

UNAMIR

HUMAN RIGHTS REPORTS

11 NOV 1994 - 27 NOV 1995

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Vol. I
No. I
July/juillet I, 1995

Human Rights in Rwanda
Les droits de l'homme au Rwanda
Uburenganzira bw'ikiremwa muntu mu Rwanda

Seminar Promotes Human Rights and Fosters Professionalism among local Journalists

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By Marc Vincent

A four-day seminar, organized by the HRFOR, to promote understanding of human rights principles and foster professional codes of conduct among Rwandese journalists wrapped up June 24 with a concluding speech by Vice-President and Minister of Defense, Mr. Paul Kagame.

The Vice-President and Minister of Defense expressed support for the conference and its aims to promote a greater understanding of human rights among journalists in both the public and private sector. He also underlined the important role of journalists in society in promoting tolerance and respect for human rights among the greater Rwandese public.

Also present during the closing ceremonies at the Hotel Diplomat was the Minister of Information, Mr. Jean-Baptiste Nkuliyingoma. Mr. Nkuliyingoma enthusiastically voiced his approval at the resolutions drawn up by the journalists and also personally underlined the importance of professional training and conduct among journalists in Rwanda.

The resolutions and recommendations agreed upon by the journalists were far-reaching and comprehensive. Most important, according to the assembled group, was encouraging and promoting the emergence of a free and independent press in Rwanda. Other recommendations were more practically oriented, including the creation of a Press Centre in Kigali which could act as a resource centre for journalists and become a meeting place for national and international journalists where information and ideas could be exchanged.

Touching on the role of women in Rwandese society, the journalists encouraged more women to enter the profession of journalism and promoted a

more indepth understanding of the problems of women in Rwanda especially considering women comprise approximately 70 per cent of the Rwandese population. (See Page 3)

La Journée de l'Enfant Africain encourage les familles à accueillir les enfants

Par Souria Saad-Zoy

La journée de l'enfant africain a eu pour slogan « Un enfant, une famille » car elle avait pour principaux objectifs d'encourager les familles à accueillir les enfants seuls et de faire connaître à la population l'Engagement d'accueil qui a été élaboré.

Un grand programme de sensibilisation a précédé le 16 juin, afin que toute la population prenne conscience du fait que chaque accueil d'enfant sera à l'avenir réglementé, et que l'Engagement d'accueil sera également applicable aux accueils qui ont déjà été faits. Ce programme est passé par la création d'affiches, de tee-shirts, de distributions de Conventions relatives aux droits de l'enfant, de messages publicitaires à la radio et dans les journaux. Ces actions se situent au niveau national. Au niveau local, ce sont les préfectures qui se sont mises en rapport avec les institutions oeuvrant dans le domaine de l'enfance pour préparer la journée.

La composante Education de l'Unité de Coopération Technique du HCDH a participé activement à la préparation de cette journée, aussi bien du point de vue de l'organisation de la journée que du point de vue financier. Dans ce dernier cas, c'est l'organisation « Partage avec les Enfants du Rwanda » qui a fait un don financier à la mission du HCDH. (Voir Page 2, le 16 Juin)

Amahame La Charte The Charter

United Nations High Commissioner
for Human Rights, Field Operation
in Rwanda

*The Charter is a monthly
newsletter designed to promote
and facilitate Human Rights
discourse in Rwanda.*

*All submissions are welcome in
either French, English or
Kinyarwanda.*

*Please forward submissions,
letters or your comments to Marc
Vincent, Editor, The Charter,
Technical Cooperation Unit,*

Amahame Makes its debut

Welcome to the first edition of Amahame.

Amahame is designed as a forum for human rights discourse within Rwanda. In the coming months we will hopefully be bringing to everyone updates on human rights activities within Rwanda plus useful information that could be used for Human Rights informal Education.

First a few words on our goals. First and foremost Amahame is a vehicle to encourage and disseminate human rights information. It can be copied, taken apart, reassembled and distributed as far afield as possible. In the future we would like to include tear-outs on certain Human Rights instruments in Kinyarwanda that can also be copied and distributed.

At the moment we have sections devoted to women's rights, children's rights, human rights activities by either NGO's, other UN Agencies and the teams in the field. We welcome and encourage you to send us articles on your activities. Something you are doing in one commune may be helpful to someone else in a distant commune. Your project ideas can be exchanged, reused and modified.

Certain sections will also be devoted to explaining and elaborating on the UN High Commissioner for Human Rights' role in Rwanda. Later if all goes well Amahame will develop monthly themes such as the human rights of unaccompanied minors, rural women, urban residents, the handicapped and human rights education within the military and the gendarmerie sectors. Any themes you consider important - let us know.

While produced under the auspices of the UN High Commissioner for Human Rights, Amahame is not exclusively a UN bulletin. Anyone with articles or information can contribute.

Unfortunately we have not yet the facilities for sophisticated layouts, or pictures. Also given space limitations we cannot provide every article in the three working languages of Rwanda. However where possible we will try to ensure important or useful information is provided in Kinyarwanda and one of the two other working languages.

Thank you very much for taking interest...

Le 16 Juin a été marquée par des milliers de sourires

(de page une)

A présent, avec du recul, il est possible de dire que la journée du 16 juin a été une réussite car tout a réellement été centralisé autour de l'enfant rwandais. Cette journée a été marquée par des milliers de sourires d'enfants qui ont retrouvé l'insouciance qu'ils avaient peut-être perdue.

Amahame La Charte The Charter

Haut Commissaire aux Droits de l'Homme, Opération sur le Terrain au Rwanda

La Charte est un bulletin mensuel ayant pour objectifs de promouvoir et faciliter le discours des droits de l'homme au Rwanda.

Tous les articles, documents ou commentaires peuvent être soumis en anglais, en français ou en kinyarwanda.

Vous pouvez envoyer les articles à Marc Vincent, Rédacteur, La Charte, Unité Coopération Technique, Cellule d'Education, Ecole Belge, Kigali.

Au niveau de Kigali, la fête a été marquée par un rassemblement au stade, rassemblement des diverses autorités rwandaises, des représentants des organisations internationales et surtout de tous ces enfants : enfants des écoles, des centres d'accueil, des orphelinats, de la rue, tous unis en cette ultime journée ensoleillée. Tous ces enfants ont défilé sous le regard attendri des spectateurs. Certains marchaient, d'autres couraient, beaucoup chantaient et faisaient des sauts de gymnastique. Puis chaque groupe d'enfants, que l'on pouvait différencier par les couleurs de vêtements ou les pancartes portant le nom de telle école ou tel établissement d'accueil, a fait un numéro : danse, chant, numéros sportifs, poèmes... souvent en portant de manière énergique des banderoles sur lesquelles étaient inscrits en grosses lettres des slogans tel « Vivons pour la paix »...

Lorsque les ministres ont fait leurs discours, les mots étaient couverts par les voix et rires de tous ces enfants présents pour la même cause : la journée de l'enfant, qui devrait l'être chaque jour de l'année.

Dans les bureaux du HCDH qui se trouvent à l'Ecole Belge, l'après-midi a consisté à organiser un goûter pour environ soixante-dix enfants vivant dans la rue, à qui ont aussi été distribués des vêtements. Le soir, ces mêmes enfants ont pu assister à un spectacle fait par les enfants et organisé par le MIFAPROFF, le HCDH et Partage avec les Enfants du Rwanda.

Dans chaque préfecture, les autorités se sont démenées pour que les activités et festivités de ce jour soient réussies. Des défilés, des célébrations officielles d'accueil d'enfants par des familles... ont été organisés, et ce, dans une ambiance bon enfant.

Les chargés d'éducation du HCDH dans les préfectures ont organisé en collaboration avec les autorités rwandaises des fêtes, des concours de dessins. A Rwamagana, des chansons ont été dites par les enfants en hommage à ceux qui sont morts lors des événements de 1994.

Tout cet enthousiasme déployé avant et pendant le 16 juin prouve l'intérêt que chacun porte pour les enfants, un intérêt qui ne doit surtout pas se limiter à une seule journée. Les enfants nécessitent une attention sans limite de chaque instant, l'objectif premier étant qu'ils soient heureux et que cela se voit dans leurs yeux.

Lessons For Rwanda from the Experiences of Other Countries in Attempting to Prevent Impunity

The following are excerpts from "Impunity and Human Rights in Practice"

Many other countries in the world have confronted the problem of trying to prevent impunity for past human rights violations, crimes against humanity and genocide. Rwanda can learn much from these experiences on how to effect justice and accountability for participation in the genocide.

International expert on impunity, Professor Naomi Roht-Arriaza, states in her book "Impunity and Human Rights in International Law and Practice".

[Currently] the number of countries slowly and painfully coming to terms with their governments' past treatment of its citizens has grown. In Chile, the elected regime has moved to investigate violations and compensate victims but not in most cases to prosecute. In the former USSR and in several Eastern European countries the accountability of the prior regimes and

methods of redress for their victims are urgent matters of public discussion. In South Africa, Cambodia, Haiti, El Salvador, and Guatemala, questions of investigation, accountability, and redress have been a major factor in negotiations toward domestic or internationally sponsored transitions, even as human rights abuses often continue. And in those countries that have confronted questions of impunity in the recent past-- Argentina and Uruguay, for example-- it is now possible to attempt an evaluation.

As the transitional regimes emerge, they inherit a legacy of widespread repression against the civilian population. [emphasis added] In some cases, this repression has taken the form of massive killings of real or perceived political opponents; in others, opponents were forcibly kidnapped and disappeared; in still others, citizens were tortured and imprisoned; and elsewhere, selective killings combined with imprisonment were the norm. In each case, the official or quasi-official status of the perpetrators shielded them from sanction, creating a culture of impunity in which the most inhumane acts could be carried out with fear of repercussions [emphasis added]...

Any transition from authoritarian rule to greater democracy necessarily involves efforts to establish and promote the rule of law. **Societies in which massive human rights violations occur with impunity are by definition lawless societies.** [emphasis added] The lawlessness of the state itself serves to disempower ordinary citizens, making them fearful to think or speak out and breeding cynicism and passivity. **As societies attempt to recover from these periods of lawlessness, one of the first opportunities to reestablish the primacy of law over individuals comes in the treatment of the former rulers, torturers, and jailers.** [emphasis added]

Discussion of how to deal with past human rights violations-- in law as well as in politics and morality-- takes place on two levels. First, **national societies debate the effects of pursuing official investigations, prosecutions or civil penalties, or compensation mechanisms.** [emphasis added] The extent and severity of past violations, the prior history of democratic rule in the country, the number of victims, the extent of complicity by the citizenry, cultural and historical traditions, the stability of the new government, and the press of

other-- especially economic-- matters provide a unique context in each case. So too do the character of the liberalization (top down or bottom up), the strength of civil society, especially human rights or victims' groups, and the amount of time elapsed between the acts at issue and the transition or liberalization."

In the case of Rwanda, just as in other countries which have gone through transitions, a combination of mechanisms will have to be used by both the international community and the Rwandan government in order to achieve justice and accountability for the genocide.

Seminar Promoted Professionalism Among Journalists

(From Page 1)

The seminar, which was financed by both UNESCO and UNICEF, saw 14 experts, both national and international making presentations on a wide range of subjects from the role of journalism after a genocide, to the mandate of the High Commissioner for Human Rights in Rwanda and methods of collecting information.

There were also very important presentations by the Minister of Justice and the Director General of the Ministry of Information on the law of the press in Rwanda and the concept of a responsible press.

Over 70 journalists and representatives of all the ministries attended the seminar which was organized by the Education Component of the Technical Cooperation Unit in collaboration with representatives from both the private and public press.

Given the importance of the media in communicating information to the public it is hoped by the TCU to follow up with the journalists on a program of informal human rights education and promotion.

(*Editor's note. Many of the speeches made during the seminar, video and audio tapes and the final report are available from the Education Component of the Technical Cooperation Unit)

Amahame La Charte The Charter

Umuyobozi Mukuru
w'Umuryango Urengera
Ikiremwanuntu Ishami
Ry'Umuryango w'Abibumbye
mu Rwanda

*Amahame ni ikiriyamakuru
gisohoka buri kwezi
cyashyirirwaho guharanira no
korohereza ubwisanzure
bw'ikiremwanuntu mu
Rwanda.*

*ibitekerezo byose biremewe,
byaba mu cyongereza, mu
gifaransa cyangwa mu
kinyarwanda.*

*Mwohereze inyandiko
n'ibitekerezo byanyu ku biro
bya Marc Vincent, Editor The
Charter, Technical
Cooperation Unit, Education
Section, Ecole Belge, Kigali.*

Security Forces Can Play a Vital Role in Protecting Human Rights

By Homayoun Alizadeh

On 15th June, 1995 the first group of 300 young soldiers completed a four-month course to qualify as Gendarmes at the National Gendarmerie School in Ruhengeri. The training and subsequent graduation is indicative of the first steps taken by the administration to rebuild a professional police force since the genocide that left over one million dead and showed once more the darkness and sadness of the history of mankind.

Rwanda is slowly but surely recovering from the plight of the genocide but faces huge problems in the reconstruction of social, economic and political infrastructure. The lack of qualified personnel, funds, facilities, mobility and communication are just some of the obstacles faced by the authorities.

In the domain of internal security, the same problems of rehabilitation and reconstruction exist. Internal security in Rwanda is mostly provided by the army which as a former guerilla force is not trained for police work. Nearly no civilian police force exists to enforce the law.

The outbreak of violence at the camp for internally displaced persons (IDPs) in Kibeho on 22nd April 1995, resulted in a considerable number of deaths and aroused shock and horror both in Rwanda itself and among the international public. The disproportionate and excessive use of force was evidence of the need for a well trained police force that could cope with internal security matters.

The establishment of a fully functional trained Gendarmerie and Communal police force with professionalism and the necessary equipment would assist national authorities to avoid future incidents. A communal police force would also contribute to strengthening commune structures and promote security within the country, particularly with regard to the reintegration of returnees into the communes.

According to Articles 55 and 56 of the UN Charter, all member States of the United Nations have pledged to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". The security forces thus, as the face of the State of Rwanda, not only have a

vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, but they shall also play an important role in the building of a human rights culture in Rwanda and in the reconstruction and reconciliation of the country.

Human rights education is a long and continuous process, especially taking into account the reality of Rwandese society after the genocide. Therefore, the aims and objectives of educating and training members of the security forces in human rights should be seen as follows:

- Promotion of respect for human rights and the exercise of state power based on respect of these rights;
- Sensitising the law enforcement officers with regard to the respect for human dignity and fundamental rights;
- To familiarise law enforcement officers with international human rights principles and Standards;
- To encourage and reinforce an ethos of legality and a culture of respect for human rights and fundamental freedoms within the law enforcement agencies;
- To promote the development of strategies, policies and practices in law enforcement agencies that are in accordance with international human rights standards;
- To develop a training project corresponding to the existing needs of the Rwandan authorities;
- To equip law enforcement educators and instructors to provide effective human rights education and training for law enforcement officials.

In order to implement the above mentioned objectives a number of activities should be taken into consideration such as training programmes for law enforcement officials, training programmes for educators and instructors of the law enforcement agencies, follow-up programmes, providing human rights documentation, financial and material assistance, providing advisory services for the relevant ministries and offering training courses on human rights for ministry officials in charge of developing training

programmes, with the participation of human rights field officers from each of the prefectures.

Human rights should be the main issue for the future of this country.

The genocide should never be forgotten.

Vast Possibilities for Human Rights Education in the Field

By Ben Majekodunnu

The scope and the possibilities for human rights education and promotion in Rwanda, and most especially in the rural communities, are vast. In a country which has suffered from internal disruption over so many years the aim is to introduce human rights as international law, as a social contract and as a code by which people live in every walk of life from national government to rural farming communities.

A key aspect of human rights education by the United Nations Human Rights Field Operation in Rwanda is that virtually every initiative should begin with the consultation of local Rwandans. Thus while the ultimate objectives of the mission, may be predefined there is no overall programme that will be implemented identically in every prefecture; the emphasis is on the needs particular to each region and on the decisions taken by the local population, authorities and NGO's in consultation with the local human rights team.

Education and promotion of human rights can be achieved through a variety of means. Formal seminars could address particular sections of the population, such as teachers, farmers and the gendarmerie. Education and promotion can also be encouraged through informal contacts with people, through discussions and debate or take the form of assistance to special interest associations.

A human rights education and promotion programme could cover the international law relevant to genocide, the right to life, the right to liberty, the right to freedom of expression, the right to property, ... the individual nature of the responsibility for a crime, practical questions such as arrest procedures and conditions for interviewing

■ 5 July/juillet 1, 1995

prisoners.

All of the above topics could be looked at from the view point of Rwandan law with discussions being raised by members of the Rwandan legal system and the debate could then be widened and enriched by being placed in an international context with human rights officers referring to their own academic and practical experiences.

Many of the human rights field officers have lived through personal situations in which human rights in their own countries have been violated. With the benefit of their experiences they could help to develop the debate and the search for solutions here in Rwanda.

In Rwanda approximately 70% of the population is made up of women and yet women have limited representation in government, in the army and in the police. The promotion of women's rights within the

context of human rights could for example involve raising awareness among government officials of the need to employ more women. Discussions with the directors of universities could also encourage the recruitment of more women students and « reunions populaires » with members of the rural community and local primary school teachers could find ways of encouraging more young girls to attend primary and secondary school.

A very good example of how human rights education and promotion may continue is the work accomplished in the sous-prefecture of Rwamagana (Kibungo prefecture) where the Bourgemestre of Muhazi commune asked the human rights team if they would be prepared to speak about human rights to the whole population of a number of secteurs. A « reunion populaire » was called and approximately 1500 people attended. For some two hours the Bourgemestre and the human rights

team spoke on human rights in general, on the need for tolerance, the importance of acknowledging those who were innocent in the genocide, on the rights of women, on the role of the High Commission for Human Rights in Rwanda.

The reunion was well received by the population who hugged the Rwamagana team members at the end of the day to thank them for their contribution and efforts.

The experience was extremely moving for the field officers and they have found that since the success of the reunion they are now recognised and welcomed all over the sous-prefecture, a fact which greatly facilitates other aspects of their work.

Other Bourgemestres from within the sous-prefecture have now expressed their wish to have the work repeated in their communes.

Notions d'arrestation ou détention arbitraire, quelques points de considération

Par Gilbert Bawara

L'arrestation ou la détention arbitraire est une notion difficile à cerner de façon formelle, d'autant plus dans une situation comme au Rwanda où les limites des moyens dont disposent les autorités rendent tolérable sinon excusable des pratiques qui, sous d'autres cieux, seraient impensables sinon arbitraires. Il s'agit ainsi de remarquer, d'entrée, la relativité de cette notion qui, lorsque sa pratique se joint à celle de la torture, se réfère généralement, à tort bien entendu, aux gouvernements autoritaires ou dictatoriaux. Raison pour laquelle, certains gouvernements préfèrent le terme d'arrestations ou détention illégale, terme qui, il est vrai, serait un peu atténuatif.

Dans les lignes qui suivent, il ne s'agit pas de donner une définition juridiquement précise et immuable, mais de dégager, à partir des instruments internationaux relatifs aux droits de l'homme et des travaux du Groupe de travail des Nations Unies sur les arrestations et détentions arbitraires, quelques principes qui devraient être pris en considération, alternativement ou cumulativement, pour analyser les situations qui se présentent à l'officier des droits de l'homme sur le terrain.

De façon générale, un acte (arrestation, détention) est arbitraire lorsqu'il est manifestement illégal (illégalité caractérisée ou manifeste) en ce sens qu'il n'est fondé sur aucune base juridique valide (arrestations pour des motifs non prévus par la loi ou en violation de la procédure légale).

Il en est ainsi:

°des cas dans lesquels la privation de liberté est manifestement illégale parce que la détention est allée au-delà de la durée de la peine prononcée ou a continué en dépit d'une décision d'amnésie.

°des cas de privation de liberté liés à l'exercice par la personne concernée des droits et libertés protégés par les articles 7, 13, 14, 18, 19, 20 et 21 de la Déclaration Universelle des droits de l'homme et les articles 12, 18, 19, 21, 22, 25, 26, et 27 du Pacte International relatif aux droits civils et politiques.

°des cas dans lesquels tout ou partie de dispositions internationales relatives au droit à un procès équitable et transparent ne sont pas observées de sorte que la détention subséquente revêt un caractère arbitraire.

Comme on peut le voir, un simple vice de procédure ne suffit pas à faire d'une arrestation ou d'une détention un acte arbitraire. Il doit s'agir d'un vice ou d'une illégalité caractérisée, manifeste qui donne à une privation de liberté un caractère arbitraire.

Pour ce déterminer sur le caractère arbitraire d'une privation de liberté, les éléments suivants sont déterminants.

A. Dans les situations pré-judiciaires (arrestations ou détention judiciaire ou administrative):

i) cas dans lesquels l'arrestation, la détention ou l'emprisonnement sont entrepris sans base légale pertinente, sans observer strictement les dispositions légales, sont entrepris par une autorité non compétente ou une personne non compétente à cet effet;

ii) cas d'arrestation, de détention ou d'emprisonnement dans lesquels l'autorité a excédé manifestement les pouvoirs que lui confère la loi ou en a abusé sans que sa décision soit sujette à recours (principe IX du Corps des principes);

iii) cas où la personne arrêtée n'est pas informée sans une langue appropriée (qui lui est accessible) des raisons de son arrestation et des charges et accusations retenues contre elle ou n'est pas informée de ses droits, cela dans un délai raisonnable (principes 10, 13 et 14 du corps des principes, article 9 alinéa 2 du Pacte Internationale relatif aux civils et politiques);

iv) cas où la personne arrêtée n'est pas interrogée et entendue de façon appropriée et dans un délai raisonnable par une autorité compétente (principe 11 alinéa 1 du Corps des principes);

v) cas dans lesquels le détenu est dénié le droit de se défendre lui-même ou de se faire assister par un conseil juridique ou le droit de bénéficier d'office d'une assistance juridique lorsque l'intérêt de la justice l'exige (principe 17 du Corps des principes);

vi) cas dans lesquels le détenu ou son conseil juridique n'ont reçu aucune communication du mandat d'arrêt ou l'ordonnance;

vii) Cas dans lesquels la continuation de la détention n'est pas sujete à révision par une autorité judiciaire ou autre;

viii) Cas dans lesquels l'arrestation, la détention ou le transfert (d'un détenu d'un endroit de détention à un autre) n'est pas notifiée à sa famille de façon appropriée ou à une autorité ou personne déterminée (autorités consulaires ou diplomatiques de son Etat s'il s'agit d'un étranger, l'organisation internationale pour laquelle l'intéressé travaille...);

ix) cas dans lesquels des aveux ou des dénonciations sont obtenus par des voies illégales notamment sous l'effet de la contrainte physique ou psychique;

x) cas dans lesquels le détenu ou son conseil juridique sont empêchés d'entreprendre des démarches pour faire valoir des éléments à décharge ou relatifs à l'illégalité de la détention (interrogation des témoins à décharge dans les mêmes conditions que les témoins à décharge, confrontation avec les témoins à charge...)

B. Au cours d'une procédure judiciaire:

i) cas dans lesquels le détenu suspect ou accusé d'avoir commis une

infraction pénale est dénié le droit d'être présumé innocent jusqu'à ce que sa culpabilité soit légalement établie et n'est pas traité ainsi pendant le procès souffrant des restrictions à ces droits (principe 36 du Corps des principes);

ii) cas dans lesquels une personne suspectée d'avoir commis une infraction pénale est détenu pendant l'instruction préparatoire et les investigations préliminaire ou pendant le procès sans ordre écrit d'un juge ou d'une autorité judiciaire (principe 37 du Corps des principes);

iii) cas de détention préventive excessivement prolongée, soit l'atteinte au droit d'être jugé sans retard excessif (article 14 par. 13 let. c du Pacte international relatif aux droits de civils et politiques);

iv) cas dans lesquels une personne arrêtée ou détenue du chef d'une infraction pénale n'est pas traduite dans un délai raisonnable devant le juge ou une autre autorité habilitée par la loi à exercer des fonctions judiciaires (article 9 alinéa 3 du Pacte international relatif aux droits civils et politiques);

C. Situation de détention ou d'emprisonnement post-judiciaire: dans ce cas, la peine de détention ou d'emprisonnement doit être, en principe, considérée comme arbitraire lorsqu'elle résulte d'une procédure judiciaire ou de toute autre nature tenue en violation des normes internationalement acceptables, en particulier:

i) procès non tenu par un tribunal compétent, indépendant et impartial établi par la loi;

ii) procès au cours duquel l'accusé n'était pas informé, dans un délai raisonnable, dans une langue qu'il comprend et de façon détaillée, de la nature et des motifs des accusations portées contre lui;

iii) procès au cours duquel l'accusé n'a pas disposé du temps et des facilités nécessaires à la préparation de sa défense et à communiquer avec le conseil de son choix.

(Notes de Rédacteur: Dans les pages suivantes on va trouver les mêmes articles traduits en Kinyarwanda)

KU BYEREKEYE GUFATWA NO GUFUNGWA BINYURANYIJE N'AMATEGEKO.

(Gilbert Bawara)

Ifatwa cyangwa ifungwa binyuranyije n'amategako ni ijamba rikomeye cyane gusobanura ku buryo busanzwe, cyane cyane mu gihugu nk'u Rwanda kirangwa n'amikoro make abategatsi bafite bugatuma ibikorwa bimwe na bimwe byihanganirwa cyangwa bigirirwa imbabazi kandi ahandi ari ibintu bitumvikana kandi binyuranyije n'amategako. Tugomba rero, mbere na mbere, kwitondera iryo jambo ryitirirwa ubusanzwe ubategatsi bw'igitugu bukandamiza abaturage, mu by'ukuri bibeshya, iyo kurishyira mu bikorwa byiyanye no kwica umuntu by'agashinyaguro. Ni yo mpamvu Guverinoma zimwe zihitamo ijamba ifatwa n'ifungwa binyuranyije n'amategako, kuko mu by'ukuri ari ryo ryoroheje, rikakanganywe.

Mu mirongo ikurikira, ntabwo turi butange ibisobanuro nyabyo kandi kidakuka ku buryo bwemewe n'amategako, ahubwo turi butoranye, duherereye ku mategeko mpuzamahanga yubahiriza uburenganzira bw'ikiremamuntu n'ibikorwa by'ishami ry'umuryango w'abibumbye byerekeranye n'ifatwa n'ifungwa binyuranyije n'amategako, inshingiro zimwe na zimwe zagombye kuba ifatizo zo guseseengura ibibazo umukozo w'umuryango urenganura ikiremamuntu ahura nabyo mu kazi ke akorera hanze.

Muri rusange, igikorwa cyo gufatwa no gufungwa by'ateganyo kiba kinuranyije n'amategako iyo kitubahiriza amategako ku buryo bugaragara, ni ukuvuga ko nta fatizo rigendera ku mategeko riba rihari (gufata umuntu nta mpamvu ziteganyijwe n'amategako cyangwa ryica

■ 7 July/Juillet I, 1995

amategeko agenga imburanishirize)

Biyo rero, niko bigenda.

mu gihe umuntu yatswe uburenganzira bwe bwo kwishyira akizana ku buryo bugaragara kandi bunyuranyije n'amategeko, kubera ko igihe cy'igihano cyo gufungwa cyatanze cyarenze cyangwa igifungo kigakomeza batitaye ku itegeko ryo kurekura imfungwa zose (amnestie).

mu gihe umuntu yambuwe uburenganzira bwo kwishyira akizana bigendana no gushyira mu bikorwa uburenganzira n'ubwisanzure bwa buri muntu birengera n'ingingo ya 7, 13, 14, 18, 19, 20 na 21 z'amasezerano mpuzamahanga yerekeye ku burenganzira bw'abaturage n'inzego za politiki.

mu gihe ingingo zimwe cyangwa zose z'amabwiriza mpuzamahanga (dispositions) yerekeye ku burenganzira bw'ikiremwa muntu bwo kugira urubanza rutabogamye kandi rubereye ku mugaragaro nta kubindikira umuntu, atubahirijwe ku buryo butuma igifungo kibiturutseho kiba ntaho gishingiye.

Nkuko bigaragara rero, kutubahiriza gusa amategako y'imburanishirize ntibihagije kugirango gufatwa na gufungwa bibe igikorwa kinyuranyije n'amategeko. Hagomba ikosa cyangwa igikorwa kinyuranyije n'amategeko ku buryo bugaragara kuko bituma kubuza uburenganzira bwa buri muntu butagira aho bushingiye kuko buba bunyuranyije n'amategeko.

Kugirango twemeze niba kubuza umuntu uburenganzira bwe bwo kwishyira akizana binyuranyije n'itegeko, tugomba kureba ibi bikurikira.

A. Mu gihe imanza zitarabwo;

i) mu gihe gufatwa, gufungwa by'agateganyo cyangwa kujya muri gereza bibaye bidashingye ku mategeko abigenga, batubahirije ku buryo budasubirwaho amategeko, biturutse ku butegetsi butabifitiye ububasha cyangwa se ku muntu utabifitiye nawe ububasha.

ii) mu gihe gufatwa, gufungwa cyangwa se kujya muri gereza, ubutegetsi bwatunguye ku mugaragaro ububasha buhabwa n'amategeko cyangwa bwabigize nkana kandi ufunzwe nta handi afite yaragera (principes IX du Corps des Principes);

iii) mu gihe uwafashwe atamenyeshejwe mu rurimi yumva neza (ashobora kwitabaza) impamvu yafatiwe n'ibyaha bamushinje cyangwa atazi neza uburenganzira bwe mu gihe cyumvikana (principes 10, 13 et 14 du Corps des Principes, ingingo ya 9, umurongo wa 2 w'amasezerano mpuzamahanga agenga uburenganzira bwa gisiviri n'ubwa politiki);

iv) mu gihe uwafashwe atabajijwe ntanaburane mu buryo bukomaye kandi mu gihe cyumvikana n'umutegetsi ubifitiye ububasha (principe II, alinea I du Corps des Principes).

v) mu gihe ufunzwe atemerewe kwiburanira ubwe cyangwa se ngo ashake umufasha amugira inama mu by'amategeko cyangwa igihe bamubujije uburenganzira bwe kugira umugira inama mu by'amategeko biturutse ku nyungu z'umushinjacyaha (Principe 17 du Corps des Principes);

vi) mu gihe imfungwa cyangwa umujyanama we mu by'amategeko batigeze babona urwandiko rubatumira;

vii) mu gihe gufungwa bikomeje nta nkomyi kandi bidashobora

kongera gusubirwaho ngo bisuzumwe n'umushinjacyaha cyangwa se n'undi wundi ubifitiye ububasha;

viii) mu gihe ifatwa, ifungwa cyangwa kwimura imfungwa (bazivana muri gereza imwe baziyana mu yindi) bitamenyeshejwe umuryango we mu buryo bwemewe kandi bubonye cyangwa se bitamenyeshejwe umutegetsi cyangwa undi muntu ubigenewe (konsule cyangwa se ambasade za Leta niba ari umunyamahanga, umuryango mpuzamahanga ushinjwa icyaha akorera,...)

ix) mu gihe kwiyemeza icyaha cyangwa se kurega abandi bibaye ku buryo budakurikije amategeko bitewe n'agahato, ububabare, gutotezwa n'ibindi bitesha umutwe;

x) mu gihe imfungwa cyangwa umujyanama we mu by'amategeko batemerewe gukora ibishoboka byose kugirango bagaragaze ibimenyetso amushyiraho byerekane ko afunguye akatengane (ibazwa ry'ababibonye bahamya cyangwa bemeza ibyo ashinjwa mu buryo butanyuranye, kubaburanisha hamwe, ...)

B. Mu muburanishirize;

I) mu gihe ushinjwa icyaha gihanwa n'amategeko, atemerewe uburenganzira bwe bwo gukomeza kuba umwere kugeza igihe afatiwe n'icyaha ku buryo bwemewe n'amategeko cyangwa se adafashwe gutyo mu gihe cy'iburanishirizwa. (principes 36 du Corps des Principes);

ii) mu gihe ushinjwa icyaha afunze kandi ankete za mbere zitegurwa urubanza zigikorwa cyangwa mu gihe cy'iburana bidategetswe mu nyandiko n'umushinjacyaha cyangwa se n'umutegetsi wundi uzobereye mu by'amategeko (Principe 37 du Corps des Principes);

iii) mu gihe cy'igifungo cy'agateganyo gikomeje ku buryo bukabije kandi burambiranye, burengeje igihe gitegenywe n'amategeko (article 14 par. 13 let.c du Pacte International relatif aux Droits Civils et Politiques);

iv) mu gihe uwafashwe cyangwa ufunzwe icyaha gihanwa n'amategeko adashyikirijwe mu gihe cyumvikana umushinjacyaha cyangwa se undi mutegetsi wemerewe n'amategeko gukora akazi k'abashinjacyaha (article 9 alinea 3 du Pacte International relatif aux Droits Civils et Politiques);

C. Imiterere y'igifungo cy'agateganyo n'igifungo cy'urubanza rwacye: muri icyo gihe igihano cy'igifungo cy'agateganyo cyangwa igifungo cya gereza kigomba ubusanzwe, gufatwa nk'ikidafite ishingiro ry'uburutse ku muburanishirizwa cyangwa ubundi buryo butubahiriza amategeko mpuzamahanga yemewe, ku buryo bw'umwihariko

i) Urubanza rutabereye mu rukiko rubifitiye ububasha, rwigenga kandi rutabera rwashyirwaho n'amategeko.

ii) Urubanza rubaye uregwa atamenyeshejwe mu gihe cyumvikana, mu rurimi yumva neza kandi ku buryo burambuye, impamvu z'ibirego bamushinje.

iii) Urubanza rubaye mu gihe ushinjwa icyaha atabonye igihe n'uburyo buhagije bwo gutegura uko agomba kwiregura no kubonana n'umujyanama yitoreye ubwe.

Selon La Convention

Women's Reality Far from the Ideal Expressed in the Conventions

By Kallhopi Migirou

Conventions have been signed. States around the world have ratified the conventions committing themselves to eliminate all forms of discrimination against women. But, the reality of the position of women all around the world is far from the ideal expressed in the Conventions. The unwillingness of Governments to ameliorate the position of women and change society's mentality concerning women is apparent.

In Africa and Asia three quarters of the female population are illiterate. In general, women represent the two thirds of the whole illiterate world. Concerning working conditions, on average, the women's salary is from 30% to 40% less than men for the same job. The present model of society reflects a masculine mentality. Women are rarely included in the decision making processes related to conflict prevention, resolution and management, or in peace-building initiative. In 1993, only six countries had a female Prime-Minister and women represented 10% in Parliaments all over the world.

Women are not only discriminated against overtly. Systems of education and the image created by the mass media deteriorates the role of women in society. Often women are portrayed as subservient and less intelligent than men. Such presentation can become a second and false reality to women and can make them believe that they are not equal to their brothers.

Women have the right to have equal access to education on all levels. Women have the right to have access to health care. Women have the right to the same jobs and the same

salaries as men. Women have the right to have the same access to political power and decision making as men and they have the right to be sexual without being considered sex objects. Women and men have the right to be treated as individuals and not as stereotypes of any culture. Women have the right to be treated with dignity and respect by all members of society.

Governments must assure that women's rights are protected within the legal framework of the national legislation of the country. The legal framework must be the basis of a culture and an education system that promotes the full equality of women. Through education and legislation the mentality of a society and the image of women must be changed so that women can enjoy their full rights.

Rwanda is a party to the Convention of the Elimination of All Forms of Discrimination Against Women as well as the International Conventions on Civil and Political and Economic and Social Rights, which includes the Rights of women. Despite this fact there are discriminatory laws against women and discriminatory juridique interpretations based on traditions and customs in the country. The right of inheritance from both families and spouses and access to primary education is not equal in Rwanda. Especially in rural areas women are not given awareness about their rights and often do not know their rights.

In post-genocide Rwanda a lot of women face extreme problems. Women are one of the most vulnerable parts of the population during the collapse of a community, like an armed conflict. Victims of rape and sexual abuse, being left with no financial or social

support bare the burden of passing on culture, traditions and values to the next generation. Many women are widows. They must take care of their homes and families on their own. A large number of survivors of the genocide have been raped and impregnated and must now deal with the reality of not wanting these children.

Many local NGOs, and UN agencies, have been trying to help these women. These NGOs need assistance in order to assist in re-building Rwandese society and to ensure that the rights of women will be promoted and respected at all levels. Tolerance is a concept that women more easily understand in most societies. In Rwanda it is also true and in order to create confidence in this country women's rights and women's organisations must be promoted.

In September of this year the United Nations will hold the Fourth World Conference on the Rights of Women. The Conference will most likely take place in China if the Chinese Government will allow NGOs to freely express their views. The Conference, which is hoped to have an important impact, will address the inequality that women face around the world. Included in the discussion will be the crucial questions of equal access to education, political power and financial resources.

Women of all ethnicities, religions and classes must work together to create realities based on tolerance and peace. Women's rights are Human Rights and no society can be complete unless there is equal respect for the human rights of all.

Une section relative à la protection et aux droits de l'enfant a été créé

Une section relative à la protection et aux droits de l'enfant a été créé dans la composante Education de l'Unité de Coopération Technique de la mission du Haut Commissaire des Nations-Unies aux droits de l'homme au Rwanda. Il était nécessaire que la mission prenne en compte

cette catégorie de la population qui, la plupart du temps, est défavorisée car sans défense et sans moyens.

Le travail dans ce domaine a commencé depuis le mois de Mai en collaboration directe et étroite avec le ministère de la

Famille et de la Promotion de la Femme, le but étant d'apporter une aide dans certains domaines intéressant directement le mandat de la mission.

Ainsi, des projets à long terme constituant des priorités ont été élaborés dans le but de

joindre les efforts pour que des solutions soient rapidement mises en oeuvre dans des domaines spécifiques.

Mais un problème devait être rapidement pris en compte, celui relatif aux enfants qui ne sont plus avec leurs parents car ceux-ci sont morts ou peut-être sont-ils vivants mais se trouvent dans un lieu inconnu qui est soit un pays voisin ou même le Rwanda. Ainsi, les enfants se retrouvent-ils dans des orphelinats, des camps de réfugiés ou restent dans la rue, livrés à eux-mêmes, refusant parfois toute aide d'adultes, ou sont accueillis par des familles. Dans ce dernier cas, les lois nationales relatives à l'adoption et à la tutelle étant inapplicables dans le pays du fait de la carence du système judiciaire, les familles accueillent les enfants sans aucune réglementation.

Parfois, les enfants accueillis n'ont pas droit au même traitement que les enfants de la famille qui accueille. Ils ne peuvent suivre une scolarité normale et sont parfois obligés de faire des tâches ingrates. C'est pourquoi, il s'est rapidement avéré urgent d'élaborer un document réglementant les rapports famille d'accueil - enfant.

Une commission a donc été constituée par des membres du gouvernement, la représentante du Service social International au Rwanda et le HCDH. Un document appelé Engagement d'accueil a été élaboré. Il permet de protéger l'enfant en énonçant des principes qui devront être respectés par les familles d'accueil et met au point un système simple en cas de conflit, avec recours possible. Ce document a été présenté aux organisations oeuvrant dans le domaine de l'enfance, et après suggestions et remarques, il a été finalisé. Il a ensuite reçu l'approbation des ministères concernés.

En parallèle, la commission a élaboré des documents relatifs à la procédure d'identification de la famille d'accueil, aux modalités de visite de la famille d'accueil au centre d'accueil et à la procédure de suivi. Ces documents sont en cours de finalisation.

Un enfant qui connaît la guerre est-il toujours un enfant ?

Par Souria Saad-Zoy

La guerre, quoi de plus dévastateur et de plus terrible pour un pays ?

Les enfants ont été les principales victimes des conflits armés au cours des dix dernières années avec plus de 1.5 millions de morts, plus de 4 millions de blessés ou d'handicapés et près de 12 millions de sans-abri. Les quelques 100 millions de mines terrestres posées dans près de 60 pays, tuent ou blessent des centaines d'enfant chaque mois.

Au Rwanda, il est possible d'affirmer que presque tous les enfants de ce pays ont été témoins des événements tragiques survenus entre avril et juin 1994. Les conséquences sont là, visibles chaque jour et partout dans le pays. Les traumatismes psychologiques qui frappent ces enfants existent et existeront pendant très longtemps: mutisme, violence, tristesse permanente...

Sans oublier le fait que beaucoup d'enfants ne sont plus avec leurs parents car ceux-ci sont morts ou peut-être sont-ils vivants mais se trouvent dans un lieu inconnu. Ainsi, les enfants se

retrouvent-ils dans des orphelinats, des camps de réfugiés, ou sont accueillis par des familles, ou restent dans la rue, livrés à eux-mêmes, refusant parfois toute aide d'adultes.

Un enfant qui a vécu les souffrances, les tragédies et les peurs d'un pays en guerre n'aura jamais le même esprit d'insouciance et de gaieté que celui qui ne les a jamais connues. Comment faire oublier à un enfant ce qu'il a vu de plus terrible: le massacre de sa famille par machette et les cadavres mangés par des chiens?

Comment écouter sans émotions le témoignage de cet enfant expliquant qu'il est vivant car il s'est caché parmi les corps sans vie de ses parents et a feint d'être mort? Comment faire comprendre à cet autre enfant que ce qu'il a vécu n'est pas normal et qu'il a le droit d'être heureux et de vivre avec un sourire permanent aux lèvres?

Ce qui frappe, c'est le regard d'adulte qu'ont ces enfants si petits, des regards qui en disent long et que l'on ne peut oublier. Des regards qui donnent envie de se battre pour que cela ne recommence plus jamais et surtout, surtout pour que ces enfants aient enfin une vie normale, c'est-à-dire une vie où leurs rires et jeux d'enfants sont rois.

UMWANYA W' UMWARI N'UMUTEGARUGORU MU BUREZI.

Olivia Mujawingoma

abahungu biganze mu bwinshi.

Nk'uko byagaragajwe n'amaburura rusanga, mu Banyarwanda bafite gusoma, kwandika no kubara, abari n'abategarugori ni bo benshi.

Koko rero, icyo urebye uburere ababyeyi bakomeje guha abana b'abakobwa mu bihe byo hambere, usanga barategurirwaga gushyingirwa no kubara gusa. Nyamara icyo witegereje imiterere y'umuryango usanga umutegarugori afite uruhare runini, mu muryango, haba mu burezi n'uburere bw'umwana, haba mu icungamutungo ndetse no mu mibanire n'indi muryango.

Abanyarwanda babivuze ukuri ngo **"UKURUSHA UMUGORE AKURUSHA UMURYANGO"**. Bityo rero, ntibyumvikana ko umutegarugori yahozwa mu nzego zimwe z'uburezi. Nubwo mu mashuri abanza umubare w'abakobwa ukunze gusumba uw'abahungu, mu mashuri yisumbuye si ko bimeze kuko usanga

Dusobanukirwe ko kuba ubu dusanga abakobwa benshi mu mashuri yisumbuye atari uko uburezi n'uburere mu gihugu cyacu bwahindutse, ahubwo ni uko abakobwa ari bo itsembatsemba ryasigiyemo umuhare mwinshi ugereranyije n'uw'abahungu. Na ba bandi bari mu mashuri yisumbuye kandi, inzizi ni zose, urugero ni nk'ibyemezo bifatirwa umwana w'umukobwa usanywe inda y'indaro mu mashuri yisumbuye: yirukanwa hatitaweho ingaruka ku buzima bwe n'ubw'uko azabwirako. Si ibyo gusa kandi kuko mu bihe byo hambere ho, hari n'amashuri abakobwa batemererwaga gukurikira mu mashuri yisumbuye.

Amahirwe tugira ni uko izo nzizi zigenda zigabanuka n'ubwo inzira ikiri ndende kuko niba umutegarugori ari we nkingi nyakuri y'umuryango, akwiye no kwitabwaho kuburyo bw'umwihariko mu nzego zose.



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

REPORT N° 2
STATUS OF THE ADMINISTRATION OF JUSTICE
IN RWANDA

- June, 20 th, 1995-

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ANNEX 1: Analysis of the situation

ANNEX 2: Organization of the Ministry of Justice

INTRODUCTION: FUNCTIONING COURTS

Prefectures	Supreme Court of Appeal	Prosecutor's office (Sup. Court of Appeal)	Court of Appeal	Prosecutor's off. (Court of Appeal)	Court of first instance	Prosecutor's off. (Ct. of 1st inst.)	Communal courts
Butare			no	no	no	yes	?
Byumba					yes	yes	1
Cyangugu			no	no	yes	yes	3
Gatsibo					?	?	
Gikongoro					no	yes	3
Gitarama					yes	yes	?
Gisenyi					no	yes	?
Kibuye					no	no	1
Kibungo					no	yes	0
Kigali	no	no	no	no	yes	yes	?
Kirambo					?	?	
Nyamata					no	no	0
Rwamagana					no	yes	0
Ruhengeri			no	no	no	yes	1
Rushashi					no	no	

Key:

(*) Gatsibo, Kirambo, Nyamata, Rushashi and Rwamagana are second chambers of the following courts of first instance, respectively: Byumba, Ruhengeri, Kigali (2), et Kibungo.

I - COURTS

(Number of magistrates including presidents and vice-presidents)

Prefectures	Supreme court of Appeals	Court of Appeals	Court of first instance	communal Court
Butare		0	1	
Byumba			9	
Cyangugu		0	5	19
Gikongoro			5	26
Gisenyi			0	12
Gitarama			6	7
Kibuye			2	23
Kibungo			2	5
Kigali	3	1	6	22
Ruhengeri		1	2	25
Total	3	2	38	138

II - PROSECUTOR'S OFFICES

It concerns:

* Prosecutors of the Supreme Court of Appeal and Courts of Appeal and their deputies.

* Prosecutors of first instance courts and their deputies.

* IPJ's (Judicial Police Inspectors) of Communal courts

Prefectures	Supreme Court of Appeal	Court of Appeal	Court of first instance	Communal courts (*)
Butare		0	1	
Byumba			1	
Cyangugu		0	1	8
Gikongoro			1	1
Gisenyi			1	1
Gitarama			2	
Kibuye			1*	0
Kibungo			2	2
Kigali	2	1	5	
Ruhengeri		0	2	1 ?
Total	2	1	17	12

Key:

* The prosecutor appointed at Kibuye has not commenced his duties.

(*) The figures are referring to IPJ

Note:

These figures are based on information provided by our teams in the field. Lacking information and future developments will be dealt with on a regular basis in the next reports.

III - POLICE

The term "Police" is to be understood in a broad sense. It includes:

* (IPJ) judicial police inspectors,

* (OPJ) judicial police officers, that means officers and non commissioned officers of gendarmerie, army officers, bourgmestres and magistrates of the Prosecutor's office. These OPJs are dealt with in a separate chapter (see chapter I I). To them should be added the gendarmerie officers of the criminal investigation services in charge of criminal investigations and technical police.

Prefectures	new IPJ	total IPJ	OPJ/Bourg
Butare	11	14	20
Byumba	4	8	17
Cyangugu	3	7	11
Gikongoro	5	11	13
Giseyni	5	6	12
Gitarama	13	18	17
Kibuye	7	7	9
Kibungo	9	11	11
Kigali	39	49	19
Ruhengeri	9	17	16
Total	103	142	145

Total IPJ newly appointed: 118

Total IPJ lacking: 17

Total IPJ all over the country: 160

As the number of OPJs of the gendarmerie and communal police is not available as of now, we propose to communicate it in the next report.

IV - PRISONS

1 - Total population (*)

Prefectures	Men	Women	Minors	Children	Total	Capacity (*)
Butare	6,208	210	114	50	6,582	1,000
Byumba	223	8	8	3	231	500
Cyangugu	1,797	23	36	127	1,868	700
Gikongoro	844	12	17	2	873	700
Giseyni	1,140	28	29	7	1,197	800
Gitarama	6,780	218	20	0	7,018	750
Kibuye			32	1	1,267	600
Kibungo	2,526	48	53	4	2,990	400
Kigali	8,651	290	235	70	9,246	2,000
Nyanza	478	51	14	6	549	800
Ruhengeri	1,081	12	29	4	1,126	1,500
Total	27,877	859	526	141	29,403	9,750

Source: Ministry of justice

(*) Source: PRISONS UNIT/ MAY 1995

Note:

The term "Minor" means children of 14 to 18 years old. "Children" means babies accompanying one of their parents in detention.

Most of the figures are provided by our Prisons Unit. These numbers represent only the population of prisons and detention centers to which our field teams have access. The prison population all over the country is estimated at more than 43,000 prisoners according to the ICRC. Arrests are made at a rate of 1,500 persons per week.

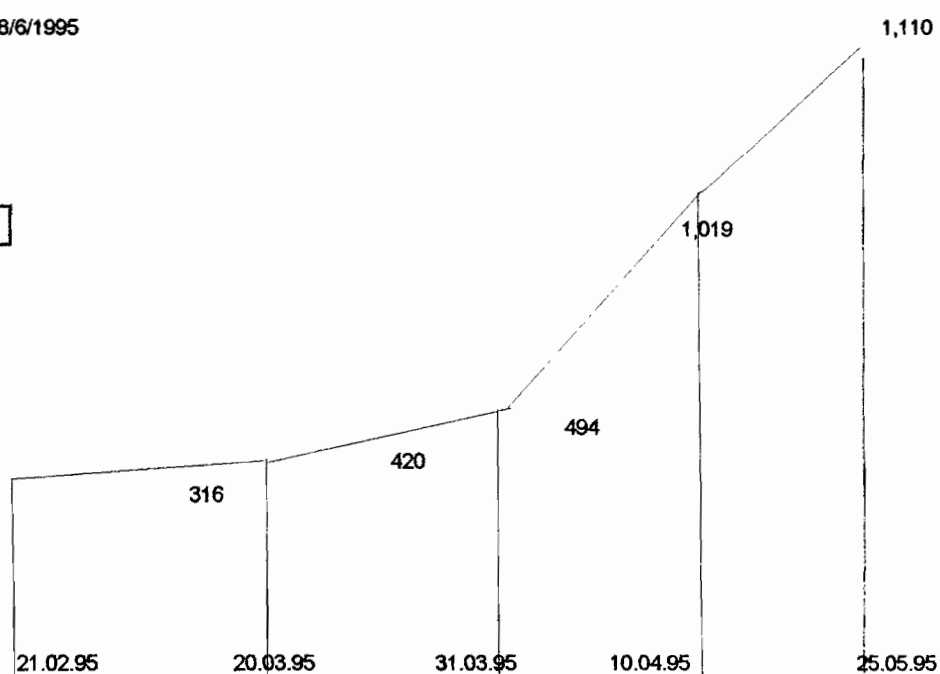
2 - Children and women in prison

Place	Accompanied children (0-14) not accused	Accompanied and accused children	Minors (15-17) accused	Women	Assistance:
Butare Nyanza prison	4	1	8	28	ICRC, HCHR
Butare central prison	30	20	107	60	ICRC, UNICEF HCHR
Cyangugu prison	0	1	16	15	ICRC, HCHR
Byumba prison	0	1	13	0	ICRC, HCHR
Kibungo central prison	0	6	68	33	ICRC, MDM HCHR
Kibungo Nsinda prison	1	2	30	23	HCHR, ICRC MDM
Kibuye prison	2	0	8	8	ICRC, HCHR
Kigali central prison	(3 births) 71	68	367	250	ICRC, UNICEF UNESCO SCF-USA HCHR
Kigali Rilima prison	3	3	49	6	ICRC, HCHR
Gisenyi prison	7	1	30	27	ICRC, HCHR
Gikongoro prison	0	1	10 (young boys)	5	ICRC, HCHR
Gitarama prison	11	18	125	143	ICRC, HCHR UNICEF, MSF Belgium, UNESCO
Ruhengeri prison	(babies) 2	5	21	19	ICRC, MDM HCHR
Sub-total	131	127	852	617	

TOTAL children in prison (0-17 years) 1.110 TOTAL women 617

Source: UNICEF/Rwanda-18/6/1995

Children in prison



Source: UNICEF, Ministry of justice, ICRC, UNHCHR, MDM, Juristes sans frontières.

V - INTERNATIONAL AID

1 - Aid provided by Governments, Agencies and NGOs.

For the Ministry of Justice

Donors	Infrastructure	Office supplies (**)	Buildings rehab.	Experts	Trainings	Séminars	Salaries	Nutrition
USAID	3 Sédan 3 Suzuki 2 Camionnettes 1 4X4	2 computers 1 laser printer 2 printers (matrix) 1 photocopier 13 stencil machines 50 calculators, 130 typewriters, 1 small photocopier						
U.K.		211 typewriters + ribbons, 40 t paper (80 GSM), 17 t bank paper (45 GSM), 2770 boxes of env. (250/b.), 1040 b. of cut folders (100/b.).						
HCR	3 camionnettes 10 motorcycles							
UNICEF	2 vehicles		Gitagata prison					
UNDP			1 new detention center, buildings, infrastructures (*)	2				
Belgium				1				
Belgium CANADA/ et U.E							officials	prisons
NPA		1st inst. court/Cyangugu						
HCHR	3 minibusses (***)			3				

(*) The rehabilitation and enlargement of existing buildings has already started: those of Nsinda, Nyanza, Byumba, Gisenyi, and Kibuye (source Prisons Unit).

(**) Some of these supplies are not yet distributed.

(***) 1 minibus for the prosecutor's office of Kigali, 1 for the prison of Kigali and another for the central administration of Ministry of Justice.

For IPJ (1st and 2nd training)

Donors	Infrastructure	Office supplies	Buildings rehab.	Experts	Training	Seminars	Salaries	Nutrition
Belgium Gvt.					financing and providing of trainers			
Swiss Gvt.					200.000CHF			
Citizens' Network		59 typewriters 118 office kits			organizing (1st and 2d) training *			
HCR					154.088 \$			
HCHR	Logistical supports for investigations							aid of WFP

* The second training is currently under way.

For the Bourgmestres

HCR	12 camionettes							
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For the Gendarmes

UNAMIR					450			
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Miscellaneous:

- 1 - 26,000 \$ from German government for MINIJUST.
- 2 - Financing of a study on the rehabilitation of the magistrates' school at Nyabisindu and a study on traditional law (30,000 CHF) by Swiss government.
- 3 - Citizens' Network has already organized a training course for prisons' staff, a training course is scheduled for clerks.
- 4 - The HCHR provides a logistical and technical assistance for the evaluation of needs for rehabilitation as well as distribution of materials received in the Prefectures.

2 - Distribution of material received

Institution	Typewriter	Total cost \$	Copy paper A4 80 GSM	Total cost \$	Bank paper A4 45 GSM	Total cost \$	Envelopes C4	Total cost \$	Various	Total cost \$	Cut folders	Total cost \$
Parquet	47	14,650	105	1,365	58	1,740	257	2,570	*	70	27	108
1st Instance Court **	15	4,700	94	1,239	118	2,555	384	3,640	*	50	7	28
** Some office supplies and equipments was donated to the "conseil de guerre".												
Prisons	4	800	88	1,118	85	1,255	192	1,920	*	2,820	10	40
IPJ	45	4,500	3	39	5	75	1	10	*	570	5	20
Gendarmerie	0	0	0	0	0	0	0	0	*	0	0	0
Communal Police	0	0	0	0	0	0	0	0	*	0	0	0
Bourgmestres	0	0	0	0	0	0	0	0	*	0	0	0
Communal Courts	0	0	0	0	0	0	0	0	*	0	0	0
GRAND TOTAL	111	24,650	288	3,761	266	5,625	814	8,140	*	3,510	49	196
TOTAL COST \$ 45,882												

Comments:

The grand total represents the total quantity and cost in USD by item
 Quantity in boxes: paper A4 80 GSM : 5 reams of 500 sheets each
 " Paper A4 45 GSM: "
 " Envelopes: : 250 per box
 Quantity in packs: Cut folders: 100 per pack
 Various: ribbons, carbon paper, a. s. o.

ANNEX I

ANALYSIS OF SITUATION

Introduction

After constant observation of the situation during several months of field presence, we consider it our duty to draw attention to some serious problems that risk to hamper the administration of justice in the coming months. While these problems testify to the lack of means of the new government, they also give proof of a certain disfunctioning of the legal apparatus.

1. The first problem is related to the non-respect of arrest procedures

In fact, the Rwandese law indicates precisely which are the competent authorities in charge of criminal investigations and official reporting. These authorities are entitled to arrest accused persons and to release them.

The following OPJs are competent to arrest accused people:

- in the field of their competence, the gendarmes having at least a rank of sergeant,
- army officers,
- IPJs appointed by the Ministry of Justice,
- prosecutors who can also release detainees,
- bourgmestres.

In reality, it is military personnel (not necessarily OPJs and often in ignorance of the law) that, in the majority of cases, proceed to arrests. In a legal system where the courts do not function normally and in the absence of any legal procedure similar to a HABEAS CORPUS system, this phenomenon does not only generate Human Rights violations, but also gives rise to two important problems:

a) Numerous are those arrested on simple denunciation; a number of files do not contain the necessary elements justifying an extended detention. In other cases, everything depends on the collaboration between army and gendarmerie; it happens that, upon arrest by the military, the arrestee is brought to the Brigade for further investigations, but this is not yet systematic.

b) The forwarding of files (if any) to the Prosecutor's office is also not made in a systematic manner. Military men still insist that the OPJs transmit the files to them.

Moreover, several facts are to be noted:

- the lack of appropriate means to permit IPJs to accomplish their mission;
- in certain Prefectures, the gendarmerie is not present;
- the IPJs newly appointed in the Prefectures suffer from a cruel lack of means; in addition to housing problems, unpaid salaries and the lack of the means of subsistence, they also lack the logistical means to allow them to go into the field for deepening their investigations.

2. A second problem is that of detention documents:

According to the law, any detainee must have:

- a legal file with the deposing OPJ or Prosecutor,
- a penitentiary file,
- and a file at the court when he is summoned

Most of the detainees do not have these files.

[Report 2, 20.6.1995]

3. In view of these facts, we can formulate the following recommendations:

To the Rwandese Government

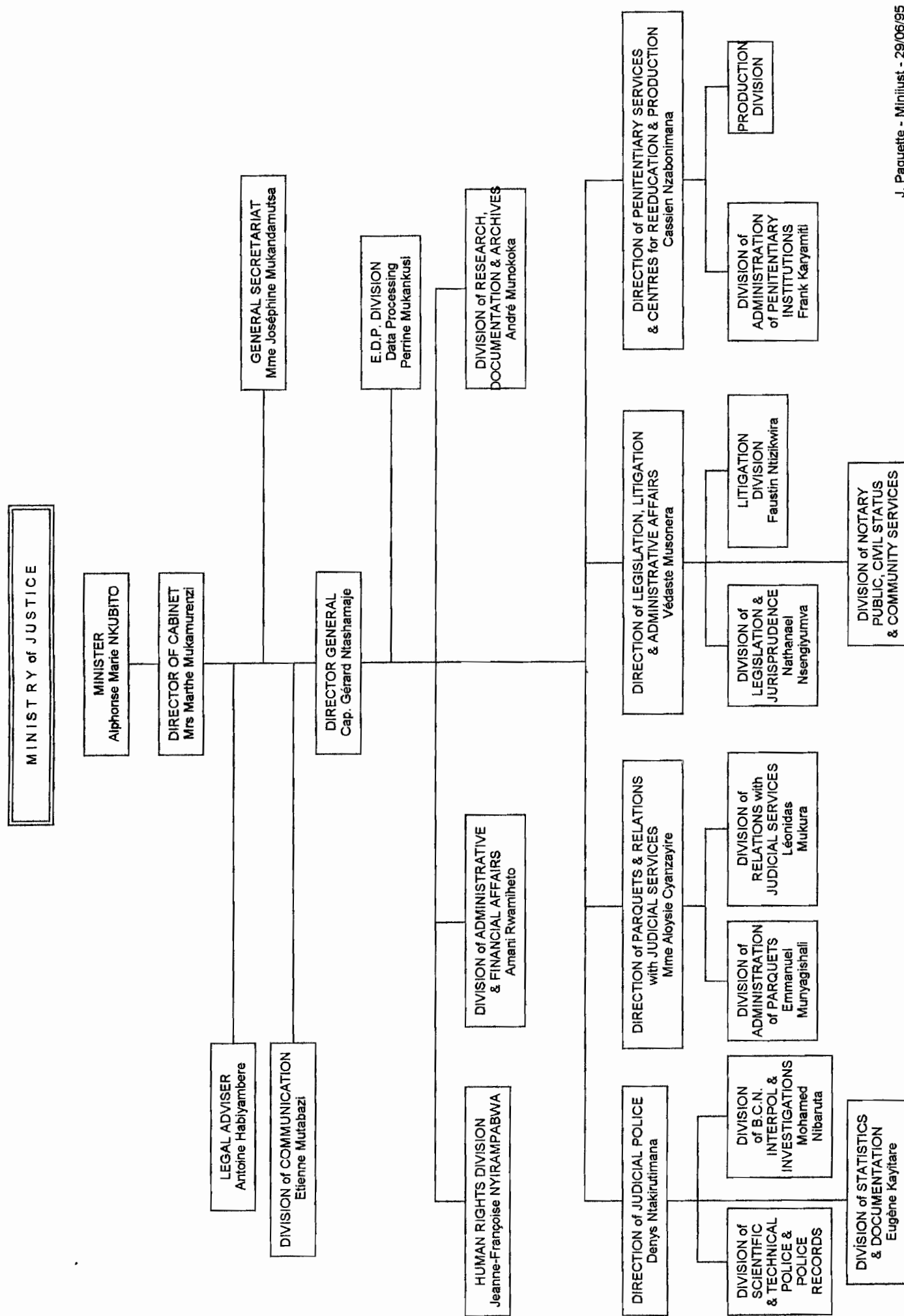
1. Reinforce the prerogatives of the Prosecutors concerning arrests and detentions.
2. Define in a clear and precise manner the field of competence of the OPJs involved in genocide investigations.
3. Ensure that the security forces having responsibilities in arrest and detention matters be with priority under an efficient legal and administrative control in accordance with national and international laws and that these forces be accountable for their acts not only to military institutions but also to courts under the rule of law.
4. Ensure that the conditions of preventive detention be respected. Normally the preventive detention is authorized by the president of the court which has to render judgment on the offence. The order on preventive detention is issued by the chamber of councils upon demand by the Prosecutor (art. 39 of the Criminal Procedure Code).
5. Ensure that the fundamental rights of the detainees be respected:
 - the right to be heard; in fact the accused must be heard prior to a preventive detention;
 - right to appeal, namely concerning orders taken in preventive detention matters (art. 46/CPC)
 - the time limit of detention which is 48 hours in the brigades of the gendarmerie and in communal prisons; this time limit can be extended only once by 24 hours by the Prosecutor (Ministerial Decree n° 221/07 of 15 April 1982).
6. Ensure that the OPJs transmit depositions directly to the Prosecutor as required by law. The task of the OPJs consists in gathering preliminary information that is to be brought directly to the attention of the Prosecutor, who is the only competent instance to proceed with preparatory investigations.

To the International Community

The International Community should:

1. Provide material means to the Prosecutors' offices to allow them to perform their tasks.
2. Provide a minimum of logistics to IPJs and OPJs in order to facilitate their access to communes so that they can conduct field investigations.

ANNEX II



UNITED NATIONS



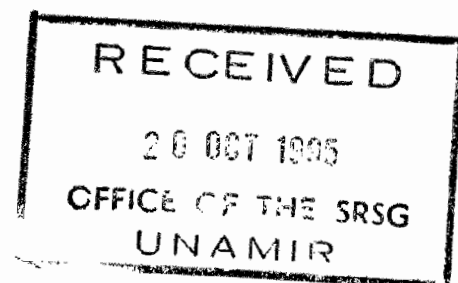
HIGH COMMISSIONER FOR HUMAN RIGHTS
FIELD OPERATION IN RWANDA

NATIONS UNIES

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

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

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



37.0

*Ladaw: For the SRSG -
could you help with
these. Thanks -*

*Dr. Dore
25/10 WML*





UPDATE ON THE ACTIVITIES OF THE HRFOR
16 SEPTEMBER - 13 OCTOBER 1995



I. STATUS OF DEPLOYMENT AND FINANCIAL SITUATION

As of 13 October 1995, there were 120 members of the HRFOR, comprising the following: 39 fixed-term staff, 64 UN Volunteers and 17 human rights field officers contributed to the HRFOR by the European Union. In the framework of technical co-operation projects, there were 3 legal experts working with the Ministry of Justice, financed by the Voluntary Fund for Technical Cooperation in the Field of Human Rights.

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

A statement of pledges and contributions is attached which indicates the situation as of 13 October 1995. The statement shows that the HRFOR has to that date received voluntary contributions in the amount of US\$ 7,226,859.69. This, together with the US\$ 3 million, advanced from CERF, has enabled the entry into spending commitments for the months September 1994 to the end of September 1995 of US\$ 7.5 million. A revised cost plan for the period October through December 1995, is also attached. The revised cost plan is based on the assumption that the present fixed-term staff component would have to be maintained until the end of 1995. It indicates a total estimated requirement of US\$ 11,319,000 (at current strength). Thus, there is a shortage of US\$ 1,092,100. This estimate does not include the repayment of the CERF advance of US\$ 3 million.

II. HRFOR ACTIVITIES

A. General Situation

1. General appraisal

During the period under review, HRFOR has observed that the following factors have had particular influence on the human rights situation

First, there has been an increase of well-organised insurgencies that appear to have been mounted by groups based in bordering countries of Rwanda, with the exception of Uganda. UNAMIR reported that in the week of 23 September to 1 October, there were a number of incidents of sabotage, assassination and mining of public roads. Most notably, two platoon-size infiltrations into Cyangugu prefecture were also reported. In addition, on 24 September, an attempt was made to destroy an electrical power pylon by explosive demolition, one of several such recently reported incidents. There have been a series of other security-related incidents. For example, in Gikongoro, a woman working for ICRC was injured when her vehicle struck a land mine near the Nyungwe Forest. Also, in Kibungo prefecture, incursions continue from refugee camps in Tanzania as well as from Akagera

National Park. Former Government of Rwanda forces and Interahamwe militias are both active in the area.

Second, the continuing return of refugees has intensified and continues to be an area of priority concern to HRFOR. For example, in many communes, particularly in Kibungo, Gikongoro and Cyangugu prefectures, problems have arisen because of a scarcity of basic living necessities as refugees and IDPs return. In some areas, survivors of the genocide have been harassed or threatened by former neighbours upon return to their communes of origin.

Third, HRFOR continues to receive reports of arrests made without warrants or in accordance with other proper legal procedures. Furthermore, most detainees case files have not been processed. However, it appears that the arrests are at least being made more frequently by competent authorities, such as the gendarmerie and the judicial police. In some prefectures, recently trained and appointed Inspectors of the Judicial Police are making a positive contribution, including with regard to creation of case files.

Fourth, the justice system remains largely inadequate and very little progress has been made in addressing the most urgent requirements. The most important effort of HRFOR to strengthen the justice system through the provision of 50 legal experts for the prosecution effort, financed by UNDP, has been unfortunately, stalled by the Government of Rwanda. HRFOR hopes, however, that the Government's announcement to appoint judges to the Supreme Court, will lead to a reinvigoration of the entire justice system.

2. Refugee return

The return of refugees to Rwanda was calm and well-organised during the reporting period. The total number that have crossed the border from 8 September to 7 October was 20,940. Returnees arriving from Zaire constituted 57% (14,096), and about five percent crossed the border from Burundi. The remainder entered Rwanda from Tanzania, approximately 30%, and Uganda at 8%. Kibungo received the bulk of returnees from Zaire (20%) and from Burundi (80%).

The rate of return, currently considered to be manageable by UNHCR and other concerned international organizations is 6,000 per day. The Government of Rwanda has announced that it is prepared to receive 20,000 returnees per day, however HRFOR considers 6,000 per day to be the more realistic figure.

The steady increase in numbers can be attributed in part to the efforts of the Government of Rwanda, UN agencies and NGOs to encourage refugees to return home and in part, to the provision of assistance as regards resettlement and reintegration. Misinformation campaigns were reportedly conducted by elements within the camps bent on discouraging refugees from returning to Rwanda by spreading rumours of dangerous conditions in potential receiving communes. The attempts by several agencies to counteract these developments through the use of radio broadcasts by Radio Agatasha and local radio stations, helped to encourage the return of refugees to their home communes. The increase can also be attributed to what seems to be a decline in the power bases of the former government of Rwanda forces within the camps along the borders with Zaire, Burundi and Tanzania, removing some impediments to return. The reported deterioration in the state of security in Zaire may also be a reason for the increased number of

refugees. In some areas of Zaire, the local community has grown weary of the Rwandese refugees in their midst.

Within the communes, returnees have been well received in general, with few reports of human rights violations. There have been 184 arrests of returnees upon their arrival during the reporting period. This represents less than 1% of the total number of returnees to Rwanda. Approximately 80% of the arrests were carried out in Gitarama and Butare prefectures and in the majority of cases, those arrested were charged with acts of genocide.

Human rights field officers, in concert with UN agencies and the Government, were well prepared to receive returnees. Transit centres, such as Nkamira, are able to register and transport returnees to the communes within 24 hours. However, there is a shortage of accommodation for returnees and, in some prefectures, of food and farming materials. The Humanitarian Assistance Coordination Unit at the Ministry of Rehabilitation and Social Reintegration (MINIREISO), which has an emergency coordination unit to organise the repatriation process at a national level, has alleviated some of the conditions that returnees frequently face upon arrival. Also, in each prefecture, crisis cells and communal committees have been set up by local authorities to coordinate the reception and integration of returnees.

3. Prison situation

The conditions of detention remain of very serious concern. On 5 October, three provisional detention centres were officially opened, one in Kigali and the others in Nsinda (Kibungo prefecture) and Nianza (Butare prefecture).

The sites at Nsinda and Nianza were already in operation before the inauguration. Following the rehabilitation of these sites, a total capacity of 5,000 was created at Nsinda and 2,800 at Nianza. At the Kigali site, formerly the ONATRACOM (Office Nationale des Transports en Commun) buildings, a capacity of 5000 has been created.

With the opening of these sites, the capacity of the main detention centres is expected to be approximately 26,000. This number is expected to reach 30,000 upon completion of the project to enlarge Gitarama prison, scheduled for mid-October.

In Rwanda's 13 main prisons, which have a collective capacity of 12,750, there were more than 40,000 detainees (see annex). More than 10,000 detainees are currently quartered in communal cachots. The total number of detainees increased slightly over the reporting period. Because of overcrowding and poor sanitary conditions and hygiene in the prisons remain of serious concern. On average, 20-30 deaths per month as well as several hundred cases of illness in Rwandese prisons have been documented.

Human rights field officers still had not gained access to some detention centres or military cachots, and consequently, were restricted in attempting to interview detainees in private.

Information was received of cases of mistreatment, often leading to death, particularly in Kigali Rural, Kibuye and Cyangugu prefectures. In a vast majority of these cases, mistreatment was perpetrated in the course of interrogations and efforts to force confessions.

4. Commissions de Triage

The Commissions de Triage in most prefectures did not meet during the reporting period. This was due in some cases to the logistical difficulties faced by Commission members in reviewing and investigating case files, and in other cases, to a lack of continuity with regard to representation from the RPA and the Gendarmerie to these Commissions. For example, in Gisenyi, the review of 13 files, scheduled for September, was postponed in the immediate aftermath of the Kanama incident. Also, in Kibungo, although the Commission did not meet during the reporting period, case files were prepared by the Prosecutor and are expected to be submitted to the Commission at its next meeting.

However, where the Commissions de Triage actually met and considered case files, a number of persons were released. This has been most evident in Butare, where in order to alleviate the prison overcrowding, many persons held for less serious offenses have been released. The Commission has been meeting once a week and has released 150 detainees since it began its work at the end of June 1995. Also, in Gitarama, two detainees were released and in Maraba commune, 9 detainees were released since 2 October. This Commission is composed of the sector conseillers of the commune, the Bourgmestre, the Inspector of the Judicial Police and two members of the RPA. It must be noted, however, that the Commission has not reviewed the files of detainees charged with complicity in the genocide.

HRFOR has made recommendations to the Government with respect to the structure and practice of the Commissions de Triage in order to improve its functions. In particular, HRFOR has recommended that the Government should provide full public support of the work of the Commissions de Triage, which may help ensure that rearrests without warrant or fresh indictments of those provisionally released, is diminished. The Government's publicly stated support could also contribute to the understanding on the part of the local population as to the work and value of the Commissions. HRFOR has also recommended the provision of minimum facilities required to enable the Commissions to review files and to conduct investigations. With a view to enhancing the profile and efficacy of the Commissions, HRFOR has also recommended that the decisions of the Commissions be made public.

On 6 October, President Pasteur Bizimungu announced that a new Supreme Court bench would be appointed within two weeks. This is expected to lead to the reinvigoration of the lower courts and to the gradual normalization of the judicial system.

B. Prefectures

1. Butare

As in the previous month, the situation in the Butare prefecture has remained relatively calm. Most cases of human rights violations reported by the team during this period pertained to illegal arrest and detention. HRFOR (Butare) therefore followed the situation in the detention centres as well as developments in the area of administration of justice in the prefecture.

A reburial ceremony of some 6000 victims of genocide took place in Muganza commune on 23 September, attended by more than 2000 persons, including the President of the Republic, the Prime Minister, and other high ranking officials. The President pledged one million Rwandese francs to the communal authorities to help families that survived the onslaught of genocide. At the Bourgmestre's request, HRFOR (Butare) recorded the event on video. Similar ceremonies are scheduled to take place in Shyamba, Maraba and Mbazi communes where the remains of 2000, 6000 and 7000 victims, respectively, of the 1994 massacres shall be buried.

On 29 September, a forensic pathologist from the International Tribunal's Prosecutor's office, responsible for investigations of last year's massacres, met with HRFOR (Butare). The forensic pathologist studied the information the team had collected, and visited, with HRFOR (Butare), the mass-grave sites in Ngoma. HRFOR (Butare) also had contacts with a delegation from Amnesty International.

Refugees from Zaire continued to return to the prefecture, although the number of returnees was significantly lower relative to that of the previous reporting period. According to UNHCR, between 18 September and 6 October, 1133 refugees arrived in Butare prefecture: 218 from Zaire and 915 from Burundi. Most of the returnees were managed through organised repatriation programmes. HRFOR (Butare) monitored the Burundian border situation, and visited the communes to evaluate the resettlement conditions, which were found to be satisfactory. Land disputes during the reporting period seemed to have occurred infrequently and the few that occurred, were settled by communal arbitration committees. The number of arrests of returnees, however, has risen, with more than 150 persons charged with complicity in the genocide.

On 9 October, Karubanda Central Prison quartered 6,595 persons, with 216 women, 102 minors, and 56 infants. There were two new births in the prison during the reporting period. The prison authorities informed the team that one detainee had died, but the cause of death was not disclosed. Although overcrowding remains the major problem in this detention centre, human rights field officers noted that the number of detainees in poor health had significantly decreased.

On 5 October, local authorities inaugurated the renovated buildings in the Nianza prison's enclosure. The buildings, with a capacity for 1,500 persons, were expected to take in some of the 6,407 detainees currently quartered at the Gitarama Central Prison.

During this period, HRFOR (Butare) visited 10 of the 22 communal cachots in the prefecture. The most overcrowded cachots were those of Runhinyia, Huye and Rusatira. The detention conditions in communal cachots in the south of the prefecture were characterized by cramped and dirty cells. Numerous cases of mistreatment in the cachots were reported to HRFOR (Butare).

The prefectural Commission de Triage has not met since the beginning of August. The interruption of the work can be attributed to the frequent change of members of the Commission. However, HRFOR (Butare) reported that the Commission de Triage at the communal level has met each week. Nine detainees accused of common crimes, were released on 2 October. This Commission, composed of the communal Conseiller, Bourgmestre, Inspector of the Judicial Police, one RPA representative and one Gendarme, has released more than 150 detainees since it began to meet in June 1995. Normally, the Commission provides a two-month suspension of proceedings to allow plaintiffs to adduce sufficient evidence against the detainee; failure to adduce such evidence results in the release of the detainee. However, the Commission has not considered cases concerning acts of genocide.

The Tribunal de première instance sat regularly during the reporting period; however, all cases considered involved family law matters.

HRFOR (Butare) held several meetings with local authorities to discuss improvements to the prefectural judicial system. One participant proposed a 'mobile' justice office, consisting of the Inspector of Judicial Police and a gendarme, but suggested that authorization would have to be provided from the central Government authorities.

HRFOR (Butare) continued its human rights education activities during the reporting period. HRFOR (Butare) and the local authorities within Shyamba and Nyabisindu communes organized conferences/debates in each school, a programme intended for both students and teachers. The first conference is scheduled for the end of October.

2. Cyangugu (and Nyamasheke)

Overall, the security situation in Cyangugu prefecture remained relatively calm, despite frequent incursions. The number of returnees steadily increased during the reporting period and tapered off during early October. The number of detainees continues to increase. Projects in the area of rehabilitation of the judiciary are progressing, albeit slowly. Finally, in the area of educational activities, HRFOR (Cyangugu) has created and, with the assistance of local authorities, will soon be implementing, a new human rights education program.

Frequent incursions continue to occur. Some intruders are now believed to be hiding in or around Kagano commune. Reports persist concerning ongoing infiltration attempts by individuals based on Ijwi Island, including at least one report of an infiltration by 40 to 50 persons. One intruder was killed by RPA soldiers.

During the reporting period, there was another attempt to blow up an electrical power pylon. No new mine incidents have been reported. The RPA report that, although incursions from Ijwi have been reduced and the possibility of mines being laid is small, the safety of individuals travelling on the Kamembe-Kibuye road cannot be guaranteed.

A significant incident took place during the reporting period in Gisuma Brigade. A detainee was found dead at the Brigade less than one week after his arrival. Although the autopsy and other sources identify the cause of death as blows to the head, a number of officials have claimed the cause of death to have been malaria. HRFOR (Cyangugu) is continuing its investigation of this matter.

The situation at the border crossings has been relatively calm during the reporting period. During the three-week period of 17 September to 7 October, 784 returnees crossed the border into Cyangugu prefecture. Of these, 376 crossed at Ruzizi I border post and 408 crossed at Uvira border post. Two returnees were reportedly arrested at the border, but HRFOR(Cyangugu) has not confirmed this report.

Re-integration for returnees into their home communes has posed few problems, although HRFOR (Cyangugu) interviews with returnees suggest that the number of land disputes has increased. Many returnees have stated they returned on the basis of information conveyed on Radio Agatasha.

A continued problem for returnees in this prefecture has not been so much the security of returnees upon arrival in the communes, but rather a lack of adequate housing, because many houses of the returnees have been destroyed or looted. Also, many returnees have complained of dire poverty and the unavailability of seeds.

As of 25 September, Cyangugu Central Prison (capacity 700) held 2,065 detainees, nearly three times the prison's capacity. Of this number, 1,998 are men, 26 are women and 41 are minors. In addition, three infants were present with their mothers. HRFOR (Cyangugu) is looking into reports that Gendarmes guarding the prison, have frequently beat detainees. With the rainy season under way, detainees have requested that efforts be taken to repair the prison's leaky roof. HRFOR (Cyangugu) is discussing the matter with the ICRC and the local authorities.

Generally, within the communal cachots, overcrowding persists, with a few exceptions. Detainees report they feel their cases are being neglected, and many state they have not been interviewed by Inspectors of the Judicial Police. Sanitary and hygienic conditions are poor, with cases of malaria, dysentery and tuberculosis.

For the first time, HRFOR (Cyangugu) gained access to Ntendezi military detention centre, on 26 September. The centre held 65 detainees, all of whom were adult males. There are reports of mistreatment in the centre, but this has not been confirmed.

As in Gikongoro prefecture, there were reports that Inspectors of the Judicial Police were not interviewing many of the detainees and, accordingly, many case files had not been created. There were 17 Inspectors of the Judicial Police deployed in the prefecture, but they appear to have made little progress. In Gafunzo commune, no Inspector of the Judicial Police has been available to interview detainees. In Kagano commune, no detainee has seen an Inspector of the Judicial Police in the past three weeks. During the week of 25 September to 1 October, only three detainees in Kamembe Brigade were interviewed, despite the presence of 10 Officers of the Judicial Police.

More disturbing, there have been reports of Inspectors of the Judicial Police extorting money from detainees and their relatives as a condition for commencing an investigation. Although the Prosecutor is aware of the practice, and the Ministry of Justice has apparently condemned it as well, it does not appear to have ceased.

Only one cantonal tribunal functions at the moment, whereas the Commission de Triage has spent a considerable amount of time in discussions over procedure. During the 23 September session, a list of priority cases was drafted, but no final decision had been taken on any of these cases.

HRFOR (Cyangugu) is in the process of developing a model for a prefecture-wide human rights education programme. The programme includes an Education Troupe, which will convey human rights messages through traditional Rwandese stories, music, dance and theatre, and is designed to appeal to all ages and educational backgrounds. The program will also incorporate a professional Rwandese storyteller whose stories will convey human rights themes on the right to life, minority rights, women's rights, children's rights, refugee rights, prisoners' rights, the right to a fair trial, the presumption of innocence, the right not to be married except by full and free mutual consent, and the right to education.

HRFOR (Cyangugu) will work closely with public officials and NGOs in the preparation of the program. The Troupe's first program is scheduled to begin on 11 November.

3. Gikongoro

Overall, the security situation in the prefecture seems to have worsened during the reporting period. In particular, a mine exploded on 26 September and a civilian vehicle was attacked some days later on a well-travelled road. The prison population has been increasing and Inspectors of the Judicial Police appear to have been neglecting their duties to interview detainees. There are, however, signs of positive change taking place in the prefecture, primarily in the form of a recently functional Tribunal de Première Instance.

HRFOR (Gikongoro) reports that, at approximately 0900 hours on 26 September, a mine exploded on a road between Muko and Musebeya communes. The vehicle, which was carrying three individuals working for the ICRC, set off the mine, which shattered the vehicle and threw its passengers approximately six to seven meters. All three individuals survived the incident and only one suffered serious injuries. Sources indicate the mine was likely have been an anti-tank or similar mine. Because of the incident, some NGOs and other agencies temporarily ceased operations within the prefecture.

On 1 October, another significant incident took place. On the main road from Gikongoro to Cyangugu, approximately five kilometres from the Gikongoro edge of the forest, a small group of armed bandits attacked a car, killing two persons and possibly injuring a third. There is no reported motivation for the killings. HRFOR (Gikongoro) is continuing its investigation.

During this reporting period, the detention centre situation has not changed considerably. Sanitary and other hygienic conditions in the detentions centres of this prefecture, although less serious than in other prefectures, continue to be poor. Furthermore, with a steadily increasing detainee population, the central prison has

now surpassed twice its capacity. HRFOR has not been able to obtain confidential interviews with a number of detainees.

At Kivu communal cachot, the following incident took place. HRFOR (Gikongoro) had commenced a series of questions to detainees of the cachot, when a number of detainees identified an impostor in their midst. The detainee singled out, turned out to be an RPA soldier, dressed as a detainee, and was present in the room presumably to monitor the interviews between the human rights field officer and the detainees. The human rights field officer protested at which the point, the soldier left before interviews resumed. It was later learnt that this practice had been taking place systematically. However, in spite of a fear of reprisal, the detainees found the courage to identify the informant. HRFOR (Gikongoro) has lodged a protest with the Prefect, the Gendarmerie commander and the prosecutor and awaits a formal response on this matter.

HRFOR (Gikongoro) visited Gikongoro central prison (capacity 500) on 5 October. There were a total of 1,116 detainees, of which there were 1,083 men, 14 women and 19 minors. In addition, there are four infants with their mothers. Hygienic conditions have begun to deteriorate. Numerous cases of respiratory related diseases, as well as at least one instance of malaria, have been identified in the prison infirmary. One case of tuberculosis has also been reported. At the current rate of increase in number of detainees, an outbreak of a contagious disease would prove difficult to isolate.

HRFOR (Gikongoro) has begun a coordinated effort with the Prosecutor to study detainee case files. The focus has been put on minors, women, unsubstantiated accusations and cases of possible discrimination against Batwa detainees.

Conditions at almost all cachots continue to remain poor. Food is provided only by family members of detainees. Sanitary and hygienic conditions vary, with cases of malaria and tuberculosis on the increase. There have been frequent reports from detainees of mistreatment. Detainees have complained they were not being interviewed by Inspectors or Officers of the Judicial Police.

The Tribunal de Première Instance commenced adjudication of cases during the week of 25 September. In its first week, some civil cases were conducted. The court was scheduled to commence adjudication of penal cases during the week of 4 October.

The Commission de Triage again has failed to meet during the reporting period, with some members of the Commission reportedly absent from Gikongoro.

HRFOR (Gikongoro) has organised a seminar on arrest and detention, scheduled for mid-October. The Prosecutor, Officers and Inspectors of the Judicial Police as well as local military and civil authorities, have been approached to participate. A human rights education program has also been launched at S.O.S. village. The program highlights coverage of the Universal Declaration of Human Rights and the Convention on the Rights of the Child and targets primary school teachers.

4. Gisenyi

Following the massacre of 109 persons in Kanama commune on the morning of 12 September, the Brigade Commander for the three western prefectures, and the officer in charge of the Kanama region, were suspended from their duties. The Battalion Commander for Bigogwe Military Camp, was placed under arrest. A dusk-to-dawn curfew was enforced in Bisizi and Kayove, two of the sectors where the massacre occurred.

As a security measure, visitors to the affected sectors in Kanama are obliged to report to the Nyambakumi or village council, which in turn reports to the local authority of the cell, who reports to the conseiller and finally to the bourgmestre. Local authorities suspect that there is a continued Interahamwe presence in Bisizi and Kayove sectors.

The general security situation in Gisenyi during the reporting period remained calm, broken only by a few isolated incidents. Most notable was the double murder of the Bourgmestre of Kayove commune and an agronomist, on 27 September. Both were shot dead in the Gihumba sector, Buruhukiro cellule, at around 16:00 h, whilst returning from a meeting in Vumbi sector. HRFOR (Gisenyi) and local authorities are investigating the incident.

Gendarmes arrested six persons in connection with the attack on a family in Ramba commune on the night of 25 September. Two of their children were taken hostage. HRFOR (Gisenyi) is investigating the incident with local officials.

The number of returnees who crossed the border into the prefecture during the reporting period stood at 10,331. About half of these comprised 'old caseload' refugees from 1959, mainly from the Masisi region in Zaire. The sudden influx has been attributed both to the success of the repatriation campaign and the deteriorating security situation in the camps in Zaire.

A new border point was opened on 11 September at Mutovu, in Mutura commune, to facilitate the return of refugees in Kibumba, Katale and Kahindo camps. The number of refugees crossing at this point was low during the reporting period, perhaps due to their fears of ill-treatment at transit centres. HRFOR (Gisenyi), local Rwandese authorities and NGOs launched concerted efforts to counteract misinformation disseminated throughout the camps.

On 5 October, Prime Minister Rwigema and other high ranking military and civilian authorities toured Gisenyi, including the Gishwati forest, where 317 families from Masisi were illegally settled. The Prime Minister announced that the returnees would be moved to an area of 1000 hectares in Ruhengeri reserved for them, as the place where they are currently settled had been earmarked for a Government project.

Returnees have been generally well integrated into their communes; no major incidents have been reported. Crisis committees have been established in several communes to deal with the situation of returnees.

As of 6 October, 1,398 persons were quartered in the Gisenyi Central Prison, with 1320 men, 27 women, 41 minors, and 10 infants with their mothers. All prisoners had been provided with beds, which consequently had improved health conditions. Case files have been completed for 600 of the detainees, and HRFOR (Gisenyi) assisted in their preparation with the delivery of 10 office supply kits holding typewriters and paper.

As of 6 October, the Brigades at Gisenyi town, Ngororero sub-prefecture and Kabaya in Nyamyumba commune quartered 221 persons. The numbers remained steady to that of the previous reporting period. Conditions in the cachots and Brigades were in general reported to be adequate. In the ETAG (Gendarmerie detention centre), on 7 October, a further 242 persons were detained, an increase of five percent over the previous reporting period.

The newly appointed Inspector of Judicial Police for Mutura commune commenced a programme designed to sensitise the population and the military to proper arrest and detention procedures and secured the cooperation of the military to this end.

5. Gitarama

Security within the prefecture remains of concern. The situation is particularly volatile within the communes of Ntongwe, Musambira, Taba and Bulinga.

On 15 September, two farmers were killed in their home in Musambira commune. According to the local military authorities, the case involved the attempted arrest of a suspected Interahamwe, whose wife was also killed during the suspect's alleged attempts to escape. The bodies of the victims were already buried when HRFOR (Gitarama) visited the scene on the same day. Local authorities, with HRFOR (Gitarama), are investigating the incident.

The number of returnees to the prefecture had decreased during the reporting period. Of the 1,026 returnees, 31 were arrested upon arrival, most of them on charges of complicity in the genocide. However, in most of the communes visited during the reporting period, returnees were well integrated, although shortages of food, clothing, and agricultural tools persist. No land disputes were reported during the period, and local authorities were studying a plan to rebuild houses. Work on the reconstruction of 61 houses belonging to survivors of the genocide began in mid-October.

In Taba commune, the number of registered detainees had increased within the communal cachots, although few arrests were reported in the last few weeks. HRFOR (Gitarama) received indications from various sources that some illegal arrests were conducted at night. In particular, the arrest of a school inspector, on 13 September, and of the Bourgmestre's assistant, on 12 September, were not registered. Both persons were quartered in the Taba communal cachot, and HRFOR (Gitarama), with local authorities, continues to follow these cases.

As of 10 October, 6,407 persons were quartered in the Gitarama Central Prison, with 217 women, 62 minors, and 31 infants with their mothers, including 6 new births registered. Prison authorities indicated that 4 detainees died of malaria during the past weeks and more than 200 detainees were treated at the prison's infirmary daily. A tent provided by UNICEF was installed recently near the women's building to receive children and their mothers. An NGO provides daily assistance to this particularly vulnerable group. Prison conditions are expected to be improved with the completion of a new prison wing, with a capacity of 4,750, in mid-October.

On 26 September, human rights field officers met with prison authorities to discuss future meetings with representatives of detainees, primarily with respect to the problem of overcrowding. The transfer of detainees to a new wing of the Nianza detention centre is scheduled to commence in October 1995.

During the reporting period, HRFOR (Gitarama) visited all 17 communal cachots of the prefecture. The detainee population in those detention centres was estimated to be more than 2100. Most of the detainees were accused of genocide. In general, the cachots are filled with detainees some times, 10 times their capacity. The most overcrowded cachots are those of Ntongwe and Murama which quartered 312 and 211 detainees respectively.

The human rights field officers were informed that more than one third of detainees were ill. Most suffered from malaria, diarrhoea and open wounds. Medical assistance given to them was in most cases either insufficient or non-existent. Almost 450 detainees were not receiving food from their families and only ate what other detainees shared. HRFOR (Gitarama) approached an NGO, which gave assurances of food assistance, and signed an agreement with the Prefect to that effect.

The Commission de Triage continued to meet regularly, despite logistical constraints. The absence of one member considerably slowed down the work. The Commission recommended the release of two detainees, one accused of genocide and the other of a common crime. Since the beginning of the Commission's working sessions in May 1995, only one detainee has been re-arrested.

HRFOR (Gitarama) met with the Procurer and all the Inspectors of Judicial Police to evaluate the administration of justice in the prefecture. This meeting was the first to take place since the deployment of the Inspectors to the communes. Regarding the technical assistance program, HRFOR (Gitarama) has delivered furniture and office material to the prefectural Parquet.

HRFOR (Gitarama) continues with its human rights education programme by organising meetings with local associations of women and international NGOs. The first debating conference for women is scheduled for October, to be held in the communes of Musambira, Runda and Mukingi. Over one hundred persons are expected to attend.

6. Kibungo

The general security situation continued to be uncertain in the border regions due to incursions from refugee camps in Tanzania by members of the former Rwandese Government Forces and Interahamwe militias operating from the Akagera National Park. HRFOR (Kibungo) continued with its visits of communes. Human rights field officers met with local authorities and population to assess the human rights situation. The team inspected communal cachots, monitored the reception and re-integration of returnees, visited health centres and met with judicial authorities to discuss arrest and detention procedures and evaluate the working of the judicial system.

Infiltrations have occurred in Rukara, Kayonza, Kigarama and Rukira communes. These incursions seem to be carried out to intimidate the local population as well as to recruit personnel for militia groups. Infiltrators appear to be concentrated in the south of Akagera National Park and in the north of Lake Nasho. Infiltrators commonly were familiar with the territory and were frequently recognised by members of the local community who could identify them by name and place of origin, even indicating the refugee camp where they stayed.

During the night of 26 September, a group of about 10 men armed with guns, machetes and sticks attacked three houses in Kabare II and Bare, Kigarama commune and robbed the residents. It is believed that the perpetrators came across the border from Tanzania. With the exception of one man, the infiltrators were allegedly dressed in civilian clothes. Three persons were injured during the attack. That same night at Rwinkwavu hospital, one of the victims died of wounds suffered in the attack. The attackers managed to escape at first. On being informed of the incident, however, RPA troops deployed at Cyarubare reportedly carried out a search operation and allegedly killed three of the attackers in their tents on the bank of Ihema lake. The attackers were reportedly identified by eyewitnesses who were able to provide the names to HRFOR (Kibungo). Human rights field officers continue to investigate the incident.

During the night of 28 September, a group of 8 armed men entered a house in Rusumo commune and killed 8 members of a family. Only two little children were able to escape. Reports have been received that the perpetrators were former residents of Rusumo commune who had come from a refugee camp in Tanzania and returned immediately after the incident to Tanzania. Other reports indicated that the family was killed by members of the local population who resented the victims for having accused residents of participation in the genocide. The Gendarmerie arrested 8 suspects who are detained at the Brigade in Kibungo. HRFOR (Kibungo) plans to interview the detainees and continue its investigations.

On 4 September, some soldiers brought a detainee to Rwinkwavu hospital, Kayonza commune, who had suffered a deep wound to his throat and who allegedly had attempted to commit suicide. The soldiers stated that the detainee was held at the cachot of the same sector and they took him back immediately following the

surgery, without allowing the patient to receive proper post-surgical treatment. Human rights field officers inspected the cachot in Rwinkwavu where 10 detainees were held. The detainee who had been treated at the hospital was not in the cachot. Various sources indicated that he may be held at a military detention centre at Hotel Akagera, near the border of Akagera National Park. Infiltrators coming from Tanzania and arrested by military personnel were held allegedly at this detention centre. RPA soldiers, however, denied the existence of the detention centre. HRFOR (Kibungo) will continue to investigate these questions.

On 12 September, a meeting was held at the office of the prefect to discuss the refugee return situation and to co-ordinate the activities of various governmental, international and non-governmental organisations. The prefect announced that he would set up a prefectural crisis committee to deal with the refugee return situation.

In early September, 30 representatives of Rwandese refugees in Burundi visited the prefecture to assess the current situation in their home communes. Generally, the members of the delegation were satisfied with the security and human rights situation.

- During the month of September, a total number of 8,483 registered returnees arrived at Kibungo prefecture, including 4,512 coming from Burundi, 2,885 from Zaire, 797 from Tanzania and 289 from Uganda. Many returned to Birenga and Sake communes in the south of the prefecture. Large numbers were brought to Nasho, Rusumo commune, an area defined as a settlement zone by the Rwandese Government. The security situation was calm. The economic and sanitary situation in Nasho, however, remained problematic due to forest fires, water shortages and lack of health facilities.

As of 2 October 1995, Kibungo prison held 3,497 detainees, including 85 women and 62 minors. There were also 24 infants in the prison with their mothers. 45 detained RPA soldiers were held in a separate cell. Detention conditions were distressing and exacerbated with the onset of the rainy season. Detainees had no room to move or walk. They had no choice but to stand bare feet on the wet floor soaked in excrement and mud. Most detainees were exposed to the elements. Human rights field officers (Kibungo) were deeply concerned about this situation at the beginning of the rainy season. HRFOR (Kibungo) arranged meetings with the Humanitarian Co-ordinator, DHA, the prison director of Kibungo and ICRC in order to provide plastic sheeting to protect detainees during the rainy season.

The parquet has completed more than 1,000 case files. The Prosecutor of Kibungo informed HRFOR (Kibungo) that 1,500 detainees will be transferred in groups of 200 to 300 from Kibungo to Nsinda Prison.

HRFOR (Kibungo) visited Nsinda prison on 11 September and on 5 October. On 5 October, the number detained stood at 941, with 892 men, 24 women and 25 minors. There were also two infants with their mothers. All detainees stand accused of having participated in the genocide. The 25 minors will be transferred

to Gitagata juvenile correction centre as soon as their case files are completed. On 5 October, the new prison at Nsinda was inaugurated by the President of Rwanda, in the presence of several ministers, the Special Representative of the UN Secretary-General, representatives of various Governments and UN agencies as well as the Chief and Deputy Chief of HRFOR. The new prison has a maximum capacity of 5,000. On the inauguration day, the detainees were transferred from the old buildings to the new buildings. Transfers from other prisons will begin at the end of the month.

On 8 October, there were 2,330 detainees, including 69 minors, quartered in the 11 communal cachots and 3 brigades of the prefecture. Overcrowding constituted a serious problem.

On 19 September, HRFOR (Kibungo) visited Kayonza commune. The local population in border areas, continued to feel insecure and feared further incursions. HRFOR (Kibungo) renewed its request to UNAMIR to carry out regular patrols so as to deter incursions. The communal cachot quartered 63 male detainees, including several minors aged around 15. Overcrowding represented a serious problem with around half a square metre space per person. Some detainees had been held for more than four months. No case files had been established. Rooms had no windows. The commune could not provide food for detainees and some families were not permitted to visit their relatives on a daily basis to bring food. Several detainees were obviously malnourished.

On 25 September, a former interpreter of UNAMIR who had been arrested on charges of genocide, was released from Kibungo prison. The prosecutor stated that he had ordered the release of the detainee since the charges against the accused could not be substantiated. The man was, however, re-arrested by RPA soldiers before he was able to leave the prison facilities.

HRFOR (Kibungo) continued to investigate the case of an Italian priest accused of having participated in the genocide. His passport has been withheld. Both judicial and military authorities allegedly have conducted investigations and submitted their case files to the Minister of Justice. No arrest warrant has been issued. The priest lives in the bishop's residence in Kibungo where he is kept under unofficial house arrest. Human rights field officers visited and interviewed the priest. He is in good health. He stated that Italian authorities were intervening on his behalf before the Rwandese Government.

HRFOR (Kibungo) continued to collect information on the genocide in Muhazi commune. 11 witnesses were interviewed and eight mass graves were analyzed. HRFOR (Kibungo) confirmed that the witnesses would be available to make statements before the International Tribunal for Rwanda.

The Commission de Triage did not meet during the reporting period. Since its first meeting on 11 August, the Commission de Triage had met only three times. The Commission has examined five cases and will decide on the case files at its

next sitting. The prosecutor prepared 10 case files and will submit them to the Commission at its next meeting.

The Tribunal de Première Instance in Kibungo is not operational. The only magistrate at the tribunal could not fulfil his duties due to illness. The second chamber of the Tribunal de Première Instance was suspended and the one magistrate has been transferred to Kibungo. The new magistrate in Kibungo together with the prosecutor and the parquet undertook major efforts to complete the case files at Kibungo prison.

On 14 September, HRFOR (Kibungo) delivered 3000 blankets for orphans and their foster families in Rukara commune. The blankets were donated by the Austrian Relief Programme and transported to Rukara by UNAMIR. More than 3,000 unaccompanied minors and orphans live in extremely poor conditions in Rukara commune. HRFOR (Kibungo) has encouraged different NGOs to support unaccompanied minors and their foster families.

HRFOR (Kibungo) organised a meeting with representatives of 30 women's associations in the prefecture, representing about 25 different local associations. Human rights field officers gave a presentation on the mandate and activities of the HRFOR and offered their assistance to women's associations in order to promote women's rights in Kibungo and to establish contacts to international NGOs willing to support local associations. The next meeting will be held on 16 October.

7. Kibuye

The security situation in Kibuye prefecture remains of concern. There have been no recent reports of incursions. The relative calm may be attributed to stepped up efforts by the RPA to counter previous incursions of former Government of Rwanda forces in the northern part of the prefecture. Suspicious deaths, illegal arrests and mistreatment of detainees have been reported.

The number of returnees arriving in the prefecture has slowed considerably. As compared to the period 28 August-17 September during which 1,493 returnees arrived, only 69 returnees arrived during the period 17 September-9 October. Of the 1,562 returnees, 55 were arrested, the majority accused of genocide. The returnees were generally well-received.

During the night of 26 September, a judge from the Tribunal of the Canton in Rwamatamu died in Kibuye central prison. On 26 August 1995, the magistrate had been arrested without a warrant by communal police during a religious ceremony. Accused by four persons of having participated in the genocide, he had been incarcerated at the communal cachot before being transferred on 17 September to Kibuye central prison. Prison authorities stated he died of malaria. Other sources have indicated the judge had been beaten for days by communal police and by the Bourgmestre's assistant. HRFOR (Kibuye) is continuing its investigation.

On 26 September, at 2 a.m., the President of the Gisovu Cantonal Tribunal was arrested at his home by 12 RPA soldiers who accused him of genocide. Since then, the magistrate has reportedly been mistreated. HRFOR (Kibuye) has also been informed of the arrest of the Gishyita Inspector of the Judicial Police.

Between 16-23 September, the International Tribunal for Rwanda conducted investigations into genocide in the prefecture, expressing their interest in information regarding mass graves. HRFOR (Kibuye) has closely cooperated with Tribunal.

On 5 October, the Kibuye central prison quartered 2,171 detainees among which were 62 women and 13 minors. Also, seven infants were with their mothers. Sanitary and hygienic conditions are poor. Several cases of malaria have been reported. Overcrowding continues to be pervasive.

During this reporting period, HRFOR (Kibuye) visited nine communal cachots in the prefecture. The total number of detainees quartered in these cachots is 500, with the most overcrowded cachots being Rutsiro (106), Kivumu (86) and Mabanza (73). In most of the cachots, the human rights field officers were not able to meet confidentially with the detainees because of the constant presence of RPA soldiers and communal police officers. Mistreatment is still evident, and there has been one report of a detainee who died under suspicious circumstances at Gishyita cachot. HRFOR (Kibuye) is investigating.

The Commission de Triage has not started to function yet. Investigations into accusations against detainees are moving slowly, if at all. Even though the list of appointees for the seven Inspectors of the Judicial Police was published on 31 August, only those responsible for Mabanza and Gishyita are in place. Among nine cantonal tribunals, only one is functioning.

During the present reporting period, HRFOR (Kibuye) continued human rights education activities. Among its other efforts, the team has organised in close cooperation with local authorities, seminars on rights of women. Another conference/debate for secondary school students took place in Gitesi commune, to spread tolerance and respect for human rights.

8. Kigali

From 11 September until 7 October, HRFOR (Kigali) made 24 visits to 15 communes in both Kigali Ville and Kigali Rural Prefectures. During their visits, human rights field officers met with local authorities on a communal as well as a sectoral level, interviewed members of the local population and representatives of local associations, established commune profiles, followed up on individual cases and visited communal cachots. The general security situation was calm. Economic problems, however, remained of serious concern. The general human rights situation in Kigali Ville and Rural Prefectures has been stable and calm during the reporting period. The re-integration of returnees has not created any major problems to this point. The situation at Kigali Prison, however, continued to be a matter of serious concern.

Thirteen depositions on alleged human rights violations including 11 cases of alleged arbitrary and/or illegal arrests and detentions and 2 cases of alleged violations of the right to integrity and security of the person, were received. Since 11 September, human rights field officers conducted 8 follow-up investigations.

On 1 October, a man previously detained at Muhima Brigade came to the HRFOR office to inform human rights field officers of his release. He expressed his gratitude for HRFOR's intervention, which he credited for his release. The victim had been arrested on 25 September by an Officer of the Judicial Police and taken to Muhima Brigade where he was held in the cachot until his release. The Officer of the Judicial Police had accused the person of theft. At one point during his incarceration, a gendarme came into the cachot and claimed they had been told the detainee had participated in the genocide. Human rights field officers went together with the victim's wife to speak with the Officer in charge of the case providing documentation proving the innocence of the victim. The Officer read through the documents that exculpated the victim. The victim was released three days later.

On 19 August, a journalist at Radio UNAMIR left his house to travel to Uganda through the border post at Gatuna. Since that day, the man has not been seen by his wife or employer. The victim had been expected to have returned to work on 31 August. Investigations have been coordinated with UNAMIR and the national gendarmerie, but nearly two months after his disappearance, the whereabouts of the victim are still unknown.

Particular attention was paid to the return, reception and re-integration of former refugees. HRFOR (Kigali) organised meetings with UNHCR (Kigali) in order to co-ordinate activities and monitor the situation in communes. Human rights field officers continued to visit regularly Ndera transit camp.

The influx of returnees to communes in Kigali has significantly decreased over the last four weeks. Generally, the returnees continued to be well received by the local population. No major incidents were reported. Until now, the number of returnees did not exceed the capacities of the receiving communes. Most have found shelter, often with family or friends. Land and property were given back to their legal owners. However, the food situation continued to be critical and housing is scarce. The anticipated influx of large numbers of returnees may lead to serious nutrition and housing problems and create conflicts between new returnees and those who have returned shortly after the April to mid-July 1994 armed conflict.

As of 5 October, the population of Kigali Prison was 10,162, including 342 women and 266 minors. There were also 80 infants in the prison with their mothers. In the last reporting period, new cases of detention have declined to approximately 35 per week. Overcrowding remained the most severe problem and sanitary conditions remained poor. The women on the other hand were very content in their new quarters, which include a large open courtyard that allows them to exercise.

Civil authorities attested to increasing military involvement in areas of civilian responsibility. Military authorities increasingly exerted the de facto authority in the prison. Soldiers cite 'security reasons' for their frequently ignoring judicial authority.

Prisons visits by HRFOR staff continue to be directed and monitored by soldiers alone.

The authority of the military in the judicial domain was further illustrated by an incident that occurred at the end of September, when a gendarme brought nine persons to be incarcerated in Kigali Prison. The prison director refused to admit the nine persons in question to the prison for lack of arrest warrants. The gendarme then went to the parquet and brought a substitute prosecutor back with him, who was coerced to sign the warrants on the spot. Such actions call into question the independence of the judiciary.

The modalities for the selection of detainees for transfers to new prisons were set out by the Ministry of Justice, subsequent to the Prison Director's implementation of a selection on a voluntary basis. The Ministry of Justice issued criteria that only those who have been interrogated, and indeed, have a case file, would be permitted to transfer. A general fear currently exists in the prison, due to the fact that a large majority of inmates do not want to transfer to another prison. Such is mainly due to reasons of family visits, and especially when the family has acquired special permission from the Ministry of Justice to regularly visit a detainee to bring food.

The Commission de Triage stopped sitting in mid-August, according to the acting Prosecutor, because of several cases of re-arrests of persons released by the Commission. Allegedly, the civilian members of the Commission are unwilling to recommence sittings of the Commission without assurance of their personal protection, as well as that of anyone granted provisional release by the Commission. Since the change over of Government in early September, hearings at the Conseil de Guerre have been suspended.

HRFOR (Kigali) is currently investigating a case of a detainee who had been granted provisional release by the Commission de Triage and then subsequently re-arrested by the Gendarmerie without provision of further cause. This person is still being detained at Gikondo Brigade, despite the Prosecutor's refusal to sign another arrest warrant.

More than 2,000 detainees were held in 16 communal cachots in Kigali Rural Prefecture. Food and water shortages constituted serious problems in most communal detention centres. Several cases of malnutrition were reported. Frequently, families were not able to bring food to their detained relatives. Communal authorities were not providing food for detainees. Reports have been received that detainees in three communal cachots were severely beaten during interrogations.

HRFOR (Kigali) arranged a meeting with the NGO Médecins sans Frontières (Spain) in order to discuss the problems of lack of health care in Kigali Rural Prefecture and to propose possible locations for health care centres.

9. Kanazi

The general situation in the Kanazi Sub-Prefecture, Prefecture Kigali Rural, has been calm over the last three weeks. No serious human rights violations were reported.

Returnees to the sub-prefecture were in general well-received, although in Ngenda commune, a scarcity of land and housing led to a few conflicts. Also, within sectors of the same commune, returnees complained about the food aid distribution conducted by the persons responsible at the cell level. In response, local authorities commenced an anti-corruption crackdown, resulting in the arrest of two public officials.

The number of returnees to the sub-prefecture of Kanazi stood at 1,339 as of 28 September, reflecting a slight increase over the previous reporting period. Approximately twenty percent of this number remained within the sub-prefecture, the majority being transported to Kibungo prefecture.

On 14 September, HRFOR noted two returnees quartered in the Nyamata cachot, Kanzenze commune. Both were arrested in Nyagihunika sector on suspicion of genocide upon their arrival from Zaire, and both appeared to be in poor health. HRFOR will follow up on the situation.

On 11-12 September, HRFOR was for the first time permitted access to the Rilima Central prison. On 5 October, there were approximately 3000 persons quartered in the prison, with 18 women, three with infants, and 80 minors. HRFOR was unable to review the register in order to confirm the number of registered detainees. The prison has a capacity of 1200 persons. Conditions were poor, and overcrowding continued to present the most severe problem.

An average of 800 detainees per week request medical assistance. The prison authorities, however, refused to allow transfer of severely sick detainees to hospitals in Kigali for treatment. The detainees received some assistance from local NGOs. HRFOR was not allowed to communicate with the prisoners in private. They did, however, interview four detainees accused of genocide. In the absence of an Inspector of Judicial Police, no case files had been prepared on the detainees.

HRFOR reported that conditions in the three communal cachots within the sub-prefecture had worsened during the reporting period, due to overcrowding. Plans to transport detainees from the cachots to the Central Prison, authorised by the assistant Bourgmestre of Kanzenze, were thwarted by the prison authorities. On 4 October, a truck conveying 112 detainees from Nyamata cachot to the Central Prison was refused entry. HRFOR has made enquiries into the situation.

The three communal cachots each have a capacity of about 55 persons. Each quartered over 100 persons, however, and all reflected increases in the detainee population. Most of the detainees had been living in the swamp area, and were arrested as suspected Interahamwe. The detainees themselves reported that they had lived in the swamp area for fear of being arrested in connection with the genocide.

On 30 September, the Gitagata Juvenile Correction Centre, with a capacity of 200, quartered 149 persons, all male. Six of the detainees were under 10 years of age. HRFOR reported no evidence of beatings or physical abuse, and the conditions appeared adequate.

The Commission in Kigali, which serves the Kanzenze sub-prefecture, did not sit during the reporting period.

HRFOR reports that the children of returnees in Gashora commune were denied access to schools since their parents were sometimes suspected of genocide. The team is monitoring the situation.

A seminar on arrest and detention procedures in Nyamata, Gashora commune, organised by HRFOR and UNHCR, and scheduled for 18-23 September, was postponed until October, due to alternative commitments of the participants.

10. Ruhengeri

During the reporting period, the general security situation remained calm. The number of incursions possibly involving infiltrations from Zaire increased, involving theft of cattle and intimidation.

As of 5 October, the total number of returnees since 28 August stood at 3,547. From 9-23 September, the number of returnees remained small with a total of 246 returnees to the prefecture. The low figure reflects the fact that the border was closed for a number of days. The number of returnees increased significantly after 25 September with almost 1,000 entrants per week recorded. An average of 135 returnees entered the prefecture daily from Nkamira camp, Gisenyi prefecture and from Uganda via the Cyanika border post. Butaro and Kinigi communes accounted for more than half of the total with 483 and 565 for the last two weeks respectively. A total of 818 persons returned to Kinigi since 28 August. HRFOR (Ruhengeri) continued to monitor the reception of returnees in the communes. Human rights field officers traced returnees they had previously interviewed in Nkamira transit camp, in their home communes.

Generally, the situation for returnees remained calm. They continued to be well-received and their re-integration into home communes has been smooth. After receiving food assistance and seeds provided by UNHCR and WFP, returnees generally were able to reclaim their property without further land disputes. One arrest of a returnee charged with participation in the genocide was recorded during the reporting period. The man is held at Nyarutovu communal cachot. Since 22 August, only two returnees have been arrested accused on genocide charges in the prefecture. Tensions were reported from Nyarutovu commune where returnees houses have been pillaged.

On 13, 20, 27 September and on 6 October, human rights field officers visited Ruhengeri Prison. On 6 October, there were 1,467 persons quartered at the prison, with 1,442 males, 25 females, 30 minors under 18 years and 7 minors under 14

years. The maximum prison capacity is between 600 and 800 persons. The prison director confirmed that all 12 persons transferred to the prison in the period from 9-30 September had their arrest warrants signed by the prosecutor confirming the legality of the process. The prison population was stable during the reporting period. Interviews with detainees revealed that the situation remained calm. Conditions were satisfactory.

On 18 September, human rights field officers accompanied the prison director to Kigali Prison to collect 700 shirts, 300 shorts and other clothing for detainees at Ruhengeri Prison.

The Gendarmerie Brigade was inspected on 14, 21, 28 September and on 6 October. On the latter date, the number of detainees stood at 55. Conditions remained satisfactory.

The Commission de Triage gave instructions for 4 detainees to be released after the Commission sat on 14 September. On 15 September, the four were released and three of them were re-arrested on that same day by the Gendarmerie. HRFOR (Ruhengeri) met with the commanding officer of the Brigade to discuss the re-arrest of 3 out of 4 detainees released on the instructions of the Commission de Triage. The commanding officer stated that the 3 detainees released by the Commission de Triage, and subsequently re-arrested by the Gendarmerie, were arrested for their own protection. They apparently returned to their home communes where the local population reportedly objected to their release on the ground that they were actually guilty and had been mistakenly released. The Gendarmerie is reviewing each of their case files.

From 9 September until 7 October, human rights field officers made 44 visits to all 16 communes in Ruhengeri Prefecture. The general situation was calm. HRFOR (Ruhengeri) continued to visit communal detention centres. During the reporting period, all communal cachots were inspected, most of them on a weekly basis. Conditions were adequate throughout the prefecture. There were about 100 detainees quartered in the 16 communal cachots of the prefecture. About 10 percent are held in connection with the genocide.

In Nyarutovu communal cachot, two men continued to be detained without an arrest warrant. HRFOR (Ruhengeri) informed the prosecutor of the illegal detention of the two men. The prosecutor has agreed to write the Prefect on the matter.

In the wake of the incidents at Kanama, the RPA Brigade Commander responsible for Gisenyi and Ruhengeri prefectures and the Battalion Commander of Ruhengeri were suspended of their duties and have been replaced.

The Human Rights Programme at the National Gendarmerie Training School continued to thrive. The number of hours of advisory courses given by three human rights field officers was doubled to 40 per month. On 27

September, a women's human rights meeting was held at Ruhondo commune. Around 700 women attended. On 19 September, a first preparatory meeting in preparation for a women's human rights prefecture seminar was held at the HRFOR office in Ruhengeri.

An outline report has been prepared which provides a cost plan for certain essential works to rehabilitate buildings of the judicial system. Both the Prosecutor and the Vice President of the Tribunal de Première Instance have been consulted regarding needs within the Prefecture.

C. Technical Cooperation Programme

Administration of Justice

1. Project "Advisory Services of Experts to the Ministry of Justice in the Administration of Justice" (RWA/94/AH/13)

Pursuant to a project to provide 6 legal experts to the Ministry of Justice through UNV, three experts have been working with the Ministry since April and May. Their contracts end shortly and extensions are being considered by the Ministry of Justice. The other three experts initially proposed by the Centre for Human Rights and UNV were rejected by the Ministry of Justice. HRFOR is awaiting a response from the government on possible new candidates.

The three experts have provided assistance in a number of areas, including the following:

A "Manual for Judicial Police Inspectors" has been finalized by the NGO, "Citizens Network", with the assistance of the expert in Judicial Services.

Preparations for the detainee registration project have been moving forward with the assistance of the expert assigned to the Judicial Police Inspectors. A pilot project to register detainees at two prisons should commence by the end of October. Six police officers have been trained on the system.

The expert assigned to Penitentiary Services has been participating in the working group of the Ministry of Justice to ameliorate detention conditions. The expert has been participating actively in planning to transfer prisoners to new prison facilities. This is a follow-up to a short-term plan of action elaborated by the working group with the participation of other units of HRFOR, UNAMIR and NGOs. The plan envisages increasing the facilities for detention from the original capacity of 13,800 to close to 50,000.

2. Human Rights Awards for Peace and Reconciliation

HRFOR is in the process of preparing an awards ceremony in Kigali for those nominated by the Minister of Justice for human rights awards. The five nominees have been interviewed at various locations throughout Rwanda and have been confirmed by the new Minister of Justice. The award ceremony is provisionally set for December 10 in order to commemorate Human Rights Day. The award ceremony will be an important vehicle to highlight the importance of human rights and efforts to safeguard them.

3. Project "RWA/95/007 Rehabilitation of the Justice System"

In February 1995, the Ministry of Justice made a request for 650 foreign investigators, prosecutors and judges to bolster the overloaded and understaffed judicial system. The request was further developed during the visit of the High Commissioner for Human Rights to Kigali in April 1995 and a project involving the Human Rights Center, UNDP and DDSMS was elaborated, aimed at providing 50 foreign legal professionals.

Initially, it was expected that the foreign professionals would serve with their Rwandese counterparts. However, following rejection of this proposal by the Transitional

National Assembly, it was agreed that they would serve as advisers to the Ministry of Justice, the Supreme Court, Court of Appeals, First Instance Courts, and prosecutors offices at every level. In addition, the Minister requested that a few legal professionals be assigned to the law faculty of the university.

As described in the Project Document, the Centre for Human Rights was to pre-select candidates and provide training to the legal professionals upon their deployment. On the basis of recommendations from individuals, NGOs and government, the Centre pre-selected 36 candidates from over two hundred applications and prepared a comprehensive 10 day training program.

On September 25, however, the government suspended the project. The recently appointed Minister of Justice announced the decision in a letter to the UNDP Resident Representative. Her explanation focused on two factors. First, the Ministry believes it would be inefficient to employ the advisors so long as major elements of the justice system, including the Supreme Court and the Supreme Council of the Magistracy, are non-functional. Secondly, the Minister believed it was necessary to review all aid committed to the Ministry to ensure maximum use of resources.

The UNDP Resident Representative met with the Prime Minister and the Minister of Justice, during which he expressed the international community's concern regarding the Government's decision. The government's decision regarding the future of the project is expected early in the week of October 16.

Four legal professionals had already arrived by the time the project was suspended. They have participated in the training for newly arrived UNV field officers, pending a decision from the Ministry on their deployment.

4. Development of a Governmental Response to the Genocide

Since November of 1994, the HRFOR has been working on contributing to a governmental process to create a sustainable response to the genocide.

The President's office is convening a summit entitled: "Genocide, Impunity and Accountability: Dialogue for a National and International Response." The summit will bring together 15 top Rwandese policy makers with more than 15 leading international experts and practitioners for a three day retreat. The retreat is designed to stimulate real policy decisions and government projects.

HRFOR advised representatives of the President's and Vice-President's office, the Ministries of Interior and Justice, and the Gendarmerie for the last few months in regards to project.

Funding for the summit has been provided by USAID and the Irish government. The summit is scheduled for 1-3 November.

5. Other Activities

HRFOR has assisted the establishment of working groups throughout the country whose members comprise all those who were making arrests and those who had the legal authority to make arrests.

The Third Report on the Status of the Justice System has been distributed and features an analysis of the Commissions de Triage and the proposed law to derogate procedural protections for those accused of the genocide.

HRFOR continues to work to support local human rights organizations. A human rights NGO Calendar of activities is now prepared on a monthly basis.

Human Rights Education Projects

1. Human Rights and Women

A tour of Rwandese prefectures has recently been completed by the HRFOR program officer responsible for Women's rights. The visits provided an opportunity for the HRFOR to contact the representatives of the Ministry for Family and for Women's Promotion and to meet with women's groups and to explain the work and objectives of the various activities on women's rights that are being developed by the HRFOR in collaboration with the relevant ministries and with local and international NGOs.

Following the August seminar on women's rights, held at the National University in Butare, the first of a number of debates on women's rights was held in Kigali with the participation of over one hundred women from the communes of Kigali Rurale. Debate focused on the role that Rwandese women should play in the reconstruction and development of post-war Rwanda.

A project for the creation of centers to provide legal and economic advice and general orientation for women at the commune level has been elaborated with local legal associations and with the Ministry of Justice and the Ministry of Family and Women's Promotion. The centers will also be used to coordinate the activities of the main local women's NGOs, to provide legal advice to victims of sexual abuses during the war and ultimately to reinforce the developing framework of human rights organizations in Rwanda.

2. Human Rights and Civil Society

The first five of ten radio plays, each designed to cover a certain aspect of human rights of particular relevance to Rwanda today, are nearing completion. The plays are due to be broadcast on Radio Rwanda and on Radio UNAMIR and meetings are presently underway with USAID with a view to eventually filming the plays and showing them on video to people in their communes by using mobile units equipped with generators. This method of promoting human rights takes advantage of radio, as the most influential of Rwandese information mediums, and is not constrained by problems of literacy or communications.

The fourth edition of "Amahame," the HRFOR's human rights newsletter has been completed with contributions from local and international staff within the mission and from Rwandese partners among the NGO community and from the Ministries. Used to disseminate information on the activities of HRFOR and within Rwanda in general in the field of human rights education, the newsletter is distributed monthly to all the prefectures and communes of the country.

A Human Rights Club organized by HRFOR is now into its third month and meets every weekend. An ever increasing number of young Rwandese have joined for discussions and debates on human rights and other issues viewed from a human rights perspective.

3. Human Rights and the Military/Gendarmerie

HRFOR continues to participate in the training given to prospective Gendarmes at the National Gendarmerie School in Ruhengeri, and, in this context, gives a regular contribution on relevant aspects of human rights law and the philosophy behind it.

After long negotiations with the HRFOR, the Ministry of Defense has accepted the proposal that HRFOR organize a seminar for the Gendarmerie and the RPA on the role of the armed forces and law enforcement officials in the protection and promotion of human rights.

Workshops on arrest and detention procedures, destined for the principal arrest and detention authorities, have continued in the prefectures of Gitarama, Cyangugu, and Butare and in Nyamata (Kigali Rurale) where it is hoped that they will lead to a better respect of arrest procedures and consequently reduce the number of unfair arrests and begin to reduce the pressure that continues in Rwanda's overcrowded prisons. The later two workshops were co-financed and co-organized by UNHCR. Such workshops are being organized in each prefectures and will be followed by work in the communes. Recently a working group at the national level was formed with the Ministry of Justice, UNHCR, Citizens Network, and the HRFOR to better co-ordinate these important efforts.

Annex

PRISONS IN RWANDA

Date: 9 October 1995

	Prison	Men	Women	Minors	Total	Infants	Capacity	Date
1	Butare	6277	216	102	6595	56	2000	09-oct-95
2	Byumba	346	8	9	363	3	500	09-oct-95
3	Cyangugu	1998	26	41	2065	4	700	02-oct-95
4	Gikongoro	1083	14	19	1116	3	700	05-oct-95
5	Gisenyi	1320	27	41	1388	10	1000	06-oct-95
6	Gitarama	6128	217	62	6407	31	800	10-oct-95
7	Kibungo	3350	85	62	3497	24	600	02-oct-95
8	Kibuye	2096	62	13	2171	7	800	05-oct-95
9	Kigali	9450	342	266	10058	80	2000	05-oct-95
10	Nianza	1696	103	42	1841	14	800	09-oct-95
11	Nsinda	892	24	25	941	2	150	05-oct-95
12	Rilima	2870	18	80	2968	3	1200	05-oct-95
13	Ruhengeri	1412	25	30	1467	7	1500	06-oct-95
	Total	38918	1167	792	40877	244	12750	

**HUMAN RIGHTS FIELD OPERATION IN RWANDA
COST PLAN
FROM 1 SEPTEMBER 1994 UNTIL 30 SEPTEMBER 1995 AND FORECAST
FROM 1 OCTOBER 1995 TO 31 DECEMBER 1995**

(in thousands of US Dollars)

Resources	Amount	Expenditure	Sept. 1994/ 30 Sept. 95 (actual)	Forecast Oct/Dec. 1995	Gd-Total
Pledges 1/ as at 13 October 1995 \$9,494,344					
Contributions: as at 13 October 1995	7,226.9	A- Staff costs Salaries: 2,161.9 MSA & Travel: 2,934.6	5,096.5	1,696.8	6,793.3
Advance CERF 2/	3,000.0	B-Operational costs General operating expenses: 563.3 Supplies & materials: 167.6 Furniture & equipment: 698.2 Yet to be paid: Vehicles, Communication equipment and other material supplied from DPKO & UNHCR 0.0 Total Operational costs	1,429.8 0.0 1,429.8	540.0 1,241.5 1,781.5	1,969.8 1,241.5 3,211.3
		Sub-Total expenditure	6,526.3	3,478.3	10,004.6
		13% Administrative Support Cost	978.9	335.5 3/	1,314.4
		Total costs	7,505.2	3,813.8	11,319.0
		Balance 2/	2,721.7	(1,092.1) 4/	(1,092.1) 4/
TOTAL	10,226.9	TOTAL	10,226.9	2,721.7	10,226.9

1/ Excluding the European Union contribution consisting of 33 fully equipped field officers corresponding to ECU 5 million = US\$ 6,377,551

2/ Does not include refund of the 3 million US\$ advance from CERF

3/ Excluding 15% Administrative support cost of \$ 1,241,500 amount yet to be paid (UN Property material)

4/ Over-expenditure or shortage in brackets

Administrative Office, HRFOR, Geneva
13 October 1995

HUMAN RIGHTS FIELD OPERATION IN RWANDA
STATEMENT OF PLEDGES AND CONTRIBUTIONS AS OF 13 OCTOBER 1995

COUNTRIES	Currency and Amount	Equiv. US\$	Payment effected	Other services provided and remarks
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1- GENERAL PLEDGES AND CONTRIBUTIONS

AUSTRALIA	A\$ 100 000	63 500.00	73 690.00	
	A\$ 200 000	146 000.00	145 800.00	
AUSTRIA	Sh 500 000	45 000.00	46 643.97	
BELGIUM	FB 15 000 000	465 800.00	523 098.52	
CANADA	CAN\$ 100 000	68 376.00	66 500.00	
DENMARK	US\$ 100 000	100 000.00	100 000.00	
FINLAND	FIM 400 00	75 600.00	83 267.41	1 investigator (1 1/2 month)
FRANCE	FF 1 200 000	233 100.00	190 476.19	
			40 899.80	
GERMANY	DM 314 704	201 700.00	119 949.36	Office building in Kigali
			93 126.28	
IRELAND	Irish L 50 000	79 500.00	79 547.71	
	Irish L 50 000	76 923.00	80 930.00	
ISRAEL	US\$ 10 000	10 000.00	10 000.00	
JAPAN	US\$ 500 000	500 000.00	200 000.00	Payment made in N.Y.
			300 000.00	Payment made in Geneva
LIECHTENSTEIN	CHF 10 000	8 771.93	8 771.93	
LUXEMBOURG	Fr. L. 550 000	17 000.00	16 791.67	
NETHERLANDS	Dfl. 75 000	42 600.00	44 640.00	1 Prosecutor - 1 Forensic Doctor
	Dfl. 1 350 000	798 800.00	764 439.41	+ 3 Criminal Investigators for 3 months
NEW ZEALAND	NZ\$ 50 000	29 600.00	29 597.74	
NORWAY	NOK 700 000	101 700.00	105 616.55	+ 2 Procurement Experts (3 months)
				+ 2 criminal investigators (3 months)
SPAIN	US\$ 9 880	9 880.00	9 880.00	2 Forensic Doctors (2 months) + 1
				Prosecutors (1 month) + US\$ 208 000
	US\$ 208 000	208 000.00		for 8 UNV for 6 months
SWEDEN	SEK 1 000 000	129 500.00	137 631.25	
SWITZERLAND	CHF 100 000	75 758.00	75 757.58	+ 1 Criminal Investigator (9 months)
	CHF 150 000	113 636.00	113 636.36	
UNITED KINGDOM	L 250 000	383 200.00	383 155.00	+ 4 vehicles in Kigali
	L 2 000 000	3 200 000.00	3 223 000.00	
UNITED STATES	US\$ 750 000	750 000.00	Payment made to UNDP	5 Criminal Investigators (3 weeks) - Airlift of vehicles from Kuwait to Kigali - 25 UNVs for 6 months
	US\$ 50 000	50 000.00		Contribution pending
	US\$ 1 000 000	1 000 000.00		Contribution pending

OTHERS				
EUROPEAN UNION	ECU 5 000 000	6 377 551.00		33 fully equipped HRFOs
UNDP	US\$ 250 000	250 000.00		Contribution envisaged for recruitment of UNVs
ACCT, Paris	US\$ 180 000	180 000.00	159 617.65	Balance of 20,383 pending
OXFAM	L 50 000	80 000.00		In Kind 3 vehicles provided in Kigali
INDIVIDUALS	FF 1 000 + US\$ 200	400.00	395.31	
TOTAL		15 871 895.93	7 226 859.69	

2 - PLEDGES AND CONTRIBUTIONS FOR TECHNICAL ASSISTANCE PROGRAMME IN RWANDA

ITALY	L 2 000 000 000	123 333.00	123 333.00	
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NATIONS UNIES

HAUT COMMISSAIRE AUX DROITS DE L'HOMME

OPERATION DES DROITS DE L'HOMME SUR LE TERRAIN AU
RWANDA

UNITE DE LA COOPERATION TECHNIQUE

*I have given the
English version of the
German Auth. He will
give it back*

RAPPORT N°3

ETAT DE L'ADMINISTRATION DE LA JUSTICE

Lodan

AU RWANDA

- 25 Juillet 1995 -

TABLE DES MATIERES

Analyse de l'état de l'administration de la Justice:

- LES COMMISSIONS DE TRIAGE.
- LE PROJET DE LOI PORTANT DEROGATION A L'APPLICATION DES REGLES RELATIVES A LA DETENTION PREVENTIVE ET LA MISE EN LIBERTE PROVISOIRE SUITE AU GENOCIDE, AUX MASSACRES, AUX CRIMES DE GUERRE ET AUTRES CRIMES CONTRE L'HUMANITE.

Recommandations

Annexes

L'Unité de Coopération Technique (UCT) se propose d'examiner une fois par mois l'état de l'administration de la justice au Rwanda sous l'optique des Droits de l'Homme. Les rapports de l'UCT sont le résultat d'une part de ses activités sur le terrain, d'autre part de la collaboration avec le gouvernement rwandais, les pays donateurs, les agences des Nations Unies et les ONG. le présent rapport est un tirage spécial qui ne contiendra pas les thèmes habituels que sont: l'aide internationale, l'organisation et le fonctionnement du système judiciaire. Tout changement concernant les thèmes cités fera l'objet du prochain rapport.

L'UCT voudrait pour finir exprimer sa gratitude à tous ceux qui ont porté leur contribution à la rédaction de ce rapport. Tous commentaires et suggestions sont les bienvenus.

Le présent rapport était suspendu depuis le 29 juillet 1995. Quelques révisions ont été apportées à son introduction, mais les informations relatives aux faits datent de la première rédaction. Le HCDH présente ses excuses aux lecteurs du rapport pour le retard avec lequel celui-ci est publié.

Les Commissions de Triage

Introduction

Une analyse de la Commission de Triage est complexe. La Commission, son existence, son fonctionnement et son impact sont potentiellement source de division et de controverse.

L'idée de la Commission est née dans un contexte de génocide sans précédent dans son ampleur et dans sa cruauté. La société était entre-déchirée, le gouvernement et les institutions décimés en terme de personnel et de matériel.

Vue dans une perspective des Droits de l'Homme, la Commission présente à la fois des aspects positifs et négatifs:

- positif dans le sens où des individus illégalement accusés de génocide ont été relâchés.
- positif parce que la Commission de triage a aidé le gouvernement à se focaliser sur les limites des mesures de poursuites, ce qui a eu comme résultat de plus amples investigations pour un certain nombre de cas.
- positif dans le sens où la Commission met ensemble tous les acteurs importants du système judiciaire dans le but de maximiser les ressources disponibles dont le gouvernement rwandais a besoin pour répondre à la situation actuelle.
- positif parce que c'est un effort fait par le gouvernement pour faire face au réel problème de capacité.
- négatif parce que c'est une institution qui normalement ne devrait pas exister; avec son fonctionnement actuel, elle déplace certaines fonctions qui en principe devraient être accomplies par un personnel judiciaire ayant une formation et l'expérience requises.
- négatif parce que les critères, en ce qui concerne les éléments de preuves et la procédure de sélection des cas, sont ambiguës et ouverts à des interprétations arbitraires et variées.

Dans les circonstances de post-traumatisme, dans lesquelles se trouve le Rwanda aujourd'hui, compte tenu des capacités limitées du gouvernement, une totale conformité avec les normes nationales et internationales peut s'avérer impossible à obtenir à court terme. A circonstances spéciales, réponses spéciales. Il est néanmoins imprudent et indésirable d'institutionnaliser des réponses *ad-hoc*, spécialement quand de telles institutions peuvent ralentir la procédure vers la normalisation et la conformité à la loi.

De plus, il y a un manque de transparence à la fois des opérations et décisions internes de la Commission.

Cette institution n'a encore pas fait relâcher un nombre significatif de détenus. S'il n'y a aucun changement, la Commission de triage n'aura pas un impact considérable sur la population carcérale.

Vu son fonctionnement actuel, la Commission de triage n'a aucun apport pédagogique sur les agents impliqués dans les procédures d'arrestation compte tenu de l'éloignement et le temps passé avant que les cas soient examinés.

Néanmoins, jusqu'à ce que le système judiciaire commence à fonctionner, il est souhaitable sinon nécessaire que le gouvernement réexamine les cas actuellement en suspens.

A l'époque où le rapport avait été écrit, la Commission de triage fonctionnait dans toutes les préfectures sauf celles de Kibuye et de Gikongoro. Dans le mois d'août, elle a commencé à fonctionner à Gikongoro.

FONCTIONNEMENT DES COMMISSIONS PAR PREFECTURE

Conformément à l'article 10 du Code de procédure pénale, une Commission avait été mise en place par le gouvernement au mois de mars pour examiner les dossiers de personnalités et de Magistrats. Cette Commission était composée du Premier Avocat général (qui la présidait), des représentants du service de renseignement de la Primature, du Ministère de la Défense et du Ministère de l'Intérieur (voir supplément au rapport 1). Après une visite effectuée dans tout le pays, un rapport a été remis au gouvernement. Ce rapport contenait toutes les fiches individuelles des 56 cas examinés avec les informations suivantes: l'identité de l'individu, le lieu, l'auteur et la date de son arrestation, l'infraction, les preuves à charge et à décharge et l'avis de la Commission sur le cas quant aux charges et preuves retenues contre la personne (il faut noter que les décisions devaient être prises à l'unanimité.). Le gouvernement après examen de ce rapport lors d'une session du Conseil des Ministres du 18/7/1995, décide que le contenu (les recommandations y compris) du rapport soit mis à exécution. Les 22 recommandations pour une remise en liberté provisoire ont été suivies. L'une des personnes remises en liberté a été tuée depuis et une autre a fait l'objet d'une arrestation.

La première Commission de triage à fonctionner fut celle de Kigali. Dans une lettre datée du 31 mars 1995, le Ministre de la Justice donna pour instruction à tous les procureurs de mettre en place une commission similaire dans leur préfecture.

Les Commissions sont généralement formées selon les vœux du Ministre de la Justice de quatre membres dont, un procureur et des représentants des Ministères de la Défense, de l'Intérieur et d'un agent du service des renseignements de la Primature. Exception faite des préfectures comme Gitarama où il n'y a pas de gendarmerie. La Commission de triage est chargée d'examiner les dossiers pénitentiaires et judiciaires des détenus pour s'enquérir du respect des procédures d'arrestation, de la légalité des dépositions et des éléments de preuve. Ceux illégalement emprisonnés seront remis en liberté. Dans la plupart des préfectures, trois votes sur quatre sont nécessaires pour prendre une décision de remise en liberté provisoire. Cependant, dans quelques préfectures, la pratique est d'atteindre le consensus avant toute remise en liberté.

Butare

La Commission s'est réunie la première fois le 30 juin 1995 et a planifié son travail en deux phases. Dans la première phase, il a été décidé de séparer physiquement les deux catégories de détenus. Les cas relatifs aux détenus de droit commun et de génocide seront examinés dans une seconde phase. Parmi les dossiers liés au

génocide, la priorité sera accordée aux mineurs. A la demande de l'équipe des Droits de l'Homme de Butare, l'objectif suivant sera l'examen des dossiers des femmes. Au 20. 7. 1995, aucune réunion de travail n'a été tenue par la Commission.

Byumba

Mise en place le 2 mai 1995, suite aux instructions du Ministère de la justice, la Commission de triage a déjà examiné 63 cas dont 1 seule remise en liberté le 30 juin 1995. Dans la plupart des cas, les dossiers sont réexaminés en session par les membres de la Commission après approfondissement des enquêtes.

Cyangugu

La Commission de triage a tenu sa première réunion le 13 juillet 1995 au cours de laquelle elle devait fixer sa composition et son fonctionnement. Dans la session du 20 juillet 1995, 10 cas ont été examinés à l'issue desquels, six personnes ont été remises en liberté (une remise en liberté provisoire et cinq remises en liberté définitive). Au niveau local, le même travail se fait avec les détenus des cachots communaux par les Commissions appelées "*Commissions de sécurité*", composées du bourgmestre, d'un représentant de l'APR, d'un Officier de la sécurité, du responsable du centre de détention ainsi que du président du tribunal de canton et des IPJ (s'il y en a).

Gisenyi

Le substitut du procureur a présidé la première réunion de la Commission le 24 mai 1995 au parquet. La juridiction de la Commission est limitée aux cas de personnes accusées du crime de génocide. Le substitut du procureur semble décider des cas qui vont être examinés, cas qu'il soumet ensuite aux autres membres de la Commission avant la tenue de chaque session. A l'issue des deux premières sessions, neuf personnes ont été remises en liberté.

Gikongoro

Une Commission de triage a été mise en place à la fin du mois de juillet. Cependant, des remises en liberté étaient déjà faites grâce au travail du procureur.

Gitarama

La Commission de triage siège dans les locaux du parquet où elle a tenu sa première réunion le 5 mai 1995. Jusqu'à présent, elle s'est réunie sur la base d'une fois par semaine. Dix huit cas ont été examinés par elle. On compte huit remises en liberté dont une réarrestation.

Kibuye

Aucune Commission de triage ne fonctionne dans cette préfecture. L'absence d'OMP est un handicap majeur dans le processus de légalisation des détentions. Notons tout de même que trois libérations de personnes accusées de génocide sont survenues au mois de juin suite aux enquêtes du chargé de la sécurité de la préfecture. En effet, sur instruction du Préfet, le chargé de la sécurité a entrepris l'examen des dossiers des "*droits communs*" et des cas douteux de personnes accusées du crime de génocide.

Kigali

Deux versions existent quant à la date à laquelle la Commission de triage a débuté ses travaux. Selon le procureur de la république, la Commission de triage a tenu sa première réunion en octobre 1994, elle devait commencer ses travaux au mois de novembre 1994. Suite à des controverses sur une éventuelle participation du représentant du Premier Ministre et l'absence du procureur M. FRANCOIS XAVIER, la Commission mit fin à ses réunions au mois de février pour ensuite les reprendre au mois d'avril. Kigali est le lieu où la Commission de triage a le plus longtemps fonctionné et tenu beaucoup de sessions comparativement aux autres Commissions opérant dans le reste du pays. Depuis que la Commission a commencé ses travaux, environ 50 personnes sur 4000 ont été remises en liberté provisoire. Parmi elles, trois ont été re-arrêtées. Signalons qu'aucun mineur n'a été remis en liberté.

Kibungo/Rwamagana

La Commission de triage a tenu sa première réunion le 11 juillet pour fixer le cadre de son travail. Et depuis, elle ne s'est plus réuni.

Ruhengeri

La Commission a été mise en place en février 1994. Elle se réunit une fois par semaine. Sur les 80 cas étudiés, 35 remises en liberté ont été prononcées (ces personnes étaient toutes suspectées du crime de génocide). On a signalé une ré-arrestation parmi ces cas. Le cas d'une personne accusée d'avoir participé au génocide dans une autre commune.

Le projet de loi portant dérogation à l'application des règles relatives à la détention préventive et la mise en liberté provisoire suite au génocide, aux massacres, aux crimes de guerre et autres crimes contre l'humanité.

Introduction

Récemment, l'Assemblée Nationale de Transition a voté un *"UMUSHINGA W'ITEGEKO RIHAGARIKA IKURIKIZWA RY'AMATEGEKO YEREKEYE GUFUNGA NO GUFUNGORA BY'AGATEGANYO KUBERA ITSEMBATSEMBA, IBYAHABIKOZWE MU NTAMBARA, IBYAHA BYIBASIYE INYOKO-MUNTU."*⁽¹⁾

La raison d'être du projet de loi est l'impossibilité actuelle du système judiciaire et pénal de satisfaire aux procédures de détention conformément à la loi.

Le problème que le Parlement essaie de résoudre est en réalité urgent et doit être résolu. Néanmoins le projet de loi soulève des doutes quant à sa conformité à la fois à la constitution rwandaise et aux engagements internationaux. Dans sa formulation actuelle le projet de loi s'il devait devenir loi (2), serait vraisemblablement exposé à des critiques de la part de la communauté internationale des Droits de l'Homme.

Ce commentaire essaie de trouver une solution et suggérer des possibilités pour l'amélioration du projet de loi.

Contexte

Il y a actuellement 50.000 personnes détenues dans les prisons et les centres de détention du Rwanda. Tous ces détenus sont virtuellement en détention préventive en attendant le procès pour les crimes relatifs au génocide de 1994. Ces personnes ont été arrêtées de différentes manières. Dans les mois qui ont suivi le génocide, la plupart d'entre elles ont été arrêtées par des militaires de l'APR et mises en prison sans plus de cérémonies. Lorsque la gendarmerie a commencé à fonctionner (en septembre 1994), les arrestations étaient faites par les soldats, les gendarmes et/ou les bourgmestres ou des conseillers qui utilisaient les cachots communaux avant de transférer les détenus dans les prisons ou aux chefs-lieux de la brigade de la gendarmerie. Les parquets ont repris leur travail en septembre, mais dans certains domaines seulement. Même maintenant, ils ne couvrent pas entièrement le territoire national. La plupart des tribunaux de première instance ayant compétence pour connaître les crimes relatifs au génocide n'ont que quelques agents et encore,

(1) Le projet de loi portant dérogation à l'application des règles relatives à la détention préventive et la mise en liberté provisoire suite au génocide, aux massacres, aux crimes de guerre et autres crimes contre l'humanité.

(2) Le projet de loi deviendra loi après son approbation par la Cour constitutionnelle et sa publication dans le journal officiel.

moins de 50% d'entre eux sont opérationnels sans compter qu'aucun des tribunaux n'a encore jugé de cas de génocide. Ce scénario a créé un problème, la quasi totalité des arrestations et des détenues ne sont survenues conformément au code de procédure pénale rwandais. Ce qui est contraire à l'interdiction par le droit international des arrestations illégales (arrestations opérées sans respect de la loi).

Bien plus, cette pratique donnait la possibilité à ceux qui étaient accusés de génocide d'être remis en liberté sur la base des irrégularités procédurales et non sur la base de la culpabilité ou l'innocence du crime en question.

En conséquence, le projet de loi était préparé pour déroger de façon rétroactive aux procédures légales pour éviter la possibilité d'une large impunité pour ce crime de génocide.

Le Droit

Conformément au droit rwandais, des arrestations ne peuvent être opérées que sur autorisation du procureur de la république à moins qu'il ne s'agisse d'un cas de flagrant délit. Dans le cours normal des événements, si une enquête préliminaire sur un crime fait peser des soupçons sur un individu, un mandat d'amener lui est décerné pour interrogatoire. Le résultat de l'interrogatoire peut être la remise en liberté de l'individu ou alors son arrestation pure et simple. L'arrestation ne peut être autorisée que par la loi lorsqu'il y a des indices sérieux de culpabilité contre le suspect pour le crime en question. Lorsque toutes les conditions sont réunies et après interrogatoire du suspect, l'OMP (Officier du Ministère Public) peut délivrer un mandat d'arrêt provisoire. La détention préventive doit alors être expressément autorisée par le président de la juridiction compétente. L'ordonnance autorisant la détention préventive est limitée à un délai de 30 jours mais elle peut être prolongée de 30 jours si l'intérêt de la société ou les besoins de l'enquête l'exigent. Le Rwanda est partie à la convention internationale sur les droits civils et politiques dont **L'article 9 stipule:**

1. tout individu a droit à la liberté et à la sécurité de sa personne. Nul ne peut faire l'objet d'une arrestation ou d'une détention arbitraire. Nul ne peut être privé de sa liberté, si ce n'est pour des motifs et conformément à la procédure prévus par la loi.

2. Tout individu arrêté sera informé, au moment de son arrestation des raisons de cette arrestation et recevra notification, dans le plus court délai, de toute accusation portée contre lui.

3. Tout individu arrêté ou détenu du chef d'une infraction pénale sera traduit dans le plus court délai devant un juge ou une autre autorité habilitée par la loi à exercer des fonctions judiciaires, et devra être jugé dans un délai raisonnable ou libéré. La détention de personnes qui attendent de passer en jugement ne doit pas être de règle, mais la mise en liberté peut être subordonnée à des garanties assurant la comparution de l'intéressé à l'audience, à tous les autres actes de la procédure et, le cas échéant, pour l'exécution du jugement.

4. Quiconque se trouve privé de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal afin que celui-ci statue sans délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale.

5. Tout individu victime d'arrestation ou de détention illégale a droit à réparation.

Personne parmi les auteurs du génocide et des massacres n'a été immédiatement arrêtée après les tueries. En conséquence, aucune des arrestations n'a obéi à la procédure de flagrant délit. En droit, nul ne devrait être arrêté pour participation aux massacres sans enquêtes préliminaires pour prouver sa culpabilité. Bien que dans la plupart des cas, les arrestations aient été effectuées, sur simple dénonciation par un ou plusieurs témoins, un procès verbal de témoignage a été rarement rédigé. Aucun juge n'a vraisemblablement autorisé les détentions préventives. Souvent les détenus n'ont pas été informés des raisons de leur arrestation. Pour ces différentes raisons, aucune des arrestations et détention dans ce pays n'a été opérée "sur la base de procédures telles que appliquées par la loi". En principe, un groupe de travail des avocats de la défense devrait invoquer des procédures de l'"*Habeas Corpus*" pour chacun, voire pour tous les détenus et les cours et tribunaux seraient tenus de les mettre en liberté. Pour des raisons évidentes, la mise en liberté immédiate de criminels suspects n'est pas souhaitable. Cela a été l'argument du gouvernement rwandais, du fait que les procédures appropriées n'ont pas été suivies parce que les ressources faisaient défaut. La communauté internationale, a toujours manifesté la bonne volonté pour accepter ces arguments.

Toutefois, la réponse donnée par la présente loi va au delà de ce qui est nécessaire pour atteindre le but recherché. En outre, la loi supprime les mesures de protection déjà mises en place par le gouvernement parmi les moyens existants pour atteindre ce but, tels que le réexamen des dossiers par le procureur.

En résumé, l'on peut dire que dans la situation actuelle, l'applicabilité de cette loi conduirait à une violation des normes standards internationaux des Droits de l'Homme, tels que spécifiés dans les documents suivants:

Le projet de loi enfreint également l'article 6 de la charte africaine des Droits de l'Homme et des Peuples, dûment ratifiée par le Rwanda. Cet article stipule:

"tout individu a droit à la liberté et à la sécurité de sa personne. Nul ne peut faire l'objet d'une arrestation ou d'une détention arbitraire. Nul ne peut être privé de sa liberté, si ce n'est pour des motifs et conformément à la procédure prévus par la loi".

le Pacte International relatif aux Droits Civils et Politiques (*)

- Art. 9, "Droit à la liberté et à la sûreté de sa personne, droit de ne pas être arrêté ni détenu arbitrairement",

- Art. 14, "droit à ce que sa cause soit entendue équitablement et publiquement par un tribunal compétent, indépendant et impartial, établi par la loi."

la Convention relative aux Droits de l'Enfant

Art. 40, "droit à un traitement pénal approprié ..."

Ensemble de Règles Minima pour le traitement des détenus 1977

En particulier le C de la deuxième partie sur les personnes arrêtées ou en détention préventive.

Principes Fondamentaux relatifs au traitement des détenus 1990

Règles des Nations Unies pour la protection des mineurs privés de liberté

En particulier le chapitre III sur les mineurs en état d'arrestation ou en attente de jugement.

Ensembles de Règles Minima des Nations Unies concernant l'administration de la justice pour mineurs (Règles de Beijing)

En particulier le chapitre 13 concernant la détention préventive.

* Dérogation aux dispositions de la Convention Internationale aux Droits Civils et Politiques est admise sous son **Article 4** dans les cas d'urgence publique qui menacent la vie des nations et dont l'existence a été officiellement déclarée, considérant la situation présente, il ne faudrait chercher trop loin les arguments justifiant que la situation d'urgence existe. Si le Rwanda veut invoquer cette clause, il doit informer les autres Etats parties à la convention, par l'intermédiaire du secrétaire général des Nations unies, des dispositions dont il a porté dérogation et des raisons pour lesquelles il l'a fait. Une autre communication aurait dû se faire à propos de la date à laquelle cette dérogation doit prendre fin.

Recommandations

1. Une attention toute particulière devrait être portée aux procédures d'arrestation et de détention pour les rendre conformes aux Droits de l'Homme. Un réexamen particulier des cas de ceux qui sont déjà détenus nécessite un système judiciaire fonctionnel

2. Les normes nationales et internationales doivent être suivies. Des plans réalistes avec un délai précis et un objectif devraient être arrêtés pour tous les agents impliqués dans les arrestations pour voir comment ils gagneront éventuellement en conformité avec la loi.

Il est par exemple possible de parvenir à une plus grande implication de l'agent d'arrestation. La révision des cas pourrait être faite rapidement par un Officier du Ministère Public en présence de l'agent d'arrestation. Premièrement cette révision interne aurait lieu dans un délai de dix jours pour progressivement atteindre la conformité aux procédures légales actuelles dans six mois. Tous les détenus pourraient être transférés dans les prisons centrales, seulement après que les conditions de la mise en détention préventive soient réunies. Ce processus pourrait durer 20 jours pour progressivement atteindre la conformité totale à la loi sur une période de six mois.

3. Des plans mis en place par la gendarmerie, les bourgmestres et les procureurs pour obtenir toute conformité à la loi devraient être soutenus et des ressources immédiatement rendus disponibles.

4. Des structures et des procédures qui créent une réelle collaboration entre les agents d'arrestation devraient être mises en place et soutenues. Les groupes de travail sur la réhabilitation du système judiciaire déjà existants dans quelques préfectures avec les bourgmestres et la gendarmerie devraient être soutenus. Des rencontres régulières d'une fois toutes les deux semaines ou d'une fois le mois devraient être encouragées. Un budget devrait être mis à la disposition de ces groupes de travail pour répondre aux besoins actuels que nécessite le processus de légalisation des arrestations et des détentions.

5. La Commission de triage devrait être en place seulement jusqu'à ce que le système judiciaire fonctionne; Les efforts pour mettre en place le système avant six mois devraient être soutenus.

6. Les membres de la Commission de triage devraient être soutenus dans l'accomplissement du rôle qui leur est imparti dans les limites de la loi, mais la commission en tant qu'institution ne devrait pas être supportée.

7. Si la Commission de triage continue de fonctionner, le gouvernement devrait définir son délai de fonctionnement, les éléments de preuve à considérer (en tenant compte de la formation juridique de ceux qui sont impliqués), s'assurer de la transparence de la procédure de sélection des cas et des décisions, et commencer une campagne d'éducation publique pour expliquer la fonction et l'utilité de la commission de triage.

8. Si la proposition de loi dérogeant aux procédures pénales est déclarée inconstitutionnelle par la Cour Constitutionnelle, elle serait revue pour mieux répondre aux exigences de la loi fondamentale rwandaise et des normes internationales, refléter et encourager les progrès faits relativement à la procédure d'arrestation. Le soutien à l'Assemblée Nationale de Transition devrait être assuré pour accroître sa capacité à légiférer dans le respect de la constitution rwandaise et des textes internationaux.

UNITED NATIONS



High Commissioner for Human Rights
Field Operation in Rwanda



HRFOR

NATIONS UNIES

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

Ladon.
See

Kigali, 3 october, 1995

UNDP Resident Representative

Subject: Support for the Triage Commission through HRFOR

Dear Mr Hasegawa,

The Secretary General of the United Nations, in his recent report on the Rwandan Prison situation and justice system, has made the HRFOR responsible within the UN system for improving the work of the Triage Commissions. To facilitate this work, the Secretary General has indicated that the HRFOR has access to monies in the Trust Fund.

As you have noted from our 3rd Report on the Status of the Justice System in Rwanda, the Triage Commissions - in general - are not functioning well. While the HRFOR is in the best position to positively influence the functioning of the Commissions, the task is especially complex and delicate.

Complex for:

- the work involves at least four institutions, the RPA, the Gendarmerie, the Prefecture (Ministry of Interior), and the Prosecutor (Ministry of Justice);
- the work and individual relations varies widely prefecture by prefecture;
- actions need to be taken immediately or impact will be negligible;

and delicate for:

- it involves the most highly charged and emotional subject facing Rwanda;
- short-term activities should not impede the development of long-term solutions such as the proper functioning of the justice system.

Our understanding of the problem indicates that the modality chosen for provision of support to the Triage Commissions should stress decentralization, flexibility, and speed of delivery as well appropriate control and reporting procedures.

The HRFOR should be given access to 500,000 USD of trust fund monies for its work relative to the Triage Commissions.

This support will go for supporting the work of the Triage Commissions, but will not be based upon a project document signed by all the relevant Ministries (Justice, Interior, and Defense). Rather, the HRFOR will be fully responsible for reporting how the money is spent to the UNDP. A monthly report will be provided.

The idea is to provide the HRFOR maximum flexibility to leverage positive change in the Triage Commissions by utilizing a decentralized method of operating. The HRFOR will meet extensively with the

members of the Triage Commissions at the prefectural level and discusses ways in which aid can be provided that will positively impact the functioning of the Commissions.
Those within the HRFOR responsible for this work, will meet every two weeks at national level to determine what is working and how those strategies can be expanded upon.

Using this scenario, as discussed before, the money would go toward a secretariat, toward motivating consist work, toward strengthening the capacity of the individual members, and for an educational campaign. No monies will be spent without the approval of the representatives of all Ministries at the local level.

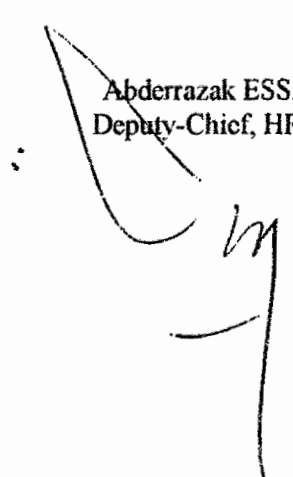
The modality to be utilized will be that purchases will comply with UNDP regulations and one HRFOR officer will be assigned to be the liaison with the UNDP financial officer to ensure the money is properly requisitioned and spent.

Thus, we trust the UNDP will work with us to create a structure to respond to the difficult challenge given to the HRFOR and the UN system by the Secretary General.

It is my understanding the money already donated by the Swedish Government - generally for the justice sector - is not presently earmarked and could easily be utilized for the above mentioned purpose. Further, given our understanding and experience with SIDA it would be a project that they would fully support. We look forward to your prompt consideration of our proposal.

Thank you and best regards.

Abderrazak ESSAIED
Deputy-Chief, HRFOR



CC: Amb. Shaharyar KHAN

Technical Cooperation Unit(TCU), HRFOR.

UNITED NATIONS



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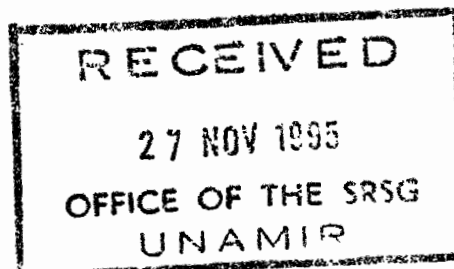
High Commissioner for Human Rights
Field Operation in Rwanda

HRFOR

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

27 November 1995

Ambassador Shaharyar Khan
Special Representative of the
Secretary General
UNAMIR
Kigali



Free Human Rights

*Pl. workshop
for
rept. 27 Nov*

Dear Ambassador Khan,

Subject: Reports of Special Rapporteur

*7000
1994*

Please find attached copies of the last three reports of the Special Rapporteur, dated 11 November 1994, 17 January 1995 and 28 June 1995. There has been no more recent report - his next report will be made after his December visit here, to the February/March session of the Commission on Human Rights. However, these three reports have just been placed before the General Assembly - I attach a copy of the cover note from the Secretary-General.

The Special Rapporteur is scheduled to address the General Assembly today. I attach a copy of his draft speech, a letter I wrote to him advising a revision, and a memorandum confirming his intention to revise the text. This should therefore not be regarded as a final version, and although it is in the format of a General Assembly document, I am advised by the Centre for Human Rights that it will not in fact be printed as a GA document, but simply photocopied for distribution to delegates.

Best regards.

Yours sincerely,

Ian Martin
Chief, HRFOR

Encl./s

UNITED NATIONS



NATIONS UNIES

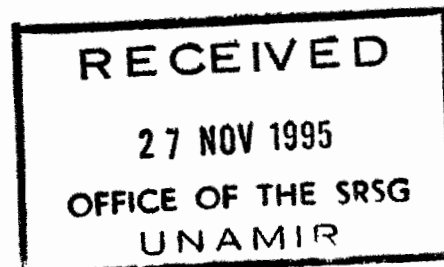
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Yours sincerely,

Ian Martin
Chief, HRFOR

Encl.a/s



Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/7
28 June 1995

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 10 of the provisional agenda

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

Highlighted.

*Mr.
29-11-95*

GE.95-13019 (E)

*→ Ladan, please keep in
your files. Thanks.
Lfr.
6.12.95*

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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 Nyundo (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), Kigali-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 16 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 Ndagò 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 and 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 Ntiringanya, 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.

Economic and Social
CouncilDistr.
GENERALE/CN.4/1995/71
17 January 1995ENGLISH
Original: FRENCHCOMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 12 of the provisional agendaQUESTION 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

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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 on the human rights situation in Rwanda has made three visits to that country and neighbouring States. The purposes of these missions were:

(a) The first (9-20 June 1994), in accordance with the Commission's request, "to visit Rwanda forthwith" and "to report on an urgent basis" to its members, submitting a preliminary report within four weeks of the adoption of the resolution. That report (E/CN.4/1995/7 and Corr.1) was issued on 28 June 1994;

(b) The second (28-31 July 1994), to assess the situation in Rwanda following the victory of the Rwandese Patriotic Front (FPR) and to ensure that reprisals would not be inflicted on the Hutu. That report (E/CN.4/1995/12) was issued on 12 August 1994;

(c) The third (16-25 October 1994), to update, supplement and clarify the information contained in the first two reports. That report (E/CN.4/1995/70) was issued on 11 November 1994.

The present report endeavours to summarize the information contained in the three previous reports.

2. The Special Rapporteur wishes at this point to reiterate his sincere thanks to all persons, both Rwandese and foreigners, and United Nations officials who supported him in the execution of these three missions. He wishes to express particular thanks to the Centre for Human Rights and the Committee of Experts on Rwanda for the assistance provided to him by the former in facilitating his work, and for the cooperation he received from the latter in the performance of his mission.

3. It is apparent from these various missions and inquiries carried out that Rwanda has been and remains the scene of serious violations of human rights. In making this observation, however, a distinction should be made between violations committed during and after the hostilities.

I. VIOLATIONS COMMITTED DURING THE HOSTILITIES

4. The attack which cost the lives of Juvénal Habyarimana, President of the Rwandese Republic, Cyprien Ntaryamira, President of the Republic of Burundi, and several persons in their entourage occurred on 6 April 1994 in what was already a tense and explosive social and political situation. It undoubtedly constituted the spark which set off the massacre of civilians. These massacres were followed by the armed conflict between the governmental forces and the Rwandese Patriotic Army. The hostilities and, more particularly, the massacres gave rise to violations of human rights.

A. The massacres

5. It is true that the people of Rwanda have experienced several massacres, but those perpetrated during the hostilities are without precedent in the history of the country. They are in fact unique in their extent, their planning and their horrific nature.

1. Their extent

6. The extent of the massacres has been unequalled in space and in time; they spread like wildfire throughout the country from 6 April up to the end of the hostilities and even beyond that date.

7. Although these massacres are attributable to the two warring parties, who have combined civil war with looting, far more have been committed by the interim Government than by the Patriotic Front.

8. The results have been completely catastrophic: in addition to the massive destruction of property and crops, the loss of human life has been extremely heavy, possibly reaching 1 million.

2. Their planning

9. There now seems to be little doubt that the massacres were planned. This is the conclusion reached from a number of consistent indications, not to say evidence, including:

(a) The campaign of incitement to exterminate the Tutsi orchestrated by both the public authorities and the media, including Radio Télévision Libre des Mille Collines (RTLM). Several audio cassettes of broadcasts by Radio Rwanda and RTLM have been made available to the Centre for Human Rights;

(b) The distribution of weapons to the civilian population, and more particularly to members of the militias;

(c) The exceptional speed of events at the outset: roadblocks were set up all over Kigali just 30-45 minutes after the assassinations, even before they had been reported on the radio;

(d) The "screening" carried out at the roadblocks by militiamen and soldiers, and the lists drawn up by the public authorities with the aim of identifying Tutsi, after which they were immediately executed.

3. Their horrific nature

10. The horrific nature of the massacres is apparent from the way in which the Tutsi were killed: in most cases they were attacked with machetes, axes, cudgels, iron bars, etc. until they breathed their last.

11. Moreover, the massacres were systematic and spared nobody, not even babies. The victims were hunted down even in their final refuge: orphanages, hospitals and churches.

B. Violations of human rights

12. The hostilities have given rise to grave, massive and systematic violations of human rights; it is important to analyse the nature, causes and perpetrators of these violations.

1. Their nature

13. The charges are threefold: the genocide of the Tutsi, the assassination of the Hutu and other violations of human rights.

(a) The genocide of the Tutsi

14. From the definition of the crime of genocide given in article II of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (see E/CN.4/1995/7, para. 44), it is apparent that this crime has three constituent elements which might be summarized as follows: a criminal act, "committed with intent to destroy, in whole or in part," a particular group "as such".

15. There does not seem to be any doubt about the first condition, in view of the massacres perpetrated and even the cruel, inhuman and degrading treatment. 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 screening 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 invenzi (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.

16. 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.

(b) The assassination of Hutu

17. The massacres have not spared the members of the Hutu ethnic group, who have not been targeted per se, but for political reasons.

18. On the one hand, the so-called Hutu moderates, with whom certain foreigners are associated by extension, have been massacred by members of the government militias for having associated themselves with the main enemy, thereby betraying their ethnic group. The victims are chiefly human rights activists and political opponents.

19. On the other hand, the so-called Hutu extremists, and in particular the members of the militias, are executed by the Rwandese Patriotic Army in the area controlled by the Rwandese Patriotic Front, notably for their involvement in the massacres.

20. These acts constitute assassinations, and more specifically political assassinations, violating the right to life, which is a fundamental right established by certain conventions binding on Rwanda.

(c) Other violations

21. A number of other fairly diverse, but no less important, rights have also been seriously violated by the parties to the conflict. We would mention the following:

(a) The right to physical and moral integrity, whereby torture and other cruel, inhuman and degrading treatment are forbidden;

(b) International humanitarian law with regard to murders, political assassinations, executions of hostages and other inhuman acts constituting crimes that violate the four Geneva Conventions of 12 August 1949;

(c) Other violations of rights which amount to crimes against humanity because of the assassinations and other inhuman acts committed against the civilian population, and also the acts of persecution for political motives combined with the serious violations of international humanitarian law applicable to armed conflicts.

2. The causes

22. The causes of the hostilities, and more specifically the massacres, are of various kinds: economic, political, social and cultural. Three are immediately apparent and indicative of the situation in Rwanda: the rejection of alternate political power, incitement to racial hatred and impunity.

(a) The rejection of alternate political power

23. 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 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 (see para. 15). The resistance to the Arusha Peace Agreements of 4 August 1993 is indicative of this and even of the rejection of simple power-sharing or political coexistence.

(b) Incitement to ethnic hatred and violence

24. Since incitement to ethnic hatred and violence has already been the subject of much comment, it will not be dealt with in detail below. Attention is simply drawn to the fact that, unlike what happened prior to 6 April, the public authorities have openly involved themselves in the perpetration of the massacres of Tutsi by giving clear and unequivocal orders. This would seem to be the case with Mr. Sindikubwabo, President of the Interim Government, who, in a speech at Butaré on 19 April 1994, urged the population to "get to work" in the Rwandese sense of the term by using their machetes and axes.

(c) Impunity

25. Impunity, like incitement to murder, is a recurrent cause of the massacres. No legal action has been taken against the chief criminals, the perpetrators of the earlier massacres, whether they are civilians or members of the armed forces and although they are known to all. On the contrary, some have been promoted while persons who showed humanity and refused to soil their hands have been dismissed.

3. The perpetrators

26. Although it has not been possible to identify by name all those responsible for the atrocities, as far as the authorities or organs involved are concerned responsibility can immediately be apportioned to:

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

(b) FPR organs, particularly those in charge of military activities;

(c) Private individuals such as members of the militias, leaders of extremist political parties (National Republican Movement for Development and Democracy (MRND) and Coalition for the Defence of the Republic (CDR), and the founders and broadcasters of RTLM;

(d) Certain foreign States, in the light of their interference in Rwandese politics, which remains to be clarified;

(e) The international community and, in particular, the United Nations, whose response to the urgent needs of the population, especially with regard to security and humanitarian assistance, should also be clarified.

27. The chief perpetrators of the massacres have relentlessly continued their acts since the cessation of the hostilities.

II. VIOLATIONS COMMITTED AFTER THE HOSTILITIES

28. This second series of human rights violations actually began during the hostilities and continued after the hostilities had ceased. These violations have two distinct sources: the insecurity in Rwanda and the fate of the refugees and displaced persons.

A. The insecurity in Rwanda

29. In Rwanda, genocide and reprisals are dialectically linked: genocide seems inevitably to lead to reprisals. In the towns of Rwanda, to which the inhabitants and activities are gradually returning, the dead are being mourned but at the same time there is rejoicing whenever a lost relative or friend is found. But by far the greatest concern of the surviving victims, who are deeply shocked, seems to be whether the perpetrators of the genocide will be tried and punished. However, pending the establishment of the international tribunal, people do not hesitate to take the law into their own hands. Hence there are serious violations of human rights, for which the solutions envisaged remain insufficient.

1. Violations of human rights

30. Insecurity, which is again on the increase in Rwanda, is a source of human rights violations, which take the form of serious violations of property rights, the right to personal safety and the right to life.

(a) Violations of property rights

31. For many refugees back in Rwanda, especially those who constituted the old Tutsi diaspora, these violations consist in the illegal occupation of houses and land abandoned by their owners who have fled. When these owners, Hutu for the most part, return and claim their rights, conflicts break out and are in many cases resolved by violent means.

(b) Violations of the right to personal safety

32. These violations mainly take the form of arbitrary arrest and detention. Rwandese prisons are full of people who are awaiting trial for genocide. No arrest warrant or detention order is issued and the persons concerned are kept in places of detention for much longer than the lawful period of police custody. What is worse, persons released by the judicial authorities are rearrested and detained in barracks by the military authorities.

(c) Violations of the right to life

33. These violations are in many cases the result of disappearances of persons and summary executions, not to say massacres, of Hutu. The Government itself acknowledges that members of the armed forces, including officers, have participated in these massacres.

2. Inadequate solutions

34. All the acts committed taken together would appear to constitute reprisals by the victims of genocide. In order to put an end to these violations, the Government has taken a number of measures, which are far from sufficient:

(a) Eviction orders are often flouted and the Government does not have the means to build new housing or distribute land;

(b) The virtual non-existence of genuine administration by the State adds to the difficulties;

(c) Admittedly, more than 100 members of the armed forces have been arrested, but the indiscipline which seems to be rampant in the army does not help matters.

35. Generally speaking, the measures taken cannot in themselves help to assuage the anger and contain the determination of the people to exact revenge; this will be the case until such time as the alleged perpetrators are prosecuted and tried, and for as long as they are able to travel in complete freedom in certain countries and in the refugee camps.

B. The fate of the refugees and displaced persons

36. The hostilities caused an exodus unprecedented in the history of Rwanda which has created the difficult problem of the return of the refugees and displaced persons.

1. The exodus of Rwandese

37. The exodus resulting from the hostilities has been enormous, particularly since it has been twofold in character, the movement of displaced persons within the country being combined with the flight of refugees abroad.

(a) The displaced persons

38. The war and, in particular, the massacres have led to mass population movements within the country. More than 2 million people, fleeing the hostilities, left their hills for other regions where they felt more secure. Some kept constantly on the move on the hills, while others were herded into so-called displaced persons' centres or camps, where they all eked out an extremely difficult existence, dominated by total insecurity - physical and moral insecurity and insecurity as regards their food and health.

39. But as the fighting drew nearer, the camps would empty and some or all of their occupants would simply be massacred. However, large numbers of people were able to flee and settle in the south-west of the country, in the area covered by the former "Operation Turquoise", and did not cross the Zairian frontier.

(b) The refugees

40. The hostilities caused many other Rwandese to leave their country and take refuge in neighbouring States: Zaire, Tanzania, Burundi and Uganda. The situation of these refugees has been deteriorating.

41. At the beginning of the events, it was mainly the massacres which prompted several thousand Rwandese, and particularly the Tutsi, to go into exile. The total number of refugees at that time was close to 1 million. Tanzania gave shelter to the largest number, estimated at 410,000, including 330,000 in the Benaco camp alone. This huge flow of refugees already at that time constituted a risk of political destabilization for the neighbouring States because of overpopulation, the spilling-over of political and ethnic tensions, and insecurity.

42. Towards the end of the hostilities, millions of people, mainly Hutu, fled before the victorious advance of the FPR army and burst across the borders of neighbouring States in search of refuge particularly in Zaire. At the end of July 1994, between 12,000 and 20,000 refugees an hour were arriving in Goma; at that time the number of refugees was estimated at 2.5 million, including 1.2 million in Goma alone. This Zairian city, which was the base for "Operation Turquoise", thus became the principal refugee centre, being larger than the Benaco camp in Tanzania. The overpopulation of Goma, in precarious living conditions, contained the seeds of a human tragedy which made it a unique case. The consequences were predictable: famine was followed by a cholera epidemic and dysentery, which killed several thousand persons. Despite these sufferings, the refugees are reluctant to return to their country because they fear for their lives.

2. The return of the refugees and displaced persons

43. The return of refugees and displaced persons to Rwanda and the hills where they live continues to be the international community's main concern. Unfortunately, their return, which began at the end of the hostilities, is at present being slowed down, if not completely blocked, by the strong pressure being exerted on the refugees and displaced persons - in a very appropriate framework.

(a) Strong pressure

44. This pressure takes the form of the constant threat to persons wishing to return by the old governing group now in exile. It is clear from large-scale campaigns orchestrated by the old ruling group that return will be possible only as a result of political negotiations entailing a general amnesty or, otherwise, a resumption of civil war with the aim of regaining power. Those who do not take the advice offered and return would run the risk of being the first targets in the event of a reconquest of power.

(b) An appropriate framework

45. The framework devised and set up to maintain the pressure and thus block voluntary departures is institutional, political and administrative in nature.

46. The institutional framework involves simply reconstituting in the camps the political and administrative structures that exist in Rwanda, namely, the prefectures, communes and, in some cases, sectors.

47. The system of control of refugees and displaced persons gives the perpetrators of the genocide, through their local representatives, substantial powers:

(a) Registering arrivals in the camps gives them significant powers of control;

(b) The distribution of foodstuffs and other humanitarian supplies places in their hands a food weapon which they use and abuse, bringing the rebels into line and diverting stocks of food which are sold on the markets of receiving countries;

(c) The imposition of punishment, with exercise of the right of life or death, enables mayors, militiamen and bandits to impose gun law, creating an atmosphere of total and permanent insecurity in the camps.

48. The solution to the problem of the return of the refugees undoubtedly lies, as the Secretary-General of the United Nations has envisaged, in the separation of the politicians, in other words, the former political authorities, military personnel and militiamen, from the rest of the refugee and displaced population.

III. CONCLUSIONS AND RECOMMENDATIONS

49. In conclusion, the Special Rapporteur wishes to state that he 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, at the origin of the insecurity.

50. A correct diagnosis is essential if the right medicine for the Rwandese sickness is to be prescribed. 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 the international community is not to be the powerless spectator of a second war and further massacres.

51. It was in order to avoid a disaster of this nature that the Special Rapporteur made recommendations in his three reports, notably in document E/CN.4/1995/70 (chap. IV). These recommendations include the following:

Recommendation No. 1

The United Nations should require Rwanda and the countries which have accepted refugees to abide by their international commitments, particularly those deriving from the relevant provisions of the conventions relating to human rights, refugees and asylum.

Recommendation No. 2

The United Nations should, as soon as possible:

(a) Initiate the International Court for Rwanda which has been set up by the Security Council (resolution 955 (1994) of 8 November 1994), and also the local courts that are to be established in order to try persons charged with genocide, so as to stop, or at least reduce, acts of reprisals;

(b) Establish, first, an international force responsible for ensuring security in the camps for refugees and displaced persons, and secondly, arrangements for the repatriation of refugees and displaced persons in appropriate conditions of security and dignity.

Recommendation No. 3

The United Nations should formally and urgently appeal to Member States, particularly the major Powers and the African States, to provide:

(a) Substantial assistance in the reconstruction of the Rwandese State as a matter of urgency. Such assistance, which should take various forms and be provided in all economic, political, social and cultural sectors, presupposes a prior overall assessment of needs;

(b) Assistance with regard to 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 include 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 in order to safeguard the independence of the Judiciary.

Recommendation No. 4

In cooperation with the Organization of African Unity, the United Nations should take steps to:

(a) Create conditions and a framework for a dialogue between the various Rwandese political groups both inside and outside the country. This dialogue might lay the foundations 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.



Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/70
11 November 1994

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 12 of the provisional agenda

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

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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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NATIONS
UNIESConseil Economique
et SocialDistr.
GENERALEE/CN.4/1996/7
28 juin 1995

Original : FRANCAIS

COMMISSION DES DROITS DE L'HOMME
Cinquante deuxième session
Point 10 de l'ordre du jour provisoireQUESTION DE LA VIOLATION DES DROITS DE L'HOMME ET DES LIBERTES
FONDAMENTALES, OU QU'ELLE SE PRODUISE DANS LE MONDE,
EN PARTICULIER DANS LES PAYS ET TERRITOIRES
COLONIAUX ET DEPENDANTSRapport sur la situation des droits de l'homme au Rwanda soumis par
le Rapporteur spécial, M. René Degni-Séqui, en application
du paragraphe 20 de la résolution S-3/1 du 25 mai 1994

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Introduction

1. Conformément au mandat qui lui a été confié par la Commission des droits de l'homme dans sa résolution S-3/1 du 25 mai 1994 et qui a été prorogé par la résolution 1995/91 du 8 mars 1995 (par. 19), le Rapporteur spécial s'est rendu au Rwanda du 27 mars au 3 avril 1995, et ensuite du 25 au 28 mai 1995. La première visite s'inscrit dans le cadre du suivi de sa mission. Il s'agissait pour lui de s'enquérir de l'état d'avancement du déploiement des observateurs des droits de l'homme sur le terrain, ainsi que de l'enquête sur le génocide, à l'approche de la commémoration du premier anniversaire du début des massacres et de la guerre. La seconde répond à la nécessité de s'informer des récents événements tragiques survenus lors de la fermeture forcée du camp de déplacés de la localité de Kibeho par des militaires de l'Armée patriotique rwandaise.
2. Le Rapporteur spécial s'est également rendu en Belgique, en France, au Canada et aux Etats-Unis.
3. Durant son séjour au Rwanda et dans ces quatre autres pays, le Rapporteur spécial a pu s'entretenir avec des membres du Gouvernement rwandais, des représentants de diverses agences des Nations Unies oeuvrant au Rwanda, des diplomates étrangers accrédités au Rwanda, des représentants d'organisations non gouvernementales, des autorités judiciaires et quelques témoins des massacres d'avril-juin 1994, des détenus, des juges, des officiers, diverses personnalités étrangères, des militants des droits de l'homme, ainsi que des journalistes.
4. Parmi les personnalités rencontrées par le Rapporteur spécial, il convient de mentionner :
 - a) Les personnalités nationales

M. Pasteur Bizimungu, président de la République; M. Faustin Twagiramumgu, premier ministre; M. Seth Sendashonga, ministre de l'intérieur; M. Alphonse-Marie Nkubito, ministre de la justice; Dr. Anasthase Gasana, ministre des affaires étrangères; le préfet de Kibuye.
 - b) Les personnalités étrangères

Au Rwanda : M. Shaharyar Khan, représentant spécial du Secrétaire général au Rwanda; le Général-major Claude Toussigant, commandant de la Mission des Nations Unies pour l'assistance au Rwanda (MINUAR), le Représentant résident au Rwanda du Programme des Nations Unies pour le développement; le Chargé d'affaires à la Nonciature apostolique au Rwanda, le procureur adjoint du Tribunal international pour le Rwanda, le juge Rakotomanana; les ambassadeurs de Belgique et des Etats-Unis; le chef de la délégation du Comité international de la Croix-Rouge à Kigali; les délégués de l'Agence de coopération culturelle et technique en mission au Rwanda.

En Belgique, en France, au Canada et aux Etats-Unis : MM. Andries et Van Winsen, respectivement auditeur et ancien auditeur militaires de Bruxelles; le Général Dallaire, ancien Commandant de la MINUAR;

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Mme Prudence Bushnell, adjointe au Sous-Secrétaire d'Etat des Etats-Unis chargé des affaires africaines; M. Reed Fendrick, directeur-adjoint du Bureau chargé pour l'Afrique centrale du Département d'Etat des Etats-Unis; des membres de la Ligue des droits de l'homme du Canada et de plusieurs autres ligues affiliées à la Fédération internationale des droits de l'homme; Mme Iris Almeida, directrice des programmes au Centre des droits de la personne et du développement démocratique de Montréal.

5. Le Rapporteur spécial voudrait ici exprimer ses sincères remerciements à toutes ces personnalités qui l'ont soutenu dans la préparation et la réalisation de sa mission. Il est particulièrement reconnaissant au Représentant spécial du Secrétaire général au Rwanda et au Commandant de la MINUAR pour leur aide, soutien logistique et coopération généreuse.

6. Les entretiens qu'il a eus et les visites qu'il a effectuées sur le terrain et dans les prisons ont permis au Rapporteur spécial de faire le point sur la situation qui prévaut au Rwanda en mettant l'accent sur le déroulement de l'enquête sur le génocide, la surveillance de la situation des droits de l'homme et le problème du retour de l'exode.

I. L'ENQUETE SUR LE GENOCIDE

7. Le Rapporteur spécial veut mettre un accent particulier sur ce crime contre l'humanité, qui a particulièrement marqué les Rwandais. Nonobstant la référence au génocide, l'enquête porte sur l'ensemble des violations des droits de l'homme. La visite sur le terrain a permis d'évaluer le déploiement des observateurs et les progrès réalisés par l'enquête.

A. Le déploiement des observateurs

8. Dans son troisième rapport (E/CN.4/1995/70 du 11 novembre 1994), le Rapporteur spécial avait stigmatisé le retard accusé dans le déploiement des observateurs. La situation était caractérisée à l'époque, d'abord par l'absence d'observateurs sur le terrain et, ensuite, par la présence d'un groupe d'observateurs cantonnés à Kigali sans être déployés sur le terrain, faute de moyens matériels et de logistique. Depuis lors, des progrès sensibles ont été réalisés. Mais le déroulement de l'opération des droits de l'homme se trouve confronté à quelques difficultés.

1. Le déroulement de l'opération des droits de l'homme

9. L'opération, qui a commencé à la mi-août 1994 avec quatre observateurs, a connu une évolution sensible, à en juger par le nombre des observateurs et leur constitution en équipes et en unités opérationnelles.

a) Le nombre d'observateurs

10. Faisant suite aux recommandations du Rapporteur spécial dans son deuxième rapport (E/CN.4/1995/12 du 12 août 1994) tendant à déployer 150 à 200 observateurs, le Centre pour les droits de l'homme, en accord avec le Gouvernement rwandais, a retenu 147. Ce chiffre correspondait à peu près au nombre de communes rwandaises (143). Lancée avec quatre observateurs, l'opération s'est lentement et progressivement enrichie de plusieurs autres.

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Ainsi, le nombre est passé en octobre 1994 de 22 à 38; en avril 1995, à 127; en mai 1995 il est retombé à 122. Au 22 juin, le nombre des observateurs s'élevait à 112.

11. Ce résultat a été obtenu grâce à diverses contributions : outre les 51 observateurs recrutés par le Centre pour les droits de l'homme, 27 l'ont été par le Programme des Volontaires des Nations Unies; 31 par l'Union européenne. Il convient de signaler, d'une part, que le nombre prévu de 147 observateurs n'est toujours pas atteint et, d'autre part, que des recrutements ont dû être ralentis sinon arrêtés à certaines périodes, faute de ressources suffisantes. Ainsi, du 1er au 22 juin 1995, le nombre des observateurs est passé de 119 à 112. Il devra, d'après les prévisions, baisser encore dans un proche avenir.

b) La constitution d'équipes

12. Les observateurs sont déployés en équipes comprenant quatre à huit personnes par unité. On en distingue 11 affectées dans des bureaux régionaux, installés dans les différentes préfectures selon la répartition suivante : Butare 9, Cyangungu 9, Gikongoro 8, Gisenyi 8, Gitarama 6, Kibungo 3, Kibuye 6, Kigali 7, Rilima 4, Ruhengeri 6, Rwamagana 4. Un sous-bureau a été ouvert à Nyamasheke dans la préfecture de Cyangungu. Deux observateurs des droits de l'homme ont été déployés au nord-est de la préfecture de Byumba pour évaluer la possibilité d'ouvrir un bureau dans cette région.

13. Au moment de la rédaction du présent rapport, toutes les préfectures du Rwanda, à l'exception de Byumba, sont dotées chacune d'une équipe d'observateurs. Celle-ci est dirigée par un chef d'équipe, qui fait rapport au chef de l'opération. Dans le cadre de leurs activités, les observateurs sont en plus répartis dans des unités opérationnelles.

c) Les unités opérationnelles

14. La mission a créé trois unités : l'unité d'analyse juridique et de coordination, l'unité de surveillance et l'unité d'assistance technique.

i) L'unité d'analyse juridique et de coordination

15. Dans le cadre des enquêtes sur le génocide et les autres violations graves des droits de l'homme, une unité spéciale d'investigations a été créée dès septembre 1994 pour assister la Commission d'experts sur le Rwanda et le Rapporteur spécial pour le Rwanda. La Commission d'experts ayant terminé ses travaux, cette unité a continué à enquêter pour les besoins du Rapporteur spécial. Comme le mentionne le plan opérationnel de l'opération, des experts de l'Espagne, des Etats-Unis, de la Finlande, de la Norvège, des Pays-Bas et de la Suisse ont mené des enquêtes approfondies sur le génocide (examen médico-légal des sites de massacres et de charniers, entretiens avec des survivants et des témoins) et réuni des documents et autres preuves tangibles qui ont été transférés, en accord avec le Rapporteur spécial, au Tribunal international pour le Rwanda. Du fait de la création d'une unité d'enquête de type judiciaire au sein de ce dernier, l'unité spéciale d'investigations a été dissoute pour laisser place à l'unité d'analyse juridique et de coordination.

Celle-ci doit continuer à faire des enquêtes sur le génocide et les autres crimes contre l'humanité pour les besoins du Rapporteur spécial.

ii) L'unité de surveillance

16. L'unité de surveillance, dite encore de monitoring, s'occupe de l'enquête sur les violations passées et actuelles des droits de l'homme. Les observateurs qui y sont affectés et déployés dans différents bureaux régionaux rendent compte, d'après le plan opérationnel précité :

- i) Des progrès enregistrés dans le sens de la réconciliation nationale;
- ii) De l'existence de tribunaux ou de magistrats chargés de régler les différends entre Rwandais;
- iii) De la disponibilité de logements et d'autres structures pour ceux qui retournent au pays;
- iv) Des mesures prises par les autorités locales ou l'Armée patriotique rwandaise en ce qui concerne les Rwandais de retour et les pratiques administratives auxquelles ils sont soumis;
- v) Des conditions de sécurité dans leur zone;
- vi) De la disponibilité des produits et des services de base; et
- vii) De l'élaboration de programmes d'éducation et de diffusion d'informations sur les droits de l'homme à l'intention des responsables rwandais et de la population en général.

iii) L'unité d'assistance technique

17. Cette unité s'occupe de l'assistance à apporter au gouvernement pour le rétablissement de l'Etat de droit et de la confiance dans la société civile. Elle participe aux efforts de reconstruction du système judiciaire rwandais, par l'apport en personnel judiciaire et par la formation des magistrats et autres auxiliaires de justice.

18. De taille encore fort modeste (deux fonctionnaires au 2 avril 1995), l'unité est appelée à se renforcer, d'autant plus que le Ministre de la justice du Rwanda a adressé, le 22 février 1995, une lettre au Représentant spécial du Secrétaire général au Rwanda, indiquant les besoins en ressources humaines de son ministère, évalués à 678 personnes (magistrats et enquêteurs policiers compris).

2. Les difficultés rencontrées par l'opération

19. L'opération des droits de l'homme en général et le Rapporteur spécial en particulier rencontrent des difficultés qui sont de nature à compromettre la mission. Elles relèvent de deux ordres : matériel, d'une part, et d'autre part politique.

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a) Les difficultés matérielles

20. Les difficultés matérielles se ramènent essentiellement au manque de ressources financières. C'est, semble-t-il, au compte goutte que le Centre pour les droits de l'homme reçoit les ressources financières à mettre à la disposition de l'opération, de sorte qu'on est habité par une incertitude autant qu'une inquiétude permanentes quant à la survie de la mission au-delà de trois mois.

21. Il en résulte au moins deux conséquences fâcheuses. La première, c'est l'insuffisance des observateurs des droits de l'homme; en dépit de l'accroissement de leur nombre, celui-ci n'atteint pas encore l'objectif de 147 initialement prévu et ce, plus de six mois après le lancement de l'opération; pis encore, la tendance est plutôt à la diminution du nombre déjà insuffisant des observateurs, car, faute de ressources, l'on s'achemine vers le non-renouvellement des contrats de certains d'entre eux. Cette situation est d'autant plus regrettable que ces personnes devront partir au moment où elles commencent à s'adapter au milieu et à l'environnement socio-culturel et surtout à acquérir de l'expérience. La seconde procède, en dépit des progrès réalisés, du manque de certains matériels : ainsi, des bureaux régionaux manquent de téléphone et de fax, entraînant une absence de fluidité dans la communication entre plusieurs bureaux et le siège.

b) Les difficultés politiques

22. L'opération des droits de l'homme en général et le Rapporteur spécial en particulier rencontrent des difficultés qui ne sont pas de nature à leur permettre de s'acquitter le plus efficacement possible de leur mission.

23. Pour ce qui est de l'opération, nombre de critiques ont pu en stigmatiser le dysfonctionnement, dû notamment au manque d'expérience, au fait qu'elle soit dirigée des bureaux de Genève, aux ordres contradictoires de ceux-ci. Certes, certaines de ces critiques sont très sévères et quelquefois pèchent par la forme, mais la substance demeure.

24. Les difficultés ne seront pas toutes passées en revue. Ne seront retenues que les difficultés politiques, celles qui affectent les rapports entre l'opération et les autorités rwandaises, d'une part, et d'autre part, entre le Rapporteur spécial et le Service des procédures spéciales du Centre pour les droits de l'homme.

i) Rapports entre l'opération et les autorités rwandaises

25. Les autorités rwandaises, nationales autant que locales, se plaignent du comportement des observateurs des droits de l'homme. Elles leur font grief de mettre un peu trop l'accent sur les violations des droits de l'homme actuellement commises et de négliger corrélativement l'enquête sur le génocide. Les observateurs, précisent-elles, ont un comportement "très policier" et usent de qualifications juridiques telles que "arrestations et détentions arbitraires", le terme "arbitraire" étant, selon elles, assimilable à l'"illégitimité".

26. Ces plaintes, officiellement adressées au chef de l'opération, ont eu, entre autres, pour conséquence que les observateurs ont été fouillés et que l'accès à certains centres de détention, dont les cachots, leur a été interdit, et ce malgré l'Accord de siège régissant les activités de l'opération au Rwanda et les autorisations dûment délivrées par le Ministre de la justice. Certes, le dialogue avec les autorités nationales engagé par le Haut Commissaire aux droits de l'homme et le Rapporteur spécial a permis de faire le point et de dissiper quelques malentendus. Mais certains obstacles demeurent, dont ceux relatifs à l'accès aux cachots.

ii) Rapports entre l'opération et le Rapporteur spécial

27. Les rapports entre l'opération et le Rapporteur spécial restent très théoriques et pratiquement inexistantes. Ils sont médiatisés par le Service des procédures spéciales qui forme un véritable écran bloquant l'accès à l'information nécessaire au Rapporteur spécial.

28. L'opération est conçue et exécutée, sans la moindre participation du Rapporteur spécial, par le service qui dirige tout à partir de Genève. De plus, la conception hiérarchique qui prévaut au Centre exige que les observateurs et autres enquêteurs déployés sur le terrain adressent leurs rapports non pas au Rapporteur spécial par l'intermédiaire du chef de la mission mais par le biais d'une chaîne qui va du chef d'équipe au Haut Commissaire en passant successivement par les chefs des unités, les coordonnateurs, le chef de la mission et le chef du Service des procédures spéciales. Inversement, le Rapporteur spécial est obligé de transmettre ses instructions à l'opération par l'intermédiaire du Bureau du Haut Commissaire qui les fait acheminer par le canal du Service des procédures spéciales, en suivant l'ordre décroissant de la hiérarchie. Il est fait interdiction au chef de la mission, même en cas d'urgence, de s'adresser directement au Rapporteur spécial.

29. Il en résulte trois conséquences. La première, c'est la lenteur dans la circulation de l'information dans un sens comme dans l'autre. Il en va ainsi des événements douloureux de Kibeho, survenus le 22 avril 1995, dont les rapports écrits sont restés dans les tiroirs du chef du Service des procédures spéciales, malgré la demande instante du Rapporteur spécial. Celui-ci n'a pu recevoir copie dudit rapport que le 6 mai par le chef de l'opération, faisant entorse à la procédure hiérarchique. Le communiqué de presse rédigé par le Rapporteur spécial relatif aux événements de Kibeho a subi le même sort. La deuxième, c'est qu'il y a une sélection d'informations au niveau du Service des procédures spéciales qui ne communique au Rapporteur spécial que ce qu'elle veut bien lui donner. Les documents transmis se réduisent aux synthèses des rapports sans consistance et donc sans intérêt pour le Rapporteur spécial. La troisième résulte de ce qu'à la rétention de l'information s'est ajoutée la disparition de documents. En effet, curieusement, trois séries de documents très importants ont successivement disparu. Et les appels pressants du Rapporteur spécial pour mener des investigations idoines en vue de retrouver lesdits documents sont restés vains. Tout se passe comme s'il y avait manque de volonté de coopérer avec le Rapporteur spécial, en violation de la résolution S-3/1 du 25 mai 1994 adoptée par la Commission des droits de l'homme sur la situation des droits de l'homme au Rwanda. Aux termes du paragraphe 24 de cette résolution,

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la Commission "prie le Secrétaire général d'apporter au Rapporteur spécial toute l'assistance dont il aura besoin pour s'acquitter de son mandat".

B. Les progrès réalisés

30. Pour évaluer les progrès réalisés par l'enquête, il importe de se placer au double plan de l'établissement des faits et de la contribution du Tribunal international.

1. L'établissement des faits

31. Les enquêtes menées par les observateurs déployés sur l'ensemble du territoire rwandais ont permis d'établir les faits constitutifs de violations des droits de l'homme : ceux-ci l'ont été à la fois par des témoignages et des éléments de preuves.

a) Les témoignages

32. Les observateurs des droits de l'homme ont recueilli de nombreux témoignages auprès des rescapés et des observateurs militaires présents pendant les hostilités, des soldats de l'Armée patriotique rwandaise, du personnel des organisations non gouvernementales et de membres du clergé. Ces témoignages portent aussi bien sur le génocide que sur les autres violations des droits de l'homme et du droit international humanitaire.

i) Sur le génocide

33. Des témoignages concordants sur les massacres ont été recueillis et sélectionnés systématiquement par préfecture. On mentionnera à titre d'illustration des faits survenus dans quelques préfectures.

34. Dans la préfecture de Butare, des témoins rapportent que près de 10 000 personnes réfugiées dans le stade furent attaquées à la machette et massacrées le 18 avril. Le 23 avril, 5 000 personnes réfugiées à Nyakibanda ont été attaquées pendant quatre jours. Les survivants ont identifié certaines personnes qui ont organisé et réalisé ces massacres, parmi lesquelles un haut responsable politique de l'ancien régime, considéré par des témoins comme l'organisateur et le coordinateur des attaques.

35. Dans la préfecture de Cyangungu, plus de 5 000 Tutsis furent parqués dans le stade de Cyangungu, sans abri, au soleil et sous la pluie. Beaucoup furent frappés à la machette. Des militaires venaient périodiquement chercher des personnes qui devaient être massacrées sur la base de listes préétablies. Le vendredi 29 avril, à 4 heures du matin, les otages terrorisés tentèrent de sortir en masse du stade. Les soldats tirèrent dans la foule. Des témoins rapportent avoir vu, l'après-midi du 29, les prisonniers de Cyangungu procéder à l'enterrement des corps emportés dans trois camions pleins, non loin de l'hôtel des Chutes.

36. Dans la préfecture de Gisenyi, dès le 7 avril 1994, les familles de professeurs tutsis enseignant dans les différentes écoles de Nyundo (petit-séminaire, école d'arts, etc.) commencèrent à se réfugier au séminaire avec les auxiliaires de l'apostolat. A 17 heures, une foule d'assaillants, armés

de machettes et de gourdins, attaquèrent le séminaire. Dispersés par les gendarmes, ils revinrent vers 20 heures et attaquèrent de nouveau, massacrant toutes les personnes cachées dans l'une des chapelles du séminaire. Le 8 avril, les gendarmes assurant la garde des Bagogwe demandèrent à ceux-ci et aux rescapés des massacres du 8, d'entrer dans la cathédrale, où ils prétendirent que leur sécurité serait mieux assurée. Le 9 avril, les miliciens attaquèrent la cathédrale et tuèrent tous ceux qui s'y trouvaient. Plus de 300 personnes auraient été massacrées. Le 1er mai, 218 rescapés des massacres du 9 avril furent à leur tour exécutés.

37. Dans la préfecture de Kibuye, le 15 avril 1994, la population de Gitesi se réfugia dans le stade de la ville, dans l'église et au home Saint-Pierre, se joignant aux réfugiés des autres communes. Le stade était, sur ordre de l'ancien bourgmestre, gardé par des gendarmes. Il y eut environ 6 000 personnes dans le stade, 3 250 dans l'église et environ 200 dans le home. Le 16 ou le 17 avril, des massacres furent perpétrés dans l'église et le home Saint-Pierre. Trois jours plus tard, les massacres s'étendirent au stade. Les gendarmes qui gardaient le stade s'étant retirés, les massacres furent organisés de façon méthodique et systématique, en commençant par les gens les plus en vue. Des survivants qui réussirent à s'enfuir vers les hauteurs de Karongi furent à leur tour attaqués. Beaucoup d'entre eux périrent et les quelques rares rescapés s'enfuirent vers Bisegiro.

38. Dans la préfecture de Kigali, selon les témoignages recueillis, des miliciens et des gendarmes auraient perpétré des massacres de Tutsis entre le 9 et le 13 avril. Plusieurs personnalités tutsies furent massacrées par des éléments de la Garde présidentielle. Dans chaque quartier de Kigali était organisé un groupe de miliciens dépendant de la milice armée de la Coalition pour la défense de la République (CDR). Dans le quartier de Cyahafi, les massacres commencèrent le jeudi 7 avril au matin.

ii) Sur les autres violations graves du droit humanitaire

39. L'exécution du génocide des Tutsis, les massacres de Hutus modérés et la recrudescence de la guerre civile qui s'en est suivie ont été l'occasion de la commission de beaucoup de violations graves du droit international humanitaire. Celles-ci vont de l'incendie des maisons et des biens des victimes ou fugitifs, à la prise en otages des femmes en passant par les viols des femmes, la torture des personnes capturées et les exécutions sommaires. Les massacres cités en exemples dans la rubrique sur le génocide valent mutatis mutandis pour les violations précitées.

40. Il faut cependant mentionner également que dans la mesure où les hostilités s'étaient étendues à tout le territoire rwandais et malgré la difficulté d'établir avec exactitude les violations commises dans les zones contrôlées par l'Armée patriotique rwandaise, des témoignages font état de plusieurs cas de violations du droit humanitaire par cette dernière. Quelques exemples mériteraient d'être mentionnés ici. Le premier concerne les massacres qui ont été commis par des soldats de l'Armée patriotique rwandaise (APR) dans certains quartiers de Kigali comme Kimihura, Kacyiru, Remera et Gikondo. Des témoins ont donné les noms des membres des familles massacrées. Le second est relatif aux massacres de 250 des 587 Batwa dans la commune de Ntongwe par des soldats de l'APR. Ces Batwa auraient répondu, en compagnie de villageois

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hutus, à un appel du Front patriotique rwandais, lancé à la fin de la guerre, les invitant à retourner chez eux. Tous ces faits, ajoutés au génocide des Tutsis, devraient faire l'objet d'une enquête plus approfondie et, le cas échéant, de poursuites par le Tribunal international pour le Rwanda.

b) Les preuves

41. Les éléments de preuves se rapportent essentiellement à l'identification de sites de fosses communes et à la découverte de documents administratifs, d'instruments ayant servi aux massacres et de cassettes audio comportant la propagande du génocide.

i) L'identification de sites de fosses communes

42. L'unité spéciale d'investigation a pu identifier et recenser sur l'ensemble du territoire plusieurs centaines de fosses communes. Le registre de ces fosses établi par préfecture a été transmis au Bureau du Procureur, à qui il incombe d'ordonner éventuellement des exhumations.

43. Il importe cependant de relativiser la portée de l'oeuvre accomplie, qui reste limitée pour deux raisons. La première, c'est que l'identification n'est pas exhaustive; elle donne seulement une liste indicative des fosses les plus importantes. La deuxième, c'est qu'il est difficile sinon impossible de déterminer la localisation exacte de beaucoup des fosses et le nombre précis des corps qu'elles contiennent. Les fosses mentionnées dans le présent rapport servent simplement à donner une idée approximative de l'ampleur des massacres qui ont été perpétrés au Rwanda, à partir du 6 avril 1994.

44. Ainsi, dans la préfecture de Butare (commune de Kigembe, secteur de Nyanza, cellule de Rugizo), plusieurs fosses communes situées entre le Tribunal cantonal et les bureaux de la commune contiendraient près de 5 000 corps. De même, dans la préfecture de Cyangungu, ont été identifiées dans la commune de Gishoma une fosse commune entre l'église et l'hôpital qui contiendrait la plus grande partie des corps de 2 à 3 000 personnes assassinées dans l'église, et, dans le secteur de Nyamasheke (commune de Kagamo), 15 fosses communes autour de la paroisse, où 4 à 6 000 personnes auraient été enterrées. En outre dans la préfecture de Gikongoro (commune de Kivu, secteur et cellule de Nyabirondo), une série de fosses communes ont été mises à jour dans les périmètres de l'école et de l'église catholiques. Il en va de même de la préfecture de Kibuye (commune de Gitesi), où ont été identifiées des fosses communes situées près de l'Eglise catholique contenant à peu près 8 000 corps et d'autres fosses renfermant à peu près 10 000 corps.

ii) Les documents

45. Les enquêteurs de l'unité spéciale d'investigation ont également obtenu et exploité des documents aussi nombreux que diversifiés. Il est possible de regrouper ceux-ci en cinq grandes catégories, émanant respectivement de l'ancien gouvernement et de la Coalition pour la défense de la République (CDR); des organisations du système des Nations Unies, en particulier la MINUAR (les rapports quotidiens de situation); de certains Etats, tout particulièrement ceux qui avaient leurs chancelleries au Rwanda : Etats-Unis, Espagne, France (opération Turquoise); des organisations non gouvernementales,

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dont celles qui ont été témoins oculaires des massacres; des médias, C'est-à-dire tant par la presse étrangère que nationale, les journaux (Kangura) et les cassettes audio de la Radio Télévision Libre des Mille Collines (RTL).

46. On pourra mentionner, à titre d'exemple, un document contenant l'organisation et le fonctionnement des milices ainsi que des éléments relatifs à leur entraînement par la garde présidentielle. Il établit par ailleurs que les milices interahamwe ("ceux qui attaquent ensemble") projetaient l'élimination d'opposants hutus modérés dès mai 1992. Un autre document contient le recensement des populations de chaque commune, effectué en 1992-1993, avec la mention de leur ethnie, de leur sexe et de leur âge. Il donne des indications assez précises sur le développement de la planification des massacres dans les régions à forte concentration de Tutsis. D'autres documents comportent des listes de Tutsis et d'opposants hutus modérés à tuer depuis mai 1992. Le Rapporteur spécial a par ailleurs reçu des listes des principaux commanditaires du génocide pour certaines préfectures: Butare, Gisenyi, Kibungo (communes de Kayanza et de Rusumo), Kigali-ville (communes de Kicukiro et de Nyarugenge). Tous ces documents ont été mis à la disposition du Tribunal international.

2. La contribution du Tribunal international pour le Rwanda

47. La création du Tribunal international va contribuer à l'avancement de l'enquête sur le génocide par les compétences concurrentes qu'il exerce à la fois avec les juridictions nationales et le Rapporteur spécial.

a) Le Tribunal international et les juridictions nationales

48. Aux termes de l'article 1er de son Statut,

" Le Tribunal international pour le Rwanda est habilité à juger les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire du Rwanda et les citoyens rwandais présumés responsables de telles violations commises sur le territoire d'Etats voisins entre le 1er janvier et le 31 décembre 1994, conformément aux dispositions du présent statut."

Cette disposition définit les compétences matérielle, territoriale, personnelle et temporelle du Tribunal. Ratione materiae, celui-ci est compétent pour connaître des violations définies aux articles 2 (le génocide), 3 (les crimes contre l'humanité) et 4 (les violations de l'article 3 commun aux Conventions de Genève et du Protocole additionnel II). Ratione loci, le Tribunal poursuit les crimes commis au Rwanda et dans les pays voisins par des citoyens rwandais. Dans son rapport du 13 février 1995 au Conseil de sécurité sur la mise en oeuvre de la résolution 955 (1994) (S/1995/134), le Secrétaire général fait observer : " En étendant ainsi la compétence territoriale du Tribunal, le Conseil avait à l'esprit essentiellement les camps de réfugiés situés au Zaïre et dans d'autres pays voisins dans lesquels de graves violations du droit international humanitaire auraient été commises dans le cadre du conflit rwandais". Ratione temporis, la compétence du Tribunal est limitée à la période allant du 1er janvier au 31 décembre 1994. Le rapport du Secrétaire général précité mentionne à ce propos : "Bien que

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la chute, le 6 avril 1994, de l'avion qui transportait les Présidents du Rwanda et du Burundi soit considérée comme l'événement qui a déclenché la guerre civile et son cortège d'actes de génocide, le Conseil a décidé que la compétence ratione temporis du Tribunal débiterait le 1er janvier 1994 de façon que la planification des crimes n'y échappe pas". Enfin, ratione personae, le Tribunal est compétent pour poursuivre les auteurs des violations prescrites aux articles 2, 3 et 4 du Statut.

49. Ainsi seront justiciables de la juridiction internationale toutes les personnes responsables des faits précités. Mais ce n'est là qu'un principe, voire un idéal, dont la mise en oeuvre se heurte à des difficultés pratiques qui en réduisent considérablement la portée. Eu égard, en effet, à la participation massive de Rwandais aux faits incriminés, il sera pratiquement impossible au Tribunal international de connaître de tous les cas de personnes présumées responsables. Aussi les juridictions nationales, rwandaises et étrangères sont-elles appelées à se prononcer sur les cas qui leur seront soumis. Les compétences concurrentes sont explicitement prescrites par l'article 8, alinéa 1 du Statut du Tribunal en ces termes :

"Le Tribunal international pour le Rwanda et les juridictions nationales sont concurremment compétents pour juger les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire du Rwanda et les citoyens rwandais présumés responsables de telles violations commises sur le territoire d'Etats voisins entre le 1er janvier et le 31 décembre 1994."

50. Au Tribunal international reviendra sans doute la compétence de connaître des cas des grands criminels, c'est-à-dire ceux qui ont conçu, organisé et fait exécuter les crimes contre l'humanité. Les tribunaux nationaux, eux, connaîtront des cas des personnes présumées responsables se trouvant dans leur territoire national. Ainsi, contrairement à une opinion généralement répandue, surtout au Rwanda, le Tribunal international ne sera pas la seule juridiction habilitée à connaître de tous les cas. Dans son rapport du 4 juin 1995 au Conseil de sécurité (S/1995/457), le Secrétaire général note que "les enquêtes ... porteront sur 400 accusés identifiés, dont la plupart se sont réfugiés à l'étranger".

51. Le vœu de voir reconnaître au Tribunal international une compétence exclusive, partagé autant par les victimes que par les présumés responsables du génocide, ne sera donc pas exaucé. Ceux-ci pourront à la limite et tout juste se consoler de la primauté fonctionnelle du Tribunal international sur les juridictions nationales. En effet, aux termes de l'article 8, alinéa 2, de son statut :

"le Tribunal international pour le Rwanda a la primauté sur les juridictions nationales de tous les Etats. A tout stade de la procédure, il peut demander officiellement aux juridictions nationales de se dessaisir en sa faveur conformément au présent statut et à son règlement".

52. A la satisfaction qui résulte de cette primauté fonctionnelle, il convient d'ajouter la mise en place progressive du Tribunal international tant attendu (voir le rapport du Secrétaire général au Conseil de sécurité en

application du paragraphe 5 de la résolution 955 (1994) du Conseil de sécurité, (S/1995/134 du 13 février 1995). Le Conseil de sécurité a fixé son siège à Arusha par la résolution 977 (1995) du 22 février 1995; le Secrétaire général a nommé successivement le Procureur du Tribunal et son adjoint, et l'Assemblée générale a procédé, les 24 et 25 mai 1995, à l'élection des six juges des chambres de première instance du Tribunal (voir A/49/889 du 26 mai 1995), sur la base d'une liste de 12 candidats présentés par le Conseil de sécurité (résolution 989 (1995) du 24 avril 1995). Ceux-ci ont été officiellement installés le 27 juin 1995 à La Haye. De plus, le Conseil de sécurité a adopté, le 27 février 1995, la résolution 978 (1995) relative à la coopération entre les Etats et le Tribunal international pour le Rwanda, dans laquelle il a recommandé aux Etats sur le territoire desquels résident les auteurs présumés du génocide de procéder à leur arrestation et à leur détention, s'ils ont des preuves suffisantes de leur participation au génocide, en attendant de les transférer au Tribunal international. En dépit du caractère non-contrainant de cette résolution, les Etats devraient coopérer de bonne foi à son application.

b) Le Tribunal international et le Rapporteur spécial

53. Le Rapporteur spécial, à la différence du Tribunal international, n'est pas investi de fonction juridictionnelle, mais son mandat impliquant des enquêtes, les deux organes se trouvent ainsi appelés à mener des investigations sur les mêmes faits. Il en résulte une nécessaire et étroite coopération entre le Rapporteur spécial et le Tribunal qui, du reste, appartiennent à la même organisation, les Nations Unies.

54. Pour déterminer les conditions de cette coopération, le Rapporteur spécial a rencontré le Procureur du Tribunal international à La Haye le 2 mars 1995 et son adjoint à Kigali le 29 mars. Il ressort de ces entretiens qu'il y a une volonté déterminée des deux procédures de coopérer étroitement à la recherche des faits et à l'établissement des rapports, notamment par un échange régulier de données d'information, de renseignements et de documents.

55. Mais, si l'intervention du Tribunal dans l'enquête internationale sur les crimes est d'un apport inestimable, elle limite l'action du Rapporteur spécial. Celui-ci, investi d'un mandat politique, peut, en effet, en agissant dans le cadre d'une procédure publique, compromettre l'enquête judiciaire qui, elle, au contraire, requiert une procédure confidentielle. Il sera donc tenu d'observer le secret relativement à certains faits et informations dont la publication pourrait nuire à l'enquête, aux poursuites judiciaires et en définitive faire obstacle à la manifestation de la vérité. L'on ne doit donc pas s'attendre à ce que le Rapporteur spécial publie toutes les informations portées à sa connaissance. Il en va différemment des renseignements qu'il obtiendra sur la situation actuelle des droits de l'homme.

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

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

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A. Les atteintes au droit de propriété

57. Dans son troisième rapport (E/CN.4/1995/70 du 11 novembre 1994), le Rapporteur spécial avait relevé l'occupation illégale de propriétés comme une des violations les plus fréquentes des droits de l'homme au Rwanda. Le gouvernement avait envisagé des solutions parmi lesquelles la plus significative semble être l'institution d'une commission chargée de régler les litiges immobiliers et fonciers. Mais celle-ci a subi un échec que ne peuvent compenser des solutions insuffisantes.

1. L'échec de la Commission des litiges fonciers

58. La Commission interministérielle des mesures d'urgence relatives aux biens immobiliers et aux litiges sur les établissements commerciaux, créée en août 1994, est composée de neuf ministres et présidée par le Ministre de l'intérieur. Elle est assistée par un comité technique d'experts placé sous les ordres de ce dernier; le ministre dispose du pouvoir d'approbation des décisions prises par le Comité d'experts, et la Commission elle-même n'intervient que lorsque l'affaire présente une certaine gravité.

59. La Commission a rencontré beaucoup de difficultés pour faire appliquer ses décisions. Les mesures de déguerpissement prises par elle se heurtent dans leur exécution à différents obstacles. Plusieurs formes de résistance en ce sens peuvent être mentionnées. Certaines sont le fait même des agents des forces de l'ordre commis à cette tâche. Il arrive en effet que des gendarmes et des militaires, mandatés, privilégient leurs relations familiales ou amicales avec les occupants illégaux pour ne pas exécuter les mesures de déguerpissement. Mais les résistances les plus importantes viennent des occupants eux-mêmes. Ceux-ci usent de divers procédés dont on en retiendra quatre. Ils consistent : le premier, à s'absenter le jour prévu pour le déguerpissement, paralysant ainsi l'action des agents des forces de l'ordre; le deuxième, à laisser des gens âgés dans la propriété au moment de l'exécution de la mesure : ce stratagème vise à dissuader le déguerpissement forcé, eu égard au respect dû aux personnes âgées en Afrique en général et au Rwanda en particulier; le troisième, à faire appel à des groupes d'amis pour s'opposer physiquement au déguerpissement; et le quatrième, à recourir à la protection des officiers de l'armée, qui ordonnent parfois l'arrestation de soldats commis au déguerpissement.

60. Au total, le taux d'application des mesures de déguerpissement, prises, au départ, à raison de quatre tous les vendredis, ne dépasse guère 30 %. En outre, des personnes relogées par la Commission ont dû se résoudre à quitter leur logement et à vivre cachées, à la suite des menaces dont elles ont été l'objet de la part d'occupants déguerpis. Pis encore, des personnes réintégrées dans leurs droits ont été arrêtées, voire assassinées ou portées disparues.

61. Quelques exemples rapportés aux observateurs peuvent être mentionnés. C'est ainsi qu'une personne, répondant à la convocation du chef de secteur de Gitega pour le règlement du litige relatif à la maison de son frère était appréhendée entre le 22 et le 24 février 1995 par les gendarmes de la brigade de Nyamirambo, accusée d'appartenir à la tendance extrémiste du Mouvement démocratique républicain (MDR). Mais il y a des indices sérieux qui prouvent

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que son arrestation était motivée par le fait qu'il était propriétaire de deux maisons et qu'il gérait aussi celle de son frère. La victime se trouve toujours détenue à la brigade de Nyamirambo, tandis que ses deux maisons ont été illégalement occupées par un colonel de l'APR et une dame. Ceux-ci auraient pris possession des lieux dès le lendemain de son arrestation. Il en va de même d'une famille qui a réussi à faire "déguerpir" de sa maison sise à Kigali les occupants illégaux et qui a, par la suite, assisté impuissante, le 25 août 1994 à 6 heures du matin, à l'enlèvement de son chef ("époux et père") par deux militaires. Les démarches entreprises par l'épouse pour retrouver son conjoint sont restées infructueuses. Il en va encore de même du cas du commerçant hutu de Kigali, Gervais Birekeraho, qui mérite un peu plus de précision. Accusé d'avoir participé au génocide, il fut arrêté mais réussit à prouver, grâce à beaucoup d'éléments, dont son passeport contenant des visas étrangers estampillés, qu'il était à l'étranger au moment des hostilités et des massacres. Il fut libéré. Mais comme il tenait à récupérer ses nombreuses propriétés, il fut enlevé. Son épouse saisit l'opération des droits de l'homme. Des enquêtes menées ont abouti à la découverte de son corps, quelques jours plus tard.

62. Face à l'échec de la Commission, d'autres solutions ont été proposées dans le cadre de l'assistance technique au Rwanda.

2. Des solutions insuffisantes

63. Les solutions envisagées consistent essentiellement en des mesures destinées à construire de nouveaux logements. Ce projet s'insère dans le cadre du plan de réinstallation des réfugiés rapatriés. Il est géré par le Programme des Nations Unies pour le développement (PNUD). Celui-ci a prévu le financement à court terme de la construction de 500 bâtiments avec des matériaux locaux près de Kigali et un peu plus à Mutara. L'augmentation du nombre de logements à construire dépendra des fonds alloués. Pour l'heure, les moyens mobilisés restent encore insuffisants. Au 1er avril 1995, le PNUD n'avait encore reçu que 40 millions de dollars sur les 110 millions requis pour le démarrage du programme de développement communautaire visant essentiellement le secteur de l'habitat.

64. Du reste, cette somme est loin de suffire, face aux besoins immenses à satisfaire pour réintégrer près de 600 000 anciens réfugiés dont on a prévu le rapatriement. L'aide internationale reste donc largement insuffisante. Elle l'est malheureusement autant pour la construction de logements que, d'une manière générale, pour la reconstruction nationale. Dans son rapport précité du 4 juin 1995 (S/1995/457), le Secrétaire général de l'ONU stigmatise la lenteur de l'aide déjà promise. Parlant de l'assistance économique annoncée à la Table ronde organisée par le PNUD à Genève les 18 et 19 janvier 1995, il rapporte : "Bien que des contributions de 634 millions de dollars aient été annoncées à cette occasion, 69 millions seulement ont effectivement été décaissés, dont 26 millions ont été utilisés pour le service de la dette." Et le Secrétaire général de conclure : "Il est important de s'attaquer à ces problèmes". L'on doit d'autant plus s'attaquer à ces problèmes que l'aide de la communauté internationale reste indispensable pour exécuter le programme de reconstruction nationale et tout particulièrement la construction de logements ou de centres d'accueil pour les réfugiés. Cela pourrait contribuer à

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encourager les réfugiés à rentrer chez eux, et ainsi à, sinon faire cesser, du moins atténuer les atteintes à la sûreté personnelle.

B. Les atteintes au droit à la sûreté personnelle

65. Les atteintes au droit à la sûreté personnelle se sont malheureusement multipliées ces derniers mois, souvent en relation directe avec les atteintes au droit de propriété, en constituant la cause immédiate. Elles consistent en des arrestations et détentions arbitraires qui conduisent à des conditions déplorables de détention.

1. Les arrestations et détentions arbitraires

66. Les arrestations et détentions auxquelles procèdent les autorités rwandaises sont arbitraires en ce qu'elles heurtent frontalement tant les règles prescrites par la législation rwandaise elle-même que les normes internationales pertinentes. D'après la procédure pénale rwandaise, l'arrestation d'une personne présumée auteur d'une infraction doit être effectuée sur la base d'un mandat d'arrêt délivré par le procureur de la République. La durée légale de la détention est de 48 heures. Celle-ci peut être prolongée mais la prolongation ne peut excéder cinq jours. Au-delà de ce délai, si le parquet souhaite maintenir en détention la personne arrêtée, il doit la présenter au tribunal de première instance, qui statue, en chambre du conseil, sur la mise en détention préventive qui peut aller jusqu'à un mois, ou qui décide de la libération provisoire ou définitive du détenu en cas de non-lieu. Or la quasi-totalité des arrestations et des détentions opérées depuis la fin des hostilités l'ont été au mépris des règles énoncées ci-dessus, qui, du reste, reflètent les Principes fondamentaux des Nations Unies relatifs au traitement des détenus.

67. Le nombre de personnes arrêtées puis détenues s'est accru depuis quelques mois. Au 29 mai 1995, le nombre de détenus dans les prisons et centres de détention accessibles aux observateurs des droits de l'homme était de 29 403. En réalité, la population carcérale sur tout le territoire rwandais était fin mai 1995, estimée à plus de 42 000, comme l'évalue le dernier rapport du Secrétaire général sur le Rwanda (S/1995/457 du 4 juin 1995). Celle-ci était estimée fin février 1995 à 25 000. Ainsi, de fin février à fin mai, on est passé de 25 000 à 42 000 détenus, soit 17 000 de plus en trois mois, près de 6 000 nouveaux détenus par mois, soit encore 1 500 par semaine. Ces arrestations et détentions se déroulent dans des conditions telles que les autorités rwandaises elles-mêmes, tout particulièrement l'ancien procureur de la République près le tribunal de première instance de Kigali, reconnaissent que plus de 20 à 30 % des prévenus sont innocents.

68. En fait plusieurs raisons étroitement liées expliquent la recrudescence des arrestations et détentions massives. La première, invoquée par les pouvoirs publics, est la fermeture des camps des déplacés qui, selon eux, étaient devenus le refuge de nombreux miliciens et autres auteurs présumés du génocide. Ceux-ci, hors des camps, auraient été reconnus et dénoncés par des témoins ou ayants-droit des victimes des massacres. La deuxième est tirée des dénonciations calomnieuses, motivées par la haine, la jalousie et la convoitise des biens des personnes poursuivies. Les exemples cités ci-dessus, en matière d'occupations de propriété en sont une illustration typique.

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La troisième procède de la pratique des mandats en blanc. Le Rapporteur spécial a été informé de ce qu'il existe une pratique illégale consistant, pour certains procureurs, à signer des mandats en blanc, remis aux bourgmestres pour permettre à ces derniers, officiers de police judiciaire à compétence restreinte, de procéder à des arrestations. Une telle pratique, dont l'existence a été confirmée expressément par des autorités publiques, ne peut que contribuer à la recrudescence des arrestations massives et arbitraires. L'ancien procureur de Kigali, qui n'a pas manqué de s'élever contre ces arrestations arbitraires résultant de dénonciations calomnieuses, a ajouté, au cours d'une conférence de presse prononcée à Bruxelles le 11 mai 1995, une quatrième raison se rapportant à une déclaration du Procureur du Tribunal international, le juge Goldstone. Il a notamment déclaré : "Je voudrais insister sur le fait que ces arrestations ont augmenté d'une manière inquiétante après l'annonce, à la radio nationale, que le Tribunal international n'entamerait pas les poursuites avant la fin de l'année 1995". Ces arrestations massives sont d'autant plus inquiétantes que les conditions de détention laissent à désirer.

2. Les conditions déplorables de détention

69. La situation dans les prisons constitue l'une des préoccupations majeures de la communauté internationale. Elle demeure indescriptible et inqualifiable. L'ancien procureur de Kigali, quant à lui, la qualifie de "tragique". Et pour cause : elle se caractérise par une surpopulation carcérale et des traitements inhumains infligés aux détenus.

a) La surpopulation carcérale

70. La population carcérale était au 29 mai 1995 de 29 403 personnes entassées dans 13 petits centres officiels de détention. Ces centres ne comprennent pas les cachots et autres lieux de détention inaccessibles aux observateurs des droits de l'homme. La population carcérale totale était estimée, au 10 juin 1995, à près de 46 000 détenus, dont 1 100 mineurs.

71. Les prisons rwandaises sont constituées de ces centres surpeuplés et le niveau de surpopulation carcérale dépasse largement le seuil du tolérable. Il en va ainsi de la prison de Butare, dont la capacité d'accueil est de 1 500 détenus et qui en contenait, au 10 juin, 6 589, soit 4 fois plus que prévu; il en est de même de la prison de Kigali, qui hébergeait, au 3 juin, 9 401 détenus pour une capacité d'accueil de 2 000, soit 5 fois plus que le nombre requis; il en va de même de la prison de Gitarama qui, elle, en comptait 6 847 pour une capacité réelle de 300, soit près de 8 fois le nombre normal prévu.

72. Dans la plupart des prisons les détenus sont logés à l'étroit, le grand nombre disposant à peine d'une place pour s'asseoir, encore moins pour se coucher sur un sol souvent rocailleux. Les rares couchettes sont vendues au plus offrant ou occupées par les plus forts. Il est extrêmement difficile au visiteur de se frayer un chemin à travers cette masse humaine exposée au soleil et aux intempéries. C'est ainsi qu'il a été impossible au Rapporteur spécial, lors de sa visite du 31 mars 1995 de circuler à l'intérieur de la prison de Gitarama. Immobilisés et à la merci des intempéries, les détenus mangent, boivent et défèquent sur place. Cette situation "tragique" n'épargne

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ni les vieillards, ni les femmes, ni même les enfants. Ces derniers comptent parmi eux des personnes âgées de moins de 11 ans. C'est ainsi qu'à la prison de Kigali, on compte 278 mineurs et 70 enfants accompagnés de leurs mères. Le Rapporteur spécial a été affecté de voir à la prison de Kigali un garçon de 7 ans accusé d'avoir participé au génocide.

73. Ces conditions déplorables de détention sont à l'origine de nombreuses maladies. Les décès ne sont pas moins nombreux. A titre d'exemple, à la prison de Gitarama, le nombre de décès était de 48 personnes en avril 1995. Le jour de la visite du Rapporteur spécial dans cette prison, on a évacué deux corps en sa présence. Il lui a été alors rapporté que la moyenne quotidienne de juin 1994 jusqu'en mars 1995 était de quatre par jour. Ces décès sont également provoqués par des sévices infligés aux détenus.

b) Les traitements inhumains et dégradants

74. Les centres de détention, sans détenir le monopole des traitements cruels, inhumains et dégradants, en constituent le lieu de prédilection. Beaucoup de cas de tortures sous des formes diverses ayant laissé des séquelles sur les suppliciés ont été rapportés aux observateurs des droits de l'homme de l'ONU. Ces traitements inhumains revêtent diverses formes, allant des bastonnades à l'étouffement en passant par le "kandoya".

75. La pratique de la bastonnade, consistant à frapper les détenus, est courante dans un grand nombre de centres de détention. Il en va ainsi de la prison de la préfecture de Gisenyi où les observateurs des droits de l'homme ont rapporté avoir reçu 40 plaintes de victimes en janvier et février 1995. Dans plusieurs de ces cas, les victimes ont été transportées à l'hôpital. Deux ont succombé à leurs blessures. A la brigade de Save, plusieurs détenus arrivés au début du mois de mars présentaient des signes de mauvais traitements, soit des plaies ouvertes au dos, sur les jambes, des articulations enflées, des blessures à la tête. Un autre présentait des cicatrices partout au dos et sur les bras. Des observateurs de Butare ont, lors d'une visite de routine à la prison dans la semaine du 20 au 25 mars, entendu des bruits, des cris, des menaces et des gifles provenant de la salle d'interrogatoires de l'officier de police judiciaire.

76. De la bastonnade se rapprochent les divers coups assenés par les instruments autres que des bâtons. Ce sont notamment des coups de machette à plat sur les épaules, les coups de pied, les coups de tournevis dans le dos et sur la tête, qui provoquent des plaies; les coups de crosses, qui font des trous dans les pieds; les coups de matraque, qui laissent des marques sur la tête et au dos; les coups avec une chaîne liée à un cadenas, qui provoquent des blessures; les coups aux fesses laissant des blessures ouvertes.

77. Le kandoya est une autre technique de torture qui consiste à ligoter les bras du supplicié juste au-dessus des coudes, derrière le dos. Il laisse des traces évidentes sous forme de plaies qui, à long terme, entraînent la paralysie des membres supérieurs.

78. L'étouffement est une modalité de torture qui a provoqué l'incident survenu à la brigade de gendarmerie de Muhima dans la nuit du 16 au 17 mars 1995. Les faits méritent d'être brièvement rapportés. Le soir

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du 16 mars, 75 personnes arrêtées furent transférées du centre communal de Gikoro à la brigade de Muhima. Elles y arrivèrent vers 17 heures. Les autorités locales de la gendarmerie déclarèrent qu'il était trop tard pour les enregistrer et que ces personnes devaient rester dans un lieu de détention improvisé en attendant de procéder aux formalités d'enregistrement le lendemain. Les gendarmes forcèrent les 75 personnes à entrer dans une pièce qui mesurait à peine 16 mètres carrés, n'avait qu'une porte et ne comportait aucune fenêtre. Au milieu de la nuit, les personnes enfermées frappèrent à la porte sans qu'on pût la leur ouvrir. Le lendemain matin, 22 d'entre elles étaient mortes d'étouffement; 2 autres transportées à l'hôpital succombaient à leur tour, portant le nombre de décès à 24. La demande des observateurs pour enquêter sur cet incident a reçu une fin de non-recevoir de la part des autorités rwandaises, qui assurent avoir ouvert elles-mêmes une enquête.

79. Il faut ajouter à cette liste non exhaustive de sévices le viol de femmes et la malnutrition des détenus.

2. Les solutions envisagées

80. Le Gouvernement rwandais et la communauté internationale ont adopté un certain nombre de mesures destinées à court terme à mettre fin à la surpopulation carcérale et à moyen terme à faire juger les auteurs présumés du génocide. Ces mesures peuvent être regroupées en deux grandes catégories. Les unes ont trait au triage des dossiers et les autres visent la réhabilitation du système judiciaire.

a) Le triage des dossiers

81. La première solution préconisée et mise en oeuvre par le Gouvernement rwandais a consisté à créer, le 17 octobre 1994, une commission chargée de trier les dossiers des détenus par préfecture. Ce triage avait un double objet : séparer, d'une part, les affaires de droit commun de celles relatives au génocide et, d'autre part, les dossiers des personnes sur qui pèsent des charges suffisantes de participation au génocide de ceux des autres personnes. Le but poursuivi par cet examen préliminaire était de toute évidence d'ordonner l'élargissement des personnes pour lesquelles la détention ne s'imposait pas et, ce, en vue de désengorger les prisons.

82. La commission de triage des dossiers est composée du procureur de la République près le tribunal de première instance (président), d'un représentant de la gendarmerie, d'un représentant de l'armée et d'un représentant des services des renseignements. Celle de Kigali a commencé ses travaux le 10 janvier 1995 et, à sa première réunion, ordonné 5 libérations sur les 12 dossiers examinés. A la mi-février, les décisions de libération auraient pu bénéficier à 50 détenus, n'eût été l'opposition des militaires, qui ont empêché que ces libérations ne deviennent effectives. Cette commission a dû arrêter ses travaux, faute d'avoir la coopération de l'armée.

83. - Il importe de relever qu'aussi louable soit-elle, l'institution ne comporte pas moins de limites qui en réduisent considérablement la portée. La première procède de ce que le nombre restreint de libérations que les commissions sont susceptibles de prononcer ne peut réduire significativement celui des anciens prisonniers, ni même compenser celui des entrées, qui

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oscille entre 1 300 et 1 500 par semaine. La seconde tient à l'absence d'une garantie de sécurité à la sortie de prison. La crainte de représailles ou de vengeance privée a conduit des Rwandais, tout particulièrement des Hutus, à se constituer prisonniers. Ces personnes, certains détenus à la prison de Butare l'ont signifié au Rapporteur spécial, ne sont pas prêtes à risquer leur vie en sortant des prisons aussi longtemps que des dispositions efficaces ne sont pas prises pour assurer leur sécurité.

84. Par ailleurs, à la suite de la fermeture des camps des déplacés, le gouvernement a décidé de procéder uniquement à l'arrestation de personnes sur qui pèsent des charges suffisantes de participation au génocide. Cette mesure ne semble pas avoir produit les effets escomptés, eu égard au nombre de détentions, qui a augmenté sans discontinuité.

85. Les limites des commissions de triage et leur échec ont conduit les agences des Nations Unies et les organismes d'aide humanitaire à préconiser la réhabilitation du système judiciaire.

b) La réhabilitation du système judiciaire

86. La réhabilitation du système judiciaire vise autant les prisons que les tribunaux.

i) Les prisons

87. Dès le début de février 1995, diverses organisations internationales travaillant sur le territoire rwandais ont recommandé aux Ministres de la défense et de la justice de prendre des mesures urgentes pour réhabiliter les prisons. Elles ont elles-mêmes préconisé au moins trois solutions.

88. Les agences humanitaires ont tout d'abord suggéré la construction de tentes pouvant abriter les détenus dans des lieux protégés par des fils de fer barbelés. Le gouvernement a rejeté cette proposition pour des raisons à la fois de "sécurité", eu égard aux risques énormes des fuites et d'"image", rappelant de trop le souvenir des camps de concentration nazis. Les agences humanitaires ont alors proposé que des détenus soient transférés provisoirement dans des stades. Cette solution a également été rejetée, parce que rappelant les stades qui ont servi de lieu de rassemblements et de massacres de Tutsis pendant les hostilités. Les agences ont enfin proposé un plan de réhabilitation des prisons impliquant le réaménagement des centres de détention existants et la construction de nouveaux centres.

89. La dernière solution a été certes retenue mais de haute lutte, car l'idée de la construction de nouveaux centres de détention se heurtait à deux objections majeures. La première émanait principalement des chancelleries de pays occidentaux, grands bailleurs de fonds. Celles-ci, sans mettre en cause le principe des arrestations et des détentions nécessitées par le devoir de punir les auteurs présumés du génocide et des autres crimes contre l'humanité, faisaient observer que l'extension de l'espace carcéral serait, en l'espèce, de nature à encourager les autorités rwandaises à persister dans l'"arbitraire" et sans chercher à désengorger les prisons par l'élargissement des personnes victimes de dénonciations calomnieuses. En d'autres termes, ce que l'on déplore et dénonce ce ne sont pas les arrestations et les détentions

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en elles-mêmes mais le caractère qu'elles revêtent. La seconde objection résidait dans le fait que la construction de quelques prisons ne ferait qu'au mieux créer des centaines de places supplémentaires, qui seraient vite dépassées par les besoins croissants suscités par les 1 500 arrestations et détentions hebdomadaires. Toutefois, face aux conditions inhumaines de détention et aux décès quotidiens qui en résultent, tout le monde, ou presque, est tombé d'accord pour considérer ces deux dernières solutions comme constituant le moindre mal. C'est dans ce contexte que certains sites ont été identifiés pour ériger de nouveaux centres de détention. Il convient de mentionner parmi ceux-ci le site de Nsida (préfecture de Kibungu), où l'on projette de construire une prison d'une capacité de 5 000 détenus. Le financement de ce projet est assuré par un fonds volontaire géré par le PNUD.

90. Quoi qu'il en soit, la construction de ces nouvelles prisons ne saurait constituer la panacée du grave problème de la surpopulation carcérale. La solution durable de ce problème réside dans la reconstruction nationale qui exige une aide accrue de la communauté internationale. Dans l'immédiat, cette aide doit être affectée à la réhabilitation des tribunaux.

ii) Les tribunaux

91. Le Ministre de la justice du Rwanda, lors d'un colloque tenu à Lille le 20 mai 1995, stigmatisait la situation des tribunaux en ces termes : "Au Rwanda plus d'un million de gens sont morts ... Les magistrats n'ont pas été épargnés. La plupart ont accompagné les anciens dirigeants, d'autres ont été massacrés lors du génocide tandis que les quelques rescapés tentent d'organiser un semblant de justice; une justice démolie et qui se cherche". Effectivement, l'appareil judiciaire rwandais reste défectueux, voire quasi inexistant. Il se caractérise par un déficit autant en ressources humaines qu'en moyens matériels.

92. Le nombre de magistrats avant les massacres d'avril-juillet 1994 était de 708. Un nombre infime de juristes était recensé, seulement 45. Le Rwanda ne compte plus aujourd'hui que près de 210 magistrats, dont seulement 60 juristes de formation. Ces magistrats sont répartis comme suit : parquets et tribunaux de première instance 55, cours d'appel 2 et cours de cassation 3. Les 150 autres relevant des tribunaux de cantons. Ainsi, si la plupart des juridictions ne fonctionnent pas c'est en grande partie en raison de l'insuffisance du personnel judiciaire. Les 55 magistrats de tribunaux de première instance, compétents en matière criminelle, devront donc se pencher sur les 46 000 dossiers actuellement en souffrance. Faute de citer tous les cas, l'on se bornera à mentionner l'exemple de Kigali, où le procureur de cette localité et ses quatre substituts devront à eux seuls traiter plus de 9 300 dossiers.

93. Il faut ajouter à ce déficit en ressources humaines la destruction des infrastructures des cours et tribunaux eux-mêmes. Il s'ensuit un manque cruel de moyens matériels et de logistique. Le manque de ressources financières n'a pas permis de reconstruire l'ensemble des biens meubles et immeubles détruits. Mais il convient d'insister surtout sur le manque de moyens techniques élémentaires d'investigation, notamment véhicules de liaison, matériel de bureau et même papier et stylos à bille. Cette situation n'est pas de nature à permettre aux magistrats de travailler dans des conditions idoines et, bien au

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contraire, retarde l'instruction des dossiers des auteurs présumés du génocide.

94. Pour mettre un terme à cette situation, le Ministre de la justice a adressé aux autorités de l'ONU, y compris celles du Centre pour les droits de l'homme, une demande d'aide, notamment en personnel judiciaire étranger, évaluée à 678, dont 303 juges, 300 magistrats du parquet et 75 officiers de police judiciaire (enquêteurs policiers).

95. En réponse à cette demande du Gouvernement rwandais, un programme d'assistance technique à la justice rwandaise a été adopté et est en voie d'être mis en oeuvre. La première phase de son exécution prévoit deux éléments : la réhabilitation des cours et tribunaux et la réhabilitation des prisons, y compris la construction de nouveaux centres de détention. La deuxième phase porte sur trois activités : le recrutement initial prioritaire de 50 magistrats étrangers, la formation du personnel judiciaire national et l'institution, au sein du Ministère de la justice, d'une structure de coordination de l'assistance technique extérieure et de gestion du projet. Ce projet sera géré par le Ministère de la justice, la responsabilité du recrutement étant dévolue au bureau du Haut Commissaire aux droits de l'homme et le financement assuré par le PNUD. Le Centre pour les droits de l'homme a déjà procédé à la sélection de 16 juristes internationaux dont les dossiers ont été transmis, pour approbation, au Ministre de la justice. Ils auront pour tâche d'aider les parquets à instruire les dossiers.

96. L'opération droits de l'homme au Rwanda a reçu mission d'assister le Ministère de la justice dans l'exécution du projet de réhabilitation du système judiciaire. Ce projet a pour objectifs : l'orientation et la gestion du personnel judiciaire étranger, la formation du personnel national, le déploiement des magistrats étrangers dans les préfectures et les communes, l'achat, la distribution et l'entretien des véhicules, ainsi que l'évacuation médicale du personnel étranger. Toutefois, un obstacle juridique empêche, pour l'heure, l'exécution du programme. La législation rwandaise n'autorise pas en effet, pour des raisons évidentes de souveraineté nationale, l'exercice sur son territoire de la fonction juridictionnelle par des magistrats étrangers. C'est, entre autres, pour lever cet obstacle que le gouvernement a soumis au Parlement un projet de loi dont l'adoption, dans les meilleurs délais, contribuerait sans conteste à débloquer le système judiciaire rwandais. En témoigne en partie l'échec de l'initiative prise par le Ministre de la justice de commencer, ne serait-ce qu'à titre symbolique, le procès des auteurs présumés du génocide le 6 avril 1995. L'adoption par le Parlement rwandais du projet aiderait à coup sûr à commencer et à faire progresser le jugement des affaires pendantes relatives non seulement au génocide mais aussi aux infractions commises actuellement sur le territoire rwandais, dont les atteintes au droit à la vie.

C. Les atteintes au droit à la vie

97. Les atteintes au droit à la vie qui s'étaient quelque peu ralenties pour céder le pas aux arrestations et détentions arbitraires, connaissent hélas à l'heure actuelle une résurgence. Elles consistent en des exécutions sommaires, des massacres et des enlèvements et disparitions forcées.

1. Les exécutions sommaires

98. Les observateurs des droits de l'homme ont reçu de nombreux témoignages faisant état d'exécutions sommaires perpétrées par les populations civiles et surtout par les soldats de l'APR, usant de représailles. Quelques exemples peuvent être rapportés, mais seulement à titre indicatif. Le 12 février 1995, deux personnes roulant à vélo, Nteziyaremye et Buseruka, pour être, par erreur, entrées en collision avec un militaire de l'APR dans le secteur Gakarara (préfecture de Ruhengeri, commune Karago), ont été immédiatement conduites au camp militaire de Mukamira. Le 15 février, les familles étaient informées de ce qu'elles avaient été abattues par des éléments de l'APR alors qu'elles tentaient de s'enfuir. Les corps, récupérés par les familles, présentaient des marques et blessures qui étaient loin de corroborer la thèse officielle. De même, le 30 avril 1995, trois habitants du secteur Gasasa (commune Nyakizu, préfecture de Butare) ont découvert huit cadavres dans une petite forêt. Ces corps ont été identifiés comme étant des déplacés revenus récemment du camp de Kamanana, dans la préfecture de Gikongoro. Les témoins ont affirmé avoir vu, le 29 avril au soir, c'est-à-dire la veille, les huit victimes encore en vie escortées par un groupe de personnes parmi lesquelles se trouvaient deux militaires en uniforme, allant en direction de ladite forêt. Ces personnes sont mortes à la suite de coups portés à la tête avec des pierres et des bâtons. Leurs noms ont été communiqués aux observateurs. Trois personnes soupçonnées d'avoir participé à ces exécutions ont été arrêtées. Le 4 avril 1995, dans la préfecture de Gitarama, une fille de 16 ans a rapporté aux observateurs que son père avait été tué la veille à Ntenyo (secteur de Tambwe) par un groupe dirigé par deux frères, prénommés Vital et Aphrodis, ainsi que quatre autres personnes. Ce groupe serait constitué d'éléments tutsis rescapés de la guerre.

99. Dans la préfecture de Cyangungu, il a été également rapporté plusieurs cas d'exécutions sommaires. A Nyamasheke, le 24 mars, trois personnes ont été tuées par des éléments de l'APR. Les victimes ont été identifiées par les observateurs militaires de la MINUAR. Le 25 mars, deux autres personnes étaient tuées à Kirambo pour avoir résisté à une arrestation. Toujours dans la même ville, le jour suivant, c'est-à-dire le 26 mars, des soldats de l'APR ont tué deux institutrices et un bébé.

100. Il convient enfin d'ajouter à cette liste, déjà longue, le cas de l'assassinat, le 4 mars 1995, de l'ancien préfet de Butare, M. Pierre-Claver Rwangabo, dans des conditions non encore élucidées. A ces exécutions individuelles il faut adjoindre les massacres de déplacés à Kibeho.

2. Les massacres de Kibeho

101. La tragédie de Kibeho constitue le fait majeur de la période faisant l'objet du présent rapport. Aussi mérite-t-elle qu'on s'y attarde. Après l'échec de l'"Opération retour", le Gouvernement rwandais a décidé de la fermeture, au 15 avril 1995, des camps des déplacés qui, en raison de l'infiltration des miliciens et des éléments des ex-forces armées rwandaises, constituaient une "menace pour la sécurité de la région". Le camp le plus important, celui de Kibeho, comptait encore 120 000 personnes sur un total de près de 250 000 déplacés. Les autorités rwandaises ont donné l'ordre de le

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fermer de force. Des soldats de l'APR ont pris position autour du camp dès le 18 avril. Ce jour-là, deux brigades de l'APR, soit plus de 2 000 soldats, ont encerclé les camps de Kibeho et de Ndagò pour, selon eux, mener une opération de fouille en vue de retrouver les criminels et les armes. Les déplacés furent pris de panique, quittant leurs huttes en laissant tout derrière eux, et se réfugièrent autour des bâtiments contrôlés par la MINUAR. Suite aux bousculades causées par l'encerclement des camps par les militaires et par des coups de feu tirés en l'air, 11 personnes - en majorité des enfants - trouvèrent la mort, écrasées par la foule en débandade. Des incidents similaires, provoquant des dizaines de morts et de nombreux blessés, se reproduisirent les 19, 20 et 21 avril. L'on enregistra et évacua durant ces trois jours quelque 9 000 déplacés. L'opération fut cependant rendue difficile par une forte pluie et, sur les routes empruntées par les convois à pied, des groupes de jeunes civils, armés de bâtons et de pierres, attaquèrent les déplacés.

102. Mais c'est, semble-t-il, dans la nuit du 22 avril que le pire s'est produit : de nombreux coups de feu ont été entendus et, le lendemain matin, la route reliant les deux postes de la MINUAR était jonchée d'un nombre incalculable de corps. Il importe de préciser à ce stade que certaines personnes ont péri sous le feu de l'APR, d'autres ont été piétinées ou écrasées par la foule dans la panique générale et d'autres encore ont été exécutées par des miliciens usant de représailles contre les déplacés qui avaient manifesté l'intention de quitter le camp.

103. Le nombre de victimes des massacres de Kibeho reste à déterminer. Le Gouvernement rwandais n'a enregistré que 300 décès, tandis que d'autres sources font état de 8 000. Quant à la MINUAR, elle fait osciller ce chiffre entre 1 500 et 2 000. L'on ne saura jamais le chiffre exact. Mais ce qui importe et est partant condamnable, ce n'est pas tant le nombre de morts que l'acte qui a été perpétré et de la manière dont il l'a été. L'on comprend dès lors sa condamnation unanime par la communauté internationale.

104. A la suite de ces massacres et des condamnations qui s'en sont suivies, le Gouvernement rwandais a proposé la constitution d'une commission internationale d'enquête sur les événements de Kibeho. La commission, instituée officiellement à Kigali le 3 mai 1995, a commencé ses travaux le 8 mai et a rendu son rapport le 18 mai 1995.

105. Dans son rapport, la Commission a tiré plusieurs conclusions dont on en retiendra trois. La première, c'est que les massacres de Kibeho n'ont résulté "ni d'une action planifiée pour tuer un certain groupe de personnes, ni d'un incident qui aurait pu être empêché". La seconde, c'est qu'il y a des preuves suffisantes pour établir que des violations graves des droits de l'homme ont été perpétrées contre des personnes déplacées non armées, causant des morts et de graves dommages corporels parmi celles-ci. La troisième, c'est que ces violations sont imputables à la fois au "personnel militaire de l'APR" et aux éléments armés se trouvant parmi les personnes déplacées elles-mêmes. Le Gouvernement rwandais, dans une déclaration faite le 26 mai 1995, a pris acte des conclusions et recommandations de la commission et a réitéré "son engagement à les mettre en pratique".

3. Les enlèvements et disparitions forcées

106. Les observateurs des droits de l'homme ont également reçu de nombreuses plaintes concernant des personnes enlevées et disparues dont les familles n'auraient ni nouvelles ni traces. Les enlèvements et disparitions forcées seraient principalement le fait d'éléments de l'APR. L'on se limitera à mentionner à titre d'exemple, quelques cas.

107. Le 4 août 1994, entre 22 et 23 heures, M. Ladislas Benhimana (47 ans), inspecteur des finances, a été arrêté en compagnie de ses deux enfants, Jean-Claude et Rosine, par trois militaires de l'APR, apparemment sans aucun mandat. Selon les informations reçues, les démarches effectuées par son épouse sont restées sans suite. Le 25 août, à 6 heures du matin, M. Leodomir Baguliyoro (47 ans), cadre au Ministère des finances, a été enlevé dans sa maison à Kigali par deux militaires qui l'ont poussé dans un véhicule. Là également, les démarches entreprises par son épouse pour le retrouver sont restées infructueuses. Il en est de même de M. Ndagimana (31 ans), chauffeur-mécanicien, enlevé le soir du 25 juillet 1994, alors qu'il revenait de l'hôpital Roi Fayçal. Sa voiture a été retrouvée devant la brigade de Gikoro. Un témoin a affirmé l'avoir vu trois jours après son arrestation, menottes aux mains, dans l'enceinte de l'état-major de la gendarmerie nationale à Kimihurura. Les recherches effectuées par les siens pour le retrouver sont restées sans suite. Il en va de même encore du cas de M. Marcel Ntirenganya, qui avait quitté son domicile le 20 octobre 1994 pour déposer un militaire, ami de la famille, à son lieu de service. Sa voiture a été retrouvée devant la brigade de Muhima. Il n'a jamais été retrouvé.

108. Durant sa dernière visite au Rwanda, le Rapporteur spécial a rencontré une délégation de femmes rwandaises dont les maris et, pour certaines, les enfants, sont portés disparus depuis juillet 1994. Celles-ci lui ont soumis un dossier comportant plusieurs pièces. La première contient cinq rapports sur des cas de disparitions forcées. La seconde reprend une liste non exhaustive de 49 personnes portées disparues, enlevées par des soldats de l'APR. La liste a été adressée par le "Collectif des épouses des personnes portées disparues depuis juillet 1994" au Ministre de la justice le 25 mai 1995. Mais jusqu'à ce jour, toutes les démarches entreprises par ces femmes pour retrouver leurs maris auprès des autorités compétentes sont demeurées sans suite. La troisième est relative à une liste de 149 hommes portés disparus, adressée par le groupe de femmes du secteur de Masoro (commune de Rutongo, préfecture de Kigali) au chef de l'opération des droits de l'homme à Kigali. Leurs maris sont portés disparus depuis le mois de mai 1994 à Byumba, lorsque le Front patriotique rwandais (FPR) les avait emmenés dans la zone qu'il contrôlait pour "les protéger". Elles sont restées sans nouvelles depuis cette époque.

109. Tous ces enlèvements et disparitions forcées, et surtout les événements de Kibeho ne peuvent qu'engendrer de nouveaux obstacles au mouvement de retour de l'exode.

III. LE PROBLEME DU RETOUR DE L'EXODE

110. Le problème du retour de l'exode, autre préoccupation majeure de la communauté internationale, n'a pas davantage enregistré de progrès sensible

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dans sa résolution. Bien au contraire, la situation des personnes s'est détériorée. Toutefois, ce jugement doit être nuancé, car le problème du retour se pose différemment selon qu'il s'agit des déplacés ou des réfugiés. Les premiers ont fait l'objet d'un rapatriement forcé, tandis que les seconds restent bloqués dans les camps.

A. Le rapatriement forcé des déplacés

111. C'est pour régler la situation des personnes déplacées qu'a été lancée l'"Opération retour" qui, hélas, s'est soldée par un échec.

1. L'"Opération Retour"

112. Le problème du retour des déplacés a provoqué un désaccord entre l'Organisation des Nations Unies et le Gouvernement rwandais. La première préconisait le rapatriement volontaire des déplacés et la fermeture concertée des camps. Quant au second, il optait pour la fermeture forcée de ceux-ci. A l'appui de sa position le gouvernement invoquait divers arguments, dont l'atteinte portée à la souveraineté de l'Etat rwandais, l'infiltration des miliciens dans les camps et la prise en otage par eux des réfugiés; les incursions fréquentes des miliciens sur le territoire national. Tout en considérant que la position du gouvernement était légitime, l'ONU a demandé à celui-ci d'adopter la solution du retour volontaire et pacifique des déplacés.

113. L'accord obtenu du gouvernement d'appliquer la stratégie proposée par les Nations Unies a permis le lancement de l'"Opération retour". Celle-ci, initiée par le Bureau des Nations Unies pour la situation d'urgence au Rwanda, visait à rapatrier des déplacés des camps vers leur résidence habituelle. Un programme de réhabilitation alimentaire, géré par le CICR, accompagnait l'opération (notamment distribution des semences). Commencée le 28 décembre 1994, l'opération a permis le "rapatriement" de près de 150 000 déplacés. Cette solution n'a prévalu et ne s'est appliquée que de décembre 1994 à mars 1995.

2. L'échec de l'opération

114. D'après le Bureau des Nations Unies pour la situation d'urgence au Rwanda (UNREO), en mars 1995, près de 170 familles étaient arrivées au camp de Kibeho, portant le chiffre des déplacés de ce camp à plus de 130 000. Certains déplacés sont partis au Burundi par la route de Ntongwe, d'autres vers les camps situés au sud de Gikongoro. Ainsi, le chef de camp de Munini estimait, en mars 1995, qu'au moins cinq familles de personnes déplacées quittaient les camps chaque jour pour aller non pas au Rwanda mais au Burundi. D'après la MINUAR, du 13 au 19 mars 1995, le nombre de personnes déplacées allant du sud-ouest du Rwanda vers le Burundi était d'à peu près 510.

115. Ces flux constatés procèdent de ce que les rapatriés n'ont pas confiance et ont peur d'être arrêtés ou tués. Certains ont déclaré à des agents d'organismes humanitaires : "Nous sommes prêts à rentrer chez nous et y être arrêtés si on nous accuse d'avoir participé au génocide, mais pas parce que nous réclamons nos biens". Le nombre des rapatriements avait ainsi, avant avril 1995, considérablement diminué.

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116. C'est dans ce contexte que le gouvernement a décidé de la fermeture forcée des camps, en particulier celui de Kibeho, qui s'est soldée par les massacres, décrits ci-dessus. A la suite de la fermeture brutale et forcée des camps, de nombreux déplacés furent transportés vers leurs communes d'origine. Beaucoup d'autres y retournèrent à pied, dans des conditions pénibles. Nombre d'entre eux ont été encerclés, harcelés, dépouillés de leurs biens et battus par des bandes de civils armés de pierres et de bâtons. Ainsi, par exemple, le 21 avril, l'on a pu voir, à 5 km de Runyinya, plus d'une centaine de personnes déplacées courant affolées et couvertes de blessures. Deux jeunes gens frappèrent à mort une dame portant un bébé au dos.

117. Le 25 avril, à l'exception de Kibeho où il restait moins de 2 000 personnes, tous les autres camps étaient évacués et déserts. Les derniers mouvements de déplacés se sont opérés dans le sud de la préfecture de Butare à partir de Kamana vers les communes de Nyakizu, Gishamvu, Kigembe et Runyinya. Le 25 avril, il restait encore quelques centaines de déplacés qui refusaient de quitter les camps. Le 26 avril, le nombre total de déplacés enregistrés s'élevait à 60 177.

118. Du 19 au 28 avril, date à laquelle les camps ont été totalement évacués, le nombre de déplacés rapatriés était estimé à 61 855. Il convient cependant d'indiquer que beaucoup de déplacés ne se sont pas faits enregistrer, par crainte de l'autorité communale. Lors de sa visite sur le site de Kibeho, le Rapporteur spécial a pu constater que les camps étaient vides et placés sous la surveillance de militaires de l'APR et que les postes de la MINUAR avaient été complètement évacués.

119. Le retour forcé des déplacés et surtout les massacres de Kibeho ne peuvent qu'engendrer de nouveaux obstacles au retour des réfugiés.

B. Le blocage des réfugiés

120. Malgré les efforts déployés par l'ONU et les organisations non gouvernementales humanitaires pour améliorer la situation dans les camps et en dépit de quelques progrès réalisés, les réfugiés continuent de vivre dans une insécurité permanente. Ils se trouvent enfermés dans un dilemme qui ne leur offre, à la vérité, aucun choix : d'un côté, ils supportent mal la vie pénible dans les camps et, de l'autre, ils ne peuvent rentrer chez eux en raison tant de l'insécurité au Rwanda que de leur maintien en otage dans les camps. Les différentes solutions envisagées pour les libérer de cette situation n'ont pas abouti à des résultats satisfaisants.

1. Les solutions envisagées

121. Le Secrétaire général des Nations Unies a envisagé plusieurs solutions pour non seulement mettre un terme à l'insécurité mais également favoriser le retour volontaire et pacifique des réfugiés. Parmi ces mesures, il convient de mentionner le projet de création d'une opération de maintien de la paix, qui a échoué pour faire place au déploiement des troupes locales.

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a) L'échec du projet de l'opération de maintien de la paix

122. Le Secrétaire général a, dans son rapport du 25 janvier 1995 au Conseil de sécurité (S/1995/65), proposé la mise en place d'une opération de maintien de la paix composée de 5 000 hommes, pour assurer la séparation des politiques des autres réfugiés.

123. Ce projet, qui se fondait sur une conception intégrée des problèmes, visait plusieurs objectifs à la fois. Il avait en effet pour but de mettre fin aux actes de banditisme et de harcèlement du personnel humanitaire, de protéger l'entreposage et la distribution de l'aide humanitaire et de permettre aux réfugiés candidats au retour de rentrer au Rwanda sans être intimidés par les anciens dirigeants. Mais l'"opération de maintien de la paix" n'a, semble-t-il, pas emporté l'adhésion des Etats membres des Nations Unies. Sollicités par le Secrétaire général, ceux-ci, à la quasi-unanimité, ont refusé de fournir des contingents nationaux pour le compte de ladite opération. Le Secrétaire général rapporte en ce sens que, sur 60 Etats sollicités, seul un Etat avait accepté de mettre une unité à la disposition de l'opération. Aussi s'est-il résolu à s'orienter vers des solutions alternatives : la constitution d'un groupe de policiers/observateurs militaires et la conclusion d'arrangements contractuels avec des agences de sécurité privée.

124. Mais ces propositions ont dû également être abandonnées parce que revenant excessivement cher. C'est finalement la solution du recours aux forces de sécurité locales qui a prévalu.

b) Le déploiement des troupes locales

125. Le Haut Commissariat des Nations Unies pour les réfugiés (HCR) a signé, dans le cadre de la solution nationale, le 27 janvier 1995, un accord avec le Gouvernement du Zaïre, aux termes duquel ce dernier s'est engagé à déployer 1 500 soldats pour assurer la sécurité dans les camps des réfugiés. A ce jour, tous les 1 500 soldats zaïrois ont été déployés, essentiellement à Goma et à Bukavu. Selon le HCR, un contingent supplémentaire de 400 soldats pourrait être déployé pour les camps situés à Uvira.

126. Les soldats zaïrois sont encadrés par des conseillers internationaux qui constituent le Groupe de liaison civil pour les questions de sécurité. Ce groupe, actuellement composé de 45 officiers, comprend 13 Hollandais, 2 Suisses, 10 Béninois, 10 Guinéens et 10 Camerounais. Leur nombre devrait être porté à 50.

2. Des résultats peu satisfaisants

127. Certes, le déploiement des troupes locales dans les camps a permis aux réfugiés de retrouver un calme relatif qui a suivi l'amélioration des conditions alimentaires et sanitaires. Dans son rapport du 14 avril 1995 au Conseil de sécurité (S/1995/304), le Secrétaire général note que la présence des troupes locales dans les camps situés au Zaïre a donné jusqu'ici des résultats positifs.

128. Mais, dans l'ensemble le bilan reste largement négatif, car les objectifs majeurs sont loin d'être atteints. La situation demeure en effet presque la même que les mois précédents, caractérisée à la fois par le reflux des réfugiés et l'insécurité des camps. Au total le nombre de réfugiés rwandais avoisine deux millions.

a) Le reflux dans les camps

129. D'après le HCR, il y avait au 28 juin 1995, 1 100 400 réfugiés rwandais au Zaïre, 608 700 en République-Unie de Tanzanie, 200 000 au Burundi et 4 000 en Ouganda.

130. Depuis les massacres de Kibeho, on assiste à un triple phénomène : le retour spontané et organisé au Rwanda d'un grand nombre d'anciens réfugiés tutsis du Burundi et du Zaïre; l'arrêt des rapatriements volontaires et organisés par le HCR de nouveaux réfugiés hutus; et un reflux de personnes déplacées dans les camps des réfugiés du Zaïre et de réfugiés rwandais du Burundi vers la Tanzanie.

131. L'examen de ce dernier phénomène mérite plus de précision. Au début du mois de mai 1995, 27 000 personnes déplacées, rescapées des massacres de Kibeho, ont trouvé refuge au nord-est du Burundi. N'ayant pas été accueillies par les autorités burundaises, environ 16 000 d'entre elles sont parvenues à passer au Zaïre par la plaine de Ruzizi et se sont réfugiés à Uvira. Par ailleurs, entre les 19 et 25 mai 1995, 1 166 Rwandais réfugiés au Burundi sont arrivés en Tanzanie au camp de Kitali. Ce nombre est tombé à 248 entre les 26 mai et 1er juin, à la suite de la fermeture des frontières de la Tanzanie avec le Burundi, fermeture décidée par les autorités tanzaniennes.

b) L'insécurité des camps

132. L'insécurité qui règne dans les camps semble largement déborder ce cadre pour menacer la stabilité de l'Etat rwandais et la sécurité des populations locales.

133. La stabilité de l'Etat rwandais se trouve menacée par les incursions de plus en plus nombreuses, organisées par des miliciens et des ex-forces gouvernementales rwandaises au Rwanda. La situation dans ce pays devient davantage préoccupante lorsque s'y ajoutent les rapports faisant état d'entraînement et de livraison d'armes dont ils bénéficient. Amnesty International et Human Rights Watch, deux organisations humanitaires connues pour leur sérieux, citent nommément les pays fournisseurs de l'aide militaire. C'est ainsi que Human Rights Watch, dans son rapport publié en mai 1995, révèle que les flux d'armes à destination des camps au Zaïre proviennent de l'Afrique du Sud, la Chine et la France. Le Secrétaire général de l'ONU dans son rapport intérimaire précité sur la Mission des Nations Unies pour l'assistance au Rwanda, en date du 4 juin 1995 (S/1995/457), stigmatise la situation en y voyant l'une des "causes des tensions et des frustrations que connaît le Rwanda" et, se faisant l'écho du Gouvernement de Kigali, il note que celui-ci "s'inquiète de ce que l'instruction militaire d'éléments des ex-forces gouvernementales rwandaises et les livraisons d'armes dont elles bénéficient ne semblent pas faire l'objet de restrictions effectives, alors que l'embargo sur les armes continue de s'appliquer au Rwanda".

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134. Le reflux des réfugiés, l'insécurité des camps et le rejet par les autorités locales des réfugiés sont autant de problèmes qui exigent des mesures urgentes.

135. Les rapports des réfugiés rwandais avec les populations locales ne sont guère meilleurs. Ils restent tendus en raison des agressions dont celles-ci sont constamment l'objet de la part des éléments armés de ceux-là. Dans les pays d'accueil, au Burundi, en Tanzanie et au Zaïre, les réfugiés rwandais sont ainsi de plus en plus jugés indésirables par les populations locales, non seulement à cause de l'insécurité qu'ils créent, mais aussi à cause de la dégradation de l'environnement. Telle est la cause de la décision des autorités tanzaniennes de fermer les frontières de leur pays aux réfugiés rwandais, surtout ceux en provenance du Burundi. Il en va de même pour celle des autorités zaïroises, qui ont d'ailleurs durci leur position à l'encontre des réfugiés rwandais. Déjà en mai 1995, le Haut-Conseil de la République (Parlement de Transition) du Zaïre avait adopté une résolution demandant au gouvernement leur renvoi au Rwanda. Dans un communiqué, rendu public le 24 juin, celui-ci vient de faire une déclaration allant dans le sens de ladite résolution.

IV. RECOMMANDATIONS

136. Les recommandations formulées par le Rapporteur spécial tiennent dûment compte des problèmes urgents, à court et à moyen termes. Ceux-ci se ramènent essentiellement à : la répression du génocide, la cessation des violations des droits de l'homme, le sort des victimes de ces violations, celui des réfugiés et des déplacés et la reconstruction et la paix sociale.

A. La répression du génocide

137. L'ONU devrait, comme recommandé dans le troisième rapport du Rapporteur spécial (E/CN.4/1995/70 du 11 novembre 1994), procéder dans les meilleurs délais à :

L'entrée en fonction du Tribunal international pour le Rwanda;

L'intensification de l'assistance technique et financière destinée à la réhabilitation du système judiciaire rwandais, notamment par l'apport de personnel, la reconstruction des bâtiments abritant les cours et tribunaux et la construction de nouvelles prisons en vue de désengorger les prisons existantes.

138. L'ONU devrait :

Amener l'Etat rwandais à prendre des mesures législatives et réglementaires qui facilitent l'exercice des fonctions judiciaires par les magistrats étrangers, en vue de poursuivre et de juger rapidement et équitablement les auteurs présumés du génocide;

Exiger des Etats membres qu'ils donnent plein effet à la résolution 978 (1995) du Conseil de sécurité du 27 février 1995 relative à l'arrestation et à la détention des auteurs présumés des crimes perpétrés au Rwanda, se

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trouvant sur leur territoire, et qu'ils coopèrent de bonne foi avec le Tribunal international;

Contribuer à assurer la défense des auteurs présumés du génocide en vue d'une justice équitable.

B. La cessation des violations des droits de l'homme

139. L'ONU devrait exiger des autorités rwandaises que soient respectées :

Les prérogatives et les décisions de l'autorité judiciaire, condition sine qua non d'une bonne administration de la justice;

En particulier les formes et procédures prévues par la législation nationale et les normes internationales réglementant l'arrestation et la détention de personnes présumées responsables de crimes.

140. L'ONU devrait recommander au Gouvernement rwandais que soient :

Organisées de vastes campagnes de sensibilisation des populations au respect de la personne humaine et des biens d'autrui, ainsi que de préparation à une vie commune et en bonne intelligence;

Adoptées, comme préconisé dans le troisième rapport du Rapporteur spécial, des mesures administratives énergiques de nature à dissuader les actes de représailles tout en respectant les droits fondamentaux des auteurs desdits actes.

C. Le sort des victimes des violations des droits de l'homme

141. L'ONU devrait prendre des mesures appropriées pour :

Identifier les victimes du génocide et des autres violations graves des droits de l'homme, évaluer leurs besoins et favoriser et/ou organiser leur prise en charge;

Assurer ou renforcer la protection des groupes vulnérables, tout particulièrement les enfants non accompagnés, les veuves et les handicapés. La mise sur pied d'un cadre juridique s'impose.

142. L'ONU devrait :

Amener le Gouvernement rwandais à faire droit aux requêtes des personnes dont les propriétés sont illégalement occupées et en sanctionner les occupants;

Aider le Gouvernement rwandais à construire des logements pour les rapatriés, plus particulièrement les anciens réfugiés, en vue d'éviter précisément l'occupation illégale des propriétés.

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D. Le sort des réfugiés et déplacés

143. L'ONU devrait, comme précédemment indiqué, recommander aux gouvernements sur les territoires desquels sont réfugiés les Rwandais, tout particulièrement le Gouvernement zaïrois, qui en a accueilli le plus grand nombre, qu'ils prennent les mesures appropriées pour que :

- a) Le rapatriement librement consenti des réfugiés soit effectivement assuré et facilité;
- b) Les réfugiés ne soient indûment influencés dans un sens comme dans l'autre, c'est-à-dire à quitter le territoire d'accueil ou à y demeurer;
- c) Des campagnes d'information systématiques soient organisées à cet effet afin que les intéressés puissent décider en pleine connaissance de cause.

144. L'ONU devrait exiger desdits gouvernements :

- a) Que leurs territoires ne soient utilisés comme base de déstabilisation du Rwanda ou d'agression contre cet Etat;
- b) Qu'ils respectent leurs engagements internationaux, tout particulièrement ceux découlant des dispositions pertinentes des Conventions internationales relatives à l'asile et aux réfugiés.

145. L'ONU devrait prendre des mesures appropriées pour :

Vérifier, notamment par une commission internationale d'enquête, les informations relatives au réarmement et à l'entraînement des ex-forces gouvernementales rwandaises;

Renforcer le dispositif de sécurité dans les camps des réfugiés pour éviter les attaques de ceux-ci contre les populations locales et les incursions sur le territoire rwandais;

Assurer, en accord avec les différents Etats intéressés, le rapatriement des réfugiés dans des conditions idoines de sécurité et de dignité.

E. Reconstruction et paix sociale

146. L'ONU devrait lancer un appel solennel et pressant aux Etats membres, tout particulièrement aux grandes puissances et aux Etats africains, pour qu'ils apportent une aide substantielle et urgente à la reconstruction de l'Etat rwandais.

147. L'ONU devrait procéder à l'augmentation du nombre des observateurs des droits de l'homme au Rwanda, en les faisant passer de 147 (chiffre initialement prévu) à 300.

148. L'ONU devrait, par une conception intégrée des problèmes de la région des Grands Lacs :

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a) Adopter une stratégie globale destinée à prévenir l'explosion de la sous-région;

b) En accord avec l'Organisation de l'unité africaine et les membres permanents du Conseil de sécurité, convoquer une conférence internationale pour régler les problèmes de la sous-région, du fait de leur caractère lié, interdépendant et transfrontalier, en vue d'instaurer définitivement la paix.
