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5. MR. NTIRUBABARIRA
6. MR. NTASHIBU
7. MR. NTIBITANGIRA
8. MR. SENTASHYA
9. MR. RUTAZIHANA
10. MR. DUSABIMANA
11. MR. GAHAMANYI

Human rights
refuses.

F.

FINDINGS:

- 1.A. MOST OF THOSE DETAINED ARE SAID BY [REDACTED] TO HAVE BEEN PUT IN THE LOCAL JAIL IN CYABINGO AND ONLY SOME ARE UNDER CUSTODY IN RUHENGARI.
- 3.B. MILOBS WITNESSED A LOCAL JUDICIAL INSPECTOR (A FORMER CAREER MILITARY) SLAPPING AND CANING ONE OF THE DETAINEES AT CYABINGO. THE OFFICIAL WAS UNAWARE OF BEING OBSERVED. HE EVIDENTLY ATTEMPTED TO EXTORT CONFESSION FROM THE DETAINEE ASKING QUESTIONS IN IRRITATED VOICE AND OBTAINING MERELY UNCLEAR ANSWERS. OTHER DETAINEES AS WELL AS SOME LOCAL RESIDENTS WATCHED THE SCENE PASSIVELY.
- 3.C. ACCORDING TO [REDACTED] A PSYCHOLOGICAL GAP BETWEEN THE RPA AND THE POPULATION HAS BEEN AND IS EXPANDING ON A DAILY BASIS. COMMON PEOPLE ARE MORE AND MORE AFRAID OF RPA AND THEIR NIGHT TIME VISITS AT VILLAGES. THERE IS NO CONFIDENCE IN THE RPA ON THE PART OF THE POPULATION. MOST VILLAGERS ARE SAID TO SEE NO DIFFERENCE BETWEEN RPA AND RGF AS THEIR BEHAVIOR IS ALIKE - "WHENEVER SOLDERS SHOW UP BAD THINGS SHOULD BE EXPECTED." SCHOOLCHILDREN OFTEN FLEE AT THE SIGHT OF ARRIVING RPA SOLDERS. ADULTS REFUSE TO COOPERATE ASSUMING A PASSIVE AND INSIPID ALTITUDE. IT SEEMS TO BECOME A COMMON PLACE THAT THE POPULATION PERCEIVE RPA SOLDERS TO BE EXPONENTS OF PERSECUTION AND OPPRESSION. THEREFORE IN MANY AREAS LOCAL RESIDENTS DARE PUT UP OPEN RESISTANCE AGAINST RPA TROOPS AS WAS THE CASE IN NGEGE ON 23/24 OCT 94. THE SITUATION IS AGGRAVATED BY NUMEROUS DETENTIONS, ARRESTS, CONFISCATION OF PROPERTY, MALTREATMENT OF DETAINEES AND ALLEGED EXECUTIONS ON THE PART OF RPA. IN VIEW OF THE ABOVE MORE INCIDENTS LIKE THE ONE IN NGEGE ON 23/24 OCT COULD BE EXPECTED AS THE POPULATION SEEM TO BE MORE AND MORE DISSATISFIED WITH RPA TROOPS BEHAVIOR, AND IN PARTICULAR WITH DISAPPEARANCE OF MANY PEOPLE DETAINED ON UNSPECIFIED CHARGES.

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United Nations Development Programme**Terms of Reference****Rwanda****Reconnaissance Mission on Rehabilitation of the Judicial and Legal System****I. Background**

The 1994 civil war tragedy in Rwanda did not destroy a great deal of physical infrastructure, however, it was an event that had catastrophic consequences for the 7.5 million people of the nation. There is widespread agreement that the genocide resulted in approximately one million deaths, 2.2 million people becoming refugees outside the country, and 800,000 persons becoming internally displaced. The decimation of human resources greatly affected the civil service, and had a particularly devastating impact on the judiciary system where magistrates and other officials were targeted.

The breakdown of government institutions, governance and dissolution of Rwandan society has resulted in additional complicated factional disputes. The most critical problem facing Rwanda at the present time is the refugee situation. However, to achieve stability, it is important that refugees and displaced persons return to conditions where governance exists and the framework for the rule of law prevails. This will be tested most stringently at the local level where the institution of private property is in flux. It is exacerbated by temporary abandonment of extensive land holdings and many houses due to displacement of nearly half the population and the repatriation of approximately 300,000 "old" refugees, many whom were in exile for up to 30 years. This is certain to lead to serious land tenure issues and property rights issues that will require urgent attention to prevent large-scale renewal of hostilities.

It is of crucial importance to establish the effective rule of law and fair administration of justice as rapidly as possible in Rwanda. It is equally important that a new judicial and legal system be viewed as fair and equitable by all members of this diverse society, based on inclusion and participation.

II. Mission Objectives

The principal objectives of this reconnaissance Mission are:

- to propose a strategic approach and the basic requirements necessary to rehabilitate the judiciary and legal systems in Rwanda;
- to explore the feasibility of mediation and arbitration as techniques for resolving legal disputes at the commune or local level; and

- to provide recommendations on rebuilding the judiciary and legal systems in Rwanda that will form the basis for (a) a discussion paper at the December Round Table meeting that reflects the Rwandan Government's views and (b) a follow-up programming mission.

III. Overall Assignment

This reconnaissance Mission is viewed as the initial step in a long-term process of rebuilding the judiciary systems in Rwanda. It is anticipated that the findings and recommendations of this Mission will provide the foundation for a follow-up effort to prepare a comprehensive action plan and to programme activities that will create a systemic judicial and legal framework in these countries based on institutionalization of the rule of law. Furthermore, it is expected that examining the potential for arbitration and mediation techniques during this Mission will lead to their acceptance and expansion as fundamental methods to resolve conflicts and build confidence and trust between diverse groups in civil society.

It is a huge undertaking to rebuild judiciary and legal systems from the remains of institutions that have been nearly destroyed. However, there is widespread global interest and support for assisting Rwanda accomplish that goal. The UNDP has offered support in coordinating the efforts of donors and other organizations in this endeavor. Agencies and organizations that have to date indicated interest in becoming collaborating partners with the governments in rehabilitating their judicial and legal systems include the United Nations Centre for Human Rights, Swiss Development Cooperation, World Bank, United States Agency for International Development, North-South Centre of the European Council, International Commission of Jurists and International Peace Academy.

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IV. Terms of Reference

1. Collect data and information on the judicial and legal systems in Rwanda by reviewing recent reports and studies; holding meetings with government officials, law enforcement agencies, resident donors and civic associations.
2. Analyze the data and information assembled on the current status of the judicial and legal systems, especially its institutional structures from national to local level and its operational procedures.
3. Analyze human resource availability, qualifications and capacity to manage and operate restructured judicial and legal systems.
4. The Mission will explore and test the feasibility of using arbitration and mediation as conflict resolution techniques and the potential for expanded use of these processes.

5. Recommendations will be provided that includes (a) an overall approach and strategy on how to proceed with rehabilitation of the judicial and legal systems (b) a proposed organizational structure of the judicial systems (c) basic procedures and delegated authorities for the systems and (d) how human resource requirements could be met to implement the system.
6. Requirements for next steps in the process should be identified, including essential programme planning and further studies.

V. Report

1. The Mission will prepare a written report that includes a summary of its data collection and basis for its analytical findings. The analysis should be a foundation for the conclusions and recommendations that follow. The report will, at a minimum, discuss the points outlined in the Terms of Reference.
2. Recommendations in the report should be prioritized based on importance, as well as an indication of short-term urgent needs versus long-term capacity building requirements.
3. There is flexibility in the format of the report, but it should contain an Executive Summary of about 5 pages that provides a synopsis of the strategy and incorporates its key recommendations.
4. A preliminary draft report will be provided to the UNDP Resident Representative prior to the Mission's departure from Rwanda. The final report is to be submitted to UNDP Headquarters not later than 9 December 1994.

V. Administrative Arrangements

- A. The Mission will visit Rwanda for approximately two (2) weeks.
- B. The Mission will work under the general guidance of the UNDP Resident Representative.
- C. The UNDP Country Office will assist the Mission with administrative and logistical support including schedules, appointments, in-country transportation, and office and secretarial needs.

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Note for the file

At the invitation of Mr. James Baker, Director, Complex Emergency Division, DHA, I attended a Rwanda Inter-Agency Consultation on Monday, 14 November 1994. Representatives of DPKO, FAO, UNDP (3), UNHCR, and UNICEF participated in the meeting. The purpose of the meeting was to review preparations for the 1995 Consolidated Inter-Agency Appeal and the December 1994 UNDP Round Table and to clarify their relationship to each other. A draft note on the link between the Consolidated Appeal Process and the Round Table was circulated at the meeting (see draft attached).

UNDP informed the meeting that the Round Table originally was not conceived as a resource mobilization for the Government of Rwanda. It was supposed merely to discuss the Government's vision for future reconstruction and development activities. The Round Table should enable the Government to meet with their international counterparts in that endeavour. However, over the last weeks, the Government changed its perception of the Round Table. It will be a Government Round Table to which UNDP will lend its assistance and co-chair the proceedings. Among other things, UNDP will provide the needed documentation. Instead of having an additional solidarity meeting, the Government would actually like to see the Round Table resulting in concrete and immediate assistance for the rehabilitation of Rwanda. Instead of covering and discussing long-term projects, the Round Table will concentrate on the next 12 months. The Government agreed to prepare documentation on their intended governance of the country as well as a development plan for that time period, which should include sectoral papers with specific projects.

It was expected that the draft documents would be ready by Wednesday, 16 November 1994, and submitted to the Rwandese Cabinet. The Cabinet was expected to approve the documents on Friday, 18 November 1994. The documents which provide the Government's negotiating position on this matter should be available for UNDP, DHA and potential donors by Monday, 21 November 1994 (Kuroda, DHA, assured sending us copies as soon as received). Consultations by the Government with potential donor countries revealed that the donor community was interested in the Round Table. Therefore, UNDP was requested to start preparing it (terms of reference, preparatory meetings in Kigali, etc.).

While UNDP would go ahead with the preparations for the Round Table, DHA should continue to work on the Consolidated Appeal. A draft appeal could be included in the documentation for and discussed at the Round Table. The appeal itself should consider the results of the Round Table and be finalized thereafter. A further coordination meeting will take place in Kigali on 24 November 1994.

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- 2 -

Participants in the meeting underlined the need that the documentation of the Round Table includes or makes reference to the reports of missions to Rwanda by the World Bank, the IMF and FAO. It was suggested that a representative of the World Bank be invited to the next consultations on the matter. UNDP would closely coordinate preparations on the ground with UNAMIR.

Participants also briefly discussed the proposal of the Dutch Minister for Cooperation and Development, Mr. Pronk, to establish a Rwanda Trust Fund. The "Pronk Fund" would be established in addition to the one created by the Secretary-General in order to meet financial needs to fill the gap between the time when emergency assistance will be terminated and the time when rehabilitation assistance was not yet available. Resources of the Fund would address immediate and short-term needs of the Government of Rwanda.



D. Wilke
15 November 1994

**DRAFT: NOTE ON THE LINK BETWEEN
THE CONSOLIDATED APPEAL PROCESS AND THE
ROUND TABLE**

Heads of agencies in their meeting of 9 November 1994 reviewed the purposes and timing of the forthcoming Consolidated Inter-Agency Appeal and the Round Table. It was strongly felt that the two had to relate to each other in a coherent and consistent way; and towards that end, agreed upon the following:

[1] The 1995 Consolidated Inter-Agency Appeal would reflect "Rwanda sub-regional" emergency relief and recovery requirements for a period of one year, January through December 1995. The appeal would include such needs within Rwanda as well as those of Rwandese refugees.

[2] The Government of Rwanda would be asked to become fully engaged in the Consolidated Appeal Process. Individual agencies have already worked with relevant government authorities on sectoral aspects of the appeal. Fuller engagement would lead to involvement in the overall appeal strategy as well as opportunities to seek specific project funding.

[3] Every effort will be made to finalise a first draft of the appeal by 7 December, based upon agency drafts submitted by 15 November. [UNTICR has requested additional time to present its submissions, and similarly the Government's own submissions will not be available by 15 November.]

[4] Heads of agencies along with the Government will establish a technical working group to develop and draft the appeal as well as to propose solutions on matters of translation, etc.. The specific terms of reference for that technical group and individual participants will be quickly prepared once agreement has been finalised on the overall objectives, structure and format of the appeal.

[5] That portion of the Consolidated Inter-Agency Appeal draft which relates to all humanitarian requirements within the borders of Rwanda would form the basis of the humanitarian section for the Round Table, the latter to take place in Geneva on 14-15 December 1994.

[6] The Round Table will precede the formal issuance of the Consolidated Inter-Agency Appeal. The Consolidated Appeal draft will be amended based upon the results of the Round Table. A schedule for agency headquarters review of the final draft appeal will have to be devised, bearing in mind an intended target date for final distribution of the appeal by or before 9 January 1995.

[7] There will a meeting for the donor community in Kigali, either on 18 or 21 November, depending upon the wishes of the Government. The purpose of the meeting will be to explain the relationship between the Consolidated Inter-Agency Appeal and the Round Table. Invitations to the meeting would be sent by the UN Humanitarian Coordinator and the UNDP Resident Representative, and participants would include Government, agency and NGO representatives.

[8] Action Points:

- * Begin discussions with relevant Government authorities
- * Meeting to finalise CAP objectives, framework, format and schedule as well as the Round Table "sub set"
- * Creation of CAP/RT Working Group
- * Preparations for Donor Meeting in Kigali

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GENERAL ASSEMBLY
Forty-ninth session
Agenda item 100 (c)
HUMAN RIGHTS QUESTIONS: HUMAN
RIGHTS SITUATIONS AND REPORTS
OF SPECIAL RAPPORTEURS AND
REPRESENTATIVESSECURITY COUNCIL
Forty-ninth yearSituation of human rights in RwandaNote by the Secretary-GeneralAddendum

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the third report prepared by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda, in accordance with paragraph 20 of Commission on Human Rights resolution S-3/1 of 25 May 1994 and Economic and Social Council decision 1994/223 of 6 June 1994.

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 2

ANNEX

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

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 4	3
I. GENOCIDE	5 - 21	4
A. Confirmation of the facts	6 - 14	4
B. Delay in carrying out the investigation	15 - 21	7
II. INSECURITY	22 - 46	8
A. Violations of property rights	23 - 28	8
B. Violations of personal safety	29 - 36	10
C. Violations of the right to life	37 - 46	11
III. THE RETURN OF REFUGEES AND DISPLACED PERSONS	47 - 70	13
A. The slow-down in the number of returns	48 - 52	13
B. Taking refugees hostage	53 - 64	14
C. New solutions	65 - 70	16
IV. RECOMMENDATIONS	71 - 82	18
A. Cessation of human rights violations	72 - 73	18
B. The situation of refugees	74 - 75	18
C. International assistance to Rwanda	76 - 82	19

/...

A/49/508/Add.1
S/1994/1157/Add.1
English
Page 3

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 (A/49/508-S/1994/1157, annexes I and II).

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

(a) Travelled to Kigali, Kibungo, Butaré, Gisenyi and Cyangungu (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 Kagame, 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 Office 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 Council permanent de la Francophonie, a branch of the Cultural and Technical Cooperation Agency; the Swiss Chargé d'affaires in Rwanda; Mr. Jean Gol, former Belgian Minister of State; Professor Filip Reyntjens of Antwerp University (Belgium); and Mr. Eric Gillet and Mr. Ravo 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

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 4

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 - "genocidaires" 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 60 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.

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 5

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 a 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 'it's 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".

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 6

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. 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, annex) 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, contained in Council resolution 955 (1994) of 8 November 1994, 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 ...".

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 7

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 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 Centre for Human Rights, only provisional instructions had 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 would only be after the arrival of the chief of

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 8

the operation at Kigali on 10 September 1994 and when the head of the specialized investigation team had assumed his functions that complete instructions for field personnel, based strictly on the experience acquired during the first few weeks of the operation would 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

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 9

rehouse the refugees, recognises 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 recognises 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 Rwandan 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 Organisation 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.

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 10

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, the International Committee of the Red Cross (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 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

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R/49/508/Add.1
S/1994/1157/Add.1
English
Page 11

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 Chamvuso (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

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 12

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

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 13

Secretary-General in his progress report of 6 October 1994 on UNAMIR (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 late return. 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 Gisany 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

A/49/508/Add.1
S/1994/1157/Add.1
English
Page 14

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 RPF 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.

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 15

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 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.

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 16

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 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. 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 Rwandese Armed Forces 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;
- (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

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 17

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 on 24 October 1994 by the Rwandese Government, the Government 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.

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 18

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;

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 19

(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

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A/49/508/Add.1
S/1994/1157/Add.1
English
Page 20

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 first 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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IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND
OTHER DEPENDENT COUNTRIES AND TERRITORIESReport on the situation of human rights in Rwanda submitted
by Mr. E. Dagnan-Séguin, Special Rapporteur of the Commission
on Human Rights, under paragraph 20 of Commission resolution
E/CN.4/S-3/1 of 28 May 1994

GE.94-12147 (E)

E/CN.4/1995/7
page 2

INTRODUCTION

1. At its third special session, the Commission on Human Rights adopted resolution 2-3/1, dated 25 May 1994, by which it requested its Chairman to appoint a special rapporteur to investigate at first hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation there from Governments, individuals and intergovernmental and non-governmental organizations, and to avail himself of the assistance of existing mechanisms of the Commission on Human Rights.

2. The Commission requested the Special Rapporteur to visit Rwanda forthwith and to report on an urgent basis to the members of the Commission, no later than four weeks from the adoption of the resolution. In accordance with that provision, the Special Rapporteur visited Rwanda and some neighbouring States from 9 to 20 June 1994. During that mission, he was accompanied by Mr. Saore Naly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Nigel Rodley, Special Rapporteur on matters relevant to torture, who accepted his invitation and placed at his disposal their experience and expertise.

3. The Special Rapporteur would also like to thank the Rwandese "interim Government" and the Rwandese Patriotic Front (FPR) for their cooperation.

4. He also wishes to thank all those who supported him in the preparation and realization of his mission. He is particularly grateful to the United Nations Rwanda Emergency Office (UNRWO), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC) for the logistic assistance they gave him. He also wishes to express his deep gratitude to the Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR) and his officers for their support and generous cooperation, in difficult circumstances, during his stay in Rwanda. Lastly, the Special Rapporteur thanks all those who sent him information on the situation of human rights in Rwanda, particularly the non-governmental organizations, and invites them to continue such cooperation in the future.

5. It should be mentioned that the Special Rapporteur's mission was a follow-up to that of the High Commissioner for Human Rights on 11-12 May 1994 (E/CN.4/1994/S-3/2) and, to a certain extent, to that of the Special Rapporteur on extrajudicial, summary and arbitrary executions, Mr. Saore Naly Ndiaye, in April 1993 (E/CN.4/1994/7/Add.1).

6. This report, which is based upon information, testimony and documents received from various sources, cannot claim to be exhaustive, the time factor prohibiting this. It is simply a modest attempt to paint an overall picture of the human rights situation in Rwanda, a general view which will make it possible to guide future inquiries. This general view, designed to enlighten the Commission while meeting some of its concerns, relates to the preliminary measures adopted by the Special Rapporteur and to the reported events and resultant violations of human rights and, lastly, contains a series of recommendations.

I. PRELIMINARY MEASURES

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

A. Mandate

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

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

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

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

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

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

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

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

S/CN.4/1993/7
page 4

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

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

B. Consultations and field visits

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

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

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

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

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

II. THE REPORTED EVENTS

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

A. The massacres

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

1. The extent of the massacres

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

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

E/CN.4/1995/7

page 6

the Coalition for the Defence of the Republic (CDR) - imwazamugami ("those who have a single aim"), and are directed against the Tutsi in general and against Hutu who are considered moderate, i.e. against unarmed and defenceless people. Examples, supplied by trustworthy witnesses, are not lacking. A few may be mentioned: in Butare, several thousand persons have been massacred or mutilated; in Gisenyi, thousands of Tutsi have suffered the same fate, some of them having allegedly been buried alive in common graves in the town's cemetery; in the parish of Nyundo (prefecture of Kibuye), more than 560 persons have been killed including, 36 members of the clergy and nuns and 11 lay ministers; atrocities have also occurred in Kibuye itself, particularly in the stadium and the parish church; at Gikongo, a quarter of Kigali, on one day, Sunday 10 April, the street was covered with corpses for the length of a kilometre. At Kiziguro, a parish on the road between Kabiro and Murambi, a common grave was found containing several hundreds of corpses and a few survivors crying for help. In Cyangugu, the number of persons massacred to date is estimated at more than 25,000.

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

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

Butare and Cyangugu remained calm for more than a week and were not caught up into the cycle of violence until their prefects had been dismissed and replaced by Hutu extremists. Concordant and reliable witnesses have stated that the new President of the Republic went to Butare to urge the Hutu population to engage in massacres. In Cyangugu, despite the delay, the number of persons massacred on 20 April reached, according to certain witnesses, some 13,000. It is alleged that the Armed Forces blocked all the roads leading to Kaire to prevent the survivors from escaping and the Prefect is alleged to have said that he had received "orders from above" to that effect. Those massacres are still continuing. Veritable manhunts have been carried out from house to house, from family to family, from village to village by members of the militias who, at the present time, are not hesitating to raid the so-called displaced persons' camps. Thus, on 14 June 1994, they carried off 40 young men and, on 17 June, had it not been for the firm intervention of UNAMIR, the "Mille Collines" Hotel would have witnessed a blood bath: a group of armed militiamen had already entered it.

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

2. The nature of the massacres

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

26. The massacres do seem to have been planned. There are various pieces of evidence pointing to this conclusion. The first is the campaign of incitement to ethnic hatred and violence orchestrated by the media belonging to the Government, or close to it, such as Radio Rwanda, and above all Radio Télévision Libre des Mille Collines (RTLM). The second is the distribution of arms to the civilian population, and more particularly to members of the militias. Pastoral letters issued by the Bishop and priests of Nyundo diocese in December 1993 condemn this distribution of arms to the population. Furthermore, the members of the militias are reported to have undergone intensive training at military installations from November 1993 to March 1994. To this must be added the reign of terror carried out by the militias and the assassination of political figures. The third sign is the exceptional speed of events after the death of the President of Rwanda: the "provisional Government" was formed within only a few hours of the accident, according to a reliable international source. In addition, barricades were set up between 10 and 45 minutes after the crash of the aircraft, and even before the news of it had been announced on the national radio. A credible witness reports that, 45 minutes after the explosion, the road from the Hotel Méridien to Amahoro Stadium was blocked by soldiers and civilians and that he had been stopped twice by the latter. Senior officers of the General Staff whom the Special Rapporteur met acknowledge these facts, but assert that there was a justification for them: President Habyarimana was so popular that his murder by the FPR angered the people and elements in the armed forces. Finally, the

E/CN.4/1995/7
page 8

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

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

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

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

B. Other facts

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

1. Insecurity

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

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

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

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

2. Exodus

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

E/CN.4/1995/7
page 10

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

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

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

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

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

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

II. VIOLATIONS OF HUMAN RIGHTS

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

A. Nature

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

1. Genocide of Tutsi

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

E/CN.4/1995/7
page 12

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

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

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

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

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

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

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

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

2. Assassination of Hutu

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

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

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

3. Other violations

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

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

E/CN.4/1995/7

page 14

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

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

B. The causes

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

1. Rejection of alternate political power

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

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

2. Incitement to ethnic hatred and violence

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

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

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

3. IMPUNITY

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

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

C. The perpetrators

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

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

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

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

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

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

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

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

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

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

IV. RECOMMENDATIONS

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

A. Immediate measures

I

67. The United Nations should:

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

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

II

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

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

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

To disband the armed militias and similar organizations.

III

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

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

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

IV

70. The United Nations should solemnly:

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

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

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

V

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

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

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

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

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

B. Short-term and medium-term measures

I

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

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

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

II

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

III

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

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

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

IV

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

V

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

→ File [Tribunal]
Human Rights
PAGE 2 of 3

3. On the International Tribunal, I expressed surprise that there were suggestions of a breakdown between the Security Council and Rwanda with a take-it-or-leave-it position adopted by the Security Council in its last informal meeting (your code cable 3531 dated 28 October 1994). I felt that Rwanda had stated its reservations to some of the proposed articles of the draft tribunal, but had not adopted a hard-line attitude towards the Tribunal. In my discussions with the Minister of Justice, he had outlined Rwanda's reservations (my code cable 2228 dated 29 October 1994): a) questioning the need for Chapter VII, b) the Seat of the Tribunal, c) the jurisdiction of the Tribunal over Rwandese courts, d) the death penalty, e) the serving of sentences outside Rwanda, and f) the selection of judges. I did not gain the impression that these Rwandese reservations were make-or-break points. In fact, some of the reservations were aimed at public posturing (notably the death penalty and the seat location) while others were clearly negotiating positions. I expressed the view that a negotiating focal point needed to be established with the Rwandese government in order to negotiate and hopefully bridge the existing gap. Rwanda needed an International Tribunal and wanted it to start operating as early as possible. Moreover, the majority of the "criminals" were abroad and Rwanda could not afford to go it alone and therefore needed an International Tribunal. I suggested that the Commission of Experts play a bridging role to overcome differences on the Tribunal.

4. The members of the Commission of Experts were sympathetic to playing this role, informally, but added that the International Tribunal did not figure in their mandate.

5. I feel it is important that at least one round of in-depth negotiations on the International Tribunal should be held with the Rwandese government before a final decision is made by the Security Council. I am sure that most of the existing differences would be

bridged in these discussions. I would recommend that a team lead perhaps by Judge Goldston or a legal expert closely involved with International Tribunals should visit Rwanda and engage in intensive negotiations on the issues with the political, legal and diplomatic elements of the Rwandese hierarchy. After this round of negotiations, the Security Council could decide on the final draft resolution of the Tribunal. However, I do not feel that the Rwandese Permanent Representative to the UN has a sufficiently wide and detailed brief to enable him to negotiate with the Security Council the complex proposals for an International Tribunal. I feel it is unfair on Rwanda to insist on accepting a resolution on the Tribunal today without an intensive round of negotiations with leading Rwandese authorities and especially when it is known that Rwanda is keenest of all to have the international tribunal set up as early as possible.

6. Best regards.

Note For your consideration

31 OCTOBER 1994

DR. KABIA,

THIS MORNING I WAS APPROACHED BY MAJOR LANCASTER REGARDING HIS REMOVAL FROM LIASON ACTIVITIES IN THE HUMAN RIGHTS COMPONENT.

HE WANTED TO KNOW WHAT HAD HAPPENED OR IF ANYONE WAS DISATISFIED WITH HIS PERFORMANCE.

FIRST, I INDICATED SURPRISE AT HIS REMOVAL SINCE I THOUGHT HE WAS EMINENTLY COMPETENT TO DO SUCH A JOB. SECONDLY, I INDICATED TO HIM THAT I WAS CERTAIN THERE WAS A MISUNDERSTANDING. AS FAR AS I KNEW THE SRSG'S OFFICE HAD ONLY POINTED OUT THAT HIS TITLE HAD TO BE CHANGED FROM LIASON OFFICER TO MILITARY ADVISER OR SOMETHING SIMILAR. THERE WERE SOME TECHNICALITIES INVOLVED IN THE USE OF LO AS FAR AS HEADQUARTERS WAS CONCERNED.

HE SEEMED INCREDULOUS. I PROMISED TO RAISE IT WITH YOU.

IF I AM CORRECT IN MY STATEMENT, COULD YOU INDICATE TO THE FC 2 OFFICE THAT MAJOR LANCASTER'S PERFORMANCE WAS NOT IN QUESTION AND THAT IN FACT THEY DO NEED A MILITARY ADVISER IN THAT OUTFIT THAT TEACHES THE MONITORS HOW TO READ MAPS AND WHAT ARE THE SENSITIVE AREAS IN THE DIFFERENT SECTORS, ETC.

I THINK IT IS UNFORTUNATE THAT A MISUNDERSTANDING CAN LEAD TO YET ANOTHER REMOVAL OF A MILITARY OFFICER (THE FIRST WAS THE MIL SPOKESMAN) AND I DON'T THINK IT HELPS IN OUR WORK. THIS INCIDENT HAS ALSO PUZZLED CLARENCE NO DOUBT.

/s/ Isel
ISEL RIVERO

ISEL

A suggestion was made that Major Lancaster be designated as liaison officer ^{right} for Human Rights. I informed that Hadden that the SRSG had already appointed Mr. Rapi as Human Rights liaison officer for Human Rights activities. Otherwise advised against duplication of efforts by having two liaison officers. I went further by suggesting that the talents of Major Lancaster could be more beneficially used elsewhere.
ARH 30/10

Human Rights

NOTE FOR THE FILE

On 29 October 1994, the SRSG held a meeting with the Commission of Experts appointed by the U.N. Secretary General to investigate human rights abuses in Rwanda. This meeting was attended by the following members of the Commission: Mr. Atsu-Koffi Amega (Chairman), Mrs. Habi Dieng and Mr. Salifou Fomba. Also present were Mr. Sammy Buo (Political Adviser to the SRSG), Mr. Jose Gomez del Prado (Senior Human Rights Officer, U.N. Centre for Human Rights), Mr. William Clarence (Chief of Operations in Rwanda, U.N. Centre for Human Rights), Mr. Oriano Micaletti (Human Rights Field Monitor), Mr. Lyal Sunga (a Commission staff-member), Ms. Ladan M. Rafii (Political/Legal Officer for UNAMIR), and Ms. Sylvie Noissereau (interpreter).

In his introduction, the SRSG expressed his appreciation for the work of the Commission performed thus far, and then proceeded with a general overview of the current political climate in Rwanda. His focus was on the following areas of concern:

- the reasons for the refugees' refusal to return to their country
- the nature of the immediate aid required for Rwanda, and its effect on the Rwandan Government's ability to operate should it not be forthcoming

With regard to the reluctance of refugees to return to Rwanda, the SRSG stated that problems exist in the refugee camps in neighbouring countries, as well as in the displaced persons camps situated within Rwanda. In particular, the refugee camps in Zaire were gradually being controlled by extremist elements, through intimidation of the refugee population and killings preventing their return home. Furthermore, due to the fact that the militia now controlled the distribution of food and water in these camps, the U.N. agencies and non-governmental organisations were obliged to deal with them. The problem of neutralising this atmosphere of intimidation was of paramount importance.

He added that in order to attract refugees back to Rwanda, the psychological barrier in their minds due to the fear of a denial of their basic human rights had to be overcome. The Rwandan Government, he stated, must take measures to reassure refugees genuinely that they would not face harassment upon their return. What remained to be determined was the methodology to be used in this regard. The issues of habitation and shelter involving the questions of land tenure and property rights had yet to be resolved, despite the Government's expressed policy of encouraging the return of refugees.

He remarked that although the private sector was gradually beginning to recover in Rwanda, a commensurate development in the public sector had not occurred, due mainly to the lack of funds at the disposal of the Rwandan Government. The SRSG expressed his concern over the non-payment of Government salaries, and warned that this could lead to a potentially explosive situation for the present Government with increasing tension being manifested throughout the country and particularly in Sector 4.

The Chairman of the Commission thanked the SRSG for his efforts in resolving the crisis situation in Rwanda. The focus of the Chairman's comments pertained to the UNHCR report which, in his view, had assumed tremendous importance in the eyes of the public and the media. He also expressed concern with the general security situation in Sector 4.

In response, the SRSG stated that although he may not agree with Mr. Gersony's findings, his main criticism was directed towards the manner in which this report was allowed to surface. Also, he disagreed with the conclusions drawn by Mr. Gersony. That is, although the findings refer to atrocities committed by the RPA against Hutus living near the Burundi-Tanzania border, his conclusions that they were of such gravity to be considered systematic and sanctioned by the top echelons of Government were not justified. He noted that although summary justice, murders and revenge killings have occurred in Rwanda, these acts did not appear to be preordained nor commissioned by high levels of the Government. He informed the Commission that despite the accusations made by Mr. Gersony, the Rwandan Government's response to the report had been very positive and bona fide. They had been most cooperative in investigating the allegations before the investigation was terminated at the request of Mr. Jose Ayala Lasso, the U.N. High Commissioner for Human Rights.

The SRSG was pleased to announce that the takeover of Sector 4 from Operation Turquoise by UNAMIR had been conducted successfully with no incidents of violence being reported, as some had anticipated. He added that the Rwandan Government's cooperation and coordination with UNAMIR had been instrumental in the successful changeover of administration in this sector. He concluded that any increased tension being manifested in Sector 4 was not due to the transfer in administration, but rather, it was a result of the inability of the army to pay its forces' salaries for the past four months due to insufficient funds.

Mrs. Dieng also criticised the UNHCR report and admitted that it had surprised them, because the information it contained had not been made available to the Commission. She was also concerned with the refugee problem in Zaire, having recently visited the country. The issues of property misappropriated in Rwanda by the refugees entering Zaire, and the impact of the refugee population on Zaire's economy and environment were of particular concern to her.

Both she and Mr. Fomba expressed their indignation at certain members of the Rwandan Government for questioning their credentials to serve on the Commission of Experts. The SRSG assured them that any misgivings which may have been held by some Government officials had disappeared since the publication of the Commission's interim report.

The focus of the meeting then shifted to the subject of the International Tribunal for Rwanda. The SRSG stated that progress on the establishment of the tribunal had slowed due to disagreement on several outstanding issues. Among the problems yet to be resolved were: the location of the tribunal; institution of the death penalty; sentencing of criminals and their conditions of imprisonment; the possibility of concurrent jurisdiction between the international tribunal and Rwandan domestic courts; as well as the period for the international tribunal's temporal jurisdiction.

In an effort to resolve the above-noted problems, the SRSG urged members of the Commission to use the opportunity of visiting Rwanda to persuade governmental authorities to modify their position on these issues, as they did not appear to him to be intransigent on these points. Despite reservations raised by some participants, the Chairman affirmed his belief that the Commission of Experts could play a positive role in the current debate over creation of the international tribunal, even if it was not strictly within its mandate to do so.



Ladan M. Rafii
Political/Legal Officer
2 November 1994

27 October 1994
OSRSG/LA/008/94

Note for the File: International Tribunal for Rwanda

The SRSG held a meeting with the Minister of Justice of Rwanda, Mr. Alphonse Nkubito, at his Ministry on 26 October 1994. Also in attendance were Ms. Marthe Mukamurenzi, Directeur de Cabinet of the Ministry, Mr. Ike Minta, Legal Adviser (OSRSG) and Mr. Stanley Oliver, UNAMIR Interpreter. The following were discussed in relation to the International Tribunal for Rwanda.

1. Chapter VII (UN Charter)

The Minister expressed the view that the establishment of the Tribunal under Chapter VII of the UN Charter would give the Tribunal sweeping powers that might override the sovereignty of Rwanda. This view had been conveyed in their response to the preliminary report of the Commission of Experts on Rwanda [S/1994/1125 of 4 October 1994].

The SRSG expressed his understanding and sympathy with the problem posed by Chapter VII.

2. The Seat of the Tribunal

The Minister expressed his preference for Kigali as the Seat of the Tribunal, even if elements of the Tribunal for the former Yugoslavia based in the Hague were to be utilized. The main reason for choosing Kigali is to show to the people of Rwanda that justice is done with regard to the atrocities committed against them.

The SRSG responded that, on the other hand, justice must not only be done but must also be seen to be done. Therefore, to avoid a possible perception that the highly-charged atmosphere in Rwanda would influence the trials, it may be advisable to consider a suitable neighbouring country as the Seat of the Tribunal.

3. Concurrent jurisdiction/cooperation

The Minister underlined the advantages of the International Tribunal as a mechanism to ensure that all accused persons, many of whom have fled abroad, are not only brought to justice but that such justice is administered in an impartial manner. Nevertheless, he was concerned at the prospect of the International Tribunal having overriding powers in relation to the courts of Rwanda. Their own courts should be able to try some cases without having to submit to a superior jurisdiction to be exercised by the International Tribunal. Moreover, it should be possible to have at least one Rwandese judge among the judges of the International Tribunal.

The SRSB noted that while the draft Statute of the International Tribunal did not exclude national trials, there must be a way of ensuring that any national trials do not conflict with trials by the International Tribunal, but that the two systems inter-lock in a cooperative manner. How does Rwanda view this question of cooperation? Perhaps the Commission of Experts in their second visit prior to the preparation of their final report, could also point out a way towards resolving this problem.

The Minister responded by stating that the type of cooperation and the inter-locking nature of the two systems of jurisdiction must be made very clear. One important element is that the commencement date with regard to the acts of genocide must include the period during which such acts were planned; thus, the date must be earlier than that suggested in the draft Statute. These issues should be explored further.

4. Penalties/legal treatment

The Minister stated that, while he was personally not in favour of the death penalty, many members of the Government were in favour of it; thus, the exclusion of the death penalty in the Statute of the International Tribunal would pose a problem. Furthermore, he was against the prospect of unequal treatment for different categories of culprits; it was quite likely that the most culpable people who gave orders and are now abroad may, at worst, end up in comfortable jails in Europe or other foreign countries, while those who carried out their orders may face the death penalty or other harsher punishment in Rwanda. This should be avoided.

The SRSB agreed on the need for equality or lack of discrimination in the punishment meted out to the culprits. Even more importantly, the issue of cooperation between the two trial system needs to be addressed [see item 3 above].


I. Minta
Legal Adviser

CC: Dr. Kabia, Executive Director

FACSIMILE

F
Human
rights
45311

U.N. AIR 06:25 27
IN 4010 001 010

TO: KHAN UNAMIR, KIGALI	FROM: ANNAN, UNATIONS, NEW YORK
DATE: 26 October 1994	Fax No. (212) 963-9222
SUBJECT: Draft resolution on the Int. Tribunal for Rwanda	
TOTAL NUMBER OF TRANSMITTED PAGES INCLUDING THIS PAGE: 16	

... Please find attached, for your information, copy of the revised version of the draft resolution on the International Tribunal for Rwanda which was circulated, but not discussed, during informal consultations of the Security Council held yesterday. The draft statute of the Tribunal is also attached. Will keep you informed. Regards.

↑

SRSS E/DIA

UNITED
NATIONS

Mr. Anundi

S



Security Council

PROVISIONAL

S/1994/1168
25 October 1994

ORIGINAL: ENGLISH

New Zealand, United Kingdom of Great Britain and Northern Ireland
and United States of America: draft resolution

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

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

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

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

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

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

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

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

Stressing also the desirability of international cooperation to strengthen the courts and judicial system of Rwanda,

94-41464 (E)

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

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

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States between 1 January 1994 and a date to be determined by the Security Council, which shall determine the date within three months after the adoption of this resolution and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

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

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

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

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

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

7. Decides to remain actively seized of the matter.

S/1994/1168
English
Page 3

Annex

Statute of the International Tribunal for Rwanda

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

Article 1

Competence of the International Tribunal for Rwanda

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

Article 2

Genocide

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

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

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

3. The following acts shall be punishable:

- (a) Genocide;

S/1994/1168

English

Page 4

- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 3

Crimes against humanity

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

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

Article 4

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

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

- (a) Violence to life, health and physical or mental well-being of persons in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

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

Article 5

Personal jurisdiction

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

Article 6

Individual criminal responsibility

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

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

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

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

S/1994/1168
English
Page 6

Article 7

Territorial and temporal jurisdiction

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

Article 8

Concurrent jurisdiction

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

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

Article 9

Non-bis-in-idem

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

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

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

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

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

S/1994/1168

English

Page 7

Article 10Organization of the International Tribunal for Rwanda

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

- (a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor; and
- (c) A Registry.

Article 11Composition of the Chambers

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

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Five judges shall serve in the Appeals Chamber.

Article 12Qualification and election of judges

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

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

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

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

S/1994/1168
English
Page 8

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

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

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

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

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

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

S/1994/1168
English
Page 9

Article 14

Rules of procedure and evidence

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

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

S/1994/1168
English
Page 10

Article 17

Investigation and preparation of indictment

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

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

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

S/1994/1168

English

Page 11

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

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

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

Article 20

Rights of the accused

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

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

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

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

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21

Protection of victims and witnesses

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

Article 22

Judgement

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

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

Article 23

Penalties

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

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

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

Article 24

Appellate proceedings

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

S/1994/1168
English
Page 13

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

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

Article 25

Review proceedings

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

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

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

Article 28

Cooperation and judicial assistance

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

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

S/1994/1168
English
Page 14

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

Article 29

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

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.
2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.
3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.
4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

Expenses of the International Tribunal for Rwanda

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

Article 31

Working languages

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

S/1994/1168
English
Page 15

Article 32

Annual report

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

23.10.94 IR

AMNESTY REPORT

The ten recommendations (10) of the Amnesty Report all fall within the competence of the Human Rights Commissioner and the Special Rapporteur. Also they are not new. Certain slant given to the report suggests that they had previous knowledge of the UNHCR report. The Government has declared that it would be in agreement with the setting up of a Commission of Inquiry. In fact, they had agreed to the principle of openness and investigations after the UNHCR Gersony report results were known. Bilateral donors are providing legal expertise to assist the Government in carrying out investigations.

Africa Watch, another human rights NGO has requested that the names of all detainees be published or broadcast through the radio in order to allow family members of visit. They also have pointed out that many people believed to be missing are in fact detained. Other points of interest:

PAGE 5

Second paragraph. Report mentions that RPF occupied North East Sector in February 1994, and that they were at NYABWISHONGWEZI at that time. This place is identified as a location where atrocities were committed by the RPF.

My question is, how were they able to confirm that the RPF had in fact as early as February advanced in that area?

PAGE 8

Paragraphs 3 and 4. Please note that in both cases it is suggested that evidence was suppressed, specially regarding the priest and later implying that a returning refugee was killed at a checkpoint at the edge of United Nations "safe zone".

PAGE 9

Paragraph 2. Identified RPF massgrave in Byumba. Can this be verified?

Last paragraph, speaks of a mass grave in military security zone, at the Valley next to Groupes Scolaire in Butare. Can this be verified?

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F. HUMAN RIGHTS

Agreed there must be other material - sent to 12

F/IN - 3736

FACSIMILE COVER SHEET

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組織

UNAMIR
Fax: (44) (71) 956 1157
Tel: (44) (71) 413 5616

TO: PA to UNAMIR Executive Director

FROM: Godfrey Byaruhanga, Researcher

DATE: 19 October 1994

DESTINATION FAX NO.: 010 1 212 963 3090

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If you do not receive all of the pages, or they are not fully legible,
please call us as soon as possible on (44) (71) 413 5616.

COMMENTS/MESSAGES

Dear madam,

I am sending you a copy of an Amnesty International report on Rwanda
which we will be publishing tomorrow. It is for the attention of Dr Kabia
and any other UNAMIR officials who may be interested.

You may remember that we sent through you a memorandum to the
Rwandese Government. I will be calling you later today to find out if there
have been any developments or hitches relating to the memorandum.

Thank you for your assistance.

Yours sincerely,

Godfrey Byaruhanga
Central Africa Researcher

This is an important
document. The recommendations
need to be seen. Most of
the atrocities alleged are
during the war. It does not
exonerate them but there are
relatively few ask
July 19. we may discuss
ED AM
Fred L.

AMNESTY INTERNATIONAL
INTERNATIONAL EXECUTIVE COMMITTEE
c/o International Secretariat

1 Easton Street, London WC1X 8DU, United Kingdom

Telephone: Amnesty London WC1X 8DU Tel: 25502 AMNISTY G. FAX: (44) (71) 956 1157
Internet: amnesty@amnesty.org.uk or amnesty@mcrl.geonet.de
or 25502 (44) (71) 956 1157

amnesty international

RWANDA

**Reports of killings and
abductions by the Rwandese
Patriotic Army, April - August
1994**



20 October 1994
AI Index: AFR 47/16/94
Distr: SC/CC/CO/GR

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

[EMBARGOED FOR 20 OCTOBER 1994]

amnesty international

RWANDA

Reports of killings and abductions by the Rwandese Patriotic Army, April - August 1994

20 OCTOBER 1994

SUMMARY

AI INDEX: AFR 47/16/94

DISTR: SC/CC/CO/GR

Amnesty International has received numerous reports of human rights violations committed by the Rwandese Patriotic Army since armed conflict began in Rwanda in 1990 and particularly since April 1994. Although it is not appropriate to make any comparison between the horrendous scale of massacres committed by forces loyal to the former government between April and July 1994 with those committed by the Rwandese Patriotic Army (RPA), Rwanda's new national army which until July 1994 was the armed wing of the Rwandese Patriotic Front (RPF), hundreds, possibly thousands, of defenceless people have been killed by the RPA and its supporters.

These violations have included hundreds of deliberate executions, as well as abductions or "disappearances" of captured combatants and unarmed civilians suspected of supporting the former government. Many of the killings took place in a series of arbitrary reprisals on civilian members of the majority Hutu ethnic group, some before widespread massacres started in areas under the former government's control on 6 April 1994. There were also sporadic deliberate and arbitrary killings as the RPA took control of new areas and uncovered evidence of genocide, committed mostly against members of the minority Tutsi ethnic group whose members form the majority of the RPA, and took revenge on Hutu. Some of the killings by the RPA occurred during or after a process of "screening" people returning to their homes. There have also been reports of civilian supporters of the RPF being allowed to kill opponents. In addition to these killings, many prisoners held by the RPA have been subjected to a particularly painful form of tying with the victims arms tied above the elbows behind the back sometimes resulting in permanent injury.

These violations appear to have gone largely unreported. The Rwandese Patriotic Front (RPF) has closely monitored and controlled movements of foreigners in areas

under its control. Journalists and representatives of humanitarian organizations rarely talked to Rwandese citizens under RPF control without an RPF official being present. This meant that before the new government came to power in mid-July 1994 very limited information about abuses by the RPA could be gathered or made public by independent observers.

In August 1994, a month after the RPF and others proclaimed a new government, Amnesty International representatives visited Rwanda to hold talks with government and security officials, and to collect information about human rights violations which have occurred before and after the new government came to power. President Pasteur Bizimungu and other government officials assured the organization's representatives that the government was determined to bring an end to impunity for human rights violators in Rwanda. During their visit, Amnesty International's representatives received reports of serious human rights violations by the RPA, particularly those committed since April 1994. Amnesty International representatives have also interviewed Rwandese asylum-seekers in neighbouring countries, and found substantial evidence of killings and other abuses by the RPA.

✓ Amnesty International is concerned that the authorities are not known to have conducted independent and impartial inquiries to establish the full truth about these allegations with a view to identifying those responsible and bringing them to justice.

Immediate action is required so as to ensure that members of the security forces and government supporters are not led to believe that they can continue to violate human rights with impunity. This will ensure that the cycle of violence and other human rights abuses is broken. Amnesty International is calling on the international community to ✓ assist the Rwandese authorities to accomplish this urgent task. Amnesty International has made ten specific recommendations to the Rwandese Government, calling for independent and impartial inquiries into all reports and allegations of human rights abuses by the RPA and for perpetrators to be brought to justice. The Rwandese Government should also implement United Nations and other safeguards to prevent a recurrence of human rights violations.

KEYWORDS: EXTRAJUDICIAL EXECUTION / DISAPPEARANCES / IMPUNITY / ETHNIC GROUPS / RELIGIOUS OFFICIALS - CATHOLICS / TORTURE/ILL-TREATMENT / RESTRAINTS / DOCTORS / TEACHERS / MILITARY AS VICTIMS / PRISONERS OF WAR / DISPLACED PEOPLE / WOMEN / CHILDREN / JUVENILES / FAMILIES / MILITARY / ARMED CIVILIANS / ARMED CONFLICT / GOVERNMENT CHANGE / MISSIONS / UN / PRISONERS' TESTIMONIES /

This report summarizes an 13-page document (5,649 words), *Rwanda: Reports of killings and abductions by the Rwandese Patriotic Army, April - August 1994* (AI Index: AFR 47/16/94), issued by Amnesty International on 20 October 1994. Anyone wanting further details or to take action on this issue should consult the full document.

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

TABLE OF CONTENTS

1. Introduction	1
2. Deliberate and arbitrary killings by the RPA	3
2.1 Deliberate and arbitrary killings in northeastern Rwanda	4
2.2 Deliberate and arbitrary killings in southern Rwanda	6
2.3 Deliberate and arbitrary killings in western Rwanda	7
3. Abductions and "disappearances" by the RPA	9
4. Recommendations to the Rwandese Government	10

propaganda by some of the very people who were responsible for genocide between April and July 1994. However, Amnesty International considers it unacceptable to allow killings and other human rights violations by the RPA to pass in silence with the risk that they could escalate and continue unchecked.

Amnesty International has known for several years that the RPF closely monitored and controlled movements of foreigners in areas under its control. Journalists and representatives of humanitarian organizations rarely talked to Rwandese citizens under RPF control without an RPF official being present. This ensured that before the new government came to power on 19 July 1994 very limited information about abuses by the RPA could be gathered or made public by independent observers. However, Amnesty International has received numerous reports of human rights abuses committed by the RPA since the war in Rwanda began in October 1990. These have included hundreds of deliberate and arbitrary killings⁴ or possible extrajudicial executions⁵, and "disappearances" of captured combatants and unarmed civilians suspected of supporting the former government. There have also been reports of civilian supporters of the RPF being allowed to kill opponents. In addition to these killings, many prisoners held by the RPA have been subjected to a particularly painful form of tying known in Uganda as *kandoya*⁶ or "three-piece-tying", with the victim's arms tied above the elbows behind the back. *Kandoya* sometimes results in permanent injury and constitutes a form of cruel, inhuman or degrading treatment, prohibited under the terms of international human rights agreements.

In August 1994, several weeks after the RPF and others proclaimed a new government, Amnesty International representatives visited Rwanda to hold talks with government and security officials, and to collect information about human rights abuses which have occurred before and after the new government came to power. President Pasteur Bizimungu and other government officials assured the organization's representatives that the government was determined to bring an end to impunity for

⁴ "Deliberate and arbitrary killings" are those committed by armed opposition groups in violation of the internationally recognized norms of humanitarian law, including executions and other killings of prisoners and non-combatants.

⁵ An extrajudicial execution is an unlawful and deliberate killing carried out by order of a government or with its acquiescence. In the case of Rwanda, killings by the RPA are considered as extrajudicial executions from the time RPF members became government officials on 19 July 1994.

⁶ This manner of tying can be used as a method of restraint, but also be used deliberately to inflict pain and coerce prisoners during interrogation. After protests against its use in Uganda in 1986, Uganda's President Yoweri Museveni banned the practice by Uganda's National Resistance Army (NRA) in 1987. Its use by NRA soldiers nevertheless continued to be reported subsequently.

RWANDA

Reports of killings and abductions by the Rwandese Patriotic Army, April - August 1994

1. Introduction

The Rwandese Patriotic Army (RPA)¹, Rwanda's new national army which until July 1994 was the armed wing of the Rwandese Patriotic Front (RPF), has the reputation of being much better organized and disciplined than the security forces of the former government² it overthrew in July 1994. Soldiers and militia of the former government are reported to have killed 500,000 or more members of the minority Tutsi ethnic group and its opponents from the majority Hutu ethnic group between April and July 1994. Given the horrendous scale of massacres committed by forces loyal to the former government, there could never be any comparison between those massacres and other human rights abuses committed by the RPA³. Nevertheless, this fact should not be allowed to prevent the truth about alleged RPA abuses from being uncovered and, where appropriate, action being immediately taken to bring those responsible to justice and to prevent such abuses from recurring. Although it is generally unclear whether human rights abuses by the RPA are ordered or condoned by top government and security officials, it is incumbent on them to take action to prevent the abuses and to ensure that those responsible are brought to justice.

Reports of abuses by the RPA have already been exploited as political propaganda by supporters of the former government. This report may also be exploited for partisan

¹ The RPF/RPA was formed and is dominated by exiled members of the minority Tutsi ethnic group. They and, or their parents fled to neighbouring countries such as Uganda in the wake of massacres of Tutsi by Hutu before and after independence in 1962.

² The former government and its security forces were dominated by members of the majority Hutu ethnic group.

³ Former government security forces and militia are believed to have carried out massacres of 500,000 or more members of the Tutsi ethnic group and members of the Hutu ethnic group opposed to the government and the killing of Tutsi since 6 April 1994 when the plane carrying Rwanda's President Juvénal Habyarimana and Burundi's President Cyprien Ntaryamira was shot down. Amnesty International has published numerous reports of the massacres and other human rights abuses which have occurred in Rwanda since the war in Rwanda began on 1 October 1990. More recently, on 23 May 1994, the organization published a report about the massacres which began on 6 April 1994 entitled, *Rwanda: Mass murder by government supporters and troops in April and May 1994*, AI Index: AFR 47/11/94.

human rights violators in Rwanda. During their visit, Amnesty International's representatives collected testimonies regarding allegations of serious human rights violations by the RPA, particularly those committed since April 1994. Amnesty International also interviewed Rwandese asylum-seekers in neighbouring countries and found substantial evidence of severe ill-treatment and attempted execution by the RPA. In addition to numerous testimonies about killings and other abuses which were so consistent in dates, places and names of victims as not to be dismissed as anti-RPA/RPF propaganda. Amnesty International is concerned that the authorities are not known to have conducted independent and impartial inquiries to establish the full truth about these allegations with a view to identifying those responsible and bringing them to justice.

Amnesty International is now making public some of the information it has collected in order to draw the attention of the Rwandese authorities and the international community to them. These allegations are very grave and require immediate action so as to ensure that members of the security forces and government supporters are not led to believe that they can continue to violate human rights with impunity. This will significantly contribute to ensuring that the cycle of violence and other human rights abuses is broken. Amnesty International is calling on the international community to assist the Rwandese authorities to accomplish this urgent task. Amnesty International is also urging the international community to deploy human rights monitors in Rwanda who could investigate any further reports of abuse over the coming months. Evidently it is also vital that objective information be available on the public record about the human rights situation in Rwanda so that refugees can make an assessment based on sound information of whether their safety will be guaranteed or not when they return home.

Amnesty International submitted the concerns contained in this report to the Rwandese authorities at the start of October 1994.

2. Deliberate and arbitrary killings by the RPA

Reports received from Rwandese eye-witnesses and others suggest that hundreds - possibly thousands - of unarmed civilians and captured armed opponents of the RPF have been summarily executed or otherwise deliberately and arbitrarily killed since countrywide massacres and other acts of violence flared up after the death of former President Juvénal Habyarimana on 6 April 1994. Many of the killings took place in a series of arbitrary reprisals mainly against groups of Hutu civilians, some of which occurred in some cases before 6 April, but mainly afterwards in the northeast. There were also sporadic deliberate and arbitrary killings as the RPA took control and, uncovering evidence of genocide, took indiscriminate revenge on unarmed Hutu civilians. There were also deliberate executions carried out in the course of "screening"

process⁷. There have also been reports of revenge killings by Tutsi supporters of the RPF.

Many of these killings by the RPA, which appear to have gone largely unreported, appear to have taken place in northeastern Rwanda in mid-April 1994. Others have occurred in southern and western Rwanda once the RPA took control of these areas in May and June 1994. There are also reports that the RPA, as well as RPF supporters, were responsible for numerous killings of unarmed civilians in August and September 1994 in southeastern Rwanda. Some corpses of the victims were reported to have been dumped in the Akagera river which flows along the border between Rwanda and Tanzania. The floating of corpses in the Akagera river is reminiscent of the hundreds or even thousands of bodies of people reportedly massacred by former government forces and militia in May and June 1994, which floated downstream to Lake Victoria.

In mid-September the United Nations High Commissioner for Refugees (UNHCR) said that it had received dozens of testimonies from refugees who had fled from the area, alleging that the RPA had carried out numerous killings, forcing many people who had returned to the area to flee. The UNHCR suspended repatriation of refugees from neighbouring countries. A controversy soon arose when some other UN agencies expressed or implied doubt over UNHCR findings. The United Nations Assistance Mission for Rwanda (UNAMIR) sent several dozen soldiers to monitor the situation. The Rwandese Government denied that its soldiers had been involved in any massacres and agreed to cooperate with a UN investigation team which was reported to have begun its work in early October 1994.

2.1 Deliberate and arbitrary killings in northeastern Rwanda

Amnesty International representatives received numerous disturbing reports of deliberate and arbitrary killings in April and May 1994 of unarmed civilians by units of the RPA in northeastern Rwanda. Witnesses reported that such killings took place at Nyabwishongwezi and Kagitumba in Byumba prefecture's Ngarama district (*commune*). At both locations the killings reportedly took place at public meetings to which local people had been summoned by the RPA. RPA soldiers were reported by eye-witnesses to have used guns, grenades, bayonets and hoes to kill their unarmed victims. Accounts by the eye-witnesses portray a striking consistency of dates and places of the killings.

⁷ The RPA has been recording the identities and places of origin of people returning from places inside Rwanda or from neighbouring countries where they had fled as a result of the war. There have been reports that returnees suspected of involvement in the massacres of RPA supporters or sympathizers have been arrested or even killed during or after the screening process.

Rwanda: Killings and abductions by the RPA

5

Several dozen witnesses reported that members of the RPA arrived in Kagitumba on 12 April 1994. At first the fighters were reportedly very friendly to the local population and promised that the RPA was determined to protect the local people who were then summoned to a public meeting at Gishara. On 13 April unarmed civilian men, women and children gathered at Gishara in Kagitumba. RPA officials reportedly began addressing the crowd and suddenly without provocation or warning they opened fire on the crowd and threw grenades at the crowd. It is unclear how many people were killed. However, from accounts of eye-witnesses, dozens are likely to have been killed in the incident.

One 36-year-old man present told Amnesty International representatives that RPA fighters seemed friendly at first, only to open fire on civilians without warning or provocation. He said most of the people in Nyabwishongwezi had only arrived there recently, having fled from other parts of Rwanda. Other inhabitants of Nyabwishongwezi were Rwandese nationals who had recently been expelled from Tanzania where they had been living for some years. Government soldiers had withdrawn from the area several weeks earlier. When RPA forces occupied the area in February 1994 the local population first fled but was convinced by the RPA to return. The witness explained that in March the RPA called the first public meetings during which RPF officials told people that they had nothing to fear. At one such meeting in April the RPA fired a rocket and threw grenades into the crowd. Others were shot and killed, while others sustained severe injuries. The RPF continued to deny that any killings had occurred in Kagitumba. But people did not believe them and continued to flee from Nyabwishongwezi. RPA fighters reportedly started a man-hunt for the Hutu, killing many using bayonets and guns. More extensive killings reportedly occurred on 15 April. The witness said he saw RPF soldiers hunting for civilians in the fields. He said that among those killed were his 30-year-old wife, Jovans Nakabonye, who was shot. The others, including his 12-year-old daughter, Felicita Busingye, were bayoneted to death. Those killed included a four-year-old child known as Yankunda.

One 56-year-old survivor of the killings at Gishara in Kagitumba and in Nyabwishongwezi narrated how his family and friends were slaughtered by the RPA. He said he and others were summoned to a public meeting on 13 April 1994 at Gishara. He said, "We had been told that men, women and children must attend. They said they would kill hippos for us and needed some representatives from among us to go hunting with the soldiers. Twelve of us were taken behind a house of "tailleur" (tailor) Muziga and they said they wanted to talk to us. They asked us to indicate who among us knew how to shoot or was a soldier. We said none of us knew how to shoot and that all soldiers had left. All of a sudden we heard a grenade explosion". He said many people were killed including his wife, Anastasia Mukamurigo, his 10-year-old son Nkwaya, and 20-year-old daughter Mukazaza. Others killed by the grenade and gunshots included

Azaria Ukuyemuye, a director of Nyabwishongwezi primary school, and his wife, Anne Maria, and a Roman Catholic nun known as Helène from Muyanza parish in Byumba.

The witness then fled from Kagitumba to Nyabwishongwezi. On 16 April 1994 RPA forces came to the area while he was at the home of Sinamenye, in Rwantanga village in Nyabwishongwezi. Sinamenye's house was surrounded by six RPA soldiers, two of whom entered the house asking for the home owner and identity papers. They confiscated the papers and told Sinamenye to go to a soldier at the entrance to collect valid papers. The soldier assaulted him with a bayonet and he fell. They then shot and killed him. The soldiers told Sinamenye's son, Bampora, to walk away and shot him in the back. The survivor said he was one of the few who managed to run away from the scene of these killings.

2.2 Deliberate and arbitrary killings in southern Rwanda

Amnesty International representatives who visited Burundi in July 1994 received reports of both deliberate executions and cases of cruel, inhuman or degrading treatment to which civilians from southern Rwanda said they had been subjected by RPA soldiers after they took control of Bugesera in southeastern Rwanda. The witnesses, some of whom had themselves narrowly survived execution and bore the marks of blows to their heads, had fled to northern Burundi from the area of Mututu in Butare prefecture's Muyira district and from parts of rural Kigali prefecture.

Towards the end of May 1994 RPA soldiers were reported to have carried out numerous arrests of Hutu who had returned to their homes in the Mututu area from Burundi. Virtually all those arrested were subjected to "three-piece-tying". In one incident a unit of about 10 soldiers and armed Tutsi civilians who had recently returned from exile are reported to have arrested and tied up all adult men and teenage boys in Mututu. They were first held in the compound of one Rutekeleza before being killed. Those executed included Leodomir Kazadi whose head was reportedly smashed with a blunt weapon, possibly a hoe. Other victims were reportedly killed in the same way. These and other killings caused many people in the area to flee to Burundi. There were claims that some of those who tried to escape were shot as they tried to cross River Akanyaru on the border with Burundi.

* In August 1994 the Rwandese Vice-President and Minister of Defence, Major General Paul Kagame (a former senior officer of Uganda's NRA), told Amnesty International representatives that "three-piece-tying" had been abolished and those found responsible would be punished. However, this form of tying was reported to be still in evidence in August with detainees bearing wounds around the elbows caused by ropes or flex used.

Around early June 1994 about 100 men, women and children were reportedly arrested by the RPA in the same area and detained in a compound for about a day. They were then moved towards Muyira district when the eye-witness who spoke to Amnesty International representatives and at least six of his close relatives managed to escape. All bore scars caused by "three-place-tying". The witness and others returned to the area after the RPA had left only to find that dozens of those who had remained in the custody of the RPA had been killed. Bodies were still tied and heaped in an open pit in the compound of one Gakwayiro, near the Mahwa river. All the victims, including the witness' neighbours, Senama and Kareje, were male adults and youths.

A woman formerly resident in Burenge, in rural Kigali prefecture's Ngenda district, testified that she and many others had been hiding in sorghum fields after the RPA took control of the area, only returning home when they heard that the RPA had stopped killings. They handed themselves over to the RPA and were taken to a "screening" centre at Rutonde. On the second day young men were taken away and her husband was taken away on the third day. A man who had been taken away with her husband reportedly returned and reported that those taken away, including her husband, had been tied up, hit on the head and killed, and that their corpses were being thrown into the river. She alleged that some of the women detainees were taken away by RPA soldiers and raped: she thought they were killed afterwards. She tried to escape with her child strapped to her back but was subsequently recaptured with several other women escapees by RPA soldiers. The soldiers killed two other women with blows to the head and also killed her child. She was hit on the head with a nail-studded club but survived. The scars caused by blows, in particular by nails, were clearly visible.

2.3 Deliberate and arbitrary killings in western Rwanda

Around 5 June 1994 four members of the RPA killed 13 Roman Catholic priests, including the Archbishop of Kigali, Vincent Nsengiyumva, and three other bishops, at Byimana, a few kilometres south of Kabgayi Roman Catholic church near Gitarama. The RPF subsequently declared that the combatants had been assigned to the bishops as their bodyguards. On 9 June RPF leaders announced that one of the killers had been shot dead by fellow soldiers as he fled and that the other three had escaped. RPF leaders explained that the combatants seemed to have carried out the killings because they suspected the priests of complicity in the killing of members of their families, including some of the Tutsi who had fled to Kabgayi.

A priest who survived the killings gave a different version of the incident. He said that the RPF took control of Kabgayi on 2 June, arrested the priests and took them to a mission at Byimana. On 5 June some of the soldiers who had been guarding the priests entered the room where the priests were being held and opened fire. The surviving priest

escaped through a door at the end of the room. The next day he was found by RPA soldiers who told him that the killings had been an accident. The soldiers reportedly detained him, insisting that he accepted the soldiers' version of the killings. He was released when he said he would agree to the RPA's version and he escaped.

Members of the government told Amnesty International representatives in August that the three escapees had never been found. The RPF's explanation that its soldiers had killed the priests to avenge the killing of their relatives appeared to be guess-work rather than based on any statement made by any of those involved. It is not clear whether any formal investigation or judicial inquiry had been carried out: indeed, the priest's testimony above suggests that evidence was deliberately suppressed.

People suspected of killing RPF supporters appear to have been deliberately executed by the RPA. For example, a returning refugee was killed on 27 August 1994 at a checkpoint at the edge of the United Nations (UN) "safe zone" by RPA soldiers. The circumstances suggest that returning refugees may have been extrajudicially executed or that the soldiers may have used excessive lethal force in breach of international human rights standards. According to the report, the RPF soldiers stopped a convoy of five British army trucks carrying approximately 200 returning Hutu refugees at a checkpoint 40 kilometres east of the border town of Kibuye as they were crossing from the UN "safe zone" into territory controlled by the Government of Rwanda. One of the passengers fled and was reportedly pursued by approximately 15 RPA fighters. Witnesses heard five bursts of automatic gunfire and said that when the soldiers returned they said that they had killed the man who fled. Three other men in the convoy were detained.

Amnesty International subsequently wrote to the Rwandese authorities seeking clarification about the circumstances of this killing and the identities and whereabouts of those detained and called on the RPA to issue standing orders about the circumstances in which soldiers could use firearms, which would prevent such killings. Amnesty International also wrote to the United Nations seeking clarification about a statement reportedly made by the spokesman of the UNAMIR suggesting that RPA soldiers were justified to shoot the fleeing man. The organization expressed concern that if correctly reported, the spokesman's statement was inconsistent with the UN's own fundamental international standards on the intentional use of lethal force. The organization had not received a response from the Rwandese Government by the start of October 1994. A senior UN official replied in early September 1994, saying that the UNAMIR spokesman had been misquoted, and that his exact words were: "This man was fleeing and, in these situations, if one runs, he can expect that someone will shoot". However, the UN official did not explain whether UNAMIR had investigated the killing to determine whether the man had been extrajudicially executed or not. The official added that

Rwanda: Killings and abductions by the RPA

UNAMIR had initiated an investigation concerning the other three persons arrested, but had not obtained any specific information about their whereabouts.

3. Abductions and "disappearances" by the RPA

There have been numerous reports of abductions and "disappearances" carried out by the RPF since April 1994. There are fears that those who were abducted or "disappeared" may have been killed and their bodies secretly disposed of.

Amnesty International has received reports that a medical doctor known as Dr. Canisius, and former head of Byumba Hospital was abducted in May 1994 by the RPF. He was apparently accused of being a member of the *Interahamwe* (predominantly Hutu militia loyal to the former government) and had expressed his fear for his life to some of his friends prior to his abduction. He and his wife and children were allegedly taken away by the RPF and they were never seen again. There have been unconfirmed reports that Dr. Canisius and his family were killed and buried in a mass grave in Byumba. Some of his colleagues have inquired about him from the RPF but the authorities have not revealed any information about the fate of the doctor and his family.

Amnesty International representatives visiting Rwanda in August 1994 were informed that several hundred soldiers who were left at a school complex known as *Groupe scolaire* in Butare "disappeared" soon after the town fell to the RPA at the start of July 1994. Part of the complex had been turned into a make-shift hospital by former government forces. The representatives learned that former government soldiers had been severely wounded or disabled in battle and were left behind by their retreating colleagues. Amnesty International found in the abandoned make-shift hospital one decomposed body of a soldier whose head had been smashed allegedly by RPA soldiers before death.

There were further reports of "disappearances" in July 1994 of about 600 people from a camp for the displaced at Rango, several kilometres south of Butare. Amnesty International representatives were told that the RPA was thought to have killed and buried those who had "disappeared" in mass graves in a valley next to the *Groupe scolaire* in Butare. However, Amnesty International's representatives were prevented from going to the valley by RPA soldiers manning a roadblock on the road leading to the valley on the grounds that it was a military security zone. As a result, neither the "disappearances" nor the mass graves could be confirmed by Amnesty International.

4. Recommendations to the Rwandese Government

The RPF and the new Rwandese Government have usually denied that their combatants have carried out serious human rights violations. In some instances they have acknowledged that abuses have occurred but explained that they were not committed as part of RPF or government policy. Government officials told Amnesty International representatives visiting Rwanda in August 1994 that two RPA soldiers had been executed by official order in mid-1994, one for murder and another for rape. The authorities said the soldiers were tried by the RPA military court in accordance with the RPA Operation Code of Conduct. The authorities said they were holding in custody more than 60 RPA soldiers accused of criminal offences.

While welcoming government action to bring those responsible for human rights abuses to justice, Amnesty International is concerned that the RPA violated the ultimate fundamental right to life in order to punish persons accused of human rights abuses. It is unclear whether their offences had been the subject of any independent and impartial investigations. Furthermore, those convicted had, according to RPA officials, no right of appeal, although the decision to carry out the sentence had to be made by the RPA High Command.

For government action and statements to be taken seriously by the people of Rwanda, particularly members of the security forces, it is essential that immediate action be taken in response to the allegations of human rights violations by the RPA described in this report. To this effect Amnesty International is recommending the implementation of its 14-Point Program for the Prevention of Extrajudicial Executions and for the Prevention of "Disappearances". It is also recommending:

4.1 In addition to accepting responsibility for carrying out impartial investigations into past killings of civilians and captured armed opponents, it is urgent that the new government set up a commission of inquiry with specific responsibility to investigate reports of human rights violations both in areas under the RPF's control before July 1994 and in the whole country since then. The commission of inquiry should be composed of people known for their independence and impartiality and should be asked

* Amnesty International has developed a 14-Point Program for the Prevention of Extrajudicial Executions, published in March 1993, AI Index: POL 36/02/93, and another one for the Prevention of "Disappearances", adopted by Amnesty International in December 1992, to call attention to the official steps needed to end these abhorrent human rights violations. The programs consist of a series of detailed measures which should be taken by all governments. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop extrajudicial executions and "disappearances" and to work for their eradication.

to investigate the allegations mentioned in this report and those reported elsewhere, either published by other organizations or the media, or made by private individuals. The commission could also ask United Nations investigators to assist in carrying the inquiries. All investigations should be consistent with the standards set forth in the UN Principles on the Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions and the UN Manual on their implementation¹⁰.

4.2 The investigating body should be given powers to summon any witnesses, regardless of their position in the government or the security forces, to testify. Its terms of reference should include making recommendations on any action to be taken against those responsible and prevent a recurrence of the abuses. The findings of the inquiry should be made public as soon as it has been completed. The findings should then be submitted to a competent, independent and impartial court of law to try those found by the inquiry to have been involved in perpetrating the abuses.

4.3 The international community, particularly governments and the United Nations, should assist the Rwandese Government with the human and material resources the Rwandese authorities require to carry out these investigations in accordance with international standards, just as it should be assisting with investigations into the crimes against humanity committed before July 1994 mostly by soldiers and supporters of the former government. Furthermore, the international community should assist the Rwandese Government to build a competent, independent and impartial judiciary to protect and promote human rights. The international community must not make excuses for or turn a blind eye to human rights violations committed by the RPA or other institutions or officials of the new government on the grounds that they are not 'as serious' as those committed by its predecessor.

4.4 The government should take immediate steps to avoid a recurrence of the killings of civilians and captured armed opponents in which members of the security forces have been implicated. These steps should include training in international standards and explicit instructions made publicly to all security personnel to the effect that firearms may only be used with lethal intent when strictly unavoidable and in order to protect life. All killings by the security forces must be the subject of an inquiry to establish if this standard has been respected or violated. Members of the security forces responsible for

¹⁰ By Resolution 1989/65 on 24 May 1989 on "Effective prevention and investigation of extra-legal, arbitrary and summary executions", the UN's ECOSOC called on all governments to take into account and respect a series of Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The Principles give some guidance on procedures for investigation and suggest that if the established investigative procedures (for example of the Procuracy) are inadequate, governments should establish independent commissions of inquiry.

unlawful killings should be brought to justice in legal proceedings which satisfy international minimum standards.

Amnesty International is requesting the Rwandese Government to make public the identities of RPA soldiers in custody and details of their cases. Amnesty International demands that the soldiers be given prompt and fair trials and that in no case should anyone of them be sentenced to death or executed. The organization also requests the Rwandese authorities to reveal the identities of those of its combatants and others who have been executed and the offences of which they were convicted.

4.5 All allegations of extrajudicial executions and of similar deliberate and arbitrary killings before July 1994 by security personnel should, as a matter of course, be the subject of an impartial, independent and thorough inquiry. The inquiry should establish the reasons for and circumstances of the killings, make its conclusions public, and recommend action to be taken against the security personnel who have either ordered or carried out the killings. Failure by the authorities to open an inquiry into killings of this sort is likely to be interpreted by observers and other members of the security forces as indicating government approval or condonement of violence by security personnel against civilians.

4.6 The names of all those taken into custody and any subsequent transfers or releases should be recorded and the Ministry of Justice notified. In the absence of any functioning court or legal procedures similar to habeas corpus, this will bring an end the current practice whereby government officials or private individuals must at present simply request the Minister of Defence for information about their whereabouts and wait indefinitely for a response. This provides no effective safeguard for detainees who may be at risk of "disappearance" or ill-treatment.

4.7 The Rwandese Government should use the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as basic texts for the training of security personnel in human rights, in addition to training about the basic humanitarian standards contained in the Geneva Conventions. The Code of Conduct for Law Enforcement Officials stipulates that law enforcement officials (whether police or military) should respect and protect human dignity and defend and safeguard human rights. In addition, members of the security forces should receive training in international human rights standards and in the provisions of national legislation both concerning the use of firearms and force, and concerning detention procedures and the treatment of prisoners.

4.8 The authorities should prohibit the security forces from ill-treating any citizen, including political opponents, and should investigate all allegations of such behaviour,

Rwanda: Killings and abductions by the RPA

13

including the use of *kandoya* and nail-studded clubs. Official silence on the brutality to which suspected opponents of the government have been subjected has led some to believe that the authorities are implicated, there being no other explanation for their refusal to pursue the reports published by human rights groups and the media. Those who have committed such violations should be brought to justice.

4.9 The Rwandese authorities should not deny or explain away, without thorough independent investigation, allegations of serious human rights violations by their security forces.

4.10 The security forces which have responsibility for arrests and detentions should as a matter of priority be placed under effective judicial and administrative control to comply with national and international law and accountable for their actions not only to the RPA internal hierarchies, but to the courts under the rule of law.



(UNAMIR)

TO: Dr. A. Kabia
Executive Director

DATE: 6 October 1994

FROM: L. Minto *[Signature]*
Legal Adviser

SUBJECT: UNAMIR's Status Agreement

1. I have prepared the attached check-list of the respective rights and obligations of UNAMIR and the Government of Rwanda under the Status Agreement, first, for purposes of information, and second, to facilitate follow-up or implementation measures.

2. As I do not know what follow-up measures may have been taken already, I would recommend circulating this to all relevant UNAMIR Senior officials for feedback, so that any outstanding follow-up could be expedited.

SRSQ

*The check-list
provides a quick
and easy reference
to the different issues
that may arise in the
Status of Mission Agreement.
RMH
EO 9/10*

*Legal Adv
Please in white
and blue let
me know what
a general meeting
with heads of units
is
EO 10/10*

See (hank).

*ED RM
10-10*

*(4) Circulated!
see Admin Circular
007/94/11-X-4
100*

RIGHTS AND OBLIGATIONS UNDER UNAMIR STATUS AGREEMENT AND NECESSARY IMPLEMENTING MEASURES

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
1. UNAMIR's status and activities (Art. IV.5 & 6)	<ul style="list-style-type: none"> To strictly observe impartial and international nature; to observe local laws/regs. <i>111065: register UN security</i> 	<ul style="list-style-type: none"> To respect exclusive international nature, and to <u>take appropriate steps</u> to ensure security/safety of UNAMIR personnel
2. Military Conventions (Geneva - UNESCO)	<ul style="list-style-type: none"> Full respect of general Conventions re: <u>conduct</u> of military personnel (Art. IV.7.a) <i>ensure full knowledge</i> 	<ul style="list-style-type: none"> Full respect of general Conventions re: <u>treatment</u> of military personnel (Art. IV.7.b)
3. UNAMIR identification/insignia (Art. IV.8 & 9)	<ul style="list-style-type: none"> SRSB to decide/display/notify Government regarding 	
4. Communications facilities (Art. IV.10 & 11)	<ul style="list-style-type: none"> Right to install/operate viz Art.10 of 1946 Convention 	<ul style="list-style-type: none"> To facilitate; allocate radio frequencies
5. Private (UNAMIR) mail	<ul style="list-style-type: none"> Own arrangements; if involving currency, parcels or packages, conditions by arrangement with Government 	
6. Freedom of movement (Art. IV.12) <i>some restrictions: AUS, 111065, DCOs, G3 Plans</i>	<ul style="list-style-type: none"> Entitled to such, throughout territory; Coordinate with Government re: large movements of personnel, stores, vehicles, thru airports, etc. 	<ul style="list-style-type: none"> To <u>supply</u>, where necessary, <u>maps</u> and other information, including <u>locations of mine fields</u> and other dangers/impediments
7. UNAMIR vehicles (Art. IV.13)	<ul style="list-style-type: none"> Shall carry 3rd party insurance per relevant legislation 	<ul style="list-style-type: none"> No registration/licensing requirements
8. Roads, bridges, canals, ports, airfields (Art. IV.14)	<ul style="list-style-type: none"> Exemption from dues/tolls/charges, <u>except charges for services rendered</u> 	<ul style="list-style-type: none"> Not to levy dues/tolls/charges, except for services rendered
9. UNAMIR's status as subsidiary organ of UN; privileges, immunities under 1946 Convention; extend to funds/assets of participating states (Art. IV.15)	<ul style="list-style-type: none"> For details, see under Government. SRSB to ensure that commissaries established are not abused (eg, by sale/resale of goods to persons not entitled) <i>* admin. to ensure no goods needed</i> 	<p><u>Recognizes rights of UNAMIR to:</u></p> <ul style="list-style-type: none"> Duty-free importation establish/operate commissaries no customs/excise/warehouse restrictions re-export or otherwise dispose of [goods/mate]

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
10. UNAMIR premises (Art. V.16)	<ul style="list-style-type: none"> Such premises, even when provided by Government, shall be <u>inviolable and subject to exclusive control and authority of the UN</u> 	<ul style="list-style-type: none"> Shall provide, to extent possible headquarters, camp, and other premises for operational and administrative activities, and for accommodation of members of UNAMIR [no mention of charges]
11. Shared premises (Art. V.16)	<ul style="list-style-type: none"> Entry to UNAMIR premises: <u>UN alone</u> controls (Art. V.19) 	<ul style="list-style-type: none"> To guarantee such access
12. Water, electricity and "other necessary facilities" (Art. V.17)	<ul style="list-style-type: none"> To maintain any facilities provided by Government; may generate own electricity (Art V.18) 	<ul style="list-style-type: none"> To assist, as far as possible, in obtaining these same priority as essential Government services; payment on agreed terms
13. Local purchases/services (Art. V.20)	<ul style="list-style-type: none"> To ensure, on basis of information from Government, that local purchases do not adversely affect the economy 	<ul style="list-style-type: none"> To assist in obtaining, as far as possible; no sales taxes
14. Sanitary/health services (Art. V.21)	<ul style="list-style-type: none"> Both parties to cooperate fully in accordance with international Conventions 	
15. Local personnel (Arts V. 22; VI. 28, 46)	<ul style="list-style-type: none"> Recruitment at UNAMIR's discretion Immunity regarding official activities; exemption from tax and national service obligations 	<ul style="list-style-type: none"> Government to facilitate upon request
16. Local currency (Art. V.23)	<ul style="list-style-type: none"> As needed 	<ul style="list-style-type: none"> Government to provide most favourable rates
17. Diplomatic privileges of SRSG, FC & PC (Art. VI.24)	<ul style="list-style-type: none"> ... and of "such high-ranking members of the SRSG's staff as may be agreed upon" with Government (<u>Agreement needed here</u>) 	<ul style="list-style-type: none"> Government to recognize observe diplomatic privil under sections 19 & 27 1946 Convention

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
18. Other UN officials (Art. VI.25)	<ul style="list-style-type: none"> • Privileges and immunities under Arts V & VII of 1946 Convention, including: • immunity from legal process • exemption from income tax and other direct taxes/fees/charges except municipal rates • immunity from immigration/alien registration requirements • duty free import of furniture/personal effects. All for official, not personal benefit; avoid abuse of privileges 	<ul style="list-style-type: none"> • Government to recognize and observe Arts V & VII regarding.
19. MILOBS, Civ-Pol and Civilian personnel other than UN officials (Art. VI.26)	<ul style="list-style-type: none"> • Privileges/immunities of "Experts on Mission": Art. VI of Convention • UNAMIR to notify names to Government 	<ul style="list-style-type: none"> • To recognize/observe Art. V (Convention)
20. Military personnel of national contingents (Art. VI. 27, 37, 38, 39, 47)	<ul style="list-style-type: none"> • Privileges/immunities same as "Members of UNAMIR" (see below) • Shall wear their national uniform with UN insignia (Art VI. 37) • May carry arms on duty (also, civ-pol and security officers (Art. VI. 37) • <u>Under exclusive jurisdiction of their states regarding any criminal acts (Art. VI. 47. b)</u> 	<ul style="list-style-type: none"> • To recognize/observe same • To recognize <u>permits or licenses</u> issued by UN/SRSG to UNAMIR personnel <u>re: firearms</u> (also, <u>drivers' licenses</u>)
21. Members of UNAMIR (including military; excluding locals) Arts VI: 29, 30-34, 46-48	<ul style="list-style-type: none"> • <u>Exempt from:</u> income tax; direct taxes (except municipality rates); registration fees/charges; customs duty on personal effects; immigration registration/restriction; • <u>Immune from</u> legal process regarding official activities • Any crimes to be handled by SRSG and Government • Civil claims against: SRSG to be notified for certification before proceeding, but personal liberty not to be restricted regarding. 	<ul style="list-style-type: none"> • To recognize/observe same

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
22. Entry, residence, departure (Art. VI: 32-34)	<ul style="list-style-type: none"> • SRSG and members of UNAMIR: right to freely enter, reside in, and depart from Rwanda; • To inform Government of entry/departure; • No passport/visa requirements or immigration inspections; etc. 	<ul style="list-style-type: none"> • To facilitate entry/departure • Entry/exit only requires: <ul style="list-style-type: none"> (a) individual or collective movement order by SRSG or Participating State (b) Personal ID (or national, or UN LP)
23. Staff identification (Art VI: 35, 36)	<ul style="list-style-type: none"> • SRSG to issue numbered ID cards; • Members to present on demand by Government official, but not surrender IDs 	<ul style="list-style-type: none"> • UNAMIR IDs the only documents required
24. Policing/Powers of Arrest (Art VI: 40-42)	<ul style="list-style-type: none"> • Personnel designated by SRSG shall police UNAMIR premises and deployment areas with powers of arrest; • Military police have powers of arrest over military personnel. 	<ul style="list-style-type: none"> • Government officials may take into custody any member of UNAMIR: <ul style="list-style-type: none"> (a) at request of SRSG; or (b) in the commission/attempt of a crime [42]
25. Custody/Investigations/ (Art VI: 41-45; 47)	<ul style="list-style-type: none"> • Military personnel arrested shall be transferred to their contingent commander [41]; • Arrested on UNAMIR premises: transfer to Government [41]; • Preliminary investigation shall not delay transfer of custody; • UNAMIR and Government to cooperate regarding all necessary investigations [44] • Prosecution of UNAMIR civilians subject to SRSG/Government agreement [47.a]; failing which: see <u>Settlement of Disputes</u> 	<ul style="list-style-type: none"> • UNAMIR personnel arrested for crimes: transfer immediately to UNAMIR [42] • Government to promptly inform UNAMIR regarding any UNAMIR member suspected of crime with evidence [47] • Government to prosecute persons accused of acts against UNAMIR or its members [45]
26. Deceased members (Art. VI. 49)	<ul style="list-style-type: none"> • SRSG to take charge 	

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
27. Settlement of disputes (Art. VII: 50-54)	<ul style="list-style-type: none">Any private-law claims excluded from Rwandese jurisdiction by this Agreement: submit to standing <u>Claims Settlement Commission to be established</u> [50];Disputes regarding local staff: submit to SRSG/Admin procedures [51];Any other disputes, or appeals from claims settlement commission: submit to <u>tribunal of three arbitrators</u>, unless otherwise agreed [52];Disputes regarding 1946 Convention: see Section 30 of Convention [53]	
28. <u>Liaison/Implementation</u> (Arts. IX; X. 56)	<ul style="list-style-type: none">Appropriate steps by both parties;	<ul style="list-style-type: none"><u>Government has ultimate responsibility for implementation /observance of privileges/immunities of UNAMIR by all Government agencies</u>

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SPEC. PROCEDURES

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United Nations

Press Release

Information Service

United Nations Office at Geneva

HR/94/46

21 September 1994

UNITED NATIONS INVESTIGATIVE TEAM ARRIVES IN RWANDA

Team in Kigali to probe violations of international law, including genocide, for Commission of Experts

The High Commissioner for Human Rights, Mr. Jose Ayala Lasso, today announced the arrival of a five-member investigative team in Kigali to gather evidence to identify persons most culpable and responsible for grave violations of international humanitarian law, including genocide, committed in Rwanda beginning on or about 6 April 1994. The team was provided to the High Commissioner by the Government of the United States in response to his announcement on 15 September of a \$ 10.5 million plan for the expansion of human rights operations in Rwanda.

The expert team, which includes prosecuting attorneys, investigators and legal experts from the United States of America is led by Mr. Stephan Mansfield, an Assistant United States Attorney, Deputy Chief, Criminal Division, U.S. Attorney's Office in Los Angeles, California, who was appointed by the High Commissioner for Human Rights as interim Head of the Special Unit responsible for the conduct of investigations, established in the U.N. human rights field office in Kigali. In addition to Mr. Mansfield, the team includes legal experts from the U.S. Department of State, the U.S. Foreign Service, the U.S. Army Judge Advocate General's Corps and the Federal Bureau of Investigation (FBI).

The investigative team will work within the framework of the human rights field operation in Rwanda as established by the High Commissioner. Under the authority of the High Commissioner and in support of the investigatory priorities identified by the Commission of Experts established pursuant to Security Council resolution 935 (1994), the experts shall interview witnesses and gather and preserve documentary and other tangible evidence of grave violations of international humanitarian law including possible acts of genocide.

The work of the experts in the field will be coordinated by the Chief of the Human Rights Field Operation in Rwanda, Mr. William Clarence, and Mr. Mansfield.

Government responded accordingly and convincingly.

4 August - Botswana. ~~All top~~ The President, Prime Minister, and the ~~the~~ cabinet attended a four hour rally where they reassured ~~the audience~~ ~~the audience~~ on rights of returnees, punishment for the perpetrators of massacres, employment and reconciliation.

The results of these missions were very positive. ~~We know that~~ many people returned as a direct result of these Government visits.

Despite the positive efforts described above, the Government, in reference to the above-listed assurances, must ~~make more~~ of an effort to match their words with action on the ground. The most telling example of this lack of action on the ground is the fact that many returnees are returning to find their property and businesses occupied. There is currently no legal process in place nor any effort made to restore property to owners. This represents a serious practical impediment to the return of refugees, and, equally important, it casts doubt on the credibility of the Government's assurances.

3. Human Rights:

Though many leaders, including President Museveni, were sounding warnings long ago that it ~~was~~ critical that immediate steps be taken to catch the perpetrators of the massacres, thus far, no concrete progress has been made in this regard. There has thus far been no attempt to identify suspects who may be hiding in Zairean refugee camps, nor has there been any progress towards the formation of an international tribunal. The international community is beginning to show concern about the present human rights situation in Rwanda; the newly-appointed Coordinator for Human Rights Operations and his staff are tasked to investigate allegations of reprisals, disappearances and other extra-judicial incidents which may surface on a daily basis.

The Government is justifiably disillusioned and disappointed by what they perceive is an unbalanced approach to the human rights situation in Rwanda. The Government's position is that it is imperative that criminals be punished for their crimes. If criminals are allowed to go unpunished, and indeed, continue to participate in murder and banditry, it will most probably lead to extra-judicial reprisals against those suspected of crimes, against their family members and perhaps even against those of the same ethnic group. Thus, the lack of rapid and decisive action on the part of the international community regarding the punishment of the perpetrators of the massacres, in the opinion of the Government, has engendered and even encouraged extra-judicial reprisals in Rwanda.

4. Zaire and Tanzania:

The Government of Zaire, in a joint communique with the Rwandese Government and on several other occasions, has said the following: a) Zairean territory will not be used to destabilize Rwanda; and b) Zaire will facilitate the return of



Security Council

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ORIGINAL: ENGLISH

LETTER DATED 1 OCTOBER 1994 FROM THE SECRETARY-GENERAL
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

By its resolution 935 (1994) of 1 July 1994, the Security Council requested me to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse information submitted pursuant to that resolution, together with such further information as the Commission of Experts might obtain through its own investigations or the efforts of other persons or bodies, including the information made available by the Special Rapporteur of the Commission on Human Rights on Rwanda, with a view to providing me with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide.

On 26 and 29 July 1994, I informed the Security Council of the establishment of the Commission and its terms of reference and composition (S/1994/879 and S/1994/906). On that occasion, I expressed the hope that, in view of the urgency of the matter, the final report of the Commission would be submitted not later than 30 November 1994.

The Commission began its work on 15 August 1994 and, after a series of meetings in Geneva, conducted a field mission to Rwanda and some neighbouring countries from 29 August to 17 September 1994. Pursuant to a decision taken at its first session, the Commission has transmitted to me an interim report which covers its preliminary investigations and activities prior to 30 September 1994. The Commission has taken the period 6 April 1994 to 15 July 1994 as the temporal mandate for the purpose of its interim report.

The interim report provides an account of the evidence gathered by the Commission during its field visit to Rwanda or provided by various Governments, intergovernmental institutions and non-governmental organizations. It also contains conclusions and recommendations and describes a plan of work for the remainder of its activities.

I wish to draw your attention to the conclusions reached at this stage by the Commission, namely that, in the period under consideration:

(a) Individuals from both sides to the armed conflict have perpetrated serious breaches of international humanitarian law, in particular of obligations set forth in article 3 common to the four Geneva Conventions of 12 August 1949

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Annex

Preliminary report of the Independent Commission of Experts established
in accordance with Security Council resolution 935 (1994)

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION	1 - 18	5
A. Mandate	1 - 9	5
B. Composition	10	6
C. Meetings	11 - 13	6
D. Missions carried out in Rwanda and in neighbouring countries	14 - 15	7
E. References made to the Commission of Experts by other United Nations bodies	16 - 18	7
II. SOURCES OF INFORMATION AND ANALYSIS OF INFORMATION RECEIVED BY THE COMMISSION OF EXPERTS	19 - 40	8
A. Information received from States	20 - 24	8
B. Information provided by organs within the United Nations system	25 - 30	8
C. Information provided by other intergovernmental bodies	31	10
D. Information provided by non-governmental organizations	32 - 36	10
E. Information provided by both sides to the armed conflict	37 - 38	11
F. Information provided by private individuals	39 - 40	11
III. OVERVIEW OF THE FACTS	41 - 83	12
A. Background	41 - 43	12
B. Concerted, planned, systematic and methodical nature of the criminal acts	44 - 78	12

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I. INTRODUCTION

A. Mandate

1. On 1 July 1994, the Security Council adopted resolution 935 (1994) requesting the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse information submitted pursuant to that resolution, with a view to providing the Secretary-General with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide.
2. In pursuance of paragraph 3 of the above-mentioned resolution, the Secretary-General submitted, on 26 July 1994, a report to the Security Council (S/1994/879). In that report, the Secretary-General stated that the Council had condemned all breaches of international humanitarian law in Rwanda, particularly those perpetrated against the civilian population during the armed conflict and had recalled that persons who instigated or participated in such acts were individually responsible. The Council had affirmed that the killing of members of an ethnic group with the intention of destroying the group as such, in whole or in part, constituted a crime under international law.
3. Based on the terms of reference set out in Security Council resolution 935 (1994), the Secretary-General requested the Commission of Experts to review and update information available from all sources; to carry out its own investigations in Rwanda; to draw its own conclusions concerning evidence of specific violations of international humanitarian law and in particular acts of genocide; and to determine whether and to what extent certain individuals might be held responsible for having committed those violations.
4. In view of the above, the Commission was requested to examine the question of jurisdiction, whether international or municipal, before which such persons could be brought to trial. The Commission of Experts decided that its temporal mandate should cover the period 6 April 1994 to 15 July 1994. a/
5. Furthermore, the report of the Secretary-General outlined the composition of the Commission of Experts and its operational modalities. In that regard, the Secretary-General took note, inter alia, of the similarities of the mandates entrusted by the Commission on Human Rights in its resolution S-3/1 of 25 May 1994 to the Special Rapporteur on Rwanda and the terms of references outlined by the Council in its resolution 935 (1994) vis-à-vis the Commission of Experts.
6. To avoid unnecessary overlapping and to ensure maximum cooperation between the two investigative bodies, the Secretary-General urged that the information submitted to him in pursuance of the above-mentioned resolutions should be made available to each body in the performance of their respective tasks.
7. For reasons of efficiency, practicality and economy, the Secretary-General decided that the Commission of Experts should be located at the United Nations Office at Geneva, where it could benefit from the resources of the Office of the

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D. Missions carried out in Rwanda and in neighbouring countries

14. From 29 August to 17 September 1994, the Commission of Experts conducted a field mission in Rwanda and its three neighbouring countries, Burundi, the United Republic of Tanzania and Zaire. The Commission met with the national authorities of those countries, United Nations officials, representatives of international and local non-governmental organizations, diplomatic representatives and other individuals in order to collect substantial information relating to grave violations of international humanitarian law and acts of genocide committed in Rwanda during the conflict.

15. During its stay in Rwanda, the Commission carried out a number of missions in the field and initiated several investigations. It also had the opportunity to hold a number of meetings with Rwandese refugees at Goma, Zaire, and at Dar-es-Salaam and to collect allegations of violations committed by the Rwandese Patriotic Front (RPF).

E. References made to the Commission of Experts
by other United Nations bodies

16. At its first session, the Commission took note of Security Council resolutions 918 (1994) and 925 (1994), and of the reports of the Secretary-General (S/1994/640 and S/1994/879), leading to the establishment of the Commission.

17. The Commission also took note of the resolution adopted by the Commission on Human Rights at its special session held in Geneva on 25 May 1994 (S-3/1) and of the reports of the Special Rapporteur of the Commission on Human Rights on Rwanda (E/CN.4/1995/7 and E/CN.4/1995/12) submitted pursuant to that resolution.

18. Furthermore, at its forty-sixth session, the Subcommission on Prevention of Discrimination and Protection of Minorities adopted resolution 1994/1 entitled "Situation in Rwanda", which called the attention of the Commission of Experts to the need to inquire, *inter alia*, into events leading to the present situation, including the attack on the plane carrying the Presidents of Burundi and Rwanda, the assassination of the Prime Minister and of Rwandese ministers and dignitaries, as well as of the 10 United Nations soldiers assigned to protect the Prime Minister; to identify the Rwandese and foreign individuals implicated in the traffic of arms or other illicit traffic; and to engage as a priority in the identification and finding of evidence leading to attribution of responsibility of proprietors, management and personnel of certain media institutions especially those of Radio des Mille Collines, which played a crucial role in the perpetration and spread of the atrocities through incitement.

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(a) To investigate at first hand the human rights situation in Rwanda and to receive relevant and credible information on the human rights situation there from Governments, individuals, intergovernmental and non-governmental organizations, including on root causes and responsibility for atrocities committed on a continuing basis;

(b) To gather and compile systematically information on possible violations of human rights and acts that may constitute breaches of international humanitarian law and crimes against humanity, including acts of genocide, in Rwanda and to make that information available to the Secretary-General.

26. The Special Rapporteur has submitted two reports so far. In his first report (E/CN.4/1995/7 of 28 June 1994), the Special Rapporteur indicated that large-scale massacres were organized and carried out by the Hutu militia interahamwe, associated with the Movement révolutionnaire national pour le développement, and by the impuzamugambi, associated with the Coalition pour la défense de la république.

27. The victims of the massacres were mostly either of Tutsi origin or were Hutus considered to be moderate. The report cited numerous heinous acts perpetrated against those groups, including the killing of moderate Hutus by extremist Hutus, acts of torture and other cruel, inhuman or degrading treatment, as well as the incitement of ethnically motivated hatred and violence. The report concluded that responsibility for the above rested with the aforementioned militias and the "transitional Government" of Rwanda. It recommended, inter alia, the establishment of an ad hoc international criminal tribunal or, alternatively, the extension of the jurisdiction of the International Criminal Tribunal for the former Yugoslavia. b/

28. In his second report (E/CN.4/1995/12 of 12 August 1994), the Special Rapporteur denounced in particular the activities of the Radio-Télévision Libre des Mille Collines and of the former Government that fled the country as being primarily responsible for the killing of Tutsis and moderate Hutus and also for the fear or refugees to return to Rwanda.

29. The Special Rapporteur has transmitted to the Commission a list of 55 persons he considers chiefly responsible for the massacres, persons against whom there is "sufficient evidence" regarding massive human rights violations, in particular those concerning genocide.

30. The Commission of Experts has also received information from UNHCR that contains extensive evidence of systematic killings and persecution, in some cases as recently as early September, of Hutu individuals by the RPF army. The victims were consistently reported to have been men, women and children. The vast majority of the killings did not appear to be associated with any suspicion that the victims were personally associated with the April 1994 massacres of Tutsis. Floating bodies, many bound at the hands and feet, indicating death by summary execution, were retrieved from the Kagera River at an average of five bodies per day during the last week of August and the first week of September. The Government of Rwanda has acknowledged that some 60 to 70 Hutus were killed by RPF army soldiers in various parts of the country, although it has described

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the former Rwandese regime who have been identified by name. In the complaint, the individuals named are specifically accused of having committed the following acts: (a) the crime of genocide; (b) grave violations of international humanitarian law; (c) crimes against humanity; and (d) torture and other cruel, inhuman or degrading treatment or punishment. Another piece of evidence on file constitutes a transcript of broadcasts made by Radio des Milles Collines concerning incitement to commit acts of genocide.

E. Information provided by both sides to the armed conflict

37. The Commission has received from both sides to the conflict thousands of pages of documents, letters, complaints and testimonies, both in writing and in other forms (audio and video recordings), indicating that serious violations of international human rights and humanitarian law have taken place. These documents vary in quality. From RPF and, consequently, from the Government that is currently in power in Kigali, the Commission received documents incriminating the former Government, as well as related entities and militias, in crimes against Tutsis. Some of these documents contain lists, which are not exhaustive, of principal suspects. In this context, the Commission received from RPF a list of Hutu persons accused of instigating the massacres and other crimes committed in Rwanda after 6 April 1994.

38. For their part, leaders of the former Government, now in exile, provided the Commission with documents enumerating (a) the names of several hundred persons massacred by the Inkotanyi troops of the RPF; (b) specific sites of some 15 mass graves where victims of massacres perpetrated by the RPF were buried; and (c) written testimony of a number of Hutus who had escaped from areas occupied by RPF during the armed conflict.

F. Information provided by private individuals

39. The Commission also took note of testimonies, reports, complaints and other documents provided by private individuals. They consist primarily of information provided by members of religious orders and foreign nationals who lived in Rwanda or had maintained relations with nationals of Rwanda and Rwandese refugees in Zaire.

40. Information has also been received from associations of Rwandese of each side, resident in other countries, but these show especially strong bias. Pro-Hutu groups argue that the international community should not consider Tutsis as the only victims of the Rwandese tragedy. They point in particular to certain serious violations such as the killing of prisoners, taking of hostages, destruction of property belonging to the Hutu extremists who have fled the country, torture and other cruel, inhuman or degrading treatment. Pro-Tutsi associations have insisted, for their part, on the premeditated and planned nature of the killings by Hutus.

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45. The Rwandese Government of President Juvénal Habyarimana, following colonial policy, had classified Rwandese by ethnic group. The ethnic identity of individuals in Rwanda is traditionally determined on a patrilineal basis, taking sole account of the father's ethnicity. While mixed marriage abound in Rwanda, one is considered a Tutsi in Rwanda where the father is Tutsi, regardless of the mother's ethnic background. In April 1994, the population of Rwanda consisted of approximately 84 per cent Hutu, 14 per cent Tutsi, and 2 per cent other.

46. Certain physical traits have commonly been attributed to the Tutsi population that are taken to distinguish them from Hutu. Tutsi are described as being taller than Hutu, with more aquiline noses, thinner ankles, longer fingers and longer gums.

47. In Rwanda, the ethnic designation of every individual is clearly indicated on his or her identity card. In the past, censuses have been taken that relate the name of each Rwandese to his or her ethnic identity. These lists were used during the killings that began on 7 April 1994.

48. Ample evidence of extensive preparation and planning months in advance of the actual violations indicates the concerted and premeditated character of the criminal acts in question.

49. In 1992, Leon Mugesera, an official in President Habyarimana's Movement révolutionnaire national pour le développement delivered a speech at a party conference at Gisenyi. In his speech, he explicitly called on Hutus to kill Tutsis and to dump their bodies in the rivers of Rwanda. The Commission of Experts has in its possession an audio cassette of this speech, which will likely prove to be of significant probative value to establish the presence of criminal intent to commit genocide when the perpetrators are brought to justice.

50. Racist hate propaganda was disseminated on a widespread basis as far back as 1993, especially by Radio-Télévision Libre des Mille Collines, a private radio station owned by members of President Habyarimana's party. These incitements branded Tutsi as well as certain Hutu opponents of the President as "enemies" and "traitors" who "deserved to die". The radio referred to all Tutsi as "the enemy" and accused them of siding with RPF. It called for all "enemies" to be "exterminated". Posters, leaflets and radio broadcasts on Radio des Mille Collines dehumanized Tutsis as "snakes", "cockroaches" and "animals". Individuals targeted in the radio broadcasts were among the first killed (along with their families) in April 1994.

51. Subsequently, a training camp for Hutu militia (interahamwe) was established at Mutara. The programmes there which lasted for three weeks each, involved indoctrination of groups of 300 men in ethnic hatred against the Tutsi minority. The programmes also propagated information on methods of mass murder. These trainees formed the militia of interahamwe meaning "those who attack together". They formed the core perpetrators of genocide. This militia was augmented by the impuzamugambi, which means "those who have a single aim", of the Hutu Coalition pour la défense de la République. The impuzamugambi militia were trained, armed and led by the Presidential Guard and other elements of the Rwandese government army.

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58. Within the next week, the Presidential Guard and militia had killed an estimated 20,000 people in Kigali and its immediate environs. The mass killings, fomented by Radio des Mille Collines broadcasts which encouraged listeners to "fill the half-empty graves", spread to areas outside Kigali.

59. Many documents from human rights non-governmental organizations have provided non-exhaustive lists of victims:

Human Rights Watch/Africa (Report of June 1994)

- 2,800 persons killed in a church in Kibungo;
- 6,000 Tutsis killed in a church in Cyahinde where they had taken refuge. Only 200 survived;
- 4,000 killed in a church in Kibeho;
- 2,000 killed in a parish in Mibirizi;
- 4,000 killed in Shangi parish;
- 500 killed in Rukara parish;
- Hundreds of sick patients and also medical staff in hospitals in Kigali and in Butare;
- 31 Tutsi orphans and 11 Red Cross volunteers who tried to protect them were killed at the orphanage at Butare;
- 88 students were killed at their school in Gikongoro.

Doctors without Borders (USA)

60. According to testimony on the events of 6 to 30 April 1994, Doctors without Borders provided the names of hundreds of persons murdered, prefecture by prefecture. The perpetrators of the crimes were Rwandan civilians and Hutu refugees from Burundi, RPF army soldiers and also Hutu militia.

Prefecture of Ngenda

- 3 persons were killed in a camp at Burengé (6 to 10 April);
- 5 persons working for Doctors without Borders were assassinated at Burengé, close to the office of the Belgian Red Cross, on 10 April 1994;
- On 7 and 12 April, 24 other persons disappeared from a camp.

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Testimony of clergy gathered by soldiers of Opération Turquoise

- 30 priests of the Nyundo Diocese were assassinated;
- Massacres and mass graves (pits) at Birambo, on the order of the mayor (bourgmestre) of Bwakira, and of the Sub-prefect of Birambo.

Other testimony from general sources

61. On 11 April, more than 800 Tutsi gathered at Kiziguro Roman Catholic Church, Murambi district, Byumba prefecture. Rwandese soldiers and militia attacked and killed all but 10 of them. Those survivors threw themselves into the mass grave to avoid being hacked to death.
62. Nine Tutsi patients at the Kigali hospital were killed in separate attacks on 11 and 15 April by Rwandese government soldiers.
63. It was reported that 500 Tutsi were killed by interahamwe militia and gendarmes at Rukara Roman Catholic mission in Kibungo prefecture, Rukara district.
64. On 15 April and thereafter, Rwandese army troops distributed automatic and semi-automatic rifles and pistols to interahamwe militia, with which they continued the mass slaughter of Tutsis that had begun with machetes and other weapons.
65. On 17 April more than 100 Tutsi were killed by soldiers and militia at Nyanza. On 18 April, 2,000 Tutsi were massacred by interahamwe militia in the Mibirizi Roman Catholic church, Cyangugu prefecture, Cyimbogo district.
66. On 19 April, the President of the provisional Rwandese government, Theodore Sindikubwabo, spoke on the radio and called for the killing of "accomplices" in Butare. The Presidential Guard flew in that night and dug pits, filled them with burning tires, and pushed Tutsi into them. They also executed Tutsi near the National University for the next three days, killing thousands.
67. Over 2,800 people, most of them Tutsi, were killed at Mukarange Roman Catholic parish, Kibungo prefecture, Rwamagana district. Interahamwe militia used grenades, machine-guns, R4 rockets and machetes in this massacre.
68. In Gikongoro, 88 students were singled out because of their Tutsi origin and slaughtered at their school.
69. On 23 April, Government troops and militia murdered 170 Tutsi patients and staff at Butare hospital. Doctors of Médecins sans frontières witnessed these acts.
70. On 29 April, military and militia killed over 300 of 5,000 hostages held in the Cyangugu stadium.

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Inkotanyi (regulars of the RPF forces) in Byumba prefecture. In the commune of Bwisige, it is alleged that the following massacres were perpetrated: 30 Hutus killed in Bwisiga sector; 49 in Nyarurama sector; 52 in Kabongoya sector; 52 in Buhanga sector; 22 in Gihuke sector; 26 in Muti sector and 25 in Karehe sector. The former Government has alleged that, in Kigali prefecture, RPF elements massacred 102 Hutus in the communes of Rutongo, Shorgi, Mutwa and Rwerere from April to June 1994.

82. The Commission of Experts has concluded that there exist substantial grounds to conclude that mass assassinations, summary executions, breaches of international humanitarian law and crimes against humanity were also perpetrated by Tutsi elements against Hutu individuals and that allegations concerning these acts should be investigated further. To this point, the Commission has not uncovered any evidence to indicate that Tutsi elements perpetrated acts committed with intent to destroy the Hutu ethnic group as such within the meaning of the Genocide Convention of 1948.

83. As it was finalizing the present document, the Commission of Experts received reports of violations of the right to life in Rwanda perpetrated in the period from August to early September 1994. The Secretary-General has asked the Commission to investigate these reports. The Commission will undertake to investigate the reports within the terms of its mandate and to submit its report to the Secretary-General in accordance with his request.

IV. ISSUES OF LAW CONCERNING INDIVIDUAL RESPONSIBILITY IN INTERNATIONAL LAW

A. Applicability of international law to the situation in Rwanda

84. The applicability of international legal norms to the situation in Rwanda in the period 6 April to 15 July 1994 depends upon (a) the legal status of the conflict (determined by the factual situation in Rwanda and the legal norms in force); (b) the scope ratione materiae of specific norms of international human rights law and international humanitarian law (determined by their content); and (c) the legal status of these norms (determined by their sources of law).

85. With these indices in mind, it is clear that international legal norms providing for individual responsibility for serious human rights violations have been breached in Rwanda during the period 6 April to 15 July. d/ Specifically, certain individuals are responsible for breaches of (a) norms of international humanitarian law on a systematic, widespread and flagrant basis; (b) norms prohibiting crimes against humanity; and (c) norms prohibiting acts of genocide.

86. The relevant norms of international law providing for individual responsibility overlap to a certain extent. Consequently, in some instances a single act may qualify as a crime on more than one separate and distinct legal ground.

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95. Common article 3 to the Geneva Conventions of 12 August 1949 prohibits "at any time and in any place whatsoever":

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment; and

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

against "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause".

96. Article 3 (2) provides that "the wounded and sick shall be collected and cared for".

97. Article 4 of Protocol II, which supplements article 3 common to the four Geneva Conventions, prohibits the following acts against "all persons who do not take a direct part or who have ceased to take part in hostilities":

(a) Violence to the life and person, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation, cruel treatment or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Slavery and the slave trade in all their forms;

(g) Pillage;

(h) Threats to commit any of the foregoing acts.

98. Article 4 of Protocol II provides that children shall be provided with the care and aid they require and that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities".

/...

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

105. Article 14 guarantees protection of objects indispensable to the survival of the civilian population. Article 16 provides for protection of cultural objects and places of worship.

106. Article 17 provides that:

"The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition."

107. The Commission of Experts has determined that common article 3 of the Geneva Conventions of 1949 and the provisions cited above of Protocol II additional to the Geneva Conventions of 1949 were violated in Rwanda during the period 6 April to 15 July 1994 on a systematic, widespread and flagrant basis.

C. Crimes against humanity

108. To understand whether and to what extent norms prohibiting crimes against humanity apply to the armed conflict in Rwanda it is necessary to consider the content and legal status of "crimes against humanity" as a norm of international law.

109. "Crimes against humanity" as a legal category is not as clear in content or legal status as "genocide" or breaches of the Geneva Conventions or Protocols additional thereto. A certain level of ambiguity in the content and legal status of "crimes against humanity" derives partly from its formulation in the Nuremberg Charter and partly from the way it was interpreted by the Nuremberg Tribunal.

110. "Crimes against humanity" were cast in article 6 (c) of the Nuremberg Charter as:

"murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the [Second World] war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the [Nuremberg] Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

/...

116. Secondly, the content and legal status of the norm since Nuremberg has been broadened and expanded through certain international human rights instruments adopted by the United Nations since 1945. In particular, the Genocide Convention of 1948 affirms the legal validity of some of the normative content of "crimes against humanity" as conceived in article 6 (c) of the Nuremberg Charter, but does not overtake it. The International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the United Nations General Assembly on 30 November 1973 refers in article 1 to apartheid as a "crime against humanity".

117. Thirdly, the Commission of Experts on the former Yugoslavia, established by the Security Council in its resolution 780 (1992) has stated that it considered crimes against humanity to be:

"gross violations of fundamental rules of humanitarian and human rights law committed by persons demonstrably linked to a party to the conflict, as part of an official policy based on discrimination against an identifiable group of persons, irrespective of war and the nationality of the victim." p/

This view finds support in the writings of publicists. o/

118. The Commission of Experts on Rwanda considers that "crimes against humanity" are gross violations of fundamental rules of humanitarian and human rights law committed by persons demonstrably linked to a party to the conflict, as part of an official policy based on discrimination against an identifiable group of persons, irrespective of war and the nationality of the victim, and includes acts such as the following:

- Murder and extermination;
- Enslavement;
- Deportation and population transfer;
- Persecution;
- Mutilation;
- Cruel treatment;
- Humiliating and degrading treatment;
- Torture;
- Unlawful human experimentation;
- Apartheid.

The Commission has determined that there exists ample grounds to conclude that "crimes against humanity" were committed in Rwanda between the period 6 April and 15 July 1994.

/...

- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide."

123. Article IV provides that "persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

124. The Commission of experts has determined that there are ample grounds to conclude that every provision laid out in article III of the Genocide Convention has been violated in Rwanda in the period 6 April to 15 July 1994 in respect of a specific ethnic group as such.

V. ATTRIBUTION (IMPUTABILITY)

A. Individual responsibility in international law

125. The attribution of responsibility to the individual in propria personam is not entirely new. Indeed, military trials of individuals for having committed war crimes date back at least to 1419, as Keen documents in his work The Laws of War in the Middle Ages. g/ There is also the international trial of Peter von Hagenbach, which took place in 1474 for acts that today are considered crimes against humanity. International legal norms stipulating individual responsibility for slave-trading and slave-trafficking and for piracy arose out of the Congress of Vienna in 1815. Today these norms are considered part of customary international law and probably of ius cogens. r/

126. It is true that international responsibility is predominantly, even almost exclusively, centred around States rather than other entities. This should not be surprising since it is the State that is the primary subject of international law. Prior to the Nuremberg Trials following the end of the Second World War, even war crimes and crimes against humanity involved responsibility primarily of the State rather than of the individual.

127. However, the Nuremberg Trials established clearly the principle that any individual, regardless of office or rank, shall be held responsible in international law for war crimes, crimes against peace or crimes against humanity. It symbolized the possibility that trials could actually be carried out and punishment enforced in modern times.

128. The principle that the individual shall be held responsible for serious violations of human rights - firmly enforced by the Nuremberg Tribunal and today universally recognized by the international community - is the same principle that guides the operation of the International Criminal Tribunal for the former Yugoslavia and of the present Commission of Experts on Rwanda acting in conformity with United Nations Security Council resolution 935 (1994).

/...

international prosecution could be perceived in some cases to be too far removed from the actual community it serves.

135. However, one should not confuse the jurisdiction of the tribunal competent with trying individual suspects with the site where the trial is held. No inconsistency would in any way exist between having cases brought under the jurisdiction of an international criminal tribunal and between having the trials conducted by that tribunal in the territory of Rwanda if that were deemed suitable.

136. There are some obvious disadvantages to the municipal prosecution and trial of individuals in cases where the crimes alleged concern extremely severe violations, such as those determined to have taken place in Rwanda between 6 April and 15 July 1994. Municipal prosecution in these highly emotionally and politically charged cases can sometimes turn into simple retribution without respect for fair trial guarantees. Even where such trials are conducted with scrupulous regard for the rights of the accused, there is a great likelihood that a conviction will not be perceived to have been fairly reached.

137. Therefore, for the purposes of independence, objectivity and impartiality, there are advantages in having trials conducted by an international criminal tribunal in a place such as The Hague for the very reason that there would be a certain measure of distance from the venue of the trial and the places where severe atrocities have been perpetrated.

138. Moreover, the gravity of human rights violations committed in Rwanda from 6 April to 15 July 1994 extends far beyond Rwanda. As a matter of international peace and security, they concern the international community as a whole. It is not only a matter of ensuring justice in respect of atrocities that have already been perpetrated, but also a matter of deterrence for the future. The coherent development of international criminal law better to deter such crimes from being perpetrated in future not only in Rwanda but anywhere, would best be fostered by international prosecution rather than by domestic courts. An international tribunal can more effectively take account of the relevant international legal norms in their specificity because that forms its special field of competence. Domestic courts are not likely to be as familiar with the technique and substance of international law.

139. It would seem that if criminal cases concerning Rwanda could perhaps be brought under the competence of the International Criminal Tribunal for the former Yugoslavia (created pursuant to Security Council resolutions 808 (1993) and 827 (1993)), this could greatly advance the cause of international criminal justice.

140. The alternative of creating an ad hoc tribunal along side the already existing international criminal tribunal in The Hague would not only be less efficient from an administrative point of view of staffing and use of physical resources, but would be more likely to lead to less consistency in the legal interpretation and application of international criminal law.

141. For these reasons, the Commission of Experts recommends that trials of individuals suspected of serious breaches of international humanitarian law,

/...

~~to destroy the main ethnic group as such during the said period, within the meaning of the Genocide Convention of 1948.~~

149. The Commission considers that to enhance the fair and consistent interpretation, application and adjudication of international law on individual responsibility for serious human rights violations and to effect the most efficient allocation of resources, the jurisdiction of the International Criminal Tribunal for the former Yugoslavia should be expanded to permit cases concerning the situation in Rwanda to be brought under it.

B. Recommendations

150. The Commission of Experts strongly recommends that the Security Council take all necessary and effective action to ensure that the individuals responsible for the serious violations of human rights in Rwanda during the armed conflict triggered on 6 April 1994 are brought to justice before an independent and impartial international criminal tribunal.

151. The Commission of Experts recommends that the Security Council take all measures to ensure that individuals shall be accorded a fair trial on the facts and law according to international standards of law and justice.

152. The Commission of Experts recommends that the Security Council amend the Statute of the International Criminal Tribunal for the former Yugoslavia to ensure that its jurisdiction covers crimes under international law committed during the armed conflict in Rwanda that began on 6 April 1994.

153. The Commission of Experts wishes to express its gratitude to Mr. José Ayala Lasso, the United Nations High Commissioner for Human Rights, and to Mr. Ibrahima Fall, Assistant Secretary-General for Human Rights, for their coordinated efforts and support to the Commission.

154. The Commission of Experts will submit its final report to the Secretary-General by 30 November 1994.

Notes

a/ The Commission of Experts wishes to make clear that the choice of its own mandate covering the period 6 April to 15 July 1994 is not meant to imply that jurisdiction ratione temporis of a tribunal, if formed to try and punish individuals responsible for crimes under international law in Rwanda, should be in any way limited to this period. The Commission considers that 6 April 1994 was clearly the date that the pertinent armed conflict was triggered. However, the Commission chooses to consider 15 July 1994 as a convenient end-point delimiting its temporal mandate over the situation in Rwanda, for the purpose of making its preliminary report. The Commission of Experts reserves the right to extend, contract or in any other way modify its temporal mandate in conformity with Security Council resolution 935 (1994).

/...

o/ See, for example, Reshetov, "Development of Norms of International Law on Crimes against Humanity" in The Nuremberg Trial and International Law, Ginsburgs and Kudriavtsev (eds.) 1990, p. 199. See also, Bassiouni, Crimes against Humanity in International Criminal Law, 1992, chap. 11.

p/ Article 53 of the Vienna Convention on the Law of Treaties, 1969 provides that a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

q/ Keen, The Laws of War in the Middle Ages, 1965.

r/ See Sunga, Individual Responsibility in International Law for Serious Human Rights Violations, 1992, and, generally, Bassiouni, International Criminal Law, 1986.

s/ See General Assembly resolution 95 (I) of 11 December 1946.

t/ See report of the International Law Commission on the work of its forty-third session (A/46/10).

u/ Article 8 of the Nuremberg Charter provides that "The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determine that justice so requires".

HUMAN RIGHTS WATCH/AFRICA

Formerly Africa Watch

□ 485 Fifth Avenue, New York, NY 10017-6104 TEL (212) 972-8400 FAX (212) 972-0905 E-mail: hrwatchnyc@igc.apc.org
□ 1522 K Street, NW, #910, Washington, DC 20005-1202 TEL (202) 371-6592 FAX (202) 371-0124 E-mail: hrwatchdc@igc.apc.org
□ 33 Islington High Street, N1 9LH London, UK TEL (4471) 713-1995 FAX (4471) 713-1800 E-mail: hrwatchuk@gn.apc.org
□ 15 rue Van Campenhout, 1040 Brussels, Belgium TEL (322) 732-2009 FAX (322) 732-0471

ABDULLAHI AN-NA'IM

Executive Director

IANET FLEISCHMAN

Washington Representative

BRONWEN MANBY

KAREN SORENSEN

ALEX VINES

BERHANE WOLDEGABRIEL

Research Associates

ALISON L. DESFORGES

Consultant

September 15, 1994

THE AFTERMATH OF GENOCIDE IN RWANDA

Absence of Prosecution, Continued Killings

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Devastated by a genocide that cost the lives of at least half a million Tutsi, Rwanda continues to suffer from the aftermath of these catastrophic killings. According to Human Rights Watch/Africa, whose representative just completed a ten day mission to Rwanda:

-The present government lacks the resources to even begin prosecuting the thousands accused of massacres.

-The international community, despite its infinitely greater resources, has done little to gather the evidence necessary for judicial proceedings.

-With the prospect of actual trials still distant, persons accused, rightly or wrongly, of participation in the massacres are being killed or are disappearing from their communities, frequently at the hands of government soldiers. A small number of those taken by soldiers have been handed over to civilian authorities for trial but many are presumed dead.

-The government has denounced killings for vengeance, but has not acted effectively to stop them.

-Soldiers of the Rwandan Patriot Front also killed numerous civilians during the war against the then government of Rwanda, thus violating the Geneva conventions. Sixty-four soldiers are now under arrest, but not all are charged with killing civilians.

THE INTERNATIONAL TRIBUNAL

The international community, shamefully absent during the genocide itself, has insisted that the guilty must be brought to justice. To this end, the United Nations Security Council established a Commission of Experts to examine the case and advise on the desirability of further proceedings through an international tribunal. The Commission visited Rwanda in early September, but does not plan to issue its interim report before the end of the month. The establishment of an international tribunal, with the necessary prosecutorial staff, would take place some time after that date with actual trials still further in the future. Human Rights Watch/ Africa strongly supports expanding the

**HUMAN
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KENNETH ROTH, Executive Director · CYNTHIA BROWN, Program Director · HOLLY I. BURKHALTER, Advocacy Director
GARA LAMARCHE, Associate Director · JUAN E. MÉNDEZ, General Counsel · SUSAN OSNOS, Communications Director
ROBERT L. BERNSTEIN, Chair · ADRIAN W. DEWIND, Vice Chair

Human Rights Watch is a not-for-profit corporation monitoring and promoting human rights in Africa, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords.

Approximately fifteen hundred persons accused of killings are now housed in the central prison of Kigali, but the single prosecutor, with a staff of five, can hardly begin to examine their cases. The ministry of Justice has no funds to provide food and supplies for the prisoners and has had to arrange for the World Food Program to feed them. At the time of a visit to the prison by Human Rights Watch, the supply of beans had been exhausted and only corn meal was available to feed the prisoners. Hundreds of other accused persons are still in military camps awaiting transfer to prison. The ministry hopes to open the prison at Gitarama, but is unsure that it will have the resources to do so.

Civilian administration has been established in about one half of the country, with most lower level local officials (conseillers, responsables) elected by the population and burgomasters appointed by the local military commander. Even in communities with civilian administration, the army continues to be responsible for keeping order. A civilian police force has not yet been established.

KILLINGS, ARRESTS AND DISAPPEARANCES OF THE ACCUSED

In the absence of any effective movement toward orderly prosecutions by either national or international authorities, soldiers of the Rwandan Patriotic Front and victims of the genocide have been killing, arresting and causing to disappear persons who are accused, rightly or wrongly, of having participated in the massacres. In communities in the northwest, throughout the center and in the south and east of the country, Human Rights Watch collected testimony about these killings and disappearances. The earliest testimonies date from the first arrival of the RPF in the region and the most recent took place on September 2, the final day when information was gathered.

Among the more dramatic cases were the following:

-At Kivumu parish, north of Gitarama, the priests were evacuated when RPF soldiers arrived to make camp on the grounds. When the priests returned at the end of July, they found a considerable number of bodies. Apparently the victims, whose arms had been bound, had been assembled for interrogation by the soldiers and had been beaten to death. The priests organized the burial of the bodies in three large mass graves which were located and photographed by Human Rights Watch/Africa.

-On July 13, in the southern town of Butare, RPF soldiers gathered several hundred displaced persons from Ntyazo, Ngeda, and Vumbi communes and told them they were going to be transported either to the stadium in Butare or back to their own homes. Instead they were confined at the Groupe Scolaire, a complex of buildings in the town. Women were separated from the men, who were interrogated. Some of the women were eventually released, but most or all of the men have not been heard from since. The men were detained in the veterinary school, which has since been guarded by soldiers. Journalists and the representative of the

from since.

-An estimated 20 persons have disappeared from Munyuzwe parish in the commune of Masango. They include Wisengimana of Kirwa and the trader Sylvan Bakondakwita and his son Laurent. The latter may have been accused by commercial rivals.

-After the RPF established their camp at Kabgayi, the large Catholic bishopric in central Rwanda, six bodies of persons who had been bound were found in the adjacent woods.

-Damien, who worked at the Nursing School at Kabgayi, was reportedly killed by the RPF at his home at Mpanda, in the commune of Mukingi.

-Chantal, a woman married to a man from Burundi, her children and visitors at her home were killed in the Gahogo sector of the commune of Nyamabuye in late July or early August.

Other disappearances have been recorded in the communes of Ruhengeri town, Taba, Kigoma, and Runyinya, and in several communes of Kibungo prefecture. In the most recent case recorded, a man was taken by soldiers from the road in front of the Groupe Scolaire in Butare just after noon on Friday, September 2. In the absence of any official notification to relatives that persons taken away have in fact been arrested, their families assume them to be dead. In such cases, Human Rights Watch/Africa counts them as victims who have disappeared.

In some cases of killings or disappearances, the RPF appears to have targeted lineages of smaller family groups, such as the Abakomba lineage in the region of Butare.

According to Justice Minister Nkubito, some of the persons listed as disappeared are currently in prison or are still being detained in military camps. Since there is as yet no reliable list of the prisoners and detained persons, it is impossible to know how many of those who have been taken away by soldiers are still alive and in the hands of the authorities. It is the responsibility of the public authorities to prepare immediately a listing of all those detained and to make the list public.

THE RPF KILLING OF CIVILIANS DURING THE WAR

Refugees who fled the advance of RPF troops south and west through Rwanda often recounted that soldiers killed large number of civilians when they entered their communities. Some of these accounts were clearly rumor or deliberate propaganda spread by the former Rwandan government. Other accounts have subsequently been substantiated. Refugees reported, for example, that civilians were gathered in a mosque in the region of Bugesera and were then executed by grenade. Soldiers now attempt to keep outsiders from approaching the mosque, but one visitor was able to note damage to the building that appeared to result from grenade attack.

insist that they are doing their best to halt these reprisals. On August 25, General Kagame and Prime Minister Twagiramungu made speeches in Ruhengeri admonishing the population not to appeal to soldiers to kill or otherwise abuse people whom they presume to be guilty. Authorities assert that enormous pressure for reprisals will continue so long as no orderly proceedings exist to deal with accusations against presumed killers. In a speech to representatives of the European Economic Community, President Pasteur Bizimungu appealed to other nations to send judges, magistrates and investigators to help speed these proceedings.

Given the tight discipline which apparently exists within the Rwandan Patriotic Army, Human Rights Watch/Africa would expect any strict order to halt reprisals to be immediately executed. In fact, it was able to document only two cases of attempts to control abuses. In the case described above that took place in Ntwale cell, Cumbi sector, Kayenzi commune, one soldier apparently told the others that party membership in the MRND, the party of former President Habyarimana that was involved in the genocide, was not sufficient grounds for arresting someone. He wanted to search the house of the accused person to see if there was any evidence to substantiate the charges against him. The other soldiers apparently overruled him and the suspect was taken away. In a second case that happened in mid-August, a man named Athanasi of the commune Musango was arrested near the Butare airport, tied up and beaten by soldiers. A Major Karenzi intervened and had the man freed. The Major apparently refused Athanasi's request that the soldiers involved be punished and told Athanasi that in case of any future problems, he should tell soldiers that Major Karenzi was aware of his case.

According to authorities, sixty-four soldiers are under arrest, some of them charged with the killing of civilians. This number, originally reported nearly a month ago, has not increased since, although more killings are being reported everyday. Human Rights Watch/Africa was told that those facing the most serious charges were detained at Kibungo prison. The Human Rights Watch/Africa representative was permitted to visit the prison to interview the detained soldiers. None was an officer. One said he was arrested after he had killed a member of the Interahamwe militia who had just thrown a grenade at him. Another recounted a similar story.

In an interview the next day, General Kagame told Human Rights Watch/Africa that a Major Sam Bigabiro was under arrest for having killed civilians. He indicated that he thought Major Bigabiro may have been in command at Mukingi commune where a large number of civilians had been killed. His staff said that Major Bigabiro was detained at Kibungo prison but they could not explain why he had not been present the previous day when other soldiers had been made available for interview by Human Rights Watch/Africa.

Military authorities have also said that two soldiers have been tried in courts martial and subsequently executed. Details of their crimes and the kinds of proceedings involved have not been made public.

THE NEED FOR MONITORS

The United Nations Human Rights Commission recommended that a number of monitors be sent to keep track of the human rights situation in Rwanda. Rwandan authorities agreed to their presence in the country. The representative of the Special Rapporteur, who was to coordinate the establishment of the monitoring network, has encountered as much difficulty in implementing this system as she has in trying to obtain resources for investigating the genocide. She was promised twenty monitors by the end of August but in fact received only four. Once guaranteed 150, enough to place one in every commune, she may have to make do with fewer than a dozen. As with other aspects of the international effort in Rwanda, much of the difficulty seems to stem from trivial bureaucratic conflicts.

Given the slow and inadequate response of the United Nations to the pressing need for monitoring the situation, a number of international human rights nongovernmental organizations are exploring the possibility of creating a monitoring network in collaboration with local associations.

RWANDAN HUMAN RIGHTS ASSOCIATION

The various Rwandan human rights groups have suffered serious losses as a result of the killings of the Tutsi and members of the political opposition. They have begun courageously to rebuild themselves and have organized a group of teams who have begun assembling documentation on the genocide.

CONCLUSIONS

The lack of progress toward orderly prosecution of those accused of genocide has left the way open to demands for and execution of reprisal killings. In the absence of a police, the maintenance of order remains in the hands of the army, a situation which creates widespread fear, particularly out on the hills. The practice of keeping prisoners in military camps, with no adequate system for reporting their whereabouts, contributes to the widespread conviction that all those taken by the military have been killed. This is not always the case, but substantial numbers -- at least hundreds -- of persons taken by soldiers have been killed, as is demonstrated by the mass graves at Kivumu parish, which served briefly as a military camp.

In addition, Human Rights Watch/Africa documented one case where hundreds of civilians were killed in the course of the RPF advance into the region south of Gitarama.

The government has denounced killings for vengeance, but has not punished the soldiers responsible for them quickly and consistently enough to bring an end to the practice.

To the international community:

Those governments that have persons apparently guilty of genocide residing within their borders must extradite them to Rwanda for trial, bring them promptly to trial themselves or deliver them to an appropriate authority for trial before an international tribunal, if one is created;

Those governments whose legal systems are like that of Rwanda should offer to provide jurists and investigators, either by seconding them from present government service or by aiding in their recruitment through other channels. All governments should assist the investigations needed to bring the guilty to trial for genocide, either through financial support or by providing needed personnel;

All governments should insist upon immediate establishment of an international tribunal, preferably by expanding the existing International Tribunal for War Crimes in the Former Yugoslavia through the addition of another chamber and prosecutor;

Through the Security Council, the international community should request all countries to cooperate with Rwandan authorities and with the International Tribunal in bringing those guilty of genocide to justice, specifically by arresting suspects wherever found, as long as probable cause of their guilt is established and as long as the suspects are afforded the means in the domestic legal system to challenge their arrest.

Human Rights Watch/Africa (formerly Africa Watch)

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director, Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in sub-Saharan Africa. Abdullahi An-Na'im is the executive director; Janet Fleischman is the Washington representative; Karen Sorensen, Alex Vines and Berhane Woldegabriel are research associates; Kimberly Mazyck and Urmi Shah are associates; Bronwen Manby and Alison DesForges are consultants. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.



INTER OFFICE MEMORANDUM

Letter to SRS

To: See Distribution

1000.7(DFC)/A/4

From: MA TO DFC/COS *MA TO DFC/COS*

Date: 05 September, 1994

Subject: MEETING ON SAFE RETURN OF REFUGEES

Reference:

A. DCOS OPS MEMO 9850-1 dated 3 Sep 94.

1. A meeting to be chaired by the DFC/COS and attended by action addressees will be held on Wed 07 Sep 94 at the Conference Hall at 1000 hrs to discuss issues raised in para 3 of ref A attached.

2. All are to be seated by 0950 hrs.

3. Please find attached copy of ref A for your perusal.

Enclosure:

1. MEMO 9850-1 dated 3 Sep 94.

Distribution:

Action:

DCOS OPS
DCOS SP
HAC
UNREO
REP SRS OFFICE

Info:

MA TO FC

*1500
for your attention
08/09/94*

MEMORANDUM

9850-1

3 Sept 94

FC (thru DFC/COS)

REFUGEE RETURN

Ref: Rwanda Presidential letter dated 1 Sep 94 (attached)

1. The majority of concerns and issues in the letter at ref are outside of UNAMIR force's control or influence. Security of Tanzanian and Zairean refugee camps, the repatriation of refugees and the human rights issues are clearly outside UNAMIR's mandate for its military force. Those issues should be addressed by UNREO, UNHCR and other NGO's.

2. With respect to the establishment of safe corridors for the return of refugees, it should be noted that there is an NGO/humanitarian aspect as well as a military force/security aspect associated. In so much that it is my assessment that the current deployment, tasks and situation precludes the military force from assuming any additional tasks without receiving additional troop reinforcement beyond those currently authorized/planned.

3. Prior to considering the creation of safe corridors, UNAMIR should confirm the required information and determine feasibility of the following:

- What is the
the answer?*
- a. routes and location where corridors are required (ie: in all sectors or just in Sector 4);
 - b. whether refugee flow warrants this extraordinary measure;
 - c. final destination of refugees (to avoid "Kigali DP" situation from worsening);
 - d. assistance avail from IOM, UNHCR and other NGO's to screen/move refugees/DP's and establish "way stations"; and
 - e. establishment of collection pts at border and the provision of tpt, secur, escort is sufficient to HDGNU and achievable/practical for UNAMIR and NGO's.

4. Suggest a meeting chaired by DFC/COS with DCOS OPS, DCOS SP, HAC, UNREO and SRSG rep be convened to resolve some of the issues in para 3 to determine feasibility and way ahead.

5. Furthermore, the attached letter should be referred to UNDP/UNREO in order to address the non-military issues.



J. Arp
Col
DCOS OPS

Attachement: 1