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## **RWANDA**

### **THE CRISIS CONTINUES**

#### **INTRODUCTION**

One year after the genocide began in Rwanda, the crisis continues. Despite calls for justice inside and outside the country, no criminal trials, national or international, have taken place. The Rwandan government is now arresting some 1,500 persons a week, producing life-threatening overcrowding and appalling treatment in the prisons and fostering insecurity among the population at large. Assassinations and attempted assassinations, random violence, and the confiscation of property all heighten this insecurity as do incursions by armed groups loyal to the former government from Zaire and Tanzania. Because of the insecurity, more than two hundred thousand people huddle in displaced persons camps, reluctant to go home. The government plans to close the camps shortly.

The international community has failed to enforce the arms embargo decreed by the U.N. and plane-loads of weapons and ammunition have arrived in Zaire to augment the supplies and fortify the morale of the authorities of the former government that are guilty of the genocide. Their troops, together with some from Hutu militia in Burundi, train in preparation for new attacks. Meanwhile, food supplies dwindle for the nearly two million Rwandans in refugee camps. Even if food stocks are replenished, water and fuel for cooking will be exhausted within six months in Tanzania, not long after that in parts of Zaire, and these supplies cannot be renewed. In neighboring Burundi, Hutu and Tutsi extremists push ever closer to full-scale war, which would set off large-scale population movements, including across the border of Rwanda, and thus further increase demands on the national government and the international community.

One year to the day after the start of the killing, the Rwandan government brought the first people accused of genocide to court, but their cases were adjourned the same day to permit further investigation. Hampered by lack of resources—both human and material—as well as by reluctance to confront the political ramifications of the trials, the government has taken months to present the first defendants to the courts. The judiciary is struggling to establish its independence in a country where such autonomy has never existed before. Meanwhile promises of international aid to the judicial system have, for the most part, remained unfulfilled, allowing international inertia to be taken as a model and a cover for Rwandan government inaction.

Other national court systems with Rwandan fugitives within their jurisdictions have done little better-and with far less reason for delay. The Belgians and the Swiss appear furthest along in investigations, while the French have so far refused to deal with complaints of genocide. The Canadians chose to pursue the easier course of charging a major Rwandan figure with violating immigration law rather than prosecuting him for genocide. The South Africans have granted political asylum to a Rwandan embassy employee who was involved in buying arms for the former government. Tanzania has jailed a number of leaders in the refugee camps for incitement to riot and other crimes, but hesitates to accuse them of participating in the slaughter in Rwanda. Kenya, Cameroon, the Central African Republic, and particularly Zaire have permitted authorities presumably guilty of genocide to settle within their boundaries without acting against them. On February 27, the Security Council "urged" rather than required states to arrest and detain such persons pending prosecution by the International Tribunal.

The International Tribunal, mandated on November 8, 1994, to examine cases of genocide and crimes against humanity in Rwanda, is still months away from its first indictments. Financial and bureaucratic obstacles have made it impossible to recruit adequate staff. Only five professionals are now assisting the prosecutor in examining the systematic slaughter that took between one half million and one million lives.

In the face of this continuing crisis, the U.N. peace-keeping force (UNAMIR) is now deployed at full-strength, but the U.N. human rights field operation is still short of staff. So starved of funds that it nearly folded in December, the human rights field office once again faces shortfalls that may require it to curtail the monitoring that contributes to security in some areas.

## **RECOMMENDATIONS**

To the government of Rwanda:

1. End overcrowding in the prisons immediately by transferring prisoners to other suitable facilities, by building new detention sites, and by repairing existing prisons in order to accommodate the prison population with due regard to international standards.
2. Prosecute promptly those officers and soldiers responsible for the deaths by suffocation of the detainees held at Muhima brigade. Order and enforce an end to all torture, beating and humiliation of detainees.
3. Set priorities for prosecuting the accused.
4. Return the power to release detainees to judges. End the use of commissions of liberation as presently composed. If administrative hearings are to be used to liberate detainees, establish the commissions by law, with clearly defined judicial powers and procedures, under the presidency of a judge.
5. Ensure that arrests are carried out according to due process, that the detained are kept in official prison facilities and that their detention is recorded in registers available to the public.

6. Ensure that the independence of the judiciary is protected in any changes made in the procedure for naming judges or for forming the magistrates' council. In choosing judges, competence must be the primary criterion and equal access for all persons, regardless of sex, religion, or ethnic group, must be assured.
7. Recruit and train civilian guards to staff both new detention sites and existing prisons. Use new judicial police inspectors and the increasing number of civilian police to make arrests. As trained civilians become available, end the practice of using soldiers to make arrests and to guard prisoners.
8. Use the media to make firm and repeated declarations about the independence of the judiciary and the importance of the rule of law. Make clear that detainees are innocent until proven guilty and that guilt can only be established through a free and fair judicial process.
9. If the limits on preventive detention are extended, restrict the change to the current emergency situation and fix a date for the expiration of the extension.
10. Investigate rapidly, effectively and in conjunction with U.N. police the assassination of Pierre-Claver Rwangabo, prefect of Butare, and those killed with him, and the attempted assassination of Edouard Mutsinzi.
11. End threats and illegal demands by RPA soldiers, *abakada* (RPA political officers), and other civilians associated with them. Bring to justice those accused of such exactions.
12. Adopt legislation needed to permit the use of foreign citizens in the Rwandan magistracy for a fixed term, on an emergency basis.
13. Implement the proposed program for increasing security and providing needed support to displaced persons to encourage their voluntary return home.
14. Provide separate detention sites or at least separate quarters for detainees under the age of sixteen.
15. Adopt a law creating a bar association.

To the international community:

1. Press for the establishment of an independent and effective judiciary in Rwanda and link aid to progress in that direction. Provide immediate assistance for building new detention sites or repairing prisons to accommodate more inmates.
2. Enforce the arms embargo against the former Rwandan government.
3. Prosecute those accused of genocide within national courts and cooperate with the International Tribunal in its prosecutions, including arresting and delivering to the tribunal those indicted by it.

4. Provide adequate funds and political support for the International Tribunal, the Human Rights Field Operation, and UNAMIR. Press for better administration of the U.N. Human Rights Field Office.

5. Provide lawyers to defend the accused and to observe trials.

### **RWANDAN PRISONS: LIFE AS PUNISHMENT**

In its effort to bring those guilty of genocide to justice, the Rwandan government jailed about 15,000 persons in both regular prisons and irregular places of detention in the nearly six months from its installation in July until the end of December. In the first three months of this year, it has jailed more than 15,000 others, for a total of over 30,000 detainees. The pace of arrests has clearly increased in recent weeks. Now it amounts to about 1,500 people a week, or ten for every commune in the country each week. Patterns of arrests have not been uniform, as local authorities and security forces have targeted certain areas and population groups. In one sector of Musambira commune, for example, virtually all the young men have been detained, while many others have been arrested in the Kigali communes of Gikomero, Gicumbi and Gikoro. Some communes of Cyangugu have also reported recent increases in arrests. A significant number of persons who held authority under the old government—even including many who had been re-appointed to their posts by the new government—have been detained on charges of genocide in the last few weeks, including bourgomasters, communal councillors, judges, and teachers. Given that the genocide was directed from the top down, it is not surprising that persons of local importance have been accused of participating in the killing. But those charged most recently had not only been permitted to remain at liberty for months but had even been invested with authority by the new government. That so many of this category should suddenly fall under suspicion has provoked concerns that the arrests may be motivated more by political considerations than by the requirements of justice.

Of the seventeen prisons in Rwanda, only four are fully used. While some parts of other prisons are open, these institutions require repairs before they can accommodate larger numbers of inmates. In the meantime, the four prisons at Kigali, Gitarama, Kibuye and Butare are so overcrowded that simply being confined there is cruel and inhuman punishment.

According to the International Committee of the Red Cross (ICRC), which monitors conditions in 135 places of detention in Rwanda, the density in some prisons is such that four inmates occupy every single square meter of floor space in the open courtyards and six are squeezed into every square meter in the dormitory buildings that surround the courtyards. The ICRC warns of risks of major epidemic outbreaks and of serious tensions between detainees that may result in violence. Well over a thousand people have died in detention since September. In Butare prison in the six weeks from the end of November through the first week of the new year, the extraordinarily high death toll of 166 prisoners was recorded.

In one of these prisons, an elderly survivor of the genocide has been imprisoned on the charge of having been too close to the old authorities, even though he is Tutsi. He is no longer young enough or strong enough to provide for his needs in the harsh prison society, so he seeks to buy

what he cannot take. He recently contacted an acquaintance outside the prison to ask for enough money to buy the space to sit down.

The several hundred female detainees occupy quarters separate from the men and enjoy somewhat more room. But the 300 or so male inmates under the age of fourteen are housed with the adult male population and suffer from the same conditions of overcrowding.

Horrible though conditions are at the regular prisons, which are under the supervision of the Ministry of Justice, those at the brigades, communal lockups and other irregular places of detention are even worse. On March 17, 1995 soldiers at the Muhima brigade forced more than sixty persons into a room far too small to accommodate them. During the night they begged to have the door opened because some were dying for lack of oxygen. The guards refused to open the room until the next morning. At that time they found twenty-two persons had died of suffocation. Four others were so ill as to require hospitalization and two of them subsequently died. The officers and guards responsible for this incident have been arrested.

Prisoners are not often beaten or otherwise mistreated in the regular prisons when Ministry of Justice personnel are in charge. But on one recent visiting day at Butare prison, when the regular director was away, the person in charge made the prisoners kneel throughout the visits, supposedly in order to distinguish them from the visitors. According to reports from detainees, confirmed often by wounds, scars and other evidence, detained persons are sometimes beaten before arriving at prison, either en route or at some intermediate place of detention such as a military brigade, communal lockup, or residence occupied by soldiers.

Faced with the crisis of overcrowding, the Minister of Justice decided that repairs to existing facilities would take too long and asked instead for international help in building four temporary prison camps to permit immediate transfer of some detainees out of the four most crowded prisons. While planning was going forward, other members of the government voiced objections and at this time, the project is stalled. No other solution to the problem of overcrowding has been proposed.

### **JUDICIAL SYSTEM VIOLATES DUE PROCESS**

When the new government announced shortly after taking power that it would prosecute all those accused of killing during the genocide, it had virtually no resources to carry out this ambitious plan. The former government had fled with most of the funds and state vehicles and equipment. Only thirty-six judges and fourteen prosecutors and assistant prosecutors were available to prosecute and try the accused. All others had been killed, had fled or were themselves implicated in the crimes. Of the fourteen ready to carry on the prosecution, only three had formal legal training. To make the judicial system fully functional at all levels from the communal courts to the Supreme Court, would require nearly 700 magistrates to serve as judges and prosecutors. The prosecutors have been able to call on only twenty-six judicial police inspectors, none of whom had access to a vehicle to visit sites of the crimes. An estimated 750 inspectors are needed to investigate the genocide and related crimes.

The shortage of staff for hearing the enormous number of cases has meant that the vast majority of persons now jailed in Rwanda have been detained without due process. Rwandan law requires that detained persons be brought before a magistrate within forty-eight hours of their arrest. But even in the capital Kigali, where the judicial system comes closest to functioning as it should, only 1,498 of 6,795 persons detained in the central prison on February 13, 1995 had appeared before a magistrate. Of the rest, many have been in jail for months with no hope of even a preliminary hearing, far less a trial. In Butare, the prosecutor has been able to assure that all detainees have at least had files established that include some written statement of the charges against them. But he and the three inspectors on his staff have not been able to review many of the nearly 5,000 files. By the precedent established in a 1991 appeals decision, persons held in violation of these due process guarantees may request to be freed immediately.

To counter attempts to dismiss charges against the accused on the basis of violation of due process, the parliament is currently considering a law to allow for more extended preventive detention without action by a magistrate. The parliament must balance the need for some emergency measure that will resolve the current crisis and permit bringing the accused to trial against the need to protect the fundamental rights of the accused. A law changing the procedure governing preventive detention must be carefully written and clearly limited in the terms of its applicability. Otherwise it will violate not just the rights of the detainees but also the international conventions which Rwanda has signed and which the Rwandan Patriotic Front agreed to support in the Arusha Accords.

Virtually all persons detained have been arrested on the basis of denunciation alone rather than as the result of a criminal investigation. Because of lack of staff and of equipment and vehicles for on-site investigations, authorities rarely-if ever-seek to establish whether or not the accusations are well-founded. As it has become commonly known that accusations alone suffice to have someone jailed, the number of accusations has apparently increased. A significant number of the denunciations is false, motivated by hopes of personal profit (especially where questions of property are involved), political rivalry, or by the desire to settle some private score. Human Rights Watch and the International Federation of Human Rights were told that a group of persons in Butare, who have survived the genocide, serve as "accusers on demand" for others who want a given person jailed. The Rwandan human rights coalition CLADHO has reported the same activity in other parts of the country. The Minister of Justice and the prosecutor for Kigali have said they believed there is no basis for charges against as many as 20 percent of the prisoners now jailed. Certainly a substantial number of cases have been reported to Human Rights Watch and the International Federation of Human Rights where accusations appear to be entirely without basis. Among these cases are those of a young woman who can prove that she was out of the country throughout the entire period of the genocide and that of a young man who can prove that he was not present at the site of several murders that he is supposed to have committed.

The failure to observe due process holds for cases involving legal professionals as much as for those of ordinary people. Several months ago, soldiers, led by a sergeant, arrested a judge at his home. They had no warrant and took him under protest to the communal jail. There another military officer tried unsuccessfully to get him to sign over ownership of his pick-up truck. The soldiers confiscated the truck anyway. During a weekend of confinement at the communal

lockup, the judge was attacked and beaten three times, the last time to the point of losing consciousness. When he was transferred to the prefectural prison, the soldier in charge refused to accept custody of him as he was, injured and without any appropriate documents justifying his arrest. The soldiers took him to the hospital for treatment for his injuries and then tried to get the local prosecutor to act on the case. Because Rwandan law provides that only the Minister of Justice can bring charges against a judge of this level of importance, the prosecutor left for Kigali to seek instructions on how to deal with the case. In his absence, the judge was treated courteously by the soldiers, who were apparently troubled at having to deal with a person of this importance with no clear reason given for his imprisonment. They gave him the freedom of the prison enclosure and when night fell, an officer took him to his own home to spend the night as his guest. The next day, with still no official word on his arrest from the Minister of Justice, he continued to be well treated and was invited home to lunch time by another soldier. But that evening either word had come from Kigali authorizing the arrest or the soldiers had tired of providing for the uninvited guest. He was locked in prison and three months later he is still there. The truck was returned to the family.

Another judge, Innocent Mbanzimirera of the Tribunal de Premiere Instance of Byumba, was arrested about one month ago, on his way to visit the orphaned child of a friend. He was accused of having failed to protect the father of this child. Like the first judge, he should have been arrested only upon action of the Minister of Justice and, like him as well, he was detained without that or any other form of due process.

The authority to name new judges to fill vacancies rests with the Magistrates' Council, itself appointed by the judges of the Supreme Court. Because the positions of president and vice-presidents (five of them) of the Supreme Court have been vacant, it has been impossible to appoint the judges needed to make the judicial system function better. The Cabinet has recently moved toward remedying this situation by proposing candidates to the Supreme Court positions. This parliament will now choose one from each pair of candidates. These judges in turn will name members of the Magistrates' Council which make appointments to the lower courts. The nominations to the Supreme Court posts have been bitterly contested. Indeed, according to one report, one of the candidates for president decided to withdraw because he felt his life was at risk if he persisted in his candidature. A draft law before the parliament proposes to revise the process so that the Cabinet would name the judges, who would then elect the Magistrates' Council. If the executive branch is in fact given power to name judges directly, it could seriously threaten the independence of the judiciary.

## **THE MILITARY BLOCKS RELEASE OF DETAINEES**

In the absence of a civilian judicial system and a police force, the Rwandan Patriotic Army has been responsible for maintaining law and order, including arresting persons accused of having participated in the genocide. Some officers apparently view their domain as extending beyond purely police action into the judicial sphere.

According to article 41 of the code of criminal procedure, detainees must appear before a judge every thirty days to determine whether they are to be held in custody or whether they can be released. A person may be kept in custody only in exceptional circumstances, such as if the court

believes he might flee or might endanger public safety. In late September, Judge Gratien Ruhorahoza found that some forty detainees brought before him did not require further preventive detention and he ordered them freed. They were released, but shortly after most or all of them were re-arrested and sent to the military prison at Rilima. The judge disappeared soon after. At one time he was thought to be in prison himself, but he is now presumed dead.

In late October, a judge gave an order freeing a young man because the prosecutor had been unable to locate the persons who had accused him. The detainee was not released. He appealed to the President of the Tribunal, who confirmed his liberation. He still has not been freed.

In a more recent case reported in the international press, the priest Joseph Ndagijimana of the parish Byimana was arrested in early February on charges of having killed several people. Four widows and a widower of his supposed victims said that he was not involved and four others declared that he saved their lives. Another person has confessed to killing some of Ndagijimana's supposed victims. On the basis of this information, the prosecutor at Gitarama ordered his release, but the soldiers who have him in their charge refuse to let him go.

In mid-October, the Minister of Justice created a "Commission of Liberation" to examine cases of persons who might be eligible for release. Clearly irregular according to Rwandan legal procedure, the commission was apparently meant to protect judges from eventual reprisals. Under this new arrangement, the responsibility for the unpopular decision to liberate would rest with the prosecutor, a representative of military intelligence, and a representative of the police. In January, the commission was expanded to include a representative of the secret service. It has examined just over one hundred cases and freed fifty-eight of the persons presented. In recent weeks, others on the commission have objected to the participation of the representative of the secret service and the commission ceased all formal meetings. Informal consultations have continued between the prosecutor and the two military members. A second commission was created in late March to examine cases of judges and burgomasters who had been detained. It includes the attorney-general and representatives of the Ministry of Defense and the secret service.

The commissions have no basis or authority in Rwandan law, and violate provisions that require a judge to rule on cases of preventive detention. By intervening in the process, the commissions delay judicial review of the detention and violate article 9 of the International Covenant on Civil and Political Rights, which states:

*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power....*

The commissions, which are not bound to operate according to the code of criminal procedure, are left free to rule as arbitrarily as they wish, according to personal, political or other criteria.

While the commissions rule on cases submitted by the prosecutor, judges continue to examine cases of preventive detention, including sometimes those also considered by the commission. But the judges are all engaged in a mere semblance of judicial activity since they have been led to understand that they are not to liberate anyone. Several judges, speaking at different times and in



different places, informed us that they did not dare liberate anyone because of threats, explicit or implicit, made by military officers. Major Sekamana of the national police frequently serves as liaison between the military and the judiciary.

The case of former ambassador Sylvestre Kamali illustrates some of the arbitrariness of the system. Kamali was arrested on July 14, 1994 on the basis of an accusation. No investigation has been done into the case, although his family has offered to pay any costs related to the inquiry. On January 31 he appeared with his lawyer before a judge. Neither he nor the lawyer had been allowed to consult his file, although they had asked permission to do so. Told sometime before that the dossier included several declarations against him, Kamali was surprised to learn that the documents were dated January 31, the date of his appearance before the court. His case had been submitted previously to the commission of liberation, where the prosecutor had argued for his release. Yet when he appeared before the judge, with the facts of the case not having changed in the meantime, the prosecutor argued for his continued detention. And, the paper summarizing arguments for his release, which had been part of the dossier when it was submitted to the commission, was no longer included when the file went to the court. No one could explain how the document had disappeared.

The next day, Kamali's detention was confirmed. The decision was appealed but has not been judged by the Court of Appeal, although the penal code requires the Court to act immediately in such cases. The appeal is based not just on the absence of any credible indication of guilt but also on a 1991 appeals court decision which freed a defendant because his detention had not been reviewed as required by law.

The military officers who interfere with the exercise of civilian justice excuse their actions by saying that certain judges may be too attached to the former government and hence too lenient on the accused. Like part of the public, they seem to believe that accusation and arrest suffice to establish guilt and that no one in the jails could be innocent. They assume that judicial decisions in favor of the accused will be unpopular with their own constituency. These arguments are often covered by another, which even some of the accused themselves accept: that they are safer in jail than out where accusers might try to harm them.

When releases have taken place in Kigali, they have ordinarily resulted from steady pressure from civilian judicial officials, such as the prosecutor. In Butare, where there is no commission, the prosecutor himself has succeeded in freeing some detainees.

## **BEGINNING THE TRIALS**

The Rwandan government brought the first defendants to court on April 6, but the proceedings were immediately adjourned to permit further investigation. Despite the limitations of material and staff, the prosecutors in Kigali and Butare have long had more than one hundred cases each ready for presentation to the court. Virtually all of these are cases in which the accused has confessed to the crime.

The delay in beginning trials results not just from lack of resources but also from political considerations. As long as the key positions in the Supreme Court remain unfilled and the

procedure on the nominations of magistrates remains undecided, neither the Minister of Justice nor his subordinates can have confidence that the independence of the judiciary will be guaranteed. Indeed continuing interference from the military on such questions as whom and how many to arrest and whom to release demonstrate that the judiciary is not now free to decide questions that properly belong solely to its domain. The disappearance of Judge Ruhorahoza, the arrest of other judges, and the reported intimidation of the candidate for President of the Supreme Court indicate the context in which members of the judiciary must operate. Not surprisingly they hesitate to venture too far too fast into the process of trials that carry enormous political weight.

### **DEFENDING THE ACCUSED**

Even before the genocide, only a few dozen lawyers were in private practice in Kigali. They were not yet organized into a formal bar, although a law establishing one had been under study for a long time. Ordinarily it was only the wealthiest defendants who could afford lawyers for their defense, although the Urban Social Bureau of the Catholic charity Caritas offered legal aid for a small number of the indigent.

Defending the poor, a difficult problem a year ago, assumes the proportions of a nearly impossible task now. The few lawyers left alive and those returned from abroad generally feel themselves too much affected by the tragedy to be able to defend those accused of perpetrating it. Although they have founded an organization to prepare for the creation of a bar, the *Association des Juristes Mandataires en Justice*, it is unlikely that this group will be able to offer any aid to the accused. Rwandan human rights organizations have discussed this need and the Urban Social Bureau has undertaken a small project that seeks three Rwandan lawyers for the defense. Even should it be able to find three willing to do the work, many more will be needed.

The only lawyer to defend an accused person so far is not himself Rwandan. Only by recourse to foreign lawyers is there any hope of providing defense for the thousands of accused. Without such action, innocent as well as guilty will suffer. The presumption of innocence and the guarantee of a fair trial will be nothing but meaningless phrases and the state of law, which rests on such principles, will be doomed to failure before it is born. Nongovernmental organizations should undertake to provide not just defense lawyers but also trial observers. The Rwandan government, which has thus far said little about the presumption of innocence of those detained and their right to a fair defense, must take responsibility for creating conditions that permit the participation of foreign lawyers and trial observers.

### **INTERNATIONAL AID: MUCH PROMISED, LITTLE DELIVERED**

From its first weeks in power, the new government called on the international community for aid, not just in funds but also in personnel to help make the judicial system work. A number of countries have pledged substantial assistance, but the amounts actually delivered have been far less. The Field Operation of the U.N. Human Rights Center established a branch to coordinate and channel such international assistance. Since early November, their staff has been engaged in constructing an ambitious design for rebuilding the judicial system which has yet to be accepted by the Rwandan government. In the meantime, even less ambitious projects have been stalled as

officials in New York have debated over the appropriate channels for disbursing the funds, a problem that was resolved only in mid-March.

Despite considerable verbiage committing themselves to supporting justice in Rwanda, major donor nations declined a U.N. proposal that each assure the needs of the judicial system in one of the eleven Rwandan prefectures. The donors hesitated not just because the sums of money involved were large, but also because the plan would have implicated them more closely in the performance of the courts in the prefecture adopted. Most preferred to keep their distance because of the likelihood that the courts would pronounce at least some death sentences against the convicted and they feared complications at home if they were seen to be too closely involved with providing support for such decisions.

The Rwandan government's request for foreign judicial personnel, made several times by leading individuals in the government, was approved formally by the Cabinet on February 17, 1995. A draft law to enable non-Rwandans to serve in the judicial system is currently before the parliament. The U.N. hopes to recruit fifty legal professionals by May 1 to serve as judges, prosecutors, police investigators and defense lawyers. A four person team, one from each speciality, would serve each prefecture.

While governments and the U.N. debate the grand plan, one small nongovernmental organization has made the most visible contribution thus far to an improved judicial system. The Citizens' Network organized an intensive training course that has just graduated some one hundred and thirty judicial police inspectors. A second group will soon begin training. If the vehicles promised by donor nations arrive and are distributed to the judicial police, the new inspectors will be able to carry out on-site investigations into the genocide for the first time. In addition, the International Committee of the Red Cross has provided training for prison directors. The Human Rights Center projects training programs for magistrates and lawyers, particularly to familiarize recently returned Rwandans who have legal training and experience from elsewhere with Rwandan laws and procedures. Some of these legal professionals might then be recruited to serve in the judicial system.

The government is in the process of establishing a police force by retraining soldiers of the Rwandan Patriotic Army (RPA, formerly Rwandan Patriotic Front) with the help of U.N. experts. About two hundred police are now deployed throughout the country.

### **PROSECUTIONS OUTSIDE RWANDA**

Many of the authorities presumably guilty of genocide preferred places of refuge more comfortable than the camps of Zaire or Tanzania. Their presence in several European countries provoked complaints against them-as well as others not necessarily present within the country-by victims and families of victims of the genocide.

In late July 1994, some thirty plaintiffs filed suit in Belgium against a number of persons accused of genocide. Once court officials had taken their testimony, the procedure stalled until mid-February when a press conference by the plaintiffs' lawyers stung the authorities into action once more. The next day, the Minister of Justice appointed a special prosecutor to investigate the

cases. He is expected to carry out inquiries in Rwanda during the month of April. Rwanda has sought the extradition of several persons named in these suits, a request which Belgium apparently will not honor because it has a policy of not extraditing accused persons who might face the death penalty if convicted. A refusal to extradite obliges Belgium to prosecute the accused itself. Belgian military authorities have also been investigating criminal charges against those responsible for killing the ten Belgian soldiers of the U.N. peacekeeping force on April 7, 1994. When the judicial officials charged with this inquiry sought to question some persons who have taken refuge in Zaire, local officials refused to permit them to enter the country.

Victims also filed suit in France in June 1994. The only one of their cases thus far concluded was rejected by a judge in February 1995 on the grounds that he was not competent to hear the case. The victims had based their claim both on French domestic law and on the principle of universal jurisdiction deriving from various international conventions signed by France, including the four Geneva Conventions of 1949, the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention for the Prevention and Punishment of Genocide. The decision is being appealed. In Canada, Canadian authorities arrested, then released on bail Leon Mugesera, known for having made the speech that was the first public call to genocide. On November 22, 1992 he had called on the Hutu to send the Tutsi back to their supposed country of origin-Ethiopia-"by the river route," that is, by killing them and dumping them in rivers that eventually flow into the Nile and thus through Ethiopia. Rather than charge Mugesera with incitement to genocide, Canadian authorities are bringing him to court for having violated immigration law. In the same way, the Swiss preferred to expel Felicien Kabuga, a leading figure in Radio Mille Collines, the voice of genocide, rather than try him on charges of inciting to genocide. Subsequently Swiss authorities have behaved more responsibly in detaining Alfred Musema and investigating charges that he participated in slaughter both in Kigali and in his home region of Kibuye. Tanzania has sentenced twenty-six leaders from the refugee camps to two years in jail for causing riots and for other crimes, but has thus far refused to charge these and other authorities with genocide.

Governments of Zaire, Kenya, Cameroon, Togo, Ivory Coast and the Central African Republic have all admitted persons accused of genocide into their territories. They have a special responsibility to bring these persons to trial or to extradite them to Rwanda.

In the United States, where individuals may not bring suit in criminal cases, Human Rights Watch together with families of genocide victims filed a civil suit under the Alien Torts Act against Jean-Bosco Barayagwiza, the leading figure in the Coalition for the Defense of the Republic, a party which helped direct the genocide. The legal action, filed on May 17, 1994, was the first initiated against any of the presumed authors of genocide. On February 14, a U.S. District court judge entered a default judgment against Barayagwiza. Hearings on the amount of damages he is to pay the victims will be held shortly.

## **THE INTERNATIONAL TRIBUNAL**

Even before the killing ended last June, the United States and the European community called for bringing the guilty to justice. They apparently hoped to do in court what they had been unwilling

to do on the streets of Kigali-show that genocide is unacceptable to the world community. A year later, the point has not yet been made. No one has been indicted, far less brought to trial.

The Security Council decided that it needed an expert opinion on whether genocide had taken place and if so what to do about it. After a four-month investigation, a Commission of Experts declared that genocide had taken place and recommended extending the mandate of the International Tribunal already in existence to try crimes against humanity in the former Yugoslavia. In November, the Security Council extended the mandate of the tribunal to cover genocide and other crimes against humanity in Rwanda, but it was only in late February 1995 that the U.N. provided funding for the tribunal, with the stipulation that the authority to spend the funds would expire a month later on March 31. Pending permission to roll over the funds, the prosecutor was limited to a staff of five: his deputy, three lawyers and one chief investigator. After March 31, he had to begin the budget process once more. Hamstrung by such bureaucratic regulations, the prosecutor has made only slow progress in getting the investigation started. Resolving logistical problems on the spot has taken a considerable amount of the time of the professional staff. With hiring constraints eased, they should engage others to attend to these matters so that they can concentrate fully on the investigation itself. The first indictments are expected before the end of 1995.

In a resolution of February 27, 1995, the Security Council "urged" member states to arrest and detain persons accused of genocide who will likely be indicted by the tribunal. If being "urged" does not suffice to move the states concerned to action, the Council will, we hope, be moved to adopted stronger language and even to act itself, if necessary, to deliver those indicted into the custody of the tribunal.

### **CONTINUING INSECURITY INSIDE RWANDA**

Rwandans continue to suffer from acts of violence by unidentified armed groups, such as the three attacks which took fifteen lives in the northwestern prefecture of Gisenyi in mid-March. Similar incidents have taken lives in the southwestern prefecture of Cyangugu in January and in the eastern prefecture of Kibungo in February.

On January 29, Edouard Mutsinzi, a leading journalist who has sometimes criticized the government, was attacked by a gang of five armed men. En route home in the company of seven others, Mutsinzi was the sole target of the assailants, four of whom bludgeoned him with various weapons while the fifth stood guard. Soldiers in the immediate vicinity failed to come to his rescue. Left for dead, Mutsinzi has survived, but will never fully recover.

On March 4, Dr. Pierre-Claver Rwangabo, prefect of Butare, was assassinated along with his son and the driver of his car. They were shot to death after having been stopped at an improvised road-block on the main highway between Butare and Kigali. The bodyguard accompanying Rwangabo returned the fire of the assailants and was himself wounded. Rwangabo had been criticized in the press several weeks before for having urged more rapid action on persons detained on charges of genocide.

The same day, the government announced the capture in Kigali of four men armed with landmines and other explosives. They were said to have arrived from Zaire as part of a nine-man team to carry out "Operation Insecticide," a reference to the slur commonly used in labeling Tutsi as cockroaches.

In other recent incidents, UNAMIR troops have been injured, once by a grenade, another time by a landmine explosion.

Such cases, particularly when combined with a pattern of increasingly numerous arrests of persons who seem to disappear into the prisons with no hope of ever emerging, contribute to continuing insecurity. News of these events travels quickly to family and friends who are in displaced persons camps in Rwanda and in refugee camps outside the country, increasing their reluctance to return home.

### **QUESTIONS OF PROPERTY AND THE ABAKADA**

In many communes, an organized group of powerful young people operates parallel to the usual legitimate authorities of bourgomaster and his subordinates. The *abakada* (from the French *cadre*) are political officers attached to the RPA. Some are survivors of the genocide recruited within Rwanda while others had accompanied the advancing troops from outside the country. Dressed in civilian clothes, they operate under the direction of an *effendi*, the Swahili term for sergeant. They are responsible for supervising local political life. While some may be salaried, they also support themselves by appropriating the property of local people, a process called "helping yourself" or "liberating" the goods in question. Rwandans who have been obliged to thus contribute to the support of the *abakada* generally make no efforts to complain or seek restitution from legitimate civilian authorities.

These confiscations of goods, farm animals and food take place within the larger context of unresolved conflicts over land and residential property. The government has not made significant progress in dealing with this question, of vital importance in a nation of farmers.

### **RELUCTANCE TO RETURN HOME**

Some 220,000 Rwandans still cluster in displaced persons' camps in the southwestern part of the country. They fear returning home largely because of accounts, some false, some well-founded, some exaggerated, of arrests and attacks on others in their communes of origin. The government suspects that militia lurk in some of the camps and are in any case anxious to have people return home to restore normalcy to food production and other aspects of daily life.

The RPA has sought to empty the camps, sometimes by persuasion, sometimes by the use of force. In early January, RPA soldiers arrived at the displaced persons' camp at Bubanze near the Burundi border to announce that the camp would be closed the following week. On January 12, RPA soldiers attacked the camp during the night and shot and killed twelve persons at close range. Many of them were women and children. A number of others were wounded. Initially RPA authorities said the attack had been a case of self-defense with soldiers responding to prior

attack by residents of the camp. Later RPA authorities admitted that the shootings had not been justified and arrested three officers in connection with the incident.

Efforts to persuade the displaced to take the road home had limited success in January, particularly when the possibility of putting crops into the ground during the planting season counterbalanced security concerns. But the numbers choosing to go home declined steadily throughout February and March with the end of the planting season and the news of the upsurge of arrests. Indeed, it is reported that some communes, such as Mbazi in Butare prefecture and others in Kibungo, had more people leaving for camps than returning from them during March.

Recognizing the importance of having the displaced return to their homes, several U.N. agencies and non-governmental organizations are cooperating with the government in developing a plan for the gradual closing of the camps. Food supplies will be cut off in phases while improved security measures, food and materials necessary to begin life again at home will be provided in the home communes. The success in closing the camps peacefully would certainly reassure people in camps outside the country who are looking for just such signs to encourage them to return home.

In the refugee camps in Zaire, soldiers of the former Rwandan army and members of the militia train for new attacks. Some of these training programs are conducted jointly with Hutu refugees from Burundi in the Uvira region. Arms deliveries continue under the tolerant eye of Zairean officials. The embargo on arms sales to the former Rwandan government, established by the Security Council on May 17, 1994, is not enforced. Information on arms deliveries and the militia training will be published by Human Rights Watch in a subsequent report.

Militia, soldiers and authorities of the former government continue to rule life in the camps. By threat, force and propaganda they discourage refugees who might wish to return home. The U.N. High Commissioner for Refugees and various nongovernmental organizations have publicized the abusive control of these authorities and the threat they pose to foreign humanitarian workers as well. The U.N. effort to recruit peacekeeping troops to restore security in the camps failed completely and the Security Council has resorted to paying Zairean troops to do the job under some foreign supervision.

People within Rwanda, Hutu as well as Tutsi, fear incursions or outright attack by the former army in Zaire. Hutu often express the worry that such incursions will be taken as an excuse by the Rwandan government to abuse, arrest or even slaughter them, as the Habyarimana government once did to Tutsi at the time of the RPF attack in 1990.

### **THE U.N. HUMAN RIGHTS FIELD OPERATION**

After a feeble beginning, the human rights operation is beginning to have more of an impact within Rwanda. In part this is due to the increased number of monitors, now at 110, including some recruited and paid for by the European Community. In part it results from some monitors having learned necessary skills on the job while other, more recent recruits, have arrived with at least some initial training. The field officers were originally charged with both investigating the genocide and keeping track of the current human rights situation. The first format for collecting

data on the genocide was found to be unsatisfactory and the work began anew. With the arrival of the investigators from the International Tribunal, the inquiry was handed over to its specialists. The field officers no longer deal with the genocide investigation but just with the current situation.

The operation works very discreetly, relying on close liaison with Rwandan government officials and avoiding public comment even on matters as dramatic as the assassination of the prefect of Butare. Regardless of the tact with which the Field Operation personnel attempt to carry out their work, some of them have caused considerable ill will among Rwandan government officials. Rwandan government dissatisfaction with the monitoring operation has grown along with more general hostility towards UNAMIR, the peacekeeping force. The Rwandan government has used the national radio to criticize the U.N. presence in the country.

The Field Operation includes a division to assist in rebuilding the Rwandan judicial system, which has been unable to produce any concrete results because of the political and financial obstacles described above. A special investigations unit is charged with following up reports of human rights violations. The field operation as a whole continues to suffer from many of the administrative problems that plagued its early months, but many monitors out on the hills contribute significantly to the security of the regions where they work.

So starved for funds in December 1994 that it nearly collapsed, the Human Rights Field Operation once again faces such a serious shortfall that it may be forced to cut back activities in May. Given the enormous amounts spent on humanitarian aid and on the military presence, the international community should recognize the investment value of the \$14 million needed to fund the operation for the rest of the year.

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This report was written by Alison DesForges, Human Rights Watch/Africa consultant and Eric Gillet, consultant and board member of FIDH. It draws upon information gathered by our field team in Rwanda, Lynn Welchman and Kirsti Lattu. The report was edited by Michael McClintock.

### *Human Rights Watch/Africa*

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