FIVE YEARS AFTER
THE GENOCIDE IN RWANDA:
JUSTICE IN QUESTION

Original Version in French

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EXECUTIVE SUMMARY

Five years after the beginning of the genocide, it is now time to review the progress made in administering justice to those implicated in its planning and implementation. This report will concentrate on three aspects: justice within Rwanda, through the International Criminal Tribunal for Rwanda (ICTR) and in third countries

Rwanda faced a catastrophic situation in July 1994 at the end of the genocide: a climate of impunity predominated and the judicial machinery was practically non-existent. In order to ensure national reconstruction and the peaceful cohabitation of the two main ethnic communities, the justice system had to be reorganized throughout the country. This large-scale and exacting task was accomplished within five years thanks to government efforts, new legislation and considerable international support.

Over 900 people have been tried for genocide and crimes against humanity in proceedings that were generally found to be satisfactory. The number of trials rose from 300 in 1997 to 600 in 1998. This quantitative increase goes hand in hand with improvements in the quality of proceedings. Nevertheless, at this rate it will take 160 years to bring all detainees to court.

The report analyzes the law relating to genocide, arrests and releases, human and material resources, the situation in the prisons and more specific matters such as the rights of the defence, the participation of victims in the hearings, and the situation of women and minors. While acknowledging the remarkable work accomplished by the government, we recommend that international support should continue for another three years. We also propose a positive, albeit prudent approach to the initiatives launched to resolve the problem of how to deal with the 125,000 detainees awaiting trial, especially the implementation of the "*gacaca*".[1]

The second part of the report looks at how the ICTR is working. The Tribunal is currently detaining 36 suspects. Only five trials have so far been held. The first two were particularly important. Jean-Paul AKAYESU, former *bougmestre* of Taba, was found guilty of genocide on 2 September 1998. This was the first verdict of genocide rendered by an international tribunal and the first time that rape was treated as a crime against humanity. The trial of Jean KAMBANDA, formerly prime minister of the interim government, was of great significance as he pleaded guilty. This voluntary and public acknowledgement of genocide and his personal responsibility in it cut the ground from under the feet of the accused and others who had denied that a genocide had ever taken place.

The report points out that there has been a recent improvement in the functioning of the ICTR after its very difficult birth. However, ICG regrets that the Tribunal shows itself unwilling to co-operate with the judicial authorities in Rwanda and that its work is very little known there. Indeed, it is very difficult to find copies of verdicts issued by the ICTR, and these are never translated into Rwanda's national language.

Finally, without detailing individual cases, the report analyzes the legal problems associated with proceedings against genocide suspects in third countries and recommends a more determined application of the principle of universal jurisdiction in regard to this crime.

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[1] See page 18

I. INTRODUCTION

Five years ago, on 6 April 1994, violence on an unprecedented scale broke out in Rwanda. While the international community looked on, the country experienced a genocide and horrendous massacres that killed between 800,000 and one million people.

A disaster on this scale brings irrevocable change. Rwanda has to come to terms with the past so that it can move on into the future. This will only happen if there is an end to the culture of impunity, and it is here that justice has a major role to play. Both the victims and the perpetrators of the violence must know that justice will be administered and the guilty named. Public opinion generally associates justice in Rwanda with the international court sitting in Arusha. Although it faced a number of problems at the beginning, the International Criminal Tribunal for Rwanda (ICTR) is now up and running. Its relationship with Rwanda is complex, but the ICTR is credited with carrying the fight against impunity beyond the country's borders. The Tribunal is the confirmation that the international community accepts the universal dimension of the issues here, which might otherwise remain narrowly confined within this small landlocked country.

Less is known about the everyday functioning of Rwanda's own justice system. Many think of it only in terms of the huge mass of 125,000 detainees held in very poor conditions. Rwandan justice has rarely had a good press. Indeed, it has occasionally been severely criticized by a number of international organizations. Although its objectives are ambitious and its methods original, Rwandan justice has nothing like the aura associated with South Africa's Truth and Reconciliation Commission. Indeed, international public opinion tends to treat it with a certain reserve, perhaps because it does not have the same association with well-known personalities. Or perhaps the image is tarnished by the focus on issues such as the use of the death penalty. Maybe the disinterest is a reflection of the outside world's frustration at the continuing conflicts in some parts of Rwanda, and in the Central African region in general.

Several members of the international community who agreed to assist Rwanda in setting up an appropriate justice system are beginning to grow weary and express doubts about the task they have undertaken. There is still firm agreement about the importance of the fight against impunity, either from an ethical point of view or as an essential condition for a genuine political process of national reconstruction. However, almost five years after the genocide, the predominant feeling in the international community is that the process is too slow, lacks proper controls and seems unable to fulfil its expected role as a driving force for Rwanda's social evolution.

Nonetheless, Rwandan justice relative to the genocide represents a unique attempt to reconcile truth and justice, fight impunity and resist calls for a general pardon, record history and promote social harmony. Starting from scratch, the results achieved in less than five years are impressive. Rwanda, together with the various countries and organizations that have helped to ensure the prosecution of many involved in the genocide and massacres, all have the right to feel pride in their efforts. The whole enterprise merits respect and consideration. It must continue, but with more emphasis on achieving the desired social and political effects.

From this point of view, the initiative taken by the authorities to develop a system of citizens' assemblies to judge most of the suspects in the genocide and massacres may resolve the problem. However, if justice is to play its full role, there must be peace in the region.

In regard to the administration of ordinary justice, unrelated to the genocide and massacres, the problem is quite different. The whole judicial system has benefited from the international effort in response to the genocide. Except at the most local level, the rehabilitation of the judicial machinery has reached the end of the emergency phase. However, from an internal point of view, the system is not yet operating as efficiently as it should. The administration of justice is generally expected to be an important, although not the determining, factor in creating an environment conducive to social development. In Rwanda this social dynamic has hardly begun to see the light of day. Until it does, we will not see the wider effects expected from investments in the judicial machinery.

Rwanda's appalling economic situation and a population too large for its meagre resources provided the conditions that made the genocide possible. These are undeniable facts; and the situation is no better today. Justice, even the best justice, cannot substitute for what is lacking: a minimum level of material well being in order to ensure social harmony and good human rights practices.

Finally, the question of justice in Rwanda also affects the countries in which *génocidaires* have sought refuge. Some governments prefer to keep their eyes closed. Others try, more or less successfully, to respect their international obligation to take action against these criminals. However, it is clear that the political will is not always present.

II. RWANDAN JUSTICE

A. The Rwandan Justice System

1. Pre-1994: a culture of impunity

The Rwandan justice system was inherited from Belgium in the 1950s. The courts are organized on a pyramid system. There are 146 local courts *(tribunaux de canton)* at the level of the communes, 12 district courts *(tribunaux de première instance)* at the level of the prefectures, four appeal courts (*Cours d'appel*) and a Court of Final Appeal (*Cour de cassation*). There are no individual courts or tribunals for labour, commerce or youth

matters. However, there is a separate Security Court, which has jurisdiction over issues of a political nature.

The service dealing with investigations and legal proceedings, known as the Public Prosecutor's Office or Public Ministry *(Parquet or Ministère public)*, is organized within a structure paralleling that of the courts. Thus the Public Prosecutor's Office has 12 regional offices at the level of the prefectures, each composed of a prosecutor, deputies known as 'substitutes' or officers of the Public Ministry *(officiers du Ministère public*--OMPs) and judicial police inspectors *(inspecteurs de police judiciaire*—IPJs). The IPJs represent the Public Prosecutor's Office at commune level. Each appeal court has a corresponding public prosecutor. Up until the creation of the Public Prosecutor's Office attached to the Supreme Court in 1995, the whole edifice was crowned by the Prosecutor General attached to the Court of Final Appeal.

Generally speaking, the justice system prior to 1994 did not function very well. The quality of its work was seriously impaired by the lack of fully qualified magistrates. Out of some 600 magistrates, only one in fifty held a law degree. In addition, the judicial institution was heavily corrupt and dependent on the good will of the government, which used it as a political tool.[2]

Magistrates were restricted in a number of ways that considerably reduced their ability to operate independently. Their careers and their postings depended entirely on the government. The Prefectural Security Councils *(Conseils de sécurité préfectoraux),* set up in 1987, brought the prefectural administrative and judicial authorities under the control of the prefects *(préfets*), who were thus in a position to impose their will. Independently minded magistrates were left to stagnate in subordinate posts or were promoted to positions that held no real power. There was no independent bar association; the government decided who was qualified to act for the defence. Justice had been rendered impotent: none of the massacres that punctuated the country's political life ever resulted in legal proceedings. There was complete impunity.[3]

From all this, it is clear why the Arusha Accords, signed on 4 August 1993 between the government of the time and the RPF[4], contained a number of measures intended to guarantee the independence that was so sadly lacking in the justice system.

2. Rwanda, July 1994: a scene of utter devastation

As soon as the RPF seized power in July 1994, the question of justice—and therefore of the judicial system—was urgently posed. Rwanda's new

[2] See *La place de la justice et le rôle du magistrat dans l'édification d'un Etat démocratique* (Kigali: Ministry of Justice, 1992) quoted in *Détentions et poursuites judiciaires au Rwanda* by J-F Dupaquier in *La justice internationale face au drame rwandais,* Ed Karthala, Paris, 1996, p. 18.

[3] The 1993 Annual Report of Amnesty International mentions a number of arrests and individual judgements motivated by political reasons. See also *La magistrature rwandaise dans l'état du pouvoir exécutif: la peur et le silence, complice de l'arbitraire* by F-X Nsanzuwera, CLADHO, Kigali, November 1993.

[4] Rwandan Patriotic Front *(Front Patriotique Rwandais*).

government affirmed its concern to end the culture of impunity that had reigned in the country for years and to make sure that the genocide would be punished. In any case it seemed obvious to all observers that there could be no national reconstruction without justice. However, the government did not have the least idea how to set about achieving this.

The country was completely devastated and there were urgent needs on all sides with drastically limited human, financial and material resources available to meet them. This ruined country, with continuing insecurity and the genocide like an open wound in the country's psyche, was in no condition to hold a calm debate on how justice should be rendered.

The first priority was to set up the judicial machinery, which was virtually non-existent in September 1994. The new Justice Minister was housed in a building without telephones or windowpanes. He and his team of four did not even have paper or typewriters. Every piece of equipment had disappeared from official buildings, most of which were in ruins. The judicial staff was reduced to around 20 investigators and a few secretaries and court clerks *(greffiers),* and only 19 lawyers remained for the whole country.

The prisons were in no better state. Run by the army, it was clear that they would soon be full with an incarceration rate of over 1,000 new detainees per week, all suspected of participation in the genocide.

Everything had to start from scratch.

3. The period from July 1994 to December 1998

In July 1994, the justice question was naturally closely tied to the genocide and massacres. The problem seemed particularly complex. The government had already clearly indicated its desire for justice in July 1994. However, since then and still today, this is an issue that is unavoidably influenced by the prevailing tension in the country. How can justice help to console the victims? How is it possible to avoid the suspicion that this is a victor's justice? How can justice act as cement for the future ?

The judiciary system was completely discredited under Habyarimana's regime. Some of the country's new leaders, coming from an Anglo-Saxon tradition, did not trust a Roman-Germanic legal system that operated in French. There were very few human resources. Rwanda had never had many lawyers in any case. The magistrates and civil servants associated with the former regime had fled the country. Almost all Tutsi civil servants and magistrates had been killed, along with a large number of their Hutu colleagues who had shown signs of independence under the former government. The human resources available had therefore been dramatically reduced in number, and experienced people from the Hutu community were not trusted. There were few trained lawyers among the new arrivals from the diaspora and those there were had hardly any legal experience.

It could also be added that the judiciary is a high-spending institution that provides no financial return. Its reconstruction depends entirely on

contributions from the international community. However, as the international community has had hardly any experience in dealing with this type of emergency, it was left to a non-governmental organization (Réseau des Citoyens-Citizens Network) to take the first steps. Other NGOs, several western countries, the European Union and United Nations agencies have since provided additional support, with varying degrees of success.

Three separate periods can be distinguished between July 1994 and March 1999.

- The first, July 1994 to August 1996, saw the start of the emergency reconstruction phase of a judicial system that was barely functioning. This period concluded with the passing of a law on 30 August 1996 relative to the genocide and massacres.
- The second period, August 1996 to December 1997, saw the application of this law and the first genocide trials. It concluded with the completion of the emergency reconstruction phase.
- The third period began a few months ago with the opening of a debate on the sensitive issue of the measures to be adopted in order to process 125,000 detainees within a reasonable period of time. The government's solution, to develop a form of citizens' justice, is a bold gamble.

This last phase has also been marked by difficulties in trying to establish an appropriate judicial system for the country in regard to the administration of ordinary justice in tandem with the prosecution of the genocide cases, which must always be given priority.

The scene has completely changed over the past four years. Verdicts have been passed on almost 900 people accused of genocide and crimes against humanity at the conclusion of trials that have generally proved satisfactory. The time has now come for the government to reach a compromise between the requirements of justice and the absolute impossibility of bringing the remaining 125,000 detainees to trial before they die in prison. At the institutional level the judicial machinery is more or less operational, but it is still far from being really effective.

B. The administration of Justice : a summing-up

1. The law dealing with the genocide: four categories of criminal

In November 1995 the government invited a number of foreigners to join it in a series of meetings to debate how justice in regard to the genocide and the massacres should be administered. Different formulas were considered, including that implemented in South Africa. Although the genocide was planned and led by a relatively small group, it was perpetrated by a huge number of people transformed into killers overnight. It was inconceivable that the tens of thousands directly involved in the atrocities could be allowed to escape unpunished. A new system had to be devised to encourage the truth to emerge and responsibility to be acknowledged.

Nine months later, on 30 August 1996, a law (*une loi organique)* was passed in regard to prosecutions for the crime of genocide and crimes against humanity. This is the first law of its kind to be adopted by an independent country. It covers acts committed between 1 January 1990 and 31 December 1994 that constitute a crime both under Rwandan criminal law and under international law (genocide, crimes against humanity and war crimes).

Depending on the gravity of the charges against them, the accused fall into one of four categories fixed by this law:

- category one covers those chiefly responsibility for the genocide and massacres;
- the second category covers 'ordinary killers';
- the third groups together those who wounded without killing;
- the final category is reserved for those who vandalised and looted.

Each category has a corresponding range of penalties. In all but category one, where the death penalty may be called for, the sentences are less severe than the sanctions for similar acts prescribed under the normal criminal code. Those sentenced under category four will not receive fixed-term prison sentences. The prosecutors investigating their cases decide which category should be applied to each of the accused.

Investigations are organized in line with the model used by countries following the Roman law tradition. The Prosecutor General attached to the Supreme Court is the overall supervisor of legal proceedings. As investigations are carried out, he is also responsible for establishing a list of those accused under category one and publishing it in the 'Official Gazette' *(Journal officiel).*

The new law also provides for a procedure that has been compared to Anglo-Saxon plea-bargaining *(une procédure d'aveu et de plaidoyer de culpabilité)*. This allows every accused person the chance to admit his or her guilt during the investigation phase. The district prosecutor's office is then required to verify if such confessions are complete and whether they conform to the facts. If the prosecutor decides to accept a confession, the court must respect that decision. Everybody resorting to this procedure automatically qualifies for a substantial sentence reduction. The only exception to this covers anyone accused under category one whose name had already been published in the 'Official Gazette' prior to confessing.

Within each of the 12 local courts there are one or more special courts set up to deal exclusively with genocide cases, each one presided over by three magistrates. They implement the usual procedure employed by countries following the Roman-Germanic law tradition. However, there is a limited right of appeal, which can be applied only in regard to serious factual or legal mistakes. The appeal courts insist on a written procedure in regard to all appeals.

As far as civil matters are concerned, victims can apply to the special courts for compensation from those who have injured them. The civil

responsibility of those accused under category one has been extended to cover all damage caused during the genocide and massacres.

The accused have the right to a defence, but the state is not responsible for the costs incurred.

Another law, adopted on 8 September 1996, has considerably extended the time limits in regard to various procedures, such as the preparation of the record of arrest, the delivery of an arrest warrant, official confirmation of detention, etc. Although strongly criticized by some international human rights organizations, this is a necessary law. Over 40,000 people had already been arrested when the first IPJs began working, and the rate of arrests was far too high to hope that the previous time limits could be respected. Similar legislation is allowed in very exceptional circumstances under the International Covenant on Civil and Political Rights. The number of cases to be dealt with has led to the passing of a further law on 12 December 1997, which again extends procedural deadlines. Unfortunately, this law was badly drawn up, is technically incomplete and is being used by the judicial authorities as an excuse for relaxing their efforts to ensure procedures are correctly implemented.

2. New institutions and legal reforms

The government and the National Assembly have already completed a remarkable amount of legislative work. In theory at least, in addition to the genocide law, all the judicial institutions foreseen by the Arusha Accords have been set up. The Security Court has been abolished and the Supreme Court was established under a law passed in June 1996. This body, which is completely autonomous, comprises the Court of Final Appeal, the Council of State, the Accounting Office (*Cour des comptes*), the Constitutional Court and the Department of Courts and Tribunals.

The Council of Magistrates, created under a law passed in March 1996, is responsible for matters relating to magistrates' careers and disciplinary measures; the government cannot intervene. Further legislation in April 1997 created an independent bar association. Another law covered the organization of the military justice system. Further draft bills are under study relative to bailiffs (*huissiers*), notaries**,** the creation of tribunals to deal with labour matters, commerce, etc. Sooner or later**,** Rwanda's constitutional law code (*la loi fondamentale*) will have to be revised. This comprises various texts, including the previous constitution and the Arusha Accords. At issue here is the whole question of Rwanda's political system.

3. Human and material resources: international support

Large-scale training programmes have been underway since January 1995 in an urgent attempt to deal with the lack of judicial personnel. Courses last from one to five months. They are always organized in the same way: a radio appeal for candidates holding secondary school diplomas, an admission test, training culminating in examinations and the allocation of

posts to those who pass them. It is a remarkable fact that candidates are coming forward from both communities. As a result, magistrates sitting in the special courts dealing with the genocide may be either Hutu or Tutsi.

Unfortunately, the latest training programmes indicated a reversal of this trend, at least for the most public appointments (IPJs, OMPs and magistrates). This problem must be dealt with or the judicial machinery will never receive the credit it deserves. Another matter for concern is the way in which some authorities are discrediting most of the experienced Hutu magistrates.

So far, 750 IPJs,[5] 200 OMPs, 300 magistrates, 150 court clerks and 150 prosecutor's secretaries have received training. This has cost around four million dollars. The principal donors have been Belgium, Canada, the UN High Commissioner for Refugees, the Netherlands, Switzerland and the European Union.

Apart from the Rwandan Ministry of Justice istself, the main implementing agencies in order of arrival have been the NGO ''Réseau de Citoyens''– Citizens' Network (RCN)-, and the Belgian and Canadian development co-operation agencies.

The low salaries, difficult working conditions and general insecurity have all served to discourage people from applying, and there have been many instances of officials abandoning their posts. Some magistrates, IPJs and OMPs have themselves been arrested as suspects in the genocide; others have been killed by armed bands seeking to perpetuate it. However, by December 1998 the ranks of the judiciary had been rebuilt and the numbers are now greater than they were prior to April 1994. The number of magistrates has increased from 600 to 770, of OMPs from 87 to 160, and of IPJs from 193 to 550. The overall number of judiciary staff has grown from 1,194 to around 1,850.

This increase is justified for two reasons: prior to April 1994 the justice system was in any case understaffed, and considerable numbers of staff are now required to deal with the genocide cases. However, care must be taken to avoid establishing a justice machinery that is incommensurate with the country's resources and its normal requirements (see below).

In parallel with the training courses, a great deal of work has also gone into restoring buildings, and providing vehicles and other essential material. Around USD 4.200,000 have been invested in rehabilitating the judicial infrastructure, coming mainly from the European Union, Switzerland, Belgium, Japan and USAID. Programmes to supply equipment and vehicles to the Ministry of Justice, the courts and the prosecutors' offices have cost more than ten million dollars, provided principally by the European Union, UNHCR, USAID, UNDP (United Nations Development Programme), the German, Belgian, Canadian and Dutch (via UNDP) development co-operation agencies, and the Irish NGO Trocaire.

[5] The figures given in this report are taken from official sources that match those gathered by international organisations and NGOs. There can be no strict guarantee that these figures are exact given the lack of a specialised body to collect and collate legal statistics and other quantitative information.

The local communal police force has been given assistance worth about eight million dollars (coming mainly from UNDP and USAID), as has the Gendarmerie (the Rwandan national police force), which received aid totalling USD 1.200,000.

Among the principal areas covered by international support, particular note should be made of the following general programmes:

- programmes targeting the prisons (see below);
- the rehabilitation (with Swiss donations) and re-establishment (with support from the Belgian development co-operation agency) of the National Centre for Judicial Training in Nyabisindu;
- the preparation of handbooks dealing with specific legal issues and the supply of legal documentation;
- a project presently implemented by the German development co-operation agency to set up a data bank on detainees;
- technical assistants temporarily attached to the Ministry of Justice and other judicial institutions provided by the Belgian, Canadian and Dutch development agencies and UNDP.

and individual programmes:

- support for the unit within the Ministry of Justice aimed at raising general public awareness of justice issues related to the genocide;
- support for the selection committees (*Commissions de triage*) deciding on the release of detainees with no serious charges against them;
- a project run by the NGO Avocats Sans Frontières[6] to ensure a defence for those charged with offences related to the genocide;
- training and supervision in the defence of genocide cases;
- support for legislative reforms;
- subsidies for a period of one year to judicial staff (raising their salaries by 50%);
- support for the military justice system, etc.

Although it does not complete the list, considerable support has also been provided by the NGO Norwegian People's Aid (mainly for judicial institutions in the Cyangugu region), and by Sweden and Denmark. On the basis of the figures available, overall support for the judicial system and security services since January 1995 appears to have reached 40 million dollars.

UNDP contributions are allocated via a Trust Fund, which is managed by that agency, but provisioned by various countries, but principally The Netherlands. However, several donors believe that the multilateral machinery of a body such as the UNDP is too unwieldy to ensure the effective support effort that is required.

[6] See Avocats Sans Frontières: *Rapport d'activités du premier semestre 1998*, Kigali, September 1998.

There has never been any real co-ordination of international support. UNDP has been trying to do this for some time, but without success. However, the technical assistants meet regularly and thus ensure an informal co-ordination. A round table meeting was organised in Geneva in June 1996. This should have been followed at the end of 1997 by a consultation process on specific themes that would have again brought the Rwandan government together with representatives of all the donor countries. This would have been an excellent opportunity to review the international effort and examine it in the perspective of government policy.

Unfortunately, this section cannot conclude without mentioning the failure of the mission conducted by the UN High Commissioner for Human Rights. A team of over 100 was deployed in Rwanda until July 1998. Part of its mandate was to support the justice system. Although the difficulties faced in carrying out observation and assistance missions merit analysis, that is not the object of this report. Suffice it to say that the failure of this mission to provide technical support for the first judicial bodies responsible for human rights protection is much to be regretted.

4. Arrests, 'provisional' detentions and releases

Between July 1994 and September 1998 arrests took place at a rate varying between one and three thousand per month. All those arrested were suspected of participation in the genocide and massacres. The government has now relaxed its policy and arrests are rare, although it is acknowledged that many people compromised in the massacres remain free.

The total number of detainees is now decreasing; according to the Ministry of Justice there are now just over 123,000. Arrests, carried out by the army in the first months, later by the administrative authorities and security services, still do not conform to legal requirements. The charge files opened on several thousand detainees arrested by the army in 1994 and 1995 have still not been completed.

In 1995 and 1996 committees were set up to denounce suspects (*comités de délation*). These denunciations were systematic and indiscriminate and inevitably aroused a great deal of suspicion. Some alarming statistics have been mooted, including a claim that 50% of those detained are innocent. However, this would seem unlikely as the special courts have, in fact, acquitted around 17% of suspects. There were certainly a large number of abuses in relation to the arrest of suspects, but there is nothing to indicate that they are on the scale that might have been feared. Investigations still underway reveal that a large number of people detained for several years without charge were very certainly deeply implicated in the genocide.

Up until 1996 the army was very reluctant to allow any detainees to be released. Although this reluctance remains, it has become less marked. Survivors' groups exert a great deal of pressure and this has to be taken into account. Apart from some very rare exceptions, the government and the international community have disregarded them, except when they are required as a symbolic reference. It is easy to understand the resentment

and the strong desire for genuine justice that now motivates some of the survivors. They are suspicious and systematically critical of everything concerning the justice system. Although few in number, this radical faction represents a moral voice that speaks out with full force in political debates, sometimes influencing judicial proceedings.

With more or less good will, the government has resorted to various *ad hoc* measures in order to release some categories of detainee and yet avoid violent protests. Selection committees (*Commissions de triage*) were the first thing tried. Composed of representatives of the army, the administrative authorities and prosecutors' offices, all with different opinions about releases, these proved a failure. The itinerant groups of judicial staff members that succeeded them moved from one prosecutor's domain to another's to conduct speedy examinations of files that apparently contained no serious charges. These groups, which were disbanded a short while ago, led to the release of several thousand people, some, such as the sick and the elderly, for humanitarian reasons. Others charged with attacks on possessions rather than lives were also set free.

According to the information available, around 10,000 detainees without substantial charges against them were progressively released. The official total of releases since January 1995 stands at 34,000. In December 1998 the Ministry of Justice opened a new campaign to get the prosecutors to release another 10,000 detainees facing insubstantial charges. However, caution is called for: it has happened that some of those set free have then killed those considered potentially dangerous witnesses against them and have had to be rearrested, if they had not already disappeared.

According to the rules, a suspect can only be held in detention before trial if there are serious charges against him or her, and if release would be prejudicial to the investigation or to public order. Several factors explain the small number of releases authorised by the prosecutors or by the hearings on pre-trial custody (*chambres de conseil)*, the two bodies authorised to grant them: reluctance on the part of the army, the administrative authorities and the survivors. The situation has improved today, but the justice system is still not powerful enough to exercise its prerogatives fully. In addition, the investigating authorities concentrate their efforts on preparing cases that are then submitted to the special courts for trial. However, the same magistrates preside over both pre-trial custody hearings and the special courts. This all serves to highlight the significant lack of human resources.

5. The prisons and detention centres

Capable of holding 12,000 people, the penitentiary establishments were rapidly submerged by the unbroken flood of detainees. By April 1995 the situation had become apocalyptic. The International Committee of the Red Cross (ICRC), UNICEF and UNDP (with funding from the Netherlands, Belgium, Denmark, Sweden and Finland) took on the thankless and difficult task of improving and extending existing detention centres and arranging new, "semi-permanent" holding centres. Women and children were provided with more privacy and better protection. Living conditions were raised to a minimum level of viability.

However, the situation still gives reason for concern. The total holding capacity of the 18 prisons and other centres assimilated to them is 37,000, but they presently house almost 82,000 detainees. Another 41,000 people are living in very poor conditions in communal lock-ups and other places used to imprison them locally, although fortunately the ICRC has been able to make conditions there a little more humane. Most of these people were arrested without any respect for legal procedures and there are long delays in drawing up charges against them.

The decentralised prison administration service has been reinforced: 400 warders were quickly trained and hired, thanks mainly to the intervention of the NGO Penal Reform International (PRI), and support from the NGO CAFOD and the European Union.

However, the communal lock-ups remain under the administrative authority of the local leaders (*bourgmestres*) who do not have the resources to run them properly. The central administration is overstretched and still far too disorganized to cope with the scale of the problem. A more rigorous policy must be adopted. The European Union is financing a programme implemented by PRI, which covers both the setting up of small-scale economic projects in the prisons and reinforcement of the central administration service. Unfortunately, the effects of this programme have not yet been felt. The government has just decided to hand over the administration of the prisons to the Ministry of Internal Security It remains to be seen whether this transfer of responsibility will result in a more efficient administration.

Little is known about the military detention centres. It has never been confirmed whether those arrested during security operations in Northwest Rwanda are still held by the army.

B. Legal proceedings relative to the Genocide

1. Improvements required in the conditions under which trials are held

The first legal proceedings opened on 26 December 1996. They caused large crowds to gather and horrified reactions from observers. The trials were conducted cursorily and in an atmosphere of over-excitement. They concluded within a few hours with heavy sentences and hardly any concern for the rights of the defence.

The trial of Froduald Karamira in February 1997, one of the theoreticians behind the genocide, marked a turning point. Little by little, the quality of proceedings has continued to improve and the administration of justice has become more dispassionate. Observers agree that the justice system has improved overall, although there are variations from one place to another.

The organization *Avocats Sans Frontières*, which is mainly responsible for ensuring a defence for the accused, is generally satisfied with the present situation. Verdicts and sentences reflect a real attempt to reach truth and

justice, although they are couched in terms that are more easily understood by the populace than would be the case in more conventional contexts. Doubtless they do not have the formal and technical quality of decisions rendered by seasoned jurists.

There has also been an evolution in the severity of sentencing. Between December 1996 and December 1997, 45% of those accused were given the death penalty, and 6% were acquitted. In 1998 the proportion of death sentences fell to 16% and acquittals rose to 17%.

Factual proof is obtained almost exclusively through witness statements. This is a delicate subject. It is important that the voices of witnesses for the defence should be heard just as clearly as those for the prosecution. Despite some clear improvement, it is regrettable that prosecutors still have a tendency not to call defence witnesses. The courts, at first reluctant to deal with this problem, have now agreed to remedy it, although this will result in inevitable delays.

Another important step in the justice process was taken last July, when several thousand detainees decided to resort to a form of plea-bargaining (*la procédure d'aveu*). This represents both an important innovation in regard to the genocide law, and a significant gamble on the part of the authorities. It is not known whether the decision for so many detainees to admit their guilt was prompted by the executions carried out in April 1998, or whether it results from the information campaigns conducted inside the prisons. Whatever the reason, the fact remains that by December 1998 almost 9,000 detainees had chosen this procedure. Their cases are given priority treatment. The initiative is greatly accelerating the pace of investigations. It is also produces a favourable climate for the social dynamic expected from the trials.

The trials themselves have changed shape. Today, the preference is for trials grouping together all those involved in the same acts in a particular geographic area. This makes it possible to better understand what took place and more easily distinguish the degree of responsibility of each suspect.

Sentences were passed on 330 people in 1997; in 1998 the figure almost doubled to around 600. It would appear that improving the quality of justice produces a corresponding improvement in the number of cases dealt with. Nevertheless, at this rate it will take 160 years to put everyone on trial. This is an argument used by some who question whether the judicial path should now be abandoned. The answer is clear: certainly not. If the chief criminals were not put on trial, justice would be denied and the national conscience violated**.** However, the government believes that the country is ready for an alternative to conventional court trials for genocide suspects.

2. Major difficulties: insecurity and a lack of resources

The difficulties that remain are far from negligible. There are far too few judicial staff given the number of cases to be dealt with. From the figures available, it appears that about 20% of them have deserted their posts.

The low salary levels go a long way towards explaining this. However, the government has now increased civil service salaries by between 25% and 45%. It is to be hoped that these increases, which came into effect on 1 January 1999, will help to stem the flow. However, that is not certain, particularly as some other benefits have been removed and there has been a considerable rise in the cost of living. Magistrates feel isolated, even abandoned by the hierarchy of the Supreme Court, which clearly has no interest in them or their work.

Insecurity remains a discouraging reality in several regions of the country. The courts and the prosecutors still lack adequate logistic and material resources. Working conditions are very difficult. However, the structural weaknesses of the Ministry of Justice and the Supreme Court represent a major handicap far outweighing these other problems. Neither the Ministry nor the Court is yet capable of ensuring the logistic and supervisory services that are required to guarantee an effective administration. The fact that the judicial institutions are so ineffective is mainly due to these structural problems. Allowing the system to slow down would only be a false economy. The situation still needs to be treated as an emergency; it has not yet reached the development stage when the pressure might be allowed to ease off.

4. Some particular problems

a. The rights of the defence

The Rwandan Bar is composed of around 50 lawyers.[7] For various reasons that are not always comprehensible, only a minority of these takes part in legal proceedings, even on the defence side. The accused and the victims are defended by around 15 members of Avocats Sans Frontières and a handful of Rwandan lawyers who agree to collaborate with them under patronage of the Bar Association's Office of Consultation and Defence (*Bureau de consultation et de défense*).

Except in the prefectures in the northwest of the country, which have been neglected so far for security reasons, a defence is usually offered in the special courts. It is estimated that 60% of those on trial there have been assisted in their defence, which is a higher proportion than in civil cases. Those acting on behalf of the defence may visit detainees, meet with them confidentially and have access to their files. Petitions deposed by the defence are given due consideration and generally accepted.[8]

There is more cause for concern about the situation regarding appeals. This is a written procedure. Yet the Public Prosecutor's Office can make oral interventions, although the defence has no right to a verbal response. There are two phases to the appeal procedure: the appeal is first examined by the appeal court in order to decide whether it can be accepted; once accepted, the facts of the case are then re-examined. When the court accepts the appeal and re-examines the file, the defence is permitted to

[7] For the setting up of the Bar Association, see Law N° 03/97 of 19 March 1997.
[8] See the Avocats Sans Frontières report: *Rapport d'activités du premier semestre 1998*, Kigali September 1998.

offer further explanation, although only in writing. However, in the case of an illiterate defendant without anyone acting on his behalf the rights of the defence are only theoretical. In parallel with modifications recently made to the genocide law, this would be the ideal time to enforce greater respect for the defence in appeal situations.

b. Victims' participation at hearings

It is not easy for victims to assert their rights when they learn that the people responsible for their individual sufferings are to be brought to trial. They can consult lawyers, but only if they have the financial means to do so. Otherwise, they have to go to Kigali to the offices of Avocats Sans Frontières, or contact a local organization that might direct them towards ASF or a similar body. Failing this, they can beg for help from the Office of Consultation and Defence of the Kigali Bar, or attend the hearing without any case prepared to support their claims.

There are numerous cultural and technical obstacles for the victims to overcome. It is a very complex matter for an ordinary citizen to prove that wrong has been done and to calculate appropriate compensation claims. It must be said that magistrates have shown commendable patience and concern in dealing with such cases.

It is very important that victims should be able to make their voices heard during legal proceedings. As with all matters relating to the administration of justice in Rwanda, there is a general lack of information that cannot be adequately compensated for by the awareness campaigns conducted by the Ministry of Justice. Victims' access to the courts could be improved and time saved by the preparation of a short explanatory leaflet containing examples of how to become a civil party to a case. These could be available in the offices of the court clerks.

c. Compensation for victims and the civil responsibility of the Rwandan state

The government's attitude is ambiguous. The state is regularly summoned in its capacity as a 'legal person' to appear before the court by victims who count it morally responsible for the acts committed by its agents during the genocide. However, the government does not respond and is never represented. Although it has already been ordered to pay the equivalent of several million dollars in compensation, this will never be done. Therefore why diminish the authority of sentences in such cases and give false hope to unwary victims?

The government has sufficient margin for manoeuvre to allow the state to accept responsibility. The National Assembly voted for a compensation fund (*Fonds d'indemnisation*) for victims to be endowed mainly by public funds. A new bill could be drafted to ensure that the state is put beyond the reach of compensation claims without exonerating it of its responsibility, which would then be presumed by this fund.

d. Women and minors

Children and adolescents also participated in the genocide. In Rwanda those aged between 14 and 18 years at the time of a crime have mitigated responsibility. The law relative to the genocide provides for minors to appear before a 'specialized special court' (*chambre spécialisée spéciale*) and must be defended. This provision is being respected.

In 1996, minors aged below 14 years were released from prison and placed in a separate establishment.[9] This did not affect some 2,000 minors under 18 years, many of them living among adults. It seems that the 5,500 women detainees, some 600 of whom are accompanied by young children, have been separated from male prisoners except, according to some sources, in some communal lock-ups. Women and children are the most affected both physically and psychologically, from the overcrowded conditions prevalent in the places of detention.

e. Monitoring the trials

The UN High Commissioner for Human Rights is responsible for monitoring proceedings on behalf of the international community. Mention should also be made of the reports produced by *Avocats Sans Frontières* and the excellent work of the League for the Promotion and Defence of Human Rights in Rwanda (LIPRODHOR). Given greater resources, LIPRODHOR could be present at more hearings and ensure wider distribution of its reports.

`f. The death sentence and public executions

Both the ordinary criminal code and the genocide law retain the death penalty. Incidentally, victims have criticized this law because it considerably limits the cases in which the death penalty can be pronounced. In fact, it can only be used for major figures in the genocide (category one), and then only if they have not admitted their guilt within the permitted time limit.

On 24 April 1998, 22 people were publicly executed by firing squad. Some international organisations were shocked by the public nature of this mass execution. However, it should be said that no photographs or filming were allowed, and there was no exploitation in the official media. Although the government has not officially announced an end to executions, behind the scenes it has made assurances that there are unlikely to many more of them.

[9] Given the level of need and the complexity of this question, specific groups require attention, particularly women and children. According to a UNICEF report: *Children and women of Rwanda: A situation analysis of social sectors*, published in 1998, 5% of the prison population accused of genocide and crimes against humanity are women, of whom 600 are in prison with their children. A detention centre holding 300 women has been opened in Myove, but this is far from meeting the needs.

> As a matter of principle, approval cannot be given to the death penalty. But it must be remembered that this is a subject for which there are mixed opinions. This is particularly true in regard to crimes against humanity and the crime of genocide, and public opinion in Rwanda sees the death sentence as a legitimate form of punishment.[10]

D. The administration of ordinary Justice unrelated to the Genocide

With the exception of the local commune-level courts, and the judicial institutions in the new prefecture of Mutara, ordinary justice has been supported in the same way as genocide-related justice. Most of the people employed by the justice system have followed the accelerated training courses. Higher level magistrates must have a degree in law. They are selected by the National Assembly and have to be approved by the Council of Magistrates (*Conseil de la magistrature*). The President of the Supreme Court has gradually removed most of the more senior Hutu magistrates from their posts for reasons that seem vague and ambiguous.

The Constitutional Court is the only chamber of the Supreme Court actually functioning. It is responsible for ensuring that new laws conform to Rwanda's Basic Law. The posts of vice-president allocated to the Department of Courts and Tribunals and the Court of Final Appeal remain vacant. The Council of State and the Government Accounting Office are unable to function because of a lack of personnel.

The disorganization resulting from the war, as well as the exodus and then the return of the refugees have given rise to other litigious disputes The local commune-level courts have virtually disappeared and the such matters are presently dealt with by the local administrative authorities, which is far from ideal.

Although the other judicial bodies dealing with the administration of ordinary justice are meeting the same difficulties as the special courts (absenteeism, a lack of equipment and office supplies, etc.), they are finding it harder to function effectively. Staff are in a position to benefit from bribery and other forms of corruption as supervision is less strict given the lack of official interest here compared with the special courts. In addition, many magistrates complain of government interference.

The main problem is not the lack of resources, but rather inefficiency and the absence of a rigorous management and supervision policy. The Belgian development co-operation agency is implementing a support programme in regard to the administration of the prosecutors' offices. Its Canadian counterpart intends running a similar programme targeting the courts and tribunals. These initiatives should be extended to cover the administration of the Ministry of Justice. However, the Ministry is not in favour of such a move because, it claims, their main handicap is the lack of material resources.

E. Military Justice

The War Council and the Military Court apply the genocide law where it applies to acts committed by soldiers, and do so rigorously. The same bodies deal with acts of violence on the part of soldiers towards civilians. Although these cases are

[10] See *Eichman in Jerusalem* by Hannah Arendt, Harmonths-Worth, Penguin, 1994.

treated with equal severity, far fewer cases have been dealt with than the number of acts recorded.

The UN human rights mission noted regular reprisals on a disproportionate scale and indiscriminate massacres carried out by the army (Kibeho, Kanama, Muramba, etc.). Yet very few soldiers, gendarmes or members of the police force have been brought to trial. The struggle against impunity must ensure that no group is favoured above another or the credibility of the justice system will be at risk.

F. The challenges for the future

1. The future of justice related to the genocide: 125,000 detainees waiting for trial

What measures are required to speed up the system in regard to the huge numbers of detainees?

This is a singularly difficult problem to resolve. Some advocate a general release of all detainees except those in category one. But how could freeing tens of thousands of killers in any way contribute to ending the culture of impunity, or do anything to appease the victims and encourage social harmony and mutual respect between the communities. This would be no less than an amnesty in disguise, rightly regarded as unacceptable. However, neither is it advisable to continue with the present situation whereby it could take 20 years to bring to trial thousands of detainees while the others remain locked up indefinitely and many die in prison.

Under the impetus of the President and the leadership of the Minister of Justice, the government began a wide-reaching debate on the political and technical aspects of this problem. This reached the conclusion that what was required was an alternative system of justice in which citizens would actively participate. The main suggestion is to release all detainees, except those held under category one. Those released would then be interrogated in public on the site of their crimes. This is somewhat similar to the Rwandan tradition of *gacaca* (the literal meaning is 'turf justice'). Assemblies of 100 to 120 elected citizens will form arbitration tribunals that will operate simultaneously, hearing witnesses and passing sentence. Sentences could include work on behalf of the community.

It is not hard to imagine that such a system of 'people's justice' will inevitably face strong resistance from those calling for the rigorous application of judicial guarantees. Nevertheless, this is an interesting approach that deserves consideration, although it raises many questions and has some obvious grey areas. Informal soundings among the populace show that it is far from hostile to the idea. Some of the reactions are interesting. *"This would be our Truth and Reconciliation Commission." "Finally, our voice will be heard.' "This is what we need. There will be no lies in front of a public assembly."*

However, there can be no miracle solution for what appears to be an irresolvable contradiction between rigorous respect for procedures and the reality of 125,000 people waiting to be put on trial. The line so far taken

indicates a desire to respect the justice process while carefully looking for culturally appropriate solutions. The Ministry of Justice is presently drafting a bill. It is taking a bold gamble in this move, which certainly merits constructive, but prudent consideration. Although the initiative does away with a formal interpretation of judicial guarantees, respect for human dignity must be clearly demonstrated along with the conviction that the victims, the accused and the Rwandan people have a right to justice.

2. Justice in regard to the genocide: responding to an urgent situation

While waiting for this alternative system to be implemented, the prosecutors must continue their investigations and the special courts must continue to hold trials; the formal justice system remains, and will continue to remain, fundamental. The problem can be summarised in a few words: how to increase the quality and effectiveness of the judicial institutions dealing with genocide-related cases and yet obtain rapid results, but without increasing the financial burden on the country.

It has to be accepted that Rwanda still requires material aid to compensate for what is lacking in the administrative infrastructure. This include vehicles and equipment repairs, fuel and office supplies, transport and living costs for members of the special courts obliged to visit the scene of a particular atrocity, and logistic support for investigators gathering evidence and verifying confessions.

Adapted to the place and the circumstances, this type of spontaneous support can be quite effective. Using funds provided by Sweden, Switzerland, Belgium, Ireland and the European Union, two NGOs have already assisted the prosecutors' offices and the special courts in this way. Some bilateral development co-operation agencies occasionally adopt this approach, which should be used more often and extended to cover the areas in Northwest Rwanda that have so far been neglected. The Rwandan situation must still be treated as an emergency and assistance must be continued in order to meet the needs at the national level.

The European Union is assisting the Ministry of Justice to run a training programme to help meet the deficit in human resources. This is backed by financial support covering the salaries of five hundred extra judicial staff members (court clerks, IPJs, OMPs, prosecutors' secretaries). The intention is that they should work mainly on genocide cases.

Although not high enough, it is to be hoped that the salary increases that came into effect in January 1999 will help to ease the situation. Something must also be done to counter the isolation felt by magistrates dealing with genocide cases. It is high time that the Department of Courts and Tribunals and the Council of Magistrates fulfilled their functions. There should be more encouragement for initiatives such as the organization of seminars aimed at promoting better communications between magistrates.

Finally, consideration must be given to magistrates whose future careers are blocked because they do not have full law degrees. The Belgian and

French development co-operation agencies are setting up a continuing training programme culminating in a qualification equivalent to a university degree. This is an excellent idea, but there are not enough magistrates dealing with genocide cases and it would be a great pity if they were to have to interrupt their work for several months a year at this stage.

In regard to the defence in genocide trials, the accused and the victims are too numerous for all to benefit from the services of a lawyer. Eighty-eight people are about to complete a training programme organised by the Danish Human Rights Centre that will qualify them to provide a defence for both victims and the accused. Their deployment could very adequately resolve the problem in regard to representation and defence at trials. This should serve to increase the symbolic weight of an effective defence.

The respectful but uncompromising approach of *Avocats Sans Frontières* has largely contributed to improving the quality of legal proceedings. Its representatives are the best placed to ensure that those acting on behalf of the defence are give a practical training. As the organization has opted to gradually disengage from direct involvement, it could instead begin to take on the supervision of those acting for the defence. However, the presence of expatriate lawyers depends on the president of the Bar Association, who grants them the right to speak for the defence. So far, the Bar Association has not shown any great enthusiasm for the new category of judicial staff. *Avocats Sans Frontières* should remain active in Rwanda, but if it is to do so, the government will have to demonstrate a clear and unambiguous commitment to their continuing presence. They might eventually become involved in providing help to deal with the regions in which the justice system is not yet able to operate because of the insecurity problems.

To be fully effective, it is not enough that a justice system should simply be a 'good' system; it must also be acknowledged as such by the government and the people. The previous Minister of Justice was usually abandoned by his colleagues and left to stand alone in the firing line of criticism from those calling for a more rapid dispensation of justice. In January 1999 the Minister, a Hutu like his predecessors in this position, was sufficiently discouraged to quit the country. A new Minister, Jean de Dieu Mucyo, has been nominated in his place. It seems that the country's higher authorities are prepared to demonstrate greater support for the new man. It is certain that a more public commitment towards the justice system by senior political figures would considerably increase its impact and political effects.

A special unit within the Ministry of Justice has initiated campaigns aimed at raising awareness about how the justice system is operating. This work should be given a greater priority. However, the unit needs to develop a more effective communications strategy.

3. Reconstructing the judicial system

A considerable amount of investment has quite rightly been devoted to putting the judicial system back on its feet. Laws have been passed to create and organize new institutions. However, work still needs to be done on the rehabilitation of buildings housing the judicial machinery at the most immediate local level, and the European Union has agreed to finance this

work. The Swiss development co-operation agency has supported a training programme for magistrates in these local courts. This was a very basic course that still has to be perfected.

Continuing training programmes are on the agenda and they should help to make judicial staff more effective. This will give them qualifications that will enable them to embark on a career that few could otherwise have contemplated because of the lack of diplomas or degrees. Two hundred students are presently completing their law studies. However, this should not raise hopes that the judicial machinery will soon be run exclusively by legally qualified people; for example, very few of these students plan to follow a career in law. Indeed, the policy aimed at increasing the number of judicial staff should be clarified. The international community is being asked to support the training and recruitment effort. However, there is confusion between the temporary requirement for human resources to meet the present abnormal circumstances related to the genocide trials and the more general need to ensure an adequate staff for the judicial institutions to function properly under normal conditions. To get an idea of the size of the problem, if a calculation is made of the recurring costs that would result from meeting these requirements, it is clear that Rwanda could not do so without becoming even more dependent on the international community.

The budget for running the justice system represents 4.5% of the country's total budget. This is a respectable percentage in comparison with other countries with equivalent resources, but one that cannot be increased given the economic state of the country. On the contrary, Rwanda has had to sell off an important part of its transport fleet. This has also affected the Ministry of Justice: this is not the time for it to make substantial increases to its budget. In order to ensure continued and appropriate support from the international community, it would be useful to establish an organization chart covering all the different parts of the justice system. This should outline responsibilities and indicate which parts are currently functioning.

There are strong arguments in favour of reinforcing the capacity of existing institutions rather than advocating their extension. Three out of the five departments of the Supreme Court are not functioning at all. There is no effective control mechanism for supervising the work of the courts and the prosecutors' offices, or the administration of the Ministry of Justice, which is failing to provide its decentralised organs with the material they require in order to function properly.

Constructing a fully functional justice system is a long and exacting task. In February 1999 the government created a Ministry of Internal Security to take over the national police service, which comprises the normal police service, the Gendarmerie, prison warders and IPJs ; the latter are no longer attached to the Ministry of Justice. This is progressively becoming a 'minor' ministry compared to the Supreme Court and the Ministry of Internal Security. No matter the underlying reasons for this new distribution of responsibilities, the relationship between the different institutions has yet to be defined. Great care must be taken to avoid two main pitfalls: a security system escaping any democratic controls, and the weakening of the judicial institutions.

III. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

A. The International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) was created by the Security Council on 8 November 1994 under resolution 955. Its purpose is to try those responsible for genocide, crimes against humanity and other serious violations of international humanitarian law committed during 1994 in Rwanda, or by Rwandans in neighbouring countries.[11] The Security Council decided that the Tribunal should sit in Arusha, Tanzania.[12]

There are three parts to the ICTR:

- three courts or divisions (the third has just been created) each composed of three judges elected by the General Assembly of the United Nations for a period of four years;
- the Public Prosecutor's Office;
- the Clerk's Office.

[11] The temporal jurisdiction of the ICTR covers the whole of 1994. This was a bone of contention when the Tribunal was being set up and is recognised as one of its weaknesses. The Rwandan government raised two main objections. The first objection concerned the government's claim that the Tribunal's jurisdiction should cover the period from 1 October 1990 to 17 July 1994, thus allowing it to investigate the crimes committed against Tutsis and moderate Hutus since the beginning of the war in 1990 up until the final victory of the Rwandan Patriotic Front (RPF). That this extension not accepted was the main reason why Rwanda's representatives to the United Nations voted against resolution 995. Some observers point out that acts committed between 1 October 1990 and 17 July 1994 could nevertheless be included if a causal link could be proved between them and the crimes committed in 1994.

The government's second objection concerned the extension of the Tribunal's jurisdiction to the period after 17 July 1994. The Security Council chose to extend its jurisdiction up until the end of 1994 so that it might investigate violations of international humanitarian law that might have been committed by the RPF after the creation of the government of national unity.

The ICTR's territorial jurisdiction covers Rwanda and other countries on whose territory Rwandan nationals committed international humanitarian law violations. The intention was to thereby include Hutu militias and members of the former Rwandan Armed Forces (ex-FAR) who continued to intimidate and kill civilians from their bases in refugee camps in Zaire, Tanzania and Burundi. This extension of the Tribunal's area of jurisdiction is criticized as an infringement of the national sovereignty of states.

12 The debate over the location of the ICTR had a political dimension. Although a commission of experts recommended that the Tribunal should sit in The Hague in order to ensure its impartiality and independence, the Rwandan government called for it to be located in Kigali. The Security Council chose Arusha in Tanzania with a view to providing a calmer atmosphere for debate and better logistics and administrative facilities. These are not convincing reasons. The first reflects a lack of confidence in regard to the Tribunal itself and to the Rwandan authorities who committed themselves to full co-operation with the ICTR. The second has been disproved by the logistic and material difficulties encountered in Arusha, which have seriously handicapped the Tribunal's work.

The five judges sitting on the Appeal Court of the Tribunal for the former Yugoslavia in The Hague have also been appointed to the Appeal Court of the ICTR. The Public Prosecutor at the Tribunal for the former Yugoslavia, in charge of investigations and legal proceedings, holds the same responsibility for the ICTR, but remains based in The Hague. The practical side of the work is the responsibility of a Deputy Public Prosecutor, who has his office in Kigali.

The Clerk's Office is not only in charge of the judicial administration, which is his usual role, but is also responsible for all the management and diplomatic support required by the Tribunal. This includes support and protection for witnesses and victims, the running of the detention centre, the organization of legal assistance for the accused, the management of personnel, finances and security, etc.

The ICTR follows a procedure owing much more to the Anglo-Saxon legal tradition than to its Latin cousin. The investigation service of the Public Prosecutor's Office questions witnesses and visits sites to collect evidence. When it is decided that there is sufficient proof, the Prosecutor draws up a charge, which he passes to a judge for confirmation. Once confirmed, the charge is always made public; there are no exceptions to this. In making arrests, the Tribunal must obtain the co-operation of other countries as it does not have its own police force. All countries have an obligation under international law to co-operate with the ICTR in this way. The Tribunal holds suspects and the accused in a detention centre while waiting for trial. There is a guaranteed right to a defence with the costs generally covered by the Tribunal, which recompenses the lawyers designated by the Clerk's Office. Sentences are to be served in countries designated by the Tribunal out of those that have volunteered their services for this end. Victims are not authorised to bring independent actions for damages. This court fixes its own procedural rules, requiring approval only from the Appeal Court.

B. How the Tribunal is working out

Getting the ICTR on its feet was a chaotic process. A new judiciary structure had to be set up practically *ex nihilo*. As the Tribunal has different offices in three different countries (Tanzania, The Netherlands and Rwanda), the communication and logistic difficulties have been considerably greater that what was foreseen when it was created.

Until 1997 the Tribunal progressed very slowly and had a very low profile. It is understandable that the lack of any tangible results from an international court with resources five times greater than those available to Rwanda's judicial institutions has been a cause of frustration.

Following complaints by its own staff, by individual countries and by the General Assembly, the UN's internal controls office held an enquiry into how the Tribunal was functioning and issued a report. Known as the Pashke report, this revealed deficiencies, fraud and a stunning level of incompetence. The Court Clerk and the Deputy Public Prosecutor then resigned and structural reforms began to be implemented.

It is undeniable that these changes introduced a new dynamism into the work of the Prosecutor's Office and went far towards ending the departmental war that had waged between the Clerk's Office and the strictly judicial organs of the ICTR. However, a number of serious problems still persist. For example, there are still huge problems in regard to recruitment. Out of 137 posts in the Prosecutor's Office, 54 remained vacant in July 1998. The slow rate of recruitment is handicapping the Tribunal and it is being pressed to take more action to deal with this. The structural

problems result from the Tribunal being run like a UN agency. A large majority of the administrative staff are UN civil servants. They consider working in Arusha to be just another posting, but to a fairly unattractive geographical area. This explains the number of vacancies and the high rate of turnover. Nor does the United Nations have experience in dealing with judicial logistics that require attention to the most minute detail if the machinery is to keep running.

C. The ICTR's finances and budget

The Tribunal's budget is prepared by the Court Clerk's Office and then submitted annually by the UN Secretary-General to the General Assembly. During its first years, the budget was notoriously inadequate and help had to be provided through UN member states contributing to a special fund set up for the purpose. Around a dozen countries contributed, but Belgium and The Netherlands were the main donors. They also provided personnel on secondment and without charge. However, the Secretary-General dispensed with this form of assistance on 30 June 1998.

The ICTR's budget was around 35 million dollars for 1997 and almost 50 million for 1998.[13] The budget for 1999 has risen to 73 million dollars, which will allow the creation of some 250 supplementary posts for a Tribunal that today has a staff of 582. The amount allocated for defence activities is more than five million dollars. The Tribunal therefore has sufficient resources available, but it must now use them effectively. Given the cost of running the ICTR, there is every right to expect it to perform more efficiently than it has up until now, although considerable progress is being made.

D. The judicial work of the ICTR

1. A difficult beginning

Added to structural difficulties and the failure of the Deputy Public Prosecutor's Office to develop a criminal policy, several countries have been reluctant to collaborate with the Tribunal. When suspects seek refuge abroad, the Prosecutor relies on the countries concerned to show a real willingness to collaborate with him in his investigations. The changes in ICTR personnel and a new attitude on the part of countries sheltering suspects have radically changed things. The turning point came on 18 July 1997, when Kenya collaborated with the Prosecutor's Office and arrested nine people, including several ministers of the former interim government.

Following these arrests the new Deputy Public Prosecutor decided that the best way to shed light on how the genocide was prepared and executed was to take 29 of the accused who shared responsibility at the national level and try them as a group. Intended to demonstrate that the genocide was a conspiracy, this would have been the Rwandan equivalent of the Nuremberg trials. However, the Appeal Court rejected this project on procedural grounds in June 1998 and the Prosecutor has since changed his strategy. He is now trying to organize trials based on 'themes' (soldiers, the media, etc.) or geographic areas (the accused of Butare, etc.) while taking into account the procedural rules fixed by the Appeal

[13] The last ICTR budget, covering the period from 1 January 1998 to 31 December 1998, is estimated at USD 56,736,00. The ICTR employs 511 people in addition to the six judges. Offices in The Hague and Kigali complete the seat in Arusha.

Court. If he succeeds, such trials should bear a closer resemblance to the reality of the crimes committed and avoid the endless duplication of individual trials with the same facts constantly repeated at unnecessary extra expense.

The failure of the Prosecutor's initiative, which would have been a logical and efficient approach to the problem of trying so many people, has led to new delays of around six months as trials already underway have had to be suspended following the Appeal Court's decision.

2. Arrests

The Tribunal is presently holding 36 people in detention.[14] Of these, 30 are held in the detention centre in Arusha, another is in Texas waiting to be transferred, and two who pleaded guilty are detained in a centre whose name is being withheld in order to ensure their safety.

The majority of these 36 detainees held positions of responsibility within the Rwandan state system or in the various groups and movements that first incited others to take part in the genocide in 1994 and then directed it. They include seven former ministers, eight senior civil servants, six military officers, four political leaders, three militia leaders, three senior figures in the 'media of hate', two businessmen, a priest and a doctor. All were arrested outside Rwanda. Ten other people not in detention have also been accused of involvement.

3. Trials

The first trial, that of Jean-Paul **Akayesu**, former *bourgmestre* (mayor) of Taba, opened on 9 January 1997. Forty-two witnesses gave evidence and over 4,000 pages of notes were recorded before the trial closed on 26 March 1998. On 2 September 1998 the Tribunal found Akayesu guilty of genocide and crimes against humanity. A month later he was sentenced to life imprisonment. Both the Prosecutor and the accused have appealed against this decision; the Prosecutor is appealing because Akayesu was acquitted of war crimes**.** This was an historic trial on two counts: it was the first conviction for genocide by an international tribunal, and the first time that rape was treated as a crime against humanity as well as a means of perpetrating genocide.

Jean **Kambanda**, formerly prime minister of the interim government formed in April 1994, was the first person to plead guilty before the Tribunal. His plea was accepted on 1 May 1998 and on 4 September he was sentenced to life imprisonment for genocide and crimes against humanity. His voluntary and public acknowledgement of the genocide and his own role in it had a major political impact. It cut the ground away from under the feet of those who had steadfastly denied that there had even been a genocide. Jean Kambanda agreed to co-operate with the Public Prosecutor by providing information and evidence against others who are accused. This willingness to co-operate did not win him clemency from the Tribunal; he was given the maximum sentence anyway. The judges concluded that consideration of his plea of guilty must not detract from the gravity of the crimes committed by a prime minister who had so abused his authority. It was also their opinion that Kambanda had shown neither regret nor sympathy for the victims. He is now appealing against his sentence.

[14] The list of detainees is contained in annex.

Omar **Serushago**, a militia leader in Gisenyi, has also pleaded guilty. His plea was accepted by the Tribunal and and he was sentenced to 15 years imprisonment. The Tribunal stressed that attenuating circumstances allowed them to show clemency. These included his plea of guilty, his co-operation with the Prosecutor, his family antecedents and certain assistance given to some whose lives were threatened. Contrary to Jean Kambanda, Omar Serushago publicly expressed his remorse and called for national reconciliation. He has appealed against his sentence on the grounds that it would have been less severe if he had been tried in Rwanda under the provisions of the law passed on 30 August 1996.

The trial of Clément **Kayishema**, former *préfet* (town official) in Kibuye, and of Obed **Ruzindana**, a Kibuye businessman, was held between April and November 1998. Sentencing should take place in the first quarter of 1999. The trial of Georges **Rutaganda**, vice-president of the Interahamwe militia, opened on 18 March 1997 but was then postponed due to the state of health of both the accused and his lawyer. The trial began again on 8 February 1999. The trial of Alfred Musema, former director of a tea-producing factory, began on 25 February 1999.

4. The defence

Relations between the ICTR and the defence lawyers have been stormy. The lawyers want the Tribunal to cover their costs automatically, which is a source of tension in itself. On the one hand, the Tribunal wants to limit the costs it is liable to cover automatically and avoid the risk of being held hostage by a group of lawyers acting in concert. On the other hand, the lawyers invoke the right of the accused to choose who should defend them, and their own independence. The prolonged tension is having a negative effect on the Tribunal's work that is likely to continue despite recent directives adopted by the Tribunal.

5. Other judicial activities

The various departments of the ICTR have issued a number of decisions on procedural questions raised by the Public Prosecutor and the defence. These cover modifications in regard to charges against suspects, rulings regarding the handing over of documentary evidence, the probative value of witness statements, the protection of witnesses, changes in defence lawyers, etc.

These decisions will certainly facilitate the task of drawing up procedural regulations for a fledgling international court. They evince the Tribunal's concern that the rights of the defence are respected and a fair trial guaranteed. The only regret is that the large number of petitions and the time required to reach a decision on each one is causing considerable delays in the trials themselves.

6. Prison sentences

The ICTR will decide where sentences are to be served. Up until now Belgium, Denmark, Norway, Sweden and Switzerland have all agreed to make prison space available. Rwanda is advocating vigorously for sentences to be served on its territory. This is unlikely to happen because the Tribunal believes that such prisoners' lives could be at risk in Rwanda. The ICTR has made great efforts to

convince an African country to house prisoners. However, there is a basic requirement that any such country must respect the minimal conditions laid down by the United Nations in regard to the treatment of prisoners without having to rely strongly on international assistance. On 13 February 1999 the Tribunal signed an agreement with Mali, which has carried out a prison renovation programme. South Africa and Benin are also potential candidates.

7. Prosecution of war crimes

It is possible that certain acts committed by RPF troops in 1994 may fall under the ICTR's jurisdiction, which covers serious violations of the conventions in regard to internal armed conflicts. During the summer of 1998 the President of the Tribunal insisted on several occasions that the Tribunal's jurisdiction would intend extend this far**.** However, this has not yet been finally resolved. It is a delicate issue as it no only affects future relations between the ICTR and Rwanda, but is also susceptible to political exploitation.

E. Co-operation with other countries

The ICTR's statute requires all countries to co-operate and assist it. This co-operation can take different forms: identifying and searching for suspects, providing evidence, transmitting documents, arresting and holding suspects and persons already accused, relinquishing national jurisdiction in favour of the Tribunal, etc.

1. Co-operation with Rwanda

The Tribunal's effectiveness depends on collaboration with Rwanda. For a long time relations were strained. When the ICTR was set up, Rwanda was particularly opposed to the decision not to provide for the death penalty. It also objected to the location of the Tribunal outside its territory and to the way in which judges are nominated.

The situation was not made easier by the decision to transfer to Arusha, without giving a copy to Rwanda, all the documents and other information gathered by the UN human rights mission during the months after the genocide. The Rwandan government sometimes felt that the Tribunal was bypassing it when it saw that suspects arrested in a third country (Cameroon, Zambia), at Rwanda's request, were then transferred to Arusha instead of being extradited to Rwanda.

Although Rwanda has always declared that it is ready to collaborate fully with the ICTR, over the past two years this collaboration has been limited to allowing investigators to work on its territory. Relations deteriorated at the beginning of 1997 as the Tribunal continued to be ineffective. However, the situation changed with the appointment of a new Deputy Public Prosecutor and the arrest in Kenya in July 1997 of some of those held chiefly responsible for the genocide. The ICTR is now very pleased with Kigali's co-operation: the Ministry of Defence has opened its files for the Tribunal, witnesses for the defence detained in Rwanda have been allowed to go to Arusha, international investigators have been given access to Rwandan court files.

However, these improvements are not reciprocated. Petitions to the ICTR from the Prosecutor General attached to the Supreme Court have so far been to no effect. Neither the Tribunal nor the international community has taken into account the importance to the Rwandan justice system of gaining access to information gathered during the trials in Arusha.

2. Co-operation with other countries

The most visible aspect of this co-operation is certainly the arrest and transfer of suspects to Arusha by other countries.[15] This includes countries that had begun proceedings against suspects and relinquished their jurisdiction at the request of the ICTR. Several countries have made things easier for the Tribunal by facilitating the transfer and relocation of witness when they had to change their place of residence for security reasons.

However, not all countries have shown equal willingness. Some claim that the absence of any internal law authorising collaboration with an international tribunal absolves them of their obligation to co-operate. This argument is fallacious. Other countries having the same problem went ahead and passed the necessary legislation. In addition, the Security Council has put forward a number of legal arguments in favour of the immediate application of these provisions to all national legislation. In fact, this is much more a question of political will than of legal technicalities.

F. How the ICTR is perceived in Rwanda

For historical reasons linked to the passivity and then the complete withdrawal of Blue Helmet troops during the genocide, the UN has been discredited in Rwandan eyes. The ICTR is treated with the same scepticism and Rwandans have little time for it. They were shocked by the decisions to exclude capital punishment and not allow victims to seek compensation. They regard it as a distant, irrelevant institution, both incomprehensible in its workings and expensive to maintain. It is true that the ICTR has so far paid little concern to making itself better known. For example, it is hard to find copies of the Tribunal's decisions in Rwanda, and they are not translated into the national language. Private initiatives (*Intermédia* and the *Fondation Hirondelle*) aimed at wider recognition for the Tribunal have unfortunately not penetrated very far into Rwanda. This is a pity as the Tribunal represents the only possibility for trying a large number of those held chiefly responsible for the genocide and whose escape abroad has rendered them inaccessible to Rwanda's courts. It is a tangible sign of the universal condemnation of the genocide.

G. Suggestions

In line with the creation of the International Criminal Court and the 50th anniversary of the Declaration of Human Rights, it is generally agreed that the international *ad hoc* tribunals for the former Yugoslavia and Rwanda represent significant advances in the fight against impunity. They could be regarded as experimental laboratories for a future international justice system. However, the *a posteriori* creation of these individual

[15] Twelve come from Kenya, six from Cameroon, three from Zambia, two from Belgium, two from Benin, two from Ivory Coast, two from Togo, one from South Africa, one from Burkina-Faso, one from Mali and one from Namibia. One suspect volunteered to give himself up to the Tribunal before being arrested ; another is presently waiting to be transferred from the United States.

tribunals could also be seen as a selective political tool posing little risk to countries trying to clear themselves of accusations of inaction when real intervention was called for.

International justice is intended to serve the universal cause of human rights. In practical terms, this means acting on behalf of countries and peoples who have been the victims of the crimes that an international justice system exists to deal with. To succeed in this, be a real effort must be made to ensure that the population concerned is correctly informed of what is being done on its behalf: this is what the ICTR is singularly failing to do.

It is also said that international justice substitutes for national justice when this is unable to fulfil its role unaided. Although the Rwandan justice system in the wake of the genocide is not perfect, it is certainly genuine in its attempts to ensure that justice is done. The ICTR could support the work of the Rwandan courts at little cost to itself by communicating the results of its own work. This is a question of principle.

Finally, given the resources allocated to the ICTR it is expected to perform well and effectively. The present inefficient management practices are not acceptable. However, the Tribunal's staff is pessimistic about the chances of an early substantial reduction in logistic and personnel problems. The structural reforms must continue to be implemented, but the difficulties arising from the UN bureaucratic system are considerable. This does not mean inevitable failure, but constant pressure will have to be applied, both internally and externally, if further abuses are to be avoided.

IV. PROSECUTING *'GENOCIDAIRE'* SUSPECTS IN A THIRD COUNTRY

To what extent can justice in response to the genocide be administered within third countries? Are they obliged, or are they even entitled, to bring to trial those implicated in the crimes committed in Rwanda in 1994 who have sought refuge on their territory? Must they agree to Rwanda's extradition requests? Finally, there is the question of political asylum and the application of national legislation relative to immigration. International obligations certainly need to be clarified; at the moment the answers to these questions vary from one country to another.

A. Trying Rwandans in a third country

Genocide, crimes against humanity, war crimes and torture are international legal concepts all applicable to Rwanda. Each is subject to different international legal provisions. Without going into detail, it is clear that these provisions impose an international obligation on heads of state to prosecute or extradite those accused of such crimes. International jurisprudence emanating from the Tribunals for the former Yugoslavia and Rwanda have refined these notions and established their universality. All countries are now clearly obliged under international law to put on trial the authors of the crimes committed in Rwanda in 1994.

However, in order to meet this obligation by initiating proceedings before a national court, constitutional, technical or political reasons usually require new legislation to underpin or complete the international obligation and thus render it operative within the country's own justice system. Not all countries have taken this legislative step.

The existence of national legislation is not enough in itself to guarantee that legal proceedings will begin. They may also be avoided by a politically opportunistic interpretation of criminal policy in regard to such cases. Finally, it is clear that inertia may also result in postponed prosecutions or prevent them reaching the obvious verdicts.

B. Extradition

In principle, international law obliges countries sheltering those accused of crimes committed in Rwanda to allow extradition to Rwanda, which is certainly prepared to try suspects seeking refuge abroad. The case of Froduald Karamira, extradited from Ethiopia and tried in Rwanda may remain a unique case. In fact, the requirement to extradite is circumscribed by a country's own legislation. For example, many countries insist on an extradition agreement with the country to which a person is to be extradited before applying the international prescription. Rwanda (or the previous colonial power on its behalf) has signed 27 such agreements.

At a more fundamental level, most if not all western countries are refusing to agree to extradite anyone who might eventually be subject to either the death penalty, or cruel and degrading treatment. With the present state of Rwanda's legislation and prison conditions, there is little hope of it succeeding in obtaining many extraditions. Finally, some extradition procedures reflect government decisions taken on the basis of purely political considerations. From this point of view, Rwanda has even less influence on the international scene than, for example, the ICTR.

C. Expulsions within the framework of legislation related to immigration

Many of those suspected of involvement in the crimes committed in Rwanda in 1994 have requested political asylum in their countries of refuge. Under international law people seriously suspected of a crime related to genocide, a crime against humanity or a war crime should not be granted political refugee status. Once this has been refused, the applicant must usually leave the country or risk expulsion towards the country of origin. This is an embarrassing situation for countries that neither extradite nor expel towards countries where there is a risk of capital punishment or inhuman prison conditions. Some countries avoid the problem by expulsion towards a third country. It is, however, outrageous that a country does not itself prosecute somebody who has been refused refugee status on the grounds of suspicion of involvement in genocide.

There is a striking difference between the western debate on human rights and the case against impunity, and the timidity with which these countries approach the issue of prosecuting a few refugees suspected of involvement in the most unimaginable atrocities. Obviously, this is not a totally clear-cut issue. The relevant legislation is very complex, and there are real technical, and sometimes logistic and financial complications. Nonetheless, it is clear that the crux of the matter is the lack of political will.

V. CONCLUSIONS

Four necessary conditions must be fulfilled if justice is to succeed in Rwanda: the population must feel secure, more must be done to counter poverty, confidence must be restored in the country's institutions and the question of moral responsibility for the genocide must be dealt with.

- In order to ensure that the justice system produces the desired social and political effects, it is essential that the populace feel secure. Although there has been progress in this direction, this is still not the case in the northwest of the country. On the one hand, murderous attacks by armed bands reliving the genocide have not completely ended. On the other hand, the army's reactions, albeit legitimate, are not always in proportion and regularly result in human rights violations. Finally, the present security policy is unlikely to encourage the population to feel secure; for example, the forced displacements of the population into towns if they want to avoid being treated as accomplices of the Interahamwe,

- The fight against poverty. Justice cannot play its essential role in ensuring stability in society when the poverty level is so low that the population is inevitably at risk of destabilization. The 1994 genocide further aggravated the existing poverty. It is an unavoidable fact that the 125,000 detainees represent an economic potential that is presently unavailable to a country. Indeed, at the moment they pose a heavy financial burden for their families and for Rwandan society in general,

- Restoring confidence in the country's institutions. This is probably one of the most delicate problems facing Rwanda today. The establishment of an effective, impartial and transparent justice system requires the support of the whole population, taking into account all social classes and ethnic groups. Some initiatives are encouraging. The President of the Republic has sponsored a series of 'Saturday meetings' that bring together diverse political personalities to debate what should now happen. These meetings have led to the decision to organize 'micro-local' elections (the cell and the sector[16]) and to entrust the majority of the genocide suspects to elected arbitration tribunals. Other decisions raise their own questions. For example, the policy of progressively regrouping the population in towns seems to favour the use of coercion over the offering of incentives. Another example is the gradual dismemberment of the Ministry of Justice in favour of the new Ministry of Internal Security,

- This extremely delicate and complex question cannot be covered in a few sentences. There is undoubtedly a strong feeling of community identity within the Rwandan population, which was manipulated for political ends over past decades. The theoreticians of the genocide had the sinister ability to exercise this manipulation to the extreme. Despite the numbers who perpetrated the genocide and those others that tried to oppose them, the majority of the population did not participate. However, a feeling of unease remains. One of the main political stakes today is how first to dissociate this community identification from the ideology that lay behind the genocide and then to depoliticize, but not to eradicate it completely. Entrusting citizens' assemblies with the task of judging former neighbours who participated in the genocide and massacres could perhaps constitute a significant step towards achieving this.

[16] These are the smallest administrative divisions in Rwanda.

Supported by several international partners, the Rwandan government has done some remarkable work in the sphere of justice. The government has set the goals and the international community should continue to help in realizing them.

VI. RECOMMENDATIONS

A. Justice in Rwanda

1. Justice related to the Genocide

Three elements characterise the complexity of the justice issue in Rwanda:
- ending the culture of impunity that prevailed in the country since independence in 1994,
- administering a system of justice that has the overall approval of the population,
- dealing with the immense problem of 125,000 detainees.

At the cost of considerable effort, the justice system is now more or less capable of playing its role. The government has decided to leave the courts to deal with those who hold the greatest responsibility for the genocide and to set up an arbitration system that will allow citizens to play the major role in trying 125,000 genocide suspects. This initiative deserves to be supported. However, more emphasis should be pleased on keeping the population informed about progress in the administration of justice**,** and more moral and financial support should be provided for survivors of the events of 1994.

ICG recommends that the international community should:
- continue to support the Rwandan justice system, particularly as it is related to the genocide, for a period of at least three years,
- encourage, facilitate and support the debate on how to deal with the incarceration of 125,000 detainees, including alternative forms of justice, particularly the setting up of “arbitration tribunals”.

ICG recommends that the Rwandan government should :
- do more to raise the image of the justice system among Rwandan people and to explain the ins and outs of it,
- institute improvements in the level of efficiency and the quality of the work of the judicial institutions in cases related to the genocide and the massacres, but without raising the recurring costs to the state.

The government and the international community should pay more attention to the material and psychological situation of survivors and develop a policy, in discussion with them, for commemorating those who were killed (memorials, witness statements recorded on film, a documentation centre, etc.).

Two other aspects of genocide cases also need to be dealt with:
- independent action for compensation: victims should be better informed about how to go about this (information campaigns, a leaflet to be available in the courts, etc.),
- the defence of the accused:

- moral support for defence lawyers,
- continued international financial backing for initiatives such as those taken by Avocats Sans Frontières,
- overhaul of defence procedures in the appeal courts.

2. Arrest and detention centres

- More emphasis needs to be placed on respect for judicial guarantees at the time of arrest,

- The prison administration system should adopt a strict management policy and generally maintain a humanitarian approach to the problems facing the detention centres,

- Serious consideration should be given to releasing minors and helping them to reinsert into society,

- As far as possible, the "*génocidaire*" suspects should be kept separate from common criminals to prevent the latter from being contaminated by the genocidal ideology.

3. Military Justice

- The armed forces and the security services must intensify their efforts to fight against impunity.

4. Justice not related to the Genocide

- The justice system must act in such a way that it cannot be suspected of favouring some social groups over others. Its independence must be respected,

- There should be more concern for improving the efficiency of existing institutions, as well as their management and supervisory structures. More support must be given to the administration of justice at the level of the communes,

- A continuing training policy should be adopted for existing magistrates. More appreciation should be given to the work of both magistrates and other judicial staff.

B. The ICTR

1. The International Tribunal

- Within the limits of its mandate, the ICTR should adopt an attitude of positive collaboration with the Rwandan courts. This should be done by passing on to them information it has gathered,

- The Tribunal should adopt a policy of transparency and information, mainly directed towards the Rwandan population (ICTR judgements should be easily accessible and available in the Rwandan language), but also towards the international community,

- The Tribunal should do more to implement reforms aimed at speeding up its work and making it more efficient.

2. Other countries and organisations

- They should exert pressure to ensure that the reforms foreseen for the Tribunal continue to be implemented,

- They should support initiatives intended to raise the public profile of the Tribunal and its work,

- They should offer full collaboration to the International Tribunal.

C. Third countries

It is presumed that western countries wish to demonstrate the practical application of the values and basic principles defended in Rwanda and before the International Tribunal. Their complex legal systems allow this to be done, although some legislation may have to be modified to make it possible.

- Countries should bring their national legislation into line with the international principles and agreements that they otherwise defend and support,
- The Convention for the Prevention and the Punishment of the Crime of Genocide should be adopted into internal law,
- Laws relating to punishments linked to the violations of the Geneva Conventions on humanitarian law should be adopted into Rwandan law along the lines of the Belgian law of 10 february 1999, relative to repression of severe violations of humanitarian right,
- Rwandan victims of the genocide should be allowed to take independent action for compensation in the trials of genocide suspects; they should receive finance to pay for necessary travel from Rwanda to Europe in order to do so (this is a question that will soon become relevant in Switzerland and Belgium with trials scheduled to take place in 1999),
- The 1951 Convention on refugees should not be applied in regard to those suspected of crimes against humanity, war crimes and genocide,
- Individual countries should ensure that their criminal law codes are both ethical and in conformity with the international obligations that they subscribe to,
- adopting a firm ethical criminal policy that corresponds to their international obligations.

D. Establishing the facts and determining international responsibility

A posteriori justice must not appear to be an alibi or a measure of political expediency taken to avoid action when the international community and its member states are confronted with genocide. It is important not only to punish

those guilty of instigating and carrying out the genocide, but also to clearly establish the facts and assign responsibility in regard to the failure of the international community to prevent or stop the genocide and massacres in Rwanda in 1994. Some important work towards this has been achieved by a commission of enquiry set up by the Belgian Senate and an investigation carried out by the French National Assembly.[17] On 26 March 1999 the Security Council approved a decision to implement an independent enquiry within the UN regarding its role in Rwanda. Following the Belgian, French and UN initiatives, it is now up to the United States to undertake a similar investigation into its own response to the first incontestable genocide to be recognized by the UN.

[17] Parliamentary Commission of Enquiry regarding events in Rwanda *(Commission d'enquête parlementaire concernant les événements du Rwanda)*, Belgian Senate, 6 December 1997; Investigation into strategy regarding Rwanda (*Enquête sur la stratégie rwandaise*), 1990-1994, National Assembly, Paris, 16 December 1998.