

**INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA:**

JUSTICE DELAYED

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA:

JUSTICE DELAYED (Original Version in French)

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Seven years after its establishment immediately following the genocide in Rwanda, and more than four years since the beginning of the first trial, the International Criminal Tribunal for Rwanda (ICTR), based at Arusha, Tanzania, has to date handed down verdicts on only nine individuals. Of 69 indicted suspects, 45 have been arrested. Not one of the alleged masterminds of the genocide has been brought to trial – including Colonel Theoneste Bagosora who has been in prison for five years. Most of the masterminds of the genocide, whether officially indicted by ICTR or not (due to lack of evidence), are able to live freely in many countries, including the DRC, Gabon, Kenya, and also France and Belgium.

With more than 800 employees, three trial chambers presided over by nine judges, and a budget of around 90 million US U.S.\$, the performance of the ICTR is lamentable. Between July 1999 and October 2000, the only substantial case heard¹ was the trial of a single accused, Ignace Bagilishema, the former mayor of the village of Mabanza, which has just concluded. Five judges out of nine have spent more than a year and a half without hearing a substantial case and one of

them had managed by last March to attain a record 28 months without hearing a substantial matter.

There are some points in the ICTR's favour. It has provided indisputable recognition of the Rwandan genocide and has politically neutralised the "Hutu Power" movement's agenda of Tutsi extermination. However, seven years on, it has still not been able to shed light on the design, mechanisms, chronology, organisation and financing of the genocide, nor has it answered the key question: who committed the genocide? Compared to the International Criminal Tribunal for the former Yugoslavia (ICTY), the ICTR has suffered from international disinterest and a shocking lack of media attention. That is in part because the jurisdiction of the ICTR is limited to the trial of crimes committed in 1994, while the ICTY's jurisdiction is not subject to any time limit.

The symbolic existence of the tribunal has also not discouraged the ongoing protection in certain capitals (Kinshasa, Brazzaville, Nairobi among others) of more than a dozen powerful Rwandan Hutus who are among the principal genocide suspects. Neither does it appear to have dissuaded the perpetrators of the 1994 genocide and the war between the former Rwandan government of Habyarimana and the Rwandan Patriotic Front (RPF). The perpetrators of the genocide rearmed with complete impunity in the refugee camps of eastern Congo, leading to the resumption of the war by the RPF in 1996 and again 1998 on the

¹ A substantial case is defined as the taking of witness testimony, their questioning by the prosecutor, their cross-examination by the defence or the taking of expert evidence during a public hearing. The trial of the former mayor of Mabanza, Ignace Bagilishema began last December and the verdict is expected on 7 June 2001.

territory of the Democratic Republic of Congo, where war crimes and crimes against humanity continue to be committed by both sides.

It is certainly not the responsibility of the judges of the ICTR to write history. But their failure to complete the central tasks of delivering justice and establishing a record of events also prevents them from contributing to another mandate set by the Security Council: national reconciliation between the Hutu and Tutsi communities. The fact is that the political relevance of that mandate has been rapidly overtaken by the continuation and regional spread of the conflict.

For the majority of Rwandans, the ICTR is a useless institution, an expedient mechanism for the international community to absolve itself of its responsibilities for the genocide and its tolerance of the crimes of the RPF. The Rwandan government complains of the squandering of money and resources while 130,000 prisoners fill its jails and its courts have tried more than 4000 suspects; the survivors of the genocide find the tribunal distant and indifferent to their lot, and the victims of the crimes of the RPF denounce it as an instrument of the Kigali regime, seeing the ICTR as a symbol of victor's justice.

The important task of the ICTR seems to have been lost in daily dysfunction and internal bureaucratic conflict. The geographic split of the office of the Prosecutor between Arusha, Kigali and The Hague has seriously impeded investigations, and the long absences of judges and defence lawyers have not assisted trial proceedings. There is now a grave risk that those in custody will be released because of the failure to bring them to trial after a period of years. The ICTR must immediately focus on meeting its mandate, while the UN Security Council must ask the prosecutor to set a deadline for investigations, and ask the judges to publish a trial schedule. Every day the mission of the ICTR becomes more of an historical exercise, with less and less chance of having an impact on events of the present. To tolerate such a situation, and support it for too long, would be a second betrayal of the people of Rwanda.

Above all, in the short term, it is imperative to establish priorities among pending cases, and bring

to trial those who are already in custody. Three of the key groups that were used by Hutu extremists in the former Rwandan leadership were the army, the interim government and the media. The trial of key media figures is underway. The trial of military figures, many of whom are already in prison, should also begin as a matter of urgency. This is extremely important in order to show how the genocide was planned and carried out. The cases against former ministers of the interim government should also begin as soon as possible.

Once the major genocide trials are complete, the ICTR must undertake investigations of crimes committed in 1994 by the RPF. Despite public announcements at the beginning of the proceedings and the promise of cooperation by the government of Rwanda, it is likely that this inquiry will be seriously limited. It is hard to imagine that those in power will, in effect, lift immunity on the military, especially those who are continuing the war in the DRC. It is nevertheless crucial to insist that the regime in Kigali deliver criminals into the hands of international prosecutors, and so give a strong political signal that no crime, past or present, will go unpunished.

If the international community really wants to deliver justice and combat impunity it must urgently reform the operations of the ICTR. The recruitment of judges must be reviewed to ensure that they have real professional experience in criminal justice. They must be made accountable for their activities and performance. The independence of the prosecutor's office must be strengthened and incompetent employees of the prosecutor's office and registrar's office should be dismissed. At the same time, international cooperation between states and the ICTR must be improved in relation to the arrest and prompt transfer of suspects.

UN member states should extend their legal jurisdictions to help the cause of justice in Rwanda. The best example so far has been that of Belgium, which has just tried four Rwandans under a 1993 law that gives its national courts the power to try suspects for genocide, no matter where the crimes were committed.

In the current situation and in the face of such a large task, it is illusory to think of enlarging the

mandate of the ICTR to include crimes committed in the DRC, or in Burundi, as some have proposed. Until the permanent International Criminal Court is established, international law must immediately be applied in national jurisdictions to prosecute crimes committed in Burundi since 1993 and in the DRC since 1995. It may also be envisaged that a special court of mixed jurisdiction be created along the lines of those proposed for Sierra Leone and Cambodia. The question of the enlargement of the ICTR may be reconsidered in future, but only if it quickly manages to fulfil its mandate.

In the end, the international tribunal must deliver justice to the victims of the genocide. Certain trials should for example be transferred to Kigali to reach certain audiences and to increase the impact on the Rwandan population. The question of compensation for victims by the creation of an international fund is equally important.

RECOMMENDATIONS

TO THE UNITED NATIONS SECURITY COUNCIL AND SECRETARIAT

1. Ask the Prosecutor to set a deadline for investigations and ensure that the arrest of the masterminds of the genocide is made a priority. Require the judges to provide a court schedule establishing priorities, and initiate without delay the trials of members of the interim government, former senior officers of the armed forces, and political leaders who are already in custody. Ensure that the prosecution strategy of the Tribunal conforms to stated objectives and that efficient methods are implemented.
2. Pass a resolution obliging all states which have tolerated the presence of seventeen known fugitives on their territory to make a serious effort to arrest and transfer these persons to Arusha, under threat of sanctions. The names of the states concerned should be cited in the resolution.
3. Provide half-yearly reports on the activities of the ICTR and judges.

4. Give the office of the prosecutor both autonomy of action and financial autonomy to carry out investigations and issue indictments.
5. Create a commission to study the question of compensation for victims of the genocide, taking into account initiatives already put in place by the Registrar of the Tribunal and by the government of Rwanda. This complex issue should not be solely in the hands of the Tribunal. The commission may consider the creation of an international fund, run by a board of eminent persons.

TO MEMBER STATES OF THE UNITED NATIONS

On the Search for and Arrest of Suspects

6. Make the arrest of suspects a political and financial priority for national police. Strengthen assistance to the ICTR in the investigation and seizure of suspects, and put diplomatic pressure on those who are suspected of providing refuge or protection to suspects on their territory, such as Kenya (in the case of Kabuga), Congo-Brazzaville and DRC (Bizimungu, Ntiwiragabo, Mpiranya and Renzaho) and Cameroon (Mpiranya).

On the Transfer of Suspects

7. Transfer those indicted by the Tribunal as quickly as possible and with respect to the law, in the absence of any special procedure.

On the Protection of Witnesses

8. Increase the protection options available to the Tribunal so that it can, if necessary, offer to relocate witnesses summoned to appear before it or informers who have assisted the Prosecutor.

On the Trial of Alleged "Genocidaires"

9. Encourage states to adapt national laws, as Belgium has, that give them the universal right to try architects and perpetrators of genocide.

On Carrying out Sentencing

10. Use diplomatic pressure to encourage African states to respond favourably to requests for cooperation with the ICTR on the issue of sentencing and provide financial support to judicial cooperation programs concerned with receiving prisoners convicted by the Tribunal.

TO STATES PROVIDING FINANCIAL SUPPORT TO THE TRIBUNAL

11. Demand a full public audit of the accounts of the Tribunal.

TO THE GOVERNMENTS OF FRANCE AND BELGIUM

12. Open investigations into suspects known to be living in France and Belgium, whether on the official list of indictments or not, such as the family of former President Habyarimana. In cases already underway, such as that of the priest Wenceslas Munyeshaka, speed up proceedings.

TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA

13. Establish an office alongside the office of the prosecutor to administer funds for a program of rewards for information about suspects wanted by the ICTR.

TO THE PROSECUTOR AND THE PRESIDENT OF THE ICTR

14. Clarify and simplify the issuing of arrest warrants and if necessary, inform the UN Security Council of non-cooperation of certain states if they are shown to knowingly house suspects wanted by the Tribunal.
15. Set a final date for investigations and prosecutions and present a schedule for the trial of those who are already in custody.
16. Urgently resolve the problems observed between the registrar of the court and the

prosecutor's office in relation to the allocation of funds, notably by giving the prosecutor's office financial autonomy.

On Judicial Cooperation with Rwanda

17. Strengthen legal cooperation initiatives with national courts in Rwanda. The "young jurists mission" and the representation of Rwandan judicial officers at Arusha should be developed. The exchange of information between the two legal systems should be encouraged.

On the Outreach Program

18. Seek supplementary funds and support existing Year 2000 "outreach programs" which aim to improve knowledge about the work of the ICTR in Rwanda.

On the Holding of Trials in Kigali

19. Arrange, as soon as possible, to conduct certain trials of the ICTR in Kigali to increase the impact of the proceedings on the people of Rwanda. If transferring the trial is too costly, or is inconsistent with the rights of the defence, then at least some hearings should be held in Kigali.

On Court Delays and the Operation of the Tribunal

20. Stop the unjustifiable delays, which have characterised the activities of the Tribunal in the past two years, and fulfil the mandate promptly, obliging all chambers of the Tribunal to begin hearing substantial cases immediately and compelling the appeals chamber to speed up proceedings.
21. Ensure the recruitment of competent and efficient investigators and lawyers to the office of the prosecutor.
22. Examine the possibility of insisting that defence lawyers establish residence in Arusha once they are appointed, except with the permission of the President of the Tribunal.

TO THE GOVERNMENT OF RWANDA

23. Assist the work of the Tribunal as much as possible in Rwanda and give guarantees of cooperation especially in relation to crimes committed by elements of the RPF in 1994, immediately suspending suspects from official functions, demobilising them and handing them over to international legal authorities.
24. Modernise the legal system, especially in carrying out sentencing, to encourage other countries in the region to extradite genocide suspects to Rwanda.

Nairobi/Arusha/Brussels, 7 June 2001



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I. INTRODUCTION

Nearly seven years after its creation by the United Nations Security Council and more than four years since the trials of the presumed perpetrators of the Rwandan genocide began in Arusha, it is time for the first comprehensive review of the International Criminal Tribunal for Rwanda (ICTR).

On 8 November 1994, less than four months after the genocide and massacres that cost the lives of around one million Rwandans in under 100 days, the United Nations Security Council created the ICTR, with its headquarters in Arusha, Tanzania. Sharing the same appeal court and Chief Prosecutor as the International Criminal Tribunal for the Former Yugoslavia (ICTY), created a year and a half earlier and based in The Hague, the ICTR was mandated to prosecute "persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994²". The ICTR's jurisdiction was restricted to a specific time period, unlike the ICTY, whose jurisdiction has no time limit.

In its resolution creating the Tribunal, the Security Council noted that the trials "would contribute to the process of national reconciliation and to the

restoration and maintenance of peace" and also serve to "halt" the crimes and ensure that they are "effectively redressed". It stressed "the need for international cooperation to strengthen the courts and judicial system of Rwanda" and decided "that all states shall cooperate fully with the International tribunal and its organs (...) including the obligation of states to comply with requests for assistance or orders issued by a Trial Chamber"³. The ICTR was created under chapter VII of the United Nations Charter.

The scope of the Tribunal - indeed, its very *raison d'être* - thus went far beyond the strictly judicial dimension of trials for genocide suspects. The objectives laid down by the UN resolution - national reconciliation, peace-keeping, the fight against impunity and support for the Rwandan courts and judicial system - demonstrated international commitment to a strong penal and symbolic response to the third genocide of the twentieth century. In reality, many Rwandans saw the creation of the ICTR as a mark of an international guilty conscience. Having tragically failed in its duty to intervene and stop the 1994 genocide, the international community wanted to help punish the crime after it had been committed. Right from the start, the ICTR had a paradoxical mandate: highly ambitious on the level of national reconciliation and limited in time and place. The political weight of the mandate was quickly surpassed by the continuation and regionalisation of the conflict. Moreover, the legal response to the genocide and its relevance for those directly

² ICTR Statute attached to resolution 955 of the Security Council, creating the Tribunal.

³ Resolution 955 of the UN Security Council.

concerned - the victims of the genocide and the people of Rwanda - as well as its social and political impact, all remain highly questionable.

Since 1994, the ICTR has certainly been given the means to operate. With more than 800 employees and a budget in 2001 of over U.S.\$90 million, it has grown into a significant institution on a material and human level, capable, in theory, of achieving its mandate. It is comprised of three trial chambers each with three judges and an appeals chamber with five judges. Its activities are no longer constantly undermined by lack of funds, at least this has not been the case since 1998.

By early June 2001, the ICTR had put 45 suspects behind bars and arrested many major high-ranking figures. This meant that a large portion of the former Hutu extremist leaders had been provisionally eliminated from the political arena. Moreover, the rulings it handed down provided legal recognition of the genocide perpetrated against the Tutsis. Despite this, the ICTR has only tried eight individuals to date. Between July 1999 and October 2000, court activity revolved around the trial of a single defendant, Ignace Bagilishema, former mayor of the Mabanza commune (in the western prefecture of Kibuye), even though three new judges had been elected and a new trial chamber built in order to "speed up the proceedings". Above all, the ICTR has still not tried any of the masterminds of the genocide. While the ICTR has been criticised for its slowness, no one could have ever expected - or even imagined - such a level of sheer inefficiency.

This said, since the end of 2000, the ICTR appears to be facing up to its responsibilities more effectively. New trials have begun, proceedings are to be taken against members of the *l'Armée patriotique rwandaise* (APR) and programs have been launched aimed at bringing the Tribunal closer to Rwandan society. These are all positive signs. A new administration has been appointed and changes made to management in the prosecutor's office with the departure on 21 May of the Deputy Prosecutor, after four years in office. Three new judges will also be taking up their posts between the end of May and the month of June.

So why has the ICTR failed? Essentially, three factors have influenced the results and impact of

the ICTR: cooperation with UN member states, relations with Rwanda and the court's internal operations. The ICTR does not have its own police force and relies on the cooperation of states to carry out its work. States are still reluctant to give the ICTR their full political or financial support in several areas, including arrests, witness protection and the imprisonment of convicts. Nevertheless, the level of cooperation has on the whole been good and recognised as such, with the exception of countries such as the Democratic Republic of Congo (DRC). The Tribunal also relies on nurturing good relations with Rwanda. This is not easy and relations are often strained. The Rwandan government sees the Tribunal as a political weapon to help reinforce its moral legitimacy and neutralise its enemies. For Rwandans, the Tribunal has failed their expectations, and reactions are still governed by ignorance, frustration, remoteness and scepticism. However, the most serious charge of all is against the Tribunal itself. The relatively derisory legal work achieved so far is solely the responsibility of the ICTR. Indeed, the court has never fully recovered from the internal operating crisis that continues to unjustifiably undermine its activities.

The crisis in the way the Tribunal operates can be explained in part by structural problems. First of all, dividing the office of the Prosecutor between The Hague, Kigali and Arusha - the result of a political compromise with the new Rwandan government - has made the work of the Prosecutor very difficult. Unlike in the ICTY, the decentralisation of information has jeopardised its confidentiality, a factor that is crucial to investigations. Secondly, limiting the court's mandate to 1994, the result of another compromise between the RPF who wanted the mandate to cover the pre-genocide period as well as the genocide, and other parties who wanted the mandate to begin in 1994 and not be subject to time restrictions, shows that the Tribunal's jurisdiction is restricted and has no political impact on the present. This certainly adds to the lack of interest taken in the court.

Moreover, the Tribunal operates in a difficult political context. Since the genocide, the new RPF-led government in Rwanda has continued to wage war with its old enemies on the territory of neighbouring DRC. In 1996, the first war was a

reaction to the destruction of refugee camps, where ex-FAR soldiers had regrouped and were training. The second war in 1998 was presented by the Rwandan government as a “preventative” war against Laurent Kabila, the former ally of the RPA, who had re-armed the ex-FAR troops against Rwanda. Rwanda felt that the presence of criminals in neighbouring countries obliged it to intervene militarily. The Tribunal is therefore being called upon to prosecute past crimes, but in a context where war crimes continue to be committed by the same perpetrators.

Finally, the crisis has been deepened by internal power struggles, the daily malfunctioning between different departments of the Tribunal, past errors and the prolonged absences of judges or defence lawyers that paralyse the activities of the court. The bureaucratic, institutional and individual survival of the ICTR seems to have become a high priority. The urgency of its mandate, which remains largely unachieved to this day, has been completely forgotten. It is time to set priorities for trials and proceedings and a deadline for its work. There is also a duty, for the court's key players and the international community alike, to demonstrate a determination that has so far been seriously lacking.⁴

⁴ The report was the result of constant monitoring of the work of the ICTR from 1997, completed by a series of interviews carried out from October to December 2000 of a panel of representatives or key persons from the Rwandan community in exile, as well as thirty interviewees in Rwanda, representing a large spectrum of opinion and social positions.

II. THE ICTR UNDER SCRUTINY: THE FORGOTTEN URGENCY OF ITS MANDATE

In 1999 and 2000, trials at the International Tribunal for Rwanda slowed almost to a halt. The normally slow pace turned into an unjustifiable inertia. This serious and shocking situation occurred despite the fact that the number of judges and the overall resources of the ICTR had increased. Although new trials have recently begun, this modest progress is no guarantee that the urgency of the ICTR's mandate will be taken more seriously.

A. SOME SYMBOLIC RESULTS

1. Trials : Sending a Message Against Impunity

By 1 May 2001, the ICTR had issued indictments against approximately 65 persons. The names of 60 of these were publicly disclosed (*see complete list in appendix*) and 45 have so far been arrested. These come from various power circles - government, the army, the media, militias, clergy - and represent high levels of responsibility⁵.

Ten of the 19 ministers from the interim government⁶ established in Rwanda in April 1994, as well as the interim Prime Minister, have been arrested. Three other top political leaders have been apprehended, as well as local authorities, including six (mayors) and four *préfets*⁷. Three key media figures responsible for broadcasting anti-Tutsi propaganda are also in prison. Finally, nine officers from the ex-Rwandan Armed Forces

⁵ Another arrested suspect, Bernard Ntuyahaga, gave himself up to the ICTR before being released on 31 March 1999 after the Prosecutor withdrew his indictment. Since that date, he has been detained in Tanzania, awaiting a decision on his extradition to Rwanda.

⁶ The government in power in the aftermath of the attack on the presidential plane on 6 April 1994 in which President Juvénal Habyarimana died. The former members of this government are today accused by the ICTR of having planned and supervised the genocide against members of the Tutsi community.

⁷ In 1994, Rwanda was administratively divided into 11 prefectures and 145 communes.

(FAR), including senior staff, have been put behind bars.

Add to this list at least three militia leaders and new targets from clerical and financial circles, and the overall collection of suspects apprehended by the Tribunal reveals a diverse "assortment" of groups and organisations implicated in the genocide. However, the fact remains that only a very few real masterminds behind the genocide are behind bars in the UN prison.

Trials at the ICTR began on 9 January 1997. Since that date, eight individuals have been tried. Five of these - Jean-Paul Akayesu, Clément Kayishema, Obed Ruzindana, Georges Rutaganda and Alfred Musema - had a trial on the merits. The three others - Jean Kambanda, Omar Serushago and Georges Ruggiu - entered a guilty plea.

▪ Four judgements on substantial cases

The Akayesu trial - the first ruling on the genocide

The trial of the former mayor of the Taba commune, Gitarama prefecture, began in January 1997 and ended in March 1998. The verdict, announced on 2 September 1998, was the first conviction for genocide following a substantial trial before an international court. Jean-Paul Akayesu was found guilty of genocide and crimes against humanity for extermination, murder and rape and sentenced to life imprisonment. The trial revealed that crimes committed by local authorities, whose power is conferred by central government, were carried out in accordance with government policy. It was established that the defendant - who did not have an extremist background - fought against the *Interahamwe* militias until 18 April, after which he began to lead the Tutsi hunt the day after a crucial government meeting with local authorities, which marked the extension of the massacres across the whole of Rwandan territory. The defence pleaded that Jean-Paul Akayesu had never changed his behaviour and that he simply found himself overwhelmed by the militias, who had become the true holders of power, but the Prosecutor managed to prove that Akayesu had willingly followed the government's policy. On 1 June, the appeal court upheld the chamber's judgement and sentence in full.

The Kayishema/Ruzindana trial - genocide in Kibuye

The *ex-préfet* of Kibuye, Clément Kayishema, stood trial from April 1997 to November 1998 alongside Obed Ruzindana, a shopkeeper from the same region. In May 1999, the two men were found guilty of genocide and sentenced to life imprisonment and 25 years respectively. The region of Kibuye suffered some of the worst Tutsi massacres, notably in the town of Kibuye (Gitesi commune) and the mountainous region of Bisesero where several tens of thousands of people took refuge and were exterminated. More than 50 prosecution witnesses testified in court. Obed Ruzindana is the only accused not to have testified at his own trial. On 1 June, the appeal court upheld the ruling and sentences handed down by the trial chamber in full.

The Rutaganda trial - in the name of the Interahamwe

Of the five members of the *Interahamwe* national committee - the infamous youth organisation attached to President Habyarimana's MRND party, which became the main Hutu extremist militia - only Georges Rutaganda has been tried by the ICTR. The trial of the former second Vice-President of the *Interahamwe* is the longest and most frequently interrupted of all cases before the ICTR. Begun in March 1997, it concluded more than two years later in June 1999. In December 1999, Georges Rutaganda was found guilty of genocide and crimes against humanity and sentenced to life imprisonment for crimes committed in Kigali. He is currently appealing the judgement.

The Musema trial - oral versus written evidence

In 1994, Alfred Musema was the director of the tea factory in Gisovu, Kibuye prefecture. The charges against him partly overlap those already mentioned in the Kayishema/Ruzindana trial. What was unique in his line of defence was that Musema had a strong alibi, and aimed to prove, mostly through written documents, that he was absent from most of the places where he had allegedly committed crimes. The trial, which ran from January to June 1999, was the shortest ever, and showed that the ICTR was capable of speeding up procedures. It

was notable for having been the first trial where the defence team carried out investigations in Rwanda itself. Alfred Musema was also the first accused to recognise the existence of the genocide right from the beginning. In January 2000, he was convicted of genocide and crimes against humanity, including direct rape. This was one of the most difficult cases for the three judges to rule on, and is currently before the appeals court.

▪ Three guilty pleas

The Kambanda trial - confession and denial

Jean Kambanda, the former Prime Minister of the interim government between April and July 1994, is the most senior figure to be tried by the ICTR to date. He is also the first defendant in the history of international justice to repent and plead guilty to genocide. The former Prime Minister cooperated with the Prosecutor, and decided to testify for the prosecution in other trials. On the basis of his confession, he was found guilty on 1 May 1998 and sentenced to the maximum sentence of life imprisonment. The international tribunal views the confession of Jean Kambanda as its greatest success.

However, this victory was badly dented when the former Prime Minister did an abrupt about-turn straight after his conviction. Jean Kambanda immediately appealed his sentence, then, more radically, announced that he wished to retract his guilty plea. During the proceedings, a number of factors came to light which were later made public, calling into question the role of Kambanda's lawyer and his links with the Deputy Prosecutor, Bernard Muna. In particular, the statements made and positions adopted by the former Prime Minister raise serious doubts about the sincerity and clarity of his recognition of the crimes committed against the Tutsis and Hutu opponents, as well as his government's responsibility in the genocide. In reality, Kambanda had confessed strategically, believing he would receive a reduced sentence, but retracted this immediately after his conviction when he realised that his strategy had backfired.

Thus the legal, historical and symbolic import of Jean Kambanda's confession was significantly reduced, despite the fact that, in October 2000, the

appeals chamber rejected his request and upheld the ruling and sentence handed down two years earlier. It must also be stressed that although Kambanda is the highest-ranking person to be tried by the ICTR, he did not mastermind the genocide and his trial does not set an example, as it was hoped it would.

The Serushago trial - a repentant militiaman

A leader of the militia in the Gisenyi region, in Northwest Rwanda, Omar Serushago confessed to having participated in numerous crimes in 1994 and became an informant for the office of the Prosecutor at the beginning of 1997. His information helped to bring about the wave of arrests that took place in Kenya in July 1997, which included the arrest of Jean Kambanda. He is also a potential star witness for the Prosecutor against other defendants. In June 1998, Omar Serushago's surrender and indictment was orchestrated by the prosecution in West Africa, where he had been transferred for security reasons. He pleaded guilty to genocide in December of the same year and was sentenced to serve a 15-year term in February 1999, which was upheld by the appeals chamber a year later.

The Ruggiu trial - a European involved in hate media

Georges Ruggiu is the only non-Rwandan defendant to stand trial before the ICTR. Previously an employee of the Belgian social security service, Ruggiu was employed as a journalist for the extremist Hutu radio station RTLM three months before the start of the genocide. He was arrested in Kenya on 23 July 1997, and pleaded not guilty. After nearly two years in prison, he decided to confess, and agreed to cooperate with the Prosecutor. On 1 June 2000, Ruggiu, half-Belgian, half-Italian, was sentenced to 12 years in prison for incitement to commit genocide and crimes against humanity for persecution. He did not lodge an appeal.

For the three convicts who pleaded guilty, their cases are now closed. They may still testify in court, but only as prosecution witnesses against other ICTR defendants. The three guilty pleas provide, in principle, crucial new information on the crimes committed, the role of perpetrators and

the means they used, and they help to uncover more of the truth about the genocide. However, since the contents of each plea have never been made public, the extent of this information has so far been very limited.

▪ A ruling under deliberation

The Bagilishema trial

The only other completed trial is that of the former mayor of Mbanza, Ignace Bagilishema. It began in October 1999 and finished a year later. The ruling, set for 7 June, will be the longest final deliberation since the creation of the Tribunal. The trial, which deals with crimes committed in the Kibuye prefecture, appears to be the most disputed on substance. Faced with a defence team who made repeated visits to Rwanda and gathered substantial documentary evidence backed up by witnesses, the prosecution delivered a confusing line of argument, based for the most part on oral testimony. Even more so than in the Akayesu trial, this case raises the issue of the role and powers of a mayor in Rwanda during the genocide.

▪ Three trials in process: Cyangugu, Semanza and the Media

Between September 2000 and April 2001, five more trials officially started, two of which are due to recommence following the death of Judge Laïty Kama.

On 18 September 2000, the Cyangugu trial opened in trial chamber three. This case joins three defendants accused of carrying out crimes in this prefecture of Southwest Rwanda: Emmanuel Bagambiki, prefect, André Ntagerura, Minister of Transport and Samuel Imanishimwe, commander of the local military camp. In June 2001, the prosecution phase was underway. Since 16 October, this same trial chamber is also alternately hearing the trial of the former mayor and member of Parliament, Laurent Semanza. The prosecution phase in this trial ended in April 2001.

On 23 October 2000 one of the ICTR's flagship trials, known as the Media trial, opened in trial chamber one. This concerns three defendants: Jean-Bosco Barayagwiza, leader of the extremist party *Coalition pour la Défense de la République*

(CDR) and co-founder of *Radio Télévision des Mille Collines* (RTLM), Ferdinand Nahimana, founder and director of RTLM, and Hassan Ngeze, chief editor of the newspaper *Kangura*⁸. The first defendant decided to boycott his trial right from the beginning. The third has also occasionally decided not to appear in court. In May 2001, 17 prosecution witnesses had appeared and the prosecution phase was continuing. Another trial, that of Gérard Ntakirutimana, a doctor in Mugonero (Kibuye) and his father Elizaphan, a 75-year-old Seventh Day Adventist pastor, was due to start in April before the same chamber, but it was postponed until September.

In March 2001, trial chamber two opened the trial of the former mayor of Mukingo (Ruhengeri prefecture), Juvénal Kajelijeli, and in April that of the former Minister of Higher Education, Jean de Dieu Kamuhanda. However, the trials had hardly begun when they were postponed until July and September 2001 respectively. Another trial has been announced before this chamber, that of the group of six defendants from Butare, two of whom have been in the UN prison for the longest: Pauline Nyiramasuhuko, ex-Minister for Family Welfare, her son Arsène Shalom Ntahobali, the mayors Joseph Kanyabashi and Elie Ndayambaje, and the prefects Sylvain Nsabimana and Alphonse Nteziryayo. The trial had been set for 14 May, then 11 June, but the death of Senegalese judge Laïty Kama, President of the chamber, on 6 May, and the announcement that Judge Güney was leaving to sit in The Hague, caused severe disruption to the schedule of a chamber that was already considered the least efficient of the three. The Kajelijeli and Kamuhanda trials should resume in due course but the start date for the Butare trial remains uncertain.

▪ Trials in waiting: the soldiers and the politicians

The strategy launched by Louise Arbour in 1997 to promote grouped trials has progressively deteriorated since she left her post. The judges have rejected some of these initiatives on procedural grounds. They have also on several

⁸ A newspaper whose title means "keep awake", a tool of extremist Hutu propaganda before and during the genocide.

occasions granted the severance of joined indictments - that is, separating an accused from those with whom he or she was originally to be tried. Moreover, the Tribunal is clearly incapable, at least logistically, to run trials that group more than five individuals. At the present time, there is virtually no advantage in joint indictments, which group defendants more according to the date of their indictment or their availability to stand trial.

Among the main trials-in-waiting, most notable are those that group soldiers. One of these, which is ready on paper, has been due to start for a long while. It joins Colonel Théoneste Bagosora, former cabinet director at the Ministry of Defence and considered to be suspect number one in the 1994 genocide, Colonel Anatole Nsengiyumva, head of the military region of Gisenyi, Major Aloys Ntabakuze, commander of the para-trooper battalion and General Gratien Kabiligi, chief of operations at the ex-Rwandan Armed Forces headquarters. With the presence of Colonel Bagosora, the trial promises to be the most conclusive with regard to knowledge about the planning of the genocide and massacres. The first two defendants have been in prison for over five years, and the other two for nearly four. The other pending trial of a group of senior officers from the old Rwandan Army is that which joins General Augustin Ndindiliyimana, former head of the gendarmerie, Lieutenant-Colonel François-Xavier Nzuwonemeye, commander of the reconnaissance battalion, his deputy Captain Innocent Sagahutu, General Augustin Bizimungu, head of the FAR and Protais Mpiranya, head of the presidential guard. The first three were arrested between November 1999 and February 2000, while the other two are still at large.

The other large block of defendants is made up of former members of the interim government of April 1994. As with the soldiers, there will not be one single joint trial for the ministers. André Ntagerura is currently being tried in the Cyanguu trial, Pauline Nyiramasuhuko will be tried with the Butare group and Jean de Dieu Kamuhanda will be tried alone, as will Eliezer Niyitegeka, Minister of Information. Two large groups remain. The first, containing Casimir Bizimungu, Minister of Health, Justin Mugenzi, Minister of Commerce, Prosper Mugiraneza, Minister of the Civil Service and Jérôme Bicamumpaka, Minister of Foreign Affairs.

All four have been in detention for the last two or three years.

The second group is comprised of four ministers - Edouard Karemera, Minister of the Interior, André Rwamakuba, Minister of Education, Augustin Bizimana, Defence Minister, Callixte Nzabonimana, Minister of Youth - to which has been added the two leaders of the MRND party, Mathieu Ndirumapatse, President, and Joseph Nzirorera, Secretary General, as well as the businessman Félicien Kabuga. Of the eight accused listed above, three have still to be captured: Bizimana, Nzabonimana and Kabuga.

2. The ICTR's Achievements: Recognition of the Genocide and Political Neutralisation of "Hutu Power"

Despite the slow proceedings and meagre results of the Tribunal, it must be said that the ICTR has successfully imposed a legal recognition of the genocide. As well as allowing the Tribunal to avoid a costly trial on the merits, the confession proceedings have reinforced the distinct and total recognition of the crime committed between April and July 1994, established for the first time by the Akayesu ruling.

Moreover, it is undeniable that the ICTR has enabled individuals to be brought to trial who would otherwise have escaped justice if the international court did not exist. Since 1994, several countries have shown a marked reluctance to extradite suspects to Rwanda. The only high-ranking suspect that the Rwandan government has been able to obtain with the agreement of another country is Froduald Karamira, who was transferred first from India and then from Ethiopia in June 1996⁹. States that lent their support to the ICTR would not have been so cooperative with the government of Rwanda. In this, the Tribunal has gained a certain legitimacy and fulfilled one of its important objectives.

Less often mentioned are the important political consequences of the Tribunal's work. By its

⁹ Former leader of the MDR party, Froduald Karamira was tried in Rwanda in early 1997, sentenced to death, and executed in Kigali in April 1998.

proceedings, the ICTR has discredited the Hutu leaders who were in power in Rwanda during the 1994 genocide. These have either been taken to court, identified and tracked down as fugitives, or reduced to silence. To this effect, the ICTR has made a decisive contribution to the task of neutralising Hutu extremism in the political arena and the radical ideology of "Hutu power" that it propagated. Clearly, it has not wiped out this ideology altogether. It continues to spread in the Democratic Republic of Congo, Burundi and across the region. However, as a political movement, it has for the moment disappeared from the public domain¹⁰. This conclusion stands out markedly in the analysis made by the former dean of the law school, Aloys Muberanziza, who argues that: "The ICTR cannot be seen as a simple court, confined to its role of hearing and determining cases. Its decisions and omissions have great socio-political importance in Rwanda. The stakes at the Tribunal are not merely legal. It also has an impact on a political level. In the current state of affairs, it contributes to reinforcing government authority in Kigali. By tracking down the leaders of the fallen regime, the ICTR prevents them from ever claiming to play a political role in Rwanda¹¹."

Placing the Hutu ideological movement beyond the law was a necessary stage. In order to fight effectively against impunity in the region, the Tribunal should also begin proceedings against the Rwandan Patriotic Front for war crimes or crimes against humanity committed during its march on Kigali in 1994. This is an integral part of the ICTR's legal mandate. For many Rwandans, the credibility, independence and equity of the Tribunal depend on the initiatives which will be taken without delay in this domain.

¹⁰ This observation is even more persuasive if compared to the former Yugoslavia. In its report of 2 November 2000, ICG stated that "only with the disappearance from public and political life, by one means or another, of the forces of extreme nationalism still determined to tear Bosnia apart at the seams, will the country and its people fully emerge from the horror of the last ten years." See ICG, "War criminals in Bosnia's Republika Srpska: who are the people in your neighbourhood?", 2 November 2000.

¹¹ ICG interview with Aloys Muberanzira, Kigali, November 2000.

3. Cautious Determination to Prosecute Crimes Committed by the RPF and the Attack of 6 April 1994

The press conference held by Carla del Ponte on 13 December 2000 in Arusha marked a turning point on this issue and an initial response to the other part of the ICTR mandate. For the first time, the Chief Prosecutor publicly announced that she had opened investigative files on members of the RPF and requested the cooperation of the Rwandan authorities to help in her investigations. Four days earlier, she had a private interview on the subject with the President of the Republic, General Paul Kagame, which she briefly described in the following way: "I asked him to assist us in arresting fugitives. We discussed problems of cooperation in detail. We talked about investigations into massacres committed by the other side, that is, by soldiers from the Rwandan [Patriotic] Army. I am completely satisfied. We received his full collaboration in this area." In fact, the Rwandan authorities had been informed of the Chief Prosecutor's intentions a long time ago. Carla del Ponte's approach was pragmatic: "Without the help of the country, we will have no results in these investigations. We need access to documents and testimonies. Let's be realistic: without cooperation, I'll get nowhere. I'm moving forward step by step. I make no presumptions. I work from facts."¹²

By the end of October 2000, the Chief Prosecutor had already discreetly filed her investigation requests with the Rwandan legal authorities. A few days before del Ponte made her public statement, the Rwandan government defined its position as such: "What is the ICTR's mission? If this falls within its mission, it should continue. If Carla del Ponte asks, we will collaborate," the Minister of Justice told us. The Chief Prosecutor of Rwanda, whose office had already been informed of the impending investigations, stated: "The RPF committed human rights violations - war crimes and crimes against humanity also, but not genocide. The international court should be dealing with people on the outside. Not everyone

¹² Press Conference in Arusha, 13 December 3, 2000

can be tried.”¹³ Despite his clear reservations - especially regarding the ICTR’s ability to try people who are on Rwandan territory - the minister nevertheless hinted at a cooperation agreement. This was reaffirmed by President Kagame at the start of 2001.

The nature of the files to which Carla del Ponte has requested access - which naturally have not been disclosed to the public - also reveal the cautious approach taken by the Office of the Prosecutor. Of the three files she wishes to see, none of the suspects targeted by the three investigations has been revealed. They involve well-known and well-documented crimes. One expert on Rwanda defines the strategy as: “Ideally, we would begin by a well-documented incident, which would enable us to try the officer or officers responsible”¹⁴.

The year 2000 thus marked a decisive development towards fully implementing the ICTR mandate. It also put back on the agenda discussions over an investigation into the attack on the presidential plane that, on 6 April 1994, caused the death of President Habyarimana and marked the start of the massacres and the genocide. Shedding light on this key historical event also represents, for many Rwandans, a crucial part of the ICTR’s work. Opponents of the current regime say the issue is primordial. The Rally for the Return of Refugees and Democracy in Rwanda (RDR), a Hutu opposition movement in exile, declares: “The ICTR cannot pretend to seek the truth of the Rwandan genocide and its perpetrators while refusing to investigate the event that triggered the genocide, that is, the murder of two presidents, Juvenal Habyarimana of Rwanda and Cyprien Nteryamira of Burundi, on 6 April 1994 in Kigali, and to punish the architects and perpetrators”¹⁵.

Since at least 1997, the Office of the Prosecutor has officially considered that such an investigation does not fall within the Tribunal’s jurisdiction. The explanation given is simple: the enquiry would not

change anything of the legal history of the genocide, which has already been well established. If it could be proven that the attack was carried out by Hutu extremists, this would provide extra evidence of the conspiracy theory of the genocide. Yet, if this were the opposite, charging those responsible would be extremely difficult, since the murder of a president does not fall directly under the Tribunal’s jurisdiction. Carla del Ponte has inherited the exacting task of the woman she replaced, Louise Arbour. Yet at the same time, she has taken advantage of the investigation’s sudden acceleration by the French examining judge, Louis Bruguière, who was seized of the case of the attack on the basis of a complaint filed by the families of the French crew who were killed on the plane. The task-sharing that has taken place over the last year is described by the Prosecutor as follows: “The investigation [into the attack] has not been opened [by us] because there is an issue of jurisdiction. Judge Bruguière has begun an enquiry and has requested our cooperation. I am working with Bruguière. Moreover, he will be returning for more hearings [of ICTR accused]. I am following him closely. His results will allow me to decide whether or not we open an investigation. I think that by the beginning of next year we’ll be able to make an informed decision and we will make public the reasons why the enquiry is or is not launched”¹⁶. The conclusions of the French examining judge, and the subsequent decision of the ICTR Chief Prosecutor, have not been made public to date.

The investigation into the crimes carried out by the RPF looks likely to be a particularly fraught affair. Firstly, because although the enquiries into RPF crimes and the attack on the presidential plane are unable to change the legal history of the genocide, they can certainly contribute to changing its political history. The current Rwandan regime boasts the incontestable legitimacy of having prevented the massacres from escalating to an even grander scale in Rwanda and of having helped tens of thousands of Tutsis to escape death in 1994. More than two years later, the same army led offensives in Kivu against the refugee camps that housed thousands of Rwandan Hutu criminals who had carried out the genocide and who were

¹³ Interviews with Jean de Dieu Mucyo in Kigali on 2 December 2000 and Gérard Gahima on 5 December.

¹⁴ Correspondence with ICG, 13 November 2000.

¹⁵ Correspondence with ICG, 30 November 2000.

¹⁶ Press conference in Arusha, 13 December 2000.

threatening to invade Rwanda and reconquer it. The success of this offensive allowed hundreds of thousands of Hutu civilians and soldiers to be repatriated, while resulting in the arrest of numerous genocide suspects. A serious investigation into the responsibilities of senior RPF officers for massacres of the population that accompanied its military campaign in 1994 could significantly sully the regime's image.

Moreover, the scale of crimes allegedly committed by the RPF has been reduced even before they have been properly identified. The massacres of civilian populations carried out in 1994 by the RPF are presented by the Kigali authorities as the result of military errors but never as having been committed in a deliberate and systematic manner. It is therefore highly unlikely that a government in power would agree to lift impunity for its senior officers, who, moreover, it is sending out to wage war in the Congo. Finally, it is clear that the Rwandan government will use all available means to reduce the impact of such a possibility on its own political base, the RPF, but especially in the army, and take steps to discourage informers and internal rifts. Indeed, many RPA deserters who possess confidential information, have already made contact with ICTR investigators.

Nevertheless, it is crucial for peace and future reconciliation that the list of RPF suspects not be overtly politicised and that as many of the crimes committed as possible be punished. Other crimes against humanity were carried out by the AFDL (in which the RPA took part) during its advance into Kinshasa in 1996 and 1997 and during Congo's second war. Allowing the crimes of 1994 to go unpunished would send a dangerous message of impunity.

**B. THE ICTR'S FAILURES:
 UNACCEPTABLE BUREAUCRATIC
 LOGJAMS**

The trials of ten defendants that officially began between September 2000 and April 2001 cannot, unfortunately, cover over the mistakes made by the Tribunal. With only eight people prosecuted after more than four years of trials and nearly seven years since its creation, the ICTR's results are nothing less than shocking. Proceedings at the

Arusha Tribunal are excessively slow. Since 1997, speeding up the trials has been a constant theme in the work of judges during their plenary sessions. In November 1999, a hundred-page expert report on the operation of the *ad hoc* tribunals attempted to uncover the reasons for the logjams and concluded that those recently observed in Arusha were by far the worst¹⁷.

1. The Heavy Responsibility of Judges

International Crisis Group notes with the most serious concern that the slowness of trials has actually worsened over the years, despite the significant increase in the material resources of the Tribunal. Two people were prosecuted in 1998, four in 1999, two in 2000 and, unless there is a new guilty plea, it is likely that only one will be tried during the course of 2001.

In February 1999, a third trial chamber was created, bringing the total number of judges to nine. However, there has never been a moment during the last two years when all three chambers have been sitting simultaneously on trials of substantial cases. Between July 1999 and September 2000, only one trial of a single individual, Ignace Bagilishema, took place. The initial objective was to have each chamber alternate between hearing two trials. This has never been the case, with the exception of one chamber that has been seized of two trials since October 2000. Trial chamber two, as constituted in June 1999, did not begin its first trial until March 2001, only to immediately postpone it to July. The trial that opened in April was put back to September after only one day of hearings, following the death of Judge Kama. This should re-open when a new judge is appointed. In all, five out of nine judges have spent over one and a half years without working on a single trial on the merits. One of them set a record in March 2001, with 28 months spent without a trial.

Judges	Number of years of term	Number of trials concluded	Number of people tried
N. Pillay	6	4 (incl. 1 in process)	3 (+ 3 confessions)

¹⁷ Expert group report on the effectiveness of the activities and operation of the *ad hoc* tribunals, November 1999.

L. Kama	6	3	3 (+ 2 confessions)
L. Aspegren	4 ½	3	3 (+ 2 confessions)
W. Sekule	6	1	2
T. Kahn	4	1	2
Y. Ostrovsky	6	3 (incl.2 in process)	2
E. Mose	2	2 (incl.1 in process)	1 (+ 1 confession)
A. Gunawardana	2	2 (incl.1 in process)	1 (+ 1 confession)
M. Güney	2	1	1
L. Williams	2	2 in process	0
P. Dolenc	2	2 in process	0

Such delays seriously affect the ICTR's ability to carry out its mandate. They have caused situations of prolonged detention that give serious cause for concern. Two defendants, Joseph Kanyabashi and Elie Ndayambaje, have been imprisoned for nearly six years now without trial. Two others, Théoneste Bagosora and Anatole Nsengiyumva, crossed the five-year mark in March. Since the Tribunal has always denied motions for release pending trial, there is an urgent need to begin the trials of these defendants in particular.

Beyond the official explanations and arguments about procedure or bad legal administration which are given ample space in the 1999 expert report, the judges are held responsible to a large extent for this unjustifiable situation. The poor output of the Tribunal is linked to the mediocre productivity of judges, some of whom are incapable of running criminal trials and to their often-prolonged absences. Moreover, in their work, the tribunal chambers, which deal with the most serious crimes in cases that are often dense and complex, have relied to an abnormal extent on young legal assistants, even on interns.

Given this assessment, judges should be held accountable for their work. International Crisis Group recommends, in the first instance, that the selection of judges should be more rigorously organised and that candidates who have not had solid experience as a judge in criminal affairs should be rejected. It may be advisable in the short term to create an independent commission to attribute responsibility for the delays.

2. Levels of Staff Competence at the Office

of the Prosecutor

The situation at the Office of the Prosecutor is another contributing factor and a cause of great concern. The problem lies with the quality of staff recruited. Although Louise Arbour worked hard to make improvements, her efforts did not pay off. Carla del Ponte was faced with the same problems when she took over. Over the last year, the Chief Prosecutor has been gradually replacing several senior lawyers and other members of her teams, but many posts provided for in the budget still remain vacant. The dismissals sparked an internal conflict that badly shook the office in 2000, resulting in a major confrontation between the Chief Prosecutor and her deputy, Bernard Muna in November. Muna strongly protested against del Ponte's sacking of several of his subordinates on the grounds of incompetence¹⁸. At the beginning of April 2001, Carla del Ponte announced that she would not be renewing his contract. Bernard Muna, who had been in his post for four years, saw his mandate expire on 21 May. Most of the staff that del Ponte wanted to leave have gradually been ousted. Some of these sent a signed petition to the Secretary-General of the United Nations claiming that their dismissal was an act of racism¹⁹. It is clear that incompetence in a large part of the personnel tends to discourage others who are devoted to their work and are trying to move the trials forward.

Charges of incompetence and inadequate training have also been levelled against investigators. In particular, questions over the poor preparation and handling of cases were raised in the Musema and Bagilishema trials. This phenomenon became much more apparent in October at the start of the important Media trial. For years, those in charge had seriously neglected the case, leading to allegations of incompetence. The core evidence on the role of the media in the genocide was in a state of almost total lack of preparation. One of the reasons for the trial's extraordinary slowness today - seventeen witnesses have been heard since October - lies in this original chaos. Once again, there is an urgent need to address a situation that

¹⁸ See *Ubutabera*, an independent publication on the ICTR, of 18 September 2000 and *Diplomatie Judiciaire* of January 26, 2001 at www.diplomatiejudiciaire.com

¹⁹ "Tribunal officials sacked", Daily Nation, 16 May 2001.

threatens to undermine the efficiency, quality and integrity of the legal process. The Secretary-General of the United Nations, the Tribunal's administration and management at the Office of the Prosecutor must take rapid measures concerning the competence and efficiency of prosecution staff.

3. Internal Power Struggles

The internal crisis at the ICTR has also been marked by the conflict between the Registrar, Agwu Okali and the President, Navanethem Pillay. Since her election to the presidency in June 1999, the South African judge has always maintained that judges should have greater control over administrative and budgetary matters. The Registrar, on the other hand, has constantly fought to preserve his authority in these areas, using the Tribunal's 1994 statute to justify this stance. According to the statute, the Registrar is the absolute authority on administrative and financial matters, unlike in national courts where the registrar is clearly answerable to the President. This power struggle has seriously divided the judges and poisoned relations at the top levels of the ICTR. It is symptomatic of the difficulty and reticence of UN bureaucrats to set up a proper legal institution where the administration is subordinate to the judges. In January 2001, the UN Secretary-General dismissed the Nigerian Agwu Okali from the post he had held for four years. A new registrar, Adama Dieng from Senegal, was appointed to replace him. It is essential that the priorities of the ICTR as a court of justice match those of the new administration, which should be there to serve the judicial bodies of the Tribunal. The expert report of November 1999 clearly envisaged greater administrative and financial autonomy for the Office of the Prosecutor and the chambers. This is the natural direction to take. Indeed, in the long run this will make the legal players, especially the judges, more responsible for the smooth administration of trials.

4. Management of the Defence

On a different note, the Registrar must also pay greater attention to the management of defence lawyers, a task that is also part of his remit. In order to guarantee the defendants' right to a fair trial, the ICTR registry provides them with legal

aid at the expense of the Tribunal if they are deemed to be indigent. This practice, which has become the rule, has not escaped abuse, both by suspects and their defence teams. In its report of February 2001, the UN Office of Internal Oversight Services (OIOS) noted the practice of fee-sharing between defendants and their lawyers that may involve official arrangements between a defendant and their counsel, that is, regular payments of a share of the lawyer's fees to the defendant. This may also take the form of gifts made to the client or his family, or other forms of aid or indirect contributions. The report also established that clients sometimes blackmail their lawyers.

This situation is corrupt and creates the impression that the ICTR is a bountiful source of enrichment for defence teams and defendants' families. While it is clearly a symptom of real abuse carried out by certain defence teams, it also tends to damage the reputation of all defence lawyers at the ICTR.

The OIOS report does not implicate the Tribunal itself in this abuse. It does not, in particular, account for why a defence team was paid half a million U.S. dollars in fees even before the trial of its client had begun, whereas this sum represents the average total cost for the defence teams that have already completed their case. If the ICTR truly wants to preserve its integrity, it must seriously crack down on such a scandalous exploitation of the UN system. But it must also root out the guilty parties and accomplices within the Registry.

Another subject of concern that has been recently raised is that of the recruitment of defence investigators. Some investigators are wanted persons in Rwanda whose names are on the list of genocide suspects drawn up by the Rwandan government²⁰. In May 2001, an investigator working under a false identity was identified as a genocide suspect and arrested by the Prosecutor.

Finally, it must be stressed that it is in the interest of defence lawyers to delay defendants' trials in order to claim that the rights of their clients are not

²⁰ Press release from the Hironnelle Foundation, 4 April 2001.

being respected, and thus obtain their release for unacceptably slow proceedings.

III. THE ICTR AND STATES: LEGAL COOPERATION AND NATIONAL SOVEREIGNTY

Without the cooperation of the United Nations member states, the Rwanda Tribunal cannot function. This cooperation is essential for arrests, the transfer of suspects, witness protection and the serving of sentences. The most serious gap in this field is the absence of formal agreements between the ICTR and states to relocate witnesses in a different country from where they live or originate, if need be. Cooperation is just as crucial in terms of where a prisoner will serve his or her sentence after being convicted by the ICTR. The most important factor at stake is the financial support that must be given to the African states who have agreed to allow prisoners to serve their sentences in their prisons. Cooperation between states and the ICTR has generally been good when a country stands to make political gain. However, it is infinitely more uncertain when such cooperation requires political concessions or financial input, despite the fact that the costs of both are usually quite low. The most vital form of cooperation for the Tribunal remains that which allows arrests to be made, and this is also the area of the greatest resistance.

Not long after it was up and running, the ICTR arrested several key suspects. This was to its credit and considered a huge success. Forty-five arrests were made in seventeen different countries²¹, and the cooperation of African states - eleven countries agreed to hand over ICTR suspects - was a significant factor. In July 1997, the biggest ever arrest operation took place in Kenya, netting nine suspects in total. The event was groundbreaking since Kenya had been an almost untouchable refuge for former Rwandan Hutu leaders between 1994 and 1997. These spectacular arrests also highlighted many important issues. Firstly, it was a clear demonstration that the Tribunal's capacity to act and the cooperation of states depended upon

²¹ The 45 arrests took place in South Africa (1), Benin (2), Belgium (3), Burkina Faso (1), Cameroon (9), Côte d'Ivoire (2), Denmark (1), United States (1), France (2), Great Britain (1), Kenya (13), Mali (1), Namibia (1), Tanzania (1), Togo (2), Switzerland (1), Zambia (3).

the regional and international context. Indeed, the changed position of the Kenyan authorities was more directly due to the fall of Mobutu and Laurent Kabila's seizure of power in Congo, which triggered a shift in the regional balance of power and consequent renewal of relations with Kigali, as illustrated in the visit made by Vice-President Kagame on the eve of the arrests. The internal difficulties of the Kenyan regime, the serious violence that exploded on its territory and strong pressure from donors all played a role in Kenya's change of heart²².

The arrests also sharply brought into focus the continued protection still given to some of the most powerful Rwandan figures wanted by the ICTR. According to statements made at the time by the Deputy Prosecutor Bernard Muna, fifteen suspects had originally been targeted by the operation. For at least one of these who was able to slip through the net, the businessman Félicien Kabuga, clear evidence points to the existence of protection²³.

A. ARRESTS: CONTINUED PROTECTION FOR CERTAIN CRIMINALS

The expert report ordered by the UN on the operation of the two *ad hoc* tribunals noted in November 1999 that in the area of arrests, "generally speaking, the international cooperation given to the ICTR may be classified as excellent"²⁴. This appears to be excessive. In November 2000, the Chief Prosecutor Carla del Ponte privately disclosed that seventeen fugitives were still on the run. She was "concerned" about the fact that not a single arrest had been made since February 2000, although new indictments were imminent²⁵. One month later, she publicly

indicated, without naming names, the existence of "protection" that prevented her from bringing in certain wanted suspects²⁶.

It must be pointed out that many of the masterminds behind the genocide have not been arrested, and that some are not even being sought by the ICTR. Apparently, the Habyarimana clan, strongly suspected of being implicated in the genocide, has not been indicted by the ICTR owing to lack of evidence. Some of them appear to have taken up residence in European countries: Agathe Habyarimana's brothers, Séraphin Rwabukumba and Protais Zigiranyirabo, and President Habyarimana's cousin Charles Nzawagerageza are thought to be in Belgium. Agathe Habyarimana, the President's wife, is allegedly in France, where her son Jean Pierre is thought to have died recently. The Habyarimana clan is mostly living in Belgium. Indeed, some of its members attended the trials held in Brussels from April to June 2001. It is urgent that serious investigations be opened by the Belgian and French legal authorities to determine these individuals' involvement in the genocide.

1. The Democratic Republic of Congo - Protector of Military Fugitives

The situation faced by the ICTR is different from that affecting the ICTY²⁷. Unlike suspects from the former Yugoslavia, those from Rwanda are hard to precisely locate and the protection they are given is rarely transparent. Moreover, obtaining false identity papers is easy on the African continent, a factor that clearly facilitates travel. Among those still on the run who have been indicted by the ICTR or else under strong suspicion, include several key figures from the ex-FAR, such as Augustin Bizimungu (who is known to be in Lumumbashi), Protais Mpiranya, Aloys Ntiwiragabo (apparently in Masisi) and Tharcisse Renzaho (who was one of the leaders of the Congolese Armed Forces (FAC) in the battle of Pweto, DRC, at the end of 2000). Other candidates include the former ministers Augustin Bizimana,

Ildéphonse Hategekimana. The names of other suspects remain confidential and will not be revealed in this report.

²² In 1995, the President of Kenya, Daniel Arap Moi, declared that he would stop and expel any ICTR investigators found on its territory.

²³ Cf. *infra*.

²⁴ Expert group report on the effectiveness of the activities and operation of the *ad hoc* tribunals, November 1999.

²⁵ Interview in Arusha, 3 November 2000. The seventeen include: Charles Sikubwabo, Aloys Ndimbati, Ryandikayo, Vincent Rutaganira, Ladislav Ntaganzwa, Augustin Bizimana, Félicien Kabuga, Callixte Nzabonimana, Yusuf Munyakazi, Casimir Bizimungu, Protais Mpiranya, Augustin Ngirabatware, Ildéphonse Nizeyimana,

²⁷ See ICG Balkans report N°103, "War criminals in Bosnia's Republika Srpska: who are the people in your neighbourhood?", 2 November 2000.

Callixte Nzabonimana and Augustin Ngirabatware, as well as the famous businessman Félicien Kabuga.

Several African countries are suspected of harbouring or having harboured many of these fugitives. These include, in particular, Kenya, Congo-Brazzaville, Democratic Republic of Congo (DRC) and, to a lesser degree, Cameroon and Gabon. Several ex-FAR members live in Brazzaville, and according to the prosecutor's office, some are thought to be employed by the government's close protection unit for the country's ministers. According to numerous reliable sources, Augustin Bizimana, ex-Defence Minister in the interim government who was indicted by the ICTR in mid-1998, allegedly died around mid-2000 in Congo-Brazzaville. President Habyarimana's brother is apparently in Gabon, where he owns a private clinic. On 13 December 2000, during a press conference in Arusha, Carla del Ponte limited these accusations to "two African states" that were protecting certain suspects wanted by her office. She did not say which countries or which suspects. However, according to information held by the International Crisis Group, the two states to which she was referring are in fact the DRC and Kenya.

Protais Mpiranya, former commander of the presidential guard, has been seen in Cameroon on three separate occasions, but is currently thought to be residing in DRC. Other suspects, such as Augustin Bizimungu, former head of the Rwandan Armed Forces (FAR), Aloys Ntiwiragabo, ex-head of intelligence services and Tharcisse Renzaho, former FAR colonel and prefect of Kigali during the genocide, are also believed to be living there, mostly in the Lubumbashi region. The DRC has again become notorious for harbouring criminals since the second Congo war in 1998, in which the Congolese Armed Forces loyal to the late Laurent-Désiré Kabila battled with troops from the Rwandan Patriotic Army. According to the press agency Inter Press Services in September 1999, Augustin Bizimungu, who led the Rwandan Armed Forces (FAR) during the genocide, "has often been cited as the military coordinator of the Rwandan forces fighting for Kabila"²⁸. The number of ex-

FAR troops fighting alongside the Congolese Armed Forces is estimated at around 15,000 men. Their fate will be decided in negotiations over the framework of the Lusaka agreement. Joseph Kabila's government recently admitted that 4,500 FAR soldiers were on Congolese territory in the context of the Joint Military Commission of the Lusaka Agreement. However, it is broadly alleged that many of their leaders are defendants or suspects of the ICTR, believed to have taken part in the 1994 genocide. Neutralising these forces was Kigali's main justification for deploying troops in Congo. The Office of the Prosecutor maintains that the situation in the DRC is clearly different from that elsewhere. In the case, for example, of Congo-Brazzaville, Tanzania, Côte d'Ivoire or even Belgium, Carla del Ponte's team talks of fugitives being "assisted"; others would label this "passive protection". The DRC is clearly an exception - suspects are given "state protection". The other exception of this kind, according to the prosecutor's office, is Kenya.

2. The Troublesome Kabuga in Kenya

Aloys Ntiwiragabo and Tharcisse Renzaho, together with Félicien Kabuga, are three fugitives who managed to slip through the hands of ICTR investigators in Kenya on 18 July 1997, during the so-called operation "NAKI"²⁹. Since then, one file has constantly compromised relations between the Office of the Prosecutor and Nairobi: that of Félicien Kabuga. A former powerful businessman related to the Habyarimana family through marriage, and president of the RTLM, the 65-year old suspect who suffers from diabetes took temporary refuge in Switzerland in June 1994. He then travelled to ex-Zaire and finally settled in Nairobi, like many former key figures of the fallen regime. A long-term suspect, Kabuga was formally indicted on 31 August 1998. However, using his network of contacts and considerable fortune, and probably a number of different passports, he has constantly escaped justice. After dodging operation "NAKI", he was spotted in Southeast Asia in September 1998, according to a UN report on arms

²⁸ Inter Press Services, 21 September 1999.

²⁹ Augustin Ngirabatware, former Minister of Planning and Félicien Kabuga's son-in-law, escaped the Tribunal's investigators in November 1999, who were pursuing him on French territory.

buying by the former Rwandan government published on 18 January 1999³⁰. In 2000, he was suspected of having transited through Belgium, where his wife resides, but the finger of protection still points strongly towards the highest Kenyan authorities.

In April 1998, Félicien Kabuga was traced by ICTR investigators to a house which, according to their sources, belonged to Hosea Kiplagat, the nephew of President Daniel Arap Moi. The house adjoined another belonging to the son of the Kenyan president himself, Gideon Moi. The investigators also identified three other residences where the fugitive was hiding: one in the district of Karen in Nairobi, another in Nakuru and a third in Eldoret, near the President's fiefdom. Two of these belonged to Hosea Kiplagat. During operation "NAKI", investigators searching the house in Karen came across a hand-written note explaining that a Kenyan police officer had tipped off Kabuga to leave the building. Today, such serious allegations continue to weigh heavily on the Kenyan authorities, despite their recent official denials³¹.

³⁰ Quoted from *Ubutabera*, 13 September 1999.

³¹ "We are not sheltering anybody wanted by the tribunal and we will continue to cooperate whenever requested to do so," declared the Kenyan Minister of Foreign Affairs Dr Bonaya Godana in *The East African* of 18-24 December 2000. According to Farah Stockman, a journalist with the Boston Globe who investigated Kabuga's whereabouts in Kenya between March and May 2000, "lawyers closely associated with Mr. Kabuga say he owns an estimated 20 million US\$ in assets and scattered bank accounts around the globe". On August 17, 1995, one of late president Habyarimana's sons got married to one of Kabuga's daughters in Nairobi. "There were 350 attendants" Stockman says, "the total bill was 247,725.00 Kenyan shillings for a three hour wedding reception. The bill was addressed care of Susan Matiba, daughter of Kenneth Matiba, one of Kenya's wealthiest hotel magnates and the most serious contender for the presidential seat in 1992". "Although he already operated dozens of trucks transporting goods from Kenya's port city of Mombasa, into Rwanda, Kabuga set up an import-export company in September of 1995 called Nshikabem, with his wife Josephine Mukazi and his daughter Bernadette Uwamariya as shareholders. The business operated out of their home on Lenana drive, in the up-market Spanish Villa maisonettes. Kabuga is still the owner of house #6 in Nairobi, which he rented until recently to an unknowing Red Cross worker for 1,000 US\$ a month, through a housing agency. First Assurance Insurance agency says he

Since Carla del Ponte's arrival as Chief Prosecutor in September 1999, efforts to facilitate the arrest of Félicien Kabuga have been focused on the confiscation of his financial assets. To date, he is the only known ICTR suspect to be subjected to such measures. His bank accounts have been frozen in France, Belgium and Switzerland. The exact sum has not been disclosed, although by year-end 2000, some U.S.\$2.5 million had been sequestered, most of which appears to have been in France, amounting to some 16 million francs³². A crucial stage in the cooperation of states will have been achieved when African States - including Kenya - comply with the prosecutor's request over this issue.

Since the Tribunal does not have its own police force, its only recourse when faced with states that refuse to cooperate is to refer the matter to the United Nations Security Council. The ICTR has never officially used such a weapon, and has shown itself to be far less enterprising in this

took out fire insurance on property in Kenya up to 1998. His company, Nshikabem, is in the Year 2000 phone book. Despite the fact that they have never paid an annual tax return, the registry of company considers that it still exists. A Kenyan civil servant who spoke on the condition of anonymity told me he saw Kabuga being ferried to the airport in a car owned by the head of the military. Never officially given asylum, Kabuga had a business class work permit since April 1995, which he obtained after setting up his own company and pledging to invest 8.5 million Kenyan shillings in the country. In early June, 1997, top immigration officials became aware of allegations against him and withdrew his resident status and his work permit. This is where the story is murky. Apparently, he was asked to leave and after immigration officials investigated, they determined that he left the country. This was exactly the time when ICTR investigators were organizing their first mass arrest in Kenya, and Kabuga was supposed to be one of them."

After "Naki" operation, there was an attempt to negotiate a surrender to the ICTR through Luc de Temmerman, a Belgian lawyer who once represented Habyarimana's estate. "But the deal fell through, a family member of Kabuga told me, partly because of the Prosecutor's refusal to let him live outside the jail on bond until his trial", recalls Stockman. During her investigation, a son-in-law of Kabuga told Stockman that Kabuga could meet her "outside Nairobi, but in Kenya". However, the meeting never took place. Interview with ICG, 15 December 2000.

³² Interview with office of the prosecutor, 3 December 1999. See also the draft budget 2001 for the ICTR, dated 21 October 2000.

respect than its cousin in The Hague. Yet faced with countries that "assist" or protect suspects wanted by the international tribunal, the question remains over the level of commitment shown by the United Nations, and particularly the Security Council, to use all means to ensure compliance with the Tribunal's rulings. One American law professor, in his study that appeared in early 1999, accounts for this accordingly: "The political views of the UN Secretariat and of powerful UN members continue to exert a powerful impact on the effectiveness of these tribunals, as is clear with respect to the Council's unwillingness to impose sanctions on those governments who have to date refused to cooperate with tribunal orders"³³. In the light of this, it is imperative that the Security Council passes a resolution requesting the immediate handing over of all genocide suspects.

For a better understanding of the way the international tribunal operates, and of the limited help it can count on, it is also important to point out that states, including those who cooperate fully, never take on the responsibility of tracking down fugitives. This is the task of specialised ICTR investigators - a total of twelve people to cover the entire world - whose job it is to provide national police forces with the maximum of information with which to make an arrest. There is no prior cooperation from national police forces to track down known suspects. If there is cooperation, it only occurs at the time of actual seizure. Given the means at the disposal of the prosecutor's office and the geographical scattering of suspects, the ICTR's capacity for intelligence gathering and action is, to say the least, limited.

B. THE TRANSFER OF SUSPECTS - PROMPT ACTION AND LONG DELAYS

The cooperation of states is not limited to arresting suspects. It also involves ensuring their transfer to the Tribunal's headquarters. Most countries have organised the prompt transfer of suspects arrested on their territory, which usually means in less than four months. This has not been the case for the

United States, Great Britain, Denmark and, initially Cameroon. Although it often turns out that these long delays (three and a half years in the case of the U.S., nine months for the UK and Denmark) are linked to national laws that protect the rights of the individual, they can seriously affect the legal process at the ICTR. For example, the extremely slow transfer of Elizaphan Ntakirutimana by the United States was a key element in the postponement of the trial of his son and co-defendant, Gérard Ntakirutimana³⁴. Similarly, the delay in transferring Jean-Bosco Barayagwiza and Laurent Semanza by Cameroon in 1997 seriously undermined both cases³⁵. The positive conclusion of the transfer processes is that the ICTR's legal jurisdiction has now been firmly established. Legally speaking, when a State sends a defendant to the ICTR this is not technically an *extradition* but a *transfer*. Moreover, during the drafting of the Tribunal's rules of procedure, it was specifically stated that the domestic law of countries regarding extradition should not be an obstacle to handing over defendants³⁶. Strictly speaking, the cooperation of states has not always been as full as it might be.

Consequently, it is recommended that states, particularly those that lack rigorous legal mechanisms, should at least look at ways of accelerating national procedures for when they receive transfer requests by the international tribunal. On the one hand, despite the statutory provisions of the ICTR, it would be risky, even undesirable for certain countries to adopt special procedures that could create a precedent to undermine the protection of individual rights. On the other hand, giving priority treatment to such cases would, by default, allow compliance with

³³ José E. Alvarez, *Crimes of States/crimes of hate: lessons from Rwanda*, The Yale Journal of International Law, not dated.

³⁴ Gérard and Elizaphan Ntakirutimana were initially indicted on 17 June 1996. Pastor Elizaphan Ntakirutimana was arrested in Texas on 26 September 1996, and his son, Doctor Gérard Ntakirutimana, a month later on 29 October, in Côte d'Ivoire. However, the son was quickly transferred to Arusha on 30 November 1996, whereas his father was not handed over until 24 March 2000. Their trial, set for 22 January 2001, was postponed until 23 April, then again to September 2001.

³⁵ The time taken to transfer the two suspects amounted to eight and a half months. For details of these cases, see editions of 7 November 1999, 21 February and 31 March 2000 of *Ubutabera*.

³⁶ Rule 58 of the ICTR's Rules of Procedure and Evidence.

domestic law and the interests of the international court to be reconciled.

C. AN AMERICAN INITIATIVE TO BE ENCOURAGED: FUNDS FOR INFORMERS

One external initiative has nevertheless been launched to support the efforts of the ICTR in apprehending suspects. On 25 April 2000, Russ Feingold, a Democratic senator from Wisconsin and ranking Democrat on the sub-committee for American Affairs in the U.S. Senate, requested the expansion of the programme of financial rewards run by the federal state. The legislation allows the U.S. Secretary of State to grant instant financial compensation to any person who gives information leading to the arrest of an ICTY defendant. The Senate and the House of Representatives ratified an amendment to this law to include ICTR suspects in the programme and President Clinton signed the new law on 2 October. It is generally considered - and Carla del Ponte has confirmed this - that the programme has not been very fruitful in the context of former Yugoslavia³⁷. However, it seems that it is much more likely to bring returns in the search for Rwandan suspects, given the impact of such rewards on refugee communities living in extremely difficult environments. "The rewards program may well prove to be more effective in the case of the ICTR than in that of the ICTY. Offering a reward for information leading to the arrest and/or conviction of Slobodan Milosevic sent an important political message and served to underscore his lack of legitimacy. But obviously, Milosevic's whereabouts were not a mystery. In contrast, a number of the individuals wanted by the ICTR are indeed in hiding, and extending the rewards program to cover this circumstance may make it more difficult for these individuals to continue to evade accountability," explains Brad Jaffe, from Senator Feingold's press office³⁸. Compensation can go as high as five million U.S. dollars. At the start of 2001, a list of thirteen wanted suspects was posted on the Internet. The next stage consists of publishing posters, as with the former Yugoslavia, and

distributing leaflets based on the same model³⁹. However, interviews held by International Crisis Group in December point to the fact that those in charge at the Office of the Prosecutor still have little or no idea of how they can use the funds. It is clearly urgent, therefore, that the U.S. government explains the programme if this support is to bring concrete results.

³⁷ Interview in Arusha, 3 November 2000.

³⁸ Correspondence with ICG, 15 November 2000.

³⁹ See www.dssrewards.net/english/warcrimes/rwanda_warcrimials.htm. All things considered, this list is somewhat surprising. Two notorious defendants - Augustin Bizimungu and Augustin Bizimana are absent from it, whereas two confidential names of defendants - Ildephonse Hategekimana and Ildephonse Nizeyimana - are made public. Moreover, the name of Ladislas Kabera, captain of the presidential guard, who has not been indicted, was in fact a confidential suspect for ICTR investigators.

IV. THE ICTR AND RWANDA: THE INEVITABLE POLITICIZATION OF JUSTICE

During the second half of 2000, the ICTR acknowledged that it had to improve its impact on Rwandan society. The failures it had experienced threatened to totally alienate it from the very people it was meant to be serving. Rwandans in general, both those living in the country and others in exile, knew little of what was taking place in Arusha. The tribunal's contribution to national reconciliation was non-existent as long as it was still perceived to be delivering victors' justice. Clearly, achieving reconciliation in the context of an ongoing war is not a task that the ICTR can accomplish alone.

A. JUSTICE DEPENDANT UPON ACCESS TO THE CRIME SCENES

From the outset, Kigali was offended by the international community's confiscation of its right to deliver justice. Although the ICTR was initially created at Rwanda's request, the numerous conditions imposed by the Security Council - refusal of the death penalty, headquarters outside Rwanda, foreign judges and prosecutors, a mandate that excludes pre-1994 events, a shared prosecutor with the ICTY, primacy over national courts, etc. - meant that Rwanda was the only country to vote against the establishment of the ICTR on 8 November 1994. Clearly, the ICTR cannot operate without being allowed access to witnesses, and access to the country is crucial for gathering evidence. Since 1994, the position taken by the Rwandan government has swung between this original opposition and more or less support depending on the circumstances. The serious dysfunction the Tribunal's administration and the Office of the Prosecutor, exposed in a damning UN report in February 1997 and resulting in the dismissal of the Registrar and Deputy Prosecutor, did nothing to improve matters. In the spring of 1997, reaction in Rwanda to the new Chief Prosecutor, Louise Arbour, was particularly hostile, with public demonstrations staged by survivors' groups, openly backed by the government. Her successor, Carla del Ponte, had hardly taken up her post when she was refused an

entry visa to Rwanda, a reaction to the appeal court ruling in The Hague to release Jean-Bosco Barayagwiza for the repeated infringement of his rights⁴⁰.

1. Relations Initially Marked by Defiance

Since its creation, relations between the Tribunal and the Rwandan government have generally been tense. They deteriorated badly in 1996, gradually improving afterwards, yet by the end of 1999 had escalated into a new crisis during the Barayagwiza affair. A year after the tensions sparked by this incident, cooperation between the Rwandan authorities and the ICTR appears to be settling down, if still a little fragile. The affair had turned into a political trap for the international tribunal, with the Rwandan government adroitly using it to shame the court and, by extension, the international community.

When, in June 1996, it was made public that Froduald Karamira had attempted to escape from the plane that was taking him to Kigali during a stop-over in Addis-Ababa, Rwanda made its position crystal clear to the then ICTR Chief Prosecutor, the South African Richard Goldstone: no interference by his office in the extradition of the ex-MDR Power⁴¹ leader would be tolerated. Several weeks earlier, the Rwandan government had found it hard to swallow the fact that the ICTR had quietly stepped in and "netted" former key leaders of the regime who had been arrested in Cameroon on Kigali's initiative. During the same period, the exhumations carried out by ICTR investigators had provoked an outcry in Rwandan public opinion, who found the practice indecent. The climate between Rwanda and the UN Tribunal was at its worst after the final departure of the "blue helmets" serving under the UNAMIR⁴².

Operation "NAKI" in July 1997 marked the start of a rekindling of relations between the ICTR and Kigali. In September 1998, cooperation was reinforced by the first convictions of Jean-Paul Akayesu and Jean Kambanda, which also brought

⁴⁰ See "infra"

⁴¹ The radical wing of the Mouvement Démocratique Républicain.

⁴² United Nations Assistance Mission In Rwanda.

badly needed recognition and legitimacy for the Tribunal. 1999 promised to be the year when the Tribunal's power and status finally blossomed. A new trial chamber was created, increasing the number of judges to nine and it was announced that grouped trials involving some of the most infamous prisoners in Arusha were to be held. A number of factors symbolised the improvements in relations between Rwanda and the Tribunal. In March 1999, for the first time ever, a defence team travelled to Rwanda to carry out investigations. Other legal teams quickly followed the example, and by November 2000 a total of seven defence teams had made twelve visits to the crime sites. Such a crucial part of judicial work was eventually to become the norm. While defence lawyers have regularly encountered obstacles in their research, their physical security has never been endangered.

In August 1999, when Chief Prosecutor Louise Arbour bid the Tribunal farewell, she was given a surprisingly warm send-off by the Rwandan political and judicial authorities, which even included apologies for their harsh treatment of her during her first few months in office. In October, the normalisation of political relations appeared complete after Rwanda's appointment of a special representative to the ICTR in the new first secretary of the Rwandan Embassy at Dar-es-Salaam. Indeed, in early November, three judges from one trial chamber, accompanied by prosecution and defence parties, made their first official trip to Rwanda to visit the scene of crimes in the Bagilishema case, the mayor from the Mbanza commune in Kibuye prefecture (West Rwanda) whose trial had just opened. Paradoxically, it was in such a context of rare entente that, on 3 November 1999, the appeal court in The Hague handed down its ruling granting a stay of proceedings against Jean-Bosco Barayagwiza, the former leader of the extremist Hutu party Coalition for the Defence of the Republic (CDR).

2. The Barayagwiza Affair

According to appeal court judges, Jean-Bosco Barayagwiza had been the victim of serious and repeated violations of his rights during pre-trial proceedings. The sanction ordered on 3 November 1999 was radical: annulment of proceedings, release and a permanent ban preventing the

Prosecutor from resuming proceedings against the ex-leader of the CDR and the infamous RTLM.

The prompt reaction of Rwanda was almost as blunt. The government announced the "suspension" of its cooperation with the Tribunal and refused, for two weeks, to issue a visa to the new Chief Prosecutor Carla del Ponte. Demonstrations against the ICTR resumed in Kigali. In reality, the suspension of cooperation was more theoretical. Rwanda, despite declarations from the Office of the Prosecutor at the time, never once prevented witnesses from going to testify in the Bagilishema trial in process. Indeed, the affair brought the Rwandan government and the office of the prosecutor into tacit agreement by exerting heavy pressure on the Tribunal in their common interest.

For Kigali, this was also a means of redefining relations with a new Chief Prosecutor in a way that suited it best, i.e., weakening the relationship. Inevitably, the Rwandan government's interests in the ICTR were ambiguous, especially in its relations with the prosecutor's office. For, although the Tribunal was a useful political weapon in turning former Rwandan Hutu leaders into genocide suspects, it was also a threat, given the indictments that it could and should be issuing against soldiers from the Rwandan Patriotic Front, in power today. The Barayagwiza affair was Rwanda's special welcome to Carla del Ponte who had arrived in September 1999 and had never set foot in the region. The political-judicial incident that marked the period of the current ICTR Prosecutor's arrival was, in the opinion of one expert "a psycho-drama to test and soften up Carla del Ponte. To teach her about Africa in the Rwandan fashion. This worked perfectly"⁴³.

At the same time, the Swiss Prosecutor needed this official pressure on the Tribunal in order to pull off her legal counter-attack. Del Ponte filed a swift motion for the 3 November ruling to be reviewed on the basis of "new evidence" - the only recourse she had. Less than five months later, the situation had been remedied. On 31 March 2000, the appeal court radically reversed its ruling, declaring that

⁴³ ICG interview with a Rwandan political figure, Kigali, 21 November 2000.

the infringements of the prisoner's rights were not as serious as first judged, and that proceedings would continue against Jean-Bosco Barayagwiza before the Arusha Tribunal. In the meantime, Rwanda had already announced the "resumption" of cooperation. The affair brought into focus numerous problems with the Tribunal's way of operating. However, unsurprisingly, the manner in which the incident was handled rendered suspect all the ICTR's efforts to conserve or reinforce relations with Rwanda.

Since then, politics have openly intervened in the legal debate. The revision of the Barayagwiza judgement came after the public outcry that it provoked in Rwanda. It was also preceded by a famous statement made by Carla del Ponte that, if the judges did not overturn their decision, the Tribunal should, as it were, "put the key under the mat". The "new evidence" presented by the Office of the Prosecutor and accepted by the judges was not new in the legal sense of the term. Moreover, since then, the validity of some of this has been challenged by rulings in the Cameroon courts. Despite the fact that the 3 November ruling was also legally questionable, the turnaround by the judges was interpreted by some members of the Rwandan community as the result of political pressure exerted on judges and as a sign of their lack of independence. "Even though this is an international tribunal, I would see it as an African court. There are demonstrations, political declarations and when the Tribunal says "we'll see", it is not independent" notes Jean Rubaduka, a judge at the Rwanda Supreme Court, who has held no official post since July 1999⁴⁴. The impact is obviously even more visible in exiled political opposition groups. "The lesson to be learned from the Barayagwiza affair is that the Rwandan government cannot allow the ICTR to operate if it takes decisions it does not like. It is the Rwandan government that has the last word. (...) The affair demonstrated the ICTR's lack of independence vis-à-vis the Kigali government. [It] revealed the extent to which political influence takes precedence over legal matters at the ICTR", wrote Emmanuel Nyemera, vice-president of the RDR⁴⁵.

A year after the crisis, relations between Rwanda and the ICTR have stabilised. Minister of Justice, Jean de Dieu Mucyo, and the Rwandan Chief Prosecutor both speak of a "very good" cooperation with the Office of the Prosecutor⁴⁶. Meanwhile, Carla del Ponte has made regular visits to Rwanda. Before obtaining the revision of the Barayagwiza ruling, she strongly backed the Rwandan government's request to be allowed to speak before the Tribunal in the case. Moreover, she granted an old request by the Rwandan courts to be allowed access to the full text of the confession of the former Prime Minister Jean Kambanda, which was made available in the form of a CD-ROM. This gesture took on a symbolic significance - it is perhaps the most prestigious document to have emerged from ICTR investigations - and a legal one, given that one of the ministers from the 1994 interim government is to be tried in Kigali.

Between August and September 2000, other ICTR initiatives helped improve the climate of relations. At the end of August, four judges from the Tribunal, led by President Navanathem Pillay and Vice-President Erick Møse, made an official visit to Rwanda. One notable event on the trip was their meeting with the President of the Republic Paul Kagame. The following month, the ICTR Registrar went on the offensive, announcing the launch of an "assistance programme for witnesses and potential witnesses", as well as the opening of an information centre in Kigali with the aim of bringing the Tribunal closer to the Rwandan people. Théoneste Murangira, co-ordinator of the Rwandan human rights association Kanyarwanda summarises this evolution as follows: "Today, the image of the ICTR is positive. At first, it was not. The reversal in the Barayagwiza affair was a determining factor. It was a positive conclusion. A year ago, there was exasperation and total disappointment⁴⁷."

However, the renewed warmth of relations still has its limits and its setbacks. With regard to the access of evidence by defence teams, lawyers who have travelled to Rwanda complain that local authorities have sometimes impeded their

⁴⁴ Interview in Kigali, 7 December 2000.

⁴⁵ Correspondance with ICG, 30 November 2000.

⁴⁶ ICG interview in Kigali, 2 and 5 December 2000.

⁴⁷ ICG interview in Kigali, 4 December 2000.

investigations. In particular, several teams have been refused access to archives, both administrative and audio-visual, by the Rwandan Information Office (ORINFOR). One of these lawyers, who has made several trips, notes “a totally hypocritical line taken by all officials.” Access to the files of prosecution witnesses who are imprisoned in Rwanda is another subject of constant concern.

In the post-Barayagwiza context, the visit to Rwanda by the judges at the end of August 2000 served, in part, to sustain debates over the partiality of the Tribunal. In fact, the concerns expressed over the visit, during which four ICTR judges met the Rwandan president, the Prime Minister and the Chief Prosecutor Gahima, appear to be limited either to defendants and their lawyers or certain political movements. Aloys Muberanziza, former Dean of the Law School and lecturer at the Rwanda National University, offers the following analysis: “The Tribunal’s initiatives to visit Rwanda, the sites of massacres and the Rwandan authorities are not in themselves misplaced. If their aim is to seek out the truth and improve the quality of work and its visibility in Rwanda, this is to be appreciated⁴⁸.” Moreover, François-Xavier Nsanzuwera, former Prosecutor in Kigali and currently Secretary General of the International Federation of Human Rights (FIDH), firmly asserts that “the meeting with the Rwandan authorities has nothing to do with the independence of judges”⁴⁹.

In reality the visit was not a first. In September 1995, ICTR President Laïty Kama had met with the Rwandan president Pasteur Bizimungu. Accompanied by two other judges, a further interview took place in March 1997. The embarrassment caused by the recent trip is therefore mostly due to the context generated by the Barayagwiza affair, which threw the suspicion of impartiality over any initiative taken by the ICTR with regard to the Rwandan government.

3. The Difficult Task of Managing Witnesses

“Without the cooperation of Rwanda, it is difficult for the Tribunal to achieve the goal that it set itself, given that most of our witnesses are in Rwanda and that this necessitates collaboration with the Rwandan authorities.⁵⁰” This assertion by the former ICTR President, the late Laïty Kama, remains perfectly valid four years later⁵¹. By June 2000, almost 220 witnesses had appeared before the ICTR and around 240 had been brought by the Tribunal from over twenty different countries⁵². The question of the protection given to both defence and prosecution witnesses has generated one of the most legitimate and impassioned debates of the last four years.

The overwhelming majority of prosecution witnesses come from Rwanda. Almost all of these are “protected witnesses”, in other words, their identity is not revealed to the public. Although defence witnesses rarely come from Rwanda, they still enjoy the same protection measures. However, for prosecution witnesses, cooperation with Rwanda is clearly a key factor in the protection process. All witnesses from Rwanda, whether defence or prosecution, are vulnerable to all kinds of pressure. Since the start of the trials in Arusha, the ICTR has progressively but rapidly installed a system of systematic witness protection, and what was initially envisaged in the rules as an exception, has quickly become the rule. This said, concretely, such protection is minimal: the ICTR’s physical protection of witnesses is limited to the time they spend in Arusha. In addition, the main paradox of the situation is that witnesses in Rwandan national courts testify with their faces uncovered.

Four years after the start of the trials, two incidents occurred in the course of the ICTR’s activities: the killing of two prosecution witnesses. The first, at the end of 1996, was a potential witness in the Akayesu trial. The second had already testified in

⁵⁰ In *Ubutabera*, 10 May 1997.

⁵¹ Laïty Kama, who died in Nairobi on May 6, 2001, was ICTR President from 1995 to 1999. Navanethem Pillay succeeded in him in the post in June 1999.

⁵² Several witnesses have been sent to Arusha without ever appearing before the court. This data may be considered as valid up until October 2000, after which new witnesses were transferred to Arusha.

⁴⁸ Correspondence with ICG, 5 December 2000.

⁴⁹ Correspondence with ICG, 16 November 2000.

the Rutaganda trial. In both cases, no link between their murder and their status as an ICTR witness was ever established⁵³. Ultimately, in the face of such a sensitive issue that is still the subject of several misunderstandings, the Tribunal has achieved some rather remarkable results.

Nonetheless, the principle of public trials has been seriously eroded at the international tribunal. The problem seems to be a sign of the ICTR's political weakness, and its main fear of being blamed for any incidents. In the ICTR's defence, it is likely that it would be criticised for any problems despite the factors described above. The issue seems to have become a potential threat to the integrity and transparency of the trials, especially in a context where suspicions of false testimony abound. In this respect, the recent statements by the Belgian examining judge Damien Vandermeersch before the Brussels Court of Assizes sounds a warning bell to the international court. He stressed that "in order to assess a testimony, identity is capital," adding that anonymity runs the risk of "lapsing into rumour" and establishing facts "that cannot be verified"⁵⁴.

In March 2001, in the so-called Media trial, protection measures were lifted for the first time for a prosecution witness, with his agreement. In 1998, a defence witness in the Akayesu trial had personally requested that his anonymity be dropped. In both cases, the witnesses confirmed that they had never requested such measures. They were merely the result of an automatic protection policy.

Since September 2000, the Rwandan government has also made repeated allegations that prosecution and defence witnesses are treated differently. This is a serious allegation, but it has never been substantiated by solid evidence, even less by an official complaint. However, once again

accusations such as these undermine the ICTR, which suffers from a worrying lack of confidence over the issue.

B. A POLITICAL MANDATE DIFFICULT TO ACHIEVE

The urgent creation of the International Criminal Tribunal for Rwanda was intended primarily to fight impunity in Rwanda and, to this effect, to use the legal instrument to help bring reconciliation and contribute towards re-establishing and keeping the peace. In the same resolution establishing the ICTR, the Security Council underlined another underlying objective, "the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects." The significance of this, compared to the Tribunal for Former Yugoslavia, was underestimated.

1. A Tribunal Isolated from Rwandan Society

"Another serious shortcoming of the ICTY is its location in The Netherlands, far from the areas where the crimes took place. The only contact the average Bosnian has with the proceedings of the court are short daily television news stories, which show video footage of the accused wearing headphones, sitting in front of a panel of robed judges in a foreign court setting. As a result, the citizens of Bosnia are almost completely out of touch with the court's day-to-day proceedings. This lack of understanding prevents Bosnians - Serbs, Croats and Bosniaks alike - from hearing the evidence presented in the court⁵⁵." This conclusion from the International Crisis Group in its recent report on the Hague Tribunal is equally valid for the ICTR, with one exception: television is extremely rare in Rwanda and, for the few urban dwellers who do own a set, there are obviously no daily broadcasts or footage of the Arusha court. Radio broadcasts on the trials are also scarce. The main consequence of this is that Rwandans, for whom the international court was created, have little or no involvement outside Kigali in the trials

⁵³ Only one known case exists where a link has been confirmed by a reliable source between a witness' testimony at the Tribunal and retaliation measures. This is the case of Fidèle Uwizeye, former prefect of Gitarama, called by the defence to appear in the Akayesu trial and allowed to testify in camera. Arrested in Kigali six weeks after his appearance in Arusha, in February 1998, Fidèle Uwizeye was released on 2 February 2000.

⁵⁴ Cited in *Diplomatie Judiciaire*, 21 April 2001.

⁵⁵ See ICG report, op. cit.

today. This is the most serious and patently obvious sign of the huge gap that separates the Arusha Tribunal from the people of Rwanda.

Does the ICTR belong to Rwandans? The simple answer is no. This is the unanimous conclusion of those concerned, who see the Tribunal as the international community's way of absolving itself for its inaction in 1994. Rwandans are not actively involved in the trial process except for a handful who come as witnesses; and for most, the court is invisible. "What was its mission exactly? Why elsewhere? Perhaps it should be said that these people are no longer Rwandans. Here, when innocent people are released, I can feel that something has been achieved. Over there in Arusha, I don't know. Do you want to rewrite the history of our country? Let them come and tell us what happened and so that our children can reconstruct their history" argues, for example, Judith Kanakuze, national coordinator of the Women's Network⁵⁶. This assertion is all the more worrying as it inevitably raises the question of the role of justice in a society. One of the major concerns expressed in the wake of the genocide, which laid the foundations for the ICTR, was the ambition to combat the culture of impunity. More than just a slogan, this expression conveyed the idea that the mass crimes committed in Rwanda were partly the result of decades of similar crimes going unpunished. Setting up an international court was a way of punishing the perpetrators of such crimes and at the same time hopefully establishing a culture of law.

However, because the court was inherently foreign to the very society that it was supposed to be helping, international justice has forfeited any impact on Rwandan society. By so doing, it has failed to achieve both its social and educational functions. Protais Mutembe, one of the defence lawyers for Bishop Augustin Misago - a flagship trial that took place in Rwanda - accounts for this failure: "It would have been far more educational to have worked here. Tanzania is far away - we don't see it. Education in the law takes place on the ground. It is a culture that is gradually

emerging by the force of events, no thanks to the ICTR"⁵⁷.

For a long time, Gérald Gahima, Rwanda's Chief Prosecutor, has expressed his deep opposition to the very idea of international justice. A few months before the Rome Conference to set up a permanent international court, he described the ICTR's experience, on 5 February 1998 in Dakar, as "a total failure". One of the arguments he put forward, speaking on behalf of his government, was the isolation of the court from Rwandan society. "This leads to a situation where the societies against whom the crimes were committed know little about the tribunal's work and care even less about it. Any court that lacks contact with the victims of the crimes it is trying will always lack legitimacy," he declared. Today, the Prosecutor has barely moderated his criticisms, and still points to the lack of impact of the ICTR's work. "Even if it has become more efficient, I will not change my opinion on international justice because there is no link with the society where the crimes were committed. Even if improvements are made, it will still be a case of two or three trials a year costing several million U.S. dollars. The international tribunal is a symbol. Its impact is minimal. If we decided to close it today, there would be no reaction. It was created for the international community. What impact can it ever have?"⁵⁸

Moreover, behind the Security Council's resolution was the need to create bridges between international tribunals and national courts. To date, this judicial cooperation has mostly operated on a one-way basis. Louise Arbour defended a highly restrictive definition of information sharing for the prosecution. "I consider that until the witnesses testify in public and their testimonies have become part of public proceedings, the Prosecutor has an obligation of confidentiality. If third parties, including national courts, wish to have access to witnesses, I will never reveal their identity or the contents of their statements without their permission" confided the former Chief Prosecutor⁵⁹.

⁵⁶ Interview in Kigali, 4 December 2000.

⁵⁷ Interview in Kigali, 7 December 2000.

⁵⁸ Interview in Kigali, 5 December 2000.

⁵⁹ Interview in Arusha, 20 February, 1999.

Carla del Ponte is clearly more flexible over this issue, and more pragmatic, as illustrated by allowing the Rwandan prosecutor access to the Jean Kambanda's confession. Nevertheless, this appears to have been more of an exception than the rule: in December 2000, the confessions of Georges Ruggiu and Omar Serushago were not handed over to Rwandan courts. While it is true that the two convicts will later be testifying in other trials before the ICTR, which is why the secret of their confessions remains protected, Jean Kambanda is also, in principle, in the same situation. It is hard to imagine that the Rwandan courts would not be interested in Ruggiu's confession, since they are currently seized of the trial of his former co-worker at RTL M Valérie Bemeriki. Similarly, the testimony of the head militiaman Serushago would be a useful document for prosecutors in charge of genocide cases in Gisenyi. This indicates that, apart from the symbolic case of Kambanda, in practice there have been no fundamental changes. Indeed, the prosecutor's office in Kigali has not even asked for the confessions. The biggest request made by the body of Rwandan legal assistants is of an entirely different nature: for judges and legal staff to be given extra training.

An expert analyst of Rwandan society and legal questions, Noël Twagiramungu, executive secretary of the Great Lakes League of Human Rights, gave this assessment of the situation: "On the whole, Rwandans attach very little interest to the ICTR. We realise that it cannot do very much. Given the pace of its work, it cannot try many people. As for the survivors, since compensation is not on offer, they have almost no expectations from the ICTR. For them, Arusha is a place where criminals are kept so that they do not come back here to be held accountable for their crimes. This is somewhat discouraging. If its actions were more visible, perhaps this would change things. Then people could hear about what was happening"⁶⁰.

The year 2000 saw the first attempts to do this. Between May and July, six law students from Butare were given internships at the ICTR. In September, twenty judges went to Arusha on a working visit. Clearly, this change in approach by

the international tribunal should be supported and increased. Generally speaking, however, the two legal processes continue to operate in a totally isolated manner. No concrete efforts have been made until now by the ICTR to allow Rwandan courts access to its own case law. Similarly, there have only been rare instances when defence lawyers have cited rulings handed down by the Rwandan courts. The international court lives, for the most part, in total ignorance, if not contempt, of the work of its colleagues in Rwanda.

That said, faced with the progress and experience acquired by national courts, many people feel that Arusha also has lessons to learn from Kigali. "The ICTR has no impact on our files. Most of the time, it is lagging behind us. Our judges do not have copies of rulings handed down by the ICTR, and I do not know whether this would be useful, given their technical nature. As for the facts of the crimes themselves, does the ICTR know more? On this issue, I think that Rwanda can teach the ICTR quite a lot," explains Jean-Jacques Badibanga⁶¹, head of Lawyers Without Borders in Rwanda. He cites an example of such help: in October 2000, the trial of the former deputy Laurent Semanza opened at the ICTR for crimes committed in the commune of Bicumbi (Rural Kigali). Over a year earlier, a trial chamber handed down a ruling in a grouped trial of 40 people regarding the same crimes. "It would be senseless not to use this ruling," concluded Badibanga.

In such a context, the cost of international justice has long been a source of total incomprehension or bitterness by Rwandans who constantly see the issue in terms of numbers. By June 2000, the ICTR had tried eight individuals, whereas the Rwandan courts had pronounced verdicts against 3,751 defendants⁶². Since this date, the ratio has become much worse as Rwandan courts prosecute an increasing number of defendants every year, whereas the ICTR has only pronounced one more judgement against a single individual, in June 2001. Between 1994 and 1996, according to Human Rights Watch, the Rwandan government

⁶⁰ Interview in Kigali, 5 December 2000.

⁶¹ Interview in Kigali, 7 December 2000.

⁶² According to statistics published by the centre for documentation on the genocide trials (CDIPG) of the Rwanda association, Liprodhor.

received a total of U.S.\$19 million in foreign aid to help rebuild its legal system. Other sources confirm the sums by assessing the aid given until 1998 as around U.S.\$ 40 million. This represents a relatively constant sum of around U.S.\$10 million a year. By contrast, the cost of the ICTR for the single year of 1999 amounted to the total foreign aid given to Rwandan courts in the five years following the genocide. Since its creation, the Arusha Tribunal has probably absorbed some U.S.\$ 270 million “In my view, the ICTR consumes more than it produces. I cannot give a scientific justification of this observation but, from 1995 to today, I have compared the number of detainees tried with the resources the Tribunal has. They have thirty-eight prisoners and have prosecuted eight. In five years. If you calculate the budget, this is greater than the entire national budget of the legal sector. It is a real waste,” comments Tharcisse Karugarama, Vice President of the Supreme Court⁶³. For many other Rwandans, incomprehension quickly turns from sarcasm, from the denunciation of an “industry of tragedy” into the bitter conclusion of Callixte Habamenshi, ambassador during every regime since Independence, who argues: “We are from the Third World, we have Third World justice: the performance of the ICTR is ridiculous⁶⁴”.

2. The ICTR and Reconciliation

Nothing is more linked to the Rwandan people’s appropriation of their own justice than the notion of reconciliation. Among the numerous expectations of the ICTR, beyond its repressive functions, many are expressly stated in the Security Council’s resolution creating the ICTR. The best known of all these is that referring to national reconciliation. Yet, if the opinions expressed by the majority of Rwandans are to be believed, the ICTR’s contribution to this goal remains invisible to date. “In terms of reconciliation, it is zero. I see nothing to which it has contributed. The confessions of Jean Kambanda? A failure. Those of Serushago? What is their impact here? Nil. In terms of trials, the criminals say that they are political and the victims that they reduce the punishment of criminals.

There is one valid argument in favour: arrests. But it is very difficult for people to understand that this is enough,” concludes Noël Twagiramungu. The words of the executive secretary of the LDGL are all the more significant as they refer to judicial results of the UN tribunal that are among its key achievements - the guilty plea entered by some of its defendants - since great claims have been made for their role in reconciliation. The fact that the former head of government Jean Kambanda later decided to retract his guilty plea reduced the meaning of his original approach to nothing. However, the fact that Omar Sherushago's confession did not make an impact is more directly owing to the distance and isolation of the international court. The confessions by the perpetrators of genocide could have been one of the most spectacular and immediate contributions made by the ICTR in terms of national reconciliation. Their disclosure could have been one of the most significant factors in the recording of a common, accepted memory of events. The lack of information for Rwandan public opinion and the fact that the contents of the confessions have never been made public have seriously undermined such a possibility.

Depending on political and ethnic sensitivities, such a contribution would depend as much on the Tribunal’s commitment to try both parties in the conflict, as on the court’s ability to take into account the interests of victims. All these factors point to the conclusion that the isolation of the Tribunal is detrimental to the its potential role in reconciliation.

It is important to stress, however, that reactions to this question are as unpredictable as national reconciliation itself. It is obvious that this will not come from the ICTR but is much more likely to be the result of a political will to find lasting solutions. Such solutions must be fair and strong enough to surmount the institutional, political and military obstacles confronting Rwanda and over which the ICTR has little influence. The work of the Tribunal is above all to deliver justice for crimes committed in 1994. It cannot be expected to stop the war and reconcile the Rwandan people.

The fight against impunity, democratisation, struggle against ethnic conflict: such are the tasks that are more or less directly attributed to the

⁶³ Interview in Kigali, 7 December 2000.

⁶⁴ Interview in Kigali, 6 December 2000.

Tribunal, and such are its failures. One goal remains to be mentioned that the ICTR regularly cites as primordial: establishing an historical record of events, which is impartial, objective and thorough. The most significant trials of the conspiracy that led to the genocide, as alleged by the Prosecutor, have not yet taken place. However, for the moment, José Alvarez' analysis cannot be denied: "Whether or not any criminal trial can ever provide an account of that genocide that does justice to this variety of causal explanatory factors, the ICTR's prosecutions, artificially constrained to events occurring over one year and limited to actions taken within Rwanda, seem especially unlikely to produce the full account of barbarism that the international legal paradigm demands. (...) It remains to be seen whether that tribunal, wholly independent in theory from the Security Council but dependent on it in fact and consisting of judges from a variety of nations with interests in the way Rwanda's recent history is told, will be able to engage in the kinds of broad-gauged historical inquiries into the Rwandan genocide that are essential to preserving collective memory and to generating public confidence in its accuracy. (...) While international trials of a few Rwandan high-level perpetrators will provide some additional details about much that we already know, namely how the genocide was orchestrated and how the actual killings were organized, such trials will tell us next to nothing about those most directly involved in the killings or about their individual victims"⁶⁵.

All the trials held so far at the Rwanda Tribunal completely confirm this sombre forecast regarding Arusha's contribution to the search for historical truth and a better understanding of the mechanisms that led to the genocide. It is highly improbable that the ICTR will one-day produce a "complete record of the barbarity" or even "large-scale historical investigations". The participation of other states in the 1994 crimes are beyond the scope of the debate in trials that are limited, de facto if not de jure, to the individual criminal responsibility of Rwandan citizens. The extremely small number of people who will be tried and their level of authority does not allow an exhaustive account of massacres by their tens of thousands of

perpetrators. It is certainly not the responsibility of the judges to write history. But the legal process can help to uncover and better understand the history. Without this dimension, the work of the ICTR has even less chance of having the reconciling value that was expected or hoped of it.

⁶⁵ José E. Alvarez, op. cit.

V. THE FUTURE OF THE ICTR: THE NEED FOR RESULTS

Looking at the results the ICTR has achieved thus far, it is clear that vigorous efforts to improve the situation must be made before it is too late. There are several initiatives and decisions that could be taken or strengthened in order for the ICTR to successfully fulfil its mandate.

A. ARRESTS: MAKING BETTER USE OF AVAILABLE INSTRUMENTS

Generally speaking, the various prosecutors have always refused to provide much information about persons wanted by the Tribunal, opting rather for a strategy of discretion. However by the end of 2000, there seemed to be a growing awareness that the Tribunal had reached a stalemate and the prosecution began to implement more aggressive strategies, which were better thought out, even though they did not always materialise. A more direct approach in certain African states such as Kenya, Cameroon and the DCR was first envisioned at the highest levels by the chief Prosecutor. This approach was to open the way for more concrete and public initiatives with respect to the alleged lack of cooperation from these countries. In addition, several shortcomings were identified in the Office of the Prosecutor (OTP). For example, as perplexing as it may seem, by the beginning of December 2000, no one on the ICTR wanted list had been put on file yet with Interpol. Even though this is purely a formality, the OTP had simply never made the request. Under the leadership of the new Chief of Investigations, appointed in May 2000, this astonishing situation was finally resolved by the end of 2001.

1. Using the Full Procedural Arsenal

The procedure for issuing international arrest warrants is hardly clear. Except for the special provisions of Rule 61⁶⁶ that the ICTY used at the

beginning of its mandate, there are no rules that clearly give judges the power to issue an international arrest warrant straightaway. Consequently, until very recently, all the arrest warrants were national warrants. This paradoxical reality for an international court is an obvious handicap in terms of making arrests, in that suspects move from one country to another, thereby rendering an arrest warrant that was initially issued in a particular country ineffective in some cases. International Crisis Group is aware of at least one case in which by the end of 2000, the suspect was no longer in the country specified in the arrest warrant issued against him a few years earlier. This is undoubtedly not an isolated case. In these cases, the Office of the Prosecutor is forced to file a motion for a judge to grant a new arrest warrant, a process that is not very compatible with the rapid action that is sometimes crucial in order to arrest a suspect. In September 2000, Carla del Ponte requested the judges in Arusha to modify the procedure for issuing arrest warrants. She based her argument on the Milosevic example. On May 24, 1999, ICTY judge David Hunt sent a warrant for the arrest of the former president of the Federal Republic of Yugoslavia to "all United Nations member states." This was never done at the ICTR. However, the judges reacted differently to del Ponte's request. On November 2, Judge Navanethem Pillay issued an international arrest warrant against one of the fugitives. Shortly thereafter, in another case, Judge Kama requested additional information before issuing such a warrant, but he never received the information. On 22 November, Judge Yakov Ostrovsky refused to grant a motion to issue an international warrant for another accused, asking that the procedure in Article 61 be scrupulously followed. Clearly, the

reasonable time", the judge is obliged *de facto* to invite the Prosecutor to report on the measures taken. If the Judge is satisfied that these measures were sufficient, the matter is submitted to the Trial Chamber and a public hearing is scheduled. During the hearing, the Prosecutor explains the charges against the accused and may call witnesses. Following this hearing, the judges may issue an international arrest warrant, which is sent to all States. They may also order "a State or States" to freeze the assets of the accused, if they are satisfied that the situation is due "in whole or in part" to failure of a State to cooperate, the Trial Chamber so certifies and informs the Security Council thereof. These Rules have not been used much because they require the Prosecutor to advertise the indictments and they require too many resources.

⁶⁶ Rule 60 allows the Prosecutor to advertise an indictment in the media and to invite "any person with information as to the whereabouts of the accused to communicate that information to the Tribunal." Rule 61 states that in cases where a warrant of arrest has not been executed "within a

prosecutor needs to have the benefit of international arrest warrants in order to make more arrests. Therefore, it would be preferable to eliminate this legal obstacle by clarifying and simplifying the legal foundation for issuing these warrants.

2. Giving the Prosecution More Autonomy

Apart from the issues related to cooperation from states, two other factors of a completely different nature seem to be hindering the ICTR's ability to make arrests as of late. These factors differ in that they are linked to the internal operations of the Tribunal. The first pertains to the organisation of the Office of the Prosecutor. Approximately ten suspects could have been arrested by the end of 2000 if the legal division of the prosecutor's office had followed through and drafted the indictments. Several arrests had to be delayed during the second half of the year because the indictments were not ready, for lack of human resources to allocate to this task.

The second obstacle is not a new one and is as much a source of concern as a source of controversy. It pertains to the degree of financial manoeuvrability that the prosecution has to conduct investigations and the oversight that the Tribunal, i.e. the Registry, exerts in this area. A confidential report issued by the American government at the beginning of 1999 that quoted an inside source at the Office of the Prosecution revealed that "at least four arrests were missed" in the autumn of 1998 due to bad fiscal management by the Tribunal administration⁶⁷. Once again, the second half of 2000 was riddled with the same types of conflicts, something Carla del Ponte denied, saying, "I have never had any problems in that respect."⁶⁸ However, other reliable sources have regularly described how allocations to the budget for investigations, research and arresting suspects were blocked between September and December. According to these sources, no money at all was put into this account between June and December, after which money was only allocated in an erratic manner because the Registry financial

office felt that the accounting items submitted by the Deputy Prosecutor were not in compliance. By September, the situation was totally paralysed. In December, ICG observed firsthand the extremely random and chaotic way in which funds were made available to the prosecution teams in charge of arrests. One symptom of the dysfunctional organisation, among others, was that between U.S.\$10,000 and U.S.\$12,000 were owed to investigators for "advances" they had made for the good of the operations underway. The quarrel between these offices dates back a long time and the office of the Deputy Prosecutor and the Registry seemed to be equally responsible. However, the consequences of these conflicts are serious. ICG recommends that the new administration and the new OTP leadership find a lasting and responsible solution.

B. INCREASING ICTR PRESENCE AND INFORMATION IN RWANDA

Following the example of the Tribunal for the Former Yugoslavia, the ICTR recently offered up a preliminary response to its problem of visibility and impact in Rwanda. On Sept 25, 2000, the Tribunal inaugurated an information and documentation centre in the Rwandan capital. On this occasion, the former Registrar of the ICTR summed up what was at stake: "The ICTR cannot make a significant contribution to peace in Rwanda if the Tribunal's work and achievements are not effectively communicated to the Rwandan people. We at the ICTR are of the view that it is of the utmost essence that our work should have the impact inside Rwanda that was the goal of the United Nations Security Council when it established the Tribunal in November 1994. That, in our view, is a key indicator of whether or not the Tribunal will ultimately be adjudged as a success."

The centre was launched within the context of an ambitious initiative called the "outreach program." The concept is not new. It first surfaced in 1998 in speeches given by Tribunal officials and was clearly announced in writing at the beginning of 1999. Over the past three years, Rwandan journalists made many visits to the tribunal and the Rwandan national radio had a regular presence in Arusha thanks to this program. With budgetary needs assessed at U.S.\$157,615 for 2000 and

⁶⁷ See *Ubutabera*, 13 September 1999

⁶⁸ Press Conference, 13 December 2000

U.S.\$178,952 for 2001, the ICTR is now contemplating a program that is much more dynamic, although still modest bearing in mind how far behind it currently is. However, funding for these programs is not entirely guaranteed. The project designed to reach more people living outside Kigali by equipping caravans with mobile projection equipment may not actually take effect until much further down the road. ICG recommends significantly strengthening the most urgent activities in order to remedy the problem of lack of information in Rwanda about the Tribunal. With the opening of the Information Centre, expectations are high. It is essential that they not be disappointed again, and that this continues to be a priority for the ICTR.

C. ORGANISING TRIALS OR HEARINGS IN KIGALI TO GIVE RWANDANS A NEW SENSE OF OWNERSHIP IN THE TRIALS

Another request that many Rwandans continue to make is to have hearings held in Kigali. Again, the idea is as old as the Tribunal itself. However, it began to be voiced more strongly in 2000 to such an extent that the idea now seems less improbable, even though it sharply divides communities along ideological and political lines. "The main problem is not a psychological, moral or legal problem, but a practical problem of security," said Antonio Cassese, former presiding judge of the appeals chamber, in 1997⁶⁹. Louise Arbour revived the idea in a more spectacular manner during her last visit to Rwanda in August 1999 just before she left office. "The Tribunal is in its fifth year of existence. In my opinion, this is a challenge that it must now start to tackle," said the former Prosecutor who was already talking about "visibility" and "increasing Tribunal presence in Rwanda" and to this end, calling upon the international community to provide financial assistance for the construction of a new courtroom at the Supreme Court [of Rwanda]⁷⁰. Her successor, Carla del Ponte, took up these same words. In December 2000, del Ponte announced that she intended to file a motion along these lines in the so-called media trial. During an interview in

September, Navanethem Pillay, who is presiding over both the Tribunal and this trial, said with respect to this topic, "We would consider the matter but I made clear that a decision to hold hearings in Rwanda, as much as we support the principle, is actually a complex matter."⁷¹ By April 2001, however, no initiatives had been taken in this respect.

The positions on this issue offer a vast range of options. The Rwandan government continues to defend the idea it has had from the start: setting up the Tribunal in Rwanda. Failing that, the government has officially offered assurances that if hearings were held in Rwanda, it would be able to provide all necessary guarantees. Though he is unlikely to pass as an ideologist of the regime, lawyer and human rights activist François-Xavier Ndeze is in favour of the idea, "but only with maximum security."⁷² In fact, very few in Rwanda are strongly opposed to this idea. Abroad, however, there are very few who support it. According to the DRC, "the fact that the seat of the ICTR was established outside Rwanda demonstrates the UN Security Council's concern that trials be conducted on neutral ground in order to guarantee the independence of the Tribunal insofar as possible. Holding ICTR trials in Rwanda when the Tribunal's independence vis-à-vis the RPF-controlled government of Rwanda is already questionable, would completely undermine its credibility."⁷³ Those who would be most affected, ICTR defendants, are obviously radically opposed to the idea, at least among those who sign common communiqués. The idea of having a teleconference link has been proposed to overcome this obstacle. However, the lawyers are quick to point out that it would be impossible for them to communicate freely with their clients. In any case, without the approval of the defence, this strategy would never work. In private, however, some lawyers are not hostile to the idea. One lawyer even contemplated requesting a teleconference hearing to facilitate hearing defence witnesses who live in Rwanda and do not wish to travel to Tanzania.

⁶⁹ in *Ubutabera*, June 9, 1997

⁷⁰ Hironde Foundation newswire of August 7, 1999.

⁷¹ Interview with Hironde Foundation, September 1, 2000

⁷² Interview in Kigali, 6 December 2000

⁷³ Letter to ICG, 30 November 2000

This points to the first rule of action: be pragmatic. The idea of organising a full-blown trial in Kigali still seems unthinkable for many reasons. Undoubtedly, the main reason is ensuring the safe arrival of defence witnesses who often come from places other than Rwanda. However, it is conceivable that some of the hearing could be held in Kigali. Because of the impact that this sense of "ownership" by the Rwandans could have on the judicial process in Arusha, it is imperative to take the initiative.

D. CONFRONTING THE ISSUE OF COMPENSATION

The year 2000 was marked by a revival, or at least a strengthening and increased awareness of the issue of the role of victims in the legal process in The Hague and in Arusha. The renewed interest in this issue should make it a key element in the debate over the mandate of the ICTR.

1. Forgotten Victims

The Prosecutor is one of the driving forces behind this new desire to redefine the role of victims, and thus to bring it closer to the civil law tradition. As soon as she arrived, Carla del Ponte decided to address the Tribunal as a representative of the victims. In June 2000, during an ICTR plenary meeting, she went even further by requesting a change in procedure in order to allow victims to have passive representation.⁷⁴

In Rwanda, victims indeed feel extremely frustrated, which greatly adds to the crucial sentiment that they have no ownership in the Tribunal - that it was not established by them or for them.⁷⁵ Since then, the issue has not evolved noticeably. For his part, the former ICTR Registrar, Agwu Okali, officially launched a "witness and potential witness assistance program" in Rwanda on 26 September 2000. The total budget for this program is U.S.\$379,000.⁷⁶

Officially, the initiative covers several areas: medical and psychological rehabilitation, physical security for person and property, legal advice and guidance, financial assistance after trials, relocation/resettlement. Okali first set forth the principle in a memorandum dated 22 June 1998. "It is assistance specifically directed, through various means, to enable the targeted group – victims and survivors, especially widows and orphans – participate more effectively in the Tribunal's work of investigating, prosecuting and trying suspected perpetrators of the genocide. It is not a generalised economic and social assistance programme for the people of Rwanda and it is also not a compensation programme."

This program is presented as a manifestation of the need to develop restorative justice along with the retributive side of the trials. However, the program is the object of a longstanding major controversy. If it took three years for the program to finally see the light of day, it was because this initiative raised, and continues to raise, serious concerns. These concerns are varied. Some involve the risk of subornation of witnesses, others the possible impression that the program only benefits prosecution witnesses, or the difficulty in maintaining the confidentiality of protected witnesses, and still others, the risk of a complete breakdown in terms of the responsibility for witness protection.

medical supplies to Hope Clinic, with an anticipated 3,024 recipients. ASOFERWA (the social association of Rwandan women) received 52,000 US\$ for the construction of a village of peace in Kamonyi (Taba commune). This amount represents 15percent of the total project cost that will benefit 153 genocide survivors. Pro-Femmes Twese Hamwe, a group of 35 NGOs working on women's development, received U.S.\$11,000 for a five-day seminar to train trainers in trauma counselling that will benefit 40 people. Haguruka, the association for the defense of women's and children's rights, received U.S.\$24,708 for a project that involves two informational radio programs about the ICTR, the training of twenty paralegals in Byumba prefecture, legal aid to some 160 women and children in this prefecture and the production of 500 calendars on human rights. Avega-Agahozo, the association of widows of the April genocide, received U.S.\$35,365 for trauma counselling training for 10 people, and emergency health care fund for victims of sexual violence and potential witnesses in five prefectures, which represents a total of 200 beneficiaries, and social worker visits in 24 different communes.

⁷⁴ Press conference held in Arusha on 13 December 2000

⁷⁵ Interview in Kigali with *Ibuka*, 4 December 2000

⁷⁶ U.S.\$300,000 are from the ICTR Trust Fund and the remainder from "other donors." In the initial phase of the program, the association Rwanda Women Network received 25,562 US\$ for a one year program to provide

In short, the grievances against this program are particularly serious because if the UN administration responded in a way that was not purely legal, it would go beyond the mandate of the Tribunal, causing the institution to drift dangerously. Okali defended himself before shocked defence counsel, saying, "There is nothing wrong with such a body being associated with or providing support to a third party, such as a Non-governmental organisation, assisting such victims, especially where such activity is carried out through a neutral organ such as the Registry."⁷⁷ The Rwandan government clearly approves the initiative of the Tribunal Registry. This program has also received support from several international women's rights organisations.

However, there is strong criticism and it is significant to note that it also comes from Rwanda and even from organisations that are supposed to be the main beneficiaries. "I was surprised that it was open to women's groups rather than genocide victims' groups. Looking at it from a lawyer's point of view, I would have to side with the defence counsel. There is a risk of confusion. The distinction must be made between assistance and reparation. Assistance is a voluntary, commendable act. Reparations are entirely different: one gives what is owed. We do not look to the Tribunal for assistance. Rather, it should help us recover our debts by including us in the judgements. This is just a means of distracting us. Assistance funds cannot be confused with reparation funds. The only assistance we expect is to allow us to be present at the trial."⁷⁸ Anastase Nahahire from the association *Ibuka* is relentless in her reaction and she is not alone. "It's all staged. They are pretending. We want something strategic that will bring about lasting change," said Judith Kanakuze, Coordinator of a coalition of NGOs, even though one these NGOs benefited from the ICTR program.⁷⁹ "What does it mean? We have 25,000 members. How much did we receive? U.S.\$32,000. That's a good start, but it's only a belated drop in the ocean," vents the executive secretary of Avega, one of the five organisations

that benefited directly from the program.⁸⁰ Legal drifting on the one hand, publicity stunt or political manoeuvring on the other, the Registry's program clearly does not provide answers to the fundamental questions victims are asking. Now that everyone is working to ensure that victims' rights are no longer ignored, the problem from now on will be how to best respond.

2. Victim Reparation vs. Victim Compensation

The contrast between the ICTR and the ICTY is striking. Faced with the same issue, it was the judges in The Hague who took the time to reflect and to act. At their request, a 14-page report was drafted last summer that voluntarily focuses on financial compensation in order to "avoid turning to the broader concept of reparations (...), and to avoid dealing with other forms of reparation that, much like rehabilitation, require a more thorough analysis and seem to go beyond the scope of the Prosecutor's proposals and the discussion during the June 2000 plenary."

The task force underscored the following difficulty: "It seems that international law recognises the right of victims to compensation. Although this right is being developed, the mechanism for implementation is clearly much less developed. In the context of the Tribunal, other rights and other general political considerations must be taken into account, including the right of the accused to a speedy and fair trial." One of the points raised briefly is of course, "the core issue of the source of funding for such compensation." The options are few. There is property that the prosecution has seized, but once again the crucial issue of cooperation from states comes into play. Then there is the UN budget and voluntary contributions from member states. Finally the task force recommends establishing an international compensation committee. The advantage of this committee is that "it can process more requests, more efficiently than the court and in theory, it can at least examine all the substantial requests made by the victims of the crimes in question." At any rate, the Tribunal's statute would

⁷⁷ Registrar's response to Jean-Paul Akayesu's lawyers on 5 October 2000.

⁷⁸ Interview in Kigali on 4 December 2000

⁷⁹ Interview in Kigali on 4 December 2000

⁸⁰ Interview with Hillary Mukamazimpaka on 7 December 2000

have to be modified. This is why ICTY President, Claude Jorda, wrote to the United Nations Secretary-General on 12 October 2000. The letter was passed on to the Security Council on 2 November, as it is the only body with the power to modify the Tribunal statute.

Unfortunately, a similar study adapted to the realities of the ICTR was never conducted. It is possible that the case of the ICTR is different from the Tribunal for the former Yugoslavia. The brief ICTY report also notes that within the scope of work on the issue carried out over the past ten years, the creation of a national victim compensation fund is clearly encouraged. Consequently, the task force members presented an option other than the institution of an international committee: the possibility of having "national courts indemnify victims." But how can the fact that Rwanda is also dealing with this issue of victim compensation be ignored? Should there once again be a national solution and an international solution that do not mix?

According to the Rwandan courts, the question is not whether victims have the right to seek damages, because this right is already guaranteed by the law. Rather, the question is, compensate with what money? Assistant public prosecutor, Emmanuel Rakangira, explained the situation as follows: "Currently, there are billions of Rwandan francs in the form of damages (awarded by national courts). No, it's practically impossible."⁸¹ In the four years since trials started in Rwanda, the amounts were of course, very generous on paper. Close to U.S.\$100 million have been awarded after only some 4,000 people have been tried. In reality, however, not a single cent has been paid out because the defendants are all indigent. The ICTY task force members clearly concluded, and rightly so, that the responsibility for processing and ascertaining damages should not be given to the *ad hoc* tribunals. They pointed out in particular that this would slow down the pace of the trials even more, which would prevent the tribunals from fulfilling their main objective. Rwandans have advanced other arguments. Some fear first and foremost that the judges in Arusha are not in any position to be able to truly assess the amounts to

award. The main concern, however, is the risk of two-track compensation, hence two-track justice.

The penal solutions have proved to be limited in Rwanda. With some 130,000 persons in prison - the highest prison density in the world - the Rwandan court system cannot try everyone in a reasonable time frame. This is the main reason why the government has promised to implement an alternative solution of *gacaca*, decentralised people's courts based on some of the operating principles of traditional Rwandan justice. The *gacaca* trials are slated to begin in January 2002. However, among the prerequisites that the authorities feel must be in place in order to succeed in this unprecedented undertaking, is the national compensation fund, the draft legislation of which was being finalised in December 2000. A lot of Rwandans support the idea of a national compensation fund with "international oversight" of the use of the funds. However, one of the issues raised is that fact that it might be complex, to say the least, even absurd, to have to deal with two compensation funds. As previous experience elsewhere, such as in South Africa, has shown, the State plays a critical role in the responsibility for compensating victims for crimes it committed or that were committed in the name of the government. In this respect, it is important to note that currently the Rwandan government devotes 5% of its budget to a victim's assistance fund.

Currently in Rwanda, courts are awarding damages ranging from 5 to 20 million Rwandan francs to people whose fathers were killed.⁸² Obviously these sums will never be available. Thus, in its draft legislation, the government is contemplating alternative modes of compensation, such as providing health care or education. Before the draft legislation was finalised, Tharcisse Karugarama, Vice President of the Supreme Court, described the current prospects: "First of all, one can never truly compensate the genocide victims. Damages are only symbolic. It is a national, even an international symbol. Even if 10,000 Rwandan francs are awarded, it acknowledges that a crime was committed. It is not the monetary amount that matters, it is the fact that 'we are showing solidarity with you.' Second, it is possible to award

⁸¹ Interview in Kigali on December 4, 2000

⁸² Between U.S.\$11,500 and U.S.\$46,500

individual damages according to a scale. It is also possible to give money to associations in a transparent manner. I am not saying that there would not be any errors, and that there would not be any crooks, but guidelines have to be established. There are risks, but they are reasonable risks."⁸³

It is easy enough to see that Rwanda, and thus the ICTR, is in a unique situation. Consequently, the international tribunal needs to do a concrete and thorough study of all possible options for victim assistance. The tribunal Registry cannot be left alone to face this responsibility, as has been the case up till now. The response must be legal in nature and must bear in mind the following thought: "When there are large segments of the population affected by human rights violations, private redress is insufficient to ensure the equality and efficiency of the compensation and reparation process. The State must, therefore, assume the responsibility of ensuring that the collective result is fair. (...) Without a comprehensive approach to reconciliation, the commitment to compensation and reparation becomes an illusion, by virtue of the fact that the process is simply ineffective. Examples such as Rwanda demand that we be cautious and forward-thinking in our institutional designs: we must be sure that the models we advance at the international level leave reasonable chances of being transplanted successfully into the heart of a ravaged community."⁸⁴ ICG recommends that the Tribunal not be responsible for the solution envisioned by the international community for compensating victims in Rwanda, who should be compensated quickly and in a thorough manner. It also recommends that this solution should not be such that it clashes with solutions set up by national institutions, which serve as the foundation for the particularly delicate undertaking in *gacaca* justice.

E. THE DEBATE ON BROADENING THE MANDATE OF THE ICTR AND THE FIGHT AGAINST IMPUNITY

The fact that the existence of the ICTR has not been a deterrent is one of the underlying themes in one of the debates surrounding the mandate of the Tribunal. Should its mandate be extended both in time and in place? In other words, should the Tribunal be authorised to try crimes committed after 1994 and outside the territory of Rwanda and by persons other than Rwandan nationals? Obviously, this debate concerns the Democratic Republic of the Congo and Burundi first and foremost. Politically speaking, only one concrete attempt has been made to date to broaden the mandate of the ICTR. Yet, this shows what other issues are at stake. In April 2000, American Senator Russ Feingold, speaking to his fellow Senators, recalled this attempt, which he initiated. "I have come to this floor in the past, Mr. President, to raise the issue of parity between the ICTY and the ICTR. In particular, I have pointed out that whereas the ICTY has the authority to prosecute individuals for serious violations of international humanitarian law committed since 1991 through the present, the ICTR's mandate covers only those acts committed within Rwandan borders during 1994. Last year, the Senate approved an amendment that I offered to the State Department authorisation bill requiring a report on the merits of expanding the mandate to the ICTR in space and time, both to deter further abuses and to hold the perpetrators of the continuing atrocities in the Great Lakes accountable for their actions."⁸⁵ Last year, when the Senate voted on the State Department bill, it approved an amendment that I had proposed requesting a report on the merits of extending the ICTR mandate in space and in time, in order to both prevent future abuses and to hold the perpetrators of the atrocities that are still being perpetrated in the Great Lakes region responsible for their acts."

In August, the American Congress had in fact drafted a resolution stating that, "there have been

⁸³ Interview in Kigali on 7 December 2000

⁸⁴ Iris Almeida, in *Compensation and Reparation for Gross Violations of Human Rights: Advancing the International Discourse and Action*. Siracusa Conference, September 1998.

⁸⁵ Actually, the ICTR mandate also authorises it to prosecute Rwandan citizens for crimes committed in neighbouring States in 1994.

well substantiated allegations of major crimes against humanity and war crimes that have taken place in the Great Lakes region of Africa that fall outside of the current mandate of the Tribunal in terms of either the dates when, or geographical areas where, such crimes took place." Noting that the "the attention accorded to the ICTY and the indictments that have been made as a result of the ICTY's broad mandate continue to play an important role in current United States policy in the Balkans," Congress felt that the American government should promote a new assessment of the ICTR within the Security Council and that this assessment should include the "the potential impact of expanding the original mandate of the ICTR." The subsequent report that the US Secretary of State was to submit to Congress was to discuss "the ICTR's ability to meet its current mandate and an evaluation of the potential impact of expanding that mandate to include crimes committed after calendar year 1994. In the end, this initiative, which was the only one of its kind, failed because the amendment was later withdrawn. The report was never written.

With respect to principles and prevention, researcher Phillip Reyntjens demonstrated the need to broaden the mandate as follows, "Even though the ICTR is already functioning rather poorly, its mandate should be extended in time and in space for the following reasons: it involves a practice that did not end in 1994; the guilty ones are often the same; the causes and mechanisms are similar; the conflicts and their parade of massacres are often carried out in an extra-territorial situation and the events of one period in one country influence other times and other countries."⁸⁶ At the end of its fourth regular congress held in Bukavu (DRC) from 12-13 July, 2000, the Great Lakes League of Human Rights took the first step and in its declaration, called for an extension of the jurisdiction of the ICTR to cover Burundi and the DRC.

However, the Tribunal is indeed not functioning well and those who are opposed, or outright hostile to broadening the mandate advance, at least officially, the operational problems of the Tribunal as their main argument. "Why extend its mandate

when it is not meeting its goals?" asks the Rwandan Minister of Justice.⁸⁷

Even if the political motives were set aside, the argument is still clear and simple. There is a risk that the current mandate would be diluted and possibly that the Tribunal in Arusha would be struck with a fatal blow. "The monster is already too big for what it has to do. Increasing its tasks would push it over the imaginable limits of obesity and would open up the gates of eternity to it" decided one expert who wished to remain anonymous.⁸⁸ Thus what is at issue is the ultimate consequence of the Tribunal's failure to fulfil its mandate efficiently and swiftly. This failure now stands in the way of any reasonable contemplation of enlarging the Tribunal. At the same time, judges in national courts are less bureaucratic and more efficient. For the time being, they are the best prospects for trying crimes committed in the DRC and Burundi.

F. BROADENING THE UNIVERSAL JURISDICTION OF NATIONAL COURTS: SHARING THE LOAD

There is another arena in which to develop cooperation between states. Although it comes in another form, it could have a positive effect on the work of the ICTR. That is, strengthening law enforcement on a national level. This would also promote the development of international justice and above all, send a clear message that the prosecution of persons suspected of genocide or crimes against humanity is the responsibility of each State (and not merely that of a UN institution to which they delegate this responsibility with a sigh of relief). Besides Rwanda, Switzerland is the only other country to have successfully tried an individual in its national courts for crimes committed in Rwanda in 1994.⁸⁹

⁸⁷ Interview in Kigali, 2 December 2000

⁸⁸ Letter to ICG, 21 November 2000

⁸⁹ Fulgence Niyonteze, former *Mayor* of Mushubati, was tried before the military tribunal of Lausanne in April 1999 and sentenced to life in prison in the first instance. In May 2000, the Geneva court of appeal commuted his sentence to fourteen years in prison and the Court of Cassation upheld his final sentence in April 2001.

⁸⁶ Letter to the ICG, 13 November 2000

On 17 April 2001, Belgium in turn finally began the long-delayed trial of four Rwandan suspects.⁹⁰ The judgement in this case is expected to be issued by the beginning of June. Other trials opened in France, which have proved to be a lot less speedy. The proceedings that began in France now seem to have dissipated and the public prosecutor's office does not seem to be in any hurry to finish them.

The ICTR will not handle all these cases alone. However, due primarily to the fact that the death penalty is legal in Rwanda, most states refuse to extradite suspects to this country. Moreover, Rwanda already has 120,000 prisoners to try first. Thus when cases come to states that the ICTR Prosecutor does not feel should be handled by the Tribunal, it is up to the states to decide whether or not to try these individuals in the name of upholding the principles of international humanitarian law. Canada, which now has adapted its legislation to meet this requirement, seems ready to take this route.

The example of the trial in Switzerland of Mayor Niyonteze revealed that there are some logistical problems when such cases are heard on a national level. Even these trials, which in all likelihood would only involve a handful of cases, have definite public interest, witness the media coverage of the trial in Belgium. Moreover, these trials are a matter of legal obligation. In addition, judgements rendered by these different courts will go a long way toward benefiting the advancement of international justice. Finally, these proceedings give new meaning to the principle of complementarity of courts. In this respect, it is also important to note that just as in its relations with the Rwandan courts, the ICTR does not view this cooperation as a two-way street. Belgian examining magistrate, Damien Vandermeersch, first lamented this fact back in 1998. Unfortunately, apart from the agreement on requests for judicial assistance, it does not appear that this situation has changed much.

⁹⁰ The trial of Alphonse Higaniro, Vincent Ntezimana, Gertrude Mukangango and Julienne Mukabutera, which was initially scheduled to last 6 weeks, has been underway since 17 April 2001

CONCLUSION: ESTABLISH A TERM LIMIT

"Given the current pace of the trials, it will take the Tribunal at least seven or eight more years to achieve its mandate," wrote the team of experts who were asked to assess the workings of the two *ad hoc* tribunals on 11 November 1999. Their report indicates that "approximately 90 investigations" were underway and that "about 20 suspects might be collectively indicted in 2000."

Since then, the ICTR has fallen considerably behind vis-à-vis this forecast. And yet, the sense of urgency often seems to be a foreign notion to many Tribunal staff members, including and undoubtedly more seriously, among some of its key officials. Whereas the Rwandan government is now talking openly of impasse, even "failure" in terms of handling the massive caseload of genocide litigation it is facing, the ICTR has not proved that it is able to fulfil its mandate in a reasonable time frame either. This situation is paradoxical given the changing political discourse in Rwanda about the stakes of justice. With the upcoming implementation of the *gacaca* tribunals, Rwanda has, in fact, put "political considerations ahead of the message of impunity" and is now starting to talk about the next step: "We have to put the genocide behind us."⁹¹

A year and a half ago, experts said that "after being active for several years in the former Yugoslavia and in Rwanda [the Prosecutor and the Deputy Prosecutors of the ICTY and the ICTR] thought they had an overall and sufficiently clear vision of the circumstances of the crimes to be able to determine which cases were worth prosecuting, and they have identified virtually all those that are worth pursuing. They estimated that it would take about 10 years to complete this task and that they now had enough staff to do so." This "overall and clear" vision seems even more accessible at the ICTR since its mandate is limited in time and in place.

In the context of the current ICTR mandate, it has now become necessary to set a concrete goal of

establishing a fixed term for the mandate of this institution. The Office of the Prosecutor will, of course, play a decisive role in this respect. Carla del Ponte seemed to be determined to follow this course. During her press conference on 13 December 2000, she publicly stated that the time had come to provide a more definitive outlook as to when the Tribunal will accomplish its work. This has already begun at the ICTY, with the investigations now estimated to end around 2004. "We will undergo the same exercise at the ICTR," she promised, announcing that she would be presenting a "work plan" to the President of the Tribunal "before the end of January." This plan was in fact given to Navanethem Pillay, but it was never made public, and it should be.

In May 2001, the Office of the Prosecutor had about 20 suspects still at large plus about ten suspects who were about to be arrested. "We can reasonably expect around twenty new indictments," confided a senior official at the OTP in December 2000, thus bringing the total number of people to be charged by the ICTR to around twenty-four. "I do not see how we could still be conducting investigations in four years," added this official.

What little is known about the work plan Carla del Ponte submitted indicates an entirely different slant. It would involve potentially indicting approximately 30 people per year until 2005. That would be a total of 200 people prosecuted and tried in the end. This prospect can only make one wonder about the ability of the ICTR to handle such a heavy workload.

However, the mere fact of determining the final extent of the investigations and indictments should, at any rate, prompt those involved in the trial stage itself to vigorously tighten the court calendar, which up to now has been flexible to a fault. The responsibility that falls to the judges, which is part of the problem with the current delays, will only increase. As a judge at the Supreme Court of Rwanda pointed out, "prolonging the trials does not benefit the victims or the detainees."⁹²

⁹¹ Interview with Gérald Gahima, Kigali, 5 December 2000

⁹² Interview with Aloysie Cyanzayire, Kigali, December 7, 2000

On the whole, the international community has given the Tribunal the resources it needs to operate. A few areas could use a little more support, especially in relation to victim compensation and disseminating information to Rwandans. In addition, the states as well as the NGOs and media must show renewed interest in a Tribunal that is isolated and remains fragile and plagued with serious malfunctions. It is alarming that none of the major international human rights organisations have done any fact-finding reports on the ICTR for the past three years. The group of observers that was relatively consistent in the beginning has all but disappeared. The Tribunal in Arusha seems now to be only a place of study and work for specialised legal experts. Yet international justice is not merely a technical instrument for drafting international law. It also involves political and social stakes.

According to a recent book on the Rwandan genocide, “There is nothing the West can say now to the people of Rwanda to compensate for the failure to intervene in their hour of need.”⁹³ What the West and other UN members can do is ensure that the mandate they gave the ICTR is finally fulfilled in an efficient and rapid manner.

Arusha/Nairobi/Brussels, 7 June 2001

⁹³ in *A People Betrayed. The Role of the West in the Rwandan Genocide* by Linda Melvern, September 2000

APPENDIX A

LIST OF ACRONYMS

Abakombozi: Youth groups called "the liberators" created by political parties following the democratisation of Rwanda in 1992.

Akazu: Means "household" and refers to the immediate entourage of President Habyarimana.

CDR: Coalition for the Defence of the Republic. Extremist political party close to former party in power, the MRND. Created by President Juvénal Habyarimana. This party was against the Arusha negotiations.

Ex-FAR: Former Rwandan armed forces.

Gacaca: Term in Kinyarwanda that refers to traditional courts. Currently, this term refers to the auxiliary people's courts that the Rwandan government plans to establish in order to render justice in the hills (rural areas).

Hutu Power: Term that designates the radical Hutu groups that were against the Arusha negotiations and power sharing between the RPF Tutsi rebellion and the Hutu political parties.

Impuzamugambi: Extremist Hutu militia of the CDR party.

Interahamwe: Extremist Hutu militia of the MRND party.

MRND: *Mouvement révolutionnaire national pour la démocratie* (National Revolutionary Movement for Democracy). Only party from 1973-1992.

RDR: *Rassemblement pour la défense de la démocratie et le retour de réfugiés*. (Rally for the Return of Refugees and Democracy in Rwanda) Opposition party established in exile.

APPENDIX B

CHRONOLOGY OF ICTR ACTIVITIES

November 8, 1994: ICTR established by the Security Council. Richard Goldstein from South Africa is appointed Prosecutor of both the ICTY and the new-established ICTR. The ad hoc Tribunal is given a four-year mandate.

February 1995: The seat of the ICTR is established in Arusha, in the north of Tanzania.

May 1995: The UN General Assembly elects the six ICTR judges: Laïty Kama (Senegal), Navanethem Pillay (South Africa), William Sekule (Tanzania), Yakov Ostrovsky (The Federation of Russia), Tafazzal Khan (Bangladesh) and Lennart Aspegren (Sweden) are elected to a four-year, renewable term. Judge Laïty Kama is elected President of the ICTR for 2 years by his peers.

November 1995: First indictment of suspects from Kibuye prefecture.

May 1996: First transfer of accused to the United Nations Detention Facility in Arusha: Zambia hands over Georges Rutaganda, Clément Kayishema and Jean-Paul Akayesu to the ICTR.

September 1996: Louise Arbour from Canada replaces Richard Goldstein as Prosecutor of the two Tribunals.

January 1997: Trial of Jean-Paul Akayesu, former mayor of Taba in Gitarama prefecture, opens. Transfer of four accused detained in Cameroon, including Théoneste Bagosora, former Chief of Staff of the Ministry of Defence, and Ferdinand Nahimana, founder and former director of RTLM (*Radio télévision des Mille Collines*).

February 1997: Publication of the "Paschke Report", which criticises the serious malfunctions of the ICTR. The Registrar, Andronico Adede (Kenya), and the Deputy Prosecutor, Honoré Rakotomanana (Madagascar) are asked to resign. Agwu Okali (Nigeria) and Bernard Muna

(Cameroon) are appointed Registrar and Deputy Prosecutor, respectively.

March 1997: Trial of Georges Rutaganda, former second Vice President of the *Interahamwe*, opens.

April 1997: Trial of Clément Kayishema, former Prefect of Kibuye, and Obed Ruzindana, former Kibuye businessman, opens.

May 1997: Bernard Muna takes office and Louise Arbour redefines the prosecution strategy.

July 1997: Operation "Naki" (Nairobi-Kigali) in Kenya. Jean Kambanda, former Prime Minister, is arrested.

March 1998: Akayesu trial ends. Tribunal rejects an indictment submitted by the prosecution joining 29 accused.

May 1998: Jean Kambanda pleads guilty to genocide and crimes against humanity.

June 1998: Operation "Kiwest". Several suspects are arrested in West Africa, including Joseph Nzirorera, former MRND Secretary General, and Edouard Karemera, former Minister of the Interior.

September 1998: Akayesu is found guilty of genocide and crimes against humanity. One month later, he is sentenced to life in prison. Jean Kambanda is sentenced to life in prison. Akayesu and Kambanda appeal.

November 1998: Kayishema-Ruzindana trial ends. UN General Assembly elects ICTR judges. Judges Kama, Pillay, Sekule and Ostrovsky are re-elected. Lloyd George Williams (Saint-Kitts and Nevis), Pavel Dolencs (Slovenia), Erik Mose (Norway), Mehme Güney (Turkey) and Dionysos Kondilys (Greece) are elected. Kondilys resigned in March 1999 and was replaced by Asoka de Soiza Gunawardana (Sri Lanka).

December 1998: Omar Serushago, former militia leader in Gisenyi, pleads guilty to genocide.

January 1999: Trial of Alfred Musema, former Director of the Gisovu tea factory in Kibuye prefecture, opens.

February 1999: Serushago sentenced to fifteen years in prison.

March 1999: First visit to Rwanda by a team of defence investigators.

May 1999: Kayishema and Ruzindana are found guilty of genocide and sentenced to life and twenty-five years in prison, respectively.

June 1999: Musema/Rutaganda trial ends. Judge Navanethem Pillay succeeds Judge Laïty Kama as President of the ICTR.

July-October 1999: No trials held at the ICTR.

September 1999: Carla del Ponte (Switzerland) succeeds Louise Arbour as Prosecutor.

October 1999: Trial of Ignace Bagilishema, former Mayor of Mbanza (Kibuye prefecture), opens.

November 1999: The Appeals Chamber orders that charges be dropped against Barayagwiza, former head of RTLM and CDR party, and that he be released immediately. The Rwandan government "suspends" its cooperation with the ICTR.

November 1999-February 2000: Arrests in Europe, including the arrest of Augustin Nindiliyimana, former Chief of Staff of the gendarmerie.

December 1999: Georges Rutaganda found guilty of genocide and crimes against humanity and sentenced to life.

January 2000: Alfred Musema found guilty of genocide and crimes against humanity and sentenced to life.

April 2000: The Appeals Chamber reviews its judgement in the Barayagwiza case and the Rwandan government resumes cooperation with the ICTR.

May 2000: Georges Ruggiu, a former RTLM presenter of Belgian-Italian nationality, pleads guilty to direct incitement to commit genocide and crimes against humanity. On June 1, he is sentenced to 12 years in prison.

September 2000: Cyanguu trial opens, joining the cases of André Ntagerura, former Minister of Transportation, Emmanuel Bagambiki, former Prefect, and Samuel Imanishinwe, former military camp commander.

October 2000: Trial of Laurent Semanza, former member of Parliament and mayor of Bicumbi (Kigali-rural) commune, opens. Media trial opens, joining the cases of Jean Bosco Barayagwiza, Ferdinand Nahimana and Hassan Ngeze, former Editor-in-Chief of the newspaper *Kangura*. Bagilishema trial ends. Judgement and sentence in Kambanda case upheld on appeal.

January 2001: Agwu Okali's contract is not renewed as Registrar and he is replaced by Adama Dieng (Senegal).

March 2001: Trial of Juvénal Kajelijeli, former Mayor of Mukingo in Ruhengeri prefecture, opens and is immediately postponed to July.

April 2001: Trial of Jean de Dieu Kamuhanda, former Minister of Higher Education, opens and is immediately postponed to September. Two new judges elected: Winston Churchill Matanzima Maqutu (Lesotho) and Arlette Ramorison (Madagascar). These two judges replace Judges Gunawardana and Güney, who were appointed to the Appeals Chamber.

May 2001: Judge Laïty Kama dies. Deputy Prosecutor Bernard Muna leaves office, along with other staff of the Office of the Prosecutor, after their contracts were not renewed. Arrest of a defence investigator suspected of participating in the genocide.

June 2001: Judgements on the Akayesu, Kayishema and Ruzindana appeals. Judgement in the Bagilishema case.

APPENDIX C

SITUATION OF ICTR PRISONERS 9 MAY 2000

Name & Case No.	Date & Place of Birth	Previous Post	Date & Place of Arrest	Date of Transfer	Initial Appearance	Trial Date	Situation	Defence Counsel
POLITICAL LEADERS								
BICAMUMPAKA, Jérôme 1:ICTR-99-49-DP 2:ICTR-99-50-I	xx.xx.1957 Ruhondo Commune, Ruhengeri Préfecture	Minister of Foreign Affairs	06.04.99 Cameroon	31.7.99	17.08.99	Not set Chamber 2	---	Francine Veilleux, Pierre Gaudreau; <i>Canada</i>
BIZIMUNGU, Casimir 1:ICTR-99-45-DP 2:ICTR-99-50-I	xx.xx.xx Ruhengeri	Minister of Health	11.02.99 Kenya	23.02.99	03.09.99	Not set Chamber 2	---	Brian Shell, Michelyne Chénard-St-Laurent; <i>Canada</i>
KAMBANDA, Jean TPIR-97-23-T	19.10.55 Butare	Prime Minister	18.07.97 Kenya	18.07.97	01. 05. 98	01.05.98 Chamber 1 Pleaded guilty	04.09.98 Sentenced to life imprisonment. Ruling upheld on 19.10.00	Tjarda Eduard Van der Spoel, Gerard Mols; <i>Netherlands</i>
KAMUHANDA, Jean de Dieu ICTR-99-54-I	03.03.53 Gikomero Commune, Rural Kigali Préfecture	Minister of Culture and Higher Education	26.11.99 France	07.03.00	24.03.00	17.04.01 Chamber 2	---	Aicha Conde, Grace Amakye; <i>Guinea, United Kingdom</i>
KAREMERA, Edouard ICTR-98-44-I	xx.xx.xx Mabanza, Kibuye	Minister of the Interior in the Interim Government and Vice President of the MRND	05.06.98 Togo	10.07.98	07.04.99	Not set Chamber 2	---	Didier Skornicki; <i>France</i>

MUGENZI, Justin 1:ICTR-99-47-DP 2:ICTR-99-50-I	1949 Rukara Commune, Kibuye Préfecture	Minister of Commerce	06.04.99 Cameroon	31.07.99	17.08.99	Not set Chamber 2	---	Howard Morrison, Ben Gumpert; United Kingdom
MUGIRANEZA, Prosper 1:ICTR-99-48-DP 2:ICTR-99-50-I	1957 Kigarama Commune, Kibungo Préfecture	Minister of Civil Service and Labour	31.07.99 Cameroon	02.08.99	17.08.99	Not set Chamber 2	---	Michael Greaves; United Kingdom
NGIRUMPATSE, Mathieu ICTR-98-44-I	xx.xx.xx Tare Commune, Rural Kigali Préfecture	Director General at the Ministry of Foreign Affairs and President of the MRND	11.06.98 Mali	10.07.98	07.04.99	Not set Chamber 2	---	Charles C. Roach, Frederic Weyl; Canada, France
NIYITEGEKA, Eliezer ICTR-96-14-I	xx.xx.52 Kibuye	Minister of Information	09.02.99 Kenya	11.02.99	15.04.99	Not set Chamber 2	---	Sylvia Hannah Geraghty, Feargal Kavanagh; United Kingdom
NTAGERURA, André TPIR-96-10A-T	02.01.50 Karengera Commune, Cyangugu Préfecture	Minister of Transportation	27.03.96 Cameroon	23.01.97	20.02.97	18.09.00 Chamber 3	Joint trial with Imanishimwe and Bagambiki cases. Trials in progress	Benoît Henry, Rety Hamuli; Canada, D.R. Congo
NYIRAMASUHU KO, Pauline TPIR-97-21-I	xx.xx.46 Ndora Commune Butare Préfecture	Minister of the Family and Women's Affairs	18.07.97 Kenya	18.07.97	03.09.97	Not set Chamber 1	---	Nicole Bergevin, Guy Poupart; Canada
NZIRORERA, Joseph ICTR-98-44-I	xx.xx.50 Mukingo Ruhengeri Préfecture	President of the National Assembly and Secretary General of the MRND	05.06.98 Benin	10.07.98	07.04.99	Not set Chamber 2	---	Andrew J. McCartan, Martin Bauwens; Scotland/ Belgium

RWAMAKUBA, André ICTR-98-44-I	xx.xx.50 Gikomero, Rural Kigali	Minister de of National Education	21.10.98 Namibia	23.10.98	07.04.99	Not set Chamber 2	---	David Hooper; <i>United Kingdom</i>
HIGH-RANKING OFFICERS								
BAGOSORA, Théoneste ICTR-96-7-T	16.08.41 Giciye, Giseyni Préfecture	Cabinet Director at Ministry of Defence	09.03.96 Cameroon	23.01.97	20.02.97	Not set Chamber 3	---	Raphael Constant; Jacques Larochelle; <i>France / Canada</i>
IMANISHIMWE, Samuel ICTR-97-36-I	25.10.61 D.R. Congo	Lieutenant in Rwandan Armed Forces (FAR)	11.08.97 Kenya	11.08.97	27.11.97	18.09.00 Chamber 3	Joint trial with Ntagerura and Bagambiki cases. Trial in process.	Marie-Louise Mbida, So'o Georges; <i>Cameroon</i>
KABILIGI, Gratien ICTR-97-34-I	18.12.51 Cyangugu	Brigadier General in FAR(Rwand an Armed Forces)	18.07.97 Kenya	18.07.97	17.02.98	Not set Chamber 2	---	Jean Y. Degli; <i>France</i>
MUVUNYI, Tharcisse ICTR-2000-55-I	19.08.53 Byumba Préfecture	Commander of l'École des Sous- officiers (ESO)	05.02.2000 United Kingdom	30.10.00	8.11.00	Not set	---	Michael Fisher, <i>United Kingdom</i>
NDINDILYIMAN A, Augustin ICTR-2000-56-I	xx.xx.43 Butare	Head of Personnel in the National Gendarmerie	29.1.2000 Belgium	22.04.00	27.4.00	Non set	---	Christopher Black, <i>Canada</i>
NSENGIYUMVA, Anatole ICTR-96-12-I	04.09.50 Satinbsyi Commune, Gisenyi Préfecture	Lieutenant- Colonel	27.03.96 Cameroon	23.01.97	19.02.97	Not set Chamber 3	---	Kennedy Ogetto; Gershom B'Omanwa; <i>Kenya</i>
NTABAKUZE, Aloys ICTR-97-30-I	xx.xx.54 Gisenyi	Commander of FAR Battalion	18.07.97 Kenya	18.07.97	24.10.97	Not set Chamber 3	---	Clemente Monterosso; <i>Canada</i>
NTEZIRYAYO, Alphonse	xx.xx.xx Butare	Commander of Military	24.04.98 Burkina Faso	21.05.98	17.08.98	Not set Chamber 1	---	Titinga Frédéric Pacere,

ICTR-97-29-I		Police then Préfet of Butare from 17.06.94 to his departure						Richard Perras; <i>Burkina Faso, Canada</i>
NZUWONEMEYE, François-Xavier ICTR-2000-56-I	30.8.55 Rural Kigali Préfecture	Commander of 42 nd Reconnaissance Battalion of Rwandan Army	15.02.2000 France	23.05.00	25.05.00	---		François-Xavier Charvet, <i>France</i>
SAGAHUTU, Innocent ICTR-2000-56-I	Cyangugu	Commander of second Reconnaissance Battalion of the Rwandan Army	15.02.2000 Denmark	24.11.00	28.11.00	---	---	Fabian Segatwa; <i>Burundi</i>
MEDIA LEADERS								
BARAYAGWIZA, Jean Bosco TPIR-97-19-T	xx. xx. 50 Mutura Commune, Gisenyi Préfecture	Dir. Of Political Affairs at Ministry of Foreign Affairs	27.03.96 Cameroon	19.11.97	23. 02. 98	23.10.00 Chamber 1	Joint trial with Nahimana & Ngeze Trial in process	Giacomo Barletta Calderera, Alfred Pognon; <i>Italy, Benin</i>
NAHIMANA, Ferdinand ICTR-96-11-T	15.06.50 Gatone Commune, Ruhengeri Préfecture	Director of RTLM (Radio Télévision des Mille Collines)	27.03.96 Cameroon	23.01.97	19.02.97	23.10.00 Chamber 1	Joint trial with Barayagwiza & Ngeze Trial in process	Jean-Marie Biju-Duval, Diana Ellis, Q.C.; <i>France, United Kingdom</i>
NGEZE, Hassan ICTR-97-27-T	Xx.xx.61 Rubavu (Gisenyi)	Chief Editor of newspaper Kangura	18.07.97 Kenya	18.07.97	19.11.97	23.10.00 Chamber 1	Joint trial with Nahimana & Barayagwiza. Trial in process	John Floyd, René Martel <i>USA, Canada</i>

RUGGIU, Georges H.Y.J. ICTR-97-32-T	12.10.57 Belgium	Journalist at RTLM	23.07.97 Kenya	23.07.97	24.10.97 pleaded not guilty	15.5.00 Chamber 1 pleaded guilty	1 June 2000 Sentenced to 12 years' imprisonment Case closed	Mohamed Aouini & Jean-Louis Gilissen; Tunisia, Belgium
HIGH-RANKING CIVIL ADMINISTRATORS								
AKAYESU, Jean-Paul ICTR-96-4-T	Xx.xx.53 Taba, Gitarama	Mayor of Taba	10.10.95 Zambia	26.05.96	30.05.96	09.01.97 Chamber 1	02.10.98 life imprisonment. Appeal heard on 01 and 02.11.00	John Philpot, André Tremblay; Canada
BAGAMBIKI, Emmanuel ICTR-97-36-T	Xx.xx.48 Cyangugu Préfecture	Préfet of Cyangugu	05.06.98 Togo	10.07.98	19.04.99	18.09.00 Chamber 3	Joint trial with Ntagerura and Imanishimwe Trial in process	Vincent Lurquin, Luc Boutin; Belgium, Canada
BAGILISHEMA, Ignace ICTR-95-1-T	Mabanza Commune, Kibuye Préfecture	Mayor of Mabanza	20.02.99 South Africa	20.02.99	01.04.99	28.10.99 Chamber 1	Trial ended on 19.10.00 Deliberation until 7 June	François Roux; Maroufa Diabira; France, Mauritania
KAJELIJELI, Juvenal ICTR-98-44-T	Xx.xx.xx Mukingo, Ruhengeri Préfecture	Mayor of Mukingo	05.06.98 Benin	10.09.98	19.04.99	13.03.01 Chamber 2	---	Lennox Hinds, Richard Harvey; USA
KANYABASHI, Joseph ICTR-96-15-I	Xx.xx.37 Butare	Mayor of Ngoma	28.06.95 Belgium	08.11.96	29.11.96	Not set Chamber 2	---	Michel Marchand, Michel Boyer; Canada
KAYISHEMA, Clément ICTR-95-1-T	Xx.xx.54 Kibuye	Préfet of Kibuye	02.05.96 en Zambia	26.05.96	31.05.96	09.04.97 Chamber 2	21.05.99 Sentenced to life imprisonment. Appeal heard on 30.10.00	André Ferran, Phillippe Moriceau; France
MUHIMANA, Mikaeli ICTR-95-1-I	Xx.xx.50 Gishyita	Town councillor in Gishyita	08.11.99 Tanzania	08.11.99	24.11.99	Not set Chamber 1	---	Nyabirungo Mwene Songa; Congo
NDAYAMBAJE, Elie ICTR-96-8-I	08.03.58 Butare	Mayor of Muganza	28.06.95 Belgium	08.11.96	29.11.96	Not set Chamber 2	---	Pierre Boulé, Isabelle Lavoie; Canada
NSABIMANA, Sylvain ICTR-97-29-I	29.07.53 Butare	Préfet of Butare	18.07.97 Kenya	18.07.97	24.10.97	Not set Chamber 2	---	Josette Kadji, Charles Tchakounte Patie; Cameroon

SEMANZA, Laurent ICTR-97-20-T	Xx.xx.44 Bicumbi Commune Kigali Préfecture	Mayor of Bicumbi	27.03.96 Cameroon	19.11.97	16.02.98	16.10.00 Chamber 3	Trial in process.	Charles Acheleke Taku, Sadikou Alao; Cameroon, Benin
OTHERS								
MUSABYIMANA Samuel ICTR-2001-62-I	06.07.56	Bishop of Anglican Church in Shyogwe	26.04.01 Kenya	26.04.01	02.05.01	---	---	---
MUSEMA, Alfred ICTR-96-13-T	22.08.49 Byumba	Director of Tea Factory in Gisovu	11.02.95 Switzerland	20.05.97	18.11.97	25.01.99 Chamber 1	27.1.2000 life imprisonment. Appeal pending.	Steven Kay, Michail Wladimiroff; United Kingdom, Netherlands
NSHAMIHIGO, Simeon ICTR-01-63	xx.xx.59 Gatare Commune Cyangugu Préfecture		19.05.01 Tanzania					
NTAHOBALI, Arsène Shalom ICTR-97-21-I	xx.xx.70 Israel	Student and leader of MRND militia group, <i>Interahamwe</i>	24.07.97 Kenya	24.07.97	17.10.97	Not set Chamber 1	---	René Saint-Léger, Michael Bailey; Canada, USA;
NTAKIRUTIMAN A, Elizaphan 1:ICTR-96-10-T 2:ICTR-96-17-T	xx.xx.24 Kibuye	Pastor at Seventh Day Adventist Church in Kibuye	29.09.96 Texas, USA Released and arrested 26.2.98	24.03.00	31.03.00	Set for 23.04.01 Chamber 1	Joint trial with Gérard Ntakirutimana	Ramsey Clark, USA
NTAKIRUTIMAN A, Gérard 1:ICTR-96-10-T 2:ICTR-96-17-T	12.08.58 Kibuye	Doctor	29.10.96 Côte d'Ivoire	30.11.96	02.12.96	Set for 23.04.01 Chamber 1	Joint trial with Elizaphan Ntakirutimana	Edward Medvene; USA
RUTAGANDA, Georges ICTR-96-3-T	xx.xx.58 Gitarama	Businessman and Second Vice- President of <i>Interahamwe</i>	10.10.95 Zambia	26.05.96	30.05.96	18.03.97 Chamber 1	6.12.99 Sentenced to life imprisonment. Appeal pending.	David P. Jacobs, David Paciocco; Canada

RUZINDANA, Obed 1:ICTR-95-1-T	20.12.62 Kibuye	Businessman in Kibuye	20.09.96 Nairobi, Kenya	22.09.96	29.10.96	09.04.97 Chamber 2	21.05.99 Sentenced to 25 years' imprisonment. Appeal heard on 30.10.00	Pascal Besnier; Willem Van Der Griend; France, Netherlands
SERUSHAGO, Omar ICTR-98-39-T	24.04.61 Giseyni Préfecture	Businessman and leader of <i>Interahamwe</i> in Giseyni Préfecture	09.06.98 Côte d'Ivoire	10.07.98	14.12.98	14.12.98 Chamber 1	05.02.99 Sentenced to 15 years' imprisonment. Appeal rejected on 14.02.00	Mohamed Ismail; Tanzania

Released (1)

Bernard Ntuyahaga (indictment withdrawn)

Convicted (6)

Jean Kambanda (life imprisonment, after guilty plea)

Georges Ruggiu (twelve years, after guilty plea)

Omar Serushago (fifteen years, after guilty plea)

Jean-Paul Akayesu (sentenced to life imprisonment)

Clément Kayishema (sentenced to life imprisonment)

Obed Ruzindana (sentenced to 25 years)

Defendants convicted on trial, and in the process of appeal (2)

Alfred Musema (sentenced to life imprisonment)

Georges Rutaganda (sentenced to life imprisonment)

Defendant awaiting judgement (1)

Ignace Bagilishema (Ruling expected 7 June 2001)

Defendants currently being tried (9)

Emmanuel Bagambiki

Jean-Bosco Barayagwiza

Samuel Imanishimwe

Juvénal Kajelijeli

Jean de Dieu Kamuhanda

Ferdinand Nahimana

Hassan Ngeze

André Ntagerura

Laurent Semanza

Accused in detention awaiting trial (27)

Théoneste Bagosora

Jérôme Bicamumpaka

Casimir Bizimungu

Gratien Kabiligi

Joseph Kanyabashi

Edouard Karemera

Justin Mugenzi

Prosper Mugiraneza

Mika Muhimana

Samuel Musabyimana

Tharcisse Muvunyi

Elie Ndayambaje

Augustin Ndindiliyimana

Mathieu Ndirumpatse

Eliezer Niyitegeka

Sylvain Nsabimana

Anatole Nsengiyumva

Aloys Ntabakuze

Arsène Shalom Ntahobali

Elizaphan Ntakirutimana

Gérard Ntakirutimana

Alphonse Nteziryayo

Pauline Nyiramasuhuko

Joseph Nzirorera

François-Xavier Nzuwonemeye

André Rwamakuba

Innocent Sagahutu

Defendants at large, whose names are publicly known (14)

Augustin Bizimana

Augustin Bizimungu

Ildephonse Hategekimana

Félicien Kabuga

Protais Mpiranya

Yusuf Muniyakazi

Aloys Ndimbati

Augustin Ngirabatware

Ildephonse Nizeyimana

Ladislav Ntaganzwa

Callixte Nzabonimana

Vincent Rutaganira

Ryandikayo

Charles Sikubwabo

APPENDIX D

DEFENCE AND TRIAL COSTS

Defence money: what the report fails to mention

Diplomatie Judiciaire is publishing for the first time, some of the defence costs at the ICTR. These figures shed light on areas where there have been abuses, something the UN apparently refrained from investigating further.

In its report on abusive practices by the defence, the UN Office of Internal Oversight Services (OIOS) finally emphasised the defence costs at the two *ad hoc* tribunals. It notes that in 1999, the UN spent a total of U.S.\$8.5 million on defence at both the ICTR and the ICTY. The same amount was spent in 2000. These amounts cover defence lawyers' fees as well as their costs and expenditures.

\$U.S. 8.5 Million per Year

The report states, "The fees paid to defence teams represent significant amounts. In 1999, the ICTR and ICTY spent approximately U.S.\$4.5 million and U.S.\$4 million on this respectively. In the first half of 2000, the period for which we had figures, the ICTR spent approximately U.S.\$2.4 million. In the first nine months of 2000, the ICTY spent in excess of U.S.\$2.6 million for defence counsel. However, these amounts do not include all the defence costs for this period because many of the defence teams have not yet billed their services. Based on the amount spent in the first six months of the year, the ICTR will likely spend more than U.S.\$5 million on defence teams for the year, and the ICTY will spend U.S.\$3.5 million by the end of 2000." The report is more succinct in the details of the expenditures. It includes two graphs showing fees paid in 1999. There is considerable variation from one team to another. At the ICTR, the fees range according to the team from 0 - U.S.\$300,000 per year. Eleven teams cost between U.S.\$200,000 and U.S.\$300,000, five cost between U.S.\$100,000 and U.S.\$200,000 and twenty cost between 0 and U.S.\$100,000. The average seems to fall somewhere around U.S.\$125,000 per team,

per year. At the ICTY, one team is already over U.S.\$300,000 per year, five are between U.S.\$200,000 and U.S.\$300,000, fifteen are between U.S.\$100,000 and U.S.\$200,000, and eight are between 0 and U.S.\$100,000. The average is somewhere around U.S.\$150,000 per team per year.

Basic Information

The report points out that these variations are due to a number of factors, such as the stage of the proceedings of the case in question and whether or not the case involves a grouped trial. However, the report offers no analysis of these factors. The payment amount follows a well-established fee scale. Depending on the number of years of experience, senior lawyers make between U.S.\$80 to U.S.\$110/hour, with a maximum allowance of 175 billable hours per month. "An experienced lawyer can therefore make up to U.S.\$19,250/month, which is more than U.S.\$230,000 per year," says the OIOS report. Co-counsel are paid U.S.\$80/hour and can also bill a maximum of 175 hours per month. Thus they can earn the equivalent of U.S.\$14,500 in a month. Legal assistants and investigators work at U.S.\$25/hour with a maximum of 100 hours/month (at the ICTY, they earn between 30 and 50 deutschmarks/hour, depending on their level of experience). In order to be paid, defence counsel must submit, as the report reiterates, "a detailed statement of their fees, with a maximum amount of information about the nature of the services rendered and if necessary, the link between these services and the case pending before the Tribunal."

No Late Payments?

The OIOS investigators say that they first looked into the allegations that "fees owed to ICTR defence counsel were paid late on a regular basis." However, after having "verified a sampling of invoices," they asserted, "on average, only 35 days elapsed between the time when the ICTR defence counsel management section received the invoice,

and when payment was authorised. By way of comparison, the same research was conducted at the ICTY and the same process took an average of 36 days there." The investigators therefore quickly concluded that there was no problem in this respect. This part of the investigation was surprising. There are clearly excessive delays in payments at the ICTR. One case in particular is a glaring example - that of Vincent Lurquin, lawyer to Emmanuel Bagambiki, who holds the record for late payments. He was paid for the first time in Sept 2000, precisely during the same month when the OIOS investigators were in Arusha. Yet, he had been assigned to the case for a year and a half without receiving a cent.

The "Hyperactivity Phenomenon"

The report talks more about what it refers to as the "hyperactive lawyers phenomenon," a form of over billing or abusive billing on the part of defence counsel. However, the report only gives a few trifling examples of this phenomenon without citing numbers or names. It notes, for example, that "some defence lawyers at the two Tribunals regularly bill the maximum allowable hours per month. Moreover, some lawyers bill the equivalent of twenty hours and others the equivalent of five hours to file a motion." The report further states, "The ICTR points out that there is practically nothing it can do in this case, since the amounts requested do not exceed the authorised limit."

It is imperative to have greater transparency in these practices. Investigating abuses requires a case-by-case study, bearing in mind the various criteria, such as the stage of the proceedings, the length of the trial, as well as the geographical distance of the lawyers, and the nature of the case. The aforementioned examples do not provide a complete picture since it was not possible to gather all the pertinent information. However, they do provide other leads for the OIOS if it truly wants to ferret out the abuses and pin down the guilty ones and their accomplices.

Average Cost of a Trial: U.S. \$ 500,000

One document in particular sheds a little light on the total cost of defending an accused and on the incomprehensible, or at least, unjustified, disparities between the various teams. The document is a summary from 1996 to July 1999. The total cost mentioned here is only an indication. On the one hand, it may not include the investigators, and on the other hand, it may not include the most recent expenses paid out before this document was finished. However, these figures speak volumes.

The trial of Clément Kayishema and Obed Ruzindana ended in July 1999 and they were just sentenced recently. The trial opened in April 1997. The total UN outlay for the two lawyers for Kayishema was U.S.\$481,000. For Ruzindana, it was U.S.\$499,000. It is interesting to compare these costs with the defence costs of the Jean-Paul Akayesu trial, which also just concluded. Expenses in his case were U.S.\$509,000. During the same time, the longest trial in the history of the ICTR, that of Georges Rutaganda, was finally concluded. Expenses in his case were comparable at U.S.\$547,000. Thus at first glance one can conclude from these amounts that the cost of a trial before the ICTR should be relatively consistent for the defence at around a half a million U.S. dollars. With this index in mind, this is where matters start to sour.

The Ogetto Case

Back in July 1999, other teams had already started to reach comparable amounts even though their cases had not yet gone to trial. Anatole Nsengiyumva is one of the ICTR detainees who has been in detention the longest. Indicted in 1996, he was transferred to Arusha in January 1997. However, his trial has still not begun. He also has never changed lawyers. His lawyer does not live far away. He lives in Nairobi, four hours from the seat of the Tribunal. This is interesting to note because the Registry has sometimes argued that it has to recruit lawyers from the region under the pretext of saving money. And what savings! By 1999, Nsengiyumva's lawyer, Kennedy Ogetto and his co-counsel had already cost the Tribunal U.S.\$462,000, thus setting the ultimate record for such an early stage in the proceedings. Is there any comparison? The case of Ferdinand Nahimana is interesting. This accused was arrested and

transferred at the same time as Anatole Nsengiyumva. Objectively speaking, his file is rather thick due to the nature of the case. Since Nahimana is one of the most renowned accused at the ICTR, there is a mountain of literature about him and his lawyer has to read it all and know almost everything about Rwanda in 1994 since RTLM, the extremist radio station, run by Nahimana, and that was a key factor in the massacres, was everywhere. However, by July 1999, his lawyers had only cost the Tribunal U.S.\$101,000, a quarter of the amount of Nsengiyumva's lawyers.

Number two in the hot seat: the Kanyabashi case. Transferred to Arusha at the end of 1996, Joseph Kanyabashi first had a Kenyan lawyer who, in less than one year of service, cost a modest sum of U.S.\$128,000. His next two lawyers, both from Canada, were not guilty of any unworthy action, with a total of U.S.\$301,000. By July 1999, the total cost of this case, which had yet to go to trial, had reached U.S.\$429,000. A string of other examples of cases that had not yet gone to trial by this same date are: Nsabimana (U.S.\$300,000), Imanishimwe (\$250,000), Kabiligi (U.S.\$248,000). By contrast, some are quite thrifty such as the lawyers for Ntahobali, at U.S.\$43,000, but who withdrew from the case a little later.

Comparisons

The second reference document is the table showing expenditures for 1999. In this year alone, almost U.S.\$130,000 went to pay the fees of Anatole Nsengiyumva's lawyers. Mr. Pacere alone, lead counsel for Alphonse Nteziryayo, made U.S.\$111,000. Counsel Degli, lawyer for Gratien Kabiligi, - U.S.\$106,000; the Marchand and Boyer team (lawyers for Joseph Kanyabashi) - U.S.\$84,000; the Josette Kadji and Charles Tchakounté team (Nsabimana case) - U.S.\$91,000; and the Konaté and Henry team (Ntagerura case) - U.S.\$102,000. The prize goes to counsel Monterosso, lawyer for Aloys Ntabakuze, who pocketed more than U.S.\$125,000. A little comparison is in order. During the first half of that year, one team was in trial in Arusha, the team for Alfred Musema. His counsel, Kay and Wladimiroff only requested U.S.\$113,000 in fees. Another hot case in the first half of 1999 was that of Ruggiu. The accused in this case was in the confession

stage and naturally his lawyers were working flat out. The total for their fees: U.S.\$116,000.

The Need for Reform

These numbers must be explained. The gaps they reveal must be justified. Moreover, the Registrar should explain how it could allow so many expenses to accumulate in the cases that were still blocked in the pre-trial phase. The OIOS report points out that the ICTY rules for remuneration "were finalised by the end of 1995, based on the hypothesis that legal activities before and during the trial would take approximately nine months." However, in international justice, the months turn into years. The Tribunal in The Hague appears to be contemplating reforming the system in order to make it more rational. According to the Tribunal, this would entail, "giving the defence teams more flexibility to decide how many work hours they wish to use per month, while also limiting the maximum number of hours that can be billed for the entire trial period. The hope is that by so doing, the counsel will have full responsibility for an efficient defence, since the Registry would only have to regularly verify the accuracy of the invoices." This process, if it remains flexible and transparent, could be beneficial. The ICTR should follow suit, but with flexibility and transparency.

Source: *Diplomatie Judiciaire*, 22 April 2001

APPENDIX E

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is a private, multinational organisation committed to strengthening the capacity of the international community to anticipate, understand and act to prevent and contain conflict.

ICG's approach is grounded in field research. Teams of political analysts, based on the ground in countries at risk of conflict, gather information from a wide range of sources, assess local conditions and produce regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports are distributed widely to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analysis and to generate support for its policy prescriptions. The ICG Board - which includes prominent figures from the fields of politics, diplomacy, business and the media - is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; former Australian Foreign Minister Gareth Evans has been President and Chief Executive since January 2000.

ICG's international headquarters are at Brussels, with advocacy offices in Washington DC, New York and Paris. The organisation currently operates or is planning field projects in nineteen crisis-affected countries and regions across four continents: Algeria, Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone, Sudan and Zimbabwe in Africa; Burma/Myanmar, Indonesia, Kyrgyzstan, Tajikistan, and Uzbekistan in Asia; Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia in Europe; and Colombia in Latin America.

ICG raises funds from governments, charitable

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August 2001

APPENDIX F

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