

Report

Victims in the Balance Challenges ahead for the International Criminal Tribunal for Rwanda

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Preface

International Criminal Tribunal for Rwanda (ICTR)

Between April and July 1994, the death toll from the Rwandan genocide was 1 million.

The United Nations Security Council, under resolution 955 (S/RES/955 (1994)), made a decision to help restore peace and international security in response to a request from the Rwandan Government "to establish an international tribunal for the sole purpose of prosecuting 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 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto". The jurisdiction of the tribunal is therefore limited in both time and territorial scope, making the authority one of an ad hoc nature.

The ICTR was set up shortly afterwards in Arusha, Tanzania. The Statute of the Tribunal is based on international conventions on genocide and humanitarian law (1949 Geneva conventions) and also on customary law applying to crimes against Humanity. It includes principles already instituted by the International Criminal Tribunal for the former Yugoslavia (ICTY) designed to combat any impunity for perpetrators of the most serious crimes, including the refusal of any immunity and arguments of responsibility held by higher ranking officers.

To date, the ICTR has tried nine persons, and more than fifty others are still awaiting trial. However, calls have been made for the mandate of the tribunal to be brought to an end as soon as possible, and certain States have criticised the way it operates and the size of its budget. Given this ambition and also the legal time limits, the Security Council decided this year to expand the work of the Tribunal by increasing the number of judges; the rules of procedure were also altered by the ICTR so that certain trials or parts of trials could be held in Kigali, Rwanda. The decision to change the location for hearings will depend on the relevant judges dealing with the specific cases in question.

While the ICTR has primary jurisdiction for trials on crimes covered by the Statute of the Tribunal, national jurisdictions operate concurrently for trials of persons suspected of serious violations of international law committed on Rwandan territory.

Some 104 000 Rwandan detainees have been accused of involvement in the genocide and massacres, but so far only seven thousand have been tried. To speed up the trial of charges of genocide and massacre so that justice can be done within a reasonable period of time, the Rwandan authorities have set up a pilot project in twelve district Gacacas; more than eleven thousand of these "Gacaca" jurisdictions of the people, based on traditional village assemblies, are scheduled to become operational in the near future. They will be responsible for trying persons accused of genocide but who are not suspected of organising and planning genocide; these latter cases will remain under the jurisdiction of the twelve trial courts.

1. Introduction

1.1. Purpose of the Mission

For some months now, relations between Rwandan authorities and associations representing victims of the genocide and massacres committed in Rwanda between October 1, 1990, and December 31, 1994, on the one hand, and the International Criminal Tribunal for Rwanda (ICTR) on the other, have become extremely difficult¹; to the point where victims' associations announced they had broken off all cooperation with the ICTR, and Rwandan authorities altered the formalities for witnesses to travel. A number of trials have therefore had to be postponed as witnesses for the prosecution were not present².

In this context, the FIDH sent an international fact-finding mission to Tanzania, to Arusha, the headquarters of the ICTR, and to Rwanda, to collect information on the role and position of victims with respect to the ICTR. The fact-finding mission was in Arusha from July 28 to 31, 2002, and in Rwanda from August 2 to 10, 2002.

The mission was comprised of François-Xavier Nsanzuwera, FIDH Secretary General, and Martien Schotsmans, a consultant on international justice for the FIDH, conducting investigations in Arusha, while the mission in Rwanda was conducted by Martien Schotsmans working jointly with the Collectif des Ligues pour la Défense des Droits de l'Homme au Rwanda (CLADHO) and the Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme au Rwanda (LIPRODHOR), both FIDH member organisations.

The purpose of the mission was not to draw up a report on the general operations of the ICTR or of the associations representing Rwandan victims, but to analyse problems currently encountered by victims who have been or will be witnesses at the Tribunal.

1.2. Methodology and Persons Interviewed

Meetings were held with³:

-representatives of various units, sections and players with the ICTR (judges, registrars, prosecutors, units responsible for the security of witnesses for both the defence and the prosecution, and lawyers)

- Rwandan authorities in charge of the legal system

- representatives of various Rwandan and foreign NGOs

- a number of ambassadors and foundations present in Rwanda,

- a number of victims who have testified in Arusha as witnesses for the prosecution.

The members of the mission wish to thank the Rwandan authorities and the senior officers of the ICTR for their cooperation and also thank all the men and women who agreed to answer questions.

Special gratitude is extended to the member organisations of CLADHO (which is affiliated with the FIDH) for their kindness and excellent assistance in organising the mission in Rwanda.

1. See (inter alia): "Bras de fer Kigali/ICTR", *Diplomatie Judiciaire*, No. 87, July 2002, p. 29. "Tensions entre Kigali et Arusha", *Diplomatie Judiciaire*, No. 85, May 2002, p. 24.

2. Prosecutor C. Eliezer Niyitegeka, decided to adjourn the trial as the witnesses were not available at Trial Chamber I, stating, on June 19, 2002 that "*the Rwandan Government had suddenly decreed, without prior warning to the Tribunal, new procedures applying to travel arrangements for witnesses... These new rules leave protected witnesses exposed. ...*" Prosecutor C. Pauline Nyiramasubuko, et al: text quoted from an oral ruling handed down on June 19, 2002, by Trial Chamber II. Both decisions reminded Rwandan authorities of their obligation to cooperate with the Tribunal. The President of the Tribunal forwarded both decisions to the President of the Security Council by mail on July 29, 2002, asking the Security Council to take all effective measures for the Tribunal to be able to carry out its mandate.

3. See Annexe 1, list of persons interviewed.

2. Difficulties Encountered by Victims Appearing as Witnesses

From 1994 on, a number of associations have been set up in Rwanda to defend the interests of victims of the genocide. Most have endeavoured to provide social assistance to survivors, but Ibuka, a federation of victims' associations, and the widows' group, Avega (Association des Veuves du Genocide Agahozo), have also focused on legal issues.

For some time now, victims' associations, and in particular Ibuka and Avega, have been reported in the press and have written letters to the Tribunal, drawing attention to problems in handling victims called to the ICTR as witnesses for the prosecution and, more generally, on the way the ICTR operates.

In January 2002, these associations made an official announcement suspending any further cooperation with the ICTR. A press release, dated March 1, 2002⁴, reported that the decision to suspend cooperation had been confirmed, listing the reasons. On March 6, 2002⁵, a letter was addressed to the ICTR Registrar, presenting the same arguments and enclosing more detailed documents. The condition set as a prerequisite for resuming cooperation, was that the following problems were to be settled:

- the recruitment of investigators involved in the genocide or related to persons facing charges.
- the lack of protection for witnesses both in Arusha and after they have testified.
- the harassment of witnesses by defence lawyers during cross-examination, in particular when questioning women who had been raped.
- the accusation by defence lawyers that Ibuka, both the association and its members, were organised groups of informers.
- the exclusion of victims from involvement as parties in the proceedings.
- the lack of confidentiality covering the identity and content of statements made by witnesses, even though they are protected, leaving them open to threats.
- the lack of medical care for victims called as witnesses.
- the lack of compensation for lost income for certain witnesses.

The same associations issued a press release on June 17, 2002, expressing surprise that they had received no answer to the letter ("the only response was the most scornful

silence"). They appealed for support for their request for radical changes to be made so that the ICTR could provide genuine service for justice⁶.

The arguments concerned the role of victims as witnesses, and the involvement of victims as litigants in the trials.

According to ICTR representatives, more than 500 people have already testified before the ICTR since it was set up, two-thirds as witnesses for the prosecution. The mission met seven victims; most were people referred by the associations Ibuka and Avega, and had testified in Arusha. Obviously no general conclusions can be drawn from such a small number of cases and their criticism of the ICTR must be treated with due caution.

The ICTR states that assessments are made on the basis of a form completed by witnesses after their stay in Arusha and maintains that virtually no complaints have been received, that in fact 91% of witnesses stated they were satisfied with the care provided and the support prior to and during their stay in Arusha.

According to the Registrar of the Tribunal, information on support provided and expenditure incurred for the psychological, medical and security monitoring of Rwandan witnesses after they have testified in Arusha is recorded and kept, but has not been reported in any official external publication as such information is highly sensitive. As a result, to date no systematic study of the situation has been released.

2.1. Role of Victims Appearing as Witnesses

Before the Trial

Of the seven persons interviewed by the mission, not one complained of poor treatment during the period leading up to the trial. Some pointed out that the investigators were quite discreet and worked through associations or via Rwandan investigators. In most cases, no one from the witness's home environment was aware of what was happening. However, some did complain that the date of departure was always uncertain and that the trip had had to be postponed a number of times. Some apparently had had to make a number of trips

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to Arusha, but had not been able to testify. One person, who had always been questioned on specific individuals facing charges, ended up being asked to testify against another suspect at the last minute. Accommodation and services provided in Arusha were generally considered to be acceptable.

Preparation for testifying was divided into two parts: first a review of the statement made by the witness with a person from the Prosecutor's office and then a visit to the courtroom. According to witnesses, there was no real preparation for cross-examination by defence lawyers, except for being informed that the defence lawyer would ask plenty of questions. Furthermore, a number of witnesses interviewed by the FIDH thought that the person representing the Prosecutor was their lawyer and only realised later (during or after the trial) that they had no lawyer.

The witnesses interviewed stated that neither before, during nor after giving testimony, did they have any psychological support.

ICTR attendants accompanying witnesses are usually Rwandan nationals; they travel with the witness and live with him or her in a "safe house" in Arusha, or drop in from time to time to see that everything is all right. None of these attendants has had any training in psychology, nursing, trauma counselling⁷ or any other area. They are mainly recruited for their language skills (translating from Kinyarwanda into English or French). Some did have a one-week training course in dealing with trauma situations.

According to information provided by the Registrar of the Tribunal, the Registry has a nurse, and apparently the Tribunal often calls in other experts specialising in psychiatry or gynaecology, depending on the needs in these specific areas. The Tribunal apparently even pays for medical and psychological follow-up of certain victim-witnesses when they return to Rwanda. The FIDH mission was not able to confirm this information, particularly on the question of psychological support.

Victim-witnesses travelling to Arusha are often victims who have experienced appalling situations over a period of months and have never or rarely received any psychological support in Rwanda, where the number of trauma counsellors is still very small. While such individuals may maintain their equilibrium in their everyday routine, once away from their normal environment, the confrontation with the accused and the need to go through the past experience again in testimony,

particularly with very detailed questions from defence lawyers, can bring major mental disturbances to the fore and revive an unresolved trauma.

Of the seven people interviewed, six testified as "protected witnesses". This may seem to be an automatic option⁸, the seventh person had expressly requested that any protection be removed. Protection means that the person testifies anonymously, i.e. the public is not informed of the identity of the witness and does not see the witness (who is behind a pane of glass and a curtain). The witness's voice is not distorted for the public⁹ (and can therefore be recognised); the Tribunal could use technical equipment to scramble the voice as there is no rule against this. The witness himself, or herself, may also say things which would make it possible for members of the public to identify him or her.

If the need can be established in advance, facilities can be used for closed court hearings. However, both the accused and the defence lawyer are aware of the identity of the witness in advance and see him/her when he/she testifies, as do all the people in the courtroom. They also receive a copy of the statements by the witness. These are not, therefore, anonymous witnesses in any real sense of the term: the anonymity is intended as a means of protecting the witness from journalists and from members of the public attending the trial.

While protection requires measures for aiding and accompanying witnesses before and during their time in Arusha and for the return trip home, the protection does not extend to any physical protection after they have returned to Rwanda, yet this is where most problems with safety seem to arise (see below).

In practice, the Witness Protection Bureau in Arusha considers protection to mean anonymity: i.e. a witness wishing to be protected automatically testifies anonymously. But this should not mean that protection is therefore not available to those not testifying anonymously. Support while in Arusha, accompaniment during trips, the visit to the courtroom and precautionary safety measures should not be dependent on anonymity. Certain witnesses who declined anonymity were neglected by the persons responsible for accompanying them in Arusha.

A witness, when asked if he/she wants protection or not (a question which, quite often, is not even asked), will rarely refuse, particularly if the person is illiterate or has suffered trauma. The offer of providing protection infers that there

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must be a danger or risk, but most witnesses do not seem to believe that the risks are in Arusha, when testifying, but rather in Rwanda, where in many cases the accused was a person of influence and still has family and friends. Yet the protection offered does not extend that far. Furthermore, once the witness has returned to Rwanda, protection is the sole responsibility of the Rwandan authorities.

During the Trial

Most witnesses were upset by the cross-examination by defence lawyers. Cross-examination is a feature of ICTR proceedings which has come from Anglo-Saxon *common law*, and is unknown in Rwanda; this point, however, is not relevant in itself, as most witnesses interviewed by the mission had never testified in Rwanda.

Those who said they did not want to come back to Arusha to testify, or who were reluctant to do so, all cited the cross-examination as the main reason. Three factors come into play: the content of the questions, the way they are asked and the length of time of the cross-examination.

Referring to the content, witnesses mainly commented on the very intimate questions about rape scenes. The subject of sex is taboo in Rwanda and the fact they had to describe sexual acts, organs and so on was disturbing in itself. While it is obviously important to check the validity of the allegations by asking detailed questions, doubt may be expressed as to the need for certain requests for explanations which seem to have been primarily intended to upset the witness rather than to provide the necessary points of evidence. As questions each focused on a highly detailed aspect of the witness's statement, this meant that the witness had no clear idea of what the lawyer was trying to get at.

On the question of time, testifying under a *common law* system takes much more time than a civil law system, and while the system has its own requirements, questioning which runs on for a number of days, or sometimes more than a week, as in the case of Witness TA¹⁰, seems disproportionate, without consideration for the effort required of the witness. Translation of every question and answer into/from Kinyarwanda, English and French is obviously needed, but also seems to make the questioning a much more time-consuming process.

More important than either the content or the time spent on questioning is **the way the questions were asked** which witnesses reacted to, feeling they had been treated with

scorn, considered to be liars, cheats, mentally disturbed or fools, and feeling that they, in turn, had been accused. A number of witnesses had been asked if they had been paid to testify, whether Ibuka, Avega or the government had asked them to say one thing or another, or were criticised for not being present at the scene when the events occurred. Many witnesses felt they were left to their own devices, having to contend with treatment which they considered to be degrading, and thought they might have felt better if they had had a lawyer who could have intervened on their behalf. Most importantly, this meant that the presence of the Prosecutor did not give them the impression they had any support during the proceedings. A number of witnesses noted that the judges rarely intervened, or only did so to point out that the witness had to answer the question. They were also asked the same questions by a number of lawyers, one after the other, in cases where a number of people had been charged, which gave the witness the impression that the parties were not listening to their answers, or that the answer had not been properly translated or that they were trying to make fun of the witness.

The Statute of the ICTR¹¹ includes the principle of cross-examination and this therefore cannot be modified by a simple alteration to the Rules of Procedure; it is, in fact, a guarantee that every person charged has a proper defence.

However, respect for the witness, and the proscription of any harassment, together with the obligation to treat witnesses courteously are universal values and obligations which must be respected by lawyers, judges and prosecutors. Questioning of witnesses under the common law system certainly makes it more difficult to distinguish justified questioning from harassment which is not allowed, and it is clear that judges and prosecutors must make sure that defence lawyers respect the witness and, in cases of non-respect, must insist that they do so.

In certain trials, it appears that all parties have failed in this duty. This has been widely recognised by all those involved in the trial where witness TA testified, but there is agreement that this event was an unfortunate incident which should not be taken as a reflection of the general situation or exploited for the wrong purposes. However, a number of witnesses, including illiterate people and intellectuals, and sometimes even expert witnesses, told the mission of extremely tough cross-examination, and that someone who is emotionally involved in the events being reported in his/her testimony, can easily be upset by the questions. One witness said that it was a deliberate policy used by the lawyers to deter the witness from coming back the next day.

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The Rules of Procedure require judges to ensure witnesses are given proper respect: "A Chamber shall control the manner of questioning to avoid any harassment or intimidation."¹² The interpretation of this is left to the discretion of ICTR judges. The fact that cross-examination is conducted under a *common law*¹³ system must not mean that this method of questioning is ipso facto deemed acceptable for the ICTR. The *common law* system does not reserve the questioning of witnesses solely for the Presiding Judge, as is the case in a civil law system, but it must be noted that the ICTR system is mixed and that this article does give a certain power for judges to intervene. Furthermore, the rule of procedure has provision¹⁴ for the Chamber to "exercise control over the mode and order of interrogating witnesses and presenting evidence so as to: (i) Make the interrogation and presentation effective for the ascertainment of the truth; and (ii) Avoid needless consumption of time." The article goes on to stipulate that "cross-examination shall be limited to points raised in the examination-in-chief or matters affecting the credibility of the witness. The Trial Chamber may, if it deems it advisable, permit enquiry into additional matters, as if on direct examination." It seems that these options have not always been used. Many judges favour the rights of the defence, sometimes to the detriment of the respect due to the dignity of witnesses.

In general, witnesses have the feeling that they have been left to their own devices, have been "cast to the wolves". In most cases, the Prosecutor's office has found witnesses with sufficient strength of character to stand up to the cross-examination, but it is difficult to work out how testifying will affect the person's balance of mind once outside the courtroom. Most witnesses considered the harshest aspect to be the fact that the questions made them go through the past experience all over again, with all the suffering involved, and that no consideration was given to the mental exhaustion this caused. While most witnesses interviewed realised how important their testimony was and said that they were prepared to testify again if need be, so that another person being held on charges was not released, their proviso before agreeing to do so was that the method of questioning be changed.

After the Trial

Certain witnesses encountered major difficulties after their identity had been divulged or even because of the content of their statements. In most cases the identity was deduced by neighbours who noticed that the person was away at the same time as the radio reported on an ICTR trial concerning events from their region or district, and it is difficult to avoid

such deductions. In some cases, the only explanation is that the identity was deliberately divulged. Two witnesses returning home from the ICTR were called to report to the Deputy Prosecutor of the Republic and were confronted face to face with a detainee who seemed to know not only their identities and the fact that they had been to Arusha, but was also aware of the content of their statements. Written copies of their statements had apparently been forwarded to him via a defence lawyer who had asked the detainee concerned to present testimony on the same events for the defence. Both these witnesses later received a number of messages containing death threats, and had to seek asylum in Kigali, after attempting in vain to have the ICTR intervene; the ICTR referred them back to the local authorities for protection. This specific case should be investigated by the ICTR and appropriate sanctions taken.

Once again, the concepts of anonymity and protection have given rise to false expectations: on the one hand it is very difficult to keep the identity of witnesses confidential when they leave their hills for a number of weeks, and particularly as survivors, who are therefore potential witnesses of a given event, are quite well known to their entourage; on the other hand, the suspect who has been charged knows the identity of all the witnesses and can easily establish contact with relatives in Rwanda. Confidentiality is therefore a concept which exists as theory, but only affords a very limited level of protection.

It is then legitimate to wonder whether such "systematic anonymity" has any real meaning and whether it might not be better to testify openly in court. None of the witnesses interviewed by the FIDH said they would not testify in Rwanda because there was no proper anonymity. Only one person said that the influence wielded by persons facing charges in Arusha meant they could have the witness threatened or killed if testimony were not given anonymously. It is obvious that the argument has no real validity: the person charged always knows the identity of the witness whom he sees *de visu* during the hearing, and this applies whether the witness is covered by anonymity or not; and financial resources are not always needed to intimidate a witness.

When comparing the ICTR system with hearings conducted according to "gacaca" justice, victims always say that the fact they are testifying "in front of everyone" is protection in itself. The same argument could apply for testifying in Arusha.

One justifiable exception might be testimony concerning sexual violence perpetrated on the witness, particularly if the

testimony also extends to consequences, such as the victim becoming infected with the AIDS virus. Because the subject is taboo and knowledge of these facts can seriously jeopardise the victim's prospects for the future, particularly in the case of young girls, such hearings should be *in camera*, if so requested by the witness, once the different options have been explained to the witness.

Testifying in public can also set an example, encouraging others to testify, even on matters of sexual violence. A number of associations defending female victims have been fighting this taboo and could play an important role in a witness's decision to testify anonymously or in open court. But whatever the situation, the final decision is made by the victim who decides to testify in open or closed court.

On the question of security for witnesses after they have testified in Arusha, ICTR officers claim it is the responsibility of the Rwandan authorities, who claim it is the responsibility of the ICTR. The ICTR argument is that protection in Rwanda is the responsibility of national authorities, while the Rwandan authorities respond by saying that they are not kept informed. Systematic communication must be instituted between the ICTR and the Rwandan authorities providing information on witnesses returning home, so that the Rwandan authorities can monitor their safety effectively. It is essential for ICTR officers to provide the Rwandan authorities with systematic information on problem cases of safety or on threats against witnesses who have been to Arusha, instead of telling the witnesses to contact the local authorities themselves; consultation must also be conducted to decide on the means of protection to be provided. This is not the sole responsibility of one party or another, but is a shared responsibility.

According to the Registrar at the Tribunal, when the ICTR witness protection programme is operating in the post-trial phase, the Tribunal can provide financial support to cover costs for moving or resettling certain witnesses who may not be able to live in Rwanda again after they have testified.

A number of witnesses said they felt they were totally disregarded once they had testified. Witnesses interviewed complained that they had only been accompanied as far as Kigali on their trip home, that no further medical care had been provided, that no compensation had been paid for loss of income. Objectively, reasonable explanations may be found for some of these complaints¹⁵, and the validity of other complaints was impossible to check.

2.2. Role of Victims as Parties in Proceedings

No Individual Law Suits

Both victims' associations and certain individual victim-witnesses said they wanted to sue, basically so that they could be a genuine party to the trial, so that they could be assisted by a lawyer (and thus feel they had better protection), so that they could lodge an appeal, and so on. The fact that victims are not complainants in the trials has produced an imbalance which is difficult for people accustomed to a civil law system to understand, and it is particularly difficult to understand in the case of crimes of genocide and crimes against humanity that have caused the death of approximately one million people, and which increase the need for survivors to be granted recognition.

For victims' associations, this is also an endeavour to have their role and importance recognised. They feel they are key players, and indeed they often are, establishing contacts between ICTR investigators and victims. The survivors on the hills are very suspicious, which explains why they usually do not want to cooperate with an outsider who has not been introduced by a liaison person known to either the authorities or the associations. One witness who went to Arusha told us he had been advised to speak only to persons referred to him by the Ministry of Justice.

No Damages or Compensation

In general, victims of crimes being heard by the Tribunal, are not entitled to claim compensation, and this is the specific case for victims who have had the courage to testify in Arusha. This has been a problem not only for victims and associations of victims, but for almost all parties and players who met the FIDH mission, both in Rwanda and with the ICTR.

The initiative undertaken by the previous Registrar, Mr. Agwu Okali, to institute an assistance programme for victims, working through the associations, was a positive move, but unfortunately has proven controversial. It was helpful in that it highlighted the need for setting up positive initiatives for victims, extending beyond the specific assistance provided for witness-victims. Unfortunately it has led to arguments as to whether the programme comes under the scope of the ICTR mandate, with opinions diverging on that point, plus arguments on sources of funding for the programme which cannot be covered by the ordinary ICTR budget and must therefore be financed through the Trust Fund which in turn is

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funded through voluntary contributions made by United Nations Member States; and over recent years these contributions appear to have been insufficient.

The Registrar also informed the FIDH mission that the implementation of the programme had raised some "legitimate queries" of various kinds, including the suggestion that because of the advantages granted by the programme, but only to a small number of victims, i.e. potential or actual witnesses for the prosecution, called to testify by the Prosecutor, it may be seen as an incentive for informing on others, with the insidious side-effect being that it would encourage witnesses for the prosecution to inform on others so as to reap the benefit of full financial cover provided by the Tribunal¹⁶.

The current Registrar of the Tribunal, Mr. Adama Dieng, decided to hold meetings in Kigali with Rwandan associations, embassies, international bodies and representatives of the Rwandan government; Ibuka and Aveha have refused to take part, following their decision to boycott the ICTR. The purpose of the meetings is apparently to draw up an inventory, detailing the needs of the victims. The Registrar is reported to have offered assistance to find funding for a programme to assist victims.

The Rules of Procedure include a number of quite limited options for compensation, specifically under Articles 105 and 106 which provide for the return of goods acquired through the acts for which the person charged has been found guilty and a request for damages for a victim to be processed by the national legal system on the basis of a final judgement handed down by the ICTR. To the best of our knowledge, none of these options has been used to date (see Section IV on difficulties involved in the procedure).

The Statute has no provision for parties to be involved in the trial as complainants, or for any claims for damages or compensation to be lodged; these measures cannot therefore be included in the rules of procedure unless the

Statute itself is modified. These two sources of frustration for victims cannot be seen as the responsibility of the ICTR which has no authority to respond.

On this matter, the Rwandan authorities could undertake an appropriate initiative through the United Nations. However, the vast majority of the players who spoke with the FIDH mission, including all sides, i.e. ICTR, embassies and donors, believe that it would be unrealistic to hope for such a change to be made to the Statute at this stage when discussions are focused on a strategy for the ICTR to terminate by approximately 2008. Any changes to the procedure on these two points would only be a further cause of delay.

Both ICTR and ICTY judges have conducted an in-depth study of the question of compensation to victims, which they see as an essential point for restoring peace and for reconciliation. The President of the ICTR, Ms. Pillay, wrote a letter¹⁷ on this point to the Secretary General of the United Nations, which included an examination of options for and obstacles to compensation. Not only would the Statute and Rules of Procedure have to be changed, but there would also be obstacles with the extension of trials which are already seen as too long and complicated, with inequities which could arise between victims of acts judged by the Tribunal and victims of other offences or offenders who have not been tried, and with the problem of funding the compensation. The letter compares the situation between the Statute of the International Criminal Court, which has provision for victims to be litigants to trials - without them being "complainants" taking out "civil proceedings" - and claims for damages or compensation. It concludes by suggesting that a mechanism or special fund could be set up by the United Nations. To date this proposal has not produced any tangible results.

It would be useful for Rwanda, the United Nations member countries and victims' associations, working together with international human rights associations, to lobby for such a fund to be set up, along lines similar to the work currently under way to establish a Fund for victims of the ICC.

4. See Annexe 2, Ibuka and Avega Press Release, March 1, 2002.

5. See Annexe 3, Letter from Ibuka and Avega, dated March 6, 2002, to the Registrar of the ICTR.

6. See Annexe 4, Ibuka and Avega Press Release, March 17, 2002

7. This would be "post-traumatic stress disorder", blocking the healing or recovery process after experiencing a situation causing trauma; the term trauma designates a normal reaction to an abnormal situation. To simplify the present text, the term trauma has been used here to refer to post-traumatic stress disorder.

8. A note from the ICTR, dated August 8, 2002, addressed to the Security Council in response to a letter from the Rwandan government, states that 80% of ICTR witnesses are protected witnesses; see Annexe 9.

9. This option is possible under the terms of Article 75 B i) c) of the Rules of Procedure.

10. Witness TA: a woman, who had been raped a number of times in 1994, was questioned by the prosecutor for a day and a half, and for another seven days by the different defence lawyers in the 'Butare' trial concerning charges laid against (inter alia) Aron Shalom Ntahobali and his mother Pauline Nyiramasuhuko. The anonymous witnesses were referred to by two or three initials. See press references on the incident: Diplomatie judiciaire, No. 80, December 2001, pp. 14-17, 'Témoignage non protégé', and Diplomatie Judiciaire, No. 8, January 2002, pp. 16-17: 'Un incident scandaleux' and pp. 18-21: 'La part des choses'.

.../...

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11. Article 20.4. of the Statute: In determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality... (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.
12. Article 75 C of the Rules of Procedure and Evidence.
13. See discussion between a defence lawyer and a witness, reported in an article in *Diplomatie Judiciaire*, No. 81, January 2002, p. 20-21, where the lawyer claims the right to tell the witness he is lying.
14. Article 90, Rules of Procedure and Evidence.
15. One witness had claimed compensation for loss of income calculated on the basis of per diem allowances paid to Rwandan officers when on international missions, yet everyone realised such sums were exorbitant. The witness in question was a businessman and requested \$4 236 for a 16-day stay in Arusha; the ICTR had already paid \$1 584, and he had provided no tangible proof of any loss of income. Another witness claimed \$41 930 to compensate for expenditure and invalidity caused by a transport accident he had suffered after testifying, without ever providing any proof of cause and effect (documents provided by Ibuka). A more delicate case was one witness who had been a victim of sexual mutilation, had undergone surgery paid by the ICTR and wanted to be admitted to hospital after returning from Arusha for medical care; however, the ICTR doctor considered there was no need for her to be admitted to hospital and that the proper treatment could be provided to the person as an outpatient. This was more a misunderstanding: the ICTR had not given consideration to threats made to the woman which were the reason for her fleeing to the capital where she was then homeless. Another point often criticised was the lack of medical care for rape victims who have been infected with the AIDS virus. While it may seem cruel and unjust, the mandate of the Tribunal is not to provide medical care for witnesses for the rest of their life.
16. Explanations given by the chief Registrar, in answer to FIDH questions, and given in writing, as he was not in Arusha at the time of the mission.
17. See Annexe 6: Letter from President Pillay to the Secretary General of the United Nations, November 9, 2000, S/2000/1198.

3. Reactions to the difficulties raised by victims

3.1. The ICTR

The ICTR representatives interviewed by the FIDH team admitted that some of the allegations were justified, but had already been addressed through the arrest and suspension of the members of the defence investigation teams suspected of acts of genocide and the amendment of the code of professional conduct for defence counsel regarding fee-splitting¹⁸. However, they believe that other allegations were either unfounded (claims of witnesses being killed after their testimony and of witnesses failing to receive protection in Arusha), stemmed from a misunderstanding of the ICTR's mandate (aid given to victims, medical care for victims infected with AIDS) or were exaggerated or too general (mistreatment of witnesses during cross-examination). There were even suggestions that these allegations served other aims.

Dialogue is clearly awkward between ICTR officials and the Rwandan authorities, victims' associations and civil society as a whole.

Although the different parties concerned meet regularly on both a formal and informal basis, the ICTR does not wish to enter into a systematic working relationship with the Rwandan authorities or associations for fear that they may become too influential over the ICTR, thereby undermining its independence.

These fears were confirmed when in March 2002 the Registrar of the ICTR proposed to set up a joint commission to examine allegations of mistreatment and lack of protection of witnesses. During negotiations on the mandate of the joint commission, the Rwandan Minister of Justice was said to have wanted to expand the scope of the mandate to include an examination of the recruitment of Rwandan staff by the ICTR in order to address allegations that certain investigators had committed acts of genocide. According to the Minister of Justice, it was not a matter of expanding the scope of the commission's mandate, but of what had been agreed upon at a meeting on this issue. This initiative by the Registrar also appeared to have come up against strong opposition from defence counsel¹⁹.

The Registrar was forced to withdraw his proposal after an agreement was failed to be reached with the Rwandan government on these matters.

Tensions have been mounting ever since. The Rwandan

authorities introduced new administrative requirements for witnesses wishing to testify in Arusha, claiming that the procedures were the same for all Rwandans who wanted to leave the country. In the past, there was an arrangement whereby ICTR witnesses did not have to obtain travel documents. Witnesses are now required to obtain a number of documents from the local authorities. The Rwandan government justified the measure by stating that it needed to know the full identity of the witnesses in order to protect them upon their return to Rwanda; the ICTR had only provided a list of names in the past.

This decision, coupled with the concurrent calls for boycott broadcast over the radio by associations of victims, led to several trials being adjourned because there were not enough witnesses.

On 23 July 2002, ICTR Prosecutor Carla Del Ponte submitted a report to the Security Council expressing regret over the Rwandan authorities' failure to cooperate with the ICTR. She was supported by the President of the Tribunal, Navanethem Pillay²⁰, who requested that necessary measures be taken.

Rwanda then addressed a letter to the President of the Security Council on 26 July, which prompted an in-depth reply from the ICTR on 8 August 2002. To date, the Security Council has not dealt with the matter, although in the preamble to Resolution 1431 of 14 August 2002 regarding the establishment of a pool of ad litem judges requested by the ICTR, the Security Council urged all States to cooperate fully with the ICTR and its organs.

Tensions between Rwanda and the ICTR have reached such a point that the Security Council, or at least its President, will be required to intervene. In spite of these tensions, five witnesses were able to travel from Rwanda to Arusha in early August 2002, which could indicate that Rwanda does not want to be reprimanded by the Security Council. The Rwandan authorities have underlined the need to restore dialogue and communicate effectively to bring an end to the impasse.

The Registrar and the Prosecutor have always maintained informal contact with the victims' associations Ibuka and Avega, rather than establishing a more formal working relationship. Victims' associations are in part unavoidable, and do their utmost to remain so. Their calls for boycott, which

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was observed by most potential witnesses, are proof of this. While some representatives of the smaller associations of victims told the FIDH delegate that they wanted to put an end to the boycott and did not see the point of it, the positions of Ibuka and Avega have not been contested publicly.

But are the Registrar's fears of giving too much power to victims' associations, and in so doing potentially undermining the independence of the Tribunal, founded? It is not a matter of establishing an official rather than informal working relationship, but of clearly determining the basis of such a relationship.

In recent years, the ICTR has made a laudable effort to improve its image and gain the support of the Rwandan civil society. It set up an outreach programme, which includes a resource centre in Kigali and the broadcast of newsreels in Rwandan hill communities via Internews Network. Much remains to be done, however, as only students and intellectuals visit the resource centre. The Rwandan population's only sources of information about the work of the ICTR are the radio and victims' associations.

There have been several calls for ICTR trials to take place at least in part in Kigali. While the defence lawyers strongly oppose this proposal, most of the people interviewed by the team did not automatically rule out such an option, despite the major logistical problems it would entail. The Rules of Procedure and Evidence allow for at least part of the hearings to be held in Kigali, if so decided by the judges of the Chamber concerned and authorised by the President of the ICTR in the interests of justice²¹. Such a decision is therefore not the remit of the Prosecutor or the Registrar of the Tribunal. Several Rwandan interviewees and some ICTR representatives believe that it would promote a better understanding of the workings of the ICTR and that witnesses would feel more at ease. This was confirmed by most of the witnesses interviewed by the FIDH, except for one who had received threats after testifying in Arusha and who feared that security problems would arise if the trials were held in Kigali.

To date, Rwandan human rights associations have not conducted any investigations into the work of the ICTR, the situation of witnesses and former witnesses or the impact of the judicial proceedings in Arusha on national reconciliation. These associations should systematically monitor the ICTR trials in Arusha as well as their impact on witnesses and Rwanda as a whole. Furthermore, this would improve and give greater consistency to the ICTR's actions and communications vis-à-vis the Rwandan authorities and victims' associations.

3.2. Victims' associations

In the light of the investigation carried out in Arusha and Rwanda, the FIDH considers that some of the allegations made by victims' associations were founded (lack of confidentiality and lack of respect for victims during cross-examination), whereas others appeared to be exaggerated (witnesses not given protection in Arusha or not paid compensation for loss of income, "misuse of good faith"). Some allegations kept on returning even after the matter had been resolved and seemed disingenuous (fee-splitting, investigators accused of perpetrating genocide). Others still targeted the ICTR even though the associations were aware that the matters did not come under the remit of the Tribunal (possibility of plaintiffs claiming damages in civil cases, compensation). Some of these allegations were not necessarily based on actual facts, but stemmed from the lack of special care or psychological counselling for victims to help them deal with trauma and the specific characteristics of Rwandan culture. The ICTR should take these issues into consideration.

The allegations sometimes sounded like slogans: "the Arusha Tribunal has failed to carry out its principal mission of bringing perpetrators to justice...", "the Tribunal has become a bottomless pit of illegal enrichment and corruption", "the Tribunal serves the interests of negationists and revisionists", "the ICTR has become a safehaven for criminals", etc.²²

The representatives of Ibuka, Avega and the Association de Rescapés du Génocide (ASRG-Mpore) interviewed by the FIDH team admitted taking a hard line, but said that they had to talk tough to get a minimum in return. They added that they were not opposed to the principle of setting up a Tribunal and did not have anything against most of the ICTR staff, who appeared to be acting in good faith. The representatives also admitted that some matters were indeed inherent in the Statue of the ICTR, such as victims not being able to be represented in a trial. In their opinion, the ICTR was not operating as it should and was slow because it had been conceived as a United Nations agency rather than a tribunal, and also because of the common law system in force.

In spite of these explanations, it is surprising that some aspects of the allegations voiced publicly do not take account of victims' interests:

- "Like all negationists, the Tribunal subscribes to the idea of 'double genocide' in Rwanda. This is a conscious and deliberate attempt to thwart efforts to rebuild the country and reconcile the Rwandan people. The Arusha Tribunal

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increasingly seems to be vested with a hidden mandate to destabilise our country and its institutions²³"

- "The ICTR is manipulated by France."²⁴

Several observers have already pointed out that the Rwandan authorities use the same arguments as the victims' associations. This may be logical in the case of allegations concerning the treatment of witnesses and judicial proceedings. But the above-mentioned quotations are political and echo the Rwandan authorities' opposition to Carla Del Ponte's announcement that some soldiers from the Rwandan Patriotic Front (RPF)²⁵ would be brought to trial for war crimes committed in 1994.

There are clear ties between the government and some of the victims' associations: Antoine Mugasera, President of Ibuka, is a member of the executive office of the RPF, and Joseph Nsengimana, Legal Representative of ASRG-Mpore, is a former minister and currently an advisor to the President. It would be too simplistic to deduce that these associations share the same opinions as the government, however, given the complex balance of power within the Rwandan society.

Some observers have claimed that the associations are manipulated by the authorities. Both parties categorically refute these claims. The associations add that they have nothing against the prosecution of RPF soldiers and that everyone must be brought to justice insofar as the mandate of the ICTR permits and evidence is provided.

In any case, the interests of the victims' associations and the Rwandan authorities appear to coincide at the moment and the allegations made by the associations complement and reinforce those of the authorities, and vice versa.

Over and above the question of ties between the associations and the authorities, the most important issue is whether the associations are acting in the interests of victims by obstructing the work of the ICTR.

When the FIDH mentioned the risk of certain detainees being released on account of a lack of evidence and too few witnesses, the representatives of Ibuka, Avega and ASRG-Mpore were surprisingly offhand.

This reaction is in stark contrast to that of most of the witnesses interviewed by the FIDH. In their opinion, it is more important to go and testify to prevent a guilty person from being freed than not to return to the Tribunal because they felt harassed during the cross-examination. Women from hill

communities were the strongest proponents of this position.

The associations are clearly entitled to choose the means they deem appropriate to publicise allegations by witnesses and other parties. But if such means obstruct the work of the ICTR and those accused of serious crimes are freed, they are by no means acting in the interests of victims, who are calling for justice and an end to impunity. The situation could even lead to further reprisals against those who risked testifying.

The associations have to ask themselves whether they are prepared to take responsibility for their actions if a person accused by the ICTR is released because there were not enough witnesses.

Their requests for the ICTR to systematically address the issues they have raised and to recognise their role are entirely legitimate. But they cannot legitimately take the ICTR hostage. If they continue to do so, they may end up damaging the interests of the victims they represent.

The role of victims' associations is obviously to guarantee the interests of victims, but also to remind them of their historic duty to testify in order for truth to be established and justice done.

The international conference on survivors held in Kigali from 25-30 November 2001²⁶, organised jointly by Ibuka and The Group Project for Holocaust Survivors and Their Children, drew up a set of recommendations on justice, the judicial process and compensation. Several allegations made by the victims' associations regarding the ICTR were formally laid down as recommendations for the international community.

Underlining that national and international justice are complementary processes in which victims exercise their right to justice, the conference nevertheless recommended that Ibuka mobilise genocide survivors and ensure that they be present at genocide trials to testify and vindicate their rights. In upholding the current boycott, Ibuka is acting against this recommendation.

3.3. The Rwandan authorities

Several people interviewed by the FIDH said that the prosecution of soldiers belonging to the RPF²⁷, as announced by the office of the ICTR Prosecutor, was the real reason for the stand-off between the ICTR and the Rwandan authorities.

Looking back at the history of relations between Rwanda and the ICTR, the allegations made by the Rwandan authorities

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over the functioning of the ICTR, which are echoed by victims' associations, clearly become more virulent each time the ICTR takes a decision they disapprove of. The first stand-off came when Barayagwiza was released and Rwanda won its case after the decision was reversed by the Appeals Court. Unfortunately, the ICTR sometimes lays itself open to criticism.

The Rwandan government's allegations partly coincide with those raised by victims' associations and stated in detail above. The Rwandan authorities have made a further allegation, however. During interviews with the FIDH, they clearly outlined their opinion on the prosecution of RPF soldiers:

- the ICTR was set up to prosecute perpetrators of genocide; the ICTR would not have been set up if genocide had not been committed.
- the ICTR has not yet prosecuted perpetrators of genocide and is ineffective for several reasons; if the ICTR brings to trial certain RPF soldiers, it will have even less time to prosecute perpetrators of genocide.
- the ICTR must not put the organisation of genocide on an equal footing with occasional crimes committed by some RPF soldiers, who acted in revenge or by error (because armed civilians were involved in fighting).
- Rwandan military justice works perfectly well and has already taken care of these cases; it will investigate and bring to trial all cases submitted; it is in Rwanda's interests to try these people in order to guarantee national stability.
- the ICTR can forward such cases to Rwanda for prosecution; the ICTR's decision to handle the cases is tantamount to interfering with Rwandan justice.

The Rwandan President, Paul Kagame, stated that "the Rwandan Patriotic Army has already very severely punished those responsible for the crimes", that "the country's military tribunals have conducted very serious investigations" into the crimes and that "some of our soldiers were proven guilty, convicted and executed". He added that "it would be a very big mistake to draw a parallel between these crimes and genocide. Our army was fighting to stop genocidal forces from killing innocent people".²⁸

In a letter dated 26 July 2002 to the President of the Security Council²⁹, Rwanda reiterated its above-mentioned position and added: "In the eyes of the Rwandan government, the proceedings of a political nature brought against members of the RPA by the Tribunal do not restore stability or promote national reconciliation in Rwanda".

Statistics and other documents were officially addressed to the FIDH team by Rwanda's Military Auditor General regarding RPA soldiers brought to trial in Rwanda between 1996 and

2000: there were eight cases involving 49 people tried for murder, failure to assist persons in danger, and pillage. There are four other cases in progress involving 30 people³⁰.

The FIDH also received a list of 29 RPA senior officers brought to trial by the Military Court of Rwanda between 1995 and 2002. The list contains six cases of "violations of human rights", but does not mention the legal nature of the acts (murder, war crimes, etc.), six cases of "criminal negligence" and one case of murder. Other people were tried for theft, corruption, road accidents, etc. One person was convicted of genocide but had clearly been put on the list mistakenly.³¹

There is no mention in the statistics or the list of whether the acts were committed in 1994 (ratione temporis jurisdiction of the ICTR). To the knowledge of the FIDH team, the Rwandan military justice system only tried one of the people on the list for acts committed in 1994: Major Sam Bigabiro. All the other people are believed to have committed the crimes after 1994.

Another list outlines 20 cases of "revenge" tried by the Military Council between 1995 and 2002. The date was mentioned for some of the cases. There were nine cases of acts committed between June and December 1994. Out of these nine, the Rwandan justice system pronounced three acquittals. All told, 12 people were given prison sentences of between one and three years for murder or bodily harm causing death. When mentioned, the number of victims varies between one and six.

It is noteworthy that the Rwandan population requested that these cases be tried before *gacaca* courts in several parts of the country, namely Buymba, Ruhengeri and Gisenyi. This shows that the Rwandan people do not believe that justice has been done in these cases. President Kagame asked his people not to confuse genocide with other crimes and questioned whether it was the right moment for those who had combated "the forces of Evil" to stand trial.³² In his speech at the official inauguration of *gacaca* hearings on 18 June 2002³³, the President spoke of "isolated acts of revenge committed by individuals" and said that certain Rwandans and foreigners did not want national unity and placed killings by RPF soldiers on an equal footing with genocide and massacres, which was tantamount to negationism in his opinion.

The ICTR Prosecutor has never claimed that the acts he wishes certain RPF soldiers to stand trial for were committed on the same scale as acts of genocide. These acts do not need to have caused the same numbers of victims as genocide in order for them to be brought to trial and comparisons cannot be drawn between the nature of the acts. The victims of these acts,

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however, are also entitled to be recognised as such. Article 4 of the ICTR Statute states that the Tribunal has the power to prosecute persons committing certain war crimes.³⁴ These cases clearly come under its mandate. The preamble to the Statute stipulates that one of the aims of establishing the ICTR is to contribute to the process of national reconciliation, which is not possible unless justice is done for all victims of crimes committed in 1994.

The attitude of the Rwandan authorities therefore clearly goes against its international obligations vis-à-vis the ICTR - which do not include the power to call into question the pertinence of trials - and against the principle of combating impunity. Some observers have suggested that the real reason why the Rwandan authorities are opposed to RPF soldiers being tried is the risk of the trials revealing that they were not individual acts of revenge or errors due to unarmed civilians being confused with armed civilians in combat, but rather crimes organised or at least authorised by senior military officers at the time. That would shed an unflattering light on the Rwandan authorities one year ahead of national elections.

Rwanda has repeatedly stated that it has never obstructed these "special enquiries"³⁵.

The ICTR Prosecutor claimed that she had never received any concrete assistance, despite repeated requests and guarantees. He added that witnesses wishing to travel to Arusha had for some time been subject to interrogations by the Rwandan authorities regarding not only their identity but also the content of their testimonies³⁶.

The situation has got to the point that it can only be resolved through the intervention of the Security Council.

However, Rwanda does not wish to be reprimanded by the United Nations Security Council and will probably continue to hide behind the allegations made by victims' associations and to publicly state its intention to cooperate with the ICTR, while at the same time occasionally laying down a number of obstacles in either a manifest or low-profile fashion.

3.4. The international community

Rwandan and foreign interviewees as well as ICTR representatives all felt that the international community was indifferent to the ICTR and the future of Rwandan victims.

Each group had a host of examples. According to the ICTR, the ICTY has six courtrooms and 27 judges, while the ICTR has

three courtrooms and nine judges; the ICTR had to wait over a year³⁷ to obtain *ad litem* judges, while the ICTY got them "straight away"; the Member States of the United Nations have not made any contributions to the Trust Fund since 1999; the ICTR has the same budget as the ICTY, but the ICTY does not have to pay rent for the seat of the tribunal, the detention facility or the prison complex, or pay the security staff (who are apparently all paid by the Netherlands in the case of the ICTY); and finally the ICTR has to cover the travel expenses of counsel and witnesses from all over the world.

The Rwandan authorities and victims' associations claim that the international community has made no attempt to remedy the problems they have identified at the ICTR. It has not appointed a full-time Prosecutor to the ICTR³⁸, amended the procedure for plaintiffs to claim damages in civil cases and compensation - although they concede that Rwanda could have requested that itself - or given significant assistance to genocide victims.

Other civilian associations have made similar observations, but admitted that they had not followed the activities of the ICTR very closely.

Some people interviewed by the FIDH accused the international community of not helping the ICTR, which is regularly taken hostage by Rwanda. The country has a powerful weapon since most witnesses have to travel from Rwanda. The international community therefore has an important role to play in this respect.

The international community is generally considered jointly responsible for the failures of the ICTR, which is run like a United Nations agency. Some people said that the international community's silence was a continuation of the United Nations' stance during the genocide.

Other interviewees said it was because the ICTR was seen as an "African tribunal" and that nothing works in Africa anyway.³⁹

Most foreign representatives in Rwanda interviewed by the FIDH team realised that more focus was placed on the ICTY than the ICTR partly because some of them had a diplomatic mandate covering several countries (Tanzania, Rwanda). Some said they were prepared to protest officially and urge Rwanda to cooperate with the ICTR, but believed there were other priorities, such as the Pretoria agreements, which could give fresh impetus to the ICTR with new arrests of "masterminds of genocide".

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Some of these representatives accused international human rights NGOs of providing too few statistics and not lobbying the major donors to Rwanda. Several of them would like to have more concrete data and expressed regret that the ICTR did not publish any exhaustive reports on its activities. They also accused the ICTR of not using all the means available to it to voice its concerns and demand additional financial resources.

Since drawing battle lines with the International Criminal Court (ICC)⁴⁰, the United States has found itself in an ambiguous position: it lends financial, human and political support to ad hoc tribunals to promote international criminal justice, but has been involved in an open battle with the ICC because it has not been able to obtain effective control over the exercise of jurisdiction by the Court in the same way as it controls ad hoc tribunals through the political organ of the UN, the Security Council.

When interviewed by the FIDH in Kigali, the ambassador of Great Britain - the biggest donor to Rwanda - as well as the head of the delegation of the European Commission did not see the need for the ICTR to bring to trial RPF soldiers for war crimes committed in 1994.

There is a general feeling of fatigue surrounding the ICTR: the parties concerned recognise the importance of its work, but there is a prevailing sense of disappointment as the Tribunal has not managed to meet initial expectations. The positive trends of the past years (more expeditious trials, improved management, stricter rules of procedure in some areas and simpler rules in others, etc.) have still not changed the negative image a lot of interviewees have of the ICTR. This view is shared by the spokesperson of the ICTR, Kingsley C. Moghalu, who believes that the Tribunal should implement a much more dynamic strategy to improve external perceptions of its work rather than wait for the media, governments and NGOs to express critical opinions.⁴¹

18. Twelfth plenary session of the ICTR, 5-6 July 2002, amendments adopted by the plenary session of the judges.

19. Open letter dated 21 March 2002 from the Association des avocats de la défense (ADAD) to the Registrar, quoted by the Hironde news agency on 25 March 2002.

20. See Annex 8: Letter to the President of the Security Council dated 29 July 2002, S/2002/847.

21. Rule 4 of the Rules of Procedure and Evidence.

22. See Annex 5: "Déclaration des associations des Rescapés du Génocide", Ibuka press release, undated.

23. Ibidem, plus speech given by Antoine Mugasera at the demonstration against the ICTR in Kigali on 27 June 2002. Speech published by Diplomatie Judiciaire on 28 June 2002.

24. Slogan at the demonstration of 27 June 2002, quoted by Hironde on 27 June 2002.

25. RPF is the armed movement of exiled Rwandans that militarily opposed the government in office during the 1994 genocide.

26. Life after Death, Rebuilding Genocide Survivors' Lives: Challenges and Opportunities, an International Conference on Survivors, Kigali, Rwanda, 25-30 November 2001, Conference Recommendations.

27. The Rwandan Patriotic Front (RPF) came to power on 4 July 1994. The current name of the army is the Rwandan Patriotic Army (RPA); the RPF has become the name of the political party.

28. "L'attentat, la peine capitale, les poursuites contre l'APR", Diplomatie Judiciaire, No. 85, May 2002, p. 30.

29. See Annex 7: Letter dated 26 July 2002 addressed to the President of the Security Council by the permanent representative of Rwanda to the United Nations, S/2002/842.

30. See Annex XI: Statistics of Human Rights Abuses by RPA Soldiers.

31. Anne Marie Nyirahakizimana, an FAR major.

32. "L'attentat, la peine capitale, les poursuites contre l'APR", Diplomatie Judiciaire, No. 85, May 2002, p. 30.

33. "Des crimes commis pendant et après la guerre", Le Verdict, No. 38-39, May-June 2002, p. 5.

34. "The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977".

35. See Annex 7: Letter dated 26 July 2002 addressed to the President of the Security Council by the permanent representative of Rwanda to the United Nations, p. 5.

36. See Annex 9: Note by the International Criminal Tribunal for Rwanda on the reply of the government of Rwanda to the report of the prosecutor of the ICTR to the Security Council, 8 August 2002, points 22 and 26.

37. See Annex X: Resolution 1431 (2002), adopted by the Security Council on 14 August 2002, which authorises the election of 18 ad litem judges.

38. Carla del Ponte is the Prosecutor of both the ICTY and the ICTR.

39. See inter alia: Kingsley C. Moghalu, "Image and reality of war crimes justice: external perceptions of the International Criminal Tribunal for Rwanda", in: The Fletcher Forum of World Affairs, vol. 26:2, Summer/Fall 2002, pp.21 - 46. The author is the spokesperson of the ICTR, but expresses his personal point of view in the paper.

40. See case study on the United States / ICC on the web site of the FIDH <www.fidh.org>

41. Kingsley C. Moghalu, "Image and reality of war crimes justice: external perceptions of the International Criminal Tribunal for Rwanda", in: The Fletcher Forum of World Affairs, vol. 26:2, Summer/Fall 2002, pp.21 - 46. The author is the spokesperson of the ICTR, but expresses his personal point of view in the paper.

4. Future perspectives: the role of the victims in the International criminal justice system: progress made with the International Criminal Court (ICC)

International law has for a long time been totally uninterested in the victims' plight. At Nuremberg in 1945, where certain Nazi criminals were judged, the victims who were simple witnesses, were not allowed the right to compensation for the wrong committed. The 1948 Convention on the Prevention and Punishment of the crime of genocide, the four Geneva Conventions of 1949 and their two additional protocols of 1977, ensure that those who violate the provisions should be punished, but they do not allow victims the right to bring the perpetrators before the courts, to take part in proceedings relative to the question of guilt or to obtain compensation.

It is the human rights conventions which promote the idea that victims have the individual right to be compensated for the wrong committed to them. The most important of these conventions include the 1966 International Covenant on Civil and Political Rights,⁴² the 1984 Convention Against Torture⁴³ and the fundamental principles concerning the right to adequate remedy and compensation for victims of violations of the international human rights law and the international humanitarian law⁴⁴ of 1999.

However, in the light of this report, when the ICTR was created in 1994, along the lines of the ICTY created the previous year, the victims were somewhat forgotten. This situation explains the bitter criticism of the associations of Rwandan victims and presents more largely the problem of the place of victims in international law.

The drafters of the ICTR statute and the Rules of Procedure and Evidence based their work on the Anglo-Saxon Common Law practice which considers that the criminal action taken before an international tribunal has as its principal objective the punishment of an act against international public order which constitutes a crime. In other words, the victim can only be recognised as a witness and the only possible compensation is that of the recognition of the existence of an international crime and therefore its sanction. This limiting of the victim's role to a strict minimum is even less acceptable as the protection measures given to witnesses are subject to criticism.

In this way, international justice clears itself of any compensation to victims, except certain indemnities provided for witnesses, in order to give jurisdiction to the national tribunals concerned. In this way, Rule 106 of the ICTR Rules

of Procedure and Evidence considers that following a definitive decision by the Tribunal, it is in the victims jurisdiction to take legal action before competent national jurisdictions in order to obtain compensation for the wrong suffered. The same rule stipulates that in order to do this, the tribunal's verdict must expressly establish the responsibility of the accused for the wrong suffered by the victim.

This system of referral before national jurisdictions is long drawn out and often inadequate for victims of international crimes for the following reasons:

- In trials where the victim is just a witness, it is difficult for the responsibility of the accused to be established in the trial.
- Criminal proceedings with the ICTs lasts for a number of years. This postpones the possibility of obtaining compensation for wrong suffered before the national tribunals where the proceedings can also be very slow. This also discourages victims from taking on such judicial action.
- The carrying out of justice can be slowed down in some countries either by inefficiency or lack of material and financial means, or by the intervention of executive powers. The barriers to a fair trial seem inevitable when the States concerned remain in the conflict situation which brought the existence of international crimes to the attention of international law.
- When the accused is considered to be destitute, the possibility of the victim obtaining compensation will depend on what is set out in the laws of the country concerned.

Referral to national jurisdictions in order to obtain compensation is therefore a problem for victims and it implies examining alternative procedures for international criminal law. Countries were able to examine this problem thanks to backing from NGOs and especially from the FIDH, during the Rome Conference in July 1998. It was at this conference that the Statute of the International Criminal Court was created. This permanent institution which has the necessary competence to judge individuals guilty of the most serious crimes such as genocide, crimes against humanity and war crimes. Countries with a civil law tradition, especially France, brought the question of the victim's position to the forefront before this new international criminal court which came into force on July 1 2002 and which will be effective from the first semester of 2003. We must nonetheless remember that the

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ICC's jurisdiction is not retroactive and as such it cannot answer to victims of the Rwandan genocide of 1994.

The Rules of Procedure and Evidence (RPE) and other suppletive Rome Statute texts which were prepared during the ten sessions of the Preparatory Commission for the ICC and adopted at the first Assembly of States Parties in September 2002, allow not only increased protection for victims but also allows them to be represented in legal proceedings and to have right to compensation.

For victims, the innovative features of the Court take into consideration most of the fundamental principals and directives concerning victims' right to an effective remedy and compensation for international law violations related to human rights and international humanitarian law. These fundamental rights and principals were presented in 1999 by the Special Rapporteur Cherif Bassiouni before the UN Human Rights commission. These features are based on a judicial system which is a mix of Anglo-Saxon Law and Continental Law and they partly answer to criticism of the ICTR and also the ICTY expressed by victims' associations.

These features concern the defining a victim, court referrals, protection, participation and compensation.

Defining a victim

Contrary to the strict definition of a "victim" proposed by the two ad hoc international criminal tribunals, the Rules of procedure and evidence (Rule 85) of the ICC considers that "the term "victim" covers any physical person who suffered harm from the commission of a crime within the jurisdiction of the Court; the term "victim" can also mean any organisation or institution that has sustained harm to its property, which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and places and objects for humanitarian purposes".

Protection of victim-witnesses

Concerning the protection of victims and witnesses, the ICC is also innovative in international criminal law both in the investigation phase and throughout the proceedings. The victims and witnesses support unit is responsible for giving an opinion but also for giving relevant support, especially in the case of trauma. The right to protection concerns not only the victims but also covers other persons, like for example family members. In the interest of victims, meetings can also be held in camera, while at the same time respecting the right

of the accused to a fair trial. The identity of certain witnesses can be removed from the file. We would like to highlight the fact that witnesses can also ask for protection or to keep their anonymity.

Court referral

If the ICTR Prosecutor is the only person competent to take a case before the tribunal, the ICC allows the Prosecutor (art. 15.2) to open an enquiry into information received from victims or victims associations and it give victims not only the possibility of representation but also taking part in the debates of the Preliminary Chamber, an organ in charge of giving rulings on the jurisdiction of the Court and the prospect of legal proceedings. This new right available to victims does not automatically allow for public proceedings, but it is a procedural revolution in relation to the Common Law tradition which governs the ad hoc tribunals.

Participation in legal proceedings

Unlike Prosecutor witnesses, victims before the ICC participate in the basic proceedings, as is manifestly stipulated in Article 68 of the Statute entitled "Protection of the victims and witnesses and their participation in legal proceedings". Paragraph 3 states that "When the personal interests of the victims are affected, the Court allows for their views and concerns to be presented at the appropriate stages of the proceedings, and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. These views and concerns can be presented by the legal representatives of the victims if the Court deems it appropriate, in accordance with the Rules of Procedure and Evidence⁴⁵" If in debates regarding the question of guilt, the rights of victims' representatives are still somewhat limited in relation to those of the defendant, these limits disappear completely in the proceedings phase where compensation for the wrong is pleaded. During this phase, a direct interrogation of the accused, the victims and experts by victims' advisers is possible.

International Criminal Bar

The International Criminal Bar will also be set up with the aim of helping not only defence lawyers but also legal representatives of the victims.

The setting up of a code of ethics for defence lawyers is also an extra means of protecting the victim's interests. The possibility of having remedy to condemnations for "offences against the administration of justice" in the case of the

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disclosure of information relating to fragile witnesses (article 70c of the ICC Statute) is also a huge step forward.

Compensation

Contrary to the ad hoc tribunals, the ICC and RPE Statute provide for a veritable compensation system for the victims. Article 75.2 of the Statute stipulates that "the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of victims, including restitution, compensation and rehabilitation". "Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79". The Court itself can therefore calculate the damages to be paid even if a specific request has not been made.

The Trust Fund will have a double role; it will first of all be an instrument at the ICC's disposal in order to carry out the orders of compensation and the confiscation and penalty measures decided by the Court. The Trust Fund will then in an autonomous manner use its own resources which come from the Assembly of States Parties (ASP) but also resources from voluntary contributions of countries, international organizations, non-government organizations and individuals. It was decided to place the Secretariat of the Trust Fund in the hands of the registry and its management in the hands of a subsidiary organ under the ASP's responsibility (the management council). This was in keeping with other trust funds such that of the United Nations Voluntary Fund for Victims of Torture and also for economic reasons.

The NGO members of the International Coalition participating in the victims' workgroup (of which the FIDH is a member) supported the entirety of this management method. However, the Group underlines the risk that management will in reality be taken over by the Registry on a daily basis which would be injurious to the autonomy of the Trust Fund for matters not under the Court's orders. During preparatory commissions' sessions for the ICC, the victims' workgroup proposed to appoint an Executive Director in charge of the daily management of the Trust Fund, under the responsibility of the management council. This proposition will be examined by the Council when it is set up.

Other important questions related to the Trust Fund need to be answered by the Management Council; the acceptance criteria for voluntary contributions, the different ways of using the Trust Fund and the forms of compensation and their beneficiaries. It is essential that the beneficiaries of the Trust Fund are not limited to victims participating in legal proceedings before the Court. The Trust Fund should be available to all victims of crimes under the Court's jurisdiction as well as to their families once the Prosecutor has opened an enquiry. Furthermore, in conformity with the principle of complementarity, victims of crimes within the Court's jurisdiction who were part of an enquiry or legal proceedings before the national tribunals of a state with jurisdiction at that time should also be considered as "victims of crimes under the Court's jurisdiction". Finally, in its use of the Trust Fund's resources, the Management Council should allocate certain sums to aid organisations, including inter-governmental, non-governmental, international and national organisations, for activities and projects which help victims and their families. All these questions obviously have a high financial cost as shown by the hesitancy of the delegations who tend to reduce its autonomy to an absolute minimum. This high cost was revealed during the latest States negotiations on the Trust Fund during the preparatory commissions.

The Statute of the ICC differentiates between the status of the victim and that of the witness. Victims become players, subjects of the international criminal law. This judicial move forward is essential for the ICC's credibility. If the establishment of responsibilities is of interest to the international community, justice must be done for the good of the victims.

Some attempts of Registrars and of the ICTR president to set up similar procedures clearly shows the current loopholes in international criminal law in relation to victims. Nevertheless, the problems linked to the need to reform the Statutes, to financial requirements and to the tribunal's mandate coming to an end, mean that it would be difficult to imagine that the role of victims before the ICTR could evolve, only if there is an improvement of protection measures for victims and witnesses.

42. Cf. Article 9.5 of the Covenant: 5. " Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

43. Cf. Article 14.1 of the Convention: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

44. Report by the independent expert Cherif Bassiouni appointed by the United Nations Human Rights Commission, E/CN.4/2000/62

45. The Rules of Procedure and Evidence expands on elements included in the Statute and draw up a procedure with a strong continental identity. Victims who want to expose their points of view and their worries send a written request to the registry, who sends it to the corresponding Chamber (art. 89 RPE). The victims can be represented individually or collectively by lawyers or other counsellors. They can take part in hearings/sessions and they receive a copy of documents used in proceedings from the registry.

5. Conclusions - recommendations

The tensions between Rwanda, the Rwandan victims' associations and the ICTR take place at two levels: criticism about the way the ICTR treats the witness-victims and the consequences this has on the collaboration of Rwanda and the Rwandan victims' associations with the ICTR.

Some criticisms of the victims' associations are founded. Others are exaggerated, even unfounded or concern aspects which cannot be reproached to the ICTR.

Victims' associations have tried for several months to draw the ICTR's attention to these problems but did not receive any answer and have therefore chosen to boycott the ICTR activities. Unfortunately, this may be even more prejudicial to the victims' interests, which they are supposed to defend.

The criticism formulated by the associations suit the Rwandan authorities, that used them. The role played by the authorities in this approach led to the paralysis of the ICTR, inter alia because of the formalities imposed upon the witnesses who want to travel to Arusha and the denigration of the tribunal with the international community. The Rwandan authorities openly express their opposition to the prosecution by the tribunal of some military personnel suspected of having perpetrated war crimes in 1994. These prosecutions are considered as an interference in the Rwandan justice system, even though they are clearly part of the ICTR mandate.

The ICTR has not always been available for the victims' associations; the FIDH considers that the establishment of official contacts with these associations would not undermine the independence of the tribunal.

The international community has lost interest in the ICTR, notably because of the lack of reliable information. The image of inefficiency and squandering still sticks to the ICTR, despite the efforts made during the last few years.

FIDH Recommendations to the ICTR:

1. To improve the image of the tribunal and the understanding of its functioning and its mandate

- to make more efforts in establishing a consistent and transparent dialogue on its work, on its possibilities and the limits of its action

- to establish a systematic dialogue with the associations of victims and to recognize their importance, as well as establishing clear rules of collaboration
- to encourage ICTR monitoring by Rwandan Human Rights Organizations
- to continue its constructive dialogue with the General Assembly and the Security Council of the United Nations
- to organize, when appropriate, the hearings or parts of the hearings in Rwanda, in order to make the justice of the ICTR more visible to the Rwandan population

2. To address victims-witnesses' concerns

- to give particular attention to the consequences of anonymity and explain them to witnesses appearing before the Court
- to ensure that the witnesses are treated with respect for their dignity during cross-examinations by using the possibilities foreseen by Articles 75c and 90 of the Rules of Procedure and Evidence
- to establish with the authorities of the State of nationality of the witnesses a realistic protection system, for the anonymous witnesses as well as others
- to accompany witnesses-victims by a psychologist who is specialized in traumatism, before, during and after their testimony
- to organize regular trainings on the treatment of traumas for the staff in contact with victims

FIDH Recommendations to the Rwandan authorities:

The Rwandan authorities have an essential responsibility in the current impasse. The FIDH therefore urges Rwanda to fully and unambiguously cooperate with the Tribunal, pursuant to its international obligation and, to recognize the jurisdiction of the Tribunal in investigating and prosecuting international crimes committed by the Rwandan Patriotic Front (RPF) in 1994, in conformity with the ICTR Statute.

- To recognize the need of the existence and the work of the ICTR as complementary to the Rwandan national justice
- To respect their international obligation of cooperation with the ICTR, in the genocide cases as well as the war crimes cases
- To defend and encourage justice for all victims of crimes committed in 1994, including those committed by the RPF

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- To fully cooperate with the ICTR to ensure the protection of victims who witnessed in Arusha

FIDH Recommendations to the victims' associations:

- The victim's associations should aim exclusively at defending the victim's interests, this entails that they should, independently, take on a role of accompaniment and support towards them and should formulate constructive criticisms vis-à-vis the Tribunal instead of the at times quite excessive reproaches.
- To help the victims to understand the mandate of the ICTR and its limits and to support them in their demarches as witnesses
- To formulate relevant and constructive criticisms vis-à-vis the ICTR
- To establish a constructive dialogue with all the bodies of the ICTR, with the Rwandan authorities and with the international community, which will allow to draw the attention on the problems faced by the victims

FIDH Recommendations to the human rights associations and their donors:

Human Rights NGOs should organize a more systematic monitoring of the ICTR work. They should give special care to the situation of victims and other persons who appeared as witnesses before the ICTR or who collaborates with the ICTR as well as analyze the impact of the ICTR on the Rwandan society, notably on peaceful cohabitation.

FIDH Recommendations to the international community, and especially to Rwanda donors countries:

- To follow the work of the ICTR carefully and reiterate firm political support to the ICTR
- To give the ICTR Trust Fund the financial means so that it can organize the necessary activities
- To make its work better known and better understood by the Rwandan society and by the international community
- To provide for a system of compensation of Rwandan victims of crimes of international humanitarian law.

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Annex I : Persons met by the chargés de mission

ICTR:

Silvana Arbia, Senior trial attorney, Prosecutor office
David Chapell, Protection officer, Witness and Victims Support Section - Prosecution
Roland Kouassi Géro Amoussouga, Chief of the Witness and Victims Support Sections - Defence
Pavel Dolenc, judge, Chamber III
Etienne Hakezimina, assistant in the Witness and Victims Support Section - Prosecution
Tom Kennedy, Chief of the press and public relations
Lovemore Green Munio, assistant of the registrar
Kingsley Moghalu, special assistant of the registrar and spokesman of the ICTR
Nieves Molina-Clemente, legal assistant of the registrar
Laurent Walpen, Chief of the investigation of the ICTR
Aïcha Condé, lawyer at the Paris Bar, defence lawyer
Thierry Cruvellier, journalist of *Diplomatie Judiciaire*, based in Arusha
The registrar of the ICTR, Adama Dieng, was contacted in writing at the end of the mission as he was not in Arusha at the end of July

Rwandan authorities

Simon Rwagasore, President of the Supreme Court
Jean de Dieu Mucyo, Minister of Justice
Gasana Ndobu, President, National Human Rights Commission
Andrew Rwigamba, military listener at the Military Court

Diplomatic missions

Sue Hogwood, United Kingdom Ambassador
Gerard Howe, First Secretary in the United Kingdom Embassy
Jeremy Lester, Chief of Delegation, European Commission
Marc Wildermuth, Political Officer, United States Embassy
Jeroen de Lange, First Secretary in the Netherlands Embassy
Erwin De Wandel, Assistant to the Belgian Cooperation
Maria Farrar-Hockley, Program Officer, European Commission

Rwandan organisations

Antoine Mugesera, President, Ibuka
Anastase Nabahire, Executive Secretary, Ibuka
Benoît Kabiye, Chief Justice Department, Ibuka
Philbert Gakwenshire, Chief Memory and Documentation Department, Ibuka
Joseph Nsengimana, Legal Representative, ASRG-Mpore
Francine Rutazana, Coordinator, ASRG-Mpore
Consolée Mukanyiligira, Coordinator, Avega
Silas Sinyigaya, Executive Secretary, Cladho
Jean-Paul Biramvy, President, Liprodhor
Aloys Habimana, Program Officer, Liprodhor
Berthilde Mujawayezu, Permanent Secretary, ADL
Camerade Juste, Coordinator, Kanyarwanda
Kamunu Sibomana Papy, Project Officer, ARDHO
Rose Mukantabana, Executive Secretary, Haguruka

International Organisations

Lars Waldorf, Human Rights Watch Representative

Persons who testified for the Prosecutor Office in the ICTR

Thomas Kamilindi, non protected witness
Six protected witnesses

Annex II : Press release of Ibuka and Avega, March 1st,2001

COMMUNIQUE DE PRESSE

Concerne : Nos relations avec le Tribunal Pénal
International pour le Rwanda

L'Association IBUKA et les associations membres ayant décidé de suspendre toute relation avec le Tribunal Pénal International pour Rwanda chargé de juger le crime de génocide et d'autres crimes contre l'humanité commis au Rwanda en 1994, il importe de rappeler les raisons de cette suspension et de clarifier les conditions de reprise des relations normales.

Comme peuvent le reconnaître les responsables de ce Tribunal, nous lui avons apporté notre collaboration chaque fois que de besoin, dans la mesure de nos moyens, dans tous les travaux d'enquête dans lesquels ses services ont sollicité notre assistance et nous avons déploré à plus d'une reprise les erreurs de fond et de procédure qui se sont observées, que ce soit dans le chef des agents de la Cour, que ce soit dans celui des Avocats de la défense auprès de cette même instance, en espérant que ces erreurs allaient être corrigées le plus rapidement possible.

A plusieurs occasions, nous avons protesté tantôt par des lettres ouvertes aux différentes autorités de la Cour, tantôt par des manifestations pacifiques, ou par des rencontres et échanges avec ses représentants en vue de proposer des améliorations etc.

Nous sommes aujourd'hui au regret de constater que, loin d'améliorer son éthique, ses méthodes et son fonctionnement, le Tribunal Pénal International pour le Rwanda se caractérise par une négation totale des intérêts de la victime, lesquels intérêts font pourtant partie intégrante des objectifs d'une justice saine et équitable.

Pour illustrer cette négation, nous citerons à titre d'exemple :

- l'engagement comme enquêteurs au TPIR des personnes impliquées directement dans le génocide ;
- l'engagement comme enquêteurs de la défense des personnes ayant des relations familiales et parentales directes avec les présumés auteurs du génocide ;
- la mise en insécurité des témoins à charge à Arusha et après déposition de leurs témoignages ;
- la persécution et le harcèlement des témoins à charge, principalement des dames, en provenance du Rwanda ;
- l'incrimination de l'Association IBUKA et de ses Associations membres et leur qualification de groupements de délateurs par des Avocats de la défense en présence de Juges du Tribunal ;
- la non représentativité des rescapés aux procès en cours à Arusha ;
- le fait que des lettres de menaces émanant des prisonniers d'Arusha à l'adresse de ceux qui ont témoigné contre eux se font de plus en plus multiples ;
- le fait que les copies des dépositions des témoins à charge mentionnant leurs noms reviennent dans les familles des présumés auteurs du génocide emprisonnés à Arusha et déclenchent un mouvement de menaces sérieuses et de persécution contre les

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témoins si bien que certains parmi eux ont actuellement été obligés d'abandonner leurs foyers et d'errer ici et là ;

- le fait que les survivants du génocide n'ont pas le droit d'exercer l'action civile auprès du TPIR ni le droit à une assistance et une protection physique et psychologique en tant que témoins vulnérables pour certains, tels les infirmes et les personnes qui ont été inoculées du VIH-SIDA comme arme du génocide, alors que leurs bourreaux bénéficient des traitements spéciaux et appropriés à Arusha ;
- etc .

Nous nous tenons à la disposition de toute personne intéressée pour lui fournir de plus amples détails sur chacune de ces allégations.

Trouvant qu'aussi longtemps que toutes ces anomalies ne seront pas corrigées, les décisions qui seront prises par cette Cour ne constitueront qu'un pis aller et une moquerie à l'égard des victimes du génocide en lieu et place d'une véritable justice ;

Trouvant également qu'aussi longtemps que le corps des enquêteurs et avocats de la défense ne sera constituée que par des personnes manifestement déterminées à désorienter la cour ou à nier le génocide, les décisions du T.P.I.R. seront loin de la Justice pour laquelle la Communauté Internationale s'est tant investie;

Nous avons pris l'opinion tant nationale qu'internationale à témoin, l'appelant à se lever comme un seul homme et à se joindre à nous pour condamner énergiquement cette façon d'abuser de la bonne foi des victimes du génocide et de les humilier devant l'instance internationale qui, par nature, devrait les remettre dans leurs droits.

Nous avons également demandé à l'Organisation des Nations Unies de suivre de très près le travail de ce tribunal et de prendre des mesures qui s'imposent à l'encontre de tous ceux qui, parmi les juges, les enquêteurs et le personnel d'appui du TPIR utilisent des méthodes qui discréditent ce tribunal et le mettent dans le risque de rater sa mission si il ne se remet pas en cause en temps utile.

Nous avons enfin adressé à ce Tribunal International un certain nombre de conditions faute desquelles notre collaboration avec lui restera suspendue. Ces conditions sont les suivantes :

1. Que le Tribunal Pénal International pour le Rwanda prenne des mesures sévères à savoir le renvoi immédiat et l'engagement de poursuites judiciaires contre tous ses agents qui ont une implication personnelle dans le génocide ou qui sont en relations familiales directes ou indirectes avec les présumés auteurs du génocide poursuivis par le TPIR. et qu'il revoie tous les dossiers dans lesquels des présumés génocidaires ont été impliqués comme enquêteurs ;
2. Que le TPIR renforce les mesures de protection de la sécurité des témoins qui vont à Arusha en procédant notamment :
 - Au remplacement des agents qui ont le service de protection des témoins à charge car ils se montrent inefficaces.

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- A l'octroi des moyens nécessaires aux associations de défense des survivants du génocide, afin qu'elles établissent elles-mêmes à Arusha comme à Kigali un bureau d'accueil, d'orientation et de protection des témoins, tout le long de leur passage jusqu'à leur retour.
- Au déménagement des services du greffe et des chambres de première instance du TPIR d'Arusha à Kigali, pour que les témoins du génocide soient à l'aise dans leurs dépositions et que le peuple rwandais suive de près les jugements de ceux qui ont endeuillé le pays.

3. A propos d'IBUKA a.s.b.l. et de ses associations membres:

Nos organisations ont été qualifiées et ce, à plusieurs reprises, de «syndicats de délateurs» par les avocats de la défense dans des affaires qui n'avaient rien à voir avec elles, à l'écoute attentive des juges et sans provoquer aucune réaction de leur part.

Nous exigeons que de pareilles allégations soient à la prochaine suivies avec attention et empêchées en temps utile, ou que l'occasion d'intervenir soit accordée à nos organisations chaque fois qu'elle seront évoquées dans un procès afin d'assurer leur défense.

4. Que les juges du TPIR cessent de pécher par omission en laissant les avocats de la défense dépasser les limites jusqu'à agresser et à humilier les témoins à charge comme lors de la triste expérience du témoin T.A.
5. Que le TPIR prenne toutes les mesures qui s'imposent contre les juges et les avocats coupables de harcèlement et d'humiliation du témoin T.A. dans le procès dit de BUTARE.
6. Que le TPIR revoie ses procédures de manière à accorder aux survivants du génocide une place dans ses procès ainsi qu'une protection physique et psychologique aux témoins à charge.

Voilà, les doléances des membres de nos organisations et les conditions de reprise de notre collaboration avec le Tribunal Pénal International pour le Rwanda que nous portons à votre connaissance.

Fait à Kigali, le 01.03.2002

Dancilla MUKANDOLI
Présidente de AVEGA-Agahozo

Antoine MUGESERA
Président de IBUKA

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Annex III : Joint Ibuka and Avega letter, March 6th, 2002

IBUKA A.S.B.L. B.P.625 KIGALI TEL/FAX 576446
E-mail : ibukitsembabwoko@hotmail.com

Kigali, le 06 Mars 2002

N/Réf.N° 044 /NA/MP/02

Son Excellence Monsieur le Greffier Général du Tribunal
Pénal International pour le Rwanda (TPIR)

S/C : Monsieur le Ministre des Affaires Étrangères et
de la Coopération Régionale
Kigali

Amb. Joseph MUTABAZI
Secrétaire Général



Concerne : Nos relations avec le Tribunal Pénal
International pour le Rwanda
basé à Arusha en Tanzanie

Excellence Monsieur le Greffier Général,

Nous avons l'honneur de rappeler à votre attention que, comme précisé lors de notre entretien du 27 janvier 2002, les pratiques et méthodes qui caractérisent le greffe du TPIR et qui vont fondamentalement à l'encontre des intérêts des victimes sont parmi les principales raisons de la suspension de notre collaboration avec le TPIR et partant les correctifs que nous avons présentés constituent des préalables à toute reprise de relations normales que nous souhaitons tous.

Nous sommes étonnés que vous ayez affirmé à plusieurs reprises que nous n'avons pas donné les preuves de nos affirmations, alors que vous détenez vous mêmes ces preuves comme nous le montrons ci-après :

1° En effet, il n'appartient pas à nos associations d'anticiper sur les intentions du greffe de recruter des enquêteurs et de lui donner les preuves de leur implication dans le génocide. Il est tout simplement de rigueur qu'avant de recruter ces enquêteurs le greffe prenne la précaution élémentaire de s'enquérir des poursuites à leur endroit, de leur casier judiciaire et de leurs relations familiales avec les détenus. De même, nous ne voyons pas quelle preuve supplémentaire vous attendez pour revoir les dossiers dans lesquels ont été impliqués comme enquêteurs des personnes poursuivies pour crime de génocide que vous avez licenciées et dont certains ont été même arrêtées à l'instar du fameux BIROTO, Joseph NZABIRINDA et bien d'autres.

Nous vous donnons en annexe n° 2 un échantillon illustratif de quelques cas d'enquêteurs poursuivis pour crime de génocide ou proches parents de prévenus au profit desquels ils enquêtent.

2° Il est devenu courant que ces personnes non neutres ou présumés coupables de crime de génocide qui œuvrent au sein du TPIR diffusent les informations normalement couvertes par le secret professionnel et les transmettent aux prévenus et à leurs membres de famille qui, dans bien des cas, menacent la sécurité des témoins. Les dépositions des témoins à charge sortent du TPIR et sont diffusées en particulier dans les cercles des familles des accusés.

L'exemple récent des témoins dans l'affaire KAJERJERI qui ont dû se réfugier à Kigali après les menaces ouvertes dont ils ont fait l'objet après leur retour d'ARUSHA est bien connu de vos services à Kigali.

Ces témoins actuellement menacés errent aujourd'hui sans moyen de subsistance, sans toit, ... et les informations qui sont à la base de leur insécurité ne sont sorties que de vos services qui par ailleurs leur refusent toute protection contre l'insécurité qu'ils leur ont causée.

Un témoin dont nous taisons le nom qui pourrait vous être confidentiellement communiqué a reçu de George RUTAGANDA une lettre de menaces relatant tous les faits contenus dans son témoignage contre ce dernier. Ce cas démontre que non seulement vos services sont coupables de fuite d'informations, mais qu'en plus certains membres de votre personnel sont complices des détenus dans la diffusion des témoignages, dans la profération des menaces et probablement dans la mise en exécution de ces menaces.

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3° Alors que les prévenus et condamnés bénéficient de soins et d'attention du TPIR, vous n'avez besoin d'aucune preuve de notre part pour savoir que ces mêmes soins sont refusés par vos services aux victimes qui meurent chaque jour des suites des sévices causés par les génocidaires que vous entretenez à grands frais. Dans les affaires AKAYESU, RUTAGANDA et NTAHOBARI les témoins déjà décédés par manque de soin ne se comptent plus tandis que ceux qui leur ont donné la mort au grand jour sont entretenus et soignés par vos services.

4° Foulant aux pieds les règles déontologiques les plus élémentaires voulant que le contact avec des témoins traumatisés et hautement sensibles s'entoure de précautions destinées à ce que leur intégrité morale et psychologique ne soit pas outre mesure affectée par le rappel des circonstances de leur martyre, les avocats de la défense et leurs enquêteurs se caractérisent par des pratiques de déstabilisation mentale en refaisant revivre aux victimes les moments les plus horribles de leur cauchemar sous le prétexte cynique de rechercher des contradictions dans leurs dépositions, comme dans les enquêtes usuelles sur des cas « mystérieux ». Est-il utile de rappeler que les tueries, viols et pillages se sont faits au grand jour et que ces femmes violées torturées portent toujours les traces physiques et psychiques de leur souffrance pour lesquelles aucune personne de bonne foi ne poserait des questions traumatisantes et non nécessaires à la connaissance de la vérité?

A l'instar du témoin T.A., plusieurs femmes violées qui ont eu à témoigner sur les crimes dont elles ont été victimes ont subi de la part des enquêteurs les mêmes interrogatoires destinés à les traumatiser davantage. telles madame Rose BURIZIHIZA, Immaculée UWAYEZU et bien d'autres. Certaines d'entre elles qui, comme le témoin T.A. ont été soumises à de tels interrogatoires, ont subi des tels chocs que leur équilibre psychologique en a été affecté et qu'elles ont dû être conduites dans des centres spécialisés, sans assistance du TPIR bien entendu.

5° Enfin et pour clôturer cette liste de cas illustratifs et malheureusement non exhaustifs, nous rappelons que plusieurs témoins réclament en vain des dédommagements pour manque à gagner pourtant promis par vos services. Nous joignons un échantillon illustratif de cas bien connus et sans aucune suite de la part du greffe que vous dirigez.

Même si les preuves abondent dans vos propres dossiers, pour toutes ces situations nous annexons à la présente un mémorandum d'échantillons représentatifs qui permettront également à tous ceux qui nous lisent en copie de mesurer la gravité et l'ampleur du problème causé par les pratiques et méthodes du greffe du TPIR et qui menacent les intérêts des victimes en général et leur intégrité physique et morale en particulier.

Nous rappelons encore une fois que, tant que ces pratiques ne seront pas corrigées, notre collaboration avec le TPIR restera suspendue.

Dancilla MUKANDOLWA
Présidente d'AVEGA



Antoine MUGESERA
Président d'IBUKA



Copie pour information

- Monsieur le Président du Conseil de Sécurité de l'ONU
- Monsieur le Secrétaire Général de l'ONU
- Ministre de la Justice et des Relations Institutionnelles à Kigali
- Mesdames et Messieurs les Représentants des Missions Diplomatiques et consulaires accrédités au Rwanda
- Madame la Présidente du TPIR
- Madame le Procureur Général du TPIR
- Monsieur le Procureur Général près la Cour Suprême à Kigali

Documents joints

1. Communiqué de presse d'IBUKA et AVEGA du 01.03.2002
2. Mémorandum d'IBUKA et AVEGA sur les problèmes relevés
3. Cas du Dr HITIMANA Léonard
4. Cas des témoins de Ruhengeri
5. Cas du témoin RANGIRA Adrien
6. Cas du témoin ABE

Annex IV : Ibuka press release, June 17th, 2002

COMMUNIQUE DE PRESSE

En date du 24/01/2002, à la demande des victimes du génocide, les associations IBUKA et AVEGA, en collaboration avec toutes les associations de défense des droits des rescapés du génocide ont annoncé officiellement la suspension de leur coopération avec le T.P.I.R pour diverses raisons clairement expliquées.

Le 01 Mars au cours d'une conférence à laquelle avait été conviée la presse tant nationale qu'internationale, les dites raisons ont été expliquées en détail et le public a pu en mesurer la gravité.

Nous citerons à titre d'exemple:

- L'engagement comme enquêteurs au T.P.I.R de personnes poursuivies pour crime de génocide et / ou membres de famille des prévenus pour le compte desquels ils enquêtent,
- La divulgation quasi systématique de témoignages confidentiels et la mise en insécurité des témoins pourtant dit « protégés »,
- Le refus par le T.P.I.R d'accorder la moindre assistance à ces témoins menacés par sa faute,
- Le refus par le T.P.I.R de prendre en charge les soins de santé des témoins porteurs de séquelles graves pendant que les auteurs des sévices à la base de ces séquelles sont soignés par le T.P.I.R,
- Le refus par le T.P.I.R, malgré ses promesses, d'indemniser les témoins pour frais encourus et manque à gagner lors de leur séjour à Arusha,
- Le harcèlement et l'humiliation de témoins vulnérables, surtout des femmes victimes de viols, tant de la part des enquêteurs que de la part des avocats de la défense, et souvent en présence des juges,
- etc.

Plus récemment, le monde entier a été stupéfait d'apprendre que le procès BAGOSORA et crts était ajourné au motif que les pièces des dossiers n'avaient pas été communiquées aux accusés.

amener à lui faire confiance et à lui prêter notre concours.

En date du 30 Février 2002, nous avons reçu de Mr ADAMA DIENG, greffier du T.P.I.R, au cours d'une audience qu'il nous a accordée la promesse que toutes ces questions allaient être examinées et qu'une suite nous serait communiquée au plus tôt.

Au lieu de cela, notre surprise a été grande d'entendre cette personnalité déclarer à la presse à plusieurs reprises qu'aucune preuve de nos allégations ne lui avait été fournie.

Face à cette mauvaise foi avérée, nous avons le 06/03/2002 retransmis à Mr Adama Dieng toutes nos doléances argumentées et documentées, en prenant à témoin toute la communauté internationale dont les représentants au niveau le plus élevé ont été mis en copie.

N'ayant jusqu'ici reçu d'autre réponse que le silence le plus méprisant, et pour éviter que le T.P.I.R dans lequel la communauté internationale a placé tant d'espoir ne serve qu'à victimiser davantage les victimes du génocide, nous lançons un appel solennel à toute personne éprise de justice et de paix à joindre sa voix à la nôtre pour exiger des changements radicaux et amener le T.P.I.R à se mettre véritablement au service de la justice.

Fait à Kigali, le 17 Juin 2002

Annex V : Statement of the “associations des rescapés du génocide”

Depuis le mois de Janvier 2002, les Associations de défense des droits des rescapés du génocide ont annoncé officiellement la suspension de leur coopération avec le T.P.I.R.. Les raisons ont été clairement expliquées et un dossier largement argumenté a été transmis au Greffier Principal du T.P.I.R. en mars de cette Année avec copies à toutes les Hautes Autorités du Tribunal.

Le Greffier Principal n'a pas daigné réagir. La Présidente du Tribunal, Madame Pillay n'a pas daigné répondre. Madame le Procureur Général du Tribunal CARLA Del Ponte n'a rien fait non plus. Ce silence, qui dure depuis trois mois est inacceptable. Nous sommes déterminés à ce que ce TRIBUNAL ne fasse pas semblant d'ignorer nos réclamations car ce silence est une autre forme de mépris à l'égard des victimes du génocide.

Le T.P.I.R. n'a pas répondu non seulement à nos attentes mais même à celles de tout le peuple rwandais. Il est devenu de plus en plus clair que le Tribunal d'Arusha a failli à sa mission première qui était de faire le droit, de participer à la réconciliation du peuple rwandais et à la lutte contre l'impunité.

Le Tribunal emploie des enquêteurs impliqués directement dans le génocide. Il emploie des enquêteurs de la défense ayant des relations familiales et directes avec les présumés auteurs du génocide.

Le Tribunal emploie des magistrats caractérisés par l'incompétence, l'irresponsabilité et l'absentéisme flagrants.

Le Tribunal emploie des Avocats versés dans la corruption qui partagent leurs honoraires avec les présumés génocidaires ou leurs familles. Le Tribunal est devenu une inépuisable source malsaine d'enrichissement illicite et de corruption.

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Le Tribunal d'Arusha emploie des juges, des avocats et des enquêteurs caractérisés par un négationnisme et un révisionnisme exacerbés.

Les lenteurs dans les jugements, le manque de volonté manifeste de remplir correctement leur devoir de juges ou d'avocats, les traitements dégradants et humiliants infligés aux témoins à charge montrent bien que ce Tribunal est au service du négationnisme et du révisionnisme. Au lieu de défendre les victimes, le T.P.I.R. est devenu le lit confortable des criminels.

Les criminels à Arusha sont écoutés, bien traités, nourris et soignés tandis que leurs victimes n'y ont pas de voix, ne bénéficient d'aucune assistance ni d'aucuns soins de santé. Plus grave, le Tribunal n'a pas envisagé d'accorder aucune indemnisation aux victimes et ces dernières ne reçoivent pas aucune autre forme d'assistance. Elles sont purement et simplement abandonnées à leur sort.

Le Tribunal d'Arusha fait de plus en plus une amalgame délibérée entre les victimes et les bourreaux. Il sème la confusion dans les esprits. Comme tout négationniste, le Tribunal s'oriente vers l'idée du « double génocide » au Rwanda. C'est une tentative consciente et délibérée de torpiller les efforts de reconstruction du pays et de réconciliation du peuple rwandais. Il apparaît de plus en plus que le Tribunal d'ARUSHA a un mandat caché de déstabiliser notre pays et ses institutions.

Avec de telles visées, il est clair que le Tribunal, à son tour, ne méritera plus la confiance du peuple rwandais. C'est pourquoi, nous demandons à ce même peuple, au gouvernement rwandais et à la Communauté Internationale de dénoncer haut et fort les pratiques, le mauvais fonctionnement et les visées inacceptables du Tribunal Pénal International d'Arusha.

Pour le collectif des Associations des
rescapés du génocide :

IBUKA



**Annex VI : Letter of the President Pillay to the Secretary General of the UN,
November 9th, 2000, S/2000/1198**

Nations Unies

S/2000/1098



Conseil de sécurité

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**Lettre datée du 9 novembre 2000, adressée au Président
du Conseil de sécurité par le Secrétaire général**

Comme vous le savez, nous fournissons depuis déjà quelque temps un appui au processus d'Arusha relatif aux négociations de paix sur le Burundi. Un accord de paix a été signé le 28 août 2000, mais les négociations se poursuivent sur un certain nombre de questions clefs. Une réunion concernant les points en suspens devrait avoir lieu à Arusha vers la fin du mois et une conférence réunissant les donateurs est prévue les 11 et 12 décembre à Paris afin de mobiliser l'appui nécessaire à l'application de l'accord. J'ai donc décidé de prolonger jusqu'au 31 janvier 2001 le contrat de M. Ayite J. C. Kpakpo, Conseiller principal auprès du Médiateur.

Je vous serais reconnaissant de bien vouloir porter ce fait à l'attention des membres du Conseil de sécurité.

(Signé) Kofi A. **Annan**

Annex VII : Letter of July 26th, 2002, addressed to the President of the Security Council by the permanent representative of Rwanda in the UN, S/2002/842



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Annexe de la lettre datée du 26 juillet 2002, adressée au Président du Conseil de sécurité par le Représentant permanent du Rwanda auprès de l'Organisation des Nations Unies

Réponse du Gouvernement rwandais au rapport présenté par le Procureur du Tribunal international pour le Rwanda au Conseil de sécurité

Le rapport présenté par le Procureur du Tribunal international pour le Rwanda au Conseil de sécurité le 23 juillet 2002 est venu à la connaissance du Gouvernement rwandais.

Le Gouvernement rwandais déclare que le Tribunal doit faire face à une crise, une crise imputable à une mauvaise gestion, à l'incompétence et à la corruption et pour laquelle le Tribunal ne peut s'en prendre qu'à lui-même. Le Gouvernement rwandais entend déjouer la tentative du Procureur d'imputer la crise au Rwanda et non au Tribunal lui-même.

Eu égard aux accusations non fondées et aux déformations délibérées contenues dans le rapport, le Gouvernement rwandais se voit dans l'obligation d'apporter les réponses ci-après.

Première partie :
Réponse aux allégations spécifiques du Procureur

1.1 Les survivants du génocide auraient été incités, pressions à l'appui, à boycotter le Tribunal

Le Procureur soutient que le Gouvernement rwandais est responsable du fait que les témoins ne se présentent pas devant le Tribunal.

Le Gouvernement rwandais est au courant que, depuis un certain temps, des témoins, dont la plupart sont des survivants du génocide, boycottent le Tribunal, auquel ils reprochent notamment la lenteur des procès, la façon dont les témoins sont traités et le fait qu'il se trouve, parmi les fonctionnaires du Tribunal, des personnes soupçonnées d'avoir participé au génocide.

Le Gouvernement rwandais considère que ces griefs faits au Tribunal sont légitimes et bien fondés. Tout comme les survivants du génocide, il ne laisse, depuis plus de cinq ans, de faire état de ces questions auprès des responsables du Tribunal.

Le Gouvernement rwandais déplore qu'on laisse entendre qu'il aurait en quelque sorte incité, voire contraint les survivants du génocide à boycotter le Tribunal, cette insinuation étant non seulement injuste, mais également fautive. Depuis 1994, les survivants rwandais du génocide ont créé un certain nombre d'organisations qui sont reconnues par la loi, dont les dirigeants élus sont reconnus et qui agissent en toute indépendance, comme le ferait tout autre groupe déployant des activités de plaidoyer, en prenant fait et cause pour leurs membres dans le plein respect de la légalité. En réalité, le Gouvernement rwandais essuie lui-même souvent leurs critiques, par exemple lorsque des personnes soupçonnées de génocide sont acquittées ou mises en liberté, eu égard à leur jeune âge ou à leur âge avancé ou encore au fait qu'elles sont atteintes d'une maladie incurable, ou lorsque le

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gouvernement a proposé de substituer aux procès devant des tribunaux ordinaires la procédure judiciaire de la Gacaca. En réponse à ces critiques, le Gouvernement rwandais a noué un dialogue constructif.

Contrairement à ce qui s'est passé avec le Tribunal international pour la Yougoslavie dont les responsables ont noué un véritable dialogue avec les organisations représentant les témoins, l'attitude du Tribunal à l'égard des survivants du génocide peut être qualifiée d'arrogante, et il n'est pas rare que ces survivants soient tout simplement ignorés. Les responsables du Tribunal, y compris le Procureur, n'ont accepté qu'à une date récente de rencontrer les dirigeants de ces organisations et de discuter avec elles.

Le Procureur ne peut soutenir en toute bonne foi que le Gouvernement et les organisations représentant les survivants du génocide ont partie liée. Le Gouvernement rwandais a transmis les documents émanant de ces organisations au Tribunal en vue de faciliter le dialogue, conformément à la demande formulée expressément par le Greffier lors d'une réunion tenue avec celui-ci à Kigali en mars 2002.

En mars 2002, un accord a été conclu entre le Gouvernement rwandais, représenté par le Ministre de la justice, et le Tribunal, représenté par le Greffier, à l'effet de créer une commission mixte chargée d'enquêter sur les allégations concernant la façon dont les témoins sont traités et le recrutement de fonctionnaires du Tribunal parmi les personnes soupçonnées de génocide, et de faire des recommandations. Malheureusement, le Greffier a retiré unilatéralement l'offre de constituer cette commission mixte. Le Gouvernement rwandais est en désaccord total avec le Procureur lorsque celui-ci affirme que l'initiative de proposer la création d'une commission mixte est venue du Greffier et lorsqu'il laisse entendre que le Gouvernement rwandais aurait en quelque sorte fait capoter cette initiative.

À la fin de juin 2002, le Greffier et le Procureur du Tribunal se sont rendus ensemble à Kigali et ont examiné avec les fonctionnaires compétents la façon de mettre un terme aux difficultés susvisées. Le Greffier et le Procureur se sont engagés à mettre sur pied sans retard des négociations entre le Gouvernement et le Tribunal pour régler les questions en suspens. À ce jour, ni le Greffier ni le Procureur n'ont pris langue avec le Gouvernement rwandais en ce qui concerne les négociations proposées. Au lieu de cela, les responsables du Tribunal ont décidé, comme un seul homme, de prendre des vacances, sans se soucier de la crise, née de l'indisponibilité des témoins, pour tenter de la régler.

Il est faux de prétendre que le Gouvernement rwandais assume en tout état de cause la responsabilité du problème causé par le refus des témoins de venir déposer à Arusha.

1.2 Refus de procéder au transfèrement de témoins détenus

Le Procureur soutient à tort que le Gouvernement aurait refusé d'accéder à la demande du Tribunal tendant au transfèrement de témoins détenus. Saisi récemment d'une telle demande, le Gouvernement a répondu par écrit qu'il n'était pas possible de procéder au transfèrement des témoins visés au moment indiqué par le Tribunal, parce qu'ils devaient être entendus dans le cadre d'une procédure de Gacaca, qui venait de commencer. Le Gouvernement a tenu à préciser au Procureur en personne

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que ces témoins détenus pourraient être transférés ultérieurement, à une date à convenir entre le Gouvernement et le Bureau du Procureur.

1.3 Documents de voyage à délivrer aux témoins du Tribunal

Dernièrement, le Tribunal a tenté, dans le cadre d'une campagne de désinformation, d'attribuer l'indisponibilité de témoins à charge à de nouvelles conditions mises à la délivrance de documents de voyage. Le Gouvernement rwandais tient à réfuter cette allégation en précisant qu'aucune condition spéciale ne s'applique aux témoins appelés à déposer devant le Tribunal. Précédemment, des documents de voyage étaient délivrés à ces témoins au vu d'une lettre du Tribunal contenant uniquement le nom du témoin, sans autre précision. À présent, les témoins du Tribunal sont tenus de produire à l'appui d'une demande de documents de voyage les mêmes documents que ceux exigés de tous ceux qui demandent des documents de voyage du Rwanda, à savoir :

- 1) Un formulaire de demande dûment complété;
- 2) Une photographie;
- 3) Une photocopie de la carte d'identité;
- 4) Une déclaration du Procureur attestant que l'intéressé n'est pas traduit devant une autre juridiction pénale.

De telles exigences n'ont absolument rien de déraisonnable. On ne saurait demander à un gouvernement souverain de délivrer des documents de voyage à des personnes dont l'identité n'est pas clairement établie.

Il a été signalé plus d'une fois au Gouvernement que des témoins étaient décédés dans des circonstances inexplicables après avoir déposé devant le Tribunal. Il a également été signalé que des fonctionnaires du Tribunal s'étaient secrètement entendus à l'amiable avec les proches de témoins décédés pour tenter de dissimuler ces décès¹. Le Gouvernement rwandais ne laisse pas d'être gravement préoccupé par le fait que des témoins appelés à déposer devant le Tribunal sont ainsi ciblés. Les nouvelles conditions mises à la délivrance de documents de voyage doivent permettre aux autorités rwandaises de veiller à ce que les témoins bénéficient d'un meilleur traitement et d'une meilleure protection avant, pendant et après leur déposition à la barre. Le Gouvernement ne peut assurer la protection de témoins ayant déposé à Arusha sans posséder tous les renseignements permettant d'établir l'identité de ceux-ci.

Le Gouvernement rwandais est disposé à convenir avec le Tribunal, et à la satisfaction des deux parties, des conditions de délivrance de pareils documents.

1.4 Refus de donner accès à des dossiers officiels

Il est tout aussi faux d'affirmer que le Gouvernement rwandais aurait délibérément refusé de fournir des renseignements consignés dans des dossiers officiels. Il est exact que le Tribunal a présenté une telle demande, mais en exigeant qu'il y soit satisfait dans les plus brefs délais. Nul ne peut ignorer que des bâtiments officiels ont été mis à sac ou détruits pendant la guerre et le génocide de 1994. À

¹ À titre d'exemple, on peut invoquer le cas du décès récent d'un témoin ayant déposé dans l'affaire Kamuhanda.

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cette occasion, nombre de dossiers officiels ont été détruits ou déplacés. Il faut laisser au Gouvernement le temps nécessaire pour parcourir les dossiers existants et vérifier s'ils contiennent les renseignements demandés par le Bureau du Procureur. L'allégation selon laquelle le Gouvernement rwandais refuserait délibérément de communiquer des renseignements devant permettre au Procureur de soutenir l'accusation contre les personnes jugées par le Tribunal est dénuée de tout fondement.

1.5 Refus de coopérer à des enquêtes portant sur les violations des droits de l'homme commises par l'APR en 1994

La justice pénale internationale doit garantir qu'il soit fait droit à l'obligation de rendre des comptes en l'absence d'un État capable et désireux de traduire en justice les auteurs de violations des droits de l'homme. Le Rwanda possède un système judiciaire qui fonctionne et est reconnu par le Statut du Tribunal. Les juridictions nationales rwandaises ont déjà jugé des membres de l'APR ayant commis de telles violations et prononcé à leur encontre des peines, y compris la peine de mort.

Le Gouvernement rwandais estime que les violations commises par l'APR ne peuvent être assimilées aux crimes commis par les auteurs du génocide. L'APR a mis un terme au génocide en cours au Rwanda. Elle a rétabli la paix dans le pays. Elle continue à défendre le Rwanda contre ceux qui ont commis le génocide dans la région. Aux yeux du Gouvernement rwandais, les poursuites à caractère politique engagées par le Tribunal contre des membres de l'APR ne sont pas de nature à ramener la stabilité et à favoriser la réconciliation nationale au Rwanda.

Le Procureur n'a pas caché au Gouvernement rwandais que les poursuites engagées contre l'APR l'étaient en raison des pressions exercées par certains États, la mise en accusation proposée de membres de l'APR ayant pour seul objet, semble-t-il, de calmer les tenants d'une prétendue « justice ethniquement équilibrée » et du révisionnisme.

Le Gouvernement rwandais se défend avec la dernière énergie de s'être immiscé de quelque façon que ce soit dans les enquêtes que mène le Procureur concernant des violations des droits de l'homme qui auraient été commises par des membres de l'APR en 1994.

Le Gouvernement rwandais a respecté scrupuleusement l'indépendance du Procureur et s'est gardé de toute immixtion dans les enquêtes. Le Procureur dispose depuis 1995 d'un bureau ayant des enquêteurs au Rwanda, en particulier ce qu'il est convenu d'appeler « l'équipe spéciale d'enquêteurs » chargée d'enquêter sur les violations que l'APR aurait commises. Le Gouvernement a délivré des visas et des permis de séjour aux membres de cette équipe qu'il connaît bien et qui peuvent se déplacer partout sur le territoire, avec toute liberté de mener toutes enquêtes.

À aucun moment, le Procureur n'a appelé l'attention du Gouvernement rwandais sur la moindre tentative d'empêcher ces enquêteurs d'accomplir leur travail. Aussi le Gouvernement rwandais est-il convaincu de s'être pleinement acquitté de ses obligations au regard des dispositions du Statut du Tribunal visant la coopération entre celui-ci et les États.

Le Tribunal s'est avéré incapable à ce jour de traiter les affaires dont il est saisi, en raison de problèmes liés à une mauvaise gestion et à l'incompétence. Des

centaines d'auteurs de génocide toujours en liberté un peu partout dans le monde doivent encore être mis en accusation. Le Procureur a réduit de 250 à 130 pour la durée de vie restante du Tribunal le nombre de ces suspects que son bureau entend mettre en accusation. Dans ces conditions, il serait préférable que le Tribunal se concentre sur ces affaires et abandonne les affaires de l'APR aux juridictions nationales, tout comme cela a été le cas des civils soupçonnés de génocide qui sont détenus au Rwanda.

Deuxième partie : **Les déficiences dans le fonctionnement du Tribunal** **- Étendue, causes et implications**

Lorsque le Procureur affirme que le Gouvernement rwandais a retiré sa coopération au Tribunal, son allégation est non seulement non fondée, mais également injuste à l'égard du Rwanda. Le Gouvernement rwandais apprécie le travail qu'accomplit le Tribunal, comme l'attestent les efforts qu'il n'a cessé de déployer pour faciliter ce travail au fil des ans. On peut même dire que les succès modestes à mettre à l'actif du Tribunal sont dus dans une large mesure à l'assistance que celui-ci a reçue et continue de recevoir du Gouvernement et de la population rwandaise dans son ensemble. Le Gouvernement tient à réaffirmer son appui au Tribunal.

Cela étant, le Gouvernement et le peuple rwandais dans son ensemble ne laissent pas de s'interroger sérieusement sur le fonctionnement du Tribunal. Celui-ci, avec un budget annuel de près de 100 millions de dollars et un effectif proche de 1 000 fonctionnaires, est un appareil énorme et coûteux. La création du Tribunal en 1994 avait suscité de très grandes espérances au Rwanda. Malheureusement, dès le départ, le Tribunal a connu de graves défaillances. Le Gouvernement rwandais n'a cessé d'appeler l'attention des greffiers et des procureurs qui se sont succédé au Tribunal, ainsi que d'autres responsables de l'ONU, sur les dysfonctionnements du Tribunal. À ce jour, tous les efforts déployés pour remédier aux déficiences manifestes du Tribunal l'ont été en vain. Aux yeux du Gouvernement rwandais, il est indispensable, si l'on entend que le Tribunal conserve sa crédibilité auprès de la population rwandaise et réalise les objectifs pour lesquels il a été établi, que le Conseil de sécurité adopte sans tarder des mesures correctives dans les domaines ci-après.

2.1. Lenteur des procès

Le Tribunal existe depuis près de huit ans². À ce jour, il n'a jugé que neuf personnes, dont trois avaient plaidé coupable. En fait, il n'a vraiment mené à leur terme que cinq procès, qui sont le fruit de huit années de fonctionnement et en regard desquels il faut mettre des dépenses de plus de 800 millions de dollars. Nombre de suspects, comme Bagosora, Nsengiyumva et Kabirigi, qui sont les maîtres d'oeuvre du génocide, attendent d'être jugés depuis cinq ou six ans. On ne laisse pas d'être préoccupé à l'idée qu'ils pourraient être mis en liberté au motif que leur droit d'être jugés sans retard excessif a été violé³.

² Le Tribunal a été créé par la résolution 995 du Conseil de sécurité en date du 8 novembre 1994.

³ Art. 14 3) c) du Pacte international relatif aux droits civils et politiques et art. 19 1) du Statut du

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La lenteur avec laquelle les procès se déroulent ne contribue pas à améliorer l'image du Tribunal au Rwanda et ailleurs. Elle fait également douter beaucoup de Rwandais de la volonté et de la détermination de la communauté internationale d'amener la justice à connaître des crimes commis en 1994.

Le rythme du fonctionnement du Tribunal est absolument inacceptable, eu égard aux ressources humaines et financières mises à la disposition de celui-ci.

2.2 Mise en accusation et arrestation de personnes soupçonnées d'actes de génocide qui sont toujours en liberté

Des milliers de responsables politiques et militaires ont participé à la planification du génocide et en ont dirigé le déroulement. En 1994, à la fin du génocide, les militaires et les hommes politiques qui l'avaient planifié et en avait dirigé l'exécution se sont réfugiés à l'étranger. Le Tribunal n'a mis en accusation à ce jour que quelque 70 individus pour un génocide qui a fait plus d'un million de morts. Seules 45 des personnes mises en accusation ont été arrêtées⁴, alors même que le Tribunal sait où les autres se sont réfugiées. Treize d'entre elles mènent la guerre contre le Rwanda à partir de bases situées en République démocratique du Congo (RDC). Le Procureur subit des pressions visant à réduire le nombre de mises en accusation, de manière à permettre au Tribunal d'en finir d'ici à quelques années. Le Gouvernement rwandais s'insurge contre toute tentative de réduire le nombre de mises en accusation et les poursuites alors même que la plupart des meneurs du génocide sont toujours en liberté et pourraient bénéficier de l'impunité faute d'être traduits en justice par le Tribunal.

2.3 Mauvaise gestion

La principale raison qui rend compte du fait que le Tribunal ne s'est pas acquitté de son mandat de manière satisfaisante tient à une mauvaise gestion, mauvaise gestion que l'ONU a reconnue à plusieurs reprises⁵.

Bien que son budget lui permette de recruter de nombreux fonctionnaires indispensables pour assurer son fonctionnement, le Tribunal a tout simplement omis de le faire. La procédure d'engagement est souvent viciée, se fondant sur le népotisme et non sur le mérite, ce qui amène le Tribunal à engager un nombre incroyablement élevé de personnes incompétentes, comme de nombreux collaborateurs du Tribunal le reconnaissent. En mai 2001, le Procureur a relevé de leurs fonctions sept avocats généraux principaux pour « manque de compétence professionnelle ».

Il est question dans tous les départements du Tribunal de querelles et de dissensions qui entravent la bonne marche du service. Même les efforts déployés pour tenter de régler le dernier en date des problèmes concernant les témoins sont dans une impasse. Le Greffier et le Procureur ne parvenant pas à s'entendre sur les modalités d'un dialogue entre le Tribunal, le Gouvernement rwandais et les survivants du génocide.

Tribunal.

⁴ Rapport d'Amnesty International sur le Tribunal international pour le Rwanda : « Achievements and Shortcomings » (Succès et échecs)

⁵ Voir rapports du Bureau des services de contrôle interne (BSCI).

2.4 Engagement d'auteurs du génocide comme membres d'équipes de la défense

Le Tribunal a engagé des auteurs du génocide et il continue de le faire. Il a été contraint, de ce fait, de mettre en accusation et d'arrêter pour actes de génocide et crimes contre l'humanité deux personnes qui travaillaient au Tribunal depuis plus de trois ans. Trois autres fonctionnaires ont été révoqués après qu'il eut été établi qu'ils figuraient parmi les principaux suspects d'actes de génocide et de crimes contre l'humanité. Quant aux autorités tanzaniennes, elles ont appréhendé à ce jour deux fonctionnaires du Tribunal qui étaient munis de faux papiers d'identité. De l'aveu même du Greffier, depuis la mise en accusation de leurs collègues, une dizaine d'autres fonctionnaires du Tribunal ont abandonné leur travail et pris la fuite, parce qu'ils étaient munis de faux papiers d'identité et impliqués dans le génocide et la commission de crimes contre l'humanité.

2.5 Traitement et protection des témoins

On critique la façon dont le Tribunal traite les témoins et le fait qu'il n'a pas prévu un mécanisme de protection de ceux-ci avant, pendant et après leur déposition à la barre. Les enquêteurs du Tribunal qui viennent au Rwanda compromettent les témoins en se rendant auprès d'eux dans des voitures portant l'emblème du Tribunal. Au Tribunal même, il s'avère impossible de cacher l'identité des témoins, surtout lorsqu'on sait que des auteurs du génocide font partie des équipes de la défense, lesquelles ont accès aux témoins. Le Tribunal n'est pas en mesure d'assurer une protection efficace aux témoins dans un tel environnement où se rencontrent à foison des personnes soupçonnées de participation au génocide.

Depuis longtemps, les témoins se plaignent de la façon dont ils sont traités lorsqu'ils sont confiés aux soins du Tribunal. Selon un rapport d'Amnesty International, la Section d'aide aux victimes et aux témoins ne compte dans ses rangs aucune personne ayant une formation et de l'expérience en matière de protection des témoins au niveau national⁶. Il est indiqué dans le récent rapport du BSCI (Secrétariat de l'ONU) que la faiblesse la plus grave de ladite section tient à l'absence de collaborateurs ayant l'expérience de la protection des témoins cités par les juridictions pénales et que, faute de personnel qualifié, il ne sera pas possible d'assurer la protection la plus élémentaire à d'importants témoins à charge ou à décharge.

Autant que le Gouvernement rwandais sache, la Section n'a fourni aucun soutien aux victimes. Alors que le Tribunal dépense des millions de dollars au titre des soins médicaux dispensés à son personnel et aux détenus confiés à sa garde, y compris des accusés séropositifs dont certains sont poursuivis pour viol, un grand nombre de victimes ayant déposé devant le Tribunal meurent faute de soins médicaux. L'indifférence que manifestent à cet égard le Tribunal et l'ONU est un des facteurs qui contribuent à la désaffection des victimes à l'égard de la justice internationale en bloc, sans qu'elles se préoccupent de savoir si cette indifférence s'explique par une gestion déficiente, un mandat mal défini ou une détermination inadéquate des priorités.

L'équipe de gestion de la Section d'aide aux victimes et aux témoins est constituée exclusivement de non-Rwandais. Le Gouvernement rwandais ne croit pas

⁶ Rapport d'Amnesty international concernant le Tribunal : « Trial and Tribulations » (Tribulations).

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qu'il soit possible d'assurer une quelconque protection à des victimes qui ne se sentent pas en sécurité auprès de ceux qui sont censés les protéger. La protection des témoins suppose un environnement propice dans lequel les témoins peuvent communiquer librement avec ceux qui assurent leur protection. On ne peut admettre le fait que les seuls membres rwandais de ladite section sont des traducteurs, des baby-sitters et des femmes de ménage.

Bien qu'on ait signalé les cas de décès de personnes ayant déposé devant le Tribunal et de tentative d'assassinat dont des témoins ont fait l'objet, le Tribunal ne s'est guère préoccupé d'améliorer sa politique de protection des témoins. Il s'est dérobé, chaque fois que le Gouvernement rwandais lui a proposé d'examiner la question de la protection des témoins, et a refusé de communiquer la moindre précision concernant les témoins, au motif que cela compromettrait leur sécurité. On entend dire que des fonctionnaires du Tribunal achèteraient le silence des proches de témoins qui ont été tués. Le Gouvernement rwandais condamne de telles pratiques et souligne avec force qu'il doit être pleinement associé à tout ce qui concerne la protection des témoins, surtout après leur retour au Rwanda.

Des interrogatoires ont été menés sans la moindre prudence, au point que des témoins se sont évanouis à l'audience. Des juges ont humilié à l'audience des victimes de viol qui faisaient le récit des épreuves qu'elles avaient vécues. Il s'est trouvé un juge en particulier pour faire des remarques sexistes et des déclarations choquantes en affirmant que l'on avait fortement grossi le nombre des victimes du génocide de 1994.

La protection des témoins et l'assistance à leur fournir sont une des missions les plus importantes du Tribunal, car la vie des témoins en dépend. Faute de s'acquitter efficacement de cette fonction, le Tribunal se priverait de témoignages précieux, les témoins choisissant de ne pas déposer plutôt que de mettre leur vie en danger. Le Tribunal ne peut ignorer le fait qu'un grand nombre de témoins victimes de viol sont en train de mourir. Malheureusement, rien n'a été prévu pour faire face à un problème aussi important et qui est directement lié au mandat du Tribunal. Celui-ci traite ses témoins comme du matériel jetable : une fois leur déposition faite, ils n'offrent plus aucun intérêt.

2.6 Corruption et autres abus

En mars 2001, le BSCI a relevé un certain nombre d'abus, dont des accords de partage d'honoraires conclus entre les avocats et leurs clients. Au Tribunal, les avocats perçoivent des honoraires allant de 80 à 110 dollars par heure, avec un plafond de 175 heures par mois. Il est fait état à présent d'accords analogues qui seraient conclus entre des enquêteurs et des suspects. Selon le rapport publié en février 2001, le système d'aide juridictionnelle mis en place par le Tribunal continue de faire l'objet d'abus, la plupart des suspects prétendant être indigents afin de bénéficier de l'aide juridictionnelle et de pouvoir payer les avocats. À en croire le rapport, certains détenus vont jusqu'à exiger de l'équipe de la défense de 2 500 à 5 000 dollars par mois. Toujours selon le rapport, ils subordonnent le choix de l'avocat à la conclusion de pareils accords de partage des honoraires. Tout cela met en lumière le rôle que jouent des avocats et des fonctionnaires du Tribunal en tant que complices d'une corruption à laquelle ils sont parties.

Des avocats, des enquêteurs et des fonctionnaires du Tribunal ont soutiré à celui-ci beaucoup d'argent en gonflant les notes d'honoraires. Certains suspects

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comptent dans les membres de l'équipe de la défense leurs propres enfants ou des proches. Il s'est trouvé des accusés pour tirer parti des montants importants que le Tribunal consacre pour faciliter les voyages de témoins en faisant venir à Arusha tous les membres de leur famille en tant que témoins. D'autres font venir des suspects bien connus qui sont recherchés et qui, après avoir déposé, bénéficient de facilités pour regagner l'endroit où ils se cachent.

La plupart des Rwandais sont indignés et ne peuvent admettre que des ressources destinées à permettre de traduire en justice les responsables du génocide bénéficient au contraire aux suspects et à leur famille. On prétend même qu'une partie de ces ressources finit par se retrouver entre les mains de groupes terroristes basés en RDC. Grâce à ces fonds illicites, les auteurs d'actes de génocide et de crime contre l'humanité font inscrire leurs enfants dans les meilleures écoles, alors que les orphelins du Rwanda parviennent difficilement à satisfaire leurs besoins essentiels. Deux avocats ont été congédiés pour s'être livrés à cette pratique, mais aucun fonctionnaire du Tribunal n'a eu à rendre des comptes. Le Tribunal encourage l'impunité dans ses propres rangs en maintenant en place des fonctionnaires impliqués dans de telles pratiques.

2.7 Indifférence à laquelle se heurtent des questions de justice vitale pour le Rwanda

Le Gouvernement rwandais est consterné par l'indifférence générale et le manque d'intérêt manifesté par le Tribunal et en dehors de celui-ci à l'égard de questions liées au génocide rwandais. Les deux Tribunaux ad hoc (Rwanda et Yougoslavie) ont un seul et même procureur. Le peuple rwandais ne parvient pas à comprendre pourquoi le génocide rwandais, qui a fait plus d'un million de victimes, ne justifie pas la désignation d'un procureur distinct et constitue en réalité un travail à temps partiel d'une seule et même personne, sans égard aux difficultés que cela n'a pas laissé d'entraîner. La coordination des enquêtes et poursuites relatives au génocide et aux crimes de guerre commis au Rwanda, d'une part, et en ex-Yougoslavie, d'autre part, représente un travail des plus considérables, surtout si l'on y ajoute l'obligation pour le Procureur de superviser l'activité de quatre centres différents (La Haye, Arusha, Kigali et l'ex-Yougoslavie). Pareille tâche exige une attention et une supervision de tous les instants. Elle appelle une présence permanente au Rwanda et exige qu'on se trouve à proximité du siège actuel du Tribunal. Pareille tâche ne peut être menée à bien de manière efficace par une seule personne. Le Bureau du Procureur devrait être scindé en deux et il faudrait nommer un procureur à part entière qui se consacrerait exclusivement à faire rendre justice à plus d'un million de victimes qui ont perdu la vie dans le génocide de 1994.

Le Procureur du Tribunal international pour le Rwanda, qui est basé à La Haye, ne traite au jour le jour que les questions intéressant le Tribunal international pour l'ex-Yougoslavie et ne dispose pas d'une équipe affectée aux questions concernant le Tribunal international pour le Rwanda. À La Haye, la journée de travail du Procureur commence à 9 heures par une réunion avec les principaux responsables où l'on examine tout ce qui concerne les affaires pendantes devant le Tribunal international pour l'ex-Yougoslavie. Le Procureur ne dispose pas à La Haye d'une équipe d'appui ou de conseillers avec qui examiner au jour le jour les affaires pendantes devant le Tribunal international pour le Rwanda.

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Le Bureau du Procureur du Tribunal international pour le Rwanda est censé être établi à Kigali (Rwanda), mais le Procureur ne fait chaque année que de rares et brefs séjours au Rwanda.

Eu égard à l'impossibilité pour le Procureur de superviser au jour le jour le fonctionnement du Tribunal international pour le Rwanda, cette tâche devrait être exercée par le Procureur adjoint. Le Rwanda ne comprend pas qu'un poste aussi important soit vacant depuis plus de 14 mois, sans que le système des Nations Unies fasse quelque chose pour remédier à cette situation,

Outre le poste de procureur adjoint qui est vacant depuis plus d'un an, celui de chef des poursuites l'est depuis plus de deux ans. Par ailleurs, le Tribunal a omis de pourvoir d'autres postes importants (avocats généraux et fonctionnaires) pour lesquels des crédits ont été ouverts.

Le BSCI convient dans son rapport que la dispersion en trois endroits différents du Bureau du Procureur, de son bureau au Rwanda et des chambres nuit à l'efficacité. En particulier, l'établissement des chambres en dehors du Rwanda a eu pour conséquence regrettable que les Rwandais ignorent pratiquement tout du travail de celles-ci. En négligeant d'établir de bonnes relations de travail avec la population rwandaise, le Tribunal s'est coupé d'une source d'information et d'un appui combien importants pour son travail.

Lorsque le Conseil de sécurité a examiné la question du siège du Tribunal, le Rwanda a indiqué qu'il aurait souhaité que ce siège soit établi au Rwanda. Le Tribunal a été établi à Arusha, mais il a été convenu que, de toute façon, certains procès se dérouleraient au Rwanda. Huit ans après sa mise en place, le Tribunal continue de se faire prier pour ce qui est de la tenue de procès au Rwanda.

Ignorant la décision du Conseil de sécurité, le Procureur a établi le Bureau du Procureur à Arusha, alors qu'il devait être établi au Rwanda, pour ne laisser qu'une antenne au Rwanda. Les membres du Bureau du Procureur qui interviennent au niveau de l'appel des jugements rendus par le Tribunal international pour le Rwanda sont tous établis à La Haye. On notera avec soin que les deux tribunaux ad hoc ont la même Chambre d'appel, mais qu'il n'en va pas de même, à ce niveau, des membres du Bureau du Procureur. Pareil arrangement, contraire au bon sens le plus élémentaire, aboutit à des gaspillages, surtout lorsque l'on sait que les audiences d'appel se tiennent normalement à Arusha.

Le quartier pénitentiaire du Tribunal à Arusha en est venu à constituer une autre plate-forme politique pour la diffusion de l'idéologie génocide. De l'aveu même du Tribunal, jusque l'an dernier, un détenu exploitait clandestinement un site Web depuis le quartier pénitentiaire. De plus, au moins un autre détenu est toujours en mesure d'envoyer des courriels de menace aux victimes et aux témoins résidant au Rwanda. L'absence de gestion adéquate du quartier pénitentiaire demeure un sujet de très grave préoccupation.

Troisième partie

Conclusion

Le Tribunal est à la croisée des chemins. Ce qui est en jeu, c'est sa crédibilité au Rwanda. Faute pour l'ONU de prendre à bras le corps les problèmes du Tribunal, elle risque de se retrouver avec un Tribunal dont ceux qui ont eu le privilège de le

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servir ou de le diriger auront à rougir au lieu de s'enorgueillir. C'est pourquoi, le Gouvernement rwandais adresse les recommandations ci-après au Conseil de sécurité :

a) Le Conseil de sécurité devrait modifier le Statut du Tribunal à l'effet de créer un bureau du Procureur du Tribunal international pour le Rwanda distinct du Bureau du Procureur du Tribunal international pour l'ex-Yougoslavie;

b) Tous les postes de première importance laissés vacants depuis longtemps, dont celui de procureur adjoint (au cas où l'on ne nommerait pas un procureur distinct pour le Tribunal international pour le Rwanda) devraient être pourvus sans délai;

c) Des mécanismes efficaces devraient être mis en place pour faire échec à la corruption, au népotisme et à l'engagement au Tribunal de suspects d'actes de génocide;

d) Le Bureau du Procureur, qui a été déplacé clandestinement de Kigali à Arusha, devrait être rétabli à Kigali;

e) Il faudrait mettre au point l'organisation du transfert du Tribunal au Rwanda et tenir entre-temps certains des procès au Rwanda;

f) Il faudrait prendre des mesures en vue d'améliorer le traitement et la protection des témoins du Tribunal;

g) Le Tribunal devrait engager un dialogue avec le Gouvernement rwandais et les survivants du génocide afin de trouver une solution aux problèmes que le Tribunal rencontre;

h) Le Conseil de sécurité devrait prier le Secrétaire général de créer une commission d'enquête chargée de faire la lumière sur les questions soulevées par le Gouvernement rwandais dans sa réponse au rapport présenté au Conseil par le Procureur du Tribunal international pour le Rwanda.

Le 26 juillet 2002

Annex VIII : Letter of the ICTR President to the President of the Security Council, July 29th, 2002, S/2002/847

Nations Unies

S/2002/847



Conseil de sécurité

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Lettre datée du 26 juillet 2002, adressée au Président du Conseil de sécurité par le Président du Tribunal criminel international chargé de juger les personnes présumées responsables d'actes de génocide ou d'autres violations graves du droit international humanitaire commis sur le territoire du Rwanda et les citoyens rwandais présumés responsables de tels actes ou violations commis sur le territoire d'États voisins entre le 1er janvier et le 31 décembre 1994

Le 23 juillet 2002, j'ai reçu un exemplaire du rapport établi par le Procureur du Tribunal international pour le Rwanda, qui avait été également porté à l'attention du Conseil de sécurité. Dans ce rapport, le Procureur se plaint du manque de coopération des autorités rwandaises et explique, en particulier, en quoi le fait de ne pouvoir disposer de témoins en provenance du Rwanda risque d'entraver le travail judiciaire du Tribunal international et d'empêcher le Procureur de mener des enquêtes.

En vertu de l'article 28 du Statut du Tribunal, le Président du Tribunal international est libre de porter officiellement à l'attention du Conseil de sécurité des préoccupations ayant trait à la coopération des États ou à la façon dont ils répondent sans retard à toute demande d'assistance ou à toute ordonnance émanant d'une Chambre de première instance concernant la recherche et le jugement des personnes accusées d'avoir commis des violations graves du droit international humanitaire.

Le rapport du Procureur passe en revue les difficultés auxquelles se sont heurtées les demandes de coopération et d'assistance présentées par le Procureur et les Chambres de première instance. En particulier, les juges du Tribunal s'inquiètent du fait que trois affaires (les affaires Kajelijeli et Nyitegeka et l'affaire de Butare) ont dû être reportées à plusieurs reprises cette année, des témoins en provenance du Rwanda n'étant pas disponibles. Deux Chambres ont rendu des décisions appelant l'attention sur le fait que le Gouvernement rwandais n'avait pas délivré des documents de voyage en temps utile de façon à permettre aux témoins de se présenter devant le Tribunal. Ces deux décisions ont été portées à la connaissance du Gouvernement rwandais. Le texte de ces décisions est joint à la présente lettre (voir annexes).

Compte tenu des difficultés passées, il n'est pas certain, à moins d'une intervention du Conseil de sécurité, que la reprise des procès prévue pour les prochaines sessions puisse avoir lieu.

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En créant le Tribunal international pour le Rwanda, le Conseil de sécurité était animé de la conviction que l'engagement de poursuites contre les personnes ayant commis un génocide et d'autres violations graves du droit international humanitaire était indispensable au rétablissement et au maintien de la paix et de la sécurité internationales.

Il me paraît nécessaire que le Conseil de sécurité prenne toutes mesures qu'il jugera utiles pour permettre au Tribunal de s'acquitter du mandat qui lui a été imparti.

Le Président
(Signé) Navanethem Pillay

Annexe I

Le Procureur c. Eliezer Niyitegeka

Décision d'ajourner le procès pour non-disponibilité de témoins

Chambre de première instance I

[Original : anglais]

Devant les juges Navanethem Pillay, Président de Chambre

Erik Mose

Andrésia Vaz

Greffier Adama Dieng

Date : 19 juin 2002

Le Procureur

Eliezer Niyitegeka

Affaire No ICTR-96-14-T

Décision d'ajourner le procès pour non-disponibilité de témoins

Bureau du Procureur

Carla del Ponte

Kenneth C. Fleming

Melind Pollard

Amanda Reichman

Kirsten Keith

Conseils de l'accusé

Me Sylvia Gerghy

Me Fergal Kavanagh

Me Callixte Gakwaya

La Chambre de première instance I est saisie d'une communication du Procureur ayant trait à la disponibilité de témoins. Le Procureur a informé la Chambre qu'aucun autre témoin à charge n'était disponible pour le restant de la semaine et, par la suite, pour une période de temps indéterminée. En conséquence, le Procureur sollicite de la Chambre une directive concernant le futur déroulement du procès et l'ajournement de celui-ci, qui semble devoir être inévitable.

Trois affaires sont inscrites au rôle de la présente Chambre de première instance, ce qui représente une lourde charge de travail. Grâce à une planification méticuleuse et à une utilisation minutée de tout le temps disponible, la Chambre, en réponse au Procureur et au Conseil de la défense de M. Eliezer Niyitegeka qui lui avaient tous deux demandé de fixer la date d'ouverture du procès, a prévu de

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consacrer à l'audition de 14 témoins deux semaines du mois de juin 2002, allant du 17 au 28 juin. Cette semaine-ci, sur les sept témoins en provenance du Rwanda qui devaient déposer à la barre, un seul est arrivé.

L'attente des témoins n'a pas laissé de contrarier la planification méticuleuse du calendrier du procès et entrave gravement le travail judiciaire du Tribunal.

Nous avons entendu les arguments exposés par M. Fleming au nom du Bureau du Procureur. Nous avons également chargé la Section d'aide aux victimes et aux témoins (Procureur) d'ouvrir une enquête. Les faits ci-après sont apparus :

Depuis le vendredi 7 juin 2002, ladite section se heurte à de nouvelles difficultés pour faire venir au Tribunal des témoins protégés en provenance du Rwanda. Le Gouvernement rwandais a décrété inopinément, et sans en avoir avisé le Tribunal au préalable, de nouvelles procédures en ce qui concerne le voyage des témoins. Ceux-ci doivent se rendre en personne dans différents bureaux pour solliciter la délivrance par les autorités de police de leur lieu de résidence de trois documents, voire davantage, notamment un certificat de bonne conduite, une attestation d'identité et une attestation de non-poursuite, et ce, en vue d'obtenir le laissez-passer qui doit leur permettre de voyager en dehors du Rwanda.

Ces nouvelles règles exposent les témoins protégés, sans compter qu'elles pèchent par manque de clarté. Par exemple, le Directeur général des services de l'immigration a informé la Section d'aide aux victimes et aux témoins que l'attestation de non-poursuite devait être retirée à la préfecture ou auprès du Procureur général de la province/préfecture.

Quant au Bureau du Commissaire provincial, il a indiqué à la Section d'aide aux victimes et aux témoins que c'était au Bureau du Procureur général de la province qu'il appartenait de délivrer ces documents. Ledit Bureau a indiqué que, contrairement à la pratique antérieure, il n'était plus chargé de délivrer ces documents, cette tâche incombant désormais à la police judiciaire. Il n'a pas été possible jusqu'ici d'obtenir des indications claires. Aucune directive n'a été publiée et le Directeur général n'a pas répondu aux demandes écrites de la Section d'aide aux victimes et aux témoins qui sollicitait des précisions écrites à ce sujet.

L'avion du Tribunal a fait deux vols réguliers à destination du Rwanda, mais est revenu à vide. Ceci constitue un gaspillage que le Tribunal ne peut se permettre.

Du fait des initiatives prises par le Gouvernement rwandais, deux procès, en l'occurrence la présente affaire d'Elizier Niyitegeka et l'affaire de Butare dont est saisie la Chambre de première instance II, se trouvent à un point mort et l'on gaspille un temps précieux.

Le Statut du Tribunal doit être respecté par tous les États. Il dispose en son article 28 que « [l]es États collaborent avec le Tribunal international pour le Rwanda à la recherche et au jugement des personnes accusées d'avoir commis des violations graves du droit international humanitaire. Les États répondent sans retard à toute demande d'assistance ou à toute ordonnance émanant d'une Chambre de première instance ». Le caractère obligatoire des ordonnances rendues conformément à l'article 28 du Statut découle du Chapitre VII et de l'Article 25 de la Charte des Nations Unies, ainsi que des résolutions adoptées en application de ces textes par le Conseil de sécurité.

L'article 56 du Règlement du Tribunal est libellé comme suit :

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L'État auquel est transmis un mandat d'arrêt ou un ordre de transfert d'un témoin agit sans tarder et avec toute la diligence voulue pour assurer sa bonne exécution, conformément à l'article 28 du Statut.

Quant à l'article 58 du Règlement, il dispose plus concrètement ce qui suit :

Les obligations énoncées à l'article 28 du Statut prévalent sur tous obstacles juridiques que la législation nationale ou les traités d'extradition auxquels l'État intéressé est partie pourraient opposer à la remise ou au transfert de l'accusé ou d'un témoin au Tribunal.

La Chambre

Appelle l'attention des autorités rwandaises sur l'obligation qu'elles ont de coopérer avec le Tribunal.

La Chambre se voit contrainte d'ajourner l'audience, après la fin de la déposition de GK, au lundi 24 juin 2002.

Prie les autorités rwandaises de faire en sorte que le voyage des témoins devant déposer dans ces affaires se trouve facilité et que le procès puisse reprendre sans autre retard dès lundi.

Charge le Greffier de communiquer le texte de la présente décision dès que possible au Gouvernement rwandais ou, le cas échéant, à toute autorité chargée de permettre ou de faciliter la venue de témoins à la barre du Tribunal international pour le Rwanda.

Arusha, le 19 juin 2002

Navanethem Pillay
Président de Chambre

Erik Mose
Juge

Andresia Vaz
Juge

Annexe II

**Le Procureur c. Pauline Nyiranasubuko
et autres personnes : texte d'une décision orale rendue
le 19 juin 2002**

**Texte de la décision orale rendue par les juges de la Chambre
de première instance II le 19 juin 2002 dans l'affaire de Butare**

Pour la version officielle, prière de se reporter au compte rendu d'audience

« Le Statut du Tribunal s'impose à tous les États. Conformément à l'article 28 dudit Statut, tous les États collaborent avec le Tribunal international pour le Rwanda à la recherche et au jugement des personnes accusées d'avoir commis des violations graves du droit international humanitaire. Les États répondent sans retard à toute demande d'assistance ou à toute ordonnance émanant d'une Chambre de première instance.

Conformément à l'article 56 du Règlement du Tribunal, l'État auquel est transmis un mandat d'arrêt ou un ordre de transfert d'un témoin agit sans tarder et avec toute la diligence voulue pour assurer sa bonne exécution, conformément à l'article 28 du Statut.

Quant à l'article 58 du Règlement, il dispose plus spécifiquement que les obligations énoncées à l'article 28 du Statut prévalent sur tous obstacles juridiques que la législation nationale ou les traités d'extradition auxquels l'État intéressé est partie pourraient opposer à la remise ou au transfert de l'accusé ou d'un témoin au Tribunal.

La Chambre de première instance a été informée par le Greffe de ce que les autorités rwandaises avaient arrêté de nouvelles procédures légales en matière de délivrance de documents de voyage destinés aux témoins résidant au Rwanda. Lesdites procédures concernent directement les témoins devant déposer à la barre du Tribunal. Leur application a pour résultat de mettre la présente Chambre dans l'impossibilité de continuer le procès, les témoins n'étant pas disponibles. On notera cependant que, conformément à l'article 58 du Règlement du Tribunal, ces procédures ne prévalent pas sur les obligations des États énoncées à l'article 28 du Statut.

C'est pourquoi, la Chambre demande aux autorités rwandaises de satisfaire à l'obligation qu'elles ont de faciliter le travail du Tribunal, et de faire en sorte que les témoins puissent se rendre à Arusha pour permettre au Tribunal de poursuivre son travail d'ici au lundi 24 juin 2002.

Le Greffe est chargé d'informer les autorités rwandaises en conséquence. »

Annex IX : Note by the International Criminal Tribunal for Rwanda on the reply of the government of Rwanda to the report of the prosecutor of the ICTR to the Security Council, 8 août 2002



UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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Arusha, 08 August 2002

ANNEX

**NOTE BY THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA ON THE REPLY OF THE GOVERNMENT OF RWANDA
TO THE REPORT OF THE PROSECUTOR OF THE ICTR
TO THE SECURITY COUNCIL**

I. INTRODUCTION

By a letter dated 26 July 2002 (S/2002/842) from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council, the Government of Rwanda forwarded a reply of the Rwandan Government to the report of the Prosecutor of the International Tribunal for Rwanda, dated 21 July 2002.

By a letter dated 26 July 2002 (S/2002/847) from the President of the International Tribunal for Rwanda addressed to the President of the Security Council, the President of the Tribunal, acting under Article 28 of the Statute of the Tribunal, brought to the attention of the Security Council the Tribunal's concerns regarding problems that the Tribunal has experienced in recent months with Rwanda's cooperation with the Tribunal. In particular, the Judges of the International Tribunal are concerned because the Rwandan Government's failure to issue travel documents in a timely manner to facilitate the appearance of witnesses before the International Tribunal has resulted in the unavailability of witnesses and, consequently, the postponement of three trials.

Further to the letter from the President of the International Tribunal for Rwanda, the Tribunal provides here below a factual recapitulation of events that constitute a failure by the Government of Rwanda to issue travel documents for witnesses in a timely manner.

In its letter dated 26 July 2002, the Government of Rwanda stated that its reply to the report by the Prosecutor of the International Tribunal "explains to the members of the Security Council the shortcomings of the International Tribunal for Rwanda namely, inefficiency, corruption, nepotism, lack of protection of witnesses, harassment of witnesses, employing *genocidaires* as members of defence teams and investigators, mismanagement, slow pace of trials, insufficient staff and lack of competent staff, negligence and false allegations concerning the Government of Rwanda".

The Tribunal believes that the non-cooperation by Rwanda, which has caused three trials to be postponed, is the immediate issue before the Security Council for its consideration

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and appropriate measures, in order to ensure that the International Tribunal can discharge the mandate it has been given by the Security Council. However, considering that the Reply of the Government of Rwanda contains a number of statements on issues concerning the treatment and protection of witnesses and other aspects of the functioning of the Tribunal that require factual clarifications, and although issues such as management of the Tribunal are primarily within the competence of other organs of the United Nations, this Note has included such clarifications as deemed necessary for information purposes only. This Note is jointly endorsed by the three organs of the International Tribunal namely, the Chambers, the Prosecutor, and the Registrar.

II. NON-COOPERATION BY RWANDA

Unavailability of Witnesses

1. On Friday, 7 June 2002, eight prosecution witnesses who were to travel from Kigali to Arusha to give testimony in the Butare case and in the Niyitegeka case on 10 June 2002 were unable to leave Kigali with ICTR Registry officials because the Rwandan Director of Immigrations declined to issue the required Laissez-passers for the witnesses. The Director of Immigration informed the ICTR official who was to accompany the witnesses to Arusha that, in a sudden departure from existing procedures, Rwandan authorities had introduced a further requirement of Certificates of Attestation of "Good Conduct" and "Proof of Identity" of the witnesses, to be issued by the relevant District Office. Meanwhile, the survivors' organization IBUKA put a continuous announcement on Rwandan Radio of a boycott of the Tribunal and urged Rwandan citizens not to travel to Arusha to give testimony.
2. The Registrar urgently contacted the Prosecutor-General of Rwanda to ensure that the witnesses were cleared to travel. The Registrar was assured that a response would be provided by the Rwandan authorities by Monday, 10 June (in the meantime, the travel of the witnesses was postponed, and they returned to their homes). On 10 June, the Registrar, not having received any response from the Rwandan authorities, telephoned the Rwandan Prosecutor-General, who was reportedly unavailable as he was travelling out of the country.
3. On 10 June, Trial Chamber II (Butare case) requested an explanation from the Registry as to the unavailability of witnesses. A Registry representative provided a verbal report on the situation in open court. On the same date the Registrar apprised the Presiding Judge of Trial Chamber I (Niyitegeka case) of the situation regarding the inability of the witnesses to travel to Arusha.
4. Between 11 June and 13 June 2002, the Registry's Witness and Victims Support Section in Kigali made strenuous efforts to obtain valid Laissez-passers for the witnesses to travel to Arusha by 14 June, and succeeded in obtaining the documents for three of the eight witnesses.
5. On Friday 14 June, the Tribunal's aircraft was sent to Kigali to convey the witnesses to Arusha. However, Rwandan immigration officials again declined

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to permit the travel of the witnesses. The Rwandan authorities verbally informed ICTR Registry officials of a new requirement for advance notification to the Director-General of Immigration of impending witness movement and of a new regulation allowing witnesses travel only after having been cleared by the Director-General. Efforts by the ICTR to obtain clearance from the Director-General were unsuccessful as the concerned officials were unavailable. After several hours, the ICTR aircraft returned to Arusha without the witnesses.

6. On the same date, the Tribunal gave notice in writing to the Director-General of Immigration informing him that movement of the three witnesses to Arusha would now take place on Tuesday 18 June. He was also requested to provide the Tribunal with a comprehensive letter detailing the new procedures and requirements for witness movement that the Rwandan authorities had put in place.
7. On Monday, 17 June, Tribunal Registry officials met with the Director-General of Immigration and requested movement of the three witnesses to Arusha on Tuesday 18 June. The Director-General informed the Tribunal officials that all Laissez-passeurs issued previously were null and void. He stated that under the new procedures, witnesses holding old valid Laissez-passeurs were now required to produce "Attestations of Non-Pursuit" before they would be allowed to travel outside Rwanda to give testimony at the Tribunal. These documents were obtainable either from the Provincial Prefecture Offices or the General Prosecutor of the Prefecture.
8. The Tribunal subsequently made strenuous efforts to obtain these attestations for the eight witnesses (several of them had by this time obtained the "Good Conduct" and "Proof of Identity" requirements). These efforts, however, achieved no success. In the meantime, the survivors' organization IBUKA continued to make constant announcements on Rwandan Radio urging non-cooperation between Rwandan citizens and the ICTR.
9. On 19 June 2002, Trial Chambers I and II of the ICTR issued Oral Decisions regarding the unavailability of witnesses, reiterating the obligations of the Government of Rwanda under the Statute of the Tribunal. These Decisions were promptly transmitted to the Government of Rwanda by the Tribunal's Registrar as instructed by the Trial Chambers.
10. The Prosecutor has also encountered difficulties in obtaining the transfer of detained witnesses. A detainee due to appear to testify in the Butare trial was scheduled to travel from Rwanda to Arusha in June 2002, pursuant to a Trial Chamber order under Rule 90 *bis* of the Tribunal's Rules of Procedure and Evidence. The request for the travel authorization concerning this detained witness was submitted to the Ministry of Justice on 7 June 2002, followed by a further letter of 12 June 2002. To date, and despite the direct intervention by the Prosecutor, the Minister of Justice has not signed the letter authorizing the witness' travel to Arusha. In the Niyitegeka trial, the Prosecutor requested from the Rwandan authorities almost two months ago the letter that is required to be submitted to the Tribunal, under Rule 90*bis*, for an order to transfer a detained witness. This letter has, to date, not been provided by the Rwandan authorities.

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Furthermore, the Prosecutor is concerned by the fact that, over the last eight weeks, all requests sent to the Rwandan authorities to meet with this detained witness have proved unsuccessful and have recently been denied outright.

Impact of the Unavailability of Witnesses on Trials

11. As a result of the unavailability of witnesses, Trial Chamber I on 19 June 2002 postponed the Niyitegeka trial to 13 August 2002. On the same date Trial Chamber II postponed the Butare trial to 14 October 2002. Prior to the postponement of these trials, seven full trial days were lost in the Niyitegeka case and 19 trial days were lost in the Butare case due to the unavailability of prosecution witnesses.
12. From the foregoing, it is clear that the absence of cooperation from the Government of Rwanda, manifested in the failure to issue travel documents for witnesses in a timely manner, has severely disrupted and delayed trial proceedings at the ICTR, setting them back by several months.
13. At this time, there is no guarantee that the future trials scheduled to resume in the coming weeks will proceed smoothly, if the Rwandan authorities do not remove arbitrary impediments to the travel of witnesses. It is important that the Government of Rwanda resume cooperation with the Tribunal in an unambiguous manner.
14. The Prosecutor is deeply concerned by the situation. For the cases scheduled to resume in the coming months, she is planning to call witnesses from outside Rwanda in order to overcome temporarily the unavailability of witnesses from Rwanda. The Prosecutor is in effect having to call its witnesses according to their availability rather than in any chronological or strategic order. Of those witnesses in Rwanda who are in principle willing to co-operate with the ICTR, and who have in the past given statements to the Tribunal, the majority are only prepared to come and testify at the ICTR if the current crisis is resolved and if the survivors organisations (IBUKA and AVEGA) resume their co-operation with the ICTR.
15. It is noted that five prosecution witnesses travelled from Rwanda to Arusha on 2 August 2002. However, the Tribunal has not yet received the required cooperation from the Rwandan authorities concerning other witnesses, and also concerning other areas of cooperation, as highlighted hereunder.

Other Acts of Non-Cooperation

16. The Prosecutor is also very concerned by the fact that several requests for co-operation that she has addressed to the Rwandan authorities are still pending, unanswered.
17. On 13 March 2002, a request was addressed to the Rwandan Minister of Defence, for access to the archives of his Ministry and that specified documentation be made available.

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18. On 13 March 2002, another request was addressed to the Minister of Defence for permission to make aerial, still pictures and video footage of certain named military barracks, of interest in the Bagosora case.
19. In March 2002, a request was addressed to the Director-General of Immigration for information on the passports issued to an accused person currently on trial. Although the Director-General initially responded that he would look into the matter, he responded on 10 June 2002, indicating that he required an authorization from the Minister of Justice in order to take necessary action. The Prosecutor sent a letter on 11 June 2002 to the Minister of Justice, requesting the said authorization. No response has been received to date, despite the direct intervention of the Prosecutor with the Minister of Justice.
20. In July 2002, a letter was sent to the Minister of Defence, requesting his authorization for a trial team to visit certain sensitive military sites under the Ministry of Defence. The trial team returned to Arusha without fully accomplishing its mission, owing to non-cooperation from the Rwandan authorities.
21. In July 2002, the authorization of the Chief Prosecutor of the Military Tribunal in Rwanda was sought to allow staff of the Office of the Prosecutor of the International Tribunal to meet certain detained witnesses in preparation for their testimony in pending cases. The authorization was not granted.
22. Regarding the investigations, in furtherance of the mandate of the International Tribunal, of crimes allegedly committed by members of the Rwandan Patriotic Army in 1994, the Prosecutor reiterates that, despite assurances given to her in the past, no concrete assistance has been provided to her Office in response to repeated requests regarding these investigations. Without the cooperation of Rwanda, the Prosecutor is unable, at this stage, to finalize these investigations.
23. Defence Counsel have also reported to the Trial Chambers instances of non-cooperation by Rwandan authorities over consultations with defence witnesses and access to archive information in Rwanda.

**III. OTHER ISSUES RAISED IN THE GOVERNMENT
OF RWANDA'S REPLY**

Treatment of Witnesses

24. Section 2.5 of the Rwandan Government's report ("Treatment and Protection of Witnesses") states: "witnesses have long complained of mistreatment while in the care of the ICTR." The facts are different: **Every prosecution witness who travels to Arusha and comes under the care of the Witness and Victims Support Section-Prosecution (WVSS-P) is asked to complete an end-of-visit "service evaluation" questionnaire. The responses to each question in this questionnaire for all witnesses who completed it are recorded. Of the 206 witnesses supported by WVSS-P since 2000, a total of 64 per cent responded to the questionnaire as of April 2002. On all aspects of the**

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WVSS-P's operation, over 91 per cent of these witnesses rated the care and service as either good or excellent. Further, for other important aspects such as security, 100 per cent of the witnesses evaluated the service as either good or excellent. Critics blur the distinction between the administrative treatment of witnesses (including travel and accommodation arrangements), their treatment while giving evidence in court and the follow-up after testifying. Complaints have been based mainly upon the adverse reaction of some witnesses to having their evidence challenged, sometimes robustly, during cross-examination in court, a procedure which does not exist in Rwandan courts. So far as is possible witnesses are prepared for their first experience in court beforehand and cross-examination is conducted under the supervision of the judges as to the relevance and appropriateness of questions put.

Protection of ICTR Witnesses

25. Over 80 per cent of ICTR witnesses are protected witnesses who testify anonymously and are given appropriate security protection before, during, and after testifying. It should be noted that the protection of Rwandan citizens within Rwandan territory is the responsibility of the Government itself. Where necessary, witnesses thought to be particularly at risk are relocated within or outside Rwanda. More than 500 witnesses have testified before the Tribunal so far. No case of a witness being attacked or killed because of their evidence has been reported to the Tribunal. Several former witnesses have succumbed to injury or disease and one violent death in circumstances wholly unrelated to the Tribunal was reported.
26. The measures recently introduced by Rwandan authorities for the travel of witnesses for the Tribunal have not only caused delays but have also potentially compromised protection measures adopted for their safety by requiring them to reveal the reason for their travel at the lowest level of administration in the locality of their residence. Attestations of "Good Conduct" and "Non-Pursuit" only increase the exposure of such witnesses, which should be reduced to the barest minimum in order to ensure the practical implementation of protection orders issued by the Tribunal for such witnesses. Prosecution witnesses from Rwanda have reported to the officials of the Tribunal's WVSS-P that these new regulations established by the Rwandan authorities are causing them concern for their security because they are being subjected to rigorous interviews that expose their identity and intent to testify. Furthermore, it has been observed that Rwandan officials question some witnesses seeking to travel to Arusha about the extent and nature of their testimony. These actions are incompatible with witness protection measures.
27. Section 2.5 of the Government of Rwanda's Reply quotes an Amnesty International report as stating: "The Victims and Witness Unit does not have any personnel with expertise and experience in the protection of witnesses at a national level."
 - (a) First, it should be noted that this Amnesty International report is dated April 1998 (AI Index: IOR 40/03/98), and describes the observations of an Amnesty delegation that visited the Tribunal in October 1997. The Amnesty report goes on to

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note: "More staff with the relevant expertise and experience will soon be recruited to the Unit" (p. 18). This report is thus almost five years out of date and does not reflect the quality of staffing and expertise in the Tribunal's witness protection operations today.

- (b) Second, the Amnesty report cited by the Government of Rwanda's Reply notes that an observed weakness in the ICTR's witness protection program at that time was that it "relies heavily on the Rwandese Government for the protection of witnesses" and that "the procedures demanded by the Rwandese Government to enable witnesses to travel to Arusha from Rwanda make it impossible to protect the identity of witnesses..." (p.18).

Slow Pace of Trials

28. This has been a constant cause for concern on the part of all those involved with the work of the Tribunal. Trials last generally for more than one year because of the great complexity of judicial proceedings involving witnesses and counsel from all over the globe while assuring that the highest standards of justice, and in particular the right of the accused to a fair trial, are maintained. Within those constraints the judges have constantly sought to streamline the Rules of Procedure in order to ensure that trials proceed as expeditiously as possible, and have assumed greater control of courtroom proceedings to increase the pace of trials. Changes to the Rules have helped to reduce the length of trials. At this time the greatest impediment to a faster pace of trials of detainees at the ICTR is the inadequate number of trial judges at the Tribunal. Thus, in July 2001 the President of ICTR presented a request to the Security Council for 18 *ad litem* judges to be appointed to ICTR in order to speed up the disposal of cases and to enable the Tribunal to complete its mandate by 2008. A decision by the Security Council on this request is expected soon.
29. There are currently 13 accused persons whose cases are ready for trial, but who must remain in detention awaiting trial because all the existing Trial Chambers are overburdened with ongoing trials and cannot take on new cases until these trials are completed. As of 31 July 2002, nine trials of 22 accused persons are in progress before the Trial Chambers. Each of the three Trial Chambers is adjudicating three trials on a rotation schedule.

Failure to Indict and Apprehend Genocide Suspects Still at Large

30. The Tribunal has indicted 80 persons to date. A total of 60 of these indicted persons were apprehended in 20 different countries and detained by the Tribunal, with eight persons already sentenced and one acquitted. The Tribunal thus has a strong record of arrests of indicted persons. Arrested persons (including some of those convicted) include the Prime Minister of the Interim Government of Rwanda, 11 Ministers of that Government in 1994, senior military officers, and other high ranking individuals.

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31. The Prosecutor's investigators, with the cooperation of relevant States, are making sustained efforts to find and arrest indictees who are still at large. Indictées at large is a natural phenomenon of criminal investigations in every jurisdiction, as suspects usually do all they can to evade arrest.

Mismanagement

32. There is no problem of mismanagement at the International Criminal Tribunal for Rwanda. While the Tribunal faced management problems in its start-up phase in 1996, these problems have been progressively addressed through management reforms. The Tribunal is now an efficiently managed institution. These improvements have been acknowledged by a report of the Office of Internal Oversight Services, to which the Government of Rwanda refers¹, other management evaluations², and by the Government of Rwanda itself.
33. In its statement to the Fifth Committee (Administrative and Budgetary) of the General Assembly on the Financing of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia on 25 May 2000, the Rwanda Delegation stated, inter alia: "... the ICTR, since its beginning experienced a lot of problems in finding its way of functioning efficiently due to internal administrative management difficulties as well as other external factors inherent to its operational conditions ... However, during the last two years, we recognize some improvements and achievements of the Tribunal, in particular the reforms made by the Registrar".
34. Furthermore, the Members of the Advisory Committee on Administrative and Budgetary Questions undertook a mission to the Seat of the Tribunal at Arusha from 5-8 June 2002. The Committee reviewed various aspects of the management of the administrative and judicial support operations of the Tribunal and expressed overall satisfaction with the progress that has been achieved in the Tribunal's management.
35. The Tribunal has hired, and continues to hire, competent staff to fill vacancies. The budget of the ICTR for the biennium 2002-2003 was adopted by the General Assembly in April 2002. It appropriated 77 new posts to the Tribunal, bringing its staffing strength to a total of 942 posts. As of 31 July, and as a result of a continuing recruitment drive by the Tribunal's management, 796 posts are filled, giving the Tribunal a vacancy rate of 16 per cent. The remaining vacancies are projected to be filled by December 2002. Considering

¹ See Report of the Office of Internal Oversight Services on the follow-up to the 1997 audit and investigation of the International Criminal Tribunal for Rwanda (UN Document A/52/784), dated 6 February 1998. The report stated, inter alia, in its Summary: "Improvements were observed in virtually every area surveyed by the team of investigators and auditors". In para.6, the report stated: "Substantial changes have occurred in the Tribunal since the review by the Office of Internal Oversight Services in 1997".

² A report on the Evaluation of the Implementation of the Delegation of Authority in the Area of Human Resources – ICTR Progress and Evaluation, by the Office of Human Resources Management at United Nations Headquarters, dated 24 November 1999, concluded that the implementation of the Delegation of Authority to the Tribunal has been satisfactory. The Delegation to the Tribunal was extended to other areas of human resources management and cited as an example for extensions of delegations of authority to other overseas offices of the United Nations with similar organizational structures.

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that the Tribunal's budget was approved just four months ago, and considering the average length of time recruitment takes in the Tribunal (three months), the statement in the Rwandan Government's reply "that the ICTR has simply failed to recruit staff" is not supported by the facts.

36. All staff members recruited by the Tribunal fully meet – and frequently exceed – the qualifications required for the positions they hold, as described in Vacancy Announcements. The Annual Personnel Report of the Tribunal for 2000 stated: "Recruitment indicators show that for the experience requirements, 87 per cent are above requirements, 13 per cent specifically meet the requirements and 0 per cent are below requirements" (page 31). Paragraph 97 of the Final Report of the Management Review of the International Criminal Tribunal for Rwanda, United Nations Department of Management, 22 May – 3 June 2001, states: "The conditions of service of ICTR are not considered by some staff to be competitive. In addition, the quality of life in Arusha and Kigali may not be attractive to some people. However, notwithstanding these conditions, ICTR has been able to attract qualified and experienced staff". As in every large organization, the performance of every staff member will not be equal, and thus a few staff may not meet performance expectations. In such cases, appropriate action is taken by the Tribunal's management.

Hiring of Perpetrators of Genocide as Members of Defence Teams

37. The Tribunal has not "hired and continues to hire perpetrators of genocide". No Tribunal staff member has ever been linked to or suspected of any of the crimes within the Tribunal's mandate. Potential staff of Rwandan nationality are carefully vetted by the Security Section before receiving an offer of employment. The cases to which the Government of Rwanda's Reply refers concern a very small number of defence team investigators and assistants who are engaged by lead counsel of defence teams and remunerated from the Tribunal's Legal Aid Fund. Two such persons who had been using false identities were arrested by the Tribunal and are awaiting trial. Three others whose background gave rise to serious concern (but insufficient evidence to justify arrest) were dismissed. One has been suspended pending investigations to establish whether the allegations regarding his involvement in the genocide can be substantiated. Screening measures have been tightened for defence teams and firm action will be taken whenever clear evidence emerges.

IV. CONCLUSION

38. The Security Council and the international community as a whole have rightly emphasized the importance of the work of the International Tribunal for Rwanda and the importance of the Tribunal completing its work expeditiously and with due regard to due process.
39. The International Tribunal believes that it has become similarly important for the Security Council to underscore the independence and impartiality of the Tribunal and the obligation of all States, including Rwanda, to cooperate with the Tribunal. It is only such cooperation and full respect for the independence

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and impartiality of the Tribunal that will ensure the successful discharge of its mandate, including the conviction expressed in the preambular paragraphs of resolution 955(1994) of the Security Council, that the prosecution of persons responsible for serious violations of international law in Rwanda and its neighbouring states in 1994 would contribute to the restoration and maintenance of peace.

Annex X : Resolution 1431 (2002), adopted by the Security Council on August 14th, 2002 relating to the election of 18 *ad litem* judges

United Nations

S/RES/1431 (2002)



Security Council

Distr.: General

14 August 2002

Resolution 1431 (2002)

**Adopted by the Security Council at its 4601st meeting, on
14 August 2002**

The Security Council,

Reaffirming its resolutions 827 (1993) of 25 May 1993, 955 (1994) of 8 November 1994, 1165 (1998) of 30 April 1998, 1166 (1998) of 13 May 1998, 1329 (2000) of 30 November 2000 and 1411 (2002) of 17 May 2002,

Having considered the letter from the Secretary-General to the President of the Security Council dated 14 September 2001 (S/2001/764) and the annexed letter from the President of the International Tribunal for Rwanda addressed to the Secretary-General dated 9 July 2001,

Having considered also the letter from the Secretary-General to the President of the Security Council dated 4 March 2002 (S/2002/241) and the annexed letter from the President of the International Tribunal for Rwanda addressed to the Secretary-General dated 6 February 2002,

Convinced of the need to establish a pool of *ad litem* judges in the International Tribunal for Rwanda in order to enable the International Tribunal for Rwanda to expedite the conclusion of its work at the earliest possible date and determined to follow closely the progress of the operation of the International Tribunal for Rwanda,

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

1. *Decides* to establish a pool of *ad litem* judges in the International Tribunal for Rwanda, and to this end *decides* to amend articles 11, 12 and 13 of the Statute of the International Tribunal for Rwanda and to replace those articles with the provisions set out in annex I to this resolution and *decides also* to amend articles 13 bis and 14 of the Statute of the International Tribunal for the Former Yugoslavia and to replace those articles with the provisions set out in annex II to this resolution;

2. *Requests* the Secretary-General to make practical arrangements for the election as soon as possible of eighteen *ad litem* judges in accordance with Article 12 ter of the Statute of the International Tribunal for Rwanda and for the timely provision to the International Tribunal for Rwanda of personnel and facilities, in particular, for the *ad litem* judges and related offices of the Prosecutor, and *further requests* him to keep the Security Council closely informed of progress in this regard;

3. *Urges* all States to cooperate fully with the International Tribunal for Rwanda and its organs in accordance with their obligations under resolution 955 (1994) and the Statute of the International Tribunal for Rwanda;

4. *Decides* to remain actively seized of the matter.

02-52281 (E)

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Annex XI : Statistics of Human Rights Abuses by RPA Soldiers

STATISTICS OF HUMAN RIGHTS ABUSES BY R.P.A SOLDIERS.

1. Cases prosecuted
2. Cases under investigation
3. Some specific cases.

I. CASES PROSECUTED

	N° of Cases	N° of Soldiers Prosecuted	Crimes Committed
1996	02	03	- Murder & Non assistance
1997	02	10	- Murder of Civilians
1998	02	25	- Murder of Civilians
1999	-	-	-
2000	02	11	- Murder - Looting
Total	08	49	

II. CASES UNDER INVESTIGATION

Number of Cases: 04
Number of Prisonners: 30

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REVENGE CASES:

TRIED CASE BY WAR COUNCIL SINCE 1995-2002.

1- RMP N° 0259/S1/AM/KGL/NZ. F/95.

Accused : Sgt. MUGABO John
Cpl. Africa Damascène
Pte. GISEKA Byagatonda

Crime : - They are accused of Murder in Nyakabanda / Nyamirambo in Sept. 1994.
- Aiding and abetting the criminals.

Sentence : They were sentenced to 3 years and 3 months imprisonment.

2- RMP N° 0483/S1/AM/KGL/NA/95.

Accused : Cpl. NIYONSENGA Innocent

Crime : He is accused of Murder of 15 Interahamwe in Kabarondo.

Sentence : He was sentenced to 3 years imprisonment.

3- RMP N° 0461 S1/AM/KGL/KS/94.

Accused : Sgt. MUHIRWA Albert
Pte. NDABAKURANYE.

Crime : They are accused of murder in Kimisange on 22nd July 1994.

Sentence : They were sentenced to 2 years imprisonment.

4- RMP N° 1843/S1/AM/KGL/KS/97.

Accused : Pte. SEKUBUMBA Frank

Crime : He is accused of assassination of GAMALIYERI in July 94 in Remu

Sentence : He was sentenced to 2 years imprisonment.

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5- RMP N^o 1279/S1/AM/KGL/RA/96.

Accused : 2Lt. J.M.V KAREGEYA

Crime : He is accused of Inflicting grievous bodily harm causing death of one BENDANTUNGUKA Innocent, MPAKANIYE Etienne, NSANZUMUHIRE Xavier in MBUYE, MUSOVU & GASHORA.

Sentence : He was sentenced to 1 year imprisonment.

6- RMP N^o 0046/S1/AM/KGL/M.F/94.

Accused : Lt. Arthur BUTARE

Crime : He is accused of inflicting Grievous bodily harm to Silas MUSIRIKARE resulting into death on 16/07/94 in REMERA.

Sentence : He was acquitted by War Council.

7- RMP N^o 1991/S1/AM/KGL/KS/97.

Accused : Cpl. KAMUGUNGA Innocent
Cpl. UWAMUNGU Jacques alias Bosco

Crime : They are accused of inflicting grievous bodily harm causing death of KARURANGA Vincent on October 1994 in Kicukiro.

Sentence : They were sentenced to 2 years imprisonment.

8- RMP N^o 0014/S1/AM/KGL/UTF/95.

Accused : Cpl. UWAMUNGU Jacques
: Sgt. RUJUGIRO Innocent
: Cpl. NGAMIJE Pio
: Pte. HAVUGIMANA Emmanuel
: Pte. RUTSINDURA Epimaque.

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Crime : They are accused of murder of one Mathias HAKIZIMANA who was allegedly said to have murdered one SHAMUKIGA and other relatives of Cpl. UWAMUNGU Jacques during 1994 genocide in Kicukiro Parish.

Sentence : Cpl. UWAMUNGU Jacques & Pte. HAVUGIMANA were sentenced to 2 years imprisonment each, others were acquitted.

9- RMP N° 0540/S1/AM/N.A/95.

Accused : Sgt. RUBIMBURA J. Baptiste

Crime : He is accused of assassination in MURAMBI / MUTARA

Sentence : He died before appearing in court.

10- RMP N° 2175/S1/AM/KGL/RU/97.

Accused : Sgt. WERABE Edouard

Crime : He is accused of Murder

Sentence : He was sentenced to 1 year and 8 months imprisonment.

11- RMP N° 0070/S1/AM/KGL/MF/94.

Accused : Pte. KAREGEYA Boniface

Crime : He is accused of murder of NYIRABAGENZI on 13/09/94 in NTSINDA / GISHARI.

Sentence: He was sentenced to 2 years imprisonment.

12- RMP N° 0702/S1/AM/KGL/RA/95.

Accused : Sgt. GAKIRE Francis
Pte. DUSINGIZEMUNGU Schadrack

Crime : They are accused of murder of one NTAGANIRA Godfroid on 06/02/95 in KICUKIRO Sonatube.

Sentence : They were sentenced to life imprisonment.

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13- RMP N° 1027/S1/KGL/NA/97.

Accused : Sgt. NGAMBA John
Sgt. HABONEZA Yunusu

Crime : They are accused of murder of HABINSHUTI Oreste, former
Sous Prefet of GIKONGORO.

Sentence: They were acquitted by the court.

14- RMP N° 1183/S1/AM/KGL/KS/96.

Accused : 2Lt. Felicien MUYANGO
Civ. KABAGEMA Ambroise.

Crime : They are accused of murder of NIKUZE Bernard, former President /
Chairman of Butare court of first instance.

Crime : They were acquitted by the court.

15- RMP N° 0193/S1/AM/KGL/NA/96.

Accused : Sgt. RWITATIRA Sam
Cpl. NZIGIYE Augustin

Crime : They are accused of assassination of RWAMUHAMA Mussa &
Tharcisse on 27/10/94 in RWAMAGANA.

Sentence: They were acquitted.

16- RMP N° 0489/S1/AM/KGL/UJF/95.

Accused : Sgt. RWARINDA Damien

Crime : He is accused of murder of three people
ie. - AKIMANIMPAYE Seraphine
- MUKANDAMAGE Marie and her kid on 22/07/95 in
Mugina / GITARAMA.

Sentence : He was sentenced to 4 years imprisonment.

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17- RMP N^o. 0981/S1/AM/KGL/RA/96.

Accused : - Sgt. BYUMA BISHAKWE
- Cpl. RUBERWA Corneille
- Pte. KANANGA Albert.

Crime : They are accused of murder of NDAYISABA Pascal on 24/03/96 in GASEKE / BYUMBA.

Sentence : They were sentenced to 5 years imprisonment.

18- RMP N^o. 2597/S1/AM/KGL/97.

Accused : - Lt. Emmanuel NTIYINGINGWA
- S/Maj. RWIRAHIRA Jean Damascène
- RWABUHUNGU Geoffrey.

Crime : They are accused of murder of 5 people on 20/07/97 in Commune GITESI / KIBUYE.

Sentence: They were sentenced to life imprisonment.

19- RMP N^o. 0484/S1/AM/KGL/RA/95.

Accused : Pte. RULISA Kizito

Crime : He is accused of shooting and murdering 06 people who had Pangas in GIKOMA GASHORA forest on 16/08/94.

Sentence : He was sentenced to 1 year and 6 months imprisonment.

20- RMP N^o. 2220/S1/AM/KGL/NA/97.

Accused : Pte. KATABARWA Moise

Crime : He is accused of inflicting greivous bodily harm causing death of alleged Interahamwe who had refused to disclose to him the gun he used in 1994 genocide.

Sentence : He was sentenced to 1 year imprisonment.

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RPA SENIOR OFFICERS TRIED BY MILITARY COURT SINCE 1995-2002.

1. Brig.Gen Fred IBINGIRA (Violation of Human Rights), Convicted
2. Col Stanislas BISERUKA (Fraud) Convicted and demoted
3. COL Augustin TURAGARA (criminal negligence) convicted
4. LT.COL Fred NYAMURANGWA (Theft) Convicted and demoted
5. LT.COL KAZINTWARI KADAFI (Forgery of document) Convicted
6. LT.COL Patrick MUGABO (Theft) Convicted and demoted
7. LT.COL Andrew KAGAME (Criminal negligence) Convicted
8. LT.COL GASHAIJA (Violation of Human Rights) Acquited
9. LT.COL George RWIGAMBA (Violation of Human Rights) convicted
- 10.LT.COL RUZIBIZA (Violation of Human Rights) convicted
- 11.LT.COL Aloys MUGANGA (Negligence of duty) convicted
- 12.LT.COL SEKAMANA (Traffic Accident) convicted -
- 13.LT.COL KABERUKA (Traffic Accident) convicted
- 14.LT.COL RUVUSHA (Traffic Accident) convicted
- 15.MAJ Peter RUBAYITA (Embezzlement) convicted
- 16.MAJ Faustin NKURUNZIZA (Manslaughter) Convicted and demoted
- 17.MAJ Charles NZARAMBA (Embezzlement) Convicted and demoted
- 18.MAJ Alexis SHUMBA (Theft) Convicted and demoted
- 19.MAJ KWIKIRIZA (Criminal negligence) Convicted
- 20.MAJ Claver RUGAMBWA (Violation of Human Rights) Convicted
- 21.MAJ NGIRABATWARE Acquitted
- 22.MAJ KATABARWA (Criminal negligence) convicted
- 23.MAJ SEMANA (Embezzlement) Acquitted
- 24.MAJ Sam BIGABIRO (Violation of Human Rights) convicted =
- 25.MAJ Aloys GAPFIZI (Criminal negligence) convicted
- 26.MAJ Francis KANANURA (Criminal negligence) convicted and demoted
- 27.MAJ TUMUSIME (Theft) Convicted and demoted
- 28.MAJ Justus MUHIZA (Embezzlement) Acquitted
- 29.MAJ Anne Marie NYIRAHAKIZIMANA (Genocide) Convicted and demoted

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