

1-1-1997

## Report of The International Criminal Tribunal for Rwanda

Robert F. Van Lierop

Follow this and additional works at: <https://scholarlycommons.law.hofstra.edu/hlps>



Part of the [Military, War, and Peace Commons](#)

---

### Recommended Citation

Van Lierop, Robert F. (1997) "Report of The International Criminal Tribunal for Rwanda," *Hofstra Law & Policy Symposium*: Vol. 3, Article 16.

Available at: <https://scholarlycommons.law.hofstra.edu/hlps/vol3/iss1/16>

This Article is brought to you for free and open access by Scholarship @ Hofstra Law. It has been accepted for inclusion in Hofstra Law & Policy Symposium by an authorized editor of Scholarship @ Hofstra Law. For more information, please contact [lawscholarlycommons@hofstra.edu](mailto:lawscholarlycommons@hofstra.edu).

# REPORT ON THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA\*

*Robert F. Van Lierop\*\**

## I. FOREWARD

On October 17, 1997 the Associated Press reported that Jean Kambanda, a former Prime Minister of Rwanda, had been indicted for his alleged role in the 1994 Rwandan genocide which tragically brought his tiny land-locked country to the world's attention. Unfortunately, the world's attention span is far too brief, and far too selective.

Mr. Kambanda and six other former Rwandan political leaders were arrested in Kenya in July of 1997 and held by the International Criminal Tribunal for Rwanda (hereinafter "ICTR") at its jail in Arusha, Tanzania. The news of their arrest, detention, and subsequent indictment was greeted with considerable interest by those who have been following the controversial and complex legal processes that have unfolded in response to one of the most carefully organized and abhorrent instances of genocide ever witnessed by mankind.

Over the course of 100 days beginning in April of 1994 over 500,000 people were systematically hunted down, rounded up, and brutally murdered. The slaughter was carefully organized, orches-

---

\* The following article is a slightly revised version of a report prepared in March, 1997 for the American Bar Association (ABA) and for the Association of the Bar of the City of New York (ABCNY). The report was subsequently published in the *International Lawyer* in the spring of 1998. The author's Addendum, *see infra* at 231-232, updates the report for publication in the Hofstra Law & Policy Symposium. The views expressed are solely those of the author.

\*\* Member of the Executive Committee of the Association of the Bar of the City of New York; Co-chair of the African Law Committee of the American Bar Association; Special Committee on African Affairs; founding partner, Van Lierop, Burns & Bassett; B.A. Hofstra University; J.D. New York University School of Law.

trated, and encouraged by what at that time posed as a government in Rwanda. Women and young girls were also subjected to sexual torture and mutilation of the most perverse sort before being murdered. Some estimates have put the actual number of victims as closer to one million. The criminal nature of what occurred in Rwanda from April to July of 1994 is so pronounced that the exact number of victims almost begs the issue.

The international community, which for the most part stood by while the bloodletting unfolded, is now grappling with the aftermath of the genocide. How can this horror be avoided in the future? How can justice be done for the victims and their survivors? How can the guilty individuals be held accountable for their misdeeds as *individuals* rather than as members of a particular ethnic group or political movement?

All of these questions, and others, are integral to the proceedings of the ICTR and the parallel prosecutions being conducted inside Rwanda by the Rwandan national authorities. These questions also perplex the legal profession as we search for ways to expand the rule of law, and hope that somehow respect for the rule of law might translate into popular revulsion against ethnic demagoguery and the politics of hatred.

Since 1995 the Association of the Bar of the City of New York (hereinafter "ABCNY") has been considering various ways in which the legal profession in our country might help Rwanda as it attempts to rebuild its shattered judicial system. Rarely, if ever, has a country faced the national trauma that Rwanda faces. Rarely, if ever, has a judicial system attempted to reconstruct itself, while trying the magnitude of cases that the Rwandan judicial system now faces in the aftermath of the genocide.

Early in 1997, I was afforded the opportunity to travel to Rwanda on behalf of the American Bar Association (hereinafter "ABA"), the ABCNY, and the Lawyers Committee for Human Rights. The purpose of the visit was to assess the needs of the Rwandan judicial system; evaluate various ways in which the American legal profession might best help; and develop a series of recommendations as to how we might best assist Rwanda in the process of building a judicial system suitable to its circumstances which will enjoy the confidence of its people.

I traveled to Rwanda in mid-February of 1997 and remained until early March. Despite travel advisories (due to the deteriorat-

ing security situation resulting from a series of attacks launched by remnants of the armed forces of the old regime), I was able to travel to a number of areas outside the capital city of Kigali and visit important sites in Gitarama, Butare, Gikongoro, and Kibuye.<sup>1</sup> During these visits I met a number of people who had different experiences and perspectives during the genocide. This greatly enhanced my personal understanding of the situation. Throughout the course of my visit to Rwanda, I was fortunate enough to be able to speak with Rwandan government officials, representatives of the U.S. government, diplomats representing other nations, representatives of international organizations and non-government organizations (hereinafter "NGOs"), journalists, women's rights and human rights activists, lawyers, soldiers, students, victims of the genocide and even persons accused of participating in the genocide.<sup>2</sup>

This article is based on the report prepared for the ABA and the ABCNY. It is based in part on my own independent research and my observations and discussions with others during the visit to Rwanda. Wherever possible, specific sources of information are identified. However, in a few instances persons holding official positions with government agencies, international organizations, or NGOs, expressed personal views not necessarily shared by their agencies or organizations. In such instances those views have been summarized without identifying a specific source. The conclusions and recommendations are strictly my own.

## II. INTRODUCTION

To speak of "rebuilding" the judicial system in Rwanda is really to make liberal use of a misnomer. In its colonial and post colonial history, Rwanda never had much of what we might consider to be a modern functional judicial system. The legal system bequeathed to the country by Belgium when its colonial rule came to an end was nothing "... more than a corrupt caricature of justice."<sup>3</sup> Generally speaking, systems of justice have tended to evolve

---

1. See Annex 1.

2. See Annex 2.

3. William Schabas, *Justice, Democracy and Impunity in Post-Genocide Rwanda: Searching for Solutions to Impossible Problems*, 7 CRIM. L.F. 523, 531 (1998) (hereinafter "Schabas").

from the need to have reasonable order and predictability in commercial intercourse, and the social dynamic of balancing individual rights against the power of the state. During the colonial era in Rwanda, even the mere notion of justice was an alien concept. Those who were colonized had very few of the rights that we consider essential to the functioning of a democratic order. Among the last concerns of those who colonized Africa were any ideas of protecting individual rights, enhancing respect for the rule of law, and developing systems of justice.

After achieving political independence in 1962, there was little, if any, change in Rwanda's judicial system. Its new rulers (having gained ascendancy in the wake of the anti-Tutsi violence of 1959) enacted a series of measures to permanently enshrine political control in their own hands. The Tutsi minority was systematically denied any semblance of participation in the political life of the country. Over the years, discriminatory measures became more rigid and thoroughly institutionalized. Those measures were also punctuated by intermittent state sanctioned *pogroms* which killed many thousands and drove hundreds of thousands to seek refuge in neighboring countries.

The continued and steadfast refusal to allow the large number of refugees the right to return home in peace and participate in Rwanda's political life led to a ticking political time bomb. This led to a number of incursions into Rwanda by guerrilla forces organized from amongst the refugees. The regime responded with more repressive measures and more massacres. On October 1, 1990, the largest and eventually most successful effort to return to Rwanda was launched by Rwandans who had served in Uganda's army, and who crossed the border after deserting with their weapons. Their initial military successes, and their eventual triumph in July of 1994 over a numerically superior and better equipped foe, would subsequently change the history of Rwanda, and may also alter the course of history in the entire Great Lakes Region.

In 1993, Rwanda, a small, densely populated country with an area of only slightly more than 26,000 square kilometers and approximately 7 million people, had a legal system consisting of maybe 700 judges and magistrates, ". . . of whom less than 50 had any formal legal training."<sup>4</sup> A system of traditional justice also

---

4. Schabas, *supra* note 3, at 533.

existed to reconcile land disputes and some family matters. However, Rwanda, its political institutions and its system of justice were held hostage by the heavy handed rule of Juvénal Habyarimana, a former Major General. Habyarimana had seized power in a *coup d'état* in 1973 in the midst of anti-Tutsi violence which he was suspected of orchestrating. His despotic regime was based not only on the politics of appeals to the crudest forms of "ethnicity," but also on a regional power base in the country's northwest.

### III. HISTORIC OVERVIEW

Most historians agree that the first inhabitants of Rwanda were the hunter-gatherers known as the Twa who today comprise roughly 1% of the population. It has been generally assumed that the country was then settled in succession by those known as Hutus, and then by those known as Tutsis. However, the accuracy of the ethnic labels "Hutu" and "Tutsi" is today the subject of vigorous debate. The former, believed to comprise 84% of the population, were considered by early European colonizers to be a Bantu people. The latter, believed to comprise 15% of the population, were considered to be a Nilotic or Hamitic people. The Hutus were believed to be primarily agriculturists, and the Tutsis pastorilists. Extremists in Rwanda later propagated the theory that the two were even "separate races," and that the Tutsis were foreign invaders who had conquered and subjugated the Hutu masses. In actuality, when the Europeans arrived in the late 19th century, Rwanda was a relatively stable kingdom ruled by a Tutsi aristocracy that, with the help of the mountainous topography, had managed to isolate the country from the incursions of the coastal-based slave traders. Rwanda was certainly not a land of universal peace and harmony before the arrival of the Europeans. However, in its pre-colonial history there was absolutely no trace of systemic "ethnic" violence between Hutus and Tutsis.<sup>5</sup> They lived side by side, fought in the same armies, and generally shared the same destiny.

Early German and Belgian colonizers brought their own distorted views of race and ethnicity to Rwanda. Prior to the arrival of the Europeans, Hutus occasionally became Tutsis, and Tutsis

---

5. See GÉRARD PRUNIER, *THE RWANDA CRISIS: HISTORY OF A GENOCIDE*, 39, (1995) [hereinafter "PRUNIER"]. See also Philip Gourevitch, *Letter From Rwanda: After the Genocide*, *THE NEW YORKER*, December 18, 1995, at 78 [hereinafter "Gourevitch"].

became Hutus, depending on the rise and fall of one's economic fortune. There was also some intermarriage, and it was not uncommon for families and clans to have both Hutu and Tutsi members. Rwanda had a very complex social and political structure that was hierarchical in nature and was not completely understood by those who colonized the country. As a result, the colonizers governed in a manner that reinforced their own biases and exacerbated Rwanda's already existing social contradictions. Germany, and to a far greater extent, Belgium, appeared to favor the Tutsis, much to the chagrin of the Hutus. However, in 1959, when the Tutsi political leadership "betrayed" their Belgian colonial masters by agitating for political independence, Belgium responded by conniving with extremist elements of the Hutu nationalist movement to usurp the Tutsi political domination. By then the die had been cast. "Ethnicity" became a political and social measuring rod. Disaster would soon follow!

Over the next three and a half decades the ethnic gap widened politically, although paradoxically, intermarriage and other normal social relationships between Hutus and Tutsis continued and were not at all uncommon. After all, they shared the same culture and the same language. Traditionally, they sang the praises of the same heroes, and danced the same dances. Eventually, many even came to share the same frustrations with the corrupt and morally bankrupt Habyarimana regime. Rwandans have always lived in close proximity to each other. There are no Hutu areas or Tutsi areas in the countryside. Left to their own devices, the Rwandan people have generally lived in peace with each other. However, Rwanda has long been one of the world's most densely populated countries. It is a magnificently beautiful land, but arable land has always been scarce and eagerly competed for. This scarcity is also one of the root causes of the country's social ills and one of the issues most eagerly exploited by the demagogues who organized the mass murder of their fellow human beings.

#### IV. THE GENOCIDE OF 1994

One of the most serious, and one of the ugliest crimes known to mankind is the crime of genocide. Those who have endured its horrors have great difficulty ever forgetting that experience. Those who would describe it have great difficulty finding words adequate

to depict its vile nature. A crime of such magnitude is almost beyond comprehension.

What could conceivably drive any human being to participate — at any level — in mass murder with the aim of seeking the physical extinction of other human beings? What sick political pathology could possibly lead individuals to engage in the most aberrant practice known to mankind? To search for reasons for genocide is to search for logic in the midst of madness. To find reasons almost confers rationality on the motives of the criminals who commit this despicable act. Yet, genocide has never been a sudden or unplanned act. It has always been a deliberate, pre-meditated and carefully orchestrated orgy of mass murder for political purposes.

The genocide which occurred in Rwanda over the course of 100 days in 1994 was no exception. From the 6th day of April to the 15th day of July in that year, perhaps close to one million people were systematically hunted down, rounded up, and brutally murdered. This was not a spontaneous outburst of killing. This was not a tribal conflict fought over obscure and ancient antagonisms. Instead, this was a well-organized campaign of carnage in which the participants followed instructions from the highest levels of the political, military, and civil hierarchies.

The killers were able to claim so many lives in such a short period of time by using relatively primitive methods of killing. They used a deliberate strategy of involving large numbers of the population in the slaughter. Murder became a cottage industry and a collective activity. Men, women, and children were the victims. Other men, women, and even children were the killers. Neighbors killed neighbors. Friends killed friends. In some instances, family members killed other family members! Politicians, civil administrators, judges, police officers, journalists, teachers, priests, nuns, businessmen, students, peasants, staff members of international organizations and NGOs were both victims and participants in indiscriminate killings. Some did so willingly; others were forced to do so by threats or coercion.

Tutsis were killed simply because they were Tutsis. Some Hutus were killed because they were known to be political opponents of Hutu extremism. Other Hutus were killed because they courageously and actively opposed the genocide, or hid intended victims from the rampaging killers. Some were killed simply in error because they were thought to be Tutsis.



There were no sanctuaries. The killers invaded homes, places of business, schools, hospitals and even churches in search of their prey. The dead and the dying were unceremoniously stripped of their clothing, jewelry and anything else of value. Some were shot or killed by grenades. Most were chopped to death with machetes, knives, or farm hoes. Others were thrown down pit latrines or wells, or were bound and tossed into rivers, down ravines, or even buried alive. Some victims actually bribed their killers, begging to be shot rather than endure being hacked or beaten to death. Women were forced to kill their husbands or their children. Children were forced to kill other children. Women and young girls were gang-raped, tortured and sexually mutilated in almost unimaginable ways. The scope and intensity of what occurred is almost unfathomable. The national trauma that has resulted from this carnage is so great that it is difficult to discuss, painful to document, and impossible to ever forget.<sup>6</sup>

In the midst of the human slaughter, some of the most maniacal killers also killed cattle because traditionally cattle represented and symbolized Tutsi wealth. I was told by one reliable source that even cats were killed because their noses were seen by some of the most deranged killers as resembling what are commonly thought of as "Tutsi-like" facial features. It is difficult to imagine more demented thinking or more perverse behavior.

The event that was used to trigger the carnage was the crash of the airplane carrying President Habyarimana and the Provisional President of Burundi, Cyprien Ntaryamira, as the aircraft approached Kigali. The two were returning from a summit meeting in Tanzania where, under severe international pressure, Habyarimana had finally agreed to honor a power sharing agreement to bring peace to Rwanda. Two missiles were fired at the aircraft from an area near the airport and under the control of the then Rwandan Army. The plane was brought down by a direct hit and crashed, killing all aboard. The evidence appears to support the theory that it was shot down by some of Habyarimana's own troops, acting on

---

6. See Prunier, *supra* note 5; see also African Rights, *Rwanda: Death, Despair and Defiance*, (1995); African Rights, *Rwanda Not So Innocent: When Women Become Killers*, (1995); Human Rights Watch, *Playing the 'Communal Card': Communal Violence and Human Rights*, (1995); GENOCIDE IN RWANDA: A COLLECTIVE MEMORY, (John A. Berry et al trans., 1995); Gourevitch, *supra* note 5, at 78; Human Rights Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, (1996).

the orders of disgruntled members of his inner circle, who were displeased by the prospect of sharing power and losing some of their privileges.

Within hours of Habyarimana's death, the Prime Minister and the President of the Constitutional Court, both Hutus, were brutally murdered by members of the Presidential Guard. Other moderate politicians were similarly hunted down and murdered at the outset of the genocide. To its eternal shame, the international community did little to stop the carnage. Ten Belgian soldiers who had been guarding the Prime Minister were taken prisoner, tortured, and summarily executed. However, for the most part, United Nations troops stood by helplessly and watched the slaughter because they had been ordered not to intervene. In fact, their number had been reduced to a level barely sufficient to assure their own safety. Foreigners were evacuated, but Rwandan employees of foreign embassies and international organizations were left to face almost certain death. Rwandans watched the international community turn its back and march away. Later, they heard empty rhetoric and "double speak" emanating from United Nations Headquarters in New York, from Brussels, Paris, Washington, D.C., and other world capitals. The words, "Never again!" had a very hollow meaning to those being hunted down in Rwanda. Only the military victory of the Rwandan Patriotic Front over the armed forces of the genocidal regime some three months later ended the slaughter.

## V. IMPACT OF THE GENOCIDE ON RWANDA'S JUDICIAL SYSTEM

As it fled Rwanda in July of 1994, what remained of the genocidal regime looted the national treasury and destroyed or sabotaged whatever it could not physically transport out of the country. The new government faced enormous tasks. Restoring order and a sense of security, removing and burying the dead, caring for the injured and restoring normal services would, by themselves, have been daunting tasks in the face of what had occurred. Added to all of this, however, was the important task of arresting those accused of participating in the genocide who could be apprehended, holding them for trial and possible punishment, and in the process, ending the culture of impunity from prosecution for those criminal acts. The culture of impunity had reigned in Rwanda for

35 years and was a major contributing factor in the scope and intensity of this final desperate act of genocide.

The burning question was how to go about bringing the accused to justice when everything, including the judicial system, was in such a shambles. It must be emphasized that the defeated regime fled with every vehicle that could be driven away. Not a single desk, chair, telephone, calendar, pen, or paper clip was left behind.

The genocide of 1994 also:

... devastated what little existed of the judicial infrastructure and deprived it of most of its personnel. Reliable estimates suggest that no more than 20% survived. Of the rest, they were either murdered in the genocide, or else they were its perpetrators, in which case they have generally fled the country. But the survivors, recruited and trained during the Habyarimana period, show the unfortunate signs of their own inadequate professional backgrounds, and have had difficulty responding to the special needs of the situation.<sup>7</sup>

To place the situation in its proper context:

It should be kept in mind that no judicial system, anywhere in the world, has been designed to cope with the requirements of prosecuting genocide. Criminal justice systems exist to deal with crime on an individual level. They are unsuited for crimes committed by tens of thousands, and directed against hundreds of thousands. In Europe following the Second World War, it is doubtful if 75,000 people were judged by all of the courts of the most advanced and highly-developed legal systems. Even a prosperous country, with a sophisticated judicial system, would be required to seek special and innovative solutions to criminal law prosecutions on such a scale."<sup>8</sup>

Rwanda is currently holding over 100,000 men, women, and minors charged with participating in the genocide. Not all of those imprisoned can be expected to be found guilty. On the other hand, not all of those who share in the guilt will be arrested and charged. Some will escape apprehension because they fled to distant capitals with enough looted money (and perhaps knowledge of the complicity

---

7. Schabas, *supra* note 3, at 533.

8. Schabas, *supra* note 3, at 534.

ity of other governments) to buy immunity from the law. Others, inside Rwanda, may escape apprehension simply because there are no surviving witnesses.

### *A. Rwanda's Prison System*

Rwanda is one of the world's poorest countries. Its prisons were built to accommodate far less than 100,000 prisoners. Therefore, it has had to improvise and imprison some of the accused in makeshift facilities, in some instances using old factories or warehouses to accommodate the vastly swollen prison population. There is no question that the prisons are overcrowded and inadequately staffed. However, in my four visits to prisons, I saw no evidence of intentional maltreatment of prisoners by prison administrators or guards. Nor did I hear of such complaints.

Visiting a prison is seldom a happy experience. Rwanda's prisons are certainly no exception. I was told that prison conditions have improved over what they were two years ago. The improvement is attributed to the Government having more resources and its effort to respond to criticisms from observers. Nonetheless, prison conditions remain harsher than those we find barely acceptable in the United States. In Rwanda, the prisoners are living in very cramped quarters, almost one on top of the other, and under conditions that would be considered unsanitary by the standards of developed countries. Some sleep on blankets on the ground. Others have small cubicles to sleep in which resemble storage racks in a warehouse. However, it should be understood that most Rwandans live under very harsh conditions without many of the modern amenities, such as indoor plumbing, to which we are accustomed. Therefore, in the context of Rwanda's current economic and social conditions, prison conditions may not be so disproportionately harsh when compared with living conditions for the average Rwandan citizen. The conditions under which those charged with genocide are confined cannot be evaluated in the abstract without a frame of reference. It would be unrealistic to expect prison conditions to be much better under the circumstances.

The minors I saw at Gikondo Prison in Kigali had cleaner and more spacious quarters than those I saw anywhere for the adults. The minors also had an improvised athletic field for recreational purposes and appeared to have better supervision. I also observed that the minors and the women were receiving schooling while in

prison, but I saw little evidence of schooling at the adult male facilities during my visits there. In all of the prisons some, but not all, of the prisoners were working. Some were performing manual labor. Some were sewing, but others seemed to have very little to occupy their time and were either sitting or standing about listlessly.

The hierarchical nature of Rwandan society was very evident in the prisons. In prisons everywhere, the strongest or most clever always seem to be in control of the other inmates. This appears to be the case in Rwanda also, particularly as the ratio of guards to prisoners appeared, to me, to be very low. In some instances, it did appear that the inmates were "running" the facility — at least inside the gates. I entered the prisons with only my interpreter and perhaps one guard. In most instances, I was free to speak to the prisoners and take any photos I wished to take. Most of the prisoners expressed indignation at being arrested, proclaiming their innocence, yet showing very little remorse for the victims of the genocide. Some even expressed sentiments that could be considered prejudicial to their own defense. I heard some state that the genocide was in the past and should be forgotten. I heard others say they would finish the job when they were released from prison. I heard others say that people were killed, but it was not genocide. I also heard some express regret, but say they had nothing to do with the killings.

At Gikongoro Prison, I met and spoke with Israel Nemeyimana, who only a few days before had become the first person to be acquitted after being charged with genocide. He was a Category 2 defendant,<sup>9</sup> who told me that people he had hidden during the genocide had been discovered and killed. After the genocide, he was summoned for questioning four times and finally arrested after being accused by survivors. He was still in prison because under Rwandan law he could still be detained for up to fifteen days while the prosecution waited to review the court transcript, and decide whether to appeal. The Prosecutor told me he would probably not appeal. I asked whether he, the Prosecutor, had discretion to allow the person who had been acquitted to be released before he had received the transcript. The Prosecutor,

---

9. A Category 2 defendant is one charged with criminal acts or criminal participation placing him or her among perpetrators, conspirators, or accomplices of intentional homicide or of serious assault against the person causing death.

Habimana Jean Damascène, pondered the question for what seemed like a few minutes, and then responded, "Yes," he does have the discretion, but that under the circumstances he could not bring himself to exercise it. When I thought of the dozens of people waiting outside of his office, looking to him to obtain justice on their behalf, I understood why he felt that way. However, I also understood why Israel Nemeyimana asked me to intervene on his behalf to obtain his release. I told him that I had already raised the matter with the Prosecutor and that I would do it again, which I did. I also raised the matter with Gerald Gahima, *Directeur de Cabinet* in the Ministry of Justice. Mr. Gahima expressed surprise when I informed him that Mr. Nemeyimana was still in prison. He explained that there were a number of antiquated laws still on the books that were carryovers from the old regime, and this must be one of them. He promised to look into the matter. I took him at his word because he had been very outgoing and candid with me when we first met to discuss Rwanda's justice system. He had also been very helpful in arranging for me to visit the prisons and speak with people about what was happening.

Ironically, it was at Gikongoro Prison that I encountered the most bureaucratic prison director. I arrived at that prison close to lunchtime, which was the first problem. That hurdle was overcome with a suggestion from me that a call to the Minister of Justice might be in order if I were not allowed inside the prison at that time. Then the Director would not allow me to speak with Israel Nemeyimana in private. I protested, but to no avail, and had to speak with him in the presence of the Director and three guards. It is obvious that despite the best intentions of Rwanda's government, some members of the bureaucracy follow their own set of rules when they are in the position to do so. In this respect, Rwanda's bureaucracy is very much like our own and others that exist throughout the world.

It cannot be stressed enough that prison conditions in Rwanda are directly related to economic and social conditions in the country. In addition, the overcrowding is due to the scope of the genocide and the involvement of so many people in its execution. Until the courts have the capacity to hear the cases and judge the accused, the prison population issue will not be resolved. In fact, there could realistically be many more arrests, and it is pure myopia to suggest that most of the arrests are not based "... on some type

of evidence.”<sup>10</sup> It should be borne in mind, that Rwanda’s government would actually prefer not to have so many people in prison. The economic and social costs of imprisoning so many people are staggering. Deciding what scarce resources should be allocated to the prisons at this point in the country’s history is one of the most difficult decisions that any government, anywhere, has ever had to make.

The government of Rwanda simply cannot release *en masse* those who are awaiting trial on charges of having participated in the genocide. Revenge killings of Nazi collaborators were quite the norm in Western Europe after the Second World War in countries that had been occupied by Germany. How many revenge killings might the world expect to see in Rwanda if that country’s government were not seen by its citizens to be trying to punish the guilty and end the culture of impunity? It must be noted that the accused stand accused of murdering Hutus, as well as Tutsis. Perhaps as many as 80,000 to 100,000 Hutus were murdered by the Hutu extremists. It must also be noted that amongst the accused are a small number of Tutsis who identified themselves as Hutus, and allegedly participated in the killings. Also amongst the accused are a few who actually hid some Tutsis and then went out to kill others. Some of those they hid were women, or girls, who were hidden and held as sex slaves. Subsequent to the genocide, the current Government has also arrested and charged perhaps over 1,000 of its own soldiers, including officers, for revenge killings and other more common crimes. Under the circumstances, this accountability is an admirable effort to maintain discipline, instill respect for the rule of law and build a viable system of justice in Rwanda, for the first time in the country’s history.

## VI. THE ADMINISTRATION OF JUSTICE IN POST-GENOCIDE RWANDA

The establishment of an independent and effective system of justice in Rwanda is essential to rebuilding the country and moving the process of national reconciliation forward. No country has ever faced the dilemma that the current government in Rwanda now faces. Never before has a criminal justice system been asked to do

---

10. See Gourevitch, *supra* note 5, at 90.

what Rwanda's criminal justice system is currently being asked to do. Not every guilty party can be punished. Not every victim will obtain justice. Victims who survived the genocide will be asked to live with the guilty and work with them to rebuild the country. Some of the guilty are also victims in the truest sense of the word. The depth of the individual and national trauma is difficult to fathom. There is not a single developed country that would have adequate counseling services or facilities to address trauma of this magnitude. Victims of the genocide cry out for justice and demand that the government pursue justice on their behalf. For the sake of the country's future, justice must be served and justice must be perceived by the public as having been served.

### *A. Defining Justice*

Defining justice is not always easy, particularly in a setting such as present day Rwanda. Nonetheless, certain truths should be self-evident. Justice is much more than the punishment of a criminal act! Justice is not institutionalized revenge. To be considered just, a society must provide for the accountability of the political leadership of that society and the independence of the judiciary. The society must also provide equal opportunities for its citizens and for those who reside within its borders. All who appear before the judicial system of the society — be it a criminal matter, a civil matter, or an administrative matter — must be treated equally and in a reasonably predictable manner consistent with basic and fundamental principles of fairness. Those who are a part of the society must also know that the society will use reasonable means to assure the safety and physical security of the person, as well as an opportunity to enjoy life, liberty, and the pursuit of happiness. In the contemporary world it is inconceivable that adequate food, shelter, health care, and equal educational opportunities would not be considered critical and minimal components of "life, liberty and the pursuit of happiness." Furthermore, to be truly just, a society must also be perceived as just. It is imperative that the public have confidence that those who govern do so with the consent of the governed, and those who make judicial rulings are guided by reasonably objective criteria which are applied in a consistent and unbiased manner.



### *B. Rwanda's Judicial System*

Rwanda's judicial system is largely based on the Belgian model.<sup>11</sup> I learned from the President of the Supreme Court, the Vice-President of the National Assembly, and a former Minister of Justice (who is now in private practice), that elements of common law are likely to be introduced into Rwanda's judicial system. English is now an official language of the country, joining French and Kinyarwanda. The Dean of the Law Faculty at the National University in Butare confirmed what I had heard earlier. In an effort to harmonize the education of all students, the University might close for six months for intensive instruction in the English and French languages. Furthermore, he informed me that the law school wanted to be able to teach English legal terminology, and he suggested that U.S. English might be preferable to U.K. English legal terminology. He asked whether the ABCNY or the ABA might be in a position to help with such instruction and with efforts to commence the publication of two legal periodicals, one a case reporter and the other an analytical journal.

At the moment there are 16 practicing attorneys in Rwanda, out of almost 40 lawyers in the entire country.<sup>12</sup> There has never been a bar association. However, while I was in the country the statute enabling the establishment of a bar association was passed by the National Assembly. I was told by the Vice-President of the Assembly, and the coordinator of the soon to be formed bar association, that they expected to be formally organized sometime between the middle of March and early April. I was told that they would like to invite a representative of the ABCNY and the ABA to attend the ceremony marking the establishment of the Rwanda Bar Association. I explained that unfortunately it was not likely that either organization would find it possible to be represented, but that both would likely send congratulatory messages should they receive formal invitations.

Members of the private bar and judicial officials expressed the firm belief that those accused of genocide should be represented by

---

11. The Belgian model itself is derived from French Civil Law and the Napoleonic Code.

12. There are now 650 students enrolled in the law school.

defense counsel.<sup>13</sup> However, many of the defendants are insisting that they be represented only by Hutu lawyers, who are very few and far between at the moment. In addition, every practicing lawyer I spoke with had lost family members during the genocide and, therefore, felt unable to objectively defend persons accused of participating in the genocide unless certain of that person's innocence. For its part, the government, while sympathetic to the idea of the right of the accused to be represented by counsel, simply does not have the money to pay defense counsel. The government does not even have the money to properly prosecute all of those accused. As an example, I cite Mr. Habirana Jean Damascène, the Prosecutor in Gikongoro, a prefecture with a population of approximately 400,000 people. He is 32 years old and has been a lawyer since 1991. Before the genocide, he worked for a parastatal social security company and had never tried a case. He took on this assignment one year ago. He is the only lawyer on his staff. There is one vehicle for the entire judicial system in that prefecture. That vehicle is allotted 50 liters of fuel per week. There are supposed to be 12 small motorcycles in the prefecture for each of 12 investigators. However, 8 of the motorcycles have been in the repair shop since they arrived. The remaining 4 motorcycles are allotted only 10 liters of fuel per week. Thus, one can readily understand the great difficulty of conducting judicial investigations necessary to bring the cases to trial. In addition, the government finds it difficult to keep some of its best professionals because it is not able to offer salaries competitive with those paid by foreign embassies, international organizations, and NGOs. This has major implications for Rwanda's future as the country struggles to develop the capacity of its own institutions.

When I spoke to Israel Nemeyimana at Gikongoro Prison, he expressed understanding of the plight of the authorities in the aftermath of the genocide. "Because of what happened . . ." he said, ". . . they had difficulty sorting out the truth. What happened — happened, and now we must live in peace. I will work to build a new Rwanda by telling everyone to live in peace," he added. He was one prisoner who did express sorrow to me over the tragedy

---

13. There is no right to defense counsel, but it is allowed. Traditionally, few Rwandans were represented by lawyers in court; most represented themselves. There is also no right to confront witnesses, and no *writ of habeus corpus*.

that befell Rwanda. He also told me that the prisoners often discuss what happened. As the first person to be acquitted, he expressed belief in the system and great pleasure that the government is working to build the judicial system and apply equal justice to everyone. He also expressed a desire for everyone to benefit from a system of justice.

A major issue confronting the Rwandan government is security for witnesses who survived the genocide and for members of the judiciary. Over 300 survivors of the genocide who were scheduled to testify in criminal proceedings have been murdered. Most have been killed since those who fled the country as refugees in 1994 began to return. Obviously, some of the murderers are now trying to destroy the living evidence of their misdeeds.<sup>14</sup> This could be crucial as there is little forensic evidence (and even less capacity to uncover and effectively examine such evidence) after the genocide. The prosecution must rely primarily on eyewitness evidence. When I arrived in Rwanda the mood was quite somber following the daring assassination of a member of the Supreme Court outside of his home in Kigali, and the death of Alphonse Marie Nkubito, a former Minister of Justice, who had been an outspoken human rights activist.<sup>15</sup> His death appears to have been due to long term health problems. Nonetheless, it saddened many and has left a void.

Just before my arrival foreign aid workers were specifically targeted by unrepentant extremists who pledged to "finish" the genocide. Five U.N. human rights monitors were killed in an ambush. Three foreign doctors were killed and one wounded when former militia members attacked their sleeping quarters. In response, the U.N. and foreign aid organizations pulled their personnel back to the capital city, Kigali. Attacks on civilians have continued and have contributed to a very tense atmosphere.<sup>16</sup> One lawyer was even reported missing under circumstances that were still not entirely clear as of this writing. Efforts to intimidate the judiciary, witnesses, and human rights activists follow familiar patterns of the old regime. The new government is attempting to com-

---

14. See African Rights, *Rwanda - Killing the Evidence: Murder, Attacks, Arrests and Intimidation of Survivors and Witnesses*, (April 1996); See also Philip Gourevitch, *Letter From Rwanda: The Return*, THE NEW YORKER, January 20, 1997, at 44.

15. See Obituaries, N.Y. TIMES, February 21, 1997, at B8. See also Annex 4.

16. See N.Y. TIMES, February 15, 1997, at A1. See also Annex 5.

bat this pattern of attempted intimidation within a legal framework. However, its limited resources are severely strained.

There is a shortage of legally trained personnel, a shortage of administrative personnel, a shortage of vehicles, a shortage of fuel for the existing vehicles, and a shortage of basic supplies and legal texts. The United Nations Development Program (UNDP), the United Nations Human Rights Field Operation in Rwanda (HRFOR), a number of governments (including that of the U.S., particularly USAID), and a number of NGOs have provided much needed assistance in these areas.<sup>17</sup> However, much more is needed, and much more can and should be done.

The International Criminal Tribunal for Rwanda (ICTR) was established by the United Nations Security Council to prosecute persons responsible for genocide committed in Rwanda between 1 January 1994 and 31 December of the same year.<sup>18</sup> The statute adopted by Rwanda has a wider window. It authorizes the prosecution of those charged with committing genocide and crimes against humanity during the period between 1 October 1990 and 31 December 1994.<sup>19</sup> Rwanda has also assumed a more forceful posture with respect to the rapes and other sexual violence committed during the genocide. An interesting aspect of the resolution that created the ICTR is that it speaks of the need "... to strengthen the courts and judicial systems of Rwanda." Thus, the ICTR is called upon to play an active and constructive role in assisting the Rwandan judicial system. Unfortunately, the Tribunal has not effectively performed either of its tasks.

### *C. International Criminal Tribunal*

The international news media has reported extensively on some of the many administrative problems that have plagued the ICTR. Recently, the Secretary-General of the United Nations removed the Registrar and the Deputy Prosecutor from their positions. Based on the evidence at hand, that action was certainly warranted. However, the removal of those two individuals will

---

17. See *The Administration of Justice in Post-Genocide Rwanda*, U.N. High Commissioner For Human Rights Field Operations in Rwanda, HRFOR/JUSTICE/June 1996/E.

18. See S.C. Res. 955 U.N. SCOR, 49th Sess., 1994 S.C. Res. & Dec. at 15, U.N. Doc. S/INF/50 (1994).

19. See Organic Law of Rwanda No. 8/96 of 30th August 1996. See also Annex 6.

probably not be enough to resolve the major shortcomings of the Tribunal. For some inexplicable reason, the Prosecutor has, from the time problems first began to surface, escaped criticism. Yet, the Prosecutor might bear the bulk of the responsibility for what has gone wrong with the ICTR.

The ICTR trials are being conducted in Arusha, Tanzania. The Prosecutor, based at The Hague in the Netherlands, has spent little time in Africa and even less time in Rwanda throughout this process. It is becoming increasingly clear that the process was flawed from its inception. The ICTR appears to have been appended to the International Criminal Tribunal for the Former Yugoslavia (ICTFY) almost as an afterthought. If it can be said (and it probably can with accuracy) that a two-tier system of justice has been established for the Rwanda genocide trials, with the ICTR having far more resources, yet so far, having produced far less — the same can also be said with respect to the difference in resources and attention paid to the proceedings of the ICTR, as opposed to the ICTFY. In proceedings of this importance, the perception that the proceedings are moving forward and are fair to all concerned parties is as important as the reality. Another major distinction concerns the issue of capital punishment. Rwandan law provides for capital punishment for those convicted under category 1 of the Genocide Law. However, the ICTR specifically excludes that form of punishment. This is highly significant because it is likely that the ICTR will prosecute more of the ringleaders of the genocide than Rwanda will, thus validating the notion of a two-tier system with the unintended outcome of possibly working more to the advantage of the most culpable individuals.

Thus far, the ICTR has managed to begin one trial. The prosecution has presented its case. The defense is scheduled to begin presenting its case shortly. Other trials are also scheduled to begin shortly. However, there is little cooperation between the ICTR and the government of Rwanda. In fact, they often appear to be at odds. The Tribunal does not appear to be fulfilling an important part of its mandate. If there is any assistance to Rwanda's judicial system by the Tribunal, it is almost imperceptible. The Tribunal appears to be more focused on precedent and the long term implications for international law, particularly with respect to the eventual establishment of an International Criminal Court. Rwanda's primary concern — and understandably so — is with showing its

population that justice is being done, while its judicial system is being rebuilt. These two goals need not necessarily be incompatible. However, greater candor and sensitivity will have to be exhibited before the two sets of proceedings can realistically compliment each other. It would be most unfortunate if the surviving victims of the genocide were to never see justice done in their lifetimes, particularly with two judicial processes in existence to pursue that goal.

Unless the ICTR begins to exhibit greater sensitivity and a heightened sense of urgency, its proceedings will continue to be plagued by doubts and criticism. It could begin by taking elementary measures to assure the safety of the surviving witnesses it interviews. Too many of those witnesses have been needlessly exposed, making others reluctant to come forward. Moving the office of the Prosecutor to Kigali, Rwanda — or at least to Arusha, Tanzania — would also be a major step in the right direction. One would think that given what the people of Rwanda were forced to endure, they have a legitimate expectation that the prosecution of those who committed genocide in their country merits a full-time prosecutor, working daily within reasonable geographic proximity to where the crimes were committed and exercising effective hands on supervision of the prosecution process. Despite the many major efforts that have been undertaken in Rwanda to rebuild the society and the number of optimistic signs in comparison to the atmosphere of less than three years ago, the fact remains that the country's future is far from secure. Things could still easily unravel. Remnants of the former regime are dedicated to that end, and remain capable of stirring dangerous and barely submerged animosities. In addition, some people in the country would undoubtedly prefer instant vengeance to the long drawn out process of judicial reckoning. The current government is certainly not above criticism — no government anywhere can ever be. However, it is making a good faith effort to follow the only path that gives Rwanda a chance to have a future. That path is the one that ultimately leads people to have faith in their judicial system, and the ability of that system to punish criminal conduct. The future will very much depend on the popular perception of the performance of the judicial process currently underway. This is the area in which we can be most helpful.

## VII. CONCLUSION

Among the most moving and unforgettable experiences of my visit to Rwanda was the time spent with women's organizations. Interestingly, a number of women who are attorneys are working quite actively in these organizations, and with considerable effectiveness. I was fortunate in that the timing of my visit allowed me to be present in Kigali for the *Pan-African Conference on Peace-Gender-Development*. This event, which was a continent wide follow up meeting to the 1994 Beijing Conference on Women, was very much driven in some of the specifics on its agenda by events in Rwanda. I was also very fortunate to make two short trips outside of the capital with members of the women's organizations during my visit. The first trip was to Taba Commune for a reconciliation meeting organized by *Pro-Femme* (the umbrella organization of women's organizations in Rwanda). This was a very intense emotional experience for all who participated. The second was to the Nelson Mandela Peace Village for its dedication. This was equally emotional. In both instances the seeds of the national reconciliation process were very much in evidence as survivors, and perhaps some who might have been in ambiguous positions during the genocide, joined together, visibly struggling to face the future together as one. Reforming the legal system, including how the status of women (who may now constitute a large majority of Rwanda's population) is defined and delineated, will be a major component of the reconciliation process.

Inter-communal conflict and ethnic strife are certainly not unique to Africa. A good many lands from Eastern and Western Europe to Southeast Asia, through Central Asia, North and South America, the Middle-East and even the South Pacific, normally perceived as eternally tranquil, are plagued by the haunting specter of the potentially devastating consequences of inter-communal conflict and ethnic strife. Devising effective means to resolve complex social issues before they degenerate into inter-communal conflict and ethnic strife promises to be one of mankind's great challenges, as we stand poised on the threshold of the next century.<sup>20</sup>

---

20. See PAUL KENNEDY, *PREPARING FOR THE TWENTY-FIRST CENTURY*, at 39-46, 125, 127-31, 133-34, 143-44, 155, 183-84, 208-11, 215, 237-43, 251-56, 274-76, 287-89, 304, and 312-15 (1993).

The genocide that occurred in Rwanda must not be seen in isolation. The problem of ethnic demagoguery linked to inter-communal social contradictions, which gave rise to the genocide, exists in both developed and developing countries throughout much of the world. However, it is today perhaps potentially more devastating in developing countries where within existing social orders there is considerably less margin of error for human frailties of this sort, fewer checks and balances and less likelihood of legal redress. This is particularly true for those countries that are categorized as "least developed." No matter how serious a social contradiction may be, there can never be any justification for genocide; nor should the international community exhibit any tolerance toward genocidal regimes. The moment genocidal intentions become clear, those who are in a position to do so must act to mobilize international public opinion against the intended genocide. If the intended targets be Native American Indians, we too must be Native American Indians! If the intended targets be Armenians, we too must be Armenians! If the intended targets be Jews, we too must be Jews! If the intended targets be Tutsis, we too must be Tutsis! Today, as Rwanda attempts to rebuild in the aftermath of genocide, we too must be Rwandans!

#### VIII. RECOMMENDATIONS

In light of the current situation inside Rwanda, and our own limited resources, I do not recommend that the ABCNY or the ABA send observers to the genocide trials being held in Rwanda, or to the proceedings of the ICTR in Arusha, Tanzania. I also recommend against any effort by the ABCNY or the ABA to enlist, or encourage attorneys to volunteer their services as defense counsel at those trials. As limited as the resources of our professional associations are, they are very much in demand. Travel to and from Rwanda is expensive and very time consuming. The logistics on the ground in Rwanda are also complex. Hotels, meals, local transportation, interpreters, and overseas telephone calls — all of which would be necessary to support such a project — are also very expensive and require careful planning to effectively organize and coordinate. In addition, the limited time available to most private practitioners makes it likely that most of those who might volunteer would probably only be able to do so for two-week periods. This would not be sufficient time to effectively do what the volunteers



would be asked to do. Furthermore, it is not necessary to send observers to realize that the trials in Rwanda will not meet our current standards of due process. Under the present conditions in Rwanda, that would simply not be possible. It may also be beside the point, given the context of the country's recent history. One must wonder how trials in any country, including our own, could possibly measure up to internationally recognized standards of due process if those trials were to be conducted in the aftermath of a national catastrophe similar to that which devastated Rwanda.

With more specific reference to enlisting volunteer defense counsel, it should be noted that the Belgium based *Avocats sans Frontieres* is recruiting such counsel. While in Rwanda, I was not able to meet at length with representatives of "Avocats." However, we did speak on the telephone. I strongly advise against the ABCNY and the ABA being involved in this effort because, in addition to the resource and logistic concerns set forth above, I believe that we would not wish to be perceived by citizens of Rwanda, and other Africans, as experienced and "high powered" lawyers from a developed country, with considerable resources (relatively speaking), defending those against whom accusations of participating in genocide have been made. This is particularly true given the world's failure to act to stop the genocide when it started and when it was in full swing, and given the additional fact that the prosecution is operating under the severe handicap of having few lawyers, little experience, and extremely scarce material resources. This is not at all a situation in which the arrest process has been arbitrary and "the deck is stacked" in favor of the prosecution. I believe it is far more important, and far more helpful, for us to be seen as being as objective as it is possible to be, under the existing circumstances.

I firmly believe that a far more useful and effective use of whatever resources the ABCNY and the ABA are able to marshal for this purpose would be to enlist judges (sitting or retired), lawyers, and law professors to go to Rwanda for six-week to three-month periods in order to conduct lectures, seminars, and continuing legal education exercises with Rwandan judges, magistrates, lawyers, and lay advocates. These judges, lawyers and law professors could also observe trials while they are in Rwanda, but would not go there just to be observers. Their primary focus would be to assist in the process of enhancing respect for the rule of law, and

rebuilding Rwanda's judicial system. They would be working with those who might be prosecuting genocide cases, those who might be defending genocide cases, and those who might not have any direct involvement with any genocide proceeding. The judges, lawyers and law professors that the ABCNY and the ABA might help to send to Rwanda could also assist the government in rewriting some of its laws. The government has indicated that it wishes to rewrite its laws on inheritance (current laws bar women from inheriting property from deceased husbands or fathers), divorce, the status of women, and some commercial subjects. These judges, lawyers and law professors could also help advise the soon to be formed bar association in Rwanda, and the law school, on specific matters within their respective areas of expertise. An exchange program modeled on the ABA/USIA Robert A. Shuker, U.S./Africa Judicial Exchange Program could be a useful, and integral, part of this project. I would also strongly suggest that the East African Law Society be invited to participate in such an initiative.

Three distinguished legal scholars whom I would strongly recommend the ABCNY and the ABA to consider working with, in developing a proposal, or proposals, in accordance with the recommendations of this report, are:

- i) Dr. Norman J. Singer,  
Charles O. Stokes Professor of Law, and  
Professor of Anthropology  
The University of Alabama
- ii) Madeline Morris,  
Professor of Law  
Duke University School of Law
- iii) William A. Schabas,  
Dean of the Law Faculty  
University of Quebec at Montreal.

All three are known and respected in Rwanda for their work or writings. I am familiar with the work of all three of them, and I have spoken with them each individually after my return. I feel that they are ideally suited, and well situated, to be of invaluable assistance in developing, and participating in, a project such as that outlined above.

I also strongly recommend that the ABCNY and the ABA, or individual members of those associations, consider initiating or supporting:

- a) civil litigation against those persons within the jurisdiction of the U.S. who, it is alleged, organized, engineered, participated in, or otherwise assisted the genocide in Rwanda; and
- b) civil litigation against those persons within the jurisdiction of the U.S. who, it is alleged, fled Rwanda with money or other property belonging to the government of Rwanda, or to private individuals.

We could also encourage the U.S. government to commence criminal prosecutions against those within the jurisdiction of the U.S. who, it is alleged, participated in the genocide. However, the ICTR could exercise primacy in such cases, and the U.S. would be required to recognize that primacy. Bringing civil actions on behalf of individual Rwandan plaintiffs under the Torture Victim Protection Act, or the Alien Tort Claims Act, would be a major contribution. The United States District Court, Southern District of New York, has already decided one such in favor of plaintiffs.<sup>21</sup> This could be a significant weapon against those alleged to have committed genocide. The Memorandum Opinion and Order<sup>22</sup> by Judge Martin is very useful. However, we will have to make a very careful and practical evaluation of which cases, if any, should be brought considering the costs involved in such litigation, and what the likelihood of actually recovering monetary damages might be.

I also recommend that the ABCNY and the ABA consider establishing formal relations with the soon to be established Rwanda Bar Association, and offer whatever practical advice they are able to provide with respect to the administrative organization of a bar association, including advice on a newsletter, continuing legal education, and other appropriate functions.

In addition, I recommend that the ABCNY and the ABA adopt a position urging the United Nations to appoint a separate prosecutor specifically for the proceedings of the ICTR, and for

---

21. Louise Mushikiwabo, *et al v. Jean Bosco Barayagwiza*, No. 94 CIV 3627, 1996 WL 164496 (S.D.N.Y. Apr. 9, 1996).

22. *Id.*; See also Annex 7.

said prosecutor to permanently locate the office of the prosecutor in Kigali, Rwanda, in order to exercise effective management of the prosecution of those charged with genocide in Rwanda, in accordance with United Nations Security Council Resolution 955 (1994). Furthermore, the ABCNY and the ABA should urge the prosecutor to devise methods of protecting the identity of potential witnesses. Many witnesses have been threatened with violence as a way of thwarting the effective prosecution of those accused of committing genocide in Rwanda. Unfortunately, the ICTR has failed to heed warnings from the government of Rwanda not to visit surviving witnesses with great fanfare in certain areas of the country.

In an effort to address a major problem of great concern to all parties, I recommend that the ABCNY and the ABA consider developing an appropriate manner to request major international oil companies and the manufacturers of motor vehicles to consider devising methods of contributing fuel and vehicles necessary to conduct judicial investigations as part of the legal proceedings against those charged with genocide in Rwanda. These companies might be encouraged to do so as part of an effort to demonstrate support for the rule of law and equal justice for all.

I also recommend that the ABCNY and the ABA approach various legal publishers in the U.S. to contribute sufficient volumes of texts, such as legal dictionaries, and other useful reference publications, to the Supreme Court of Rwanda, the national law school, the bar association, each of the 12 prefectures and the Ministry of Justice.

I further recommend that the ABCNY and the ABA consider ways to assist the national law school to commence publishing a Rwandan law case reporter and a legal journal, as well as assist in commencing the publication of a newsletter reporting on the genocide trials.

Finally, I recommend that the ABCNY and the ABA adopt a position encouraging the government of the United States, international organizations, NGOs, and the private sector, to support the effort to rebuild Rwanda, through enhancing respect for the rule of law and helping to develop the judicial system, by allocating more resources, devoting more attention to the genocide trials underway inside Rwanda, and assisting capacity building measures (including those in the field of judicial investigation and witness protection) undertaken by the government of Rwanda in this regard.

Should any or all of these recommendations be accepted, I strongly urge that we coordinate our activities with those of others actively engaged in rebuilding the judicial system in Rwanda. The ABCNY and the ABA are highly regarded professional associations with well deserved reputations for candor, integrity, professionalism, and compassion. While I suggest that we coordinate our activities with government agencies, international organizations, and other NGOs, it is essential that we maintain our independence of thought and action, and continue to conduct ourselves in the same professional and objective manner in which we customarily conduct ourselves. Should we undertake to assist Rwanda, as recommended in this report, we can expect that this will not be a short term commitment. However, we need not fear that our resources are too limited to undertake this important and worthy task. In some instances, these recommendations would merely involve the ABCNY and the ABA as facilitators lending their names and good offices where appropriate. In other instances, efforts to raise the necessary financial resources should be initiated by approaches being made, and proposals being submitted to, government agencies, such as USAID and USIS; private foundations; law firms and other business enterprises; and international organizations, such as UNDP and UNHCR. During my visit to Rwanda, and since my return, I have managed to speak with a number of individuals from potentially interested government agencies, foundations, and international organizations. All have expressed interest in hearing from the ABCNY and the ABA with respect to any proposals we might develop.

Realistically, it is not possible to help everyone who seeks our assistance. We cannot be everywhere on every issue. However, some issues are so compelling, and some injustices so significant, that our presence — both real and symbolic — is essential. It is time to send a clear and unequivocal signal to the entire world that the heinous crime of genocide is one such issue — is one such injustice. History has given us one more opportunity to say, “Never again.” This time let us hope and pray that the world really means exactly what those words say — and exactly what those words signify.

## IX. ADDENDUM\*

On May 1, 1998 Jean Kambanda, former Prime Minister of Rwanda, pleaded guilty to genocide and agreed to testify against other defendants. Mr. Kambanda's plea, which was entered before the International Criminal Tribunal for Rwanda (ICTR) was historic in that he is the first person to ever accept culpability for genocide in an international court. He was sentenced to life in prison, but may still receive some sort of leniency depending on the nature and value of his cooperation with subsequent prosecution.

On September 2, 1998 the Tribunal handed down the first guilty verdict by an international court for the crime of genocide when it convicted Jean-Paul Akayesu, the former mayor of Taba, Rwanda. In that verdict, the Tribunal also held that the systematic rape of Tutsi women in Taba constituted an act of genocide. Thus, for the first time ever, rape and sexual aggression were found to be proscribed under the 1948 convention against genocide.

Rwanda's own courts have moved faster (although administered without the same procedural safeguards of the International Tribunal). Over 330 people have been tried in Rwanda's courts, with 116 having been sentenced to death and close to forty having been acquitted. In April of this year, 22 of those convicted were executed.

It is hoped that the next set of trials by the ICTR will be faster because there is now legal precedent for many of the more complex questions raised and decided at the first trial. In addition, ICTR officials maintain that the efficiency of the process has been improved. They are also seeking approval to try more than one individual at the same time. Nonetheless, at least one of the Tribunal's judges has indicated that he would resign this year to protest the quality of the Tribunal's management and its working conditions.

The political fallout from the 1994 genocide in Rwanda has been a major catalyst in the upheaval now wrenching apart the Congo and threatening to cause more upheaval in the neighboring countries as well. The reorganization of extremist and unrepentant elements of the armed forces of the genocide regime in refugee camps in the Congo (formerly Zaire) alarmed the current govern-

---

\* This Addendum was written by Mr. Van Lierop on September 13, 1998.

ment in Rwanda. When those genocidal armed forces used the camps in Congo to mount seemingly endless attacks against villages in Rwanda, Rwanda struck back. Subsequently, the Mobutu regime fell, but the spreading conflict continues as we go to press. Where the confrontation and violence throughout the region will end is anyone's guess. One certainty, however, is that until the people of the region see a system in place that affords them at least a semblance of justice, the world is likely to see a recurring and escalating pattern of a cycle of violence featuring revenge piled on top of earlier revenge, piled on top of retribution, piled on top of earlier retribution.