

**RWANDA RULE OF LAW DESIGN**

**FOUR-WEEK INTERIM REPORT**

**INTRODUCTION  
AND  
TECHNICAL REPORTS:**

**PROCEDURES FOR THE TRAIL OF GENOCIDE CASES**

**SUPPORT TO CIVIL, LAW: LAND TENURE AND LOCAL MANAGEMENT  
COMPONENTS**

**JUSTICE AT THE LOCAL LEVEL: FINDINGS AND RECOMMENDATIONS FOR  
FUTURE ACTIONS**

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## **Introduction**

### **The Rapid Response Team and Its Responsibilities**

The Rapid Response justice team was composed of four professionals from as many different fields: public administration, rule-of-law, land tenure and property rights, and alternative dispute resolution mechanisms. The team was charged with responsibility to identify specific needs of the justice system in three areas: re-starting the justice system, disposition of civil law cases and development of alternative dispute resolution mechanisms. The terms of reference indicated that team members were primarily expected to prepare scopes of work for technical assistance where needed. SOW 's were to include descriptions of the professional and personal qualities required for successful performance, the relationships with Rwandan counterparts, the security considerations and the logistical support needs.

After consultations in Kigali with the ambassador and the USAID mission, the team's mission was modified to make it as fully responsive as possible to the needs and expectations of the embassy and USAID. The public administration and rule of law members analyzed the criminal justice system, particularly in reference to the recent genocide, and identified possible remedial actions to remove impediments. The civil law member looked at land tenure problems and possible improvements in the administration of justice at the local level. The alternative dispute resolution member examined the role of various local institutions in the administration of justice and identified means for improving their functioning. She also underlined the needs of women for better access to information and services in order to assert claims to land and other property. Team members also contributed to each others' work on matters of mutual interest.

### **The Social Context**

Rwanda is a country in ruins from four years of war and traumatized by one of the bloodiest genocidal massacres in modern history. Many of its fields are untilled, its rural homes destroyed or abandoned, and much of its population is dead, in flight or in prison. There is a stunned quality in Rwandan life today. The government's effectiveness is shattered, buildings are pockmarked by bullets and shells, trained and experienced personnel are gone. As many as two million Rwandans are outside the country, most of them in the refugee camps in Zaire, Burundi and Tanzania. Probably more than 40,000 are in prisons, and many more have been displaced inside the country; some of whom are now being forcibly returned to their former communities.

War and the genocide have virtually destroyed the judicial system. That system, never a model of efficiency or fairness, has almost ceased to function. Most court buildings have been damaged or destroyed; records and documents have been trashed; the number of magistrates, attorneys and court administrative personnel still in the country and available to serve is a fraction of what is needed. Arrests are being made by army personnel, gendarmes, police and bourgmestres without full respect for prescribed legal procedures, and records of those arrests are not always adequate to identify the accused, the accuser and the arresting agent. Court documents are not being prepared uniformly or stored securely.

Yet the demand for justice is the dominant theme in Rwanda today. The survivors remember a holocaust as brutal, cruel and senseless as any the world has seen. Most of them have lost family members or bear the physical or emotional scars of the terror. Many Rwandans insist that the authors of the genocide and those who participated in it be punished.

Arrests continue, many of them unjustified, but as prison populations mount, far past the capacity of the prisons to house and feed them, the government cannot seem to get even the first genocide trial under way. As prison populations expand, risks of death from disease and overcrowding grow apace. They loom as a test of the international community's patience and a potential trigger of the wrath of that community if Rwandan officials handle the problem badly.

There are other obstacles to movement on the formal justice front. There is a shortage of magistrates, but they are to be named by the High Council of the Magistrature, which is appointed by the Supreme Court, and the Supreme Court has not yet been constituted. The National Assembly must act on all these appointments. One of the key issues is whether all magistrates who served under the previous government should be eliminated from consideration for re-appointment.

Meanwhile, it appears that the international tribunal, which is to meet in Arusha, will probably not convene until the end of the year. In a Rwanda impatient for justice, the delay is hard to accept.

Beyond the charge of murder, the government apparently would prefer to invoke the crime of genocide, but there is no Rwandan law against genocide as such. Under the international genocide convention, ratified by Rwanda, the government is obliged to introduce legislation making genocide a crime. If it does so now, will participants in the genocide be subject to an ex post facto law?

There is an additional, and potentially more serious, impediment to the conduct of genocide trials. Those who participate in the trials will be risking their lives each time a controversial decision is made, whether it is to acquit or condemn, perhaps even to pursue or to press charges. Outside the capital this concern is pervasive. Passions from the genocide cannot be easily cooled. Ethnic hatred is intense and palpable. Prosecutors, magistrates and court clerks will almost certainly have to have bodyguards.

This is the environment in which the Rapid Response Team was tasked to assist USAID to identify the needs of the justice system and begin to establish priorities for U.S. assistance. It should be emphasized that all recommendations are in support of the plan of the Ministry of Justice which was formally presented to the donor community in Kigali on March 30, 1995.

## **Summary of Technical Reports**

Four weeks of information gathering, consultations with US and Rwandan officials and private citizens, discussions with the donor community and travels within Rwanda, allowed the team to examine the justice system at several levels, from the

smallest, least formal dispute resolution practices at the community level to the formal system, with its legal basis and its institutional articulation. The examination enabled the team members to identify many of the problems and bottlenecks that keep the formal system from functioning effectively and to propose remedies, occasionally in the form of training or other technical assistance, at various points, but more frequently in the form of immediate physical, material and equipment needs.

The principal assumptions under which the team worked included:

1. The arrests will continue.
2. The government has very limited capacity to absorb assistance. It is understaffed and under-equipped and is somewhat removed from the real power centers of the country.
3. The pace at which progress will be made in restoring the justice system will be a Rwandan pace which we can encourage but not control. The U.S. government will have to watch the process unfold and identify opportunities for intervention as they arise.

It should be recognized that the Rwandan government's commitment to create an impartial, objective justice system is essential for effective international assistance.

Among the tasks assigned to the team was the identification of opportunities for technical assistance in helping the Ministry of Justice manage the coordination of resources offered by some 17 foreign governmental and international agencies and non-government organizations. The team has worked closely with the Ministry to create a coordinating position in a preferred location in the Ministry and should soon be able to write the scope of work.

The three technical reports, attached, provide USAID and AID/W with a number of specific recommendations for technical assistance. Many of these needs can be met only by the government of Rwanda, but there are excellent opportunities for USAID intervention throughout the system. However, each specific opportunity for the use of a technical assistant will have to be negotiated with the appropriate government officials by USAID. No general scopes of work can be written without close consultation with the appropriate government agency. Security conditions will also be dependent on the place and the time of each individual assignment as will the logistical support each assistant will need.

The reports also identify material needs, including office furniture and supplies, transportation, building rehabilitation and the like, but do not in most cases quantify them. Some of these needs could be met immediately. In addition, the reports indicate needs for the government of Rwanda to clarify its policies in order to achieve more disciplined implementation at the local level. These are opportunities that USAID will have to pursue.

Summary of Findings in Each Area of Concentration (For specific, detailed findings, see the technical reports.)

## **The Formal Justice System**

The team member concentrating on the rule of law developed a framework matrix of the judicial process, from the arrest stage through imprisonment, investigation and trial. Each of these four stages is presented in five main aspects: the prescribed procedures, the problems and bottlenecks, the remedial actions indicated, the identification of potential or actual donors and the legal issues, if any, involved. For each of the actions indicated (for example, in the arrest stage there are six specific actions listed) the possible USAID role is presented, along with the identification of other donors interested or already involved in that activity. In addition, other recommendations are summarily listed (e.g., see 3.1, p. 11 of Technical Report 1). All items in the matrix are indexed to the text.

### **Arrest Problems**

A basic problem that needs urgent attention is the practice of arrests by authorities who do not fully comply with the prescribed procedures. The army is still making arrests in some areas where it is not legally competent to do so. False accusations designed to remove an owner from property in order to take possession of it are all too common. The most urgent need is for more trained Judicial Police Inspectors (IPJ's). An effective, experienced NGO is available to undertake that training.

Also urgent at this stage of the criminal justice process is the related need to improve the openness and transparency of the arrest process. Clear, standardized identification procedures are needed. The same NGO could provide standardized forms and public awareness materials. USAID should consider priority funding for this effort.

### **Investigations: Triage Commissions**

According to officials of the Ministry of Justice, the triage commissions were conceived at a Council of Ministers meeting in October, 1994. They would conduct a rapid review of pending genocide cases in order to dismiss those without merit. There were to be eleven of them, one for each prefecture, attached to the prefectural prosecutor's office. Only last month did the minister issue a ministerial note to all prefectural prosecutors to create them. None has been established yet, as far as we know, except the one in Kigali which operated for a few months, then ceased its activities, and now appears to be beginning again.

Each commission is to have four members: the prosecutor himself and one each from the police, the army and the national intelligence center. These commissions have no basis in law; the ministry note gives them no legal foundation. Moreover, the note does not specify functions, objectives or procedures. Nor is it clear, even to our official contacts, just what types of cases will be judged by the commissions.

The Rapid Response Justice team in Kigali interviewed some of the country's most respected jurists and some of the magistrates who survived the genocide. Virtually all were critical of the commissions. Several pointed out the inconsistency of creating a parallel mechanism to the judicial system in order to deal with the genocide sequels at a time when the government is affirming a commitment to recreate a judicial system that will have national and international respect.

## **Prison Conditions**

Prisons are dangerously overcrowded and the justice system isn't working well enough to process cases. There is an urgent need for new prisons and prison furnishings, but expedited case review can also help to reduce the prison populations. This means that there is a need for more trained personnel at every level, from IPJ to greffier to prosecutor and magistrate. NGO's are available to provide training in several of these specializations.

## **Trial Personnel**

There is a top-down paralysis in the judicial structure affecting the whole system. The National Assembly must act in order to constitute the Supreme Court, without which the National Council of the Magistrature cannot be established. Only the latter can name the new magistrates essential to conduct of the trials.

Foreign magistrates may be made available; several donors have indicated interest in providing or financing them. But there are social, political and legal problems to be solved before this can become a feature of the genocide trials:

1. There is no provision in Rwandan law that would permit foreign magistrates to judge cases. Then, there are differences within the GOR about whether the foreign magistrates would judge cases or simply act as advisors. Can Rwandans accept a procedure in which a foreign judge issues a death sentence against a Rwandan citizen? Although a proposal to use foreign judges appears in the official government plans, we believe that both policy decisions and legislative action are necessary to move this proposal to fruition.
2. The language problem alone is daunting. Most written documents are in Kinyarwanda and most defendants will use that language in court, making both translation and interpretation an integral and time-consuming occupation.
3. Round-the-clock bodyguards will have to be provided to the magistrates, and courtrooms will have to be guarded, presumably by UNAMIR troops, thereby increasing the foreign presence.
4. Finally, there is a potentially troubling social problem. The foreign magistrates will be well paid, making more money in one day than their Rwandan counterparts do in a month. The foreigners will arrive at the courts in their cars, the Rwandans on motorbikes and mopeds. So much foreign presence can be expected to produce resentment.

## **Support to Civil Law**

The RRT team member charged with identifying technical assistance needs in the field of civil law determined at the outset that in Rwanda the linkage of justice to the disposition of land claims is unbreakable. The absence of Hutu owners, whether dead or in refugee camps, the return of earlier Tutsi refugees and the intense demand for land in this small, heavily populated agricultural country are putting great pressure on the justice system. Abuses are rampant. A "culture of denunciation" has arisen, in which an accusation against a neighbor produces an arbitrary arrest and opens the way to occupation of that neighbor's land and use of his house or property. This represents a fundamental threat to social life and the emergence of a new society in Rwanda.

Justice at the local, communal, level is administered by the ministries of Justice, Interior, and Defense. The bourgmestre reports to the Ministry of Interior, the magistrate of the cantonal tribunal to the Ministry of Justice, the gendarme to the Ministry of Defense, but to the Ministry of Justice when acting as an Judicial Police Officer (OPJ), and the soldier to his military command. The effective power configuration varies from commune to commune, often depending on individual qualities of the officials. Rules and procedures are not standardized and there is a pressing need for transparency in actions taken.

The army is often the face and instrument of government at the local level. It also appears to be the chief offender in making improper and insufficiently documented arrests. In too many cases the arrested persons are abused physically before making their confessions, most of which, in at least one prefecture, are later denied. Land and property can be the material stakes in these tactics.

To discourage false accusations, there needs to be a written and traceable record of accusations, including the identity, address, and fingerprint of the accuser(s), information about the person making the record, and transmission of the record to higher authorities. This should be accompanied by a governmental warning that individuals making false denunciations will be punished.

Three areas of action, including outside assistance, are proposed:

- A) Support a survey of the communal lands and lands available for temporary occupation at the commune level, and establishment of a records system for the allocation of lands by local officials;
- B) Support a new system of registration of people ("Etat-civil" and population statistics); and,
- C) Support information, communication, and training activities of local women's groups in their struggle for property and other rights.

## **Alternative Dispute Resolution Mechanisms**

The team member working on alternative dispute resolution mechanisms soon found that the standard model of alternative dispute resolution would have no application in Rwanda today, relying, as it does, on a disinterested third party, or parties, and introducing procedures and that have no roots in the hill communities of Rwanda. She did, however, find that contrary to previous reports there is a vigorous presence of, and growing reliance on, the traditional dispute resolution mechanism of gacaca (pronounced gachacha). Although reviving unevenly in various parts of the country, it appears to be expanding both in numbers of gacacas functioning and in the number of more serious cases under consideration. For example, gacaca leaders may be asked to take part in investigating crimes associated with the genocide murders of last year. However, given its informal nature and its existence as a product of the societies in which it functions, there is little opportunity to provide technical assistance here.

Although there is limited opportunity to provide assistance to the dispute resolution mechanism of gacaca, the ADR member proposed a variety of other actions aimed at strengthening the local-level justice system, including but not limited to the following:

1. Institutional building and coordination among ministerial representatives at the commune level.
2. Coordination of local level initiatives at the national level.
3. Training of bourgmestres both in administration and mediation skills.
4. Formulating policy that would permit surveying and allocation of land in communes as well as registering persons and land/housing occupation in communes. (See also the recommendation of the civil law specialist.)
5. Financial support to women's associations, organized to defend their rights, especially to land and property. (See also the recommendation of the civil law specialist.)

The ADR member also compiled a list of equipment and supplies needed in each of the communes. It should not be difficult to fund those items from USAID funds or to find a donor who is able to do so.

## **Conclusion**

The justice system existing before the war and before last year's genocide was inefficient and unresponsive. The destruction of its physical plant and decimation of its experienced personnel virtually ended its existence. It needs everything. The most difficult task for USAID will be to refine its priorities in coordination with other donors and create integral, coherent projects that can be monitored.

## **PROCEDURES FOR THE TRIAL OF GENOCIDE CASES**

**Report for ARD and USAID  
Ana Maria Linares, Consultant  
May 1995**

**PROCEDURES FOR THE TRIAL OF GENOCIDE CASES  
according to Rwandan Law**

The legal procedures for trying criminal cases, including genocide cases, can be divided into four main stages:

- I. Arrest
- II. Imprisonment
- III. Investigation
- IV. Trial

Each stage presents specific problems/ bottlenecks that prevent the criminal process from moving smoothly from beginning to end.

The Rapid Response Team has designed an approach that proposes concrete actions to help correct precise bottlenecks identified in the various stages of the criminal procedure, recognizing the urgent need to start trying the people in prison on charges of genocide and/or other related charges. This approach is presented in the form of a framework.

The underlying assumptions that support this framework are:

1. If genocide trials are to begin quickly, there is no time for major reforms of Rwandan criminal legislation. Therefore, we have to work with the laws as they exist. However, proposals for legal reform will be considered for medium-term projects.
2. Only those aspects of Rwandan criminal procedure law that will most likely arise when dealing with genocide cases are incorporated. It is not intended to be a full fledged course on Rwandan law.
3. We have not attempted to develop a comprehensive plan for Justice in Rwanda. Our approach derives from the needs identified in the Plan of Action of the Ministry of Justice in order to deal with the genocide, and has been prepared for USAID/Rwanda's internal use.

This framework should be used to (i) understand the different stages of genocide trials, (ii) identify choke points and bottlenecks in such stages, (iii) identify areas of potential USAID action, and, (iv) follow what other donors are doing. As such, this framework is intended as a dynamic tool with the ability to change as new hurdles are encountered or problems solved. Therefore, it should be regularly revised with the latest information.

Attached is a user's guide; each box in the following page is identified by a number and a letter keyed to the main document.

	I. ARREST	II. DETENTN.	III. INVESTG.
A. PRESBD. PROC.	<ol style="list-style-type: none"> <li>1. Denunciation</li> <li>2. PVA - AMIGO</li> <li>3. Prefct. prison</li> <li>4. Prevent. detnt.</li> </ol>	<ol style="list-style-type: none"> <li>1. Prosec. req. for P.D.</li> <li>2. Hearing at Tribunal</li> <li>3. Preventive Detention</li> </ol>	<ol style="list-style-type: none"> <li>1. Suspect interrogation</li> <li>2. Witness interrogation</li> <li>3. In situ inspection</li> <li>4. Final REPORT</li> </ol>
B. PROBL. BOTTLNKS	<ol style="list-style-type: none"> <li>1. Unfound. accus.</li> <li>2. Arbt. arrest</li> <li>3. Arbt. detnts.</li> </ol> <p>Lack of:</p> <ul style="list-style-type: none"> <li>. personnel</li> <li>. training</li> <li>. equipt</li> <li>. supplies</li> <li>. off. space</li> </ul>	<ol style="list-style-type: none"> <li>1. Unident. detainees</li> <li>2. Delayed case review</li> <li>3. No due process</li> <li>4. Prison conditions</li> <li>5. Non-functng. Tribs.</li> </ol> <p>NEEDS:</p> <ul style="list-style-type: none"> <li>. personnel</li> <li>. prison space</li> <li>. defenses</li> <li>. court admin.</li> <li>. ID equip.</li> </ul>	<ol style="list-style-type: none"> <li>1. LACK OF: <ul style="list-style-type: none"> <li>. TRAINED PROSECUTORS</li> <li>. EQUIPMENT</li> <li>. LEGAL DOCUMENTS.</li> </ul> </li> <li>2. INCOMPLETE CASE PREPARATION</li> <li>3. TRIAGE COMMISSIONS</li> </ol>
C. PROP. ACTION	<ol style="list-style-type: none"> <li>1. PROVIDE: <ul style="list-style-type: none"> <li>. Std. forms</li> <li>. Off. suppl.</li> <li>. Transport</li> <li>. Off. equip.</li> </ul> </li> <li>2. Recr. &amp; train: <ul style="list-style-type: none"> <li>. IPJs</li> <li>. Prosec.</li> <li>. Admin. persnl.</li> </ul> </li> <li>3. Tech. Asst. in Mgt.</li> <li>4. Train bourg. + gends.</li> <li>4. Educ. Public</li> </ol>	<ol style="list-style-type: none"> <li>1. Ident. Detainees</li> <li>2. Train prosec.</li> <li>3. Adapt. laws</li> <li>4. Build prisons</li> <li>5. Train prisn. pers.</li> <li>6. Tech. asst. in mgt.</li> <li>7. Photo equip.</li> </ol>	<ol style="list-style-type: none"> <li>1. TRAIN PROSECUTORS</li> <li>2. PROVIDE / PRINT LEGAL MATERIALS</li> <li>3. PROVIDE TECHNICAL ASSISTANCE IN COURT MANAGEMENT</li> </ol>
D. DONORS	<p>RCN:</p> <ul style="list-style-type: none"> <li>. IPJ Ing. 4/24 +</li> <li>. clerk Ing. (funds NEEDED)</li> <li>. Ing. Angloph. Jurists (funds NEEDED)</li> </ul>	<ol style="list-style-type: none"> <li>1. UNAMIR/ICRC</li> <li>2. RCN: train prosec. (funds NEEDED)</li> <li>3. Natl. Assembly</li> <li>4. UNDP: build pris.</li> <li>5.</li> </ol>	RCN
E. LEGAL ISSUES	<ol style="list-style-type: none"> <li>1. Evidence Sufficiency</li> <li>2. Legal Conseq. of False Accus./Istmny.</li> </ol>	<p>Defense attorneys:</p> <ul style="list-style-type: none"> <li>. not mandatory</li> <li>. open to foreigners</li> </ul>	<ol style="list-style-type: none"> <li>1. CONFESSIONS</li> <li>2. NO CONFISCATION OF PERSONAL PROPERTY</li> </ol>

## I.A.- ARREST: PRESCRIBED PROCEDURES

### 1. When a suspect can be arrested

An officier de police *judiciaire* (OPJ) has authority to arrest an individual when:

- a. the officer witnesses the commission of a criminal offense,
- b. when the individual is denounced by another person as having committed a criminal offense, or
- c. d'office, as when the officer makes an arrest based on his/her own knowledge of and information about a crime committed in the past.

In l.b and l.c above (arrests on the basis of denunciation or d'office), the arrest will be legal only if the following conditions are met:

- a. there exist indices sérieux de culpabilité (serious indicators of guilt), AND
- b. \* the offense is punishable by at least six month's imprisonment, or  
\* the officer fears the suspect will flee, or,  
\* the identity of the suspect is unclear.

### 2. Arrest procedures

When making an arrest, the officier de police *judiciaire*, usually a gendarme or a bourgmestre at the commune level, writes a procès-verbal d'arrestation' ("PVA") and detains the suspect at the "AMIGO" detention center of the brigade or the commune. The suspect is then under détention provisoire for 48 hours.

During those 48 hours, the officier de police *judiciaire* gathers preliminary evidence on the case (may interrogate the suspect), transfers the suspect to the prefecture prison and forwards the dossier to the Parquet or Prosecutor's office of the

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The elements of a proces-verbal d'arrestation or PVA are:

- a. name of suspect
  - b. type of criminal offense
  - c. preliminary evidence
  - d. time and place of the offense
- identity and domicile of accuser/declarant  
accusations

## Arrest: Procedures

corresponding jurisdiction'. A one-time 24-hour extension can be obtained with written authorization from the prosecutor in case more time is needed to prepare the preliminary dossier.

Once within his/her jurisdiction, the prosecutor interrogates the suspect and, if s/he finds no serious signs of guilt s/he frees the individual. If, the prosecutor has the intimate conviction that serious signs of guilt exist, the prosecutor delivers a *mandat d'arrêt provisoire* (warrant of arrest) valid for 5 days to investigate the case further. An Inspector of the Judicial Police (IPJ) would be charged with completing the investigation.

During the course of the 5-day period the suspect must be brought before the Tribunal of First Instance which will rule on the detention issue. The tribunal may put the suspect under *liberté provisoire*, or, by request of the prosecutor, under preventive detention with an *ordre de détention préventive*. This warrant is valid for 30 days and can be extended until the investigation is completed by the inspector of the judicial police.

### 3. Who has authority to make an arrest

By law, there are several government officials with authority to make arrests. The most relevant are:

prosecutors: appointed by the Ministry of Justice,

- b. inspecteurs de police judiciaire (IPJ) : civilians appointed by the Minister of Justice (not to be confused with officiers de police judiciaire or OPJ, who can be bourgmestres or officers of the gendarmerie),
- c. bourgmestres: local administration officials at the commune level, appointed by the Ministry of Interior, d. officers and sub-officers of the National Gendarmerie, which is part of the army, appointed by the Ministry of Defense, and,
- d. **prison directors.**

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<sup>2</sup>

There is one Prosecutor's office or *Parquet* attached to each Tribunal of First Instance. There are 11 Tribunals of First Instance, one per prefecture.

## I.B.- ARREST: PROBLEMS/BOTTLENECKS

### 1. Unfounded Accusations

"Unfounded" accusations of *having* participated in the genocide are common in Kigali and many other areas of Rwanda. This is due to the resentment and distrust left by the war, and because of problems related to access to housing and to land.<sup>3</sup> Because there is little risk of legal responsibility for assertions that could be construed as false accusations, and because of the existence of the so-called "culture de la denunciation", accusing somebody of having participated in the genocide is a simple and widespread practice.

### 2. **Arbitrar arrests**

When a person is arrested without compliance with Rwandan procedures, the arrest is considered arbitrary. It has been estimated that 1,300 persons are arrested every week. The total prison population is estimated to be more than 40,000 as of early May 1995.

The number of arbitrary arrests has increased in part because of the multiplicity of actors that by law have the authority to make arrests and the lack of control over their actions. The following problems are worth mentioning:

- a. At the communal level, bourgmestres, gendarmes and inspectors of judicial police have the power to make arrests. Ideally, inspectors of judicial police should be the ones performing the majority of arrests, except in cases of 'flagrant délit.' In fact, their presence in the communes is minimal to nonexistent and therefore, gendarmes and/or bourgmestres are the law at that level.
- b. Bourgmestres and gendarmes are under the authority of the Ministry of Interior and the Ministry of Defense respectively. Even though by law they are under the "surveillance" or supervision of the ministry of Justice whenever they act as OPJs (in a judicial capacity), in reality there is no clear line of authority that would make them accountable for their acts and/or omissions.

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<sup>3</sup> In some instances, the desire to obtain access to a house or a plot of land already occupied is at the basis of accusations of having participated in the genocide.

4 The Judiciaîl Police (IPJs) is a civilian corps attached to each prosecutor's office whose main responsibility is to perform investigations and arrest suspects on the basis of appropriate evidence.

## Arrest: Problems

- c. Bourgmestres and gendarmes have no legal *training* whatsoever and ignore the basic procedures for making arrests. However, because the Ministry of Justice is virtually absent at the local level, bourgmestres and gendarmes fill the gap.

### 3. Arbitrary Detentions

When a suspect is kept at the AMIGO detention center or at the prefecture prison without completion of a *procès-verbal* d'arrestation and/or without having an investigation open and in process, his/her detention is considered arbitrary. The main causes for arbitrary detentions are:

- a. Lack of transportation prevents moving suspects from the AMIGO centers in the communes to the prefecture prisons. People may stay at detention centers, in some cases for over a month, without reaching the prosecutor's office where the decision about their detention is to be made.
- b. Also because of lack of transportation prosecutors are not able to visit the communes within their jurisdiction on a regular basis and therefore cannot exercise any degree of control over the way arrests are being made by either bourgmestres or gendarmes. The prosecutor could screen cases of arrests that would not need to reach the *parquet* if only he had the possibility to tour the communes.

### 4. Delayed Completion of Case Files (dossiers)

Dossiers take too long to be completed by the judicial police. This ultimately affects the prosecutor's ability to decide whether a person should be preventively detained or released. The delay in completing dossiers is due to:

- a. Lack of trained personnel to perform investigations: only 26 judicial police inspectors were left in service after the genocide. A *training* course carried-out by the Belgian NGO Citizens Network produced 120 new judicial police inspectors who were assigned to the different *Parquets* around the country. A second course is to be completed in July, producing another 120 new IPJs.

Even with these two courses, the demand for new IPJs is still enormous. To have a better idea of the dimensions of the problem, it may be useful to calculate how long it would take the current number of 156 IPJs (26 + 130, assuming they are fully operational) to investigate a week's load of new cases (1,300 new prisoners). Assuming it takes 3 days on average to complete one investigation,

## Arrest: Problems

156 IPJs would need one full month to deal with each week's workload.

In the case of the Kigali prison where there are approximately 9,000 prisoners as of early May, with 38 IPJs currently attached to the Kigali *Parquet*, and assuming there are no new detentions, each IPJ would have a case load of 184 cases. It would take each one of them 552 days or 25 months to complete the investigations.

- b. Lack of sufficient trained prosecutors to make a preliminary decision about the detention or release of a suspect.
- c. Lack of equipment: at the present time, the few IPJs preparing the investigations are not fully functional because of lack of basic office equipment. Everything is done by hand, on paper that is often bought by the chief prosecutor himself. All warrants and procès-verbaux are supposed to be made in at least 3 copies but right now, carbon paper is a scarce commodity. Basic office equipment and typewriters for each IPJ are absolutely essential.
- d. Bad condition of facilities and furniture: the RRT has not visited all Parquets yet to assess the damage to buildings and offices. However, it has been reported that some rehabilitation work needs to be done in most of them, i.e. roofs, electricity, etc. From a legal perspective, though, what is key is to have in each parquet at least one "safe" room where the prosecutor could interrogate suspects and witnesses privately, and where the dossiers could be kept in safety. Doors, windows and file cabinets and locks are among the things that are urgently needed.
- e. Lack of transportation to verify evidence and interrogate witnesses: inspectors of judicial police need to go to the place where the offense took place to interrogate witnesses and gather other material evidence. Without this in situ inspection, the investigation cannot be completed and the accused cannot come before the prosecutor to resolve his/her situation.
- f. Lack of organization and internal parquet management/administration: even before the war, the Rwandan prosecutor's offices (parquets) were not a model of internal organization. There was no real system to classify the different types of cases, no method for appropriate record keeping, or for case tracing, and no methodical way of filing dossiers. The result was that 9 out of the 10 cases to be handled each day by the

## Arrest: Problems

Kigali Prosecutor could not be reviewed because the dossiers could not be found.

- g. Lack of trained administrative personnel: *secrétaires de parquet* are responsible for the organization of administrative services, for ensuring the protection of documents, records, decisions, and for dealing with the public. They are key elements in the good functioning of the justice system. Before the war few Parquets had enough trained personnel. in this area. Today the situation has only worsened. Therefore there is an urgent need to provide Parquets with personnel trained in court and case management.
- h. Lack of secretarial support: no secretaries to type dossiers once IPJs have gathered enough evidence in the field.
- i. Lack of accommodations: at least in one jurisdiction where 10 new IPJs have been posted they have not been able to fully establish themselves and start working because there are no houses available. In addition, because of the great influx of expatriates into fairly small cities, most landlords would rather rent their properties to better paying foreigners than to locals. The housing situation must therefore be assessed in each jurisdiction before bringing in new IPJs, magistrates, etc.

## **I.C.- ARREST: PROPOSED ACTIONS**

### **1. False Accusations**

1.1 In order to discourage people from falsely accusing others of genocide as a means to further their own personal interests, it is necessary to increase the declarant's visibility in the process. When IPJs issue the *procès-verbal d'arrestation*, it is essential that all information regarding the declarant's name, address, accusation and evidence be also properly recorded. In addition, it is important that accusers know and understand that the PVA records may be used in the future to call upon them to formally testify in court when the case is brought to trial.

a. Action Required: Make IPJs fully functional by providing them with office equipment, such as:

(i) standardized forms for the legal acts regularly performed in the arrest and detention process (*procès-verbal d'arrestation, mandat de comparution, mandat d'amener*). These forms would facilitate the task of bourgmestres and gendarmes and would make it more transparent and therefore less likely that pertinent information not be obtained.

(ii) carbon and white paper will be necessary to make the PVA and other warrants in as many copies as required by the law (3 copies).

(iii) other as necessary depending on the jurisdiction

### **b. USAID POTENTIAL PARTICIPATION:**

USAID could fund this action IMMEDIATELY through RCN who would be responsible for assembling the kits and distributing them to IPJs in the Kigali jurisdiction. For the distribution of kits to IPJs in jurisdictions other than Kigali, USAID may need to provide for transportation.

### **C. Potential Partner: Citizens' Network (RCN)**

RCN has determined the cost of preparing "administrative kits" for the 150 newly trained IPJs at US\$ 950/kit for a total amount of US\$ 142,500. Each kit would contain pre-printed forms, pens, paper, carbon paper, stapler, etc. The paper, forms and other materials are available locally.

## Arrest: Actions

- 1.2 A second way to discourage false accusations is to increase public awareness of proper arrest procedures and the legal implications of false denunciation and false testimony. The population needs to know that both false accusations or denunciations and false testimony are offenses punishable by criminal law with fines, imprisonment and even the death penalty.
  - a. **Action Required:** Disseminate information explaining the main elements/requirements of the arrest process and the legal implications of both false accusations and false testimony.

### **USAID POTENTIAL PARTICIPATION: To be explored.**

#### **c. Potential Partner**

#### 2. Arbitrary Arrests

2.1 In order to make arbitrary arrests less likely it would be necessary to increase the number of inspectors of judicial police at the commune level. These inspectors have, in theory, the best training in legal procedures. They should regain control over arrests and other legal matters in the communes. The problem, however, is one of lack of 'trained personnel. There are 143 communes and each will need at least 2-3 permanent IPJs, for total of approximately 280-300 IPJs. The first round of trained IPJs was distributed among the country's Parquets and it seems that only a were attached to the communes.

a. **Action Required:** Provide procedural training for new IPJs.

#### **b. USAID POTENTIAL PARTICIPATION**

USAID could participate in training activities by supporting RCN in the second training course for IPJs. Moreover, depending upon financial resources available, USAID may consider providing additional funding to RCN in order to have 2 courses taught simultaneously, given the large demand for IPJs.

#### **c. Potential Partner: RCN**

RCN is conducting a second three-month training course for 150 IPJs which will start on 24 April, 1995 and will last three months. The total cost of this course is US\$ 566,086. This amount includes a component for administrative kits which will be given to each IPJ who finishes the course. RCN has yet to obtain approximately US\$245,000 to be able to proceed with the course.

## Arrest: Actions

2.2 Another way to deter arbitrary arrests would be to strengthen mechanisms of accountability for OPJs and IPJs. A great number of bourgmestres are fairly new in their jobs. As for gendarmes, the corps was created by the Arusha Accords as a separate group within the army. Both bourgmestres and gendarmes would seem to have had little or no training in their respective- areas of competence, i.e. local administration and enforcement of the laws. If we want OPJs to understand the limitations of their attributions and the responsibilities that may derive from abuses of power or of authority, it would seem useful to start with providing them with basic training on what they can and cannot do. Furthermore, better trained bourgmestres and gendarmes would most likely have

a positive impact on overall justice. In addition, this could provide USAID with a good entry point with both the Ministries of Interior and Defense.

- a. Action Required: Prepare training courses on local administration and law enforcement for bourgmestres and gendarmes.

Whether these should be taught together or as separate courses for each group is something that would depend on the Ministries' views. The syllabi would touch upon the area of arrest procedures as a part of the functions given to bourgmestres and gendarmes.

- b. **POTENTIAL USAID PARTICIPATION:** If, and how, USAID participates in this activity should be the subject of further discussion.

- c. **Potential Partner:**

2.3 It would also be important to provide basic legal training on appropriate arrest procedures to gendarmes, bourgmestres, and IPJS. Besides training in their respective areas of

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<sup>5</sup> According to the Arusha Accords, the National Gendarmerie is an armed force established to ensure the enforcement of the law and to maintain order and public security. Its main responsibilities are:

- \* maintain and re-establish public order,
- \* prevent the commission of criminal offenses,
- \* investigate offenses and perpetrators,
- \* make arrests in accordance with the law,
- \* carry out functions of administrative police,
- \* carry out functions of judicial police within the limitations of the law,
- \* ensure respect for the laws and regulations whose implementation is within their mandate,
- \* provide police security to tribunals.

## Arrest: Actions

gendarmes and IPJs in a course that would teach basic legal procedures relevant to all of them.

- a. **Action Required** : Prepare a joint training course where Justice at the local level (IPJs, bourgmestres, and gendarmes) learn together basic legal procedures. This course could also be a good opportunity to have the Ministries of Justice, Interior and Defense work on a common project.
- b. **USAID POTENTIAL PARTICIPATION:** If, and how, USAID participates in this activity should be the subject of further discussion.

2.4 Finally, in order to reduce the number of arbitrary detentions, each prosecutor's office needs at least one vehicle to allow prosecutors to visit the communes within their jurisdiction and to transfer detainees from the detention centers to the prefecture prison.

### a. **Action Required:**

Provide each prosecutor's office (eleven in the whole country) with one 4 x 4 vehicle to begin with. For the jurisdictions with a high number of detainees, more vehicles may be supplied if necessary.

### b. **USAID POTENTIAL PARTICIPATION:**

USAID could act IMMEDIATELY on this front.

## 3. Completion of Case Files

To expedite the revision of genocide dossiers the following actions are necessary:

- 3.1 Train new IPJs. See proposal on page 9 above.
- 3.2 Train prosecutors. Once investigations are performed by IPJs, prosecutors decide *whether* to press charges against the detainee or to release him/her. So far training courses have concentrated on IPJs because they are the first step in the process. However, very soon the few prosecutors left in the country will be overwhelmed by the number of cases to process; the resulting backlog will mean prolonged detentions of people without a chance to have their cases reviewed. Therefore, training courses for prosecutors need to start as soon as possible.

USAID POTENTIAL PARTICIPATION: USAID could support other donors already working in this area such as Citizens Network.

Arrest: Actions

**Potential Partner: RCN**

3.3 Provide office supplies. The provision of administrative kits and other office supplies is an urgent need that can be satisfied with local suppliers.

**USAID POTENTIAL PARTICIPATION:** USAID could either support organizations that have already prepared administrative kits with local materials and local suppliers (i.e. RCN) or could do it directly for a pilot project in a given jurisdiction.

**Potential Partner: RCN.**

Provide basic office equipment and security devices. The main equipment that seems to be necessary in all parquets are desks, chairs, doors, windows, locks, typewriters, stencil machines, and xerox machines. As for the furniture, we should be able to identify local suppliers who could provide it at low cost. Electrical equipment will have to be imported. **USAID POTENTIAL PARTICIPATION:** USAID could provide some office equipment (i.e. xerox machines, or desks) to all parquets through the Ministry of Justice, or alternatively, it could focus on one pilot jurisdiction and provide it with everything that would be necessary to make it fully functional.

**Potential Partner: Ministry of Justice.**

3.5 Provide means of transportation + training courses. As mentioned before, each parquet needs at least one 4 x 4 vehicle. In addition to that, IPJs also need means of transportation such as motorcycles to visit the communes and perform investigations. To begin with, one motorcycle could be shared by 2-3 IPJs who would take turns to perform in situ investigations. It would also be important to make provisions for driving lessons for IPJs before they run into serious accidents as well as provisions for maintenance if we want the vehicles to last.

**USAID POTENTIAL PARTICIPATION:** Provide motorcycles to selected parquets (i.e. those chosen for pilot projects).

Potential Partner: The Ministry of Justice which has been the focal point for channeling any assistance given to the justice system. This is appropriate as long as resources for jurisdictions outside of Kigali get to their destination without major delay. However, given the fact that the Ministry of Justice has limited means to distribute resources throughout the country quickly, USAID may need to consider assisting the Ministry in carrying out such distribution.

## Arrest: Actions

- 3.6 Provide technical assistance in court administration and case management. In order to effectively deal with the court congestion that will inevitably develop due to the high number of detainees whose cases have to be reviewed at least by the parquet, it is essential that parquets establish an appropriate system of internal organization that would provide for record keeping, case tracing, and case filing.

**USAID POTENTIAL PARTICIPATION:** USAID could fund the provision of an expert in court administration and case management who would initially work with the Ministry of Justice's Department of Court administration to develop a nation wide management system that would be implemented in all parquets. In addition to an expert located at the central level, USAID could fund another person with the same expertise to work in a pilot project at one of the most important jurisdictions such as Gitarama, for example.

**Potential Partner: Ministry of Justice.'**

- 3.7 Train parquet administrators. Law clerks (greffiers) play a key role in making the parquet work efficiently. If new establishment of management systems to deal with the genocide caseload are to be put in place, the court personnel in charge of administration matters needs to be trained in using the new systems.

**USAID POTENTIAL PARTICIPATION:** USAID has several ways to participate in this very important action:

- a. By funding a training course for greffiers which is already in preparation by Citizens Network;
- b. By providing professors to teach such a course;
- c. By providing materials prepared in the US to be used in the training course;

By providing technical assistance in the form of persons with experience in court management who would come to work in selected pilot parquets for 3-6 months.

**Potential Partner: RCN.**

## I.D.- ARREST: PERTINENT DONOR ACTIVITIES

<u>COUNTRY/ORGZT.</u>	<u>COMMITMENT</u>	<u>STATUS</u>
<b>Belgium</b>	Training non-jurist magistrates	IN PREP.
<b>Canada</b>	<i>Training</i> IPJs, magist., defense attorneys	IN PREP.
<b>PREP.</b>	Translation of <i>training</i>	IN
<b>Citizens Network</b>	Second course 150 IPJ	FUNDING NEEDED US\$200,000
	Training 50 court ' clerks and adm. pers.	FUNDING NEEDED US\$131,602
—	Training for angloph. Rwandan jurists	FUNDING NEEDED US\$87,019
	Provision of adm. kits + office supplies to new IPJs	FUNDING NEEDED US\$149,625
<b>France (through ACCT)</b>	FF 2.000,000 for provision of foreign magistrates & administ. personnel	On HOLD
<b>UNHCR</b>	One vehicle to Kigali Parquet	DELIVERED
	5 motorcycles to Kigali Parquet	DELIVERED
<b>UNDP</b>	Provision of office supplies to IPJs	?
	Office supplies to Tribunals of First Inst.	?
	Provision of foreign magistrates (50)	ON HOLD
<b>USAID</b>	130 typewriters TO MOJ BUT NOT YET TO PARQUETS	DELIVERED

## **I.E.- ARREST: LEGAL ISSUES**

### **1. Sufficient evidence to arrest**

There is the widespread belief that Rwandan law requires a definite number of witnesses or accusations to constitute sufficient evidence for an arrest. That is wrong. The standard used in Rwandan law calls for the "intimate conviction" of the person performing the arrest that there are indices sérieux de culpabilité. The arresting officer may reach such intimate conviction with the accusation of only one person; on the other hand, the officer may not consider that there are *indices sérieux de culpabilité* even though five people may have accused the same person.

### **2. False accusations**

False accusations made to a judicial or administrative authority may be punished with fine and/or imprisonment. A denunciation only becomes a false accusation when the person originally accused is the object of a criminal punishment.

### **3. False testimony**

False testimony --in court-- is subject to fines and imprisonment, and, if the accused is sentenced to five years of more imprisonment or to the death penalty, the false witness is subject to the same punishment.

## II .A.- DETENTION/IMPRISONMENT: PRESCRIBED PROCEDURES

### 1. When a person can be imprisoned

A person may be imprisoned under two different circumstances:

- a. under preventive detention while the investigation and trial of the case takes place, or
- b. after a trial judgment condemning the person to prison.

### 2. When a suspect can be preventively detained

A person can be detained preventively in two phases of the judicial procedure:

- a. during the investigation phase, by warrant of the prosecutor or his deputies (for 5 days only), and
- b. during the trial, by warrant of the Tribunal of First Instance hearing the case.

Preventive detention requires:

- a. *indices sérieux de culpabilité* or serious indicators of guilt (which appears to set a higher standard than probable cause but it is not defined in the law), and that
- b. the offense be punishable by at least six month's imprisonment

### 3. Detention procedures

The procedural steps followed when the detention is ordered at trial are:

- a. The prosecutor requests the Tribunal of First Instance to order the preventive detention of the suspect based on the evidence gathered at the completion of the investigation.
- b. The Tribunal hears the accused at the audience, who can be represented by a defense attorney of his/her choice. If the accused has no defense attorney the Tribunal simply hears the accused: Lack of a defense attorney does not constitute a violation of due process.

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For a description of the detention process during the preliminary investigation, see "I.A. Arrest: Procedure" above.

Detention: Procedures

c. If after the hearing the Tribunal considers that there are enough grounds for detention (*indices sérieux de culpabilité*), the Tribunal will issue a warrant for the preventive detention of the accused.

d. The warrant of preventive detention is valid for 30 days only. It may be extended month to month indefinitely by the Tribunal for reasons of:

public interest,

if the investigation merits/requires the extension

During the first hearing, the Tribunal MUST determine whether or not the arrest was performed in compliance with due process of the law, i.e. in conformity with Rwandan criminal procedures. Depending on their seriousness and degree, violations of the criminal procedure may lead to the nullity of all legal proceedings.

#### 4. Imprisonment

once a person is sent to prison on preventive detention (either by a prosecutor --5 days-- or by a tribunal), a file is supposed to be created for each inmate. This file should record the following information:

a. number given to the suspect's case

b. identity of the person

place of origin including country, prefecture, commune and colline

profession

date of entry

g. documents used to justify the detention

h. expected duration of detention

## **II.B.- DETENTION/IMPRISONMENT: PROBLEMS/BOTTLENECKS**

### **1. Unidentified Detainees**

Prosecutors need to establish a priority order for undertaking the investigations of detainees. However, in most prisons and detention centers detainees are held with no information or record ever being established about their cases. Prosecutors are therefore confronted with a nebulous mass of people and no way to determine the whos, whys, how longs, etc., necessary to organize their investigations.

### **2. Delayed Case Review**

Prosecutors make the preliminary decision about the preventive detention or release of a suspect once the IPJ has gathered enough evidence. The lack of prosecutors will therefore prolong the time a person is detained without clarifying his/her situation.

### **3. Due Process**

It is expected that several of the dossiers of people arrested will present serious questions about the compliance with appropriate criminal procedures. In order to avoid the nullification of a great number of those cases, procedural laws will have to be adapted transitorily to provide for the procedural flaws in arrest and detention procedures.

### **4. Prisons**

There are 13 functioning prisons and 100 detention centers nationwide with a capacity to house less than 25% of current inmates. In addition, it has also been estimated that 1,300 new arrests are-made every week.

Given the magnitude of civilian participation in the genocide, it would be unrealistic to expect a significant decrease in the number of detainees once the judicial system starts functioning again.

Therefore, the following areas require special attention:

a. Lack of space: the prison system was clearly not prepared to receive the avalanche of inmates generated by the genocide. Because the numbers of prisoners will continue to increase before it starts to peak (new arrests + persons condemned to jail) , construction of new facilities and/or expansion of existing ones is an issue that requires immediate attention.

## Detention: Problems

b. Lack of trained prison personnel: In most prisons of the country there are very few people with adequate training to handle and process the inflow of inmates. The result being that the great majority of prisoners do not even have a file open for their case. Prison personnel have compiled lists of people detained. But, there are no records of other essential pieces of information such as the basis for the arrest, the commune of origin of the detainee, the evidence against him/her, the name of the accuser /denouncer, etc. There is the need for a civilian corps of trained prison personnel that would understand what needs to be done when a new person is detained.

c. Lack of appropriate management of the prisons. Because of the lack of prison directors and administrators, a great majority of the prisons in the country are administered by military officials who have little legal training. Moreover, these prison directors respond in line of authority to the Ministry of Defense when in fact, the handling and administration of all prisons and detention centers in the country is by law under the Ministry of Justice's realm of authority. It is urgent that a civilian body of trained prison directors and prison administrators be put in place to improve the management of prisons and thereby ameliorate the living conditions of inmates.

## **II.C.- DETENTION/IMPRISONMENT: PROPOSED ACTIONS**

### **1. Identification of Detainees**

In order to identify detainees it is necessary to create a system of ID cards that would include a photo of the person and the information that is required by the law (i.e. number given to the suspect's case; identity of the person; place of origin including country, prefecture, commune and colline; profession; date of entry; documents used to justify the detention; expected duration of detention).

a. Action Required: Form a team composed of one photographer and 3-4 local assistants who would be in charge of gathering the information (making sure that names are correctly spelled, that all relevant information is gathered, etc.) This team could tour all prefecture prisons (13) starting with the ones with the highest inmate population and little or 'no infrastructure for data collection.

Alternatively, what could be more useful would be to start with the most pressing one, the Kigali prison, and use it as a pilot case. If results are positive, several teams could be sent simultaneously to other prefectures.

### **b. USAID POTENTIAL PARTICIPATION**

USAID could fund the implementation of an identification pilot project for the Kigali prison. This project would have two main components:

(i) provision of the necessary equipment plus basic training in computer use. The equipment that is necessary will depend on the sophistication and speed we would want to make the identification process move forward. Ideally, it would take:

- \* a digital camera (readily available in the US)
- \* computer with appropriate software for the camera
- \* database software
- \* generator
- \* a laminating machine

The development of this identification system could be done in the US in approximately 1 - 2 weeks. Some basic training in computer use would be necessary for 3-5 days but after that, the whole process could be handled by Rwandans.

(ii) provision of local personnel to do the work.

## Detention: Actions

The cost of this system would have to be budgeted, but a rough estimate could be between US\$10,000 and US\$20,000.

For the success of this program it is crucial to have not only the approval of the Ministry of Justice, but also the endorsement of the Prosecutor in charge of the Kigali Jurisdiction and of the Ministry of Defense.

### **c. Potential Partner: ICRC; UNAMIR?**

#### **2. Expediting Case Review**

2.1 Train prosecutors: see proposed action under Arrest on page 11 above.

2.2 Train administrative personnel such as clerks and secretaries: see proposed action under Arrest on page 13.

2.3 Provide technical assistance in internal court management: (handling of dossiers; record keeping; case tracing; filing, etc.). See proposed action under Arrest on page 12.

#### **3. Due Process**

The MOJ has presented to the National Assembly a bill to modify criminal procedural laws so as to eliminate the present flaws in arrest and detention. There are also other bills being prepared by a commission that was set up inside the MOJ to adapt Rwandan laws to the Arusha Accords. This commission, however, is working with extremely limited resources. The commission received US\$ 26,000 from the German Cooperation but those funds have been completely exhausted. This is an important field to support because it is a Rwandan attempt to modernize the administration of justice in the country.

a. Action required: provide support to this commission in terms of (i) materials such as paper and office supplies, (ii) legal documentation and reference materials on key issues of criminal procedures that could be used by the commission when searching for new approaches, and (iii) technical assistance, if required, to deal with specific issues of the law.

b. **USAID POTENTIAL PARTICIPATION:** USAID could easily assist this commission with some funding to begin with. In addition, USAID could prepare some documentation explaining how the US system works and differs from the Rwandan system on specific areas such as defense of the accused, cross examination procedures, bail systems, etc. This information could be made available to the commission as reference material.

## Detention: Actions

### 4. Prisons

4.1 To deal with the problem of overpopulated prisons, it is necessary to build new facilities and expand existing ones. Even if the justice system starts operating immediately, a high number of persons will remain in prison waiting for trial or condemned to imprisonment. Therefore, if living conditions for detainees are to be improved, new prisons and/or detention centers will have to be made available as soon as possible. The cost of construction should be fairly low if local materials are used.

**a. Action Required:** build and/or expand prisons and detention centers.

**b. USAID POTENTIAL PARTICIPATION:** If, and how, USAID participates in this activity should be the subject of further discussion given current restrictions under US laws.

4.2 In order to solve the problems created by untrained prison personnel coming mostly from the military, training of a civilian corps specialized in prisons is necessary.

**a. Action Required:** Provide training for new prison personnel made of civilians.

**b. USAID POTENTIAL PARTICIPATION:** If, and how, USAID participates in this activity should be the subject of further discussion given current restrictions under US laws.

4.3 Regarding prison directors, training is also necessary.

**a. Action Required:** Provide training for civilian prison directors.

**b. USAID POTENTIAL PARTICIPATION:** If, and how, USAID participates in this activity should be the subject of further discussion given current restrictions under US laws.

## II.D.- DETENTION/IMPRISONMENT: PERTINENT DONOR ACTIVITIES

<u>COUNTRY ORGZT.</u>	<u>COMMITMENT</u>	<u>STATUS</u>
ICRC of newly arrived detainees	Preparation of lists	IN COURSE
GTZ legislative commis- sion (counterpart funds)	US\$26,000 to the	COMPLETED
RCN directors 50?	Training of prison	COMPLETED
TRUST FUND prison at Nsinda `	Construction of a new	IN COURSE
UNAMIR of women and children in Kigali prison	Identification	COMPLETED

## II.E.- DETENTION/IMPRISONMENT: LEGAL ISSUES

1. According to Article 12 of the Constitution, nobody can be imprisoned except in the cases specified by the law existing at the time of the commission of the offense.

Given the fact that there is no current law in Rwanda providing for the crime of genocide, the question is, will the government use the Genocide Convention as basis for the trial of genocide cases? If that is the case, it would be necessary to pass legislation in accordance with Article 5 of the Convention, which requires Contracting Parties, i.e. governments, to enact legislation providing for specific criminal sanctions/punishments to be imposed on individuals found guilty of genocide.'

In theory, all that would be necessary is a law stating that current Rwandan criminal law and criminal procedures apply to genocide and genocide-related cases.<sup>9</sup> The problem, however, would be to determine whether an ex-post facto law would be constitutional.

In order to speed-up the process, the government may also decide to start the trials outside the framework of the Convention. In this case, individuals would be punished for murder (in different degrees) but not for genocide.. Punishments, however, would still include the death penalty and life imprisonment.

2. Defense representation: the accused may be represented by a defense attorney but it is not a fundamental right and it is not necessary for due process.

3. Parole does exist (liberté provisoire) but no bail.

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<sup>7</sup> Rwanda adhered to the Genocide Convention in 1975 with the exception of Article 9 which subjects the Parties to the Convention to the jurisdiction of the International Court of Justice in cases of genocide.

<sup>8</sup> "Article 5.- Les parties contractantes s'engagent à prendre, conformément à leurs institutions respectives, les mesures législatives nécessaires pour assurer l'application des dispositions de la présente Convention, et notamment à prévoir des sanctions pénales efficaces frappant les personnes coupables de génocide ou de l'un quelconque des autres actes énumérés à l'article 3" (underline added).

<sup>9</sup> Penalties provided for by Rwandan criminal law include the death penalty, imprisonment and fines (Article 26, Penal Code).

### III. A.- INVESTIGATION: PRESCRIBED PROCEDURES

#### 1. Starting the investigation

Technically, the investigation should begin as soon as a suspect is arrested. It ends when the case is brought to trial after the prosecutor's office completes the dossier with sufficient evidence, and presents formal charges against the suspect before the tribunal. The investigation is performed by the prosecutor's office with the help of the judicial police inspectors (IPJs) attached to each *Parquet*.

#### 2. Objectives of the investigation

The objectives of the investigation are:

- a. to search for the authors of a criminal offense,
- b. to gather evidence against suspects, and
- c. to undertake the first judicial actions that will lead to substantive decisions at trial.

#### 3. Principles followed in doing an investigation

In performing an investigation, the following principles\_ apply:

- a. all proceedings must be in writing because they constitute the basis for the tribunal's *examination*;
- b. all proceedings should be confidential, mainly to avoid unwanted pressures and prejudices; and,
- c. proceedings are inquisitorial and non-confrontational (non contradictoire) in nature, meaning that their purpose is to provide the judicial authorities with the required information in order to process a given case, and not °necessarily to provide the suspect with an opportunity to defend him/herself. Such opportunity is given to the accused at the time of trial.

#### 4. Investigation Procedures

The following are the steps followed in the completion of the investigation dossier:

- a. the suspect is interrogated. The law does not require a that a lawyer be present during the interrogation.

## Investigation: Procedures

- b. witnesses are interrogated, either in situ or at the *Parquet* (pursuant to a written citation issued by the prosecutor);
- c. an inspection of the scene of the crime is conducted; and
- d. a report is made of the findings.

Usually the prosecutor delegates to the judicial police inspectors the performance of the above tasks. When the judicial police inspectors have completed the investigation, they submit the dossier to the prosecutor who, after review, has to determine whether or not there is enough evidence to bring formal charges against the suspect and, if so, whether or not the situation calls for (i) a preventive detention, or (ii) an extension of a preventive detention or (iii) a conditional release of the suspect.

However, if the investigation is not properly completed by the judicial police, the prosecutor may need to repeat different parts of the investigation in order to collect more in-depth information so as to enable her/him to make a decision on the case.

During the course of the investigation the judge may release the accused under parole. The judge reserves however the power to call in the suspect and put him/her under preventive detention again at the prosecutor's request.

### 4. Triage commissions

Parallel to the formal judicial system,, ad-hoc triage commissions have been conceived in Rwanda. The reasons for creating triage commissions were twofold. First, they were contemplated as mechanisms to rapidly screen the prison population and release those for whom there was not enough evidence of participation in the genocide. Second, they were meant as a security device to protect both the persons released and the prosecutor who would make the decision, by having representatives of both the police and the army participate in the process.<sup>10</sup>

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<sup>10</sup> In this point it is important to remember cases such as the one of the President of the Kigali Tribunal of First Instance Mr. Gratien Ruhorahoza, who after deliberation in the "Chambre de Conseil" decided to release 40 persons from prison. He was detained and imprisoned, presumably in the Kigali prison, in early October. He has not been released yet. Of the 40 people he proposed to release, none is currently free. In the decisions made by triage, because of the diverse composition of the commissions, it would be impossible to single out one person; therefore, they were thought of as a mechanism to counter the possibilities of intimidation of magistrates and prosecutors.

## Investigation: Procedures

Triage commissions were conceived at a Council of Ministers meeting in October, 1994.<sup>11</sup> There were to be eleven of them, one for each prefecture, attached to the prefectural prosecutor's office. Only last March did the Minister of Justice issued a ministerial note to all prosecutors' offices instructing them to create them. None has been established yet, except the one in Kigali.

Each commission is to have four members: the prosecutor himself and one each from the police, the army and the intelligence information center.

These commissions have no basis in the law. The Ministry's note gives them no legal foundation whatever. Moreover, the note does not specify the functions, objectives or procedures. Nor is it clear what types of cases will be reviewed by the commissions.

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<sup>11</sup> Mme. Marthe Mukamurenzi, Director of Cabinet, Ministry of Justice, 29 March 1995.

### III.B.- INVESTIGATION: PROBLEMS/BOTTLENECKS

#### 1. Lack of sufficient trained prosecutors

Each Parquet has a Procureur de la *République* or a Chief Prosecutor who is assisted by procureurs substitués or deputy prosecutors who can perform all functions and have the same authority as the Chief Prosecutor. Currently, the Kigali Parquet has only 5 deputies. Given the fact that the decisions regarding the detention or release of an individual at the investigatory phase of the criminal procedure can ONLY be taken by a prosecutor or his substitut, there is a strong need to provide each parquet with as many deputies as possible.

#### 2. Lack of equipment

Parquets lack basic equipment. There are insufficient binders and folders to form the dossiers, no index cards, no card index. file, no file cabinets, no locks, etc.

#### 3. Lack of legal materials

Prosecutors do not have readily access to legal materials such as Codes, laws and regulations.

#### 4. Preparation of the dossier

If the IPJ does not investigate the case in enough detail, the prosecutor may have to repeat the work. Therefore, it is key that IPJs be properly trained and supervised so that the prosecutor does not need to re-do the work to complete the investigation.

#### 5. Functioning of national triage commissions

Triage commissions present several problems among which the following are worth noting:

- a. Creating a parallel mechanism to the judicial system in order to deal with the genocide sequels seems inconsistent with the government's commitment to recreate a judicial system that will have national and international respect.
- b. Triage commissions may be perceived as an attempt by the executive branch and the army to thwart the establishment of a truly independent judicial system.
- c. The fact that it is not clear what kind of cases are to be reviewed-by these commissions makes it difficult for them to begin operating.

## Investigation: Problems

d. There seems to be some confusion in different prefectural prosecutors' offices as to their membership. Some prosecutors wrongly believe that the prefect is supposed to be one of the members, while some others do not think a representative for the intelligence service center needs to be included.

e. Potential problems of conflict of interest may arise with members of the commission without any legal training who may ignore the principle of recusation. Magistrates, even those with limited training, understand that a judge having a personal "interest" in the case that s/he will try has the obligation to recuse her/himself from the case. Other members of the commission who have no legal training may completely ignore this principle and may render decisions that may not be considered fair and objective.

6. Lack of transportation: for a discussion of this issue please refer to previous sections on problems of arrest and detention procedures.

7. Lack of an internal system of *parquet* organization: for a discussion of this issue please refer to previous sections on problems of arrest and detention procedures.

8. Lack of trained administrative personnel: *Ibidem*.

9. Lack of secretarial support: *Ibidem*.

### III.C.- INVESTIGATION: PROPOSED ACTIONS

1. Lack of sufficient trained prosecutors

Action Required: training of prosecutors. See relevant sections above.

2. Lack of equipment:

a. Action Required: provision of necessary equipment. See relevant sections above.

3. Lack of legal materials

a. Action Required:

\* provision of legal materials

\* Translation of laws and codes into Kinyarwanda

RCN is preparing two volumes of legal materials to be printed in Kinyarwanda, French and English. The first one contains/ explains the necessary procedures for the trial of genocide cases. The second is a compilation of different materials on International Criminal Law and more specifically on the Nuremberg trials. The total cost is estimated at US\$19,972.

b. USAID POTENTIAL PARTICIPATION: USAID could provide IMMEDIATE funding to this very urgent and important initiative.

c. Potential Partner: RCN.

4. Preparation of dossiers

a. Action Required: training of IPJs. See discussion above.

5. Functioning of pational triage commissions:

a. Action Required: NONE. Given the numerous problems and drawbacks of these commissions, it does not seem convenient to provide direct assistance in this area at this time. If the government strongly supports the operation of triage commissions and these evolve so as to become effective mechanisms to deal with genocide cases, assistance may be explored but always through the formal judicial system and not directly to the commissions.

*Investigation: Actions*

G. Lack of transportation

a. *Action* Required: provision of vehicles and/or motorcycles. See discussion above.

7. Lack of organization and internal parguet

a. *Action* Required: technical assistance in parquet administration and case management. See discussion above.

8. Lack of trained administrative personnel

a. *Action* Required: provide training in court administration. See discussion above.

9. Lack of secretarial support

a. *Action* Required: provide training for secretaries or provide secretarial support on a short time basis, ' .or completion of a task/product).

### III.D.- INVESTIGATION: PERTINENT DONOR ACTIVITIES

COUNTRY/ ORGZT.	COMMITMENT	STATUS
RCN	Preparation of 2 manuals with legal materials	FUNDING NEEDED US\$19,972

**NOTE:** For other donor participation, see tables for arrest and detention.

### III.E.- INVESTIGATION: LEGAL ISSUES

1. Confessions: when a person confesses to having participated in the genocide, does the prosecutor need to complete the other steps of the investigation (i.e. interrogation of witnesses, inspection of the scene), or can s/he close the investigation and submit the dossier to the tribunal for trial?
2. Inquisitorial proceedings during the investigation phase allow the accused little opportunity for defending him/herself; this in turn prolongs detentions given that trials take a long time to begin.
3. Confiscation of property: According to Rwandan law, confiscation of property and goods of suspects and even of condemned is an exceptional measure that can only take place when the object or the property was used or supposed to be used for the commission of the offense, or resulted from the commission of the offense (art 52 Code Penal).
4. Terminology guide: some of the terminology most commonly used in Rwandan criminal law may be confusing for foreigners. To avoid confusion, the following are some basic definitions:
  - a. A jurist is anyone with law degree.
  - b. A magistrat can be a prosecutor or a judge who sits at the tribunal or at the court of appeals. There are nonjurist magistrates in Rwanda.
  - c. An avocat is a public defender.

#### **IV. A.-TRIALS: PRESCRIBED PROCEDURES**

##### **1. Bringing to court**

once the prosecutor decides that a case is ready for trial s/he must present, the dossier/file to the president of the Tribunal of First Instance with proper jurisdiction in order for the case to be heard.<sup>12</sup> Once the case is received by the Tribunal, the president must then schedule an audience, that is an appearance date. Failure to do so may result in an appeal. The Tribunal can not decide, review or rule on the case until there is an appearance in the court by the accused.

If an accused is not in custody, s/he may be summoned into court. The summons must be in sufficient detail to notify the accused of the nature of the proceedings. Service of the summons is done by several means. " Unless proper service is made, the Tribunal may not hear the case because the Tribunal can only hear those cases which were properly brought before the court."

##### **2. Participants to the trial**

The participants to the trial are the accused, the three judges who will hear the case, the prosecutor, the defense attorney, if any, and the court clerk.

Under Rwandan law an accused can defend her/himself or has the right to have a defense attorney speak on her/his behalf. If the accused does not have an attorney the Tribunal may, for reasons of public interest, appoint one for her/him at no cost. The defendant does have the right to object to the appointment of an attorney and ' thus may proceed without one.

During the trial the accused also has the right to have all the evidence which may exist produced in order to allow the judge to decide the suit based on his, the judge's, own convictions and beliefs.

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<sup>12</sup> Proper jurisdiction is simply the court in the location in which the offense or arrest took place. A case may be heard only in the region in which the offense was committed. If a matter is brought to a court not within the region, then the court lacks jurisdiction and may not hear the case.

<sup>13</sup> It may be served by a bailiff, an officer from the prosecutor's office, or by the court clerk. If any of these parties fail to serve the respective individual, service is to be made by the bourgmestre or the conseiller communal.

<sup>14</sup> The time frame between the issuance of the summons and date of appearance is generally eight days. It is increased by one day for each 30 km. If the accused does not have a known address or resides in a foreign land then the time frame increases to three months.

## Trial: Procedures

### 3. Principles followed in the trial phase

The trial phase of a criminal trial is of an accusatory nature (as opposed to the investigatory phase above where it is inquisitorial). The following principles apply:

- a. the trial is oral because it is carried-out during public audiences;
- b. the trial is public. At times, however, a trial may be closed to the public for reasons of public interest or for the protection of the parties; and,
- c. all evidence is subject to confrontation (*contradiction*) to be admissible, meaning that both oral testimony and physical evidence presented to the tribunal can be challenged or contradicted by either party (defense or prosecution). Evidence submitted to the Tribunal without having given one party the opportunity to challenge it is not admissible.

The right of confrontation also supposes that an accused will be given access to the file which was prepared for the court with sufficient time to prepare his/her defense, and that the accused will be able to participate in the debates while exercising his/her full right to a defense. Once this happens, the tribunal decides the case on the evidence which was produced legally and subject to confrontation.

### 4. Evidence

Evidence is all methods, processes or items produced to convince the judge of the truth of a fact. No evidence is obligated to be accepted by the court, provided that the evidence it does accept was produced in a manner which allowed the accused the right to discuss and defend, and was introduced in accordance with the legal procedures. The court may however out of *concern* for public interest, request additional evidence which was not produced by either party to assist in his/her decision provided that it is subject to confrontation.

The most important types of evidence are:

Confession: Confession is that statement made by the accused either in court or out of court

- b. Testimony: Testimony is the examination of witnesses -and not the accused-- to prove or disprove a fact. In the Rwandan criminal system, oral testimony constitutes a weak source of evidence.

## Trial: Procedures

- c. Objects: Direct observation of physical objects and materials related to the commission of the offense is evidence admissible in court.
- d. Inferences and presumptions: The court is allowed to make inferences and presumptions based on the evidence introduced at trial in order to reach a decision.
- e. Indications of existence of a fact (*indices*) : Facts, elements and all circumstances related to the offense for which concrete proof is being sought may be used by the tribunal in order to have a better understanding of the offense.
- f. *procès-verbaux*: Only the observations made personally by the officer of judicial police have a probatory effect. However, the Tribunal is free to consider the probatory force and credibility of *all procès-verbaux*.

### 5. The judgment

The decision of the Tribunal must be pronounced in a public audience. The judgment must contain proof that all legal formalities have been followed and must also contain a justification for the decision. It must include the name of the judges, name of the parties, the factual and legal points relied upon, the legal disposition used, and other formalities required by law.

### 6. Cost

Who bears the burden of paying the cost of the proceedings depends on the outcome of the decision. Essentially, the cost is paid by the losing party.

### 7. Post-trial avenues of recourse

After trial there are three avenues of recourse available to an accused. The first is the objection, the second is the appeal and the third is a supreme court review."

#### a. Objection (opposition)

The objection is the recourse interposed by the accused before the trial court that issued ruling in his/her absence (*judgement à défaut*).

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<sup>15</sup> Each of these avenues of recourse has a time frame in which it may be filed. The time varies from 10 days to 90 days depending on the nature of the proceedings.

## **Trial: Procedures**

### **b. Appeal**

The appeal is a review of the decision by a higher court. Any parties who feel they were wronged by the lower court's judgment may appeal.

### **c. Supreme Court Review (cassation)**

This is a special and last recourse, where the Supreme Court reviews whether decisions of lower courts were made in accordance with Rwandan laws. However, the Supreme Court is not allowed to review the substantive legal matter of the case.

#### IV. B.-TRIALS: PROBLEMS AND BOTTLENECKS

##### 1. Security of court personnel

The issue of adequate security for the judiciary as a whole, but especially for judges in charge of deciding genocide cases is key to bringing justice and assuring respect for the rule of law. In the former *zone turquoise*, for instance, those magistrates who will rule on genocide cases and may sentence a person to the death penalty will be exposing themselves to intimidation and may be even risking their lives.<sup>16</sup> Therefore, in order to minimize the risk to court personnel it is crucial to establish enough security measures inside and outside of the courts.

##### 2. Legal basis for judgment of genocide cases

At the present time, there is no clear indication from the government of Rwanda about what legislation will be applied in the trial of genocide cases. The government has two main options. The first one is to have genocide trials performed within the context of the United Nations Genocide Convention" signed in 1946. In this case, it would be necessary to pass legislation in accordance with Article 5 of the Convention which requires Contracting, Parties, i.e. governments, to enact legislation providing for specific criminal sanctions/punishments to be imposed on individuals found guilty of genocide.<sup>18</sup> In theory, all that would be necessary is a law stating that current Rwandan criminal law and criminal procedures apply to genocide and genocide-related cases."<sup>17</sup> The problem, however, would be to determine whether an ex-post facto law would be constitutional.

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<sup>16</sup> The former zone turquoise is an area that will require close attention when genocide trials will begin, mainly because of the infiltrations from the refugee camps that seem to occur on a weekly basis. Such infiltrations normally end up with violent incidents and may present serious problems of intimidation of the judiciary.

<sup>17</sup> Rwanda adhered to the Genocide convention in 1975 with the exception of Article 9 which subjects the Parties to the convention to the jurisdiction of the International Court of Justice in cases of genocide.

<sup>18</sup> "Article 5.- Les parties contractantes s'engagent a prendre, conformément a leurs institutions respectives, les mesures legislatives necessaires pour assurer l'application des dispositions de la presente Convention, et notamment a prévoir des sanctions penales efficaces frappant les personnes coupables de genocide ou de l'un quelconque des autres actes enumeres a l'article 3" (underline added).

<sup>19</sup> Penalties provided for by Rwandan criminal law include the death penalty, imprisonment and fines (Article 26, Penal Code).

## **Trial: Problems**

The second course of action available to the government in order to speed-up the process is to start the trials outside the framework of the Convention, based exclusively on currently existing Rwandan criminal laws. In this case, individuals would be punished for murder (in different degrees) but not for genocide. Punishments, however, would still include the death penalty and life imprisonment.

### 3. Defense of the accused

As explained above, under Rwandan criminal procedural laws an accused may have a defense attorney to represent him/her but, due process is not violated if the accused does not make use of this privilege. The result is that a person can be condemned by a court in a criminal proceeding without ever having been represented by a defense attorney. In the present situation, it appears rather unlikely that the few lawyers who survived the genocide would be willing to undertake the defense of people accused of participating in the genocide.

However, in order to reach the goal of establishing a justice system to fight impunity in the country, it is crucial that genocide trials be as fair and objective as possible. To do that, people accused of genocide need to be represented in court.

### 4. Processing of cases

Logistically the processing of the approximately 30,000 possibly genocide related detainees will be a procedural nightmare. The task of creating and communicating each respective file to the court of proper jurisdiction will be very tedious and time consuming. As mentioned above, lack of basic resources and materials hinders the process.

Assuming the files are properly completed, the next bottleneck is resource oriented and lies in the court itself. Due to the lack of a sufficient number of judges, and court room personnel, the processing of the accused is slow. Moreover, there are no court clerks or administrative assistants who could organize internally the functioning of the tribunal to deal efficiently with the numbers of cases and dossiers that will come to their offices.

In addition, there are very few legal materials available to judges. Some tribunals have less than a complete set of the Rwandan Codes and manuals.

### 5. Avenues of recourse

To this date, no court of appeals is in operation because most efforts in the justice area have concentrated in the Tribunals of First Instance. Eventually, however, appeals courts need to be put in place to provide an avenue for recourse to people condemned in

## Trial: Problems

in place to provide an avenue for recourse to people condemned in lower courts, which is a major component of any true justice system.

### 6. Appointment of Judges

According to the Arusha Accords, the *Conseil National de la Magistrature* is the new entity in charge of appointing the judges at all levels in the system.<sup>20</sup> However, the *Conseil National de la Magistrature* is yet operational, and therefore, no new judges can be appointed in the country. Although those judges who were appointed before the war have not had their mandates revoked, there is some questioning as to whether they are still competent to administer justice before they are re-appointed under the new system.

In any case, most jurisdictions are short of the three judges required to hear a case. Therefore, speeding up the process for the nomination of new judges is key for the trial of genocide cases.

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<sup>20</sup> Before the Arusha Accords all judges and prosecutors were appointed by the Minister of Justice.

## IV.C.-TRIAL: PROPOSED ACTIONS

### 1. Security of court personnel

1.1 In order to provide protect court personnel, the governme<sup>n</sup>t will have to consider appointing bodyguards 24 hours a day to key court personnel. Besides that, it may be necessary to establish procedural mechanisms of protection such as anonymous judges (faceless judges), witnesses, and evidence in order to avoid intimidation of judges and other court personnel.

a. Action Required: Incorporating protection mechanisms in the criminal procedure by means of modifying/simplifying such procedures and incorporating other legislative reforms such as the anonymity of certain proceedings, audiences closed to the public, etc. If the government decides to go this way, it will certainly require technical assistance to determine how to best reform current criminal procedures without endangering due process.

b. POTENTIAL USAID PARTICIPATION: If requested by the government, USAID could provide technical assistance to examine different mechanisms of protection and determine which one is applicable to the Rwandan context.

### 2. Legal Basis for the trial of genocide cases

This is an area where only the government of Rwanda can make a decision. We have included it in this framework because it is a crucial in the trials of the genocide.

### 3. Defense of the accused

This is an area where foreign lawyers could be very useful. To represent a client in a Rwandan court, foreign lawyers only require an authorization from the Ministry of Justice; no new law or special procedure are required. However, international assistance in this area may be very sensitive and therefore should only take place following a specific request of the Ministry of Justice.

### 4. Processing of cases

For the processing of cases, the necessary actions refer to the provision of trained personnel, equipment and other resources. See discussion above.

### 5. Avenues of Recourse

Trained judges will be needed to form the courts of appeals of the country. Given that demand for judges is also very high for

## Trial: Actions

the re-installation of tribunals of first instance, there have been a few proposals to bring more than 300 foreign magistrates to serve as prosecutors and judges for genocide and genocide-related cases.

The UNDP and the *Agence de Coopération Culturelle et Technique* (ACCT) have so far been the only organizations having made a concrete offer to bring in 50 and 20 foreign magistrates respectively.

Although foreign magistrates may be the only way to deal with the caseload that will flow from the genocide, there are several issues that need close attention in this area. First of all, there is no agreement between the Ministry of Justice and the donor community (especially UNDP) regarding the role of the magistrates.

For the Ministry, foreign magistrates would be useful only if they prosecuted and judged cases of genocide and genocide-related crimes. UNDP, on the contrary, proposes foreign magistrates to "assist" Rwandan magistrates in reviewing dossiers, preparing the cases, etc., but they would NOT administer justice. Resolving this difference of opinion is essential before embarking on a concrete activity in this field.

Second, cases, dossiers and investigations are carried-out in Kinyarwanda, the local language, and not in French. Many of the suspects kept in prison speak Kinyarwanda only. The same would apply for a great majority of potential witnesses living in the countryside. This language barrier is a major obstacle for bringing in foreign, magistrates to either prosecute and judge or to simply review cases. Each foreign magistrate would need a permanent interpreter and a full-time translator to perform the most basic of judicial tasks.

Third, it has been contemplated that each foreign magistrate would be accompanied by a protection escort, probably from UNA.MIR, in order to avoid security problems. This, together with the fact that foreign magistrates would be paid much higher salaries than local magistrates (even though foreigners would have to be trained by locals), seems like the perfect recipe for creating major resentment within the Rwandan judiciary.

Finally, according to current Rwandan laws foreign magistrates cannot administer justice in local courts. A project to reform such laws has been presented to the National Assembly but for. The time being, the Assembly is not meeting. Until a law is passed authorizing foreign magistrates to prosecute and judge in Rwanda, bringing in foreign magistrates would seem like a waste of time and money. In the event that foreign magistrates would be brought in only to "assist" local magistrates, the language barrier would make it difficult to benefit from their presence.

## Trial: Actions

Until these issues are resolved, it does not seem appropriate to invest any resources in this area.

### 6. Appointment of Judges

Each Tribunal of First Instance works with 3 magistrates. It would seem important to have at least one of them to be a juristmagistrate (i.e. with legal training). The action required is training of new magistrates. For a discussion of this issue, please refer to sections above.

#### IV. E.- TRIAL LEGAL ISSUES

##### 1. Libération conditionnelle

According to Rwandan law, a person condemned to 3 months or more imprisonment may benefit from *libération conditionnelle* after having served 1/4 of the sentence. In cases of lifetime imprisonment, the person must have served at least ten years to be eligible for this benefit. Only the Minister of Justice has the authority to grant a *libération conditionnelle*.<sup>21</sup>

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<sup>21</sup>       decret-loi No. 23/81   du   13 octobre 1981 modifiant l'article 135 du code penal.

#### IV. D.- TRIAL: PERTINNT DONOR ACTIVITIES

COUNTRY/ORGZT.

COMMITMENT

STATUS

ACCT

Provision of  
Foreign magists.

ON HOLD

**SUPPORT TO CIVIL LAW  
LAND TENURE AND LOCAL MANAGEMENT COMPONENTS**

**Report for ARD and USAID  
Paul Mathieu, Consultant  
May 1995**

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"Auctoritas non lex facit ius"

(It is the authority, and not the law, that makes the rule of law).

Justice is to be found in everyday life, and not only in the courts and the Ministry of Justice.

## I. ASSUMPTIONS AND UNDERLYING PRINCIPLES

### A. Organic linkages between justice concerns and land tenure.

This linkage has been aptly and sharply expressed by R. Lemarchand (note to Larry Garber "Report to USAID...", Dec. 94, p. 4) about the situation in November 94

"the quickest way to move into a house or a piece of land is to accuse its owner of being a interhamwe. (...) recourse to denunciations had become the standard strategy to gain access to land and housing".

The relationship between lack of land and the violence that allows some people and groups to gain access to land (or hope to gain access to land and resources through violence) is not a new feature in Rwanda's history. This relationship contributed to the events of 1959, probably to the genocide of 1994, and it is again present nowadays during the post-genocide period. It is an acute and difficult problem to address in the short-term, and it will probably remain an important, underlying justice problem in the medium and maybe (hopefully not) long term.

It is evident that large numbers of people have been active participants, in different ways and degrees, in the genocide. The present rulers of the country understandably want them to be punished. There are also, apparently, many people arrested and imprisoned every day after easy and unfounded accusations of participation in the genocide. These arrests and imprisonments are often made without having been properly recorded, checked or verified, because of the characteristics of the authorities involved at the local level in the arrests, and because of the large numbers of people who have actually taken part in the genocide.

This last fact makes it a very high priority on the political agenda of the present rulers to put as many as possible of these participants in jail quickly, in order to see "justice" done and at the same time to address what is perceived as a possible threat to internal security. In dealing with the very real risk of leaving the former interhamwe and other potential unidentified enemies free, a high level of violent "justice administering" and "preventive attack" may be perceived by the army and part of the government as being (1) morally justified by the events of April-June 1994, and (2) better than the slightest risk of allowing some of the former militia and army (or people favorable to them) to be able to stay at liberty and fight the government.

There is thus presently a new form of access to resources : the weapon of accusation and denunciation. As a new form of social transaction, a quite legal and accepted everyday social violence, it has apparently become commonplace and not exceptional behavior. If someone wants to occupy or to keep the house or (to a smaller extent) the land of a returning refugee who wants to get his house or fields back, a simple, risk-free, even anonymous denunciation may be sufficient to have the returning refugee arrested or, in some cases, just disappear during the night.

This link between access to resources and a new kind of common, unfair but unpunished social behavior is a fundamental threat to social life and to the (re)emergence of a new society in Rwanda. It is also a very powerful disincentive to the return of those refugees who are still in camps and who have not taken part in the genocide actions. The actual possibility and guarantee of recovering one's property is indeed one of the basic conditions for the return of the refugees who have not participated in the genocide, and who might want to return instead of staying in the refugee camps outside of the country.

The social legitimacy and the ease of unfounded accusations made for opportunistic reasons (getting rid of an unpleasant neighbor, seizing or keeping someone's property) is also the historical result of several factors

- the "culture of denunciation" (of the enemies) prevailing before and again now after the genocide (for reasons that can be understood);

- the social legitimacy and banality of this act (accusing for opportunistic reasons), and the quasiabsence of verifications until now;
- the slowness of the judicial process; and,
- and, as a result of this, the total absence, so far, of any sanctions (present or foreseeable) for those who make opportunistic, unfounded accusations.

This situation has several implications for recommendations and actions to improve justice and the judicial process, particularly the procedures of arrest, collecting of testimonies, presence or not of Judicial Police Inspectors (IPJs) at the communal level, role and the means of these IPJs.

The problem must be addressed in several ways, one of them being to reduce the ease and lack of liability of those who make such accusations, and the other one to "reduce the incentive" by strictly regulating the conditions of access to land of imprisoned or absent persons.

The above analysis shows that the question of land appropriation and concerns for justice are related in two ways. The short-term dimension is the present connection between the strong drive for appropriation of lands and the actual working of arrest procedures. There is a significant risk that the overwhelming force of the "justice" claim, justifying easy accusations and very quick arrests, actually works in many cases at the local level as a politically legitimate and expeditious way of making land (and other) resources shift to new owners.

The long-term dimensions are two-fold. First, the general security or, at the opposite extreme, the uncertainty of individual land tenure rights, depend on the clarity and the consistency of the decisions being made today, and the visibility (recording) of these decisions. Secondly, the future capacity of the state to define and implement land management policies and institutions depends on the kind of management that is emerging now. What are the rules actually being implemented? What are the systems of record-keeping, the "social working of law", and the actual local land management decisions and procedures being put in place, with a limited degree of regulation by the state?

**B. Law and the real social working of law are two different things.**

Arrests and decisions on imprisonment are supposed, according to the law, to be made after carefully verifying the denunciations, accusations, or suspicions against the arrested persons. As a consequence of the insufficient means of the justice system at the local level, and of the actual priorities of the authorities present at the local level (bourgmestres and the army), it is clear that arrests and transfers to jail are often not made according to these legal rules and procedures. (For a full presentation of this problem and the recommended solutions, see technical report #1, "Procedures for the Trial of Genocide Cases.")

**C. Importance of reinforcing and supporting the local administration level.**

The whole local administration system plays a key role at the very bottom of the three interlinked processes of

- justice;
- administration of people and land (including some kind of registration systems of people and land); and,
- "social transactions": creating the conditions for an increasing sense of security in the local community. (This is an invisible but absolutely necessary element in the process of social pacification at the local level: Trust, communication between people and between people and the administration, are necessary conditions for local organizations, such as agricultural groups, to emerge or rebuild themselves.)

The problem is that such a thing as a "local administration U stem' tem" hardly exists today. The bourgmestres have presently very limited material and human resources. Furthermore, they are certainly very dependent on the local army and gendarmerie authorities for everything regarding judicial, criminal, or genocide-related issues. It is possible that in many places they consider

themselves, realistically, as acting more in subordination to these strong local powers than under the actual surveillance of the Ministries of Interior and Justice.

D. Transparency of rules and procedures, and accountability of local authorities are basic components of justice in the criminal justice sector (arrests etc ... ), and in everyday life.

Only visible rules, procedures, and sanctions provide the possibility of control (by the administrative authority, but also the social control by the community) of local authorities. Visibility of procedures and administrative decisions is thus a basic component of the rule of law. On decisions regarding land access and land allocation, the local administration makes the key rulings. Systems of records (registration of people and land, records of decisions of allocation) are the basic tools for the visibility, and thus, fairness, of these decisions.

Regarding these risks and the likelihood of easy and false accusations made for opportunistic reasons, the following could be recommended. A small, apparently very contingent and technical part of the arrest procedure is the record of the denunciations and accusations. Movement in the direction of fair arrests and imprisonment procedures would occur if

- legitimate arrest decisions in this respect had to be made with a written and traceable record of the accusation, including the identity, address and fingerprint of the person or persons making the accusation and the identity, institutional position and location of the person making the record;
- a copy of the record had to be transmitted to judicial authority of the prefectures; and,
- there were a governmental warning that false denunciations would be punished.

## **E. Countervailing powers.**

The diversity of the local institutions, the forms of organization, the arenas of communication where people can exchange information and simply talk to each other without fear (or with less fear than previously), while being involved in concrete tasks of immediate interest, is in itself a factor of trust building. The process of restarting social communication, rebuilding trust and "social capital" could be a powerful way, in the medium term, of reducing the risks and the extent of the arbitrary behavior that may arise in a disrupted social context, in the immediate aftermath of such a shock as the genocide.

This can be done by fostering basic people-to-people communication at the local level, and local community organizations. In every case this component can be included in such rehabilitation or development activities as credit schemes, seed distribution, house repairs and rebuilding. This organization-building work should be stimulated, as much as possible, along with the actions to reinforce and increase the capacities (human, technical, material and financial) of the local authorities. Increasing the means of these authorities without increasing their obligations (or incentives) of accountability and transparency, and without reinforcing the "countervailing powers" and capacities of civil society could mean "improved and more effective arbitrariness", along with improved capacities of local management.

## **II. RECOMMENDATIONS FOR PROJECTS AND ACTIONS IN THE FIELDS OF LAND MANAGEMENT, LAND TENURE, LOCAL ADMINISTRATION AND RULE OF LAW**

### **Support is proposed for:**

A) a survey of the communal lands and lands available for temporary occupation at the commune level; and establishment of a records system for the allocation of lands by local officials;

B) a new system of registration of people ("Etat-civil" and population statistics); and,

C) information, communication, and training activities of local women's groups in their struggle for property and other rights.

A. Support a survey of the communal lands and lands available for temporary occupation at the commune level and establishment of a records system for the allocation of lands by the local authorities.

### **1. Assumptions, underlying principles**

Some power-holding local authority has to be actually in charge of land management at the local level. If no national guidelines, no national institutional system, no system of records is designed and implemented, the outcome will be land management by the "local authorities" (the bourgmestre, within the set of local power relationships) without visibility, without equity, (risking corruption when the "war discipline" of the party fades), and without accountability, such a system will also undermine the capacity for national management of development policy. This pessimistic scenario could begin very soon (it may even have begun already in the urban housing sector), and it would certainly act as a meaningful signal and deterrent to the return of the refugees in neighboring countries. It

may actually be the second most important consideration of the refugees, right after the rhythm of arrests of returning recent refugees in their communes.

As explained above (see pp. 3-4), the questions of land appropriation and management and of justice are closely related in both the short- and long-term.

As another example of this relationship, one might ask, "What tools are needed for the national policy of resettlement of refugees ('old' and 'new'), and what will be the effectiveness of these tools?" These tools include not only clear tenure regulations, but also the material and institutional conditions for their implementation, and the means for the design and monitoring of the programs and policies regarding land use and resettlement. A central component of all these tools is a land information system.

## **2. Context and Problems to be Addressed**

a) Official policy and actual changes in ownership and control of land as a consequence of the genocide

No laws or official statements provide a legal or official basis for the seizure of resources belonging to imprisoned or escaped persons suspected or guilty of participation in the genocide. Urban houses and large estates and farms of high-level officials or "notables" of the former regime are presently directly managed by government authorities. Regarding the numerous small farms of peasants who are in prisons in Rwanda, or refugee camps abroad, the official position of the Rwandan government is stated in the three following documents which it has accepted.

- In the Arusha Accords, the Agreement on repatriation of the refugees and the resettlement of displaced persons states that "The right to property is a fundamental right for all Rwandans ... however, refugees have the right to regain possession of their property upon their return ... However, with a view to promoting social harmony and national reconciliation, refugees who left the country more than ten years ago may not reclaim

property that has been occupied by other individuals. In compensation, the government will make other lands available to them and will help resettle them." (Art. 4., unofficial translation)

- In the "Plan of Action" issued by the Regional Conference on assistance to refugees in the Great Lakes Region (Bujumbura, 12-17 February 1995, and accepted by the Government of Rwanda, it is stated that (§23) "The Rwandese authorities are advised to ... (c) continue to disseminate solemn declarations ... welcoming back the refugees and internally displaced persons, and (re)emphasizing that any occupation of their land or homes will be terminated after their return".

- In the document "Problèmes du rapatriement et de la réinstallation des réfugiés Rwandais Propositions de solutions" (Ministry of Rehabilitation and Social Integration of Rwanda, December 1994), it is stated that "The true proprietors of property borrowed by [the 'old' refugees from earlier conflicts] must be restored to their rights when they appear. But also guaranteed by the government is the right of repatriated refugees to be resettled and supported until they become self-sufficient." (p. 11, unofficial translation)

These positions are consistently presented as the basis of the official policy regarding land, resettlement, the return of the (new) refugees and the question of "double occupancy".

However, several observations and testimonies indicate that this official position is not necessarily always implemented at the field level by the local authorities (bourgmestres) and indeed faces serious constraints and difficulties. On one hand, there are cases in which the bourgmestre allows an "old-caseload" refugee, or returnee, to reassert a claim of ownership to land formerly owned in 1959, if the most recent owner is absent or has been killed. This ownership claim is asserted by the "old owner" by designating someone as "guardian" or tenant of the fields. A paper defining this situation is signed by the two parties, and officially confirmed (although in a form that is not defined by any law) by the communal stamp and/or by the bourgmestre's signature.

There are also cases where unoccupied fields are allocated on a temporary basis by the bourgmestre to people asking for some land. These people can be either old refugees trying to resettle individually, or some of the most recent refugees, who fled in 1994, or just local people (neighbors who feel that would be better off with some more land to cultivate), etc. (See also Annex.)

b) The current situation and risks for rehabilitation and agricultural development

In the absence of documents clearly stating the temporary nature of these land allocations, and the rights of the absent owners, along with the nature and location of the fields, seemingly temporary allocations may well turn out to be "de facto" transfers of actual long term ownership or control of the land. They can also become de facto transfers of land in control of the communes, with little visible legal regulation and accountability. Control of these lands might then become a convenient tool for building political support through local personal allegiances and client relationships. One might consider that both the setting up of national policies for agricultural development and external aid in the field of agriculture should become conditional on a clarification of procedures and improvements in that field of land administration.

**c) Conclusion**

In sum, there is a real risk of increasing arbitrary decision-making by the local administration regarding the allocation of land, given the room for maneuver and the important, to a large extent uncontrolled, power of local administration. The present institutional decision-making structure, as well as the legal rules and procedures regarding land allocation, are not different from those that existed before the genocide. If this huge room of maneuver is not reduced, and the records systems and procedures of accountability are not improved, there are serious risks of seeing the return of certain old practices of the local administration return: allocation of and settlement of this scarce and highly valuable asset (land) becoming subject to simple corruption or being used to build

political support through client relationships. If such opportunities are left uncontrolled and unchecked, this will entail the following consequences:

- It will make the lands of the presently absent refugees vulnerable to a massive "de facto" transfer of ownership (even if political declarations say the opposite);
- It will constitute an increased incentive for opportunistic and false accusations (of involvement in the genocide) as a legal means of stealing land;
- It will be a very strong disincentive for the return of the refugees;
- It will interfere with appropriate national agricultural land policies; and
- And all this will plant the seeds of numerous future social conflicts, either local or largescale.

### **3. Objectives**

Land administration is important for justice and equity, including the return of the refugees. In order to reach these general goals, three types of actions are needed regarding the communal lands and the lands of "presently absentee peasant owners":

- clear guidelines from the government (to the local administration and to the population) regarding rules for the temporary occupation of agricultural lands;

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' The following observations rely on investigation and interviews with a limited sample of bourgmestres, and from a few concrete testimonies. This limited sample does not allow assessment of the precise extent of these practices. Nevertheless, all the bourgmestres met by the team members do mention the lack of precise operational guidelines for the allocation of "vacant lands". All of them show poor systems of records for the supposedly temporary allocation of lands, and some of them express the opinion that the temporary allocation of the land of absent owners does not adequately answer the needs of the old refugees who lack sites and lands for resettlement.

- implementation of these guidelines by the bourgmestres at the communal level, under supervision of the Ministry of Interior; and,

- qualified human resources and material support for setting up a system of information, collecting data at the communal level, processing these data at a higher level, and storing and circulating the information where it is needed (in the communes, Prefectures, and Ministries of Rehabilitation and Public Works).

The first two actions depend upon the government's will and intentions. The technical and financial interventions proposed for USAID relate to the third aspect above. By supporting the technical tools needed, outside aid would likely stimulate the two other institutional components needed.

This proposal deals only with the agricultural lands and "peasant farms" in the communes. It does not deal with the urban housing sector, nor with the large estates that were privately owned under the former government, large projects (like the "paysannats", Bugesera, Muvumba plain), and the large areas of land intended for big projects of resettlement.

#### 4. Actions and Projects (including required external support)

##### a) Short-term action identification/feasibility study for:

(i) A rapid participatory registration of the "vacant lands" allocated and to be allocated on a temporary basis by the communes.

(ü) Building a permanent system of records for the allocation of lands on a temporary basis presently made by the communes, and for the identification of the "communal lands" (swamps, etc.) available at the commune level.

**(b) Medium-term actions:**

(i) Funding research consisting of case studies of the actual practices of land management at the local level. How do "de facto" rules emerge, what are the criteria for the temporary use of "lands without their owners", what are the participatory and social practices that could be fostered related to decisions regarding land use? Such research should be done in conjunction with the university (IRST), but with some inputs from external experts (African and non-African) in order to avoid bias in the design of the study and to broaden the scope.

(ii) Support for a survey of the vacant lands available for temporary allocation, and setting up a system of records for local land management decisions.

These operations are complex, at the governmental level, since they would probably involve several Ministries. The Ministry of Public Works was formerly the place for land records, but that regarded mostly urban lands. It could nevertheless be the place, or one place, for the storage of the information (storing and updating of the records). The Ministry of Rehabilitation would be interested in knowing and locating the lands available for small scale resettlement. The Ministry of Interior would probably have the lead role for setting up the system, organizing the activities of bourgmestres, and ensuring that the information and a practical system of record-keeping, and the records themselves, remain available at the commune and the prefecture levels.

The question remains open as to where the "central system of information" (probably in the form of a simple, Geographical Information System (GIS), would be located and operated. The technical tools currently available easily allow for the immediate circulation and sharing of information.

Some expertise for the operation of a big, "heavy" geographical database system has existed and is due to continue in the IOC, that is within the Ministry of Rehabilitation. It is important to understand at the earliest stage of such a project that the establishment of

a centralized capacity of information management can be a political issue, providing a possible monopoly on the use and operation of the information system. There is also an institutional stake in controlling this information. "Co-management" of the central database, circulation of the information it provides to several Ministries (through an Interministerial Committee for instance, or perhaps through IOC), and availability of the records at decentralized levels (Communes and Prefectures) are obviously important measures to be taken in the design of the system in order to avoid the risks of a monopolistic control and use of information.

The action of collecting the information at the communal level will also be complex and sensitive. It will require political support and guidelines coming from above (Ministry of Interior), sensible sociological skills for the design and conduct of the gathering of information at the commune level, commitment of the bourgmestres and "Conseillers de secteur", and a fair amount of local participation by the people themselves.

This last point implies that neither the communal administration nor the peasants feel threatened by this operation, but see it, on the contrary, as providing information emanating from them, helping them assert their present rights to land, and preventing conflicts and future social instability. The signals coming from the politicians and from the technicians, when first informing and preparing the bourgmestres and , shortly afterwards, the people, will thus have to be carefully expressed in order to evoke trust, rather than fear and dissimulation. This social aspect is as important as the technical tools and skills for the success of this operation.

## **5. Required Technical Assistance and Material Support**

### **a) Short-term actions:**

Expert consultant for short-term identification/feasibility study.

## **b) Medium-term actions:**

One senior expert, in charge of the project with the Ministry of Interior, with previous experience in participatory survey of lands in African countries. French, and if possible English, speaker. Knowledge of GIS for cadastral surveys would be another qualification needed (from same person, or an additional short-term consultant, or through collaboration with other persons available in the country, possibly in the IOC).

Four to six "junior experts" working as a mobile unit in prefectures in conjunction with a Rwandese technician (hired for the project and/or provided by the Ministry of Interior, if available), and some Rwandese surveyors, with good "sociological sense" and previous experience in the rural areas to be surveyed. Duties: collecting the data at the commune levels, with the communal authorities.

Materials needed to achieve the work will include: four to six laptop computers; four to six light 4-wheel drive vehicles; one heavy 4-wheel drive vehicle; and, one desktop computer and a good printer (possibly a color laser) for the central office to be located within the Ministry of Interior.

B. Support the introduction of a new system of population registration of people ("etatcivil" and population statistics).

### 1. Assumptions, underlying principles

Registration and management of land, registration of land claims, and the resolution of disputes arising from multiple claims on the same piece of land, can only take place if a proper system for the "registration of people" (Etat-civil et documents d'identité) is in place and functioning. The former system (i.e., existing before April 1994) has been almost completely destroyed. Some information is presently recorded by the communes, in very

difficult and inadequate conditions (see the observations in the third technical report, "Justice at the Local Level.")

## 2. Context and Problems to be Addressed

The present context is characterized by the weakness of the communal administration. This weakness includes several aspects:

- lack of human and material means, lack of experience and often of technical competence for the tasks of local administration;
- weakness of the lines of communication, lack of trust, visibility and accountability among the "vertical" levels of civil administration: Ministry of Interior, Prefets, Bourgmestres, conseillers de secteurs; and,
- a disproportionate dependence by the bourgmestres on the pressures of particular powers and interests: political parties, local representatives of the army and all "cadres" (members of whatever administration) who may often have more actual power (access to political resources of power, where the real power is; that is, not in the civil ministries) than their official position formally entails.

These conditions do not encourage the establishment of fair, reliable, secure administrative procedures; yet, the bourgmestres and the communal administration are the basic link between the political power and the people, the very place where normal life requires trust, and social relationships based on reliable norms and steady institutions.

### 3. Objectives

The general objective is to support the capacity of the communal administration to perform its functions for the registration of people and, more widely, to enhance the feeling that social life is being secured (by the State, among others) rather than threatened by arbitrary actions. This is basically accomplished by making visible and officially recognized the basic acts of personal and civil life: birth, marriage, inheritance, and having one's livelihood and place of living established.

A more specific objective is to provide records of identity that could play a key role in performing many social activities and transactions, resulting in more freedom to move, greater ability to submit claims in inheritance/property issues, the ability to open a bank account or to claim one's former property with the bank. There are appropriate streamlined procedures for the assessment of people's Etat-civil and for record-keeping.

Identity and Etat-civil documents would also be very important for widows and orphans. Only with such documents would these categories of victims be able to defend their claims in the civil justice system, in the face of relatives who would not accept the rights of inheritance of the widow or orphans of deceased people. In this respect, the issue of land tenure for these vulnerable categories is clearly linked to the provision of identity or administrative documents that can prove one's family relationships.

In performing these technical functions and providing these documents, communal administrations would also be stimulated to act more as a performing civil service, and they might even enhance certain feelings of bonding (between local administration and people), trust, and reliability. Only through the provision of such technical but socially essential services could "the State" enhance the "localized arrangements of trust" that are probably necessary for real justice, sound social life, and finally development.

#### **4. Actions**

Given the highly technical content and the sensitive political implications of this matter, the decisions regarding what type of popular registration system to set up must be taken by the government of Rwanda on the basis of a good assessment of the needs and some concrete proposals for action. The first step would thus be a short-term identification/feasibility study, which could present some concrete proposals and their institutional, technical and financial implications. On this basis of information, the GOR would then be able to make its choices, and to discuss additional technical assistance and material needs with donors.

#### **5. Required Technical Assistance**

One expatriate expert, demographer with sociological insight, and experience in the field of demographic census, and the establishment of systems of "Etat-civil" in Africa. Field experience of countries in crisis or post-crisis situation would be an asset.'

One African (most preferably Rwandanese) expert, with expertise in the field of family and personal law, customary law, and field experience in Rwanda.'

One national counterpart, with expertise in the field of communal administration, preferably from the Ministry of Interior or chosen by the Minister.

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<sup>2</sup>ne person with this relevant experience has been identified (Mr. Louis Lohle-tart, whose CV has been transmitted in an annex to the report given to the ARD team leader).

<sup>3</sup>ne person with this expertise, presently living in Belgium, has been identified: Mr. Charles Ntampaka. Details and CV are available on request.

C. Support information, communication, and training activities of local women's groups in their struggle for property and other rights.<sup>4</sup>

## **1. Assumptions and Underlying Principles**

Groups and organizations of civil society also have an important role to play in the establishment of communications, relations and social transactions among individuals, and between individuals and the government institutions. In the countryside, women's groups seem to be important in the struggle for survival, but they also play a role in the revival of certain foundations of local economic and social life: distributing seeds, organizing the reconstruction of houses, selling vegetables or handicraft products, and taking care of children, etc.

All these activities go hand in hand with a certain level of organization, of effectively entering into communication with other social actors such as the administration, transporters, merchants, and NGOs in the city or nearby. This emergence of organizations responding to immediate needs also gives women a capacity to access information and communications, and increases their possibilities for self-confidence and the ability to articulate problems, all of which are essential if they are to be heard and recognized as individuals who have rights and wish to defend them.

## **2. Context and Problems to be Addressed**

Traditionally, in the actual functioning of laws and institutions (the living law), women have not had the right to speak, no more than they have had the right to hold property in

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<sup>4</sup>This issue encompasses but is much broader than the limited issue of civil law and land tenure. Only a few suggestions and the rationale for intervention related to justice are presented here very briefly. Some of these ideas and suggestions have been discussed in Kigali with a team including Mrs. Christine Hjelt, and some of the materials and information gathered have been transmitted in the team discussions before my departure, as inputs and preliminary materials to be more extensively discussed and processed by the anthropologist/ADR specialist.

their own names. In the present crisis, often alone (their husbands dead, in prison, or in the refugee camps), women are confronted with not only the problems of daily survival but also with new and important difficulties: rebuilding a house, recovering lands, settling questions of inheritance, and establishing rights of guardianship and tutelage over children (notably for women and families taking care of children whose parents are dead or cannot be found). In order that they not become victims of injustice, these categories of women must have the rights and resources appropriate to the new and exceptional responsibilities they must assume in the present context. (See also Annex.)

### **3. Objectives**

Concerning all access to resources and personal rights in relation to family affairs, women need the organizational strength to claim rights society has not traditionally recognized. It is equally necessary for women to be able to use sources of legal information and assistance. Even to approach problems first, in a non judicial framework of local arbitration, the existence and accessibility of sources of legal information and assistance can significantly reinforce women's negotiating positions in claiming rights to resources formerly belonging to the household, or defending themselves against the family of the husband or other groups.

### **4. Actions**

Support for grassroots women's groups can best be accomplished through a "liaison committee" which would subcontract activities to experienced, local Rwandese NGOs.

This committee would be composed of a few persons belonging to a small number of these NGOs, plus a few external persons, with experience in this sector, and hopefully, at least one independent expatriate with field experience in the country.

This committee would have the task of selecting specific projects to be implemented by specific NGOs, and supervising the effectiveness of these activities through ex-post evaluation, as well as monitoring ongoing activities, so as to stimulate some kind of "learning process" among the national NGOs involved, and to ensure some kind of accountability for the activities supported by USAID funding.

If, as it seems most likely the bottleneck for actions in this field is not money but trained and experienced personnel to do the fieldwork of project assessment and implementation, a useful action would be to fund training activities for the personnel of national NGOs.

### **III. ANNEX: LAND QUESTIONS AND THE ROLE OF THE LOCAL ADMINISTRATION PRESENTATION OF THE PROBLEM**

All four bourgmestres interviewed between March 30 and April 6 said they were waiting for clear directives from the political authorities on the allocation of lands not occupied by their owners. The bourgmestres make their decisions on the management of these "available lands", "while awaiting" detailed directives from the government (an expression used by all four).

There are two categories of lands whose allocation depends presently on the bourgmestres:

- lands not taken over by individuals, such as swamps, just as before the war;
- lands abandoned by their former proprietors since the war. These lands are not necessarily abandoned, but are "not presently farmed by their owners" who may be dead, in prison, outside the country or elsewhere in the interior (as in displaced persons camps around Gikongoro).

The categories of people who could assert claims to lands are the following:

- returning refugees who fled before 1994 (the 'old' refugees from the violence of 1959 and 1972, and the recent ones from 1990-92) who are trying to resettle in the areas where they formerly lived;
- women heads of households whose husbands are dead or absent and who have not been able to recover lands they farmed before the war;
- landless peasants from the area, youth in particular, or those who have sold their land to pay off indebtedness, etc.

The real and "practical" principles by which the bourgmestres manage land are the following:

- Land cannot be left abandoned, particularly plantations which must be maintained regularly in order to be productive (tea, coffee, bananas)';
- Those who left the country (and their lands) more than ten years ago have no right to recover their lands. This part of the Arusha accords is well known to the population which learned it from the radio broadcasts (probably between 1991 and 1994).
- On the contrary, if people in the category of returning refugees (and particularly the "old refugees") request land, they have the right to receive lands for farming, even provisionally if the lands belong to others and are not being farmed.
- A person who farms or maintains a piece of land has a right to the coming harvest even if the owner arrives and reoccupies the place before the harvest.
- A person who left less than ten years ago (particularly the "recent" refugee who left in 1994 or since 1990) and who returns, has the absolute right to recover his lands and other possessions (house, cattle, as the case may be) even if these are actually occupied or being used by others.

According to information and declarations gathered during the team's mission, a "recent" refugee who returns to the rural area and finds his land occupied has no problem in recovering it either by the spontaneous departure of the provisional occupant or the intervention of the bourgmestre. This is recovery of lands and houses generally occurs in one or two weeks. However, these indications

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<sup>5</sup>This principle has been applied spontaneously by the people themselves, before and independent of actions by bourgmestres (harvest of September-December, 1994). In the strongly depopulated areas, those who are present have generally harvested in the fields of absent neighbors.

should be taken with a certain reserve, since they could not be verified on the ground and they are based on a limited number of statements.

Assuming the general proposition above, it should be limited and nuanced by the following restrictions:

a) It applies only to those who return and have no accusations against them for having participated in the genocide, nor cases of disappearance or arrest. It is easy, very easy in fact, without risk and socially legitimate for someone who wants to obtain or keep the land of a person who has been absent, to accuse or have accused of participation in the genocide any recent returned refugee whose land one wants or to obtain or keep (if someone has already begun to use the lands in question as a provisional occupant). Given that there are most often no, or very few serious verifications of these accusations before arrest and imprisonment for necessarily long periods (before trial or dossier completion), the number of people who are victims of these opportunistic and flimsy accusations for the purpose of appropriating their lands is without doubt high.

b) The apparent ease with which lands are recovered does not apply to isolated women, heads of households, where the husband is either dead, in prison, a refugee abroad or elsewhere in the country. Now, these isolated women, most often with children in their charge, represent an average of 65% of the heads of households of the population of rural areas with Hutu majorities. They are often unable to recover the family lands they farmed before the war. Either the family of the husband tries to keep the lands of the absent husband, in the name of "custom" which holds that women cannot inherit from their husbands; or, if the husband is not certainly known to be dead or in prison, and therefore supposed to be a refugee elsewhere, the local political and administrative authorities (bourgmestres or counsellors) decide that the wife of a murderer (assumed to be guilty) has no right to recover the lands in question. The woman is therefore treated as if she were an accomplice of a absent, virtually guilty person and required to pay (on the civil and economic plane by being deprived of the basis of food self-sufficiency for her and her children) for a supposed criminal act for which another person, wanted by the justice system, is responsible.

**PROJECT REPORT  
RWANDA RAPID RESPONSE RULE OF LAW PROGRAM  
USAID**

**JUSTICE AT THE LOCAL LEVEL:  
FINDINGS AND RECOMMENDATIONS FOR FUTURE ACTIONS**

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**May 4, 1995**

# REPUBLIQUE DU RWANDA

## Division administrative

### Légende

-  Frontière du pays
-  Préfecture
-  Commune
-  Parcs et forêts





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## BACKGROUND

This component area, entitled "Alternative Dispute Resolution" (ADR), was originally conceived as constituting a grassroots effort that would strengthen the justice system. Its aim was to establish/ rehabilitate local-level institutions that handle civil cases, particularly those concerned with land, houses, and property. Although few observers would argue that local institutions must be considered within any integrated justice program, many questions remain as to the best approach to take in assisting such institutions.

The November/December 1994 UNDP Mission to Rwanda recommended that pilot ADR mechanisms be developed and tested to determine their utility in the Rwanda context. The Mission proposed the following tasks for a team of ADR specialists:

1. obtaining an overall view of the scale and nature of the pending litigations, particularly those involving disputes over land and houses,
2. exploring what uses if any can be made of the traditional justice system (gacaca) where such a system still exists,
3. assisting the MOJ in determining ADR program objectives and parameters and developing criteria for pilot sites selection;
4. where the traditional justice system is no longer available, preparing the way with local communal authorities for arrival of the ADR teams and making sure their functions are properly understood, not only by the local "big men" but the population at large; and
5. developing/accessing creative strategies at the "hill" level that will make ADR mechanisms available to the largest number of people.

## STATEMENT OF THE PROBLEM

According to the Joint Mission to Evaluate the needs of the justice system, the national crisis is characterized by zones of insecurity and illegal occupation of property in the towns and the countryside, among other problems. With this in mind, this component of the national justice effort was designed to handle

justice-related problems at the local-level. At the local-level, justice is administered through institutions and authorities within communes, more often in rural than urban settings (refer to Map of Communes).

As will be discussed in the fieldwork findings section, the local institutions, including the gacaca, are functional. Nonetheless, two problems hinder the operation of local institutions: the lack of clearly formulated policy at the national level and the lack of "directedness" and transparency at the local level. But national and local processes are linked, and communication is hindered when either end of the process fails. Currently in Rwanda, the national process has failed in the sense that it has delayed making critical policy decisions that would facilitate post-war recovery operations within communes, such as concerns population and land registrations, while local processes have failed in that they have not effectively conveyed urgent local needs to policymakers.

This report emphasizes commune-level dimensions of the justice problem, including areas that require attention in the national justice effort.

#### THE ADR APPROACH: DEFINITIONS AND METHODS

Because the designers of this component of the justice program intended to implement pilot ADR mechanisms, the following two sections will discuss first, the meaning of ADR, and second, the reasons why an ADR approach, as presented in the project proposal, is not recommended by this consultant.

The meaning of the term, "Alternative Dispute Resolution" (ADR), is often not clear to the non-specialist. In this report, it is interpreted as the processes according to which the resolution of conflict is pursued, with the word "alternative" emphasizing extra-judicial, i.e., non-court, proceedings. In an effort to define illustratively ADR as well as to demonstrate problems in designing an effective ADR model/approach and in applying ADR cross-culturally, several tables from the ADR literature are illustrated and discussed in Appendix III).

When considered collectively, the tables demonstrate that an ADR approach can only be undertaken after considerable background investigation and planning. Even after such preparation, ADR measures may not be as "successful" as had been hoped, due to

unanticipated, intervening variables of both a contextual and cultural nature. Successful implementation of an ADR training program largely depends upon the ability of the trainers to meet the specific needs of the client group and to adapt their training program to the specific circumstances that may arise.

#### THE ADR APPROACH: APPROPRIATENESS FOR RWANDA

The proposal to implement an ADR approach in Rwanda derives from at least three assumptions: 1. that "alternative" dispute resolution mechanisms are required due to an absence of mechanisms or the inadequacy of existing mechanisms; 2. that local authorities are inexperienced with or lacking in conflict resolution skills; and 3. that foreign conflict resolution models could be adapted to local conditions. In the consultant's view, these assumptions are misdirected for the Rwandan context.

First, local dispute resolution mechanisms, usually in the form of gacaca, exist in all parts of Rwanda.' Despite suggestions by some observers that gacaca ceased to exist during the war, in fact, some gacaca functioned throughout the war, whereas others, which fell into disarray during the war due to the loss of leadership and neighborhood constituency, have been reorganizing in recent months. Even those populations which are not currently served by a gacaca, particularly returning refugees who are not permanently settled, will likely find functional gacaca in their new communities or will establish such gacaca once settled.

Second, local authorities have been managing minor, local level conflicts for centuries -- perhaps more continuously and effectively than Americans and Europeans, who, within their large, heterogeneous, and impersonal communities, were compelled to "reinvent" local-level conflict-resolution skills and programs when their state judicial systems failed them.

Third, foreign ADR concepts and approaches cannot easily be transplanted from one cultural context to another. For example, interpretations regarding the nature of conflict, the role of the mediator, and the appropriate processes for resolving conflict.

Gacaca is a kinyarwanda word which means "grass", and by extension, a meeting of neighbors (seated on the grass, the gacaca) for the purpose of settling litigation between the inhabitants of the neighborhood (Reyntjens 1990).

vary considerably cross-culturally. But more importantly, even if ADR mechanisms could be superimposed upon, or transplanted parallel to, existing local-level dispute resolution mechanisms, the gacaca would undesirably cease to exist as spontaneous outgrowths of communities' need for cooperation and peaceful coexistence.

ADR specialists who have sufficient understanding of Rwandan customary institutions, particularly the gacaca, could not be easily located and recruited. More important, they might encounter local-level resistance if they attempted to impose a dispute resolution program. Most Rwandans appreciate advice, but they want the autonomy to develop local institutions according to their own perceived needs and priorities.

In sum, the complexities of the post-war situation in Rwanda necessitate a variety of interventions beyond the importation and adaptation of an ADR program.

#### ANOTHER APPROACH: AN EMPHASIS ON LOCAL-LEVEL INSTITUTIONS

Another approach to strengthening the local-level justice system would emphasize institutional strengthening through training officers in administration (upgrading) and through acquiring equipment. In addition to strengthening the administrative structure at the local-level, communication linkages between all levels must be facilitated. Most important, the respective roles of officials at all levels must be clarified: the roles and responsibilities of the Bourgmestres and representatives of other ministries at the commune level (horizontal integration) as well as the roles of the Bourgmestres, Conseillers, and Responsables at the commune, sector, and cell levels (vertical integration). Improved communication and clarified roles should improve overall efficiency and reduce overlap in activities. When the representatives of local institutions are trained, assisted, and empowered, higher levels of equity, impartiality, and fairness will possibly filter upward through the justice system.

In Appendices VI and VII, the needs of local institutions in terms of equipment and training are specified. Training workshops for Bourgmestres and commune personnel in the areas of mediation and administration (record-keeping and registration procedures) are proposed. In addition, the consultant proposes that "communication" meetings be held for the purpose of

improving linkages at the commune level and between the commune and higher administrative levels. At present, public meetings at the sector and cell levels are held in many communes on a regular basis, such as biweekly. "Communication" workshops would aim to assist communes in: 1. applying better self-help methods, through improved organizational capabilities, toward recovering from the devastating effects of the massacres and the war, and 2. formulating and expressing directly their needs to higher levels, such as prefecture or ministry. All training programs must be designed within the cultural and post-war context of Rwanda.

With these considerations in mind, this component of the justice program was designed to achieve the following:

1. explanation and analysis of the structure and current operation of local administrative/justice systems, including linkages and articulation between different levels;
2. explanation of local conflict resolution procedures. This includes a discussion of the nature of customary law, with an emphasis upon current land/property issues and disputes, according to persons, institutions, and localities/regions of occurrence (based on sample survey);
3. preparation of scopes of work for a specialist to train in mediation. In this case, it was decided to emphasize Bourgmestres at the commune level rather than the gacaca;
4. preparation of scopes of work for a specialist to train in local administration, emphasizing commune officials responsible for record-keeping, statistics compilation, and registration of persons;
5. identification of the needs of communes, specifically for structural repairs, equipment, training, and staff. In addition, identification the needs of key Rwandan NGOs, such as those which are entrusted with strengthening women's grassroots organizations and with engaging in legal reform activities, as concerns, for example, women's access to local authorities/institutions for receiving and retaining land/property;

## FIELD RESEARCH

In order to ascertain local-level needs, including the need for future technical assistance by expatriate and/or local

experts, this consultant interviewed local and expatriate experts in Kigali and undertook initial survey field work in eight prefectures: Kigali, Butari, Gitarama, Byumba, Ruhengeri, Gisenyi, Kibuye, and Kibungo (refer to commune map following the Table of Contents and to the list of communes visited in Appendix I). The research sites were widely dispersed throughout the country in order that the data sample would incorporate variability in terms of population groups, socio-economic structures, and institutional forms. The consultant anticipated that local and regional requirements for institutional capacitybuilding would not be uniform, as was eventually proven to be the case.

In Kigali, Rwandan Government officers as well as representatives of NGOs and international organizations were interviewed. Outside Kigali, members of local administrations, such as prefets, sous-prefets, land/agricultural officers, commune bourgmestres, sector councillors, cell leaders, gacaca members, permanent and temporary residents of communities, and temporary residents of refugee camps were interviewed. The topics of discussion covered broadly the local administrative structure, conflict resolution procedures, land matters, and refugees. As concerns the administrative structure, the questions covered, more specifically: leadership roles; administrative procedures; cases and current case load; appeal methods; institutional jurisdiction (in theory and practice); communication between institutional levels; record-keeping; and operational problems and needs (e.g., equipment and training).

The findings discussed and the recommendations made in this report are based on interviews held with people both within and outside Kigali.

## FIELDWORK FINDINGS

### Local Administrative Structure

Local administration is organized within a hierarchical structure that varies somewhat throughout the country. At the highest level, is the commune headed by the Bourgmestre; at the second level, is the sector headed by the Conseiller (councillor); at the third level, is the cell headed by the Responsable (leader); at the fourth level, is the nyumba kumi (ten-house leader), a position which does not exist in some communes. Each house consists of one or more nuclear families, and each "ten-house" unit commonly consists of ten or more houses. ,

A Bourgmestre is appointed by the Ministry of Interior to one of the 144 communes in the country (refer to commune map following the Table of Contents). The situation of the sector councillor varies throughout the country because some councillors were chosen through popular election before the war, whereas after the war, some councillors were appointed by their current Bourgmestres. The cell leaders were chosen through popular election before the war, whereas after the war, most leaders were appointed by sector councillors and some were chosen in popular elections. Finally, the nyumba kumi were chosen through popular election before the war, whereas after the war, most nyumba kumi were appointed by cell leaders and some were chosen in popular elections. But the elections are not completely open since the official at each higher level must choose several names from a composite list of candidates, thus accepting or rejecting each person's candidature. Moreover, in our random interviewing of sector councillors and cell leaders, we seldomly encountered officers who had occupied their posts before the war: one exception was a 37 year-old cell leader who had been in his post for more than ten years.

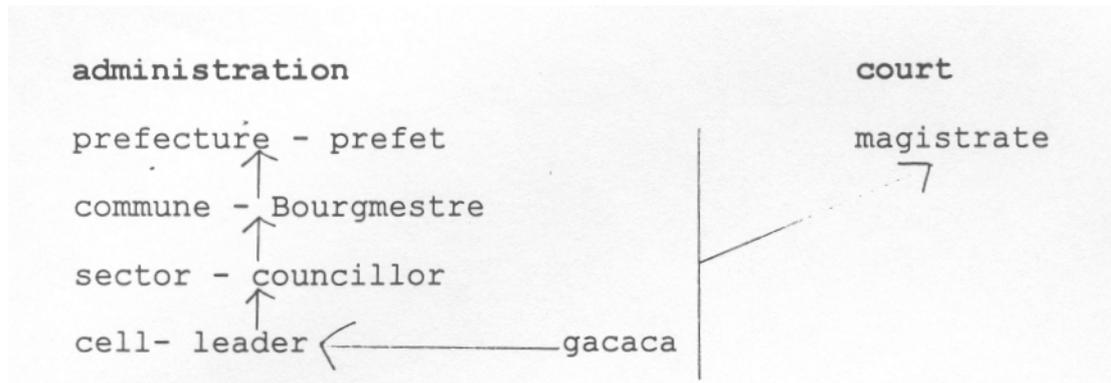
At the commune level, the Bourgmestre, the most senior official, is assigned a coordinating role among ministry representatives. Among his many administrative responsibilities, he is entrusted with overseeing commune security (as head of the commune police), hearing conflict cases, directing infrastructural developments, conducting civil marriage ceremonies and conferring marriage documents, promoting development projects, and organizing social services (e.g., requesting and allocating emergency provisions such as food).

In the Bourgmestre's role as commune coordinator, he is the key person in local-level justice initiatives connected with genocide cases. He draws up the list of prisoners who are to be transferred to the prefecture prison. Our interviews with Bourgmestres about genocide cases indicate that the IPJ puts together a dossier on each prisoner, shows each dossier to the Bourgmestre, and thereafter awaits instructions from the Bourgmestre regarding the disposition of each case.

At the sector level, the councillor is responsible for supervising the cell leaders within his sector. When a conflict case is not resolved at the cell level, the cell leader directs the case to the sector councillor who hears the case. In the event that the councillor also cannot resolve the case, he transfers it to the Bourgmestre. Moreover, the councillor collects records from the cell leaders in his sector regarding land/housing allocations and occupations as well as regarding residents and returnees (he compiles names and other personal information); he transmits these records to the Bourgmestre. Finally, he oversees security matters in his sector.

At the cell level, the leader is responsible for supervising nyumba kumi, where the latter exist. As the head of the gacaca, he serves as the first instance for hearing minor cases involving theft, insult, boundary trespass, marital conflict, and fighting. When we questioned cell leaders about the exact types of cases they can hear, they responded that they hear "minor" cases. At the same time, they indicated that they occasionally hear more serious cases when both disputants are willing to accept their efforts at mediation. As mentioned above, the leader collects records for transmission to the councillor. He also investigates cases, thereafter calling the gacaca which will deliberate on the merits of each case; when the gacaca collectively decides that a case against an accused is strong, some members will physically take the accused party to the commune offices for arrest and imprisonment. The position of cell leader is an important link between the formal administration at the commune and sector levels and the informal local organization represented by the gacaca. In some areas, where a nyumba kumi is in position, the cell leader coordinates the nyumba kumi heading each 10 or more house units. The cell leader hears cases that cannot be resolved by the nyumba kumi, thereafter transferring each case that he cannot resolve to the sector councillor.

Both men and women can be elected or appointed as Bourgmestre, sector councillor, cell leader, or nyumba kumi. While interviewing at various locations throughout the country, we encountered a woman who was both cell leader and sector councillor in Musambira Commune, and we heard about another woman who was Bourgmestre in Rubavu Commune. In both cases, the women were replacing officers who had either been killed or who had fled during the war. At the same time, both original residents as well as newcomers can be elected or appointed to the above local-level positions. For example, in Sake Commune, a cell leader who had newly settled in the commune in August 1994, after being absent from the country since 1973, was elected to his position both by fellow returnees from Burundi as well as by original community members; he had earned widespread respect due to his meritorious post-war volunteer activities.



## Election Procedures

In the previous section, election procedures in general were discussed. Such procedures can be better understood through the example of a specific, commune, in this case, Mabanza Commune. Interestingly, the Bourgmestre and a cell leader in this commune gave us conflicting accounts regarding the procedures for appointing or electing commune officials. The discrepancy was caused by us not initially asking and them not specifying the differences between pre-war and post-war procedures: the Bourgmestre gave the pre-war situation, whereas the cell leader gave the post-war procedure.

In Mabanza Commune, the Bourgmestre told us that the Bourgmestres (before the war) were appointed by the President upon the recommendation of the Minister of Interior (this is the procedure followed throughout the country). He also told us that people who would like to be sector leader must submit their names to the Bourgmestre who evaluates the candidates and draws up a list in which he prioritizes the names, ranking them from #1 downward. He explained that the ranking system is intended to influence the voters in making their choice. Even though the voters are expected to vote for the top candidate chosen by the Bourgmestre, should they collectively fail to select that candidate, the Bourgmestre can veto the alternate and install his own #1 choice. The same procedure is followed in the initial listing and selection of cell leaders. The main difference is in the actual voting procedure. At the election of sector councillors, the voters use a private ballot, whereas at the election of cell leaders, the voters show their hands at a meeting. In this commune, the sector councillors are elected by the public, but, according to our interview in Sake Commune, the sector councillors are chosen by cell leaders (we doubt the veracity of the latter explanation).

A cell leader in Mabanza Commune described how he was chosen after the war. The procedure differs from the pre-war situation

described above. He said that the RPF authorities gathered people together and asked them who was worthy to represent the cell. The authorities asked people to make their selection based on a variety of criteria: non-involvement in the genocide; honesty; and intelligence. The residents chose him. Thereafter, the RPF approved and confirmed his selection.

Although neither the Bourgmestre nor the cell leader described the appointments of Bourgmestres following the war, we are aware that each Bourgmestre was appointed by the Prefet in his Prefecture on an interim basis. We also know that commune officials expect that future permanent appointments of Bourgmestres will proceed as before the war. At the sector level, the Bourgmestre appointed the sector councillors. As indicated in the example above, cell leaders are still chosen by the community.

#### Customary Legal Institutions: The Gacaca

A U.N. report of November/December 1994 suggests that the gacaca are non-existent or minimally functional in many areas throughout Rwanda. This finding was probably more accurate at that time than at this time: in many communities gacaca are currently being reorganized or newly constituted, as previous residents return to their homes and new residents locate new housing. Nonetheless, many gacaca appear to be redefining their purposes, covering new problem areas arising from the genocide and war (e.g., rebuilding damaged structures), as needs arise.

Our fieldwork indicates that gacaca at the family, cell, or sector levels are very active in many communes. The gacaca, which operate mainly according to unwritten customary law, ideally serve to resolve minor disputes and administrative matters. According to our interviewees, gacaca commonly hear the following types of cases: land disputes (e.g., involving inheritance, allocations, boundary, cattle trespass); fighting; insult; minor assault; drunkenness; failure to repay a loan, often in the form of cattle; theft; security problems; and wifebeating. Some gacaca reportedly do not hear cases involving arson and serious assault with a weapon. Nowadays, some gacaca assist in arresting genocide suspects.

In the distant past, the gacaca were organized informally in response to everyday problems. Disputants, as well as community leaders and residents, assembled at a specified location -- often the actual site of the conflict -- to discuss the contested issue and reach a mediated settlement.<sup>2</sup>

The local administrative officers, were usually uninformed or uninvolved in the affairs of the gacaca. In recent years, gacaca have been more formally organized under the supervision of the commune administration. Some examples of the changes in the organization and operation of the gacaca in recent years:

- the leaders who handle gacaca problems, the nyumba kumi and cell leaders, may be elected and their names submitted to the Commune administration;
- the cases heard by gacaca may be written down, particularly when appealed to higher levels in the administration (to cell, sector, or commune levels);
- the gacaca may be more (or equally) responsible to the administration than to the local community, thus gacaca leaders may be asked to assist in investigations of criminal suspects (currently genocide perpetrators), in arrests, in supervision of area security, (including monitoring persons present in the community), in defining land areas (vacant and occupied), and in allocating land/houses;
- the gacaca have been organized increasingly by geographic as opposed to kinship boundaries;
- the gacaca have been diversified both within communities and across communities: for example, within communities, gacaca may exist at the cell and sector levels, and across communities, a gacaca may be headed by nyumba kumi, as in Ngenda and Rubavu (Kigali and Gisenyi Prefectures), or headed directly by the cell leader, as in Musambira (Gitarama Prefecture); and
- the jurisdiction of the gacaca has been restricted to minor civil cases, whereas the jurisdiction of the local administration has been expanded to cover more serious civil cases and minor criminal cases. In addition, the gacaca is an alternative to the court.

Due to the considerable changes experienced by the gacaca, including the introduction of the nyumba kumi, some confusion exists regarding the proper roles of the gacaca. In some communities, people may be unsure as to whom to address their problems; therefore, they do not know whether to approach the nyumba kumi, the cell leader, or the sector councillor. People may also be unsure as to the administrative level which has

<sup>2</sup> The idea that conflict should be handled in public surfaced in our interviews with local leaders who carried this notion a step further, stating that the genocide trials should be held in public in order that everyone can witness and learn from them.

jurisdiction for a particular matter. Not unaware of these uncertainties, the commune administration usually advises people to first take their problem to the lowest administrative level and gradually work their way up the hierarchy through each level.

Some officials we interviewed commented that people must resort to each level in progression, and failing to do so, they will be referred back to a lower level that they bypassed. The only exception to this rule occurs when a person takes his matter directly to court, where he may also be advised to take his matter first to gacaca; nonetheless, the court does not require him to do so.

Despite the fact that gacaca are functional in most communes, two population groups are not currently served by these local institutions: first, new and old refugee populations in internal displacement centers who have usually not formed gacaca because they have not been permanently resettled in previous or new locations,<sup>3</sup> and second, old refugee populations who occupy on a temporary basis the houses abandoned by new refugees and are not always included in local affairs, including the gacaca.<sup>4</sup> The refugees in centers usually rely upon family heads or center "responsables" for problem solving (we discovered this to be the case at Nyemeramihigo Center, a former high school which houses about 8,000 old refugees near Gisenyi), whereas the refugees in houses rely upon family heads, without having adequate resort to community administrators (e.g., at the commune level) who consider them to be temporary residents and thus marginal to primary administrative institutions.

<sup>3</sup> This is true of centers in Gisenyi and Byumba Prefectures and may be true of centers in Cyangugu and Gikongoro Prefectures: the latter two Prefectures could not be visited by this consultant due to time constraints. As discussed in the text, an interviewee said that she had discovered some sort of "gacaca" in a center at Goma, Zaire.

<sup>4</sup> This is true of the temporary house occupants we visited in Gisenyi and Byumba Prefectures. In some communities, such as Sake in Kibungo Prefecture, old refugees occupy houses on only a temporary basis but are very active in the local gacaca. The cell leader whom we interviewed in Sake is an old refugee who arrived several months ago from Burundi. He described his activities in the local gacaca.

## "Alternative" Gacaca

During the course of an interview, an expatriate researcher who had visited a refugee camp in Goma, Zaire, informed the consultant that she had witnessed a new variety of "homegrown" gacaca. After hearing the researcher's account, the consultant also discovered new, innovative forms of gacaca, although not in refugee camps. For example, she visited Nyemeramihigo Center near Gisenyi (population over 8,000), where the center Responsible stated that each house has a Responsible who heads a family unit. Both the center and the family Responsible handle problems on an individual basis. Unlike in Goma, the internal refugees consider their status to be too transitory to merit participation in or founding of a gacaca.

In the Kigali prison, on the other hand, the consultant was intrigued to discover that an internal administrative structure among prisoners, resembling that of a commune, had been set up; at the head of the prison structure was the Capita General, who acts like a Bourgmestre. He is appointed by the prison director on the basis of his popularity among prisoners, and he reports everyday to the director. The Capita General is assisted by two general secretaries whom he chooses. Beneath the Capita General is a Brigadier General, who looks after security within the prison (similar to a commune IPJ). Each prison block also has a Capita (similar to a cell leader), a secretary, and five councillors, who assume roles similar to those of the cell leader and members of the commune. In other words, they keep records of residents, they hear and resolve conflicts, and they report the general activities of their block to the Capital General every day.

## Conflict Resolution Procedures

Conflict cases proceed through each administrative level from the cell to the commune, but only when both disputants agree to resolution by mediation within the gacaca or by decision of an official. Once a case has been directed to the administrative structure, it must proceed through each level of the hierarchy outlined in the diagram above. Officers at each level only process a case upon receiving a report from the officer at the level below them.

Should a disputant decide unilaterally that he does not want his case to be heard by the gacaca or by the local administration, he can take it to the court. Unfortunately, this option is seldom feasible at present since most courts are not functioning. Moreover, it should be noted that the gacaca cannot force either disputant to come before it but the court can.

One interesting question concerns the jurisdiction of various administrative levels over different types of conflict cases. When we asked each Bourgmestre about the types of cases he hears, we received widely varying responses. In Mbazi Commune, we witnessed the Bourgmestre hearing both civil and criminal cases, excluding serious criminal cases, and in other communes, the Bourgmestres told us that they hear only "minor" cases. Most Bourgmestres said that they are currently hearing more types of cases than they might if the courts were functioning.

The sanctions meted out for offenses vary according to the administrative level and case circumstances. When the gacaca mediates conflict cases, it normally asks the party deemed at fault to make compensation to the aggrieved party. Or, it orders the party at fault to restore peace by buying beer. A recalcitrant party will be referred to the sector councillor and thereafter to the commune Bourgmestre. The commune Bourgmestre can order a party at fault to pay a fine or can imprison a criminal suspect for several days until the IPJ has reviewed the case and opened a file. In Ngenda Commune, the Bourgmestre told us that he can impose fines of up to 50,000 francs.

#### Arrest Procedures for Genocide

As indicated above, a cell leader is responsible for investigating all problem cases in his cell. This holds true for genocide cases as well. But the procedures for genocide arrests vary across communes. In Mabanza Commune, for example, the cell leader investigates a genocide case, and upon determining that the facts against a particular accused are strong, he calls together the gacaca which decides whether or not to turn over an accused party to the commune for arrest and imprisonment. As a second example, in Musambira Commune, member(s) of a cell can point out a genocide suspect who will then be arrested by the commune police and imprisoned directly. In the latter case, the gacaca is not involved at all. As a third example, in Rubavu Commune, the nyumba kumi can arrest directly a genocide suspect, turning him over to the commune office, or alternatively, the commune officer can arrest directly a suspect, thereafter ordering an investigation which proceeds from the bottom level up to the top level (i.e., consultations are held first with the nyumba kumi, then the cell leader, and finally the sector leader).

A cell leader in Mabanza described in more detail how the fact-finding and arrest procedure takes place. He told us that in his cell, people used to gather together for the purpose of eating, drinking, and bragging about their genocidal sprees, including the number of people exterminated. In this way, information about the killings became publicly known. Moreover, non-killers were not invited to such "celebrations," thereby, in the minds of the local people, the guest list for such celebrations informally implicated the participants in genocide and vindicated the non-participants.

his same cell leader described in more detail how he investigates a genocide case. Initially he approaches a relative or neighbor of a suspect and questions them about the facts of the case (this is the same procedure followed for other types of cases). When he has heard testimony from about five people -most of the facts being consistent in details -- he calls the gacaca. The members discuss the case and, when they conclude that the evidence is sufficiently strong against the accused, they take him to the commune office for arrest and imprisonment. In addition, the gacaca encourages people to denounce the unaccused killers in their commune. (In other communes, we were told that some people denounce a close relative. For example, in Sake Commune, a cell leader told us that a mother denounced her son. Subsequently, he was arrested for genocide.)

By chance, in Ngenda Commune, we happened to witness (on the commune steps) a woman and her three witnesses protest the arrest of her husband the night before. This situation demonstrated, in our view, interesting arguments and counter-arguments by commune authorities associated with arrest procedures. The woman stated that her husband could not be guilty of genocide because he was sick, thus physically incapacitated, at the time that people in a neighboring commune had allegedly witnessed him committing acts of genocide. The women accompanying her, who were her relatives, confirmed her story that her husband was sick and thus unable to travel to a distant commune for the purpose of killing people. In rebuttal, the arresting commune officer argued that the witnesses had no reason to accuse a person they did not even know from another commune. In addition, he stated that the husband could not have fled from his commune in Ngenda all the way to Gikongoro (about 100 km away) immediately after the murders occurred if he was truly incapacitated.

Following arrest, a suspect is held, in theory, for not more than three or four days in the commune prison while a dossier is being put together. Thereafter, the suspect must be released or transferred to the prefecture prison. The Bourgmestre of Ngenda Commune told us that he is supposed to imprison a suspect for only a week but is forced to hold most suspects for a longer period. In reality, prisoners in most communes are held far longer than a few days either because the dossiers are not complete or because transport is unavailable.

## Prisons

As discussed above, the consultant's terms of reference directed her to conduct local-level research, particularly into conflict resolution methods and property cases. However, since the project also deals with themes of justice, genocide trials, and human rights, she decided to take advantage of her graduate academic training in penology as well as her work in U.S. maximum security prisons by examining commune prisons and the Kigali prison. The consultant interviewed prisoners to learn about internal social organization and legal/political problems, while the justice team prosecutor separately interviewed the prison director to learn about prison administration.

We visited several communes where we were able to view briefly the prisoners and the holding cells. We noted several problems that human rights observers have publicized: too many prisoners are incarcerated in single cells; the prison cells are dark and unventilated; the prisoners are not provided with basic necessities such as beds or blankets and food (they receive food prepared by their families); and the prisoners have no access to outside information through radio or newspapers. The Bourgmestres we interviewed explained that the prisoners are supposed to be held only for three days before transference to the prefecture prison, but in reality prisoners must be retained in the commune prison much longer due to lack of transport (even when a vehicle is available, it might not have the capacity to deliver all prisoners awaiting transport). In addition, delays occur because the full investigation and resultant dossier cannot be completed within three days.

In Kigali prison, where we spent an intensive three hours interviewing prisoners, we noted that the ca. 8,000 prisoners were living in severely overcrowded conditions (for example, a block which should house 200 prisoners currently houses 600). Old arrivals are assigned spots side-by-side on long wooden bunks three levels high. New arrivals cannot be housed under a roof and therefore must remain outside in standing-room-only conditions. Unlike in the commune prison, the prisoners at the prefecture prison receive basic necessities and have somewhat better information from outside sources. They also have regular access to doctors/nurses and commonly participate in educational classes taught by their fellow prisoners -- some of whom are highly educated and skilled in various fields. Since the prisoners are housed collectively, they are able to socialize, sing traditional songs,, and play board games together. They are remarkably well-organized within an administrative structure, overseen by prisoners, which resembles the commune structure. Some of the prisoners who were arrested within Kigali claimed not to have dossiers. We were told that far more prisoners were incarcerated on charges of genocide than for any other offense.

In keeping with our project theme of justice, we asked some prisoners to explain their concepts of justice, their views about being tried by foreign as opposed to Rwandan judges, and their circumstances of arrest. Some of the educated prisoners vehemently argued that they were political prisoners and that they could not be judged fairly by anyone. As one explained, "Why should we be judged? For what should we be judged? Both sides are guilty. Both sides lost people in this war." Although his point of view may be slightly extreme, the other prisoners agreed with him that their conditions of arrest were arbitrary, that they commonly had not received dossiers, that they were being held unfairly without trial or release, and that they may have killed people but that the killings could not inevitably be labelled as genocide. We did not receive a clear answer to our question about judges since they refused to acknowledge the issues of genocide and culpability. In answer to our question about arrests, many stated that they had been pointed out by people who stood to gain in some way from their incarceration (e.g., to acquire their property or to improve their professional standing) or by people who wanted to lock up any Hutu to answer for the crimes of the Interahamwe outside the country. The prisoners argued that the people who did most of the killings are outside the country.

### Dislocated Persons

We have identified several categories of displaced persons who are suffering severe hardships due to the lack of certainty regarding their current land/housing occupation and their prospects for land rights in the future. The first category is that of the "old refugee" which we define as any person who involuntarily left the country prior to April 1994. When old refugees returned to Rwanda after the 1994 war, they assumed any one of the following temporary settlement patterns:

- location in internal temporary holding centers under UNHCR; - squatting in public lands;
- occupation of vacant lands/houses of internally displaced persons or new refugees outside country;
- occupation of vacant lands/houses of deceased persons;

The second category is that of the "new refugee" which we define as any person who, during the 1994 war, involuntarily left his residence for internal displacement or who involuntarily left the country. Both internally and externally displaced new refugees who do not return to their residences may find themselves in any one of several temporary settlement patterns:

- location in internal temporary holding centers (UNAMIR) or external temporary holding centers (UNHCR). This sub-category is the situation of new Hutu refugees.
- residence in their original commune but on land/houses belonging to other persons who may be either deceased or refugees (the latter maybe either outside the country or internally displaced). These new refugees cannot occupy their previous houses because they were destroyed during the war. They may be awaiting new land/housing allocations, or they may be building new houses. This sub-category is most commonly the situation of new Tutsi refugees.

#### Settlement Patterns.

Our preliminary interview findings indicate that the recent massive in- and out-migrations of Rwandans has resulted in shifting settlement patterns. By tradition, people resided in scattered settlements, each of which consisted of a nuclear family unit (in rare cases an extended family unit), or in towns, which were composed of unrelated families. Since the 1994 war, returning individuals and families, most of whom are concerned with security, are frequently settling in "villages" that are composed of several families and their acquaintances. For example, in Sake Commune, a cell leader told us that families and even groups of neighbors are migrating as whole units. According to him, he arrived last August from Burundi with refugees who were his neighbors; their intention was to settle permanently as a unit in Sake. As a second example, in a squatter refugee camp near Ngarama Commune, a man told us that he had come from Uganda with many relatives; in Rwanda, they formed a temporary community.

Although our research was not sufficiently extensive to analyze trends in settlement patterns, we suspect that post-war population movements are resulting in the growth of population clusters that are more amenable to provision of infrastructures, such as electricity, piped water, health facilities, and schools. Therefore, despite the unfortunate aspects of refugee movements, at least one positive aspect is that many old refugee groups appear to be spontaneously clustering in settlements. In other words, the returnees prefer group settlement patterns for security reasons, while the Government prefers such patterns for development purposes: the end effect is the same.

#### Land Areas

According to several Ministry of Rehabilitation officials who were interviewed by the consultant, land is scarce in some areas but more available in others. This perspective was substantiated by the consultant's own field interviews which indicated that land is very scarce in the northwest (except in Gishwati Forest and in Mutura Commune), is available in the northeast but not sufficient to accommodate the projected applicants, and is available in some central areas (Gitarama) and in some central-eastern areas (Ngenda, Kanzenze, and Gashora).

Currently, many land areas, which could be claimed in the near or distant future, remain unclaimed because:

- the owners are deceased and no heir has made a claim;
- the owners are deceased and their heirs are too young to make claims. The guardians of the heirs are also unable to make claims on the minors' behalf;
- the owners are residing in other parts of the country or abroad (either in private residences or in refugee camps).

In order to prevent conflicts about land and houses which could develop in the future as refugees return or resettle, vacant land areas should be identified and surveyed (refer to Recommendation section).

#### Land/House Occupations and Records

Many people in both rural and urban areas are occupying land and/or houses on a temporary basis. Some lost their homes during the war; others are old refugees whose homes no longer exist or who are not permitted, on the basis of the Arusha Accords, to reenter their family homes which were vacated more than ten years ago. Those people who occupy land with cash crops may be required to pay a rent to the commune, based upon the value of the crops (this system occurs, for example, in Runda Commune where a one year lease is drawn up). All Bourgmestres told us that temporary occupants must vacate a house within fifteen days after receiving notice that the former owner has returned. They also claimed that temporary occupants usually comply and that old refugees usually do not claim their ancestral land/house. In reality, the rules are sometimes broken, depending upon the power and influence of the involved parties.

In all communes visited, we asked the Bourgmestres about land/house occupation records (temporary or permanent). We received widely varying responses. In Ngoma Commune (Butare urban), the Bourgmestre told us he does not keep records of temporary occupation because the house occupants might misconstrue such documents to confer more permanent rights than intended. The sous-prefet of Byumba Prefecture and an officer of the Land Commission in Kigali told us that temporary occupation records were kept for urban houses but not for rural land/houses. In Ngenda Commune, the Bourgmestre indicated that land/house occupation records are kept to the extent that is possible: in fact, we examined the recordbooks. In Musambira Commune, a sector councillor similarly reported that the commune officials meet to decide formally about land distribution. Several temporary house/land occupants we interviewed during the course of our travels (particularly in Gisenyi and Byumba Prefectures) stated that their presence was not known to or recorded by local authorities and that they (the temporary occupants) did not choose to make themselves known to the authorities or to investigate the whereabouts of the absentee house/land owner. We suspect that they did not want to jeopardize their already uncertain status by calling attention to their presence and by documenting their occupation as temporary.

The Bourgmestre of Ngoma Commune also stated that when a homeowner returns to claim his property, the temporary occupant is given about two weeks to vacate (10-20 days). Bourgmestres in rural areas offered similar accounts, although they indicated that the temporary occupant will be allowed to harvest the crops or will be given compensation for the crops. Moreover, the Bourgmestres explained that some returning owners will reside on their land until the temporary occupant vacates. As far as the consultant could determine, most of these arrangements are handled informally, without records being kept of various transactions.

According to the Land Commission, based in the Ministry of Interior in Kigali and consisting of representatives from the nine ministries of Interior, Rehabilitation, Justice, Commerce, Finance, Labor and Social Affairs, Agriculture, Public Works, and Defense, the following procedure should be relied upon in establishing house occupancy and ownership: a house claimant must first give a letter which explains the problem to the local "responsible." In the letter, the claimant indicates where the house is, who occupies the house at present, and whether he is the house owner or a relative of the owner. When the house occupant is not known by the owner or is resistant to inquiries, a representative of the Land Commission will go directly to the house to determine who is occupying the house and what the present condition of the house is (the latter determination aims to prevent the occupant from removing materials from the house). Often the representative interviews neighbors to establish and verify details. He will also ask the claimant to provide documentation of status (e.g., a minor claimant will be asked to produce a birth certificate, whereas a widow claimant will be asked to produce a marriage certificate). The claimant may be able to substantiate further his claim through the Ministry of Public works which maintains records of building ownership.<sup>5</sup>

## Land Disputes

In Rwanda, land disputes are endemic; both before and after the war, problems regarding boundaries, trespass of livestock into cultivated areas, and inheritance rights, among others, frequently arose. Although the interviewees contacted during the study indicated that land disputes in rural areas are currently minor, in part because many refugees continue to remain outside the country, such disputes may become more frequent or more severe under the following circumstances:

- new refugees return to claim land/houses;
- old or new refugees who have occupied houses and/or lands on a long-term basis refuse to vacate;
- young children of deceased owners return to claim their parents' land;
- land owners take advantage of uncertainty regarding land claims and boundaries in order to extend their own land areas. (For example, some permanent land occupants appear to be extending

An officer at the Land Commission showed us their record book of house dispute cases. We counted 704 cases. He informed us that most cases are heard, resolved, and not recorded. Of the difficult cases recorded, 123 were heard in February, while 105 were heard in March. Most of these cases remain unresolved. The cases are registered by owner, not by buildings; therefore, a single owner, such as the National Bank, may claim numerous buildings.

their boundaries into currently unoccupied lands. If the original owners return to the neighboring land areas, conflicts will likely arise regarding the unauthorized boundary extensions.)

On occasion, old refugees return to claim land/houses, in contradiction to the provisions of the Arusha Accords, although our interviews indicate that this seldomly occurs. We did hear of two cases in which old refugee rights were revived: in one case, the refugee was given back his previous landholding, whereas in the other case, the refugee received compensation for his land which had been "sold".

While interviewing various officials and community residents, we heard about several interesting post-war land, housing, and property disputes. Many disputes were resolved successfully in gacaca, others were not. Still other disputes, mostly those in-urban areas, were not under the jurisdiction of the gacaca. As an example of a land dispute, we were told of several cases in Musambira Commune in which residents extended their boundaries into the land areas of women, usually widows, in the belief that the women could not defend their claims. We have no information regarding how such disputes were resolved.

As an example of a housing dispute in Kigali, an officer working for the Land Commission (based in the Ministry of Interior) told us about a case in which a returnee claimed ownership of a house that was occupied by a high ranking official. The house owner presented the proper documents before the Land Commission to prove his ownership. Thereafter, the officers needed to establish actual occupation. When the officers asked a neighbor, who was a nyumba kumi, for details about the current occupant (i.e., his name, place of employment, and times at home), the occupant used his connections to imprison the neighbor on false pretenses. At the time of our interview, the case had just arisen and had not been resolved.

As an example of a property dispute involving a woman, we were told by a woman in Rukira Commune that her mother-in-law had harvested her crops after she had fled the commune. Upon her return, she took her mother-in-law before the gacaca for a mediated settlement. Eventually the mother-in-law agreed to return the crops, and the two disputants resumed friendly relations. (More extensive field research might demonstrate that females, who currently constitute as much as 80% of the population in some communities, are asserting land claims and property rights more frequently.)

Overall, our field data seem to indicate that land disputes are currently minor because people are holding off from pursuing formal complaints while waiting for instructions about resettlement and permanent occupation. In several once densely populated areas, commune officials told us that land disputes were more severe before the war, when people struggled to assert their land rights, than after the war, when huge numbers of people had been eliminated, due to death or flight. Moreover, some officials predicted that land disputes will likely be less severe even when refugees return because communities will not immediately resume their pre-war population levels. In comparison, some officials predicted that housing disputes may intensify as refugees return, although many variables, such as the availability of houses, the demand for housing, and the rate at which refugees return, would likely influence conflict potential in each community. Nonetheless, our interview data on current land and housing disputes is far from consistent or complete. For example, in Musambira Commune, a cell/sector leader told us that disputes about land boundaries continue to be common in the post-war period, whereas another sector leader in the same commune told us that they are now rare.

### Compensation for Property Offenses

When we asked commune officials about war-related property offenses, we were told that they are currently being handled effectively by traditional mediation efforts of the gacaca. For example, in Runda Commune, a sector councillor told us that people who have stolen cattle are asked by the gacaca to compensate monetarily the victims for the value of the cattle. The consultant doubted that they would voluntarily comply: the councillor insisted they did. In Mabanza Commune, a cell leader elaborated about how he handles property compensation cases. According to him, a victim will point out a cattle thief to him, and he then makes an investigation. Since he knows that many people share in the consumption of the cow, he requires all those people to contribute to a collective compensation fund to the victim. This collective compensation is usually relatively easy to enforce because if only one person in the group can be identified, he will implicate all others who shared the meat with him. In the event that someone refuses to pay, the leader refers that person to the sector councillor for further instructions. But most people supposedly submit to the request because they fear being sent before the commune officials, considering resolution within the cell to be the least painful path. Similar forms of compensation for livestock theft occur in Sake and Musambira Communes.

We were also told in Sake and Musambira Communes that people are currently assisting their neighbors to reconstruct their houses. But an offender cannot be expected to perform this kind of personal compensatory labor for his victim. In the future, he might be instructed to provide labor toward building sector offices damaged during the war or toward repairing commune roads.

### Women's Associations

In the aftermath of the genocide and the exodus of huge numbers of Rwandans, many communities have been left with a predominance of female-headed households. The women heading such households must often assert their land/housing rights under conditions of uncertainty, while also struggling to eke out an existence for their families. In recent months, several grassroots women's associations have sprung up in some communities to provide women with training (for example, in legal rights and business administration), in handicraft design, and in the formation of agricultural cooperatives.

The consultant interviewed members of several women's organizations based in Kigali. All members stated that a primary goal of their organization is to mainstream women's activities, to engage women in various spheres of activity (e.g., political [governance], economic [business], and social), and to provide women with the legal rights and personal security that will make them effective, empowered members of society. Moreover, the organizations aim to assist women in developing more effective communication strategies within their communities and with the larger society. But before they can assist women in communicating as a group, as well as make their needs and problems visible, they need to organize women and to assist them in acquiring meeting places.

One of the main activities of the women in Pro-Femmes, Kigali, concerns the national and international peace movement: they are active in CAP (Action for Peace) and in the United Nations Fourth World Conference on Women in Beijing. Local women might also be informed about the Peace Movement.

In an effort to see rural women in action, the consultant visited the Musambira Women's Association (Gitarama Prefecture) which is supported by the Citizen's Network (Reseau des Citoyens), a Belgian NGO. An interview with the Rwandan coordinator, Mukamuganga Veneranda, revealed that the women in the association meet on a regular basis (twice a month at the cell level and also at the sector level), that the association maintains very good records, that the women engage in (and are planning 'additional) collective fund-raising activities, and that the -Bourgmestre is very supportive of their activities (the Bourgmestre was also interviewed).

We also spoke with the Association chairwoman, who simultaneously acts as cell leader and sector councillor in the general community, and with a woman who is a councillor in one of the Association's sectors. When we asked the Association Chairwoman whether the members might be interested in training programs, she responded that they had already undergone a threeday training program in women's legal rights and business management which they had found to be too long. They felt that most training programs demand more time than they can spare from their pressing domestic concerns.

As a result of the consultant's extensive interviews with representatives of women's associations and with ordinary women, she has concluded that in many communities, where large numbers of men are absent due to death and flight, women are rising to the circumstances, filling in the gaps. Everywhere we travelled, women were managing their households, carrying for their own and orphaned children, tending the fields, attempting to earn some cash, and in some cases, providing for their imprisoned husbands.

## RECOMMENDATIONS

The following recommendations are derived from the findings of the consultant's interviews both within and outside Kigali. Some of the recommendations are linked with those proposed by other members of the Justice Team, although in this case with a stronger focus on local-level institutions and problems of conflict management.

### Institutional Coordination at the Local Level

Our interviews with commune officials, primarily Bourgmestres, indicates that the roles of the representatives from the Ministry of Interior, the Ministry of Rehabilitation, and the Ministry of Justice are either coordinated by the Bourgmestre or are assumed by him (he represents the Ministry of Interior), when representatives from the other ministries have not yet been posted. For example, in some communes where representatives from the Ministry of Justice (Inspecteur de Police Judiciaire or Juge du Tribunal de Canton) are absent, Bourgmestres are hearing both civil and criminal cases, with the exception of murder. They keep records of the cases they hear, although they do not necessarily report such cases to the Ministry of Justice.

We recommend that clear directives be issued to commune representatives of all three ministries regarding their respective roles and functions. In particular, the

roles assumed by the representatives from the Ministry of Interior, the Ministry of Justice, and the Ministry of Justice need to be clearly differentiated, including case-load assignments. To achieve this clarification, the representatives should be enabled to assemble at prefecture-level coordination meetings, in order to share information, to review/rewrite job descriptions, and to solve collectively problems. Proper coordination between ministry representatives will avoid unnecessary overlaps and contradictions in performance of duties. As personnel vacancies at the commune level are filled over the next months, the ministry representatives will need to review and coordinate continuously their activities, while gradually improving the structure for ministerial/institutional interface.<sup>6</sup>

### Institution-Building

At the apex of the local administrative structure is the commune Bourgmestre. Unfortunately, the Bourgmestres currently occupying their posts were not uniformly well-trained for their current positions. Some Bourgmestres were engaged in professions, such as teaching, agronomy, and office work, that demanded a different set of skills than does their current profession. A few Bourgmestres are very young and have limited work experience. Because the position of Bourgmestre involves many demanding and complex duties, Bourgmestres should be trained or upgraded in administration and management skills.

Bourgmestres, who are known as the "chiefs" of their communes, need to be trained in modern-day management skills such as "people management" (how to deal with people), personnel management, and conflict resolution (mediation). Acquisition of these skills would improve their capacities as general managers of their communes, which in turn, would arguably improve the efficiency and productivity of commune workers. Moreover,

<sup>6</sup> At the U.N. I.O.C. we were told, "If you strengthen local administration, you strengthen the judicial system." improved performances by the Bourgmestres would likely enhance public confidence, thus integrating the commune.

### Project Coordination at the National Level

Some enterprising Bourgmestres are brimming with ideas about local project development, only to be thwarted by a lack of expertise or funding that would enable them to design and submit project proposals. Moreover, they are often unsure about the appropriate organization to which they should direct a particular proposal.

In Mabanza Commune, the Bourgmestre told us about several proposals which he has prepared or is in the process of preparing. One proposal, which requests financial assistance for making structural repairs to the commune building, was done with the assistance of a professional consultant from Kigali who was paid from commune funds (refer to Appendix VII). A second proposal, which requests financial assistance for training on democracy and human rights, was written by himself and sent to UNICEF for consideration (refer to Appendix IV). A third proposal, which would request assistance in training teachers and schoolchildren in democracy and human rights, is still in the planning stage. Finally, a fourth proposal, which would request assistance in developing a hotel that the local Impuhwe Association for widows and orphans would rely upon in raising funds for support of the orphans, is also in the planning stage.

Using the examples of the above proposals, the Bourgmestre delineated for us several problems which he regularly encounters in designing and submitting proposals:

- meeting costs that are commonly incurred in proposal preparation (e.g., making cost estimates and outlining needs). Many funding organizations have rigid requirements about proposal format, which communes cannot easily satisfy without recruiting professional assistance;
- determining the appropriate organization to which a proposal should be submitted;
- waiting long periods for responses from an organization to which the commune has submitted a proposal, only to have the proposal rejected. The commune authorities must then begin the proposal submission phase again.

In all probability, these difficulties in proposal preparation are encountered in communes throughout the country. It is reasonable to assume that many worthy local-level initiatives are likely thwarted in their germinal phase due to a lack of information at the commune level and a lack of coordination at the national level.

The consultant recommends that local-level initiatives be coordinated at the national level, possibly by an individual assigned for this purpose in one of the ministries, such as the Ministry of Social Services. This coordinator would be responsible for assisting Bourgmestres in proposal-writing, possibly organizing a workshop to train Bourgmestres in proposalwriting or at least designing and issuing guidelines to Bourgmestres. The workshop/guidelines might cover such areas as preparing a budget, defining project purposes and needs, and evaluating funding priorities of specific organizations. The coordinator would also be responsible for receiving proposals and directing them to appropriate organizations for review. Since many proposals are currently directed to inappropriate organizations on an individual basis, the coordinator would serve an important function in centralizing and streamlining the proposal review process. In effect, the coordinator could serve as an invaluable link between communes and funding organizations: he would provide the communes with the necessary information to submit proposals, and he would provide funding organizations with useful, comprehensive information about the array of proposals from the 144 communes throughout the country.

#### Rehabilitation of the Gacaca

Everywhere we travelled in Rwanda, we asked people about the gacaca. Most often people spoke positively about it: to them, it remained the idealized community-level meeting of neighbors, as in the past. A few people, however, told us, with a sense of regret, that the gacaca have lost some of their informal, local character as they have increasingly come under the formal control of the commune administration. Moreover, they lamented that the gacaca's credibility, its reputation, was tainted in some areas during the genocide: some gacaca were used as fora for assembling and instructing people in the genocide effort.

Although the gacaca are currently functioning relatively well in most areas in performing their dispute resolution functions, they may be functioning less well in inspiring confidence in some local "user populations" which may have seen them applied toward socially ominous purposes during the genocide and the war. The question thus arises as to the best means for "rehabilitating" their tarnished images among the public as well as for promoting democratic attitudes within their leadership. Moreover, the question arises as to the best means for regulating them administratively without destroying their basic nature and mode of operation (i.e., how to preserve the informality of their efficient and low-cost system of operation without permitting this informality to fall prey to local corruption and manipulation).

The Bourgmestre of Mabanza Commune is well-aware of the need to rehabilitate the gacaca. He told us about a proposal he has submitted to UNICEF that would train cell leaders, sector councillors, and commune personnel in human rights, justice, tolerance, reconciliation, and land problems. The purpose of the training would be to instruct the trainees in individual rights and duties to the community and in the value of participation in democratic process and in sustainable development. The training would be managed internally within the commune by the Bourgmestre and an ad-hoc committee and externally by a donor sponsor (refer to Appendix IV).

(We are not herein promoting this particular proposal or indicating that it represents an appropriate format; we discuss it merely to demonstrate that grassroots initiatives in the democracy and governance area exist.)

#### Conflict Resolution (Mediation Training)

As discussed in the Findings section above, conflicts at the local level, particularly about land, are likely to become more severe as old refugees settle throughout the country and as new refugees return to reclaim their land. Many of these conflicts will be easily resolved by the local gacaca; others will be more problematic and will require interventions from higher administrative levels, particularly by the commune Bourgmestre.

This consultant recommends that training programs not be undertaken with the gacaca for both political and economic reasons: the gacaca represent grassroots initiatives and they are very numerous. She does propose, as has been indicated above, that pilot mediation training be undertaken with a select group of Bourgmestres who are entrusted with the task of hearing the most difficult conflict cases upon appeal from lower levels (refer to Appendix VI).

## Customary Law

In order to deal with land and property disputes at the local-level, more information is needed about customary legal institutions and processes. Such processes and institutions are not an "alternative" to national judicial processes; rather, they are parallel to such processes, and in many instances, currently form the primary means for solving local-level matters.

A research proposal has been submitted to USAID by Michele Wagner of the United Nations Center for Human Rights (refer to Appendix V). In the proposal, she states that three Rwandan research institutions, in collaboration with the U.N. Human Rights Field Operation in Rwanda, would furnish scholars and staff to research the following issues: definition of crime; concept of guilt; ideas about complicity; traditional sanctions; reconciliation; and property law. The researchers would "elicit points of customary legal thought and practice from 'traditional legal historians', i.e., Rwandan elders."

Customary law undoubtedly offers viable fora, in the form of gacaca, and sanctions, in the form of compensation, for resolving many pressing legal problems associated with the genocide (although not for handling acts of genocide which were not envisioned by customary law). The research proposed holds potential for demonstrating the areas in which customary law currently operates and the areas in which it might be applied in resolving problems arising from the genocide. Nonetheless, the researchers would need to differentiate customary law in its ideal form, as would likely be reported by the Rwandan elders, and customary law in its actual form, as has been molded by recent historical developments, including, but not limited to, the massacres and the war. In other words, we need to know what customary law has become or what it could become with guidance (if it would still constitute "customary" law), not what it was - - even in the recent past.

## Local-level Training

Other forms of local-level training might achieve the same purpose of promoting democracy and human rights, as described in the previous section. For example, in Mabanza Commune, the Bourgmestre told us that he is currently writing a project proposal that would train teachers who, in turn, could train students about these issues. The purpose of the training would be to mold young minds at an early stage of development: before the prejudices and misdirected understandings that led to the genocide could form.

The consultant recommends that future training programs in democracy and governance divert from the standard focus on leaders to one on educational institutions. As the Bourgmestre of Mabanza Commune told the consultant, the best way to effect attitudinal change on a lasting and widespread scale is through influencing the young.

## Land Law

The Government needs to clarify several areas of land law, particularly concerning inheritance. During the course of our field research, we discovered several inheritance disputes that could not be easily resolved because the rules governing inheritance are not clear and comprehensive. Most of the disputes involved conflicting claims by the distant relatives of persons who died during the war. For example, in Kanombe Commune, both a cousin and a nephew to a deceased person claimed his land. The same type of conflict, involving other categories of relationship to a deceased, was reported in Mbazi Commune. Before the war, Rwandan land law did not need to differentiate and prioritize relatives' claims to land and property because, first, it was clear that the close relatives of a deceased would inherit his/her land or property according to customary principles of patrilineal inheritance, and second, it rarely occurred that all members of a nuclear family and the close relatives died. During the war, many members of, even entire, families were murdered, creating a situation which was not covered by existing land inheritance law and custom.

In addition, the Government needs to strengthen women's land rights. It needs to guarantee, either through legislation or policy directives, that women will receive land allotments according to demonstrated need. In post-war Rwanda, women who head households must be assured that they will receive land rights in relation to their actual circumstances rather than the dictates of custom (for example, an unmarried woman who is raising orphans may require more land than she might ordinarily be entitled to).

## Land Survey'

Land surveys would identify available land areas, thus assisting officials in relocating new settlers and displaced persons. Ultimately, greater certainty about land areas (through surveys) and populations (through registrations) would reduce the likelihood of conflict.

Identification of land areas and land ownership must be undertaken in a public and highly visible manner. Complete records must be kept and maintained. Identifying land areas would prevent the situation of ...

- officials reallocating land that is claimed by an absentee owner;

community residents, permanently settling on land that the Government or Commune has not designated for occupation;

Moreover, identifying land areas would have the desirable effect of assisting the Government in settling refugees on land that is established as vacant, i.e., public land (no previous claimants).

Identifying land ownership would prevent the situation of ...

- community residents altering pre-existing boundaries, to suit their own interests, in a situation of uncertainty;

- displaced persons or orphans returning to claim land or compensation, based on their previous land/housing ownership rights, after the land/houses have been allocated to someone else for permanent occupation;

Moreover, identifying land ownership would have the desirable effect of assisting the Government in settling refugees on land that is established as unclaimed because the previous occupants and/or their families are deceased.

## Land Settlement: Temporary and Permanent

People who are temporarily settled on land or in houses should be resettled in a permanent location as soon as possible.

The recommendation that deals with land surveys, although relevant to this consultant's analysis of local institutions and conflicts, is discussed in more depth by the land tenure consultant.

A rapid resettlement program promises to reduce the potential for land/housing disputes, while at the same time, will enhance the viability and permanence of gacaca, which in turn, would assist in resolution of land/housing disputes before they become complex matters requiring higher administrative or judicial intervention.

Another reason that people should be settled permanently is that they do not necessarily have strong incentive to care for land which is not their own. (An exception is to be found in an old refugee whom we interviewed near Byumba. While occupying an abandoned house, he had planted crops and carefully tended the yard and fruit trees.) In order to protect the environment, in both public and private land areas, the Government needs to impart responsibility for land through granting permanent, secure land rights to individuals or groups.

The land settlement program will most significantly affect returning old refugees. All leaders at the commune, sector, and cell levels whom we interviewed stated that they were aware of the Arusha Accord provisions which deny old refugees the right to reclaim land that was abandoned over ten years ago. Nonetheless, we did hear of at least two cases in which old refugees (more than ten years absence) did successfully reclaim their land. In one interesting case, an old refugee returned to discover that his house had been sold by the commune. He received compensation from the commune for the house.

#### Land/House Occupation Records

As discussed elsewhere, we recommend that land/house temporary occupation records be kept in order to reduce confusion and controversy about legitimate rights and claims.

#### Land and Housing Disputes

As indicated above, land disputes in rural areas are thus far not serious. In the future, some land disputes may become more severe, as refugees return, if land is not surveyed and populations registered (refer to other sections).

Women constitute a special category of land disputants deserving of separate attention. In theory, widows' land rights are relatively clear; they are entitled to their deceased husband's land. Unmarried women with children also have fairly clear land rights; they are entitled to receive a portion of

their father's land. In reality, both categories of women may experience problems with relatives who attempt to deny or reduce their land rights or with neighbors who attempt to extend their boundaries into their land area. People who encroach upon widows' and unmarried mothers' land rights hope to use to their own advantage the women's perceived "weakness." Other women who may encounter problems in receiving and maintaining land rights are women who form unrecognized partnerships with men and women who remain single. In post-war Rwanda, the number of single women may grow if many women are not able to find husbands due to the fact that many men were killed during the massacres and the war. Single women may encounter difficulties with land rights because, although they are entitled to a portion of their fathers' land which is being administered by a brother, their marginal status may guarantee them only a minimal land allotment. All women who experience problems in receiving and maintaining land rights have access to the gacaca; whether they are/will be treated fairly and equitably by the gacaca, in comparison to men, is uncertain. Consequently, women may be increasingly embroiled in land disputes (without receiving satisfaction) if their rights are not clarified, protected, and promoted -- both in law and through the operation of the gacaca.

Another category of women who may experience problems with land/property disputes, as discussed elsewhere in this report, are the wives of absentee Interahamwe men. Although we were told by all persons interviewed within communes that such women retain their land rights without problem, the consultant questions whether their land and property rights will remain secure in the future as the political climate evolves and as the courts, which would handle some property cases, are reestablished.

Housing disputes are serious in urban areas, particularly Kigali. In the future, housing disputes may become more severe, as refugees return, if populations are not registered and if data is not assembled on individual circumstances such as employment and housing needs. In order for the Government to satisfy fully and equitably the housing needs of returning refugees, it needs to develop a policy that differentiates between the poor and the working poor populations -- each of which requires a different form of housing assistance. Perhaps the working poor can be assisted with long-term housing loans.

#### *Work Compensation Program*

A recent World Bank report suggested that a system of "plea bargaining" be set up to deal with war-related crimes. Although

it is unclear to us whether this suggestion covers persons accused of genocide, we recommend that it cover only victims of property crime. In fact, when the consultant discussed the idea of "plea bargaining" to various Government officials, she was told that the idea was only appropriate for property crimes, absolutely not for genocide.

The idea of plea bargaining is not completely applicable to property offenses, however, since such matters are usually handled by the gacaca through mediation or by various administrative officers within the commune. Plea bargaining infers that property crimes would be handled within the judicial system by adjudicatory methods.

In the event that property crimes enter the judicial system through the courts, plea bargaining might be an effective way to alleviate pressure on the criminal justice system and to benefit either victims or the prefecture, if it were combined with compensatory measures. In other words, an offender who pleads guilty and performs some form of service would receive a reduced or no prison sentence. The courts might order select offenders to provide labor toward repairing or building public structures.

Several problem areas regarding compensation might require further Government policy directives. The first concerns identification of offenders and victims. In the case of people who have committed property crimes, the Government needs to assist communes in determining the manner and degree to which they, or their relatives, will be held liable for damage caused. In many cases the offenders are known but are not residing in Rwanda. We were told in Musambira and Mabanza Communes that a relative of an absentee offender, usually a wife, father, or brother, who is responsible for administering the offender's property, must provide compensation for the property damage caused by their relative. But since this requirement sometimes causes hardship, adjustments are made. The cell leader in Musambira Commune told us that he will occasionally mediate between, for example, a woman whose Interahamwe husband fled to Zaire and her husband's victim, trying to convince the victim to accept a smaller payment per month over a longer period. For example, if the payment schedule is 1,000 francs per month, he may ask the victim to accept only 500 francs per month. The leader understands that the wife, or other relative, may not have the financial means to make rapid compensation. But if the relative refuses to pay, s/he will be taken to the sector councillor. The cell leader keeps no records of payments, except for people who are delinquent in paying.

In the case of property crime victims, the Government also needs to determine who will be compensated since many victims are deceased and no relative, who can be compensated, is known. When a surviving relative can be identified, compensation commonly proceeds relatively smoothly. When no relative can be identified, compensation cannot proceed or must proceed in an alternative manner. The cell leader in Mabanza Commune, with whom we spoke, said that residents are being encouraged by their cell leaders or by the commune leaders to denounce people who have committed property damage or genocide, even when victims and their relatives do not survive, in order that the offenders be required to "compensate" the community for their offenses.

In addition to the problem of identifying both perpetrators of property crimes and their victims, with the end goal of determining who should make compensation and who should be compensated, a second problem area that might require further Government policy directives is that of determining the form that the compensation should take. In customary practice, people rendered compensation in like kind or in livestock. With the introduction of a cash economy, people are increasingly rendering monetary compensation. In our interview sample, we heard of a woman who was compensated by her mother-in-law in crops (like kind) in Kigarama Commune; we heard of people who were compensated with cattle for cattle theft in Runda Commune; and we heard of people who were compensated in money in several other communes. Since many people who have lost material and financial resources during the war may be held responsible for making compensation, they might be permitted to provide labor either to the victim, to the sector, to the commune, or to some public works project that would compensate individuals or public bodies for their deeds.

A final problem area that merits further consideration and Government policy directives is that of alternate, perhaps experimental, forms of compensation, such as work camps, which were proposed in the World Bank report. Although this consultant does not know the context for which the camps were proposed, it makes sense that individuals who are processed within the judicial system, who should not be sent to prison, and/or who might present an "escape" risk (i.e., no incentive to remain in their communities to provide compensation), might be candidates for work camps.

## Women's Associations

Women's associations must be provided with financial assistance if their survival and well-being are to be ensured. In particular, such associations require salaries for national officers and funds for acquisition of equipment at the local level, particularly agricultural tools and seeds. At present, the rural-based associations we heard about, for example, the Musambira Women's Association, were very new and did not have the resources to cover areas other than agriculture and handicrafts. Moreover, the collective funds which the women's sub-groups within the Association had at their disposal were very limited.

Women's associations, when properly organized and administered, have the potential to strengthen women's positions within their communities. These associations may eventually be able to tackle some of the most pressing problems which Rwandan women confront, including but not limited to:

- equal standing before informal and formal institutions
- legal rights
- inheritance of land and property
- acquisition of credit

In the future, funds might be provided to women's associations, possibly in the form of a revolving loan. Or, subgroups at the cell level of an association might receive loans as farmer cooperatives, for internal redistribution. The women we spoke to were particularly interesting in funds for buying livestock.

Funds might also be provided for training the officers or members of women's associations, although the women we spoke with in Musambira told us that their main priorities are an office building, materials, and credit. As discussed above, the women commented that training workshops can be very time-consuming and therefore must be short and highly focused.

## Registration of Persons

The Government cannot apply policy directives without knowing the number of people in the country, prefectures, and communes. Moreover, it needs to formulate and target directives based on the needs of specific population sub-groups, such as women, children, new refugees, old refugees, and handicapped. Within these sub-groups it should pay special attention to further sub-groups, such as orphans and widows.

one major policy directive which requires relatively accurate information about the location and needs of population sub-groups is that of land allocation. In particular, vacant lands cannot be allocated without information about land areas, as would be obtained through a survey, and without population statistics.

During the course of our field interviews, we asked several Bourgmestres about registration of persons and house/land occupancy. Most of them permitted us to examine illustrative registers from their files. We learned that registration procedures in some communes are very minimal, thus no documents are issued. For example, in Ngoma Commune (Butare urban), the Bourgmestre told us that temporary house occupants are not issued with occupancy papers because the holders of such papers might misconstrue them to grant permanent occupancy. As a contrast, in Kanombe Commune,, the Bourgmestre explained that such occupants are given occupancy papers:

The main problem for both Government planners and citizens is that no coherent, uniform Government policy exists; consequently, each Bourgmestre handles persons and house/land occupancy according to his own initiatives. The end result is that commune residents are insecure about their rights and their prospects for the future.

We recommend that registration procedures be improved. First, a census needs to be conducted, resulting in registration of all persons. Second, a training seminar needs to be held to upgrade the skills of commune bookkeepers in statistical collection and analysis (refer to record-keeping section below). In the course of improving registration procedures, communes should grant special attention to "marginalized" categories of persons (e.g., women, particularly widows, or refugees in centers who might not fully participate in local administration or fully receive the benefits of community membership).

### Record-Keeping

Within commune offices, records are collected from sector councillors and stored. Well-kept records assist national authorities in determining the general circumstances and needs of

<sup>8</sup> The Bourgmestre of Sake Commune showed us a list of areas, according to cells and sectors, where land is vacant and available for settlement.

all communes and of individual communes. The Government needs to know both general and specific circumstances in order to plan both comprehensive as well as targeted policy initiatives and interventions. While well-kept records are essential to national planning efforts, they also assist communes in local-level planning.

When the consultant asked the Bourgmestres in the communes she visited about record-keeping capacities, she was invariably told that record-keeping was not a problem. However, visual perusal of only record storage revealed that records were not placed on shelves in an organized manner, were often left lying about, and were sometimes dirty and tattered. Perhaps Bourgmestres said that record-keeping is not a problem because it is not a priority among their many pressing concerns.

The records of only one commune were inspected carefully by the consultant: those of Sake. The records that dealt with registration of residents were of the following types:

- registration of resident persons, including adults of different marital status and orphans without father, mother, or any parent; - registration of returnees, including information about the sector and commune of most recent residence, the sector and commune of origin, the head of family, children, date of return, destitutes;
- registration of "old" refugees, including age, date of entry, and country from which migrated;
- registration of killers, including information about the accuser (name, cell, and sector), the accused (name, cell, and sector), charges, witnesses, explanation of the accused, accused's profession of guilt or innocence, and the signatures of both the accuser and the accused.

Numerous problems in record-keeping at the Sake Commune office were noted. For example, the records are commonly not typed, are not uniformly drawn up from data obtained at different sectors, are not drawn up according to the same categories, and are not recorded consistently in the same language (some are in French, others are in Kinyarwanda). Within individual records, the categories are not delineated, no numbering system is provided throughout, no index is provided to explain categories, and the categories are repetitive and overlapping. Similar problems in record-keeping likely exist in other communes where the records were only cursorily examined by the consultant.

In some communes we visited (e.g., Ngenda and Sake), interviewees stated that skilled typists are available for preparation of recordbooks and other duties, but sufficient funds do not exist to pay their salaries or to supply typewriters.

one person, perhaps someone based within a ministry, needs to be assigned the task of standardizing and thereafter monitoring the record-keeping system at both the national and the commune levels. S/he needs to develop a plan that requires a minimum of supplies and few forms. This person might plan a training workshop for those commune staff responsible for recordkeeping that would acquaint them with the standardized recordkeeping system: the methods of data collection, recordbook construction, and data analysis. In addition, the workshop participants would be instructed in data application and dissemination.

### Structural Repairs and Equipment Acquisition

In all communes we visited, the Bourgmestres informed us that structural repairs and equipment acquisition are their top priority. In particular, the Bourgmestres stated that the lack of vehicles is the most significant hindrance to the performance of commune responsibilities: without a vehicle, the Bourgmestre cannot visit the sectors and the IPJ cannot transport prisoners to the prefecture prison.

A general list of equipment and supply needs is presented in Appendix VII. A sample equipment list which the Bourgmestre in Mabanza Commune prepared with the assistance of a professional consultant is also included in the appendix.

## SUMMARY OF ACTIONS TO BE TAKEN

The following actions are directed toward improving the operation of commune offices -- both generally and specifically in administering justice. This component of the justice project focuses upon local administration at the commune level, and the components undertaken by other members of the justice team focus upon actions at the national and prefecture levels.

### Institutional Coordination

- assign coordinator within the Ministry of Interior to oversee Bourgmestres' activities
- assign coordinator within the Ministry of Social Services to process project proposals from communes and provide linkages with donor organizations
- assign coordinator within the Ministry of Justice to monitor linkages within communes offices between representatives of the Ministry of Justice, Interior, and Rehabilitation, among others, as concerns processing of civil and criminal cases

### Training

- train Bourgmestres in administrative skills, particularly record-keeping and registration procedures
- train Bourgmestres in select communes (chosen on basis of conflict potential or actual incidence) in mediation skills
- consider developing a program that would assist primary and secondary teachers in training students in democracy and human rights

### Policy Formulation

- formulate policy that would permit surveying and allocation of land in communes
- formulate policy that would permit registering persons and land/housing occupation in communes
- formulate policy that would clarify land inheritance rules - formulate policy that would define and limit liabilities of relatives of offenders' for damages caused by the latter

### Land

- direct Bourgmestres to issue certificates of temporary occupancy
- undertake survey of land in communes, focusing particularly on vacant land areas

## APPENDICES

## APPENDIX I: COMMUNES VISITED

Butare Prefecture - Ngoma and Mbazi

Kigali Prefecture, Kicukiro, Ngenda, and Shyorongi

Ruhengeri Prefecture - Kigombe

Byumba Prefecture - urban and Ngarama

Gisenyi Prefecture - Rubavu and Kanama

Gitarama Prefecture - Musambira and Runda

Kibungo - urban and Sake

Kibuye Prefecture - Mabanza

APPENDIX II: LIST OF PERSONS CONTACTED IN KIGALI (partial listing)<sup>9</sup>

- March 24 - Fidele Nzirabatinyi, Association Maguruka  
-Anchie Book, Claude Latulippe, and Francine Cacave,  
Canadian consultants
- March 25 - Caroline Petieau and Ana Paula Oliveira, Citizens  
Network (Reseau des Citoyens)
- March 27 - Jeanne Mujawimana, Department of Legislation,  
Ministry of Justice
- March 28 - Immaculee Habiyambere, Pro-Femmes  
- Steve Holtzman and Rene Lemarchand, World Bank  
- Christine Umutoni, Director of Cabinet, Ministry of Interior
- March 29 - Todd Howland and Mr. Clarence, United Nations Human  
Rights Commission  
- Rene Lemarchand, World Bank
- March 30 - Seth Sendashonga, Minister of Interior  
- Karasi Johannes, Department of Legislation, Ministry  
of Justice
- March 31 - Mark MacKay and Barney Mayhew, United Nations  
Integrated Operations Centre (IOC)  
- Marie Jose Torres, United Nations Human Rights Commission
- April 1 - Paul Howard, United Nations Integrated Operations  
Centre (IOC)  
- Michele Wagner, United Nations Human Rights  
Commission
- April 3 - Veneranda Nzambazamariya, Pro-Femmes  
- Peter van Doren, Director of Consortium SNV/NOVIB/DRA  
- Barney Mayhew and Lazare Ndazaro, United Nations  
Integrated Operations Centre (IOC)
- April 12 - Justin Nurara, Director General, Ministry of  
Rehabilitation  
- Vincent Kamibany, Land Commission, Ministry of  
Interior
- April 20 - Land Commission, Ministry of Interior  
- Jean-Marie Col, UNDP
- April 25 - Marthe Mukamurenzi, Director of Cabinet, Ministry of  
Justice

<sup>9</sup> Spelling of some names may not be exact.

## LIST OF PERSONS CONTACTED OUTSIDE KIGALI (partial listing)<sup>10</sup>

- April 4 - Ayinkamiye Anville, Butare Prefecture  
- V. Kageruka, sous-prefet in Butare of Economic and Technical Affairs  
- Augustin Harelimana, sous-prefet in Butare of Administrative Affairs  
- Gasana Samuel, Bourgmestre of Butare (Ngoma)  
- Ladislos Twahirwa, IRST, University of Rwanda, Butare  
- Gasana Anthyme, Bourgmestre of Mbazi Commune
- April 5 - Rulinda Innocent, Bourgmestre of Ngenda Commune  
- Charles Ndacopora, Dominique Kalimba, and Alexis Rutayisire, elders in cell gacaca in Ngenda Commune
- April 11 - Kamali Karegyesa, sous-prefet of Byumba Prefecture  
- Charles Rutaganira, Regional Director of Agricultural Services in-Byumba Prefecture  
- Jean Biziorana, Ngarama Commune
- April 12 - Jean de Dieu Bigilimana, Bourgmestre of Runda Commune  
- Francois Mutabazi, Sector Councillor, Gihara Sector, Runda Commune
- April 13 - Frederic Gijanura, sous-prefet, Gisenyi Prefecture  
- Evobe Ntagwera, Representative of Ministry of Rehabilitation, Gisenyi Prefecture  
- Joseph Ruzimaziminsi, Nyumba Kumi, Cell Kaniga, sector Gisa, Rubavu Commune
- April 14 - Veneranda Mukamuganga, Musambira Commune Women's Association (coordinator)  
- Therese Amirangirukwayo, Chairwoman of Musambira Commune Women's Association, sector councillor, cell leader  
- Martin Kalisa, Bourgmestre of Musambira Commune  
- Augustin Ngendahimana, sector councillor, Kambyeyi Sector, Musambira Commune
- April 18 - Alphonse Haguma, Bourgmestre of Sake Commune  
- Thomose Simbikongwo, cell leader, Gafunzo Cell, Sake Commune
- April 20 - Karambizi Gaspard, cell leader, and Joseph Ntabzera, sector councillor, Shyorongi Commune
- April 24 - Mathias Abimana, Bourgmestre of Mabanza Commune  
- Francois Ndanga, cell leader, Mugeru Cell, Mabanza Commune
- April 26 - Kigali Prison, Capita General and prisoners

<sup>10</sup> Many other persons whose names were not recorded were interviewed.

## APPENDIX III: ALTERNATIVE DISPUTE RESOLUTION (ADR)

**TABLE 1**

TABLE 2.1. A Comparison of Conflict Resolution Processes Utilizing Third Parties: Adjudication, Mediation, and Arbitration

	Adjudication	Mediation	Arbitration
The decision maker	Judge	The parties	The arbitrator
Training of hearing officer	Law degree	Varies with the agency	Varies with the agency
Legally binding solution?	Yes	Usually	Yes
Verdict of guilt versus innocence?	Yes	No	No
Usually explores underlying issues and causes of conflict and addresses them?	No	Yes	Yes

**TABLE 2**

Table 1. Conflict Resolution Processes.

<i>Process</i>	<i>Provider (or Decider)</i>	<i>Process Sequence</i>
Adjudication and arbitration	Judge or arbitrator; higher authority	<ol style="list-style-type: none"> <li>1. Listens to each side's presentation.</li> <li>2. Decides option based on predetermined criteria (legislation, precedent, fairness, etc.).</li> </ol>
Counseling	Counselor or therapist; manager	<ol style="list-style-type: none"> <li>1. Gains rapport.</li> <li>2. Assesses the real problems.</li> <li>3. Applies intervention strategy.</li> </ol>
Negotiation <sup>a</sup>	Lawyer or agent; parties themselves	<ol style="list-style-type: none"> <li>1. Orientation and positioning.</li> <li>2. Argumentation.</li> <li>3. Crises.</li> <li>4. Agreement or final breakdown.</li> </ol>
Problem solving <sup>b</sup>	Individual or delegated official of an organization	<ol style="list-style-type: none"> <li>1. Identifies the problem.</li> <li>2. Communicates with appropriate people.</li> <li>3. Develops alternatives.</li> </ol>

TABLE 3

TABLE 14.1. Points of Comparison in Mediation and Psychotherapy

Element	Mediation	Psychotherapy
Primary focus	Problem/issue	Person/relationship
Time frame	Short-term	Short- or long-term
Structure	Mediator-led process	Client-led process
Role of the interventionist	Active role	Active or passive role
Role of the emotions	Contained/directed	Explored/encouraged
Client-interventionist relationship	Secondary	Primary
Time orientation	Present and future (nonhistorical)	Past and present (historical)
Therapeutic focus	Secondary to process	Primary to process
Background data	Less availability	Greater availability
Process constraints	Greater	Lesser
Therapeutic techniques	Utilized secondarily	Utilized primarily
Nature of the process	Legal or quasi-legal event	Psychological/personal event
Confidentiality	Critical to process	Critical to process

TABLE 4

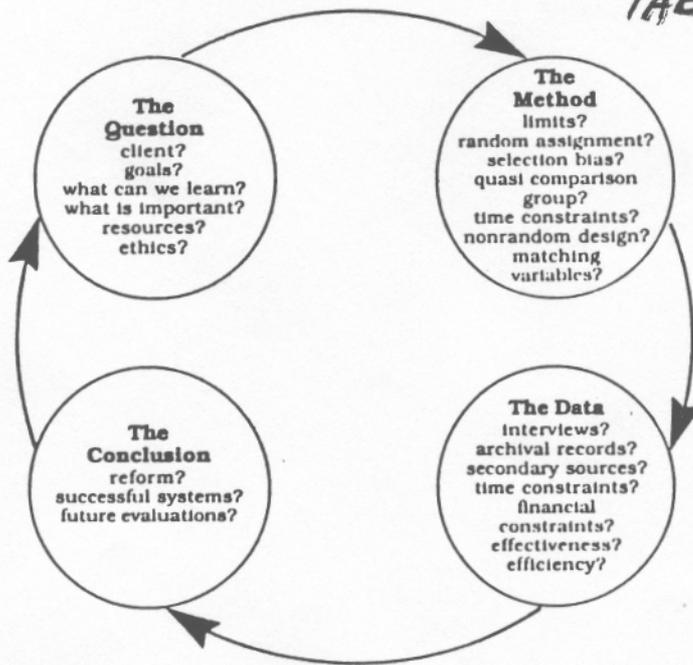


FIGURE 3.1. Flow chart of scientific guidelines for conducting community mediation research.

PART I. THE BEGINNINGS

APPENDIX 4.1  
Community Organizations and Agencies  
Contacted in the Needs Assessment

American Association of Retired Persons  
Animal Control Office  
Bar Association Lawyer Referral Service  
Better Business Bureau  
Caring Center  
Children's Home  
Christian Retirement Center  
Citizen Advocacy Program  
Community Action-Program  
Community Nursing Association  
Consumer Affairs Office  
CONTACT of United Way  
Department of Human Services  
Division of Youth and Family Service  
Downtown Business Association  
Family Case Management Intake Office  
Head Start  
Hispanic Social Service Center  
Human Services Agency  
Juvenile Conference Committee  
Landlord-Tenant Panel  
Legal Services  
Mount Holly Police Force  
National Association for the Advancement of Colored People  
Neighborhood Watch  
Office on Aging  
Preservation Commission of Historic Mount Holly  
Prosecutor's Office Victim-Witness Assistance Unit  
Retired Senior Volunteer Program  
The Well (a religious counseling service)  
Volunteers in Probation  
Welfare Board

Assessing Community Dispute Resolution

APPENDIX 4.2  
Question Protocols for Open-Ended  
Needs Assessment Interviews

AGENCY AND ORGANIZATION INFORMATION

1. How did the agency get established? What prompted its creation?
2. What types of disputes/problems does your agency address?
3. Out of the general areas covered by the agency, which are most frequently addressed?
4. Are there records available summarizing: the number of cases, the nature of the outcomes of the cases, participants' satisfaction with the process?
5. Does the agency address certain subgroups in the community? If so, how do the agencies address similar groups?
6. Describe the process that is followed in addressing disputes. Are face-to-face meetings held? How long does it take to resolve a dispute?
7. How is the organization perceived in the community? Are there any criticisms? What improvements do you see as critical? What might be done to make these improvements?
8. Does the agency have links with other services in the community? How do they overlap with other services?
9. In what ways could the proposed mediation service be integrated with other services?

KEY COMMUNITY MEMBER INFORMATION

1. Where do people in this community bring problems for mediation? What help in the following areas: interpersonal disputes, family conflicts, environmental issues, consumer complaints, government agencies, community or neighborhood organizations?
2. Have there been any key incidents that triggered the formation of conflict-focused agencies or services?
3. Which available services do you see as most successful? Which have been least successful? Why?
4. Do any out-of-control forums for settling disputes exist? Are there any or negative reputations in the community? Why?
5. What disputes are not addressed by available services? Which subgroups of people not well attended to?
6. Who else do you know in the community who might be helpful in identifying disputes and dispute resolution channels?

Note: These protocols were only general guides for interviews. Specific questions pursued as they arose in each interview.

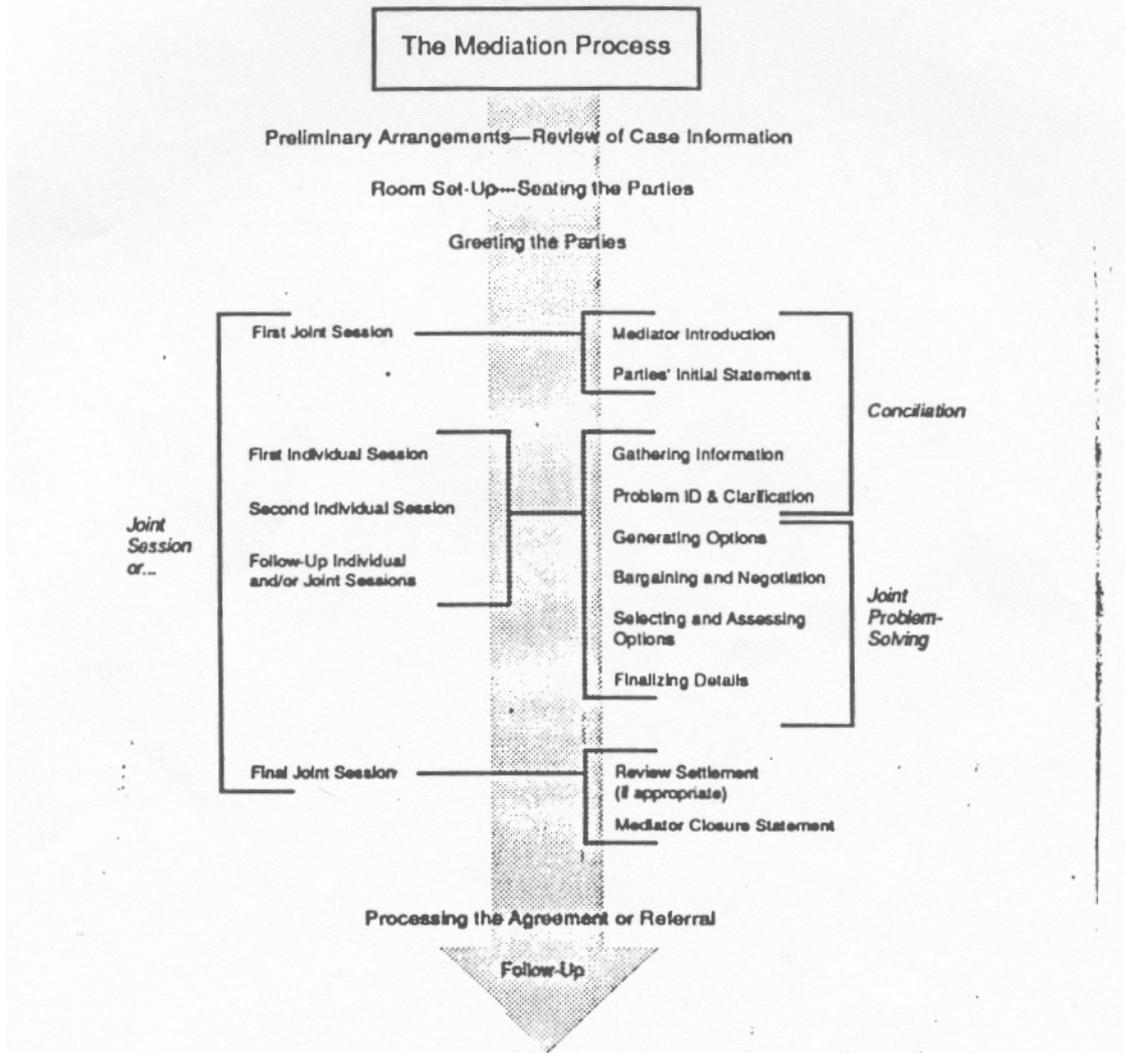


FIGURE 6.1.A model of the mediation process.

TABLE 5.1. Features of Dispute Outcomes in "Successful" and "Unsuccessful" Mediation

Feature	Case type	
	Successful	Unsuccessful
A lasting agreement was reached, i.e., the parties will comply with it over a long period of time.	3.61	1.22
All issues in the dispute were settled.	3.79	1.25
The dispute was resolved within a reasonable amount of time.	4.00	1.41
The relationship between the parties was improved.	3.17	1.18
All issues in the dispute were settled to the mutual benefit of all.	3.78	1.15
The distance was narrowed between the parties' positions.	3.97	1.70
The underlying core conflict was resolved.	3.58	1.09
An agreement was reached that the negotiators felt was their own.	3.70	1.33
An agreement was reached that did not have adverse political ramifications for either side.	3.96	1.17
The number of unresolved issues was reduced through mediation.	4.05	1.81
The parties were satisfied with the procedure of mediation.	4.05	2.28
The parties gained or recovered important, valued resources.	3.34	1.29
The parties learned to communicate and negotiate better with each other so that they could handle future disputes by themselves.	2.93	1.28
The mediator's (i.e., your) needs, goals, and interests were satisfied during the mediation process.	3.85	1.75
Feelings of goodwill and trust were created toward the mediator.	3.79	2.48
An agreement was reached that left nothing ambiguously stated.	3.78	1.43
The parties were satisfied with your mediation efforts.	4.11	2.70
The parties held back when they could have made concessions.	1.78	3.61
Few problems between the parties are unlikely to arise in the future.	3.10	1.53
The settlement succeeded in averting physical violence.	3.77	2.25

*Note.* All characteristics of the dispute outcomes distinguished the successful and unsuccessful mediations (*t* test with  $p < .005$ ).

TABLE 7

TABLE 8.2. Dispute Characteristics of Successful and Unsuccessful Mediation

Characteristic	Case type	
	Successful	Unsuccessful
The parties were not interested in settling.	1.93	3.75*
There was a strong-willed person who obstructed movement.	2.14	4.09*
One or both parties were unreceptive to mediation.	1.50	3.15*
One or both parties became committed to a position.	2.20	3.99*
One or both did not trust the other party.	2.94	3.53*
The parties did not seem to place full trust in the mediator.	1.23	2.40*
One or both wanted substantial control over the proceedings.	1.55	2.50*
One or both parties saw a major principle at stake.	2.63	3.53*
There were key "settlement issues."	2.70	3.55*
One or both sides were not well prepared for negotiations.	1.34	2.13*
One or both parties were very hostile to the other party.	2.55	3.65*
The parties had unrealistic expectations.	2.15	3.45*
One or both parties brought too many issues to mediation.	1.47	1.53
One or both parties had internal disagreements about the issues.	2.03	2.26
One or both parties lacked leadership.	1.41	1.72
One or both backed off an initial proposal/agreement.	1.57	1.77
The parties went to mediation without really bargaining beforehand.	1.82	1.71

\*This characteristic distinguished successful and unsuccessful mediation (*t* test with  $p < .05$ ).

TABLE 8.3. Use of Mediation Tactics as a Function of Successful and Unsuccessful Mediation

Tactic	Case type	
	Successful	Unsuccessful
Expressed displeasure at their progress in negotiations.	1.17	1.50*
Tried to change their expectations.	2.08	3.03*
Developed rapport with them.	3.52	3.23*
Kept negotiations focused on the issues.	4.00	3.55*
Expressed pleasure at their progress in negotiations.	3.05	2.60*
Pressed them hard to make compromise.	2.09	2.43*
Attempted to move one or both parties off a committed position.	3.00	3.59*
Made substantive suggestions for compromise	2.17	2.74*
Discussed other settlements or patterns.	2.09	2.70*
Avoided taking sides on important issues in joint sessions.	3.94	3.45*
Discussed the interests of all parties affected by the dispute.	3.14	2.77*
Told them the next impasse step was not better.	1.37	1.83*
Attempted to "simplify" agenda by eliminating/combining issues.	2.91	2.76
Clarified the needs of the other party.	3.51	3.50
Discussed the "costs" of continued disagreement.	3.08	3.45
Controlled their expression of hostility.	2.76	2.54
Suggested a particular settlement.	2.14	2.53
Suggested proposals, helping them avoid appearance of defeat.	2.36	2.55
Helped one or more parties "save face."	2.47	2.48
Suggested that they review their needs with their constituency.	1.39	1.32
Educated them to the bargaining or impasse process.	1.82	2.09
Tried to gain their trust and confidence.	3.50	3.59
Called for frequent caucuses.	2.00	2.06
Helped devise a framework for negotiations.	3.36	3.09
Helped the negotiators deal with problems with constituents.	1.58	1.55
Controlled the timing or pace of negotiations.	2.58	2.86
Kept the parties at the table and negotiating.	2.85	2.81
Kept their caucus focused on the impasse issues.	2.69	2.80
Argued their (one party's) case to the other party.	1.88	2.23
Used humor to lighten the atmosphere.	2.00	1.72
Let them blow off steam in front of me.	3.17	3.35
Helped establish priorities among the issues.	3.23	3.22
Took responsibility for their concessions.	1.35	1.46
Suggested tradeoffs among the issues.	2.09	2.40

TABLE 7

Attempted to "speak their language."	2.38	2.36
Assured them that the other was being honest.	1.75	1.63
Used late hours, long mediation, to facilitate compromise.	1.32	1.48
Attempted to settle simple issues first.	2.85	2.56
Told them their position was unrealistic.	1.50	1.93
Arranged agenda to cover general issues first, specific last.	1.67	1.78
Allowed the parties to initiate and maintain momentum	2.85	2.58
Formulated clear goals prior to or during mediation.	2.73	2.58
Attempted to develop trust between the disputants.	3.00	3.06

\*This mediation tactic distinguished successful and unsuccessful mediation (*t* test with  $p < .10$ ).





## DISCUSSION OF ALTERNATIVE DISPUTE RESOLUTION (ADR) TABLES

Tables 1 and 2 compare conflict resolution processes utilizing third parties, according to models of adjudication, mediation, and arbitration. The ADR literature tends to focus on mediation, the preferred model of neutral third parties. There is some overlap between models, although the model chosen will determine the role taken by the third party, the process for reaching a settlement, and the degree of satisfaction obtained by the disputants.

Table 3 compares mediation and psychotherapy models according to several key elements. In designing any ADR model(s), the elements need to be listed and compared on the basis of user desirability.

Table 4 illustrates the guidelines for conducting community mediation research. Clearly, the implementation of an effective mediation program is a time-consuming, multi-dimensional process in any context -- but especially so in a context as complex as that of post-war Rwanda. In effect, an ADR approach cannot be viewed as a "quick fix."

Table 5 illustrates sample questions that might be asked in open-ended needs assessment interviews in organizations/ communities that are targeted for ADR interventions. The questions are designed for administration to both organizations and key individuals (in the U.S.) who require assistance with dispute resolution. The questions are useful, although they apparently derive from the assumption that the target organization is an autonomous unit within a larger community, rather than an integral part of a small-scale community that requires participation of all members, as in Rwanda.

Table 6 demonstrates the mediation process. This model seems to be generally applicable to African customary legal processes, although the role of the mediator varies considerably across cultures. Generally, it would seem, first, that an African mediator is a member of a small community and thus is not necessarily expected to be neutral, and second, that African mediation is usually undertaken by a group of knowledgeable elders (councillors), often with the assistance of community members, rather than, as in the U.S., by a trained individual in a relatively private setting. For these reasons, an ADR approach might impose, unless carefully designed, alien concepts and procedures in the Rwandan context.

Table 7 illustrates dispute outcomes in successful and unsuccessful mediations; dispute characteristics of successful and unsuccessful mediations, and use of mediation tactics as a function of successful and unsuccessful mediation. These lists provide guidelines for evaluating the effectiveness of local dispute resolution procedures. Should Rwandan monitors be trained in evaluating local dispute resolution processes, they would probably need to design their own lists.

Finally, Table 8 delineates categories for cross-cultural comparison of ethnic perspectives regarding mediators and mediation. This table clearly illustrates that members of different cultures view conflict differently, that they tend to resort to third parties in a culturally patterned way, that they desire different procedural formats, that they look for different qualities in mediators, and that they have different expectations regarding the mediator's role and techniques. In the consultant's view, this table aptly demonstrates the importance of, as well as the difficulty in, designing a culturally specific/relevant dispute resolution model.

## APPENDIX IV: SAMPLE PROPOSAL FOR HUMAN RIGHTS TRAINING

## APPENDIX V: SAMPLE PROPOSAL FOR CUSTOMARY LAW RESEARCH

UNITED NATIONS CENTER FOR HUMAN RIGHTS  
FIELD OPERATION IN RWANDA

TECHNICAL COOPERATION BRANCH  
CUSTOMARY LAW GROUP

RESEARCH PROPOSAL

20 February 1995

Michele Wagner, UN-HRFOR

### REASON FOR THE STUDY

Confronted by a burgeoning prison population and a judicial system which has been debilitated by the genocide and the war, various branches of the new Rwandan government are presently calling for an inquiry into alternative judicial processes, including a study of Rwandan customary law, for the purpose of facilitating the hearing of many of the less serious cases, particularly those involving complicity, looting, property destruction, and property dispute issues. The study proposed will examine not only customary legal institutions and processes, but also the fundamental principles of Rwandan customary legal thought, in order to evaluate the applicability of customary processes and/or principles in the present situation. The goal of the study is to make specific recommendations of concepts or processes which would be useful to the Ministry of Justice.

### PARTICIPANTS IN THE STUDY

Three preeminent Rwandan research institutions, in collaboration with the U.N. Human Rights Field Operation in Rwanda (UN-HRFOR), have agreed to furnish the scholars and the research staff to carry out this study. The Universite Nationale de Rwanda (UNR), the Institut de Recherche Scientifique et Technologique (IRST), and the Grand Seminaire de Nyakibanda are providing legal and historical scholars, a theologian and social scientists who comprise the project's core group. In addition, the Ministry of Justice, the Ministry of Higher Education and Culture, and the FPR's Human Rights Office have agreed to appoint official liaisons to assist the group in realizing the study on the ground and developing the presentation of results. Further, IRST and the University have pledged to assist on the ground, providing the appropriate written authorizations necessary to conduct scholarly research in rural areas, and facilitating the establishment of contacts with elders throughout the country.

The members of the core group of scholars who are charged with planning and carrying out all of the fieldwork, and analyzing and developing the results into a format that is useful to

Customary law--20.02.95--M. Wagner

the Ministry of Justice (concise analysis papers which examine particular aspects of customary legal thought or practice which may be applied in the reconstruction of the judicial system), are the following:

Joseph Lyoni, karenga, (Doyen Faculté des lettres)  
Byanafashe, Deogratias (UNR, History)  
Kagabo, Philbert (IRST, Anthropology) .  
Mbonyintege, Smargde (GSN, Theology)  
Muberanziza, Aloys (UNR, Law)  
Munyampirwa, Jean-Chrysostome (IRST, Psychology)  
Nkejabahizi, L. (UNR, Kinyarwânda Literature and Linguistics) .  
Twahirwa, Ladislav (IRST, Sociology/Social Anthropology)

The general coordinator of the project is: ~

Michele Wagner, U.N.-HRFOR  
Joseph Jyoni

In addition to the above, the following institutions and organizations will be invited to collaborate in the development of the final results (i.e., the writing of concise analytical papers examining particular points of customary legal thought and/or practice with reference to their applicability in the current situation or the development of new judicial processes in Rwanda):

Ministry of Justice  
Ministry of Higher Education and Culture  
Ministry of Rehabilitation  
CLADHO (a coalition of Rwandan human rights organizations)  
RPF-Human Rights

## REALIZATION OF THE PROJECT/METHODOLOGY

Drawing on their collective experience shared in a series of internal working seminars and on a set of preliminary field studies conducted in five test regions, the core group of scholars has \_ developed a set of questions meant to elicit points of customary legal thought and practice from "traditional legal historians", i.e., Rwandan elders. The group is now in the process of initiating contacts with elders throughout Rwanda, drawing their names from a variety of \_ sources, including the Ministry of Higher Education and Culture, the Ministry of Justice, the Ministry of Rehabilitation, the university, prefectural and communal administrators, and church authorities. Having identified informative elders from each geographical and political region, pairs of researchers from the core group will travel to these regions, inviting the elders to small seminars in which the elders will be given the opportunity to share their knowledge of customary legal processes. Initially, elders will be interviewed in small groups,

in order to stimulate relaxed and lively discussion. Later, the most informative elders as well as those who command specialized domains of knowledge will be interviewed individually in depth.

The seminars with elders, conducted around the country, should stimulate regional, and later, national discussion. Interviews with particular elders whose specialized knowledge in various subject areas, such as concepts of justice from previous generations, traditional expressions of human rights culture, methods of reconciliation, etc., may be of interest to the Rwandan public, could be conducted in collaboration with Rwandan radio. The goal of contributing to national discourse will be continuously pursued, particularly as opportunities present themselves.

#### PRELIMINARY STATEMENT OF THE CENTRAL QUESTIONS AND RESEARCH ISSUES

Cognizant of the current judicial situation, and cognizant as well of the aspects of customary law which have already received scholarly attention by historians, anthropologists and legal specialists (and thus exist in the body of published and unpublished literature to which they have access), the members of core group have developed a set of issues which they regard as vital to this study. These issues include:

1. DEFINITION OF "CRIME", for example, the establishment of social "limits" and incidents which constitute social transgression, the authority to establish limits, the power to uphold limits, the context of transgression, voluntary and involuntary transgressions
2. CONCEPT OF "GUILT", for example, responsibility and its violation, individual versus collective guilt, direct and indirect guilt, degrees of guilt and/or responsibility
3. IDEAS ABOUT "COMPLICITY", for example, passive and active involvement in activities constituting social transgression, individual versus collective complicity, the responsibility of the group in permitting or inhibiting the behavior of its members, complicity in the context of the Rwandan family, the crime of complicity versus the responsibility of discretion/the protection of confidence, the complicity of silence
4. TRADITIONAL SANCTIONS, for example, the range of sanctions available in the past, their social meaning and their social role (such as punishment, social example, social or individual education, pacification of the victim or the victim's family)
5. RECONCILIATION, for example, the concepts underlying and the modes of reconciliation in the past

6. PROPERTY LAW, for example, conventions regarding the holding and transfer of land, livestock, and moveable property

## CONCLUSION

Whereas genocide, undisputably the central legal issue on the Rwandan legal agenda at present, was in no way envisioned in Rwandan customary law, many of the thousands of persons detained in Rwandan prisons and jails and currently awaiting trial have been accused, not of genocide, but of offences such as complicity and looting, and property disputes. For these persons, alternatives to the overburdened classical justice system must be sought.

As individuals and families who fled Rwanda as long ago as 1959 return and attempt to reclaim their land based on "traditional" land tenure, customary law and customary legal principles (in their case, particularly those principles related to land law) will become increasingly important in Rwandan national discourse. "Traditional" ideas of fairness, of just claim, of family property and family responsibilities will become increasingly current.

Customary law may offer viable fora and sanctions for addressing their situation. In addition, customary law and legal principles may form the base for building (or perhaps re-discovering) a Rwandan human rights culture.

## PROPOSED BUDGET

Rwandan experts	\$21,000
Interpreter	\$ 1,200
Travel expenses	\$ 5,040
Research expenses	\$ 2,300
<b>TOTAL</b>	<b>\$29,540</b>

1. Honoraria for Rwandan scholars: \$21,000  
Honorarium of \$1,000 per month (seven scholars for three months)  
(note that for UNR and GSN professors, this honorarium will be given to the individuals directly, but for the IRST researchers the honoraria will be given to the institution to administer as it chooses)

2. Salary for Interpreter/Translator: \$1,200  
Salary of \$400;00 per month (one interpreter for three months)

3. Travel expenses: \$5,040  
Food and lodging \$30.00 per day (estimate that each scholar will be available for work in the field two days per week, or eight days per month, for three months)  
 $\$30 \times 8 \text{ days per month} \times 3 \text{ months} \times 7 \text{ persons} = \$5,040$

4. Materials and Professional Expenses: \$2,300  
tape recorders (\$225 per machine x 4 machines) \$900  
cassette tapes \$500  
batteries \$350  
elder consultation fees \$750

## APPENDIX VI: PERSONNEL REQUIREMENTS

The Joint Mission outlined seven areas that the present consultant should research and write-up as a background for recruiting ADR specialist/s: number and type of technical specialists; academic, technical, and language requirements of technical specialists; scopes of work; expected relationships between technical specialists and the MOJ as well as Rwandan counterparts; expected relationships between technical specialists and NGOs/donor organizations; length of time required for specialists' services; logistical and material requirements; and security requirements.

## SPECIALIST IN RECORD-KEEPING AND REGISTRATION PROCEDURES TRAINING PROGRAM

Several inadequacies of commune record-keeping and registration procedures are discussed in the findings and recommendation sections above. These inadequacies are closely related to conflict about land rights: unclear land rights lead to conflict, while resolution of such conflicts cannot be easily achieved in the absence of records to substantiate claims. This consultant recommends that training in both record-keeping and registration skills be undertaken according to the specifications outlined by the land tenure specialist of this project (a few additional suggestions are presented below).

### Number and Type of Technical Specialists

One (or more) expatriate trainer(s).

### 2. Academic, Technical and Language Requirements of Technical Specialists

The trainer should be fluent in French as s/he will need to examine some records in French (most records at the commune level are in Kinyarwanda).

### 3. Scopes of Work

The land tenure specialist has identified a person who can train in registration procedures (in his report, he will more precisely identify the scopes of work for the trainer).

The record-keeping portion of this consultancy might be combined with the registration portion, depending upon the competency of the expatriate trainer. The registration portion requires skills in census-taking and statistics, whereas the record-keeping requires skills in bookkeeping. In this consultant's opinion, commune staff need to have their basic skills in book-keeping upgraded before they are trained in registration procedures.

This consultant suggests that the training needs to be undertaken on a national scale, since the need is universally great, as explained in the findings section of this report.

### 4. Expected Relationships between Technical Specialists and the MOJ as well as Rwandan Counterparts

The technical specialist will probably coordinate most closely with representatives from the Ministry of Interior.

### 5. Length of Time Required for Specialists' Services

(To be determined by Land Tenure Specialist.)

### 6. Logistical and Material Requirements

Transport should be provided for the expatriate trainer. In addition, training supplies, such as an artist's easel and worksheets for the trainers, and pens and notebooks for the participants, should be supplied.

## 7. Security Requirements

At the time this report was written, security did not pose a risk to an expatriate or a Rwandan trainer.

## SPECIALIST IN MEDIATION TRAINING

Mediation training should initially be undertaken on a pilot basis. As explained in the text, the training should be designed especially for the cultural and post-war needs of the Rwandan context and it should be geared toward Bourgmestres at the commune level. The end goal of such training would be to improve local-level administration as well as contribute toward resolution of local conflicts.

### 1. Number and Type of Technical Specialists

One expatriate trainer.

One (or more) Rwandan assistant trainer.

### 2. Academic, Technical and Language Requirements of Technical Specialists

The expatriate trainer should have received training and certification in conflict resolution and mediation. S/he should also have considerable experience working with local-level institutions in Africa, preferably in Rwanda, in order to understand the cultural context of mediation. Finally, s/he should have research knowledge of land/property disputes in Africa, since such matters will likely constitute an important problem area for Rwandans.

The expatriate trainer should have knowledge of French and English, but the training should be undertaken in Kinyarwanda, so as to accommodate all Rwandans.

### 3. Scopes of Work

The expatriate trainer should spend at least five days (predeparture) designing a mediation training program that is culturally sensitive to and relevant for the Rwandan context. The main task will involve designing mediation worksheets that present in simple language and illustrations guidelines to the mediation process. The training program should contain informational and practical exercises that: 1. are sensitive to ethnic diversity; 2. accommodate a mediator role such as is assumed by the commune Bourgmestre; and 3. cover hypothetical (although true-to-life) conflict situations that a Bourgmestre might encounter, such as involving land/housing disputes.

. In country, the expatriate trainer should spend about five days working with the Rwandan trainer(s). Their cooperative ' duties will include: translating the

worksheets prepared by the expatriate trainer into Kinyarwanda; co-designing a training strategy; and finalizing the arrangements for the workshop. (The USAID mission staff might make advance preparations for the workshop which should possibly be held in Kigali or the immediate area. The participant Bourgmestres need to be invited and their accommodations need to be arranged.)

The communes selected for inclusion within the pilot workshop should be high priority communes where population movements are great and conflict potential high. Among those selected might be some or all of the eleven priority communes (nine in Butare, area and 2 in south Kigali area) which are scheduled to receive a disproportionate number of returning refugees (IDPs) from the internal dislocation centers.

The trainees from the communes should be Bourgmestres who are responsible for mediating or deciding upon difficult conflict cases that could not be resolved by the gacaca, the cell leader, or the sector councillor at lower levels. The Bourgmestres are critical players in the conflict resolution process because they handle the most difficult cases as well as initiate directives to lower level officers regarding conflict resolution. (Before Bourgmestres are selected for training, their temporary appointments need to be confirmed.)

The training workshop should take place over three eight-hour days. (In the U.S., mediation certification commonly requires a minimum of twenty-four hours of training.) In order to keep the workshop at a manageable level, no more than 20 Bourgmestres should be invited to participate. At the conclusion of the workshop, the participants should evaluate the training and offer inputs as to how to improve the program.

Following the workshop, the expatriate and Rwandan trainer(s) should collaborate for about three days in writing a training evaluation report. The report should summarize the evaluations of both the trainers and the participants, offering suggestions for future programs and ways in which the mediation worksheets might be redesigned. These redesigned worksheets should be distributed to Bourgmestres who did not participate in the workshop. (Possibly additional workshops can be held with other Bourgmestres at a later date, depending upon the results of the initial pilot program.)

#### 4. Expected Relationships between Technical Specialists and the MOJ-as well as Rwandan Counterparts

The expatriate trainer will be responsible for the technical component of the program, that is, for designing the training worksheets. In the pre-workshop preparation period, the expatriate trainer will train the Rwandan trainer(s) in mediation (training) techniques. During the workshop, the Rwandan trainer(s) will get practical experience in training by explaining concepts to the participants, although being continuously assisted and monitored by the expatriate trainer. Following the workshop, the Rwandan trainer(s) should possess the minimum skills necessary to train others in mediation skills.

The technical specialist will coordinate most closely with the Bourgmestre who represents the Ministry of Interior. However, the commune representative of the Ministry of Justice should be informed about the activities.

#### 5. Length of Time Required for Specialists' Services

Approximately twenty days for the expatriate trainer, including pre-departure preparatory activities and travel to and from Rwanda. Approximately eleven days for the Rwandan cotrainer.

#### 6. Logistical and Material Requirements

Transport should be provided for the expatriate trainer and Rwandan trainer(s). In addition, training supplies, such as an artist's easel and worksheets for the trainers, and pens and training guidelines for the participants (to be prepared by the trainers), should be supplied.

#### 7. Security Requirements

At the time this report was written, security did not pose a risk to an expatriate or a Rwandan trainer.

## APPENDIX VII: COMMUNE EQUIPMENT NEEDS (partial listing)

In every commune we visited, people stated that their top priority was equipment and materials acquisition. Their list of desired items varied, depending on the personnel at each commune office and their particular needs. Among those persons who were cited as needing materials were: the Bourgmestre, his secretary, the Representative for the Ministry of Rehabilitation, the Representative for the Ministry of Youth and Cooperatives, the Representative for the Ministry of Agriculture, the Representative for the Ministry of Primary and Secondary Schools, the Representative for the Ministry of Justice, and the accountant.

In general., the needs are as follows:

- one vehicle, a small truck or a motorcycle, depending on need and maintenance capacity, for each commune (for the Bourgmestre and the IPJ)
- one storage cupboard
- minimum of 3 typewriters (for the Bourgmestre's secretary, for the Tribunal de Canton judge, and one for the collective use of other officers, such as the Representative for the Ministry of Rehabilitation, the Representative for the Ministry of Youth and Cooperatives, the accountant, etc.)
- minimum of 3 calculators (for the Bourgmestre, for the accountant, and for the records-keeping officers)
- desks and chairs (amount to be determined by each commune's needs)
- office supplies (heavyduty record-keeping paper [i.e., register paper], typing paper, binders, typewriter ribbons, rulers, pens/pencils)

In addition, funds are required in some communes for such problems as: electrical wiring, window grates, windows, and doors.

numere  
u/dng  
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DEVIS ESTIMATIF ET QUANTITATIF DES TRAVAUX  
DE REPARATION, RENOVATION ET CONSTRUCTION POUR  
LES BATIMENTS ADMINISTRATIFS DE LA COMMUNE DE  
MABANZA SIS A MEBANZA. BUREAU COMMUNAL.

*Nibuya Prefecture*

POSTE	DESIGNATION DES OUVRAGES	UNITE	QUANTITE	PRIX UNIT	PRIX TOT
1.	<u>PEINTURE</u> Peinture des murs sur plafond portes et fenêtrés	m2	2179	800	1.743.480
	<u>MENUISERIE ET FERMETURE</u>				
	Portes en triplex à remplacer	Pce	3	15.000	45.000
	Portes vit. à réparer	Pce	1	5.100	5.100
	Portes en triplex à réparer	Pce	5	2.200	11.000
	Serrures à remplacer	Pce	5	3.500	17.500
	Vitres cassés à remplacer	FF	FF	FF	21.000
	<u>MACONNERIE</u>				
	Construction d'une latrine publique de 150 usagers (au moins) ayant les mesures suivantes: 8X4X20 avec un mur de soutènement couvert de Béton armé, les murs en briques cuites et en ciment et tôles de qualité avec 4 portes pour un montant global et forfaitaire de	FF	FF	FF	706.300
	<u>SANITAIRE</u>				
	Débosselage de quatre W.C intérieurs, Vider la fosse septique et puits perdu	FF	FF	FF	134.000
	Remplacement de chasse eau	Pce	2	17.600	35.200

TOTAL : 2.718.580

Le Coût total s'élève à DEUX MILLIONS SEPT CENT DIX-HUIT MILLE CINQ CENT  
QUATRE-VINGT FRANCS RWANDAIS (2.718.580 FRW)

Fait à Mabanza, le 12/04/1995

RUGEMA François

## APPENDIX VIII: SAMPLE FIELD TRIP REPORT, SAKE COMMUNE

by Dr. Laurel Rose

On April 18, 1995, the Justice Team anthropologist, Laurel Rose, and her Rwandan research assistant, Joseph Sebarenzi, departed for a one-day field research mission to Sake, southeastern Rwanda (Kibungo Prefecture). Sake was one of the first communities to be struck by the genocidal rampage that swept through the country.

En route, the two researchers stopped at Ntarama to view a church where hundreds of people, mostly women and children, were massacred last spring. The church and its contents have been left virtually untouched in order to remind Rwandans, as well as the world, of the immense human tragedy. Within the church, the scattered fragments of human skeletons are haphazardly mixed together with the last possessions of the dead -- their broken pots, tattered clothing, and decayed food. The chaotic remains form a dense heap more than a foot deep. After one year, the smell of death still lingers in the air. In front of the church, row after row of skulls, adorned by occasional wreaths, are displayed commemoratively on a makeshift table. A middle-aged man, passing by the church as the researchers were departing, informed them that his whole family had perished in the church: he had miraculously survived by warding off his attackers with stones and fleeing into the nearby woods.

Upon arrival in Sake, the researchers interviewed the Bourgmestre who discussed the local administrative structure and the current refugee situation. He permitted them to view the prisoners accused of genocide who were being held in the commune jail. At the time of the researchers' visit, the prisoners' wives were assembled outside the prison, waiting their turn to deliver food to their husbands. One prisoner had his head to the floor, sucking in air and viewing the world through the thin crack between the floor and the door. When the Bourgmestre opened one of several solid doors for the visitors' inspection, the prisoners within squinted when exposed to sunlight. Inside their closet-sized cell, in which the only available light filtered in through a square foot window more than six feet off the ground, their eyes had become accustomed to the darkness. Five prisoners were crowded together on a concrete floor. Only one had sufficient space to lay curled up horizontally in a fetal position.

The next person the researchers contacted was the commune cell leader. He told them about land and property issues at the cell level. He also informed the researchers that he left Rwanda in 1973 for exile in Burundi. Last August, after the

war, he returned to Rwanda to start a new life. One of his first acts was to volunteer his services in rebuilding the war-torn community. In recognition of his efforts, his neighbors, both those who were returnees from Burundi as well as those who were long-term community residents, elected him cell leader.

On the road from Sake to Kibungo, the researchers stopped to chat with various people along the road. The surprised pedestrians were asked the same question by the mysterious interlopers: "What do you know about the gacaca?" (the customary council in which disputes are mediated by the community elders). One young woman told the researchers that her mother-in-law had taken her crops when she had fled the area during the massacres. When the former returned to find her crops missing, she took her mother-in-law before the gacaca to demand replacement. The gacaca elders mediated a settlement in which the older woman compensated the younger woman, thus returning peace to the family and community. At another location, several men were asked the same question, to which they responded that the gacaca is a local "brotherhood" in which community residents can settle problems among themselves. Their response was contradicted by a late arrival to the discussion, an older man who had returned from exile in Uganda this past year. He lamented that the gacaca in some communities are tainted because of their involvement in organizing people to commit the massacres. His comments seemed to indicate that the gacaca, although offering enormous potential for reintegrating communities at the grassroots level, must be rehabilitated to their former stature, if people are to have confidence in them as legitimate democratic institutions.

About ten military roadblocks later, the researchers' journey ended in Kigali.

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