

American University International Law Review

Volume 13 | Issue 6

Article 5

1998

The Rwanda Tribunal and its Relationship to National Trials in Rwanda

Neil J. Kritz

Bernard Muna

Navanetbem Pillay

Theogene Rudasingwa

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Kritz, Neil J., et al. "The Rwanda Tribunal and its Relationship to National Trials in Rwanda." *American University International Law Review* 13, no. 6 (1998): 1469-1493.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University International Law Review* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE RWANDA TRIBUNAL AND ITS
RELATIONSHIP TO NATIONAL TRIALS IN
RWANDA

BERNARD MUNA
THE HONORABLE NAVANETHEM PILLAY
THE HONORABLE THEOGENE RUDASINGWA

NEIL J. KRITZ—MODERATOR

PANEL INTRODUCTION	1470
NEIL J. KRITZ	
PRESENTATION BY THE HONORABLE NAVANETHEM PILLAY	1473
INTRODUCTION	1473
I. CONCURRENT JURISDICTION HELD BY ICTR AND LOCAL RWANDAN COURTS	1473
II. DIFFERENCES BETWEEN THE ICTR AND ICTY	1474
III. ISSUES REGARDING THE DEFENSE	1475
A. Defendants are Held in Custody for Long Periods of Time	1475
B. Sentencing Issues in Relation to Local Rwandan Courts	1476
C. Jurisdictional Issues	1476
D. Rwandan Unrest Affect the ICTR	1477
IV. THE <i>AKAYESU</i> CASE	1478
THE ICTR MUST ACHIEVE JUSTICE FOR RWANDANS ...	1480
BERNARD MUNA	
INTRODUCTION	1480
I. THE PROSECUTION'S INVESTIGATION	1481
II. LOGISTICAL ISSUES WHEN MOUNTING A PROSECUTION	1482
III. RAPE PROSECUTED AS GENOCIDE	1482
IV. CHALLENGES FACED BY THE ICTR	1483

CONCLUSION	1484
PRESENTATION BY THE HONORABLE THEOGENE RUDASINGWA	
	1484
INTRODUCTION	1484
I. RWANDA'S PROGRAM OF NATIONAL PROSECUTIONS...	1485
A. Member States of the United Nations Failed to Intervene Against Rwandan Genocide	1485
B. Rwandan Prosecution Program Holds All Genocide Perpetrators Accountable	1486
C. Prosecutorial Discretion Codified in Rwandan Law	1486
D. Punishment Under Rwandan Program.....	1486
II. RWANDA'S RESPONSE TO ENORMOUS CASELOAD.....	1486
III. RWANDA FACES A HISTORY OF IMPUNITY	1487
IV. RWANDA'S RESPONSE TO THE ICTR	1488
CONCLUSION	1488
AUDIENCE QUESTIONS	1489

PANEL INTRODUCTION

MODERATOR, NEIL J. KRITZ

SENIOR SCHOLAR ON THE RULE OF LAW, UNITED STATES INSTITUTE OF PEACE

The genocide of 1994 in Rwanda was overwhelming in its barbarity and ferociousness. The rate of slaughter of its victims was three to four times that of the number of Jews killed in the Holocaust. Additionally, the populations and percentage of those populations killed are roughly comparable to the genocides in Cambodia and Rwanda. In Cambodia, however, they did their work over a four-year period. Virtually the same degree of slaughter was perpetrated in Rwanda in a mere one hundred days.

The International Criminal Tribunal for Rwanda ("ICTR"), established by Security Council Resolution 955 in November of 1994, has unfortunately received significantly less attention internationally than its elder sister Tribunal for the former Yugoslavia. The Yugoslavia Tribunal was described as one of the best kept secrets in

the international legal community. If the Yugoslavia Tribunal was one of the best kept secrets, then the Rwanda Tribunal clearly has surpassed it. The attention given to the Rwanda Tribunal and the Rwandan domestic process of justice tended to focus on the problems that exist in these processes. Probably the greatest degree of attention that the international press devoted to the Rwandan Tribunal concerned the well-known report by the Inspector General of the United Nations pointing to all the problems with the Tribunal. There are, however, many positive things to recognize on both the international and domestic scenes. A newly produced Inspector General's report, for example, notes that of the twenty-six recommendations made a year ago, twenty-two have made progress.

The Rwanda Tribunal arguably has turned the corner and now is making significant progress. As noted last evening, of the thirty-five individuals indicted, twenty-three are currently in custody. Unlike the Yugoslavia Tribunal, this number includes many of the top officials and principal organizers of the genocide. Moreover, new developments in prosecution strategy have arisen and the Tribunal has set new legal precedents. There is also a noticeable difference between the Security Council resolutions establishing the Yugoslavian and Rwandan Tribunals. Namely, the latter recognizes the importance of the interplay between the international tribunal and the domestic scene.

Resolution 955 of the Rwanda Tribunal stresses the need for international cooperation to strengthen the courts and judicial system of Rwanda. In particular, it focuses on the necessity for those courts to deal with large numbers of suspects. Moreover, it mandates that an office be established and proceedings be conducted in Rwanda where feasible and appropriate. The interplay of this Resolution will also be a focus of our discussion this morning. We have with us today three eminently qualified panelists to present these issues.

Our first panelist is the Honorable Navanethem Pillay. Judge Pillay serves on the ICTR. In this capacity, she serves as a judge in Trial Chamber One, which has just completed the closing arguments of the first trial, the trial of Jean-Paul Akayesu. Further, since March of 1995, Judge Pillay has acted as a judge on the Supreme Court of South Africa. She also has a number of "firsts" to her credit. She is the first black woman to start a law practice, which she accomplished in 1967. She is the first South African to be awarded a doctorate in law by

Harvard Law School. Over a twenty year period, Judge Pillay has represented South African political prisoners, including detainees at Robin Island and elsewhere. She has addressed pressing issues of human rights and international law in a number of precedent setting cases. She also has written and actively has worked on a variety of issues, focusing in particular on the issue of women's rights.

Our second panelist is Bernard Muna. Mr. Muna serves as Deputy Prosecutor for the ICTR. Previously, he served as a Magistrate and Provincial Chief Prosecutor in his native Cameroon. He is also a past president of, among others, the Cameroon Bar Association, the Central African Lawyers Union, and the United African Association. Additionally, Mr. Muna is a member of the International Senate of the Union Internationale du Advocats and is the author of a number of papers and publications, with particular emphasis on issues of human rights and justice.

Our third panelist is Ambassador Theogene Rudasingwa, the Ambassador of Rwanda to the United States. A physician by training, Ambassador Rudasingwa has been obliged to give up or at least put on hold that profession, as he has been called into leadership positions for this country over the past several years. From 1991 to 1993, Dr. Rudasingwa participated in a variety of peace initiatives, including the Arusha talks. He also represented the Rwandan Patriotic Front at the Organization of African Unity and, until very recently, served as the Secretary General of the Rwandan Patriotic Front at the United Nations. Dr. Rudasingwa is one of the important leaders and thinkers in the continuing effort to put his country back together and build a brighter future in the aftermath of 1994. I would also like to note that he has a closer personal connection to Rwanda's process of justice than one might expect from the average ambassador in Washington, since he has a brother who serves as Secretary General of the Rwanda Ministry of Justice.

PRESENTATION BY THE HONORABLE
NAVANETHEM PILLAY

JUDGE, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

INTRODUCTION

It is a great privilege to be here. I thank the Washington College of Law and my host for inviting me. I was actually in the middle of the next case, which involves Georges-Anderson Rutaganda when I received my invitation to be a panelist. We expect to conclude that second case by the end of 1998, but the presiding judge, Judge Kama, and Judge Aspegren felt that this was a very important conference and that it was necessary that I attend. So, we adjourned the trial for a few days to enable me to attend. I would like to say that I formed a good impression after looking at the reading material and I am very impressed with the work done by the Washington College of Law. The Washington College of Law has not only researched the Tribunal, but is also up to date with the information of both the International Criminal Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR"). This second Tribunal tends to be forgotten by the North.

I. CONCURRENT JURISDICTION HELD BY ICTR AND LOCAL
RWANDAN COURTS

I am going to stay with the topic, which is the Rwanda Tribunal and its relationship to national trials that are proceeding in Rwanda. These trials are occurring simultaneously, so some of the issues relate to who is being tried by the ICTR and who is being tried inside Rwanda. I think it is fair to say that the prosecutor of the ICTR is focusing on people we may designate as the most serious offenders—people who were in authority, like national leaders, people in key political, administrative, and military positions; people involved in planning; and people involved in propaganda. Amongst the indicted persons are the former Prime Minister—Jean Kambanda—the Minister of Defense, the Minister of Transport, the Prefet, Burgemeister, and a professor of history. There is one Belgian citizen and the rest are Rwandan citizens. These are the people who are appearing before the Tribunal in Rwanda.

It is important to point out that while the two jurisdictions can hold trials concurrently and have concurrent jurisdiction, the statute mandates that the Tribunal has superseding jurisdiction. This provision was followed when the Kingdom of Belgium applied for the extradition of Colonel Bagosora. The government of Cameroon arrested the colonel. The Kingdom of Belgium asked for his transfer because they wished to investigate the death of ten Belgian soldiers who were part of the UNAMIR forces. The Rwanda Government, however, wanted to hold the actual trial of Colonel Bagosora in Rwanda in order to have a visible demonstration of justice taking its course inside the country. They felt that was very important to their peace and reconciliation process. Colonel Bagosora has now been transferred to our detention facilities.

We also hold the principle that if anybody has been tried and acquitted by the Tribunal, a national court cannot try such person for the same offense. This raises the question: How comfortable are we then with concurrent trials before the Tribunal and the Rwandan Government?

In terms of sheer volume, the contrast between the ICTR and the national trials in Rwanda is striking. We have thirty-five indictments and twenty-three accused persons in custody at our detention center in Rwanda. This does not even compare with the 120,000 men, women, and children who are in prisons inside Rwanda awaiting trial.

We completed the first case of Jean Paul Akayesu in the first week of April, 1998. It was a very historical moment for us. We are about to complete the prosecution case and then the defense case will start in Rutaganda. The case of Clement Kayishema and Obed Ruzindana is being heard by Trial Chamber II.

II. DIFFERENCES BETWEEN THE ICTR AND ICTY

We added our second courtroom in October of last year. I would like to point out that the Rwanda Tribunal was set up a year after the ICTY. Yet, we seem to have outstripped them. Nobody, not even the Ambassador David Scheffer, gives us credit for that. The Ambassador even asked us to quicken our pace a bit. I will address this point about expediting trials raised by the Ambassador in a few minutes.

I mention these factual details to illustrate that the statute was promulgated in November 1994. The judges were elected in April

1995 but were only put in office in September 1996. We lost almost two years before we were allowed to begin our work. These were the instructions from the United Nations.

In January 1997, we started the *Akayesu* trial. In actuality, I sit in a number of chambers while we get on with these trials. I read that the Registrar made a press statement in New York last week saying that in 1998, the judges are going to be working 600 days in the year. I do not know how we are expected to do that, but there you are.

Certainly we have far greater resources than inside Rwanda and this will affect the nature of the trials, including the extent of the legal protection for the defendants inside Rwanda. For instance, in a nine month period, ICTR paid the defense counsel in the Rwanda Tribunal a total of \$1 million. Resources such as this clearly affect the extent to which witnesses can be summoned to testify, both for prosecution and defense.

III. ISSUES REGARDING THE DEFENSE

A. Defendants are Held in Custody for Long Periods of Time

Unfortunately, in both the ICTR and Rwanda, there are defendants in custody awaiting trial for extended periods of time. We have in our custody people who have been in detention for periods of two years and longer. I think inside Rwanda, they have been in custody from July 1994 until the present. This is a matter of great concern to all of us.

The ICTR statute says that defendants must be given fair and expeditious trials. We have to balance this right to a fair trial with the rights of the accused while at the same time trying to get on with the trial as expeditiously as possible. In that respect, it is very much in the hands of the prosecutor, who has the mammoth task of investigating and bringing forward the evidence. There are also administrative problems that are frustrating for a judge because we are outside the administrative process and yet we are so affected by it, particularly in the ICTR.

I think it is also important to note that the defense counsel has a fair amount to say about this notion of expeditious trials. They have urged us not to bow down to public pressure and to give them enough time. Let me quote the lawyer named Monthe in the *Akayesu* case. He said

that “you can’t go too fast and you can’t go too slow.” Presumably, he does not want it to move at all. Justice, in his view, “is an old lady and you cannot shake old bones.” He also said that public opinion should not be let through the door because if you let public opinion in, justice is going to fly out the window. According to Monta, public opinion is like a prostitute; you make sure you keep her outside the door. I think we should let everyone know that the judges want to let public opinion in the door. Clearly, the defense’s concern was that they should be given sufficient time to prepare trials.

B. Sentencing Issues in Relation to Local Rwandan Courts

Inconsistency in sentencing is another problem that arises from the existence of two concurrent jurisdictions. The ICTR follows the United Nations’ principled position against the death penalty. This means the highest penalty we would pass would be life imprisonment. While I do not think we should underestimate the impact of a life sentence, there is a disparity of views with regard to the death penalty. The argument is that the lesser offenders may well end up with the death penalty in Rwanda, whereas the ICTR is trying serious offenders who can only receive a maximum sentence of life imprisonment. I imagine this is another concern of the Ambassador.

It is important to note that the government of Rwanda asked for this Tribunal initially. But when it came to the final voting, they voted against the establishment of this Tribunal because they wanted it to be situated in Kigali where people could see justice being done. They also were opposed to the one year subject matter jurisdiction. Furthermore, the Rwandan government felt that the Tribunal was not independent because we were sharing the chief prosecutor with the ICTY, and they were appalled that there was no provision for the imposition of the death penalty.

C. Jurisdictional Issues

No government has raised the question of jurisdiction before us, although defense counsel did so in the case of Joseph Kanyabashi, in which I participated. We gave a ruling on the challenge to the jurisdiction. As you know, this Tribunal was established under Chapter VII. Where the Security Council said there was a threat to international

peace, the defense counsel argued that this was a political decision and it overrode sovereignty.

This was the first time there was interference in the sovereign's right to administer the judicial process. This is more problematic for us than for ICTY, because in Rwanda there is an internal conflict. It is not an international conflict. We ruled on this issue and took judicial notice of the fact that because of the spillover of refugees and insurgents outside Rwanda, there may well have been a situation of destabilizing neighboring countries, thus constituting a threat to international peace.

The Tribunal charges individuals, however, not groups. When we worked on our judgment, we were very concerned about this aspect of individual responsibility. We were unsure how to approach the situation where people failed to take action. Moreover, we can try Rwandan citizens and non-Rwandan citizens who committed crimes inside Rwanda. That explains the presence of the Belgian radio journalist, Georges Ruggiu.

We have experienced strong cooperation from states in respect to people who have been transferred to our jurisdiction. They came from Zambia, Kenya, Cameroon, Belgium, the Ivory Coast, and Switzerland. The only countries that have not transferred an indicted person are Zaire and the United States. I believe that this is an ongoing process. It is very important that the United States is seen by the rest of the world to be cooperating with the Tribunal in respect to the handing over of indicted persons.

D. Rwandan Unrest Affects the ICTR

The other difficulty the Tribunal has faced is holding trials in the middle of a conflict. The deputy prosecutor, Mr. Muna, will explain to us more about the conflict situation in Rwanda and how this impacts witnesses and the prosecution's investigation. This problem is very real for us. Apart from all the other logistical problems, we are located in a rural mountainous area that is cut off from the rest of the world. We have electrical power problems. The first thing I shopped for when I landed were torches, because we need them to read when the power goes off. I am also sad to say that there were two attempts at hijacking the Tribunal's staff and two people were shot, but not fatally. There is an ongoing conflict and a real risk to witnesses as well as a risk to Tribunal staff.

I think we should look to our practical experience when it comes to formulating the International Criminal Court, which would institutionalize the work of the ad hoc tribunals. One of the drawbacks at ICTR is, for instance, the United Nations rule. Apparently, the United Nations staff are not permitted to talk to the press. When you do not give information to the press, even about your indictments, there is very little information going out in respect to that subject. I would like to see that rule changed.

IV. THE *AKAYESU* CASE

I would like to mention that in the *Akayesu* case there are two counts of sexual violence and rape. The testimony is horrendous. Nothing in my thirty year career in South Africa on torture, deaths, and detention prepared me for this level of atrocities. We intend to deal with that in our first judgment. I think this judgment will be historic because it is going to deal with gender persecution and rape as a war crime.

We appear to be working very well in marrying the two systems of civil and common law. I am sure that the common law system is as strange to the civil judges and lawyers as the civil law system is to me. When Akayesu gave his testimony, my colleagues on the bench said that was their first time they have had an accused testify and be subjected to cross-examination. They were intrigued that they could question the accused. We work, however, by consensus and common sense.

In order to achieve a fair balance—since this panel seems to be representing the judiciary and the prosecution only—I should give you an idea of what the defense's arguments are. First, they object to the use of the word "genocide." They say it is a term coined by journalists. In the course of our judgment we must seriously consider the term "genocide" and decide whether one did occur in Rwanda. That is why you will notice I use terms like "atrocities" and "massacre." The defense also argued for equality of arms. I think that when people set up the International Criminal Court, they should realize how expensive that is. The defense also needs resources for its investigation and for the involvement of experienced counsel.

The motions the defense has made involve the protection of defense witnesses who are refugees in other countries. They wanted us to order sovereign states to grant refugee status and not to repatriate people into

Rwanda. They argued that once these people got into Rwanda, defense counsel would have no access to their witnesses, and that the witnesses and their families feared threats of deaths.

The other important point is that some countries, like Belgium, have done extensive investigations and the defense wanted disclosure of all the Belgian files. Under our rules, we expect defense counsel to contact and recognize their potential witnesses and be able to argue that the detainees are going to be of value to the defense. The defense counsel said that they cannot get into Rwanda; therefore, they do not know what these witnesses are going to say. For example, one witness they wanted is Karamira—whose presence was requested by defense counsel—a leader who has been tried, convicted, and sentenced to death inside Rwanda.

These are some of their problems. The other defense position evolved after they called General Dallaire, the head of the United Nations military mission inside Rwanda. He stated in his testimony before the trial chamber that if he had 50,000 troops he might have avoided the genocide, but he had not received the assistance that he had requested from the United Nations. Thus, the defense's position is that there is blood on the hands of the entire international community; therefore, there is no reason to pick on the small guy. He only had nine unarmed policemen. What was he expected to do?

The defense also challenged jurisdiction and competence of the Tribunal. They challenged the application of the Geneva Conventions in an internal conflict. They argued that there is evidence of the participation by an entire population, making it unclear where this rule about orders to a subordinate comes in.

The defense submission concerning the numerous prosecution witnesses who testified about the atrocities is that there is a union, meaning that there is a very insidious union of informers who are coming forward and making up these stories, particularly on the evidence on rape and sexual violence. On hearsay evidence, they have cautioned the judges to watch out for and to be sensitive to Rwandan culture and language, Kinyarwanda. Many of the witnesses spoke Kinyarwanda. In response to a question I put to a linguist from Rwanda called by the prosecution, he said that while the word for seeing and hearing was, like in other languages, not the same, Rwandans tended to describe events without distinguishing between

the two. So we have to be very careful in assessing hearsay evidence. The prosecution's case, of course, is that the acts charged were part of a plan or strategy that consisted of genocide. I have confined myself to these brief remarks, as the matter is *sub-judice*.

THE ICTR MUST ACHIEVE JUSTICE FOR RWANDANS

PRESENTATION BY BERNARD MUNA
DEPUTY PROSECUTOR FOR INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

INTRODUCTION

First of all, I wish to thank those who organized this conference, because I believe it is important towards the end of this century that the international community start to sign treaties and pass conventions that protect human rights. Therefore, I am grateful to be able to participate with the ongoing trials. I believe that we are making a definite statement that humanity, collectively in the future, will not stand by and watch when other people violate human rights. To me, that is the real reason that I would support the International Criminal Court.

That being said, I have the privilege of participating in the trials that are going on in the Rwanda Tribunal. I would like to start by giving you the picture of the enormous task that lies in front of us. You have heard that the genocide in Rwanda was five times faster than the one in Germany, even though the German genocide had gas chambers. If you take the lower figure of 500,000 people killed you are looking at 5,000 people a day. If you take the higher figure of one million people killed, you are looking at 10,000 people killed a day without guillotines or gas chambers. Instead, most of the killings were done with match heads and spears. This meant that a large proportion of the population were implicated for this to succeed.

This is the real drama. When Judge Pillay was giving you the statistics of the fact that there were 120,000 people in jails, I saw some of you shaking your head. More than 120,000 people were needed to kill 5,000 to 10,000 people a day in all different parts of Rwanda. That

is the real tragedy. That is the real complication for the prosecution because you are looking at a situation in which there was a government, army, and police. All the structures of government were present and yet this wholesale killing took place.

The real tragedy is that with the government, police, and the army all participating in this killing, those who died had nobody to protect them. No government structure. No police. Yet, within the drama, those who were close will know there were heroes. There were those who hid their friends, those who tried to save some of them by taking them to safe houses. By and large, it was a telling thing for human nature when neighbor turned against neighbor. Further, there were situations where women were asked to kill their own children.

I think as we look forward our task in the Rwanda Tribunal is to simply hurry up. I believe that it is a very difficult task. Justice requires time and in our case we must administer justice as justice, but unfortunately it is often seen as a political tool. So what then do we sacrifice? These are the tasks and the difficulties that the Office of the Prosecutor must meet.

I. THE PROSECUTION'S INVESTIGATION

Evidently, from what I have told you, the thrust of our investigation when I arrived had to be refocused on the conspiracy theory. The question becomes how did this tragedy occur if there was a government and an army in place. There must have been either a conspiracy of silence, a conspiracy of inactivity or inaction, or a conspiracy of participation to allow them to do the killing.

Our investigation at this stage, which is the main thrust of the policy of the Office of the Prosecutor, is based on the fact that we have firmly established that it was an act of conspiracy. Those who were called upon as government officials, government departments, and police actually turned against the people and killed them. This is the main thrust of the Rwanda investigations.

It is important for the future to ask people what they want. In the future, this should not happen again. The only way we can stop it is to show why it happened. This is also a main thrust of the investigation policy. We must be able to establish how the killing was organized and how this tragedy was realized.

I think for posterity and for history, we have the duty to record it. The judges are there to bring the full story out and to sift the truth from the untruth. But, it is the job of the prosecutor, I believe, to be able to bring all this together and put it before the judges so that they are able to finally decide and put in the annals of history what really happened in Rwanda.

You have already heard about how many people we are prosecuting. I will not go into more detail but I will give just a general observation on our policy. I have met a lot of very well meaning people, such as ambassadors and ministers, who come to Rwanda and express concern about the Rwandan justice system. My answer is this: any justice system can only administer justice according to their own means. When I say their own means I am talking about manpower, finances, and so on.

II. LOGISTICAL ISSUES WHEN MOUNTING A PROSECUTION

If you went into Rwanda right now and attempted to administer justice as you would administer it here in the United States, it would be impossible. Where would they get the money to pay for the defense counsel, to build the jails, or to feed the prisoners? As we are judging the Rwandan justice system, we must remember that Rwanda can only administer justice according to the means available. For example, most of their magistrates were killed and others left the country. Therefore, you have a society without magistrates.

So what can Rwanda do? Send potential magistrates back to school for three years, and then have them get four or five years of experience while these guys are in jail? This is a drama. That is the reality. You have 130,000 people in jail that are to be tried. What do they do? These are the questions that we must examine before we rush to criticize, judge, and moralize the Rwandan system. The reality is there. Therefore, you administer justice according to your own means. It may not be perfect, but human justice is never perfect no matter what we may pretend or what we may think.

III. RAPE PROSECUTED AS GENOCIDE

Now, in moving forward on some of the new ground that we are breaking we must address the use of rape charges. We have been able to see clearly in our investigations that apart from the rape, other forms

of sexual violence exist. Rape is actually a means of committing genocide because when you are causing serious physical or mental harm to members of the group, you are deliberately inflicting on them conditions of life which are diminishing their lives. If you are humiliating the females in a racial group, then these women in the future cannot be expected to be mentally stabilized to bring up a family. So, rape in itself can be a means of committing genocide. Of course, we also see rape as torture, as a crime against humanity. These views, however, are not reflected in the charges, which we are putting before the court.

IV. CHALLENGES FACED BY THE ICTR

I believe that the real challenge of the Rwanda Tribunal is twofold. First, we must administer justice. We are a court of law. Justice must be fair and it must be done by the people. But at the same time it must also meet with the political atmosphere in Rwanda. The people are waiting for justice. The question is do we rush justice or do we administer justice at the pace it requires.

As we look at the Rwandan experience, I think that one of the lessons we must learn is that a court cannot be a bureaucratic organization. One of the things our court system is presently suffering from is that it has a very strong umbilical cord tied to one of the biggest bureaucrats in the world, the United Nations system. This means that those who are setting the guidelines are always thinking bureaucratically. If we are to create a new court, we must look at it as a court of law with professionals, people who know what law is about and not just bureaucracy. These are the people who know that a court is to administer justice. These are the people who know what the system is all about. To me, this is the first thing we have to do when we establish a court.

Second, we must reexamine the purpose of this court. If the court is going to administer justice, then we must give it the manpower, and thus the capability of administering justice.

We have come under a lot of criticism as being slow, and comparisons have been made to the Nuremberg trials. Yet people forget that in the Nuremberg trial the Department of the Prosecutor had about 2,000 or more people. Additionally, it was a military court and not a civilian court with 180 eyes of the United Nations looking at us

with different interests. Therefore, we are under a different pressure of reestablishing a civil court. In essence, we must go very carefully and make sure that we are planting a firm foundation for the future and hope that if we succeed then the new international court can be successful.

CONCLUSION

I would like to wind up by saying that one of the tragedies in Rwanda is that there is still conflict. In the time that we are taking to go to court, there is still fighting in the northwest part of the country near the border between Zaire and Rwanda. As we speak here today, there are still people who believe that the war must continue. Unless that country can increase its security, a judge might adjudicate fifty or even one hundred cases. That, however, will not solve the problem of Rwanda.

Rwanda's problems will finally be solved when justice is done, when the people are satisfied that justice was done, and when all of humanity accepts that we must live together as a community. We must allow everybody to live his own life within that society without interference or threat from another person. To me, this is the challenge. A court will come and go, but the real challenge for the international community is whether we will be able to make that point and make it clear. Everyone must understand that when people are being killed because they belong to a political party or to a religious group, this court means business. The international community must not only insist that these cases go before a judge, but they must act beforehand to see that there is prevention.

PRESENTATION BY THE HONORABLE THEOGENE RUDASINGWA

AMBASSADOR OF RWANDA TO THE UNITED STATES

INTRODUCTION

AMBASSADOR RUDASINGWA: First of all, I must confess that I am in a very unfamiliar terrain because most of you here are legal experts

and I am definitely not a legal expert. Second, most of you are academicians, and I do not think that I qualify to be called an academician.

Please bear with me if my comments fall below your expectations and if my comments tend to be on the political side. Having said this, I definitely am pleased to be in your meeting and to share with you some of the experiences that people in Rwanda have had in the recent past, particularly during 1994.

I was asked to shed light on four issues. First, the government program of national prosecutions. Second, the goals of the government relating to this issue of justice. Third, how the ICTR coordinates with the national judiciary. Lastly, how the ICTR may contribute to the overall process of justice in Rwanda.

I. RWANDA'S PROGRAM OF NATIONAL PROSECUTIONS

A. Member States of the United Nations Failed to Intervene Against Rwandan Genocide

Whenever we talk about the failures or shortcomings of some of these international efforts, I think it is important that we come to speak about the failures of the Member States that constitute the United Nations. Sometimes people talk about the failures of the United Nations as if the United Nations is some kind of abstract organization. The Member States are fond of hiding behind that screen. When we talk about the weaknesses, it is imperative that you also think about the weaknesses of the individual Member States that constitute the United Nations.

The failure of the United Nations back in 1994 was more or less a failure of the Member States. About a week ago we learned that no one other than the President of the United States himself came to Rwanda to acknowledge that, yes, the United Nations failed. But it was also the Member States, including the powerful nations of this world, who failed in preventing and stopping the genocide. They failed to look at the legacy of the genocide and some of the problems we have come to witness in Rwanda. This includes the problems with security, which Bernard Muna just mentioned.

B. Rwandan Prosecution Program Holds All Genocide Perpetrators Accountable

The government program of national prosecution proceeds from their own genocide. This law simply proceeds from the premise that everyone who committed genocide would be made individually accountable for the crime that he or she committed. Of course, there were many offenses committed during this period, and I think Bernard Muna has shown the drama of the crime that was committed. We have so many other programs to think about that spending a lot of time trying to prosecute some of these minor offenses, which of course in some situations might be very major offenses, is difficult.

C. Prosecutorial Discretion Codified in Rwandan Law

Second, the government recognizes that the existing system of administration of justice may not be able to prosecute all that should be prosecuted. That is why the law on genocide in Rwanda attempted to categorize offenses. I think it was a political act on the part of those who are trying to deal with this seemingly complex situation; an attempt to deal with a high degree of participation of the population in this kind of crime. It was Neil Kritz and his colleagues from the United States who shed some light on this question during a 1995 conference on genocide.

D. Punishment Under Rwandan Program

Third, the government recognizes that everybody found guilty can not be punished in the way that we may want. This means that the death penalty is limited only to Category I type offenses. These are the people who were the masterminds of the genocide. For the others, of course, we are thinking about extended sentences or some other forms of punishment.

II. RWANDA'S RESPONSE TO ENORMOUS CASELOAD

We have also considered other innovative ideas for dealing with this heavy caseload. For example, conducting investigations sector by sector. This entails moving across the country, looking at every sector within the country, and carrying out investigations at this smaller level.

We have also considered conducting group trials. I am sure you have probably heard of this kind of trial elsewhere. In doing so, we would separate Category I type suspects from the rest of the suspects who might wish to benefit from them. In addition, we thought about finding a group to help us deal with the issue of legal assistance to the suspects. That in itself would be a contributing factor to ultimately expediting the massive caseload of people that we have in the prisons.

III. RWANDA FACES A HISTORY OF IMPUNITY

The basic goal of the government is to deal with the culture of impunity that has characterized post-independence Rwanda. Formal political independence was obtained in 1962. But even before then, the governments in place were characterized by a high level of impunity. The first holocaust in Rwanda took place in 1959 under the auspices of the existing administration. From 1962 onwards, the post-independence history of Rwanda is an endless story of holocaust and killings, culminating in the genocide of 1994. The genocide of 1994 was not an isolated incident, nor was it an accident.

We are clearly dealing with this historical legacy of impunity. Part of the strategy for dealing with the question of genocide is for the country, government, and the people of Rwanda to deal with this culture of impunity. I will comment later on why the question of the rule of law becomes imperative in dealing with the future of Rwanda.

Furthermore, we must dispense justice in a way that also helps us to stabilize society. It must help bridge gaps within our society, help reconciliation, and try to unite the Rwandan people. The diversity of politics in Rwanda largely contributed to what happened in 1994. As we try to elaborate on the law of genocide, we must ask: How do you dispense justice in such a way that at the end of the day, you help society to begin to live? We cannot spend our time and future generation's time trying to deal with the problems of administering justice alone.

Dispensing justice is a problem that has dimensions that are not entirely legal. Indeed there are political, social, and cultural dimensions as well. The bottom line here is: Yes, there has to be justice, but justice must be dispensed in such a way that it will promote reconciliation and development within the country.

IV. RWANDA'S RESPONSE TO THE ICTR

I would also like to address the relationship between the national prosecutions and the work of the ICTR. The ICTR and the Rwandan Government appear to have a strained relationship. It was mentioned that we had the lone dissenting voice in the United Nations Security Council when the ICTR was being established. While we did have concerns when the ICTR was established, we still showed our support.

Part of the problem we had with the ICTR in the past was that it was an institution of the United Nations and institutions of the United Nations quite often act inefficiently for us. We had very special circumstances in our country that we were trying to deal with and quite often we became impatient with the way the ICTR was conducting its business. But, we did not hide our sentiments. Those who have dealt with the Rwandan Government probably know that this is one of our trademarks. We are very frank; when we disagree, we disagree in the open. Since then, I should say there has been some degree of progress, probably attributable to the awakening within the system itself, but more so to the new blood that has been infused into the process.

Yet, there is still much that has to be done. First, we should get in the habit of thinking about the ICTR and the Rwandan process as complementary rather than competing. I think we have the same objectives and the same goals. Second, we feel that if there is any assistance that the Rwandan process can provide to the International Criminal Tribunal, it should not be withheld. Third, we believe that this kind of cooperation should be based on an agreement. I think there should be a formal agreement between the ICTR and the Rwandan Government on how this cooperation should proceed. Finally, I believe that the question of contribution by the ICTR to Rwanda is a subject that should be left to further discussion. But, I think that the sky is the limit as to what the contributions should be. The ICTR knows very well the situation that exists in Rwanda. There should not be any restriction in terms of what help they can give.

CONCLUSION

In conclusion, let me mention two things that quite often escape mention. One is the plight of the survivors of genocide in Rwanda. We all believe that ultimately justice will be done when there is reconciliation. One category of people that is forgotten, however, is the

survivors of genocide. We have been trying to put this item on the agenda. It has been difficult, however, because the governmental organizations and the international agencies who deal best with refugees tend to act on the kind of things that attract the attention of many people across the world. This category of people, the Rwandan survivors, has been forgotten. If you are not doing anything for this category of people, the survivors of genocide, I am afraid you cannot talk about reconciliation.

The other issue is one of security. How does security relate to justice in Rwanda today? Why does this insecurity exist in the north? What is the problem in the northern part of the country? First of all, the problem in the north is the continuation of what happened in 1994. These people, the perpetrators of genocide, seem to think they have an unfinished job and they are very eager to complete that job. If you trace the problem from the exit of people to the return of refugees back into Rwanda at the end of 1996, you will see that we allowed people to go back to their communes without checking. This is because we are not able to check. We are very eager to resolve the problem of refugees.

AUDIENCE QUESTIONS

AUDIENCE MEMBER: Ambassador Rudasingwa, you know the United States has announced a justice initiative for the Great Lakes, obviously much of that focusing on Rwanda. What do you want to see come out of that? What precisely do you think the Rwandan Government needs to handle some of these 120,000 some cases?

AMBASSADOR RUDASINGWA: The Great Lakes justice initiative is an initiative that applies to other countries in that region, but I think Rwanda probably qualifies more than any. I also think that there is more focus on Rwanda right now.

We have been talking with the government of the United States to focus on the question of human resources development. For example, if you look at what is happening in the justice system in Rwanda there are just over one hundred prosecutors in the country and most of these prosecutors are high school graduates. These are not prosecutors

dealing with an ordinary case; these are prosecutors dealing with a complicated case of genocide.

There are a few university students in the national university who will be graduating shortly. But that shows you the gravity of the situation. Further, there are probably only about sixty private lawyers in the entire country. The situation is indeed very grave and whether they are talking about judges, prosecutors, or investigators, I think Rwanda has suffered.

One area of concern is how the United States government can help provide the training and develop the kind of resources that we need to deal with this sort of problem. A second area of concern is the issue of the fund for the survivors of genocide. We are very glad that President Clinton announced the \$2 million contribution to the survivors of genocide fund. Third, we must see what can be done in the area of training. Our experts in this field are very limited. The most input came from Neil Kritz and the others. I think they still have an obligation to help us try to elaborate what could be done because it is through this process that we can reduce the kind of caseload that we have.

I was reading statistics and was told that at the current pace with which we are moving it probably would take the next 400 years to try the 120,000 people that we have in the prisons. It is in that context that I want to make a direct appeal to American University, particularly its law school, the Washington College of Law. This law school should participate in an effort to see how we can deal with the problem of genocide. More specifically, we are spending a lot of time thinking about genocide because it is the absence of a justice system in the first instance that led to genocide. We need also to spend some of our time looking at how we can establish a rule of law in Rwanda, and how we can establish a justice system in the country.

AUDIENCE MEMBER: I am Jason Abrams, with the United Nations Office of Legal Affairs. I think Ambassador Rudasingwa has already made some observations on this issue, but I would appreciate the observations of Judge Navanethem Pillay and Mr. Muna as to the extent to which and how the Tribunal has made an impact on the rehabilitation of the domestic judicial system in Rwanda.

Are you finding that your work is fertilizing in any way the process of rebuilding the justice system in that country? For example, are

Rwandan judicial officers or officials coming to Arusha to watch your proceedings? Are there formal contacts between Tribunal officials and judicial officials in Rwanda? Thank you.

MR. KRITZ: I am going to take the liberty of actually adding to that. Are there any prospects for the Tribunal actually conducting some of its proceedings in Rwanda and interacting with the system?

JUDGE PILLAY: Our rules provide that we can hold trials outside the seat of the court as stipulated by the statute if reason arises. I do not know what the practical possibilities are of holding a trial in Rwanda.

When there was a defense application for the transfer of a convicted prisoner facing execution, the suggestion from the bench to the defense was that you always have the chance of applying for his evidence to be taken on commissions. That is about the closest our proceedings have come to being held in Rwanda.

There has been a great deal of cooperation between the Government of Rwanda and the Tribunal and we have had some very important visitors. For example, we had their chief prosecutor with us last week. The Rwandan Ambassador in Tanzania also visited us. She said that she now understands, after observing the trial, what kind of trial procedures and rules the Tribunal adopted. Previously, the Rwandan authorities were highly critical about the slow pace. There is that level of cooperation. The judges first took the position that it is not for the judges to be approaching the governments. We wanted to perform our functions in the way that we were expected to; but we found that because of the tensions between the government and the Tribunal coupled with the lack of cooperation, we had some difficulty. Despite this difficulty, we actually had some very good meetings with the Rwandan Government.

MR. MUNA: I would just like to cite a note of caution because it is not the fact that all the criminals in Rwanda who committed genocide will be tried and that will bring about reconciliation. That is not going to bring reconciliation. When we talk about reconciliation, it is our hope that, as time goes on, the wounds will heal as a result of the development of a justice system.

The problem is where do you start? Where do you start with somebody who has lost six or all members of his family? It is a very difficult process and it will take a long time. Just three or four years

ago, when they were celebrating the fiftieth anniversary and the end of the Second World War, the French and the British refused to let their current allies, the Germans, come to Paris or to London. If we think as a human society—ensuring that we understand both sides—that is the way neighboring countries can understand what happened and come to heal.

The second point, of course, is the building of the Rwandan justice system. We did have and we do have some of the lawyers from the Court of Appeals and the Supreme Court going to Rwanda and sitting in on the trials. They were very impressed and they understand the situation better now.

Lastly, of course, there is cooperation now with the OTP. It has opened up to us and we are able to go and talk to them. We talk to all the magistrates of the different communes and cooperate in investigations. As we cooperate, they are able to understand how we work. We hope they will also see how they investigate their cases and put together their files. But, the international court cannot be a substitute for their own system. We can only hope that there will be some cross influences.

AUDIENCE MEMBER: I would like to ask one question. I am a student. I just wanted to ask the Ambassador what he really thinks is the likelihood of reconciliation and what the role of Africa is as a whole. Rwanda is always seeking help from the North. What do you think the role of the South is? Further, is there anything the South can contribute to bring reconciliation and prevent future conflicts? Is there anything to be learned from what happened in Rwanda in 1994?

AMBASSADOR RUDASINGWA: Is reconciliation possible in Rwanda? I think so. First of all, you need to recognize that the Rwandan people have lived together for so many centuries, and that the problems of division and genocide are indeed more than a phenomenon. The post-independence regimes in Rwanda acted irresponsibly by dragging the whole society into this crime of genocide.

However, in order for reconciliation to take place, we have to invest in it. This is going to be a long and difficult process. Part of the investment that we have to make is trying to establish institutions that can help the people of Rwanda have the last line of defense against the governments. The process of institutional building becomes very critical, and how we are addressing the political question is very

important. Additionally, how we generate resources and how we distribute resources within the country are indeed programs that are very much related to the problem of justice under reconciliation. I think those items are important things that we have to invest in to ensure that it never happens again.

I truly hope that the Africans have learned from the Rwandan experience. I wish there were more Africans in this audience to listen to what is taking place. I would also have liked to see more of my fellow African ambassadors in the audience. In a number of African countries, I must confess, there are certain situations that do exist, which if we are not very vigilant, might easily generate into the kind of situation that we lived through tragically in 1994.

Genocide or war crimes are not an inherently African phenomenon. I think the last one hundred years have shown that these are things that human beings, when they decide to be as vicious as we have seen, can do anywhere. It is very important that the African people learn from the experience of Rwanda so that it never happens again on the African continent and, moreover, never happens again in the world.