

5-15-1995

### Pierre-Richard Prosper to David Bernstein May 15, 1995

Pierre-Richard Prosper

Follow this and additional works at: [https://digitalcommons.georgefox.edu/rawson\\_rwanda](https://digitalcommons.georgefox.edu/rawson_rwanda)

---

#### Recommended Citation

Prosper, Pierre-Richard, "Pierre-Richard Prosper to David Bernstein May 15, 1995" (1995). *David Rawson Collection on the Rwandan Genocide*. 111.  
[https://digitalcommons.georgefox.edu/rawson\\_rwanda/111](https://digitalcommons.georgefox.edu/rawson_rwanda/111)

This Book is brought to you for free and open access by the Archives and Museum at Digital Commons @ George Fox University. It has been accepted for inclusion in David Rawson Collection on the Rwandan Genocide by an authorized administrator of Digital Commons @ George Fox University. For more information, please contact [arolfe@georgefox.edu](mailto:arolfe@georgefox.edu).

## Memorandum

EDD

D/G



Subject

RWANDAN JUSTICE REPORT

Date

MAY 15, 1995

To

David Bernstein  
State Department

From

Pierre-Richard Prosper  
Assistant U.S. Attorney

Enclosed please find my report on the current state of the justice system in Rwanda. I hope that what is incorporated is sufficient. With further time and discussion new ideas may come to light.

If you have any questions or areas of concern please feel free to call me. (213) 894-0600.

THE CURRENT STATE OF  
THE JUSTICE SYSTEM IN RWANDA: APRIL 1995

by

PIERRE-RICHARD PROSPER  
ASSISTANT UNITED STATES ATTORNEY  
CENTRAL DISTRICT OF CALIFORNIA

I

INTRODUCTION

The current judicial system in Rwanda is at a complete stand still. Of the approximate now 39,000 genocide case few, if any, are being processed in a system which is paralysed by political constraints and logistical barriers. All aspects of the judiciary are frozen from the local level to the higher ends of the ministry of justice. Rwandans continue to be arrested by the thousands many without regard to proper procedure resulting in lack of, or poorly prepared, files and lost individuals in an over burdened system.

Much of the problems in the system stem from a simple lack of materials needed to perform the task. Many courthouses and government buildings are completely empty and lack the basic necessities such as pen, paper, pencils and the personnel to perform the task. Still other problems are politically related. Many of those who are in custody feel that they are political prisoners and that their actions may have been justified because they were in a state of war. With this environment, it is not clear who has or wants the power to make the important justice related decisions, the military or the minister of justice. One thing is certain, the military is in control the government and is or desires to be included in the decision making process. The military is completely integrated into the justice issue from making the majority of the arrests to guarding, and in a sense, running the prisons. As a source told me in confidence, the military feels that justice is their issue and their prerogative.<sup>1</sup>

While much of the issues are being sorted out at a higher level, most of the line personnel in the justice system appear to

---

<sup>1</sup> In Gisenyi, the head Inspector Police Judicaire dismissed 3 cases but only after the approval of the military. IPJ felt that for his safety he had to seek their approval.

be eager to perform their duties. Much of their efforts, however, are blocked by the apparent political conflict, inaction by the Rwandan government, lack of materials and lack of coordination amongst the international community and donors. In order for the system to begin administering justice the Rwandan government must become more decisive, the necessary resources must be supplied and the international community must be in coordination in order to avoid duplicate efforts. What role the United States government should play in these events depends on a review of the judicial system with a clear knowledge of how it formerly operated, before the war, how it is currently operating, what the international community is doing and what is immediately needed as far as supplies or technical assistance in order to clear the gridlock and start the process of adjudicating the cases of those accused of genocide.

## II

### JUSTICE PRIOR TO APRIL 1994: OVERVIEW

Prior to April 1994 the Rwandan criminal justice system was a functioning system which provided clear guidelines and procedures which were to be followed and adhered to. The guidelines imposed duties and requirements at all levels from the arresting agency to the court of appeals. Although at times it was not the most effective and proficient justice system, for the Rwandans it worked.

The authority to arrest a suspect generally rested with the prosecutor, gendarmerie, inspecteur police judiciaire (IPJ), bourgmestres and prison directors. These parties could only arrest an individual if the arresting officer witnessed the crime, the suspect was denounced by another or if the officer had information of a crime which occurred in the past. Once the officer has made the arrest s/he was to complete a proces-verbal d'arrestation (PVA), a form identifying the suspect, the crime, the evidence, and the accuser, which allowed for temporary detention of the individual.<sup>2</sup> Once this process was completed, a file with witness' statements was forwarded to the office of the prosecutor.

When the file was received by the prosecutor s/he would then review the file and interview the suspect. If in the prosecutor's discretion upon this review s/he felt that serious signs of guilt existed an arrest warrant was issued allowing for further detention of the suspect and time to investigate the

---

<sup>2</sup> For an in depth analysis of arrest procedures and a thorough overview of the justice system, please see the ARD report prepared for U.S A.I.D. by Ana-Maria Linares.

case.<sup>3</sup> The investigation was done by the IPJs who at this level were working with and for the prosecution. The investigation encompassed additional witness interviews as well as visits to the crime scene. Once completed the file was then forwarded to the court for jurisdiction and trial.

When the court received the file the first order of business was to set dates for the matter to be heard. At times the court would perform additional investigation if it felt it was warranted. Once the file was deemed complete, the matter was heard. Participants to the trial were the three judges, the prosecutor, the defense attorney, if any, the court clerk and the accused.

Under Rwandan law, an accused could defend himself or had the right to have a defense attorney speak on his behalf. If the accused did not have an attorney the court may have in the interest of the public appoint one for him at no cost. The accused did have the right to object to the appointment of an attorney and thus may have proceed without one.

The trial phase of a criminal trial was of an accusatory nature. That is, the trial was public and there were both oral testimony and physical evidence which were subject to confrontation by the accused. The types of evidence which were typically introduced were confessions, physical objects, observations, and oral statements. From these a Judge may have to draw inferences and presumptions in order to reach a decision and render a judgement.

The judgement issued by the court must have contain proof that all legal formalities were followed and must have also contain a justification for the decision. It was to include the name of the judges, name of the parties, the factual and legal points relied upon, the nature of the publicity given to the action, the legal disposition used, date, and other formalities required by law. The pronouncement of the decision was to have been done orally and publicly.

After trial, with a conviction, there were three avenues of recourse available to an accused. The first was the objection, the second the appeal and the third a supreme court review. The objection was simply the accused returning to the trial court and asking it to reverse its ruling. The appeal was a review of the decision by a higher court. The final avenue was a "Supreme Court" review. This avenue, however, is currently in a state of flux. It is unclear whether or not it is still available after

---

<sup>3</sup> The prosecutor was to also have move for detention which if granted will increase the time allowed for investigation from five days to thirty.

the Arusha Accord of 1993 and it appears that the reviewing court will have to be formed.

### III

#### CURRENT JUSTICE

In order to understand the current state of the justice system in Rwanda it is important to review each relevant area while examining the affects of war. In doing so it is important to keep in mind the volume of genocide cases the system faces and recognize the unprecedented nature of such prosecutions. The areas to be examined are the IPJs, the Gendarmerie, the Prosecutor's office, the National Triage Commission, the Courthouses, the Court Clerks, and the Prison. Each of these areas are essential and constitute the pillars on which justice is to stand in the immediate post-war Rwanda.

##### A. IPJ

Throughout Rwanda there are inspecteurs de police judiciaire who assist in the investigations of criminal cases. The number of these IPJs are few despite the fact that approximately 150 new inspecteurs have been recently integrated into the system. In Kigali there are 30 IPJs assigned to work in the capital district 25 of whom are new and inexperienced. In Gisenyi, there are six IPJs, five of which are recent additions. The remainder of the IPJs are spread throughout the country.

The new IPJs are recent graduates of secondary schools and a 165 hour non-government organization training course. In training these IPJs received a generalized course on investigation techniques. These techniques included the drafting of reports, crime scene investigation, ethics and some law. There is much concern, however, that the training received was not sufficiently detailed. This concern was raised by the Kigali prosecutor and members of the National Triage Commission who have all witnessed incomplete files, sketchy reports and vague witness statements. The IPJ are consistently, yet unintentionally, omitting essential elements from the files which are necessary for both the prosecution and the triage commission to make their determinations. With these errors, the system, according to the prosecutor and the NTC, is further slowed as the result of having to return the files to the IPJs with specific orders for further investigation in specific areas.

The working conditions for the IPJs are poor. In Kigali, for example, at least 15 IPJs are in one large room which has no

partitions, no telephones and no file cabinets.<sup>4</sup> It is a room which is on the ground level of the building facing the street. The windows to the street are broken thus allowing the public to speak and yell through the broken panes.<sup>5</sup> Inside the room each IPJ has a typewriter and a desk.

In Gesenyi, it was the opposite. There the IPJs were all present, ready to work, but were unable to do so. They lacked resources in order to do their job. They had no pens, paper, one typewriter, one desk and one table. They had no means of transporting or visiting witnesses or defendants who were in the central jail.<sup>6</sup> They also lacked housing and were forced to lodge with friends and acquaintances. Of the 1,000 accused currently incarcerated in Gesenyi, as of April 26, 1995, only 50 cases are "ready". The lack of equipment and sufficient personnel are the major contributing factors in this lack of preparation.

Given the conditions, the IPJs are processing some files. In Kigali, a system has been developed where before a defendant can be brought to the central jail he/she must have a warrant of arrest issued by the prosecutor and an open file. For this to occur the IPJs must interview the defendant and witnesses. After spending several days and numerous hours with the IPJs, I witnessed that they were continuously interviewing defendants, witnesses and complainants at an alarming rate. I observed that the IPJs appeared to be very busy and dedicated to performing their task. During a meeting which I had with the chief IPJ, numerous IPJs entered the room with files to be reviewed or approved. This flow was constant and regular.<sup>7</sup> Despite this

---

<sup>4</sup> The other 15 are either in the field or at the central jail interviewing those defendants who do not have files or were processed prior to the new system being in place. (see last paragraph of IPJ section). These defendants number in the thousands.

<sup>5</sup> I personally witnessed on several occasions large groups of people gathered outside the office. Many were pedestrians or witnesses waiting to be called. Inside the room were numerous witnesses and defendants being interviewed. It was a very chaotic situation similar to a wall street trading room.

<sup>6</sup> The Kigali parquet had the advantage of being in the center of town where the prison was within walking distance and was in a location where the witnesses could easily access.

<sup>7</sup> In Gesenyi the IPJs were still attempting to develop a system. They were going to the prisons to interview the defendant, however they are unable to do field work or go interview witness due to lack of transportation.

commitment to duty, with all the problems cited above, the task of properly investigating the increasing number of genocide cases looms larger for the IPJs with each passing day.

B. Gendarmerie

The role of the gendarmerie is akin to that of the IPJ. They too are responsible for investigating cases. The current state of this organization is one of on the job training. Most members are former soldiers who have received little to no experience in law enforcement or in investigative techniques. As the Gesenyi gendarmerie battalion leader told me "we were in the bushes for years, we have no experience". On the surface, at least the Gesenyi battalion, appear to be an inadequately trained organization lacking in basic equipment. Although they have some sense of order, the role of investigating genocide cases is new to them. I spoke with the Judicial advisor for the National gendarmerie and we discussed the experience level of his officers. I was told that many only have a general or global training and not a specific one which is necessary in order to investigate genocide cases. The officers have no knowledge as to what elements are required and what pertinent information is needed. Therefore, any files which they prepare are generally incomplete and not ripe for review.

As of April 26, 1995, the Gesenyi contingent has processed 200 genocide cases. Many are cases which the military turned over in order to be investigated and create, files while others are based on their own arrests.<sup>8</sup> This procedure of the military turning over cases to the gendarmerie may be unique to Gesenyi and of questionable legality. It is also not consistently followed. This results in lack of coordination between the military and the Gendarmerie as to which cases are brought to the gendarmerie and which go directly to the prison and then forwarded to the IPJ for follow up.

The Gesenyi office is severely lacking in materials. They have no computers, one type writer, and no visible filing room or system. Although they claim to keep files on all detainee, none were visible. Many of the individual officers were out of uniform, some intentionally for security reason and others for lack of resources. With this barren appearance the environment appeared to be of wartime and not of peacekeeping or law enforcement.

---

<sup>8</sup> Currently the gendarmerie has 40 genocide detainee in their jail who still have to be processed and forwarded to the central jail.



### C. Prosecutor's Office

The prosecutor's offices in Rwanda are ones that are struggling to stay afloat given the mass influx of cases into their system. They are burdened by a lack of personnel, both qualified and otherwise, and a lack of materials and hardware to perform their task. They find themselves buried by a constant flow of new arrest and denunciations by aggrieved parties.

In Kigali I asked the prosecutor what he needed the most and he told me a new building. In fact, the building he was in was ravaged. Space was at a premium. There were four to five persons cramped into each office leaving little room for witnesses. The entire office was sharing one typewriter and one computer and no working telephone. The real problem, however, was with the storage of files. The file room was small and relatively open to the public. There were no locks, windows were broken, and the doors were smashed. Files were stacked on shelves and on the floor with no semblance of order.

The Kigali prosecutor next expressed serious concern regarding the number of employees. Now in Kigali there are only four prosecutors as compared to the 13 which existed before the war. These four are currently due to handle all 8,000+ genocide related cases which exist as of April 28, 1995. Every week however the office is receiving new cases. In the week of April 24, 1995, alone, they received 204 new genocide cases.<sup>9</sup> When asked about the concept of importing foreign prosecutors to assist with this influx, the prosecutor agreed fully. Asked if the public would accept it, he said they have no choice. There is not a new class of lawyers who can be hired to address and process the cases. Therefore, in order to function and adjudicate the cases, in his opinion, foreign prosecutors are

---

<sup>9</sup> The prosecutor told me that there are at least 2,000 defendants in prison who they have no idea why they are there or who they are. These defendants were the ones arrested immediately after the war before procedures for prosecution were in place. The prosecution's plan is to talk to these individuals to learn why they were arrested, where and maybe build a case.

needed.<sup>10</sup> Their role may just be for case preparation and not presentation.

Lack of materials was also a concern of the prosecutor. The prosecutor has no vehicles to go to the field for investigations or money for gas. He currently has one copier, it was out of toner and he had no way of getting any, one computer and two typewriters. Paper, pencils and file folders were also in lacking.

The prosecutor, given his lack of resources, appeared to be overwhelmed by the work, but he did have a plan which was being implemented. The plan is essentially as follows. First, after receiving the file from the arresting agency, the prosecutor interviews the accused, via the IPJ, and any available witnesses. Once that is completed the file is reviewed for sufficiency. If insufficient, the case is referred to the IPJ for further investigation.<sup>11</sup> If sufficient, a warrant of arrest is issued and the accused is transferred to the central jail. While the accused is in the jail, the file is to be continually investigated in order to prepare it for trial. When the file is complete, the case is sent to the National Triage Commission (NTC) for review and a determination. (see section on triage commission for role of commission and problems encountered with case preparation). If the commission, to which the prosecutor is a part of, finds sufficient evidence, the case is then forwarded to the court for trial.

Although the prosecutor has this plan for processing the cases he does not have a system in place, or in mind, for identifying the priority cases. He is not in a position to determine the high profile cases from the ordinary. He states

---

<sup>10</sup> The prosecutor also feels that Foreign judges are necessary. I asked how the public would accept an acquittal from a foreign judge, he said they will. He said regardless there will be acquittals, as long as there are convictions the public will accept.

When asked to give a number on how many magistrate are needed he said 60. This number includes both prosecutors and judges.

<sup>11</sup> In order for the prosecution to process the files they rely heavily on the IPJ. (See IPJ for logistical complications; no vehicles to go and interview witnesses). The IPJs will go out to the field, interview the witnesses and gather evidence. The prosecutor feels that more IPJs are needed to be able to send cases to NTC.

that without personnel support a system can not be developed and maintained with an ever increasing case load. Therefore many cases languish while the prosecutor struggles with these ever increasing problems.

D. National Triage Commission

In January 1995, the National Triage Commission was formed by the Rwandan government. The purpose of forming the commission was to have it be a body which could review the genocide cases and make a determination as to whether sufficient evidence exist which warrant a case going to trial. The need for forming the commission grew out of a concern that many files were ill prepared and that some coordination among the respective branches of government was required. The triage commission is comprised of a member of the military, a member of the intelligence community, a member of the gendarmerie, and a prosecutor. The frequency of the meetings of the commission and its effectiveness has been a subject of debate.

On Tuesday May 2, 1995, I attended a meeting of the National Triage Commission in Kigali. Assembled were three persons; a prosecutor, a member of the Gendarmerie, and a member of the intelligence community. Missing from the group was the member from the military. His absence was not explained other than by saying that this happens occasionally and that each week one or more members are missing. The Commission decided that it will still review the cases provided that three members are present.<sup>12</sup>

The goal of the Commission is to meet twice a week, Tuesdays and Thursdays. In their meetings, they seek to review the completed files and make a determination as to whether sufficient evidence exist to prosecute the accused. Those cases which lack sufficient evidence are dismissed. The dismissals, according to the commission, are without prejudice meaning that if further evidence is developed the accused can be recharged. In reaching

---

<sup>12</sup> I made a surprise visit on May 4, 1995 and found all members of the triage present. I learned from a prosecution source that originally there were political reasons for members of the triage not attending the meetings, conflict between the departments, however once the non-attending parties realized that the meetings went on in their absence they now attend. Whatever political constraints existed before apparently have been lifted and the triage is hard work.

their determination the commission deliberates with complete independence and their decisions are not subject to review.<sup>13</sup>

Unfortunately due to, as reported by the commission, logistical problems, the Commission has only met approximately 10 times since its creation. In these meetings, they have reviewed only approximately 100-200 of the 8,649+ genocide cases (these are the Kigali based cases). The stated reasons for the few encounters and few dispositions are many. The members are clearly frustrated by numerous obstacles with such frustration being evident in their demeanor and speech.<sup>14</sup>

The Commission states that there are two problems which prevent them from meeting regularly, transportation and work conflicts. With transportation apparently neither the prosecutor nor any other member of the commission has a regular reliable vehicle. They are dependant on whatever public transportation may exist and of the borrowing of vehicles. If by chance they are able to obtain transportation, they have the added problem of balancing their regular assignments. Generally, a conflict arises when a member has a project which he may have been working and it spills over to a scheduled "triage" day.<sup>15</sup>

The few dispositions are the result of a different problem. The files are not properly prepared and require further investigation. In order for the Commission to hear and decide a case, they need the file to be finalized and complete. That means that all elements must be present and all witnesses must

<sup>13</sup> The sense that I received in discussing this issue with these three individuals is that this may be true. The superior governing bodies are too busy with other matters to fully monitor the commissions activities. Although the members may have received some guidelines, they are free to decide the issue for themselves. This could change, however, if the percentage of dismissals increase.

<sup>14</sup> On May 4, 1995, during the surprise visit, I asked the committee how it was going and they all responded, "it's not!" They were clearly frustrated and gave me a list of their needs to report to Washington. These needs included cars, qualified IPJs, tape recorders and more.

<sup>15</sup> I asked if a permanent triage commission would cure the problem and the answer was maybe although unlikely due to the required make up of the triage and the lack of personnel. The advantage of a permanent triage would be that the commission could properly monitor the progress of the cases and effectively speed up the process. Without this, the members did say that if other obstacles were lifted two days a week maybe adequate but the number of resolved cases would still be small.

have been interviewed. What is often the case is that the triage commission reviews a file and determines that there is insufficient information to render a decision. The result is that the commission returns the file to the prosecutors office for further investigation or at times will go out to the field themselves to investigate, assuming they have the resources.

The poorly prepared files are based on two identifiable problems. First, as the commission sees it, those who are preparing the files in the first instance are not competent. Second, the investigators are lacking in resource in order to go out to the field and properly investigate. By incompetent, it is meant that the investigators only have a general training or understanding of their tasks and therefore do not leave a clear record as to what exactly happened and who the witnesses are. The commission often receives a summary of a witness' testimony when a more detailed account is required. The investigators lack a specific understanding of what is required to prosecute a genocide case and are missing the training to acquire it. As for lack of resources, the investigators have no transportation, no recording devices or cameras and are also be lacking in the basics such as paper and pen.

Despite the mounting odds, the Commission does appear to be slowly functioning. I was informed that they met on April 27, 1995 and reviewed 24 cases.<sup>16</sup> Of those 24 cases, eight were dismissed. I asked how many cases they can hear in a given session and the response was twenty assuming the cases are ripe for review. With this each commission member seemed to be motivated in fulfilling their duties and were eager to discuss their current plight. They seemed dedicated to processing the cases with the apparent realization that the burden of justice falls squarely on them.

#### E. Courthouses

In general the courthouses throughout Rwanda are in terrible condition. They are lacking in all equipment. Such missing equipment includes the basics such as tables, desks, typewriters, paper, file cabinets, doors, locks, telephone service and more. Although all the courthouses are short on magistrates, lawyers and interpreters those personnel who remain desire to work. As the presiding judge of Kigali said to me in parting, "we want to work, we just do not have the means".

---

<sup>16</sup> This information was provided to me by the acting Chief prosecutor of Kigali in a private meeting on April 28, 1995. There he explained their previous meeting and displayed the reviewed files.

In Gesenyi, the courthouse is completely empty. It is decimated with nothing more than slight reminders that justice was once administered at the location. There are no doors, locks, evidence lockers, tables or file folders. The windows are shattered with remnants of broken glass. All files are either missing or scattered in various corners and counters in a haphazard manner with no system in place to organize them. There are no judges present or even appointed for that district.

In Kigali, the court finds itself in a similar position, completely void of resources and short on personnel. The building still shows the affects of the war with shattered glass and visible bullet holes. It too is missing doors, locks, tables, desks, pens, paper, telephone service and more. There was no library containing legal materials or adequate space for the remaining 6, of 24, judges to work. The judges have no mode of transportation and are hampered in their efforts to perform there investigations and various tasks.<sup>17</sup> At the time of this report the Kigali court had jurisdiction over ten cases with another 400, of 8,000+, expected in the coming weeks. With a cases load of this magnitude the Kigali court is not prepared to dispense justice.

#### F. Court Clerks

The lack of a sufficient number of court clerks and qualified court clerks is a grave problem in the Rwandan judicial system. Pre-war there were 314 clerks nationwide, now there are only 77. This is a problem which will become more apparent as the prosecution of genocide cases begin to advance and the volume increases. In Gesenyi there is one court clerk assigned to the building who will be responsible for processing approximately 1,012 files. In Kigali there are 30 clerks who will be tracking over 8,000 cases.

Most of the clerks are new, inexperienced and have received no formal training in the area. They have never process a large number of files or know how it is done. There is no clear system in place for filing or one envisioned at this moment. This lack of "know how" is further frustrated by the lack of materials and hardware necessary to perform the duties. There are no

---

<sup>17</sup> An example of where a judge may have to investigate, especially in these genocide cases, was given to me from the presiding judge of the Kigali court. Often times an accused will confess his/her guilt to law enforcement thus establishing the essential elements of a case. Later the accused will come into court and deny the confession and his/her guilt. No additional investigation would have been done. At this time the judge will be required to enter the field, view the crime scene and interview witnesses.

computers, file cabinets or even shelves to organize the files. With the inevitable influx of thousands of cases this creates an urgent problem for one of the important aspects of the justice system.

#### G. Prisons

The prison situation in Rwanda is serious. For a country who's normal prison population is half of what it is currently facing, today's figure of approximately 39,000 is staggering. With the passage of each day new inmates are being introduced in an already overcrowded system with no end in sight. As of April 27, 1995, the Kigali prison contained 8,629 prisoners, none of whom have been convicted and are all awaiting trial. All but approximately 500 of these prisoners are genocide cases. Although all of the following discussion focuses on the Kigali prison, the problems are not limited to there.

The main problem for Kigali prison is the increasing population. The prison is an old prison built in 1930 with a capacity of approximately 2,500+ prisoners. The prisoners are forced to remain standing and lack necessities such as beds clothes and shoes.<sup>18</sup> Of the thousands of prisoners, hundreds are minors. During a visit, I personally saw dozens who were no more than 10-13 years of age and were mixed with the adult population.

In discussing with the prison director the issue of whether each inmate has been identified he states that most have files. The director says that his prison will not accept a prisoner without a file and the proper paper work. The director admits, however, that this was not always the case. There still remain some inmates whose reason for being in custody is unknown.

The prison does have form prison files which are used for registration of inmates. The document appears to demand the pertinent information such as biographical data, nature of charge, sentence, prison file number, prosecution number and merits if any.<sup>19</sup> The files do not contain a photograph or fingerprints.<sup>19</sup> Unfortunately there is not a clear system in place for the filing of these documents. The files are simply stacked on a table in no particular order and how a particular file is retrieved is from the masses is unclear.

---

<sup>18</sup> Food and health care is also a problem. The inmates are fed cornmeal daily with no supplements. The prison has no physician on staff and has an inadequate infirmary.

<sup>19</sup> Some prisons with the help of international groups are beginning to create identification cards. These cards will contain photographs and presumably will be entered into the file.

The corresponding of an inmate to a file poses a problem. The inmate does not have a booking number which he wears that relates to the file. If the director or someone wishes to see an individual his or her name is simply called out in the prison in hopes that they will answer.

A similar problem exists with corresponding prison file to the prosecution's case number. Although the prison file does or should contain the prosecution case number, with no system to identify a case to an accused or a prisoner to a prosecution number that minimal correspondence is futile.

Another and important problem that the prison faces is the lack of civilian prison guards. Prior to the war the director of the Kigali prison had 70 jailers, now there remains only 7. This problem is felt all over the country. Before war there were over 400 prison guards for 17 prisons. Today the numbers are substantially less. With this lack of staffing the director is forced to rely on the military, who is also the primary arresting agency, for security. Their presence poses the following "justice" problems and causes an uneasy environment for all.

First, the director of the prison is not in a position to discipline the military when they wrong. He cannot garnish wages or suspend from work.

A second problem is that the military is inexperienced in "jailing". They do not know the proper policing or guarding procedures and have not been trained in these areas.

Lastly, the presence of the military creates a coercive environment. In Gaseongi, for example, the military remains present in the interview room while the IPJ interviews an accused. Both the IPJ and the accused feel intimidated and the interviewer feels that he is not getting an true confession.

The prison also lacks materials. These materials range from vehicles to typewriters. The director says that vehicles are necessary to transport the accused to court, hospital, or simply to get supplies. Before war the Kigali prison had 4 vehicles, 2 trucks, 1 pickup and 1 car. Now they have zero. As for typewriters and other supplies they are lacking and are necessary for basic record keeping and accounting.

A final area of need in the prison is personnel. The prison lacks a sufficient number of assistants such as, social workers, secretaries and typist. Before war the Kigali prison had 15 social works, 4 typist, 4 secretaries. Now it has 5, 1, and 2 respectively. Without them the prison environment suffers and the welfare of the inmates go unaddressed.



## IV

## INTERNATIONAL EFFORTS

The international efforts in Rwanda can be divided into two areas; national prosecutions and international tribunal. Both areas are of equal importance and have their problems. The national prosecutions entail a significant level of donor activity and requires coordination between all involved. The international tribunal is independent yet stands for a symbol of justice that most Rwandans hope will some day come to their country.

A. Donor coordination

Donor coordination continues to be a predominant issue in Rwanda. The concern is that there are many donors addressing the same issue without knowledge of what the other donors are doing. The result is that there are duplicate efforts and possibly inconsistent ends. As a result a concerted effort is under way to effectively coordinate the donor activity into a manageable structure in order to maximize the donor potential.

On May 2, 1995, at a UN donor meeting a plan of coordination was proposed and was essentially as follows. The various United Nation organizations will identify the areas where technical assistance is needed and material supplies are required. This information is forwarded to a justice cell of the ministry of justice. Within the cell is a director general from the ministry, a group of directors, a coordinator appointed by the UN, and several experts who will examine the needs. The cell will then solicit donors for their contribution. Before final approval for implementation of the programs is granted, the plans must be approved by a committee which includes the ministers of plan, interior, defense and justice. (please see attached UN coordination diagram). The hope is that this coordination will finally dislodge many resources which will eventually move a system that has been in desperate need of assistance.

B. International Tribunal

The status of the International tribunal in Rwanda continues to be a problem. From my first day in country to the last, the question remained the same, when will the international tribunal begin? The people are getting very restless and frustrated. They feel that the international community has the resources to prosecute and yet still fail to do so.

At the present time the International tribunal has no real presence on the ground. They do have an office however there is no one there, not even a secretary. On May 2, 1995, as well as May 5, 1995, I visited the office and found it to be vacant other

than equipment. I asked a UN official if the prosecutors were in town and available, she responded "I have not seen them in a long time, I did not realize that they still used that office". She then referred me to a Supervisor at UNAMIR who may have information as to when the tribunal would be in the country. I was unable to locate him. He apparently went on vacation for two weeks, leaving no subordinate.

The Rwandan prosecutors are also eager for the tribunal to begin. The prosecutors say that they are ready and willing to work together with the international prosecutors. In fact the Rwandans say that they have a few files which they feel involve the organizers and should be examined by the tribunal. To date, however, the tribunal has not reviewed their work and according to one prosecutor has not even made contact.

With the noted absence of the tribunal, no gathering of evidence has taken place. All that has done is that a UN special investigation unit has identified where evidence may be found and gathered. The evidence is not being preserved or kept.<sup>20</sup> With the passage of time, for most Rwandans the idea that the tribunal will be able to bring justice appears bleak.

## V

### Recommendations

The needs of the Rwandan justice system are vast and many. Every area in the process is desperate and in need of assistance. Where the United States should lend assistance must not only depend on the needs of the system but also upon where our efforts would be most productive. Any aid given should be done strategically and specifically targeted at those areas which will propel the process of justice. It is those areas which are critical and vital to the process. Although some of the following suggestions may have some legal barriers it is important that they be presented and considered.<sup>21</sup> Many of the following suggestions may not have the immediate impact of dislodging all obstacle, but are necessary if the system is to

---

<sup>20</sup> This information came directly from an UN SIU team member. He expressed his frustration that evidence which he has identified was either being destroyed or lost with the passage of time.

<sup>21</sup> The recommendations focus primarily on technical assistance and training. This is not to say that hardware or material supplies are not necessary. To the contrary they are. Every area is in desperate need of pen, paper, typewriters, computers and transportation. Without these any technical assistance provided would be futile.

survive both long term and more importantly at the mid-term level.

A. IPJ

The majority of the delays or problems in administering justice in Rwanda are due to poor investigations and incomplete files. It is in these areas for which the IPJ is primarily responsible and vital. The IPJ by the nature of its role is the most critical and essential agency to the justice system in Rwanda and is the backbone for the prosecution. Without them justice can not function. They carry the lion's share of the burden by conducting all the investigations and the majority of the interviews. If genocide cases are to move forward and be adjudicated, the process begins with them.

The problems in investigations are not the result of lack of will or desire by the IPJs. They are simply due to poor training, lack of resources and manpower. In order to cure the problem and thus allow justice to flow, a two fold approach must be taken. First, new IPJs must be trained and introduced to the system. With such low numbers the existing IPJs are taxed and overwhelmed to the point that any progress they make is minute and trivial. They cannot afford to invest the time to adequately investigate a case and properly present them to the prosecutor or in turn to the National Triage Commission. With increased numbers the work load can be shared and divided into a manageable figure thus increasing productivity and efficiency. The second approach should be to provide advance training for existing IPJs and new IPJs after they have had some field experience. This advance training should be in the form of one week seminars and in groups of twenty. Its purpose would be to target specific areas of investigative techniques which are related to the genocide cases. Such training would resolve the concerns and problems faced by both the prosecutor and the National Triage Commission and would result in files which are ripe for review.<sup>22</sup>

---

<sup>22</sup> The United States should consider not only funding a training program but also sending qualified personnel to instruct. An American perspective would be welcomed and would add diversity.

Assistance in providing training programs can be given by a non-government organization named The Citizen Network. They have recently provided entry level training for IPJs and with proper funding are in a position to continue to do so. Although the issue of advance seminars has not been discussed with the organization, it would seem logical that they would be able and willing to help.

### B. Gendarmerie

The United States assistance to the gendarmerie should be similar to that provided to the IPJ. That is training new officers and provide advance investigative training for those with experience.

If we are able and choose to train in law enforcement techniques, this area would also be beneficial. With correct arrest procedures in place and being followed many of the problems Rwanda is now facing would be alleviated.

### C. Prosecutor's Office

How to assist to the prosecutor's office is an area which should be carefully considered and well thought out. Should we provide hardware or send personnel is a difficult question. Both are needed.

If the United States is to provide personnel we must be careful and keep in mind that the brand of justice which will be administered in Rwanda may not be what most American lawyers are accustom to. It may be quick and summarily issued with slight regard to individual rights.

A safer course of assistance would be in providing supplies and training to the prosecutor and his support staff. By supplies it is meant, paper, pen, typewriters and vehicles for investigations. In training it should be in caseload management and organization. The U.S should consider sending a team of administrator from various prosecutor's offices for this task. Many of our counties have vast experience in managing high volume caseloads.

The above cited assistance may not have the full immediate impact desired however it is critical to mid and long term survival of justice.

### D. National Triage Commission

It is this writer's opinion that the National Triage Commission must be supported, at least on an interim bases. Based on the high volume of cases, it is necessary to have a system in place that will have the affect of streamlining the prosecution. By having a governing body review the files and determining which cases are sufficient, require further investigation and which cases should be dismissed, the process of dispensing justice is narrowed into a manageable frame work. The only issue which remains is what the make up of a reviewing body should be and whether it is advisable to sanction the presence of the military.

Due to the political realities which currently exist in Rwanda the triage must be comprised of the members which it now embodies. It is important that all aspects of the government be represented and involved in the process. In order for one branch to accept a dismissal of a genocide case, such as the military, they must be part of and have input in the decision. If they are not the result may be, as has happened prior to the formation of the commission, that suspects will be rearrested and tension between branches of government will rise causing fear and reprisals.<sup>23</sup>

#### E. Courthouses

If the United States is to provide assistance to the courthouses such help should be directed at rebuilding the infrastructure. Without the necessary accommodations to handle the large volume of cases justice will be paralyzed. Once the basics, such as paper, pens, computers, and tables are provided the issue of providing personnel can be considered.

Providing magistrates, as in prosecutors, is a sensitive issue. Again the justice which will be administered may not be what we are accustomed to. If we do send personnel they must be carefully selected and made aware of the political realities which are so intertwined with the justice issue.

#### F. Court Clerks

The court clerks are the backbone of the court system. Their revival is essential and must take priority. The United States should consider training new personnel who will become experienced and able to process the large volume of cases and thus facilitate the flow of the court proceedings. In providing the training we should look to our available resources such as our larger counties and districts who have experience in high volume case management. These agencies should help develop a computer system and program which will adequately track the files and create easy access to information. The goal of the assistance must be to cure both the current emergency situation and to provide a foundation for the future.

#### G. Prisons

Unfortunately for the United States prison, administration is one of our strengths. If we are to help the Rwandan

---

<sup>23</sup> Before the formation of the commission prosecutors actions were questioned and suspects were rearrested. A judge was also found missing after dismissing a genocide case. Since the formation of the commission cases have been dismissed by the triage without adverse consequences.

government with the internal prison issues the training of jailers is an important area.

The U.S. should consider assisting in developing a separate jailer's office equal to our county jail deputies or U. S. Marshals. Their sole duty would be to process inmates through the system from beginning to end. The new Rwandan jailers would become experts and be free from political influences. This type of assistance would have the affect of removing the military from the justice field while having a long term positive effect.

To provide the training the United States should consider sending team of administrators consisting of county personnel and military personnel who have experience in processing a large number of people in a short period of time. These administrators could install computer programs and help develop a system which will identify and track an inmate. The system should be able to locate a person no matter where s/he is and determine when s/he is moved.

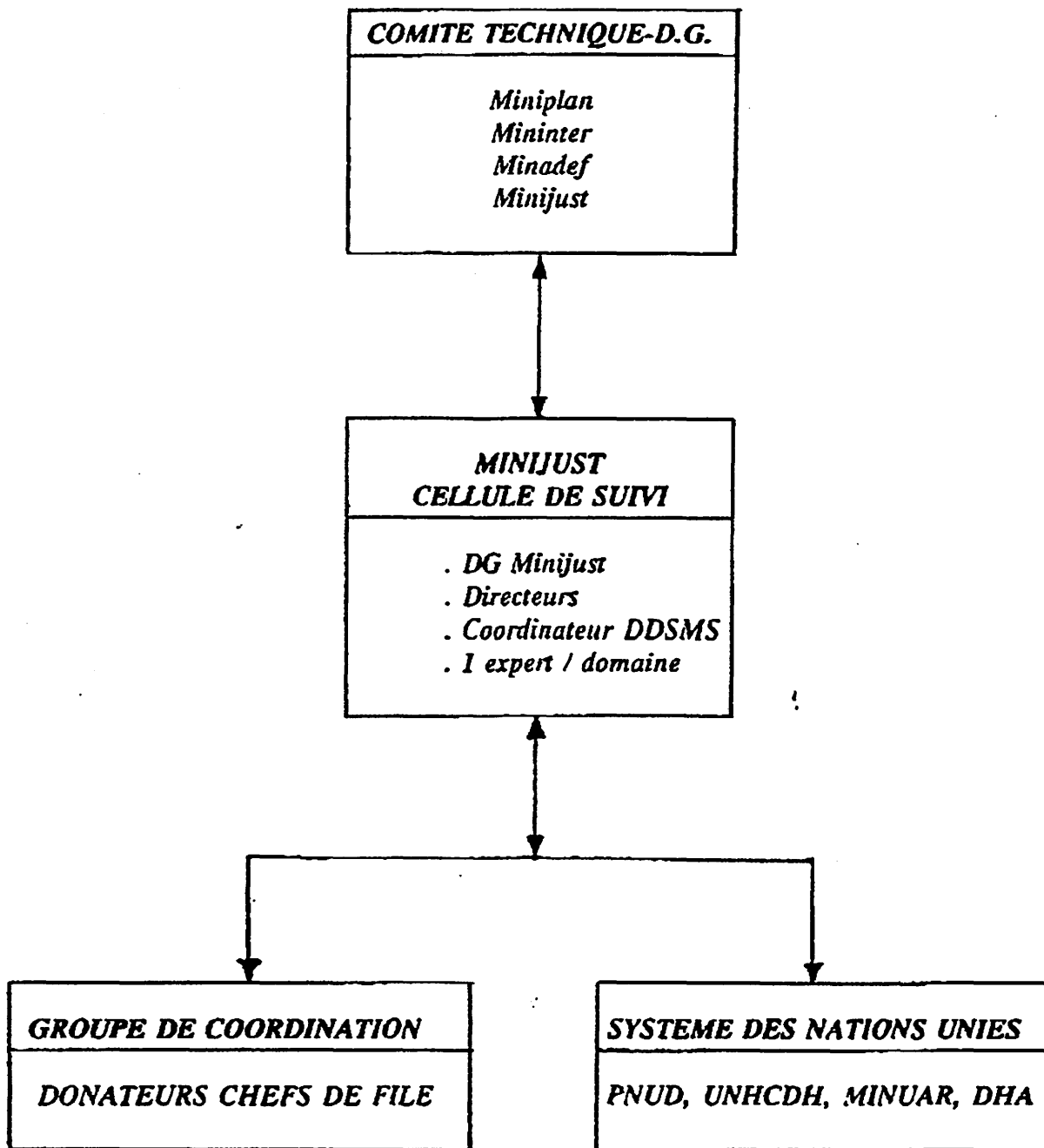
## VI

### CONCLUSION

With a justice system in such dire need the United States, with its experience and resources, should make a concerted effort to help jump a stalled process and bring hope to a desperate people. By providing material goods as well as substantial technical assistance justice can return to the African country. We must keep in mind that the process may be slow and difficult. But in the end with proper assistance it should prevail.

**STRUCTURE DE COORDINATION PROPOSEE**

02/05/95

**SECTEUR DE LA JUSTICE**

## ORGANIGRAMME - Recruitment of foreign mag

## PHASE II

