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RWANDA
Unfair trials: Justice denied

I. INTRODUCTION

The first trials in Rwanda of defendants accused of participation in genocide and other crimes against humanity opened in late December 1996. Trials have since taken place in January and February 1997 and scores more have been announced. The start of the trials represents a significant step towards justice in Rwanda and towards ending the culture of impunity which has allowed massive human rights violations to continue for decades. However, the conduct of some of the first trials has raised grave doubts about fairness, prompting fears that in the near future, a large number of people may be sentenced to death and executed after unfair trials.

These fears are accentuated by the apparently arbitrary nature of many arrests in Rwanda. About 100,000 people are now held in prisons and detention centres across the country - in conditions amounting to cruel, inhuman and degrading treatment - most of them accused of participating in the genocide and other crimes against humanity. A significant proportion of the tens of thousands facing genocide charges, unfair trial and possibly execution may be innocent. Meanwhile, many of those who played a critical role in planning and organizing the genocide and other crimes against humanity continue to evade justice.

The crimes committed during the genocide in 1994 devastated the lives of millions of Rwandese and shocked the world. The people of Rwanda, the international community and non-governmental organizations including Amnesty International have been calling for justice ever since. Those responsible for the brutal death of as many as one million people have to be identified and held accountable for their actions.

Amnesty International welcomes efforts made by the Rwandese Government to bring to trial those suspected of these heinous crimes and recognizes the enormous difficulties faced in a country still trying to reconstruct its institutions in the aftermath of the genocide. The judicial system, which was almost totally destroyed, is still short of resources, trained personnel and basic facilities and equipment. The number of defendants is huge, the crimes of which they are accused are horrific, and the issues raised by the trials are extremely sensitive. The organization and provision of fair trials in these circumstances presents a significant challenge. However, Amnesty International believes that for the government's efforts and the trials themselves to be effective, they need to conform to international standards of fairness. Otherwise, justice will not be seen to be done, public confidence in the judiciary will not be restored, and the government will have lost an opportunity to show its determination to respect human rights. More importantly, those actually guilty of genocide and other crimes against humanity may escape being punished and instead, some innocent people may suffer.

Standards of fairness are all the more important in view of the severity of the sentences, in particular the death penalty. Amnesty International believes that if the death penalty is applied after these trials, the cycle of violence in Rwanda will be perpetuated. The death penalty is a form of official violence and violent retribution is not justice. A government committed to ending human rights violations must rise above vengeance and promote and protect human rights, especially the right to life. Whatever the crimes of the detainees, the death penalty remains a denial of the right to life.

The concerns and recommendations in this report are based in part on the observations of Amnesty International trial observers who were present in Rwanda at the end of December 1996, in January 1997 and in early February 1997, and in part on Amnesty International's continuing close monitoring of the progress of trials in the broader context of the overall human rights situation in Rwanda.

On 30 August 1996, a new law was adopted in Rwanda, entitled the Organic Law on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed since 1 October 1990 (Organic Law no.8/96)[1]. This law governs the trials of those accused of participation in the genocide and other crimes against humanity. In addition to concerns about the fairness of the first trials, Amnesty International has concerns about aspects of the Organic Law itself, several of which are summarized in this report.

II. THE RIGHT TO A FAIR TRIAL: OVERVIEW OF NATIONAL AND INTERNATIONAL STANDARDS

Rwanda has made a commitment under international law to respect international standards of fair trial by ratifying the International Covenant on Civil and Political Rights (ICCPR)[2] and the African Charter on Human and Peoples' Rights (African Charter)[3]. These international obligations voluntarily undertaken by Rwanda recognize that every person shall have the right to:

-a fair and public hearing by a competent, independent and impartial tribunal;

[1] *Loi organique sur l'organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l'humanité, commises à partir du 1er octobre 1990.*

[2] See in particular Article 14 of the ICCPR.

[3] See in particular Article 7 of the African Charter as defined by the resolution of the African Commission on Human and Peoples' Rights on Right to Recourse Procedure and Fair Trial adopted at its 11th Session in March 1992.

-be presumed innocent until proven guilty;
-be informed promptly of the nature and cause of the charge;
-have adequate time and facilities for the preparation of his or her defence;
-be tried in his or her presence, to defend himself or herself in person or through a lawyer of his or her choice;
-be provided with state-funded legal assistance where the defendant is unable to afford a lawyer;
-examine, or have examined, witnesses against him or her and to call witnesses to testify on his or her behalf;
-have the free assistance of an interpreter if he or she cannot understand the language used in court;
-not be compelled to testify against himself or herself or to confess to guilt;
-appeal to a higher tribunal;
-compensation if a final conviction is reversed or there is pardon by reason of a miscarriage of justice;
-not be tried or punished again for an offence for which he or she has already been finally convicted or acquitted.

In addition, there are numerous international standards which spell out the right to fair trial, including the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers. In cases where the accused faces the death penalty, the UN Safeguards guaranteeing protection of the rights of those facing the death penalty provide that:

"*[c]apital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure fair trial*".

Furthermore, the right to be presumed innocent until proved guilty is enshrined in Article 12 of the Rwandese Constitution and Article 16 of the Rwandese Code of Penal Procedure. Article 14 of the Rwandese Constitution also enshrines the right to defence.

The International Criminal Tribunal for Rwanda

The first trial before the International Criminal Tribunal for Rwanda (ICTR) commenced in Arusha, Tanzania, in January 1997. The ICTR was established by the United Nations Security Council in November 1994 to prosecute the main perpetrators of genocide and other crimes against humanity committed in Rwanda. In respect of some accused, the ICTR has concurrent jurisdiction with the Rwandese courts. Articles 17 to 20, 22, 24 and

25 of the statute of the ICTR incorporate a number of important international standards for fair trial, including most of the rights recognized in Article 14 of the ICCPR, such as the right of a defendant to consult with a defence lawyer of his or her choosing and where he or she cannot afford a lawyer, he or she is provided one by the ICTR. Another important fair trial standard incorporated into the ICTR's statute is the right of the defendant not to be compelled to testify against himself or herself, or to confess guilt.

The guarantees of the right to fair trial in the ICTR statute are supplemented by further important guarantees in the ICTR Rules of Procedure and Evidence of the rights of suspects during investigation, such as the right to be informed by the prosecutor in a language he or she understands of his or her right to be assisted by counsel of his or her choice or to have one assigned to him or her, the right to have the free assistance of an interpreter and the right to remain silent. Moreover, Rule 42(B) provides that "[q]uestioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his right to counsel".

The statute of the ICTR precludes the imposition of the death penalty for all offences, including genocide, crimes against humanity and serious violations of humanitarian law. It allows the judges to exercise discretion in the imposition of a sentence of imprisonment, enabling them to take into consideration any aggravating or mitigating factors.

III. THE FIRST TRIALS IN RWANDA

By the end of February 1997, at least 13 defendants had been sentenced to death. At least six had been sentenced to life imprisonment and one had been acquitted.

On 27 December 1996 - in the first trial -, the court in Kibungo tried **Déogratias Bizimana**, a former medical assistant, and **Egide Gatanazi**, a former local government administrator, on charges of genocide and crimes against humanity committed in 1994.

Their trial lasted only about four hours. The defendants had no access to legal counsel either during the crucial period of investigation by the prosecutor before the trial or during the trial. Déogratias Bizimana asked to be allowed to present his defence in French, but this was refused although French is one of the official languages of Rwanda[4]. He also asked for an adjournment as he had not had enough time to study his case file, but this too was refused on the grounds that one day was sufficient. The defendants were not given the opportunity to summon witnesses for their defence or to cross-examine prosecution witnesses. The atmosphere in the court was reportedly hostile to the defendants. It has

[4]See Article 4 of the Constitution of the Republic of Rwanda, dated May 30, 1991.

been reported that defendants were booed and prosecutors applauded during the trial, without any intervention by the presiding judge. On 3 January 1997 the two men were pronounced guilty and sentenced to death. They have filed an appeal, within the required two weeks period. By the end of February, their appeal had not yet been heard.

In a trial in Byumba, which began on 31 December and resumed on 9 January, the prosecution asked for a death sentence for **François Bizumutima**, a former teacher accused of participation in the genocide and other crimes against humanity. When the defendant asked for a lawyer, he was asked by the judge and the prosecutor why he needed one. The witnesses he had asked for did not appear in court. On 17 January, he was sentenced to death.

The trial of three other former teachers accused of genocide and other crimes against humanity, **Augustin Ngendahayo, Faustin Niyonzima** and **Ignace Nsengiyumva**, took place in Butare on 10 January. The trial lasted about four hours. There was no defence lawyer present, even though the defendants had reportedly instructed a lawyer to represent them in court. The defendants' lawyer had reportedly requested an adjournment of the trial but his request was rejected. The three men were convicted on the charges and on 17 January, they too were sentenced to death.

On 13 January, **Callixte Ngendahimana** and **Javan Bavugayabuca** were tried in Gisenyi. The court denied the defendants the postponement they had asked for to give themselves time to read the case and prepare their defence. On 21 January they were both sentenced to death.

The trial of **Froduald Karamira** - widely believed to have played a leading role in the planning and implementation of the genocide and other crimes against humanity and to have actively supported the *interahamwe* militia who carried out widespread massacres of Tutsi civilians - began in the capital, Kigali, on 14 January. Froduald Karamira was a former vice-president of the Hutu-dominated *Mouvement démocratique républicain* (MDR), Democratic Republican Movement party, and leading figure of its hardline faction known as MDR-Power. He was the first major suspect accused of playing a leading role in the organization of the genocide to appear before the Rwandese courts. Prosecution witnesses were called to summarize their accusations. During the first hearing, spectators reportedly laughed at the defendant and chanted in the courtroom without being stopped by the judges. Karamira's lawyer, Paul Atita of Benin, requested an adjournment of 15 days to enable him to consider the court file and to prepare the defence case. His request was accepted. The trial resumed on 28 January and lasted three days. The presence of a defence lawyer ensured greater adherence to procedures. On 14 February, Froduald Karamira was sentenced to death.

Four other defendants appeared in court in Kigali on 14 January. The trial of three of them was adjourned. Paul Atita offered his services as a defence lawyer for the fourth: **Léonidas Ndikumwami**, a businessman of Burundian nationality. However, he was told that he did not have the official authorization to represent the defendant. His request for an adjournment to obtain the necessary authorization was rejected by the judge. The trial of Léonidas Ndikumwami proceeded nevertheless, without a defence lawyer; he was convicted and sentenced to death on 20 January.

On 28 January, two defendants were tried in Gikongoro. Neither were represented by a defence lawyer. **Vénuste Niyonzima** was sentenced to death, after his repeated requests for a postponement to obtain a lawyer were turned down. The second defendant, **Jérémie Gatorano**, was sentenced to life imprisonment. Jérémie Gatorano had confessed to killing two children but his confession was judged incomplete as he had not denounced the co-authors of the crime; he was therefore judged ineligible for plea bargaining and could not benefit from a reduced sentence.

Further trials in Gikongoro reportedly resulted in at least five other life sentences and one acquittal: **Israel Nemeyimana** was acquitted on 18 February after the judge reportedly ruled that there was no evidence against him.

The first woman to be tried on accusations of having participated in the genocide and other crimes against humanity was **Virginie Mukankusi**, who appeared before the court in Gitarama on 30 January. Her defence lawyer claimed that he had not had sufficient time to study the contents of her case file but the trial was not adjourned. None of the defence witnesses named by Virginie Mukankusi were called to testify. The defendant did not appear to understand all the procedures during the trial and contradicted herself during her defence on several occasions. Her lawyer pleaded that she should benefit from mitigating circumstances on the grounds that she was an ignorant and unintelligent peasant. The prosecution called for the death penalty. Virginie Mukankusi was sentenced to death on 28 February.

Several other trials also took place during January and February; some have been temporarily adjourned. Further trials have been announced throughout the country in the coming weeks and months.

IV. AMNESTY INTERNATIONAL'S CONCERNS ABOUT THE TRIALS

The standards of the trials of those accused of genocide and other crimes against humanity in Rwanda have varied considerably. Amnesty International is seriously concerned that several of the first few trials - including several where defendants were sentenced to death - failed to conform to international standards and Rwandese law. Ironically, some of the more prominent suspects believed to have played a significant role in the planning of the

genocide and other crimes against humanity - such as Froduald Karamira - appeared to benefit from trials which had fewer problems, whereas some of the lesser-known defendants, those with little or no education or those who may have been less well-informed of their rights were subjected to trials which fell short of basic standards of fairness.

Amnesty International is appealing to the Rwandese Government to demonstrate its commitment to human rights by ensuring that all those accused of genocide and other crimes against humanity receive fair trials, in accordance with its obligations under international law, and are not subjected to the death penalty. It calls on the Rwandese authorities to take action in the following areas.

a. Defence lawyers

The absence or lack of proper training and experience of defence lawyers remains the single most significant obstacle to the fairness of the trials in Rwanda.

There has been a striking contrast between the trials where the accused have been represented by defence lawyers and those where they have not. Trials where defence lawyers were present had noticeably fewer shortcomings, illustrating a realistic potential for trials which could be conducted fairly in the future, if the political will is there and if the necessary resources are made available. In cases where the accused have been allowed a defence lawyer and where sufficient time has been allowed for the lawyer to prepare the defence, trials were characterized by greater respect for proper procedures. The presence of defence lawyers did not appear to influence the outcome of the trials but ensured that the accused stood a chance of presenting their defence more adequately. Thus their presence not only ensured that individual trials were more consistent with the requirements of international standards but in a broader educational sense, demonstrated to the population and to the authorities that the presence of a lawyer is not something which should be feared and does not constitute an obstacle to justice. As such, trials such as that of Froduald Karamira - which was broadcast live on the national radio and listened to by a large proportion of the population - have set an important precedent in Rwanda.

However, to date, trials where defence lawyers have been able to represent the accused adequately have tended to be the exception. In some cases, requests for postponements to enable the defendant to obtain a lawyer were turned down. In others, defendants did not ask for a lawyer but may not have been aware of their right to legal representation.

The most pressing problem is the shortage of human resources. In contrast with a total of about 100,000 prisoners awaiting trial, there are only 16 defence lawyers currently practising in Rwanda. The present climate of hostility towards those accused of

genocide presents additional problems and may explain why some Rwandese defence lawyers are reluctant to become involved in these trials. Some Rwandese lawyers refuse to act for those suspected of genocide and other crimes against humanity on ideological or emotional grounds. Several lawyers - including at least one foreign lawyer - have reported receiving verbal threats, including death threats if they proceeded with the defence of those accused of these crimes.

So far, most of the defence lawyers in the trials have been provided through *Avocats sans frontières* (Lawyers Without Borders), a non-governmental organization based in Belgium which has set up a project in Rwanda to ensure that at least some of the defendants facing trial as suspects of genocide and other crimes against humanity have legal representation. However, this project alone cannot be expected to fund and provide defence lawyers for all the tens of thousands of suspects awaiting trial in Rwanda.

The right to legal counsel remains a crucial element in ensuring a fair trial and is recognized in both Rwandese and international law. It should be clear that this right is a necessity, especially for defendants who may be sentenced to death.

Article 36 of the Organic Law 8/96 - under which the prosecutions are taking place - states:

"Persons prosecuted under the provisions of this organic law enjoy the same rights of defence given to other persons subject to criminal prosecution, including the right to the defence counsel of their choice, but not at government expense."

Article 14 of the Rwandese Constitution states:

"La défense est un droit absolu dans tous les états et à tous les degrés de la procédure."

(Defence is an absolute right in all states and at all stages of the procedure).

Despite this, senior government officials, including in the Ministry of Justice, have stated to Amnesty International and others that they were prepared to see trials proceed without defence lawyers.

In the first trials, the accused were not informed of their right in law to be represented by a lawyer, neither were they asked whether they had tried to find a lawyer, nor whether they were prepared to proceed without a lawyer.

The provision of Article 36 of the Organic Law 8/96 which states that the government of Rwanda will not provide state-funded legal counsel violates Rwanda's solemn treaty obligations. Where an indigent defendant is unable to pay for a defence

lawyer, the state must provide legal counsel, especially in cases where the death penalty may be imposed.

Article 14(3)(d) of the ICCPR imposes a binding legal obligation on the Rwandese Government to provide legal assistance to a defendant:

"... in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

A case in which the accused faces the death penalty is such a case; as Safeguard 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty makes clear, in any such case the person suspected or charged is entitled to "adequate legal assistance at all stages of the proceedings".

In some of the first trials the defendants may not have asserted their right to a defence lawyer because of their inability to pay. The failure of the court to inform defendants of the right to a defence lawyer was compounded by the failure of the state to provide legal counsel to such defendants. Trials where the defendants may be sentenced to death or life imprisonment are clearly those "where the interests of justice so require" that the defendants are provided with state-funded legal assistance. The UN Human Rights Committee, in finding a violation of Article 14(3)(d) in the case of *Pinto v Trinidad and Tobago* stated that:

"...legal assistance to the accused in capital cases must be provided in ways that adequately and effectively ensure justice ..."[5]

To ensure a fair trial, defendants should have access to legal counsel during interrogation and before trial, sufficient time to prepare a defence and adequate opportunity to hold confidential discussions with their legal representatives. Defence lawyers should have prompt and adequate access to case files and other relevant documents and should be able to challenge the admissibility of confessions obtained under duress or torture before the trial begins. Principle 21 of the UN Basic Principles on the Role of Lawyers states:

"It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time".

[5]No. 232/1987.

The plea bargaining or confession and guilty plea procedure, which is set out in Chapter III of the Organic Law 8/96, will only work effectively where there are loyal defence counsel who have won the trust of their clients and are able to advise them of the interest that a guilty plea may have. Furthermore, defence lawyers will be able to ensure that the guilty plea procedure is not abused.

In the trials in Kibungo, Byumba and Butare, adequate time to consult case files was not allowed and there were no defence lawyers present at the trials. In Kigali, Paul Atita, the lawyer representing Froduald Karamira, offered to represent another defendant, Léonidas Ndikumwami, who was appearing in the same court. The court refused on the grounds that he did not have the official authorization to represent the defendant. Yet it also refused to allow the adjournment requested to obtain this authorization. In the case of Vénuste Niyonzima, who was tried in Gikongoro on 28 January, the defendant's request for a postponement to enable him to obtain a defence lawyer was also rejected. During the trial, Vénuste Niyonzima insisted that he wanted a lawyer and claimed that he had not had sufficient time to study his case file. The judge claimed that he had had ample time to read the file (18 days) and the defendant's request for more time to obtain a lawyer was turned down. The trial proceeded and Vénuste Niyonzima was sentenced to death on 4 February.

These cases illustrate a flagrant violation of the right to legal representation - all the more grave in these cases because the defendants were sentenced to death.

Recommendations

1. a)Amnesty International urges the Rwandese Government to ensure that all accused are promptly informed of their right to legal counsel and are aware of the availability of foreign lawyers and advocates to provide defence assistance, in the absence of a sufficient number of Rwandese lawyers.

   b)Article 36 of the Organic Law 8/96 should be amended to bring it in conformity with international law. State-funded legal counsel should be provided in all cases where the death penalty or life imprisonment may be imposed and where defendants are unable to obtain a lawyer of their choice or to afford the services of a defence lawyer.

   c)The government should adopt measures to ensure that defence lawyers have access to files and are able to prepare the defence case without any hindrances or interference.

d)Defence lawyers should be allowed to advise defendants on the plea bargaining scheme provided for in the Organic Law 8/96 and to ensure that it is not abused.

e)The Ministry of Justice should establish a system whereby legal advice is readily available within the prison structure, initially involving Rwandese and foreign lawyers who could advise prisoners at an early stage.

2.In cases where the defendants were not informed of their right to defence counsel or where the right to legal counsel has been denied - such as in the trial of Léonidas Ndikumwami - the conviction should be set aside and there should be a re-trial which enables the defendant to have access to legal representation and to full guarantees of a fair trial.

3.Foreign states and non-governmental organizations with appropriate expertise should help Rwanda establish an intensive recruitment and training program to train a greater number of Rwandese defence lawyers. The use of foreign defence lawyers in the trials in Rwanda is a welcome form of assistance in the short-term and foreign states and organizations should ensure that such projects continue. However, this can only be viewed as a short-term measure. The establishment of an adequately trained, permanent body of Rwandese defence lawyers is essential for the many trials which will be taking place in the months and years ahead and for the longer term future of human rights protection in Rwanda. To this end, moves towards the establishment of a national bar in Rwanda must be encouraged. The international community should invest sufficient human and financial resources to ensure that this becomes a reality.

b. Preparation of the case for the defence

The ICCPR, to which Rwanda is party, states that all accused have the right "to enough time and necessary facilities to prepare their defence and to communicate with counsel of their own choosing" (Article 14(3)(b)). Although these periods are not defined in international standards, the UN Human Rights Committee has stated in General Comment 13 on Article 14 of the ICCPR:

"*What is 'adequate time' depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel.*"[6]

The Rwandese Code of Criminal Procedure provides that the accused must receive details of the charges and evidence against them at least eight days prior to the trial. Eight

[6]General Comment 13 adopted at the 21st session of the Human Rights Committee, CCPR/C/21/Add.3

days is insufficient time in a case where the death penalty could be imposed and where it may be difficult to locate some of the defence witnesses and other evidence.

In the case of the trial in Kibungo on 27 December, Déogratias Bizimana was told of the date of his trial on 19 December 1996 - just six days before - and saw his case file for the first time only the day before the trial. This is grossly inadequate in a case of such severity, with the death penalty as a possible outcome. Déogratias Bizimana asked for an adjournment to prepare his case, but this was refused. He did not have a copy of his case file during the trial and had to rely on his memory to answer questions about evidence within it. The second defendant, Egide Gatanazi, when asked to present his defence, stated that he could not remember what the prosecutor had said. He did not have a copy of the case file with him, nor any writing materials.

In the trial in Butare on 10 January, the defendants' lawyer had reportedly requested an adjournment prior to the date of the trial to have time to consult the case file, which totalled more than 100 pages; his request was turned down.

In the trial in Gisenyi on 13 January, Javan Bavugayabuca's and Callixte Ngendahimana's request for an adjournment to give them sufficient time to read the case file and prepare a defence was also turned down. The trial proceeded, without a defence lawyer. On 21 January both men were sentenced to death.

In some more recent cases, such as the trial of Froduald Karamira where the lawyer representing the defendant requested an adjournment to allow time to adequately prepare the defence, the trials have been postponed for short periods. This has been a welcome development. Several government officials told Amnesty International that they saw no reason why reasonable requests for adjournments should not be granted. However, the requests for postponement by unrepresented defendants appear to have been denied in most instances so far.

The difficulties which defendants have experienced in preparing their defence have been aggravated by the appalling conditions in Rwandese prisons, including serious overcrowding, lack of lighting, absence of writing materials, and no guarantee of provision of assistance for illiterate defendants or those with little education.

Recommendations

1. Amnesty International urges the Rwandese Government to ensure that all defendants are given sufficient advance notice of the date of their trial and the evidence against them. They should be given adequate time, space and facilities, including writing materials, to prepare their defence. If necessary, the trial should be postponed to allow sufficient time for preparation.

The inability of the government to provide defendants or their lawyers with copies of documents due to lack of facilities and resources is a further reason to allow defendants or their lawyers sufficient time to read and take notes of the contents of the files. In cases where prison conditions pose additional obstacles to the adequate preparation of defence, separate premises could be provided for defendants to study their case file and consult their lawyer.

2.While further delays would be regrettable, the advantages of the enhanced fairness of the trial and the ability of the defendant to prepare an adequate defence would outweigh the adverse effects of any delays. Given the gravity of the cases and severity of the sentences, every precaution must be taken to ensure that there are no miscarriages of justice. Reasonable postponements should be granted, especially in cases involving the death penalty.

c. Composition of the courts - no guarantee of competence and independence

Most of the judicial officials involved in the genocide trials, including prosecutors and judges, have only received up to six months' training; many have no prior legal training whatsoever. Amnesty International appreciates the difficulties of rebuilding the judicial system since 1994 and notes the significant progress made in recent months. However, it remains concerned that the use of judicial officials who are not adequately trained - however sincere their intentions to act independently and fairly - could seriously jeopardize the process and outcome of trials, especially in view of their complexity, the gravity of the crimes and the severity of the sentences. The recognition of the lack of experience of some of these officials is illustrated by the example of the President of one of the special chambers set up for the trials of those suspected of genocide who expressed to Amnesty International his wish to observe trials at the International Criminal Tribunal for Rwanda in Arusha, Tanzania, and trials in other countries to compensate for his lack of legal training. Like many others, he had only had six months' training.

Statements by some judicial and government officials, made around the time of the first trials, to the effect that defendants should not request legal counsel or that they do not see the need for defendants to have legal representation have also raised questions about their impartiality and independence.

Under the Rwandese legal system, proceedings commence well in advance of the trial itself with the prosecutor gathering evidence by examining witnesses and obtaining their statements. The defendant is not permitted to be present during this phase of the proceedings. The prosecutor also obtains a statement from the defendant, which together with statements of witnesses and other evidence comprises the court file which is forwarded to the judges. In practice, the accused does not have access to the file, which

contains the bulk of the evidence considered by the court, until shortly before the trial. On the day of the trial the court file is examined by the judges and if there is sufficient evidence of guilt, the defendant is called upon to refute the evidence. As the evidence gathering stage of the proceedings is crucial to the outcome of the trial, it is imperative that prosecutors charged with the responsibility of compiling the court file act with scrupulous independence and impartiality. The task of the prosecutor is not only to find evidence which proves the guilt of the accused, but also to establish if there is any exculpatory evidence. In the current climate in Rwanda prosecutors face immense pressure which may affect their impartiality and independence.

As in many other civil law systems, the defendant should have an opportunity to be represented during the prosecutorial investigations, a crucial phase of the proceedings, and to challenge the evidence and witnesses considered by the prosecutor. Under Rwandese law the court file is not accessible to the general public, only to the parties. This makes it difficult to undertake an adequate assessment of the proceedings during the investigatory phase.

Throughout 1995 and 1996, a number of judicial officials have been removed from their posts or been forced to leave the country for fear of their lives, apparently as result of government or military interference with their duties. Some officials have been arrested and are currently in detention awaiting trial on charges of having participated in the genocide. For example, Silas Munyagishali, assistant prosecutor of Kigali, was arrested in February 1996 and faces charges of genocide and other crimes against humanity. His trial began in Kigali on 30 December 1996 but was adjourned after it was decided to transfer the case to the court at Gitarama. Amnesty International, who interviewed Silas Munyagishali in Kigali prison in 1996, believes that one of the reasons he may have been singled out by the authorities is because he had refused to authorize the detention of people accused of genocide against whom there was no evidence. Shortly before his arrest, he had complained about the lack of objectivity and absence of procedures in the *commission de triage* (screening committee set up to recommend the release of detainees in cases of insufficient evidence).

Another example is Célestin Kayibanda, Prosecutor of Butare, who was arrested in May 1996 on charges of genocide, murder and other crimes against humanity. Shortly before his arrest, he had reportedly denounced the interference of administrative and military authorities in the functioning of the judiciary.

These cases are not unique. Several other judicial officials, including prosecutors, assistant prosecutors, judges and defence lawyers have been threatened, arrested, "disappeared" or even killed. Reports of such cases have continued in early 1997. For example, Innocent Murengezi, a defence lawyer who had been involved in representing both the civil parties and the accused in the genocide trials, disappeared on 30 January. In

February there were reports that he had been arrested but to Amnesty International's knowledge, his whereabouts had not yet been established or communicated to his family by early March.

Recommendations

1.Amnesty International urges the Rwandese Government to provide further training to judicial officials to improve their competence and expertise and appeals to foreign governments and organizations to provide the necessary assistance. Until the competence of Rwandese judicial officials is improved, the Rwandese Government should once again consider accepting the help of foreign legal experts at all levels of the judiciary to serve alongside Rwandese judicial officials. The government has accepted the assistance of foreign experts as advisors and as defence lawyers but has rejected such assistance at the levels of judges, magistrates or prosecutors, even though such assistance could help accelerate the progress of trials considerably and enhance the independence, impartiality and competence of the courts. In many African countries foreign judicial officials, mainly African, serve in the judicial system.

2.The government should take measures to protect the independence of the judiciary at the national and local levels and ensure that judicial officials are able to carry out their functions independently and without interference. In particular, the government should adopt measures to protect judicial officials from human rights violations such as arbitrary arrest, detention, ill-treatment, "disappearance", and other forms of harassment or intimidation.

d. Conduct of the trials

In the climate of bitterness and suspicion which prevails after the genocide, it is likely that many of those accused of genocide and other crimes against humanity will be considered guilty unless proved innocent. This would be a negation of a fundamental principle of justice which states that all defendants are presumed innocent until proved guilty and which is enshrined in the ICCPR and the African Charter. Unless this principle is vigorously upheld, despite the pressures of popular opinion, innocent people could be convicted and even executed.

The conduct of some of the first trials is not encouraging. In at least two trials, the court apparently did not prevent defendants being jeered by spectators. In another, the judge and prosecutor asked the defendant why he needed a defence lawyer. Such conduct could result in the court becoming susceptible to pressure from the public and in the defendants being convicted on the basis of public acclaim rather than on the basis of incontrovertible evidence of their guilt. Public statements by government officials

declaring all defendants guilty in the months preceding the trials add to the risk of erroneous convictions and risk perpetuating the belief among the population that those accused of participation in the genocide - whether rightly or wrongly - have no rights. In this context, judges will inevitably find themselves under real or perceived pressure to find most defendants guilty.

In the first trials, there were several elements of the process that gave rise to concern. As stated above, in several cases, requests by defendants or their lawyers for an adjournment in order to prepare for the trial were not given serious consideration. In Kibungo, the court's insistence that Déogratias Bizimana present his defence in Kinyarwanda, whereas he had prepared it in French, may also have been prejudicial.

In several trials, such as that of Déogratias Bizimana and Egide Gatanazi in Kibungo and that of Virginie Mukankusi in Gitarama, prosecution witnesses did not give oral evidence in court. The court seemed to accept the written statements of the prosecution witnesses without testing the credibility of these witnesses or corroborating the correctness of their statements. Although written statements were in the case file, the accused did not appear to possess a copy of the case file. The defendants were not able to question or cross-examine prosecution witnesses, or to put inconsistencies to them, and generally to test the reliability of their evidence. At the end of his trial, Egide Gatanazi stated that he did not understand the process as he had not been allowed to question the witnesses. The court also did not give serious consideration to Déogratias Bizimana's challenge to the admissibility of statements made by certain prosecution witnesses.

In some trials, the defendants were not advised by the court to call witnesses or present material in their defence. For example, Virginie Mukankusi in Gitarama named several people that she claimed could corroborate her evidence, but these people did not appear before the court. It is the responsibility of the court authorities to assist the defendants in securing the attendance of material witnesses, especially as the defendants are in custody and in most instances are given very short notice of the trial date. Where the defendant indicates that there may be defence witnesses who could give evidence to exonerate them, the court should adjourn the hearing to allow these witnesses to be brought to court and for their testimony to be heard.

These trials therefore violated Article 14(3)(e) of the ICCPR, which states that all accused have the right :

"*To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.*"

The UN Human Rights Committee has stated in General Comment 13 on Article 14 of the ICCPR:

"This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution."

The trials also violated Article 7 of the African Charter as interpreted in the resolution of the African Commission on Human and Peoples' Rights on "The Right to Recourse Procedure and Fair Trial", which states that accused persons shall be entitled to:

"Examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them."

Amnesty International is especially concerned about the absence of witnesses during the trials in Rwanda in view of the fact that, as mentioned above, the process of compilation of case files cannot be assumed to be thorough and independent in all cases and that defendants and their lawyers have not had access to their case file throughout the investigation period.

In some trials, part of the case against the defendants were a statement made under interrogation (*procès-verbal*). In the Kibungo trial, Déogratias Bizimana and Egide Gatanazi claimed that they had been tortured into making confessions, but the court did not seriously investigate these allegations. The presiding judge asked Déogratias Bizimana whether he had a hospital medical certificate proving he had been tortured, but when the defendant said that the hospital did not provide such certificates, but that he still had visible traces of the injuries sustained, the court did not order any investigation. Instead of the court testing the admissibility of these statements - that is, whether the statements were made freely and voluntarily - the court demanded that the defendants prove their inadmissibility as evidence.

François Bizumutima, the defendant in the Byumba trial, also claims to have been ill-treated regularly while in detention. However, it is not clear whether the alleged ill-treatment was carried out specifically in order to extract a confession. Amnesty International has received numerous testimonies describing ill-treatment of detainees in detention centres in Rwanda.

The acceptance by the court of confessions without a proper investigation of allegations by the defendants that these were extracted under torture violates Article 14(3)(g) of the ICCPR which provides that no person shall be compelled to testify against himself or to confess guilt. The UN Human Rights Committee in its General Comment on Article 14 stated that this provision was linked to the prohibition of torture in Article 7 of the ICCPR and the right of detainees to be treated with humanity and respect for their dignity in Article 10(1) of the ICCPR. The Committee stated that:

"*The law should require that evidence provided by means of such methods* [which violate Article 7 or 10(1)] *or any other forms of compulsion is wholly unacceptable."*

Placing the burden on the defendant to disprove the voluntariness of the statements alleged to have been made under torture not only is inconsistent with the obligations of the prosecution to prove each element of the crime beyond a reasonable doubt, but violates the duty of the authorities under Article 7 of the ICCPR to conduct prompt and impartial investigations of complaints of torture.

Recommendations

1. Amnesty International appeals to the Rwandese Government to ensure that the conduct of these trials meets international standards, as set out in the ICCPR and the African Charter, to which Rwanda is party. In particular, it should ensure that the presumption of innocence is maintained until the guilt of the defendants has been proved beyond all reasonable doubt according to law, that defendants have the opportunity to cross-examine prosecution witnesses, to call defence witnesses and to challenge the admissibility of evidence.

2. The government should issue a directive to judicial officials advising them to undertake prompt, impartial and thorough investigations of all allegations of torture and to exclude any confession obtained as a result of duress or torture.

3. The Rwandese authorities should ensure that defendants and their lawyers have access to the court file throughout the investigation period to enable them to challenge the testimony of witnesses, to request the prosecutor or the judge to re-examine witnesses, or to ask the prosecutor to interview witnesses who may be able to provide exculpatory evidence.

e. Right of appeal

Once their sentence has been announced, defendants have 15 days within which they may file a notice of appeal. In most trials to date, defendants who have been sentenced to death

are reported to have appealed or to be intending to appeal. By the end of February 1997, their appeals had not yet been heard.

Amnesty International is concerned that the Organic Law 8/96 does not provide an adequate right of appeal. According to Article 24 of the Organic Law, appeals may only be based on questions of law or flagrant errors of fact. This provision provides the Court of Appeal with the same jurisdiction as a Court of Cassation and limits the basis on which it may consider an appeal. Although it is yet to be seen how the Court of Appeal interprets its jurisdiction, Article 24 may prevent a case being considered in its entirety on appeal, and, for example, whether a defendant was advised of his right to legal counsel or not may not be considered during the appeal. In contrast, where an appeal is filed against a civil claim or a criminal conviction arising from a private prosecution, the Court of Appeal is entitled to decide the case in its entirety.[7]

Furthermore, the Court of Appeal has to first decide the admissibility of an appeal before considering the appeal on its merits. If the Court of Appeal adopts a restrictive approach during the admissibility procedure, most appeals may be dismissed at that stage. The provision of Article 24 of the Organic Law 8/96 therefore does not adequately afford a defendant "the right to his conviction and sentence being reviewed by a higher tribunal" as enshrined in Article 14(5) of the ICCPR.

The requirement of international law is that national laws must guarantee a procedure in which both the factual and legal aspects of a case may be reviewed by a higher court. The limitation of appeal by Article 24 of the Organic Law 8/96 to questions of law or flagrant errors of fact does not constitute a full appeal and amounts only to a limited review. Article 14 (5) of the ICCPR stipulates:

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law".[8]

As the Organic Law 8/96 provides for mandatory sentences for Category 1 and Category 2 defendants, there can be no appeal against the sentence imposed by the trial court (*Tribunal de première instance*) on the basis that the court did not take into account mitigating factors. This does not allow for individual circumstances and mitigating factors, such as coercion, to be taken into consideration. Once a defendant has been placed in a particular category, the mandatory sentence applies. The failure to allow mitigating factors to be taken into account for such crimes is inconsistent with the practice of international

[7]Article 29 of the Organic Law 8/96

[8]See also Article 24 and Article 25 of the statute of the ICTR which provide for appeal and review proceedings.

courts in cases of genocide, other crimes against humanity and serious violations of humanitarian law. The International Military Tribunals at Nuremberg and Tokyo and the International Criminal Tribunal for the former Yugoslavia have all considered factors in mitigation for persons convicted of such grave crimes.[9]

Chapter III of the Organic Law 8/96 provides for "Confession and Guilty Plea Procedure" to enable defendants to engage in some form of plea bargaining and to benefit from a lesser sentence in return for confessing guilt. This procedure may be open to abuse as there are no safeguards against torture and duress. Once a defendant has been convicted and sentenced under this procedure, there is no appeal to a higher independent tribunal, not even against the sentence imposed by the trial court.[10] Therefore if a defendant makes a confession as a result of torture, and the trial court accepts the confession without undertaking a thorough investigation of the allegations of torture, the defendant has no recourse to the Court of Appeal for a review of the decision of the trial court.

An application for review of a decision of the Court of Appeal is only available to a defendant who is sentenced to death by the Court of Appeal following an acquittal by the trial court.[11] The Procurator General may also apply for review by the Court of Cassation of any decision of the Court of Appeal which is contrary to law.[12]

Some defendants who were not represented by a lawyer in the trial court - such as the two defendants in the Kibungo trial - will benefit from legal counsel in the appeal stage but there are doubts about whether assistance at such a late stage in the legal proceedings can realistically be expected to change the verdict.

Recommendations

1.Amnesty International calls on the Rwandese Government to review the Organic Law with a view to amending its provision to allow for an adequate right of appeal, in conformity with international law, in particular:

a)allowing persons who have been convicted and sentenced under the confessions and guilty plea procedure to appeal to a higher court;

[9]See most recently the decision of the Trial Chamber in Prosecutor v Edemovic, Judgement, Case No. IT-96-22-T, 29 November 1996.

[10]See Article 10 (7) and Article 24 of the Organic Law 8/96.

[11]Article 25 of the Organic Law 8/96.

[12]Article 26 of the Organic Law 8/96.

b)expanding the basis on which appeals may be filed to allow the Court of Appeal to decide each appeal in its entirety and to allow for a review of the decision of the Court of Appeal by the Court of Cassation in all cases;

c)allowing the courts a discretion in sentencing, to take into account factors in mitigation, and permitting defendants to appeal against sentences imposed by the trial court.

2.The Rwandese Government should ensure that appeals are not rejected at the admissibility stage by the Court of Appeal so that defendants are afforded the right to have their convictions and sentences reviewed, and to enable the Court of Appeal to rectify the failures of the trial courts, especially where fair trial guarantees have not been afforded to the defendants.

V. THE DEATH PENALTY

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."[13]

Amnesty International is unconditionally opposed to the use of the death penalty, in all countries and in all circumstances, because it is a state-sanctioned violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment, as recognized in Articles 3 and 5 of the Universal Declaration of Human Rights. The situation is of special concern when people may be sentenced to death after unfair trials. The last recorded execution in Rwanda took place in 1982. Amnesty International believes that resuming executions after 15 years would represent a significant steps backwards for human rights in Rwanda.

There has been significant progress towards ending the use of the death penalty. More than half the countries in the world (99 countries), including 13 African countries, have abolished the use of capital punishment in law or practice. In declaring the death penalty unconstitutional, the South African Constitutional Court stated:

"*Punishment must to some extent be commensurate with the offence, but there is no requirement that it be equivalent or identical to it. The state does not put out the eyes of a person who has blinded another in a vicious assault, nor does it punish a rapist by castrating him and submitting to the utmost humiliation in gaol. The*

[13] *Article 6 of the International Covenant on Civil and Political Rights.*

state does not need to engage in the cold and calculated killing of murderers in order to express moral outrage at their conduct."[14]

The anger and desire for retribution felt by many people in Rwanda means that support for the death penalty is inevitably widespread. It is sometimes argued that application of the death penalty is the only way to end impunity in a country such as Rwanda which has experienced mass human rights violations. Amnesty International firmly believes that the use of the death penalty can only perpetuate the cycle of bitterness and revenge, instead of bringing reconciliation and respect for human rights to Rwanda. It believes that the Rwandese Government should refrain from using the death penalty and instead, apply prison sentences, as appropriate to the gravity of the crimes, for those found guilty of genocide and other crimes against humanity. It should take this opportunity to demonstrate its commitment to respecting human rights and putting an end to the use of violence in Rwanda. Amnesty International believes that the use of the death penalty in Rwanda is incompatible with initiatives aimed at reconciliation in the aftermath of the genocide and the return of hundreds of thousands of refugees.

The irrevocability of the death penalty is of particular concern in a country whose judicial system has been virtually destroyed, where popular feeling against defendants accused of genocide runs high, and where many normal legal safeguards are not yet in place. Amnesty International fears that the first wave of defendants to be tried are especially likely to be sentenced to death after unfair trials and even executed as the government may wish to hold up these first cases as examples to demonstrate its determination to punish those responsible for the genocide. If a person is executed pursuant to judgment handed down in an unfair trial, such execution will amount to an arbitrary execution and a violation of the right to life.

In Article 2 of the Organic Law 8/96, defendants in the genocide trials are divided into four categories. Category 1 suspects, if found guilty, will be sentenced to death. Category 2 will be sentenced to life imprisonment, Categories 3 and 4 will receive other sentences. When Amnesty International's Secretary General held talks with the government in Rwanda in November 1996, the Procurator General argued that the death penalty in Rwanda had been virtually abolished as its use was restricted to Category 1 defendants. Nevertheless, Amnesty International fears that it may be widely applied, as the definition of Category 1 defendants is very broad. It includes:

"persons who acted in positions of authority at the national, prefectoral, communal, sector or cell level, or in a political party, the army, religious organizations or in a militia and who perpetrated or fostered such crimes"

[14]The State v T Makwanyane and M Mchunu, Case No. CCT/3/94, paragraph 129.

It also includes:

"notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed".

Amnesty International is concerned not only about the broad range of individuals who may be sentenced to death under this law but also that the definition of Category 1 may be used to victimize certain individuals unfairly, for example those who occupied positions of local authority during the genocide or who were real or suspected opponents of the Rwandese Patriotic Front - which came to power in July 1994 - but may not have taken any part in the massacres. On the basis of the pattern of arrests in recent months, it appears that individuals who served under the previous government at the national or local levels are most likely to be arrested on accusations of genocide and other crimes against humanity. In some cases, this may be justified. However, in others, arrests appear to have been, and may continue to be, carried out regardless of the role which the individual may or may not have played in relation to the genocide or the capacity under which they served under the former government. It is not possible to deduce that an individual is guilty simply because of the position they occupied during a particular period. More specific charges and detailed evidence must form the basis for any arrest.

On 30 November 1996, the government published a list of 1,946 names of people described as Category 1 defendants. This list is not exhaustive; further names may be added periodically. It is not clear exactly on what basis the list has been compiled, by whom, what methodology was used nor what level of detailed charges exist against those listed. The list was published one month before trials began. One concern about the wide distribution of this and previous lists of genocide suspects is that it reinforces the perception that the accused are presumed guilty unless they prove their innocence and before they are formally charged and tried. Thus, it could expose them to retribution even before they appear before a court.

The fact that certain individuals are named on the list could prejudice the outcome of their trial. According to the Organic Law 8/96, courts have no discretion as to the sentence for Category 1 defendants - they can only sentence them to death. However, those whose names have not appeared on the list have the option of confessing and pleading guilty. Article 9 of the Organic Law 8/96 states:

"*... a person who confesses and pleads guilty, and whose name was not published on the list of Category 1, shall not be placed in Category 1 if the confession is complete and accurate. If his confession should place him in Category 2.*"

Those whose names are on the list do not appear to be able to benefit from this option. In effect, for them, the list could amount to a form of judgement or even a death sentence.

Recommendations

1.The Rwandese Government should institute a moratorium on executions pending further discussion on the use of the death penalty.

2.The Rwandese Government should initiate and promote open debate and discussion on the death penalty among the population and help raise awareness of the human rights issues involved.

3.Amnesty International recommends that the Organic Law 8/96 be amended so as to allow the courts to take cognizance of aggravating and mitigating factors so that they may exercise a discretion in the imposition of sentences. This may avoid the imposition of the death penalty in respect of some Category 1 defendants.

4.Amnesty International urges the Rwandese Government to allow defendants sentenced to death legal counsel and sufficient time for the preparation of appeals and petitions for clemency and to commute any death sentences imposed after these trials.

5.Serious consideration should be given to discussing with the ICTR the possibility of transferring to Arusha, Tanzania, key suspects of genocide and other crimes against humanity.

VI. CONCLUSION

Despite the many difficulties and sensitivities surrounding the trials of those accused of genocide in Rwanda, the experience to date has shown that fair trials are a real possibility in Rwanda, and not just an unrealistic expectation on the part of outside observers. Amnesty International is urging the Rwandese authorities to ensure that this possibility becomes a reality and that international standards of fairness are adhered to in all cases.

Several government officials have acknowledged that in some cases, procedures were not respected and have stated that they are willing to try to improve the situation. Amnesty International encourages efforts such as those being made by the Ministry of Justice to raise awareness among the population of the issues surrounding the trials, to provide information on both the rights of the accused and those of the victims of the crimes committed during the genocide, and to issue instructions that proper procedures should be respected during the trials.

Amnesty International is opposed to impunity and always encourages governments to investigate human rights abuses and to bring perpetrators to justice - especially in situations of such extreme severity as that of the genocide which took place in Rwanda in 1994. However, the problem of impunity will not be resolved by violating the rights of those suspected of carrying out human rights abuses. In Rwanda what is needed is justice, not vengeance. Justice requires that those accused of genocide receive a fair trial, in accordance with international standards - obligations which Rwanda has voluntarily undertaken by ratifying international treaties. Furthermore, justice must not only be done, but must be seen to be done if it is to make possible reconciliation on the basis of individual criminal, not group, responsibility. .

It is precisely because Amnesty International is concerned that those guilty of genocide and other crimes against humanity should not escape justice that it urges the Rwandese Government to ensure that all trials are conducted fairly. To do otherwise is to risk providing the guilty with means to escape punishment by claiming - justifiably - unfair trials, and risk violating the rights of the innocent. That justice is done is of concern not only to the people of Rwanda, but also to humanity at large. That is the burden and responsibility that the Rwandese judicial system faces.