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IN PURSUIT OF INTERNATIONAL JUSTICE: THE FIRST FOUR-YEAR TERM OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Stuart Beresford[†]

I. INTRODUCTION

Although often eclipsed by its counterpart, the International Criminal Tribunal for the former Yugoslavia (the Yugoslavia Tribunal), the International Criminal Tribunal for Rwanda (the Tribunal) has achieved significant results during the first four-year term of its existence. During this period, the Tribunal has issued twenty-eight public indictments against forty-eight individuals, of whom thirty-eight are in custody. Two trials have been completed resulting in three convictions, and a further two individuals, including the former Rwandan Prime Minister, have pleaded guilty to the charges against them. Despite these achievements, the Tribunal has been plagued internally by administrative and managerial problems that have had the potential to undermine the considerable efforts undertaken by its staff to bring to justice the perpetrators of one of this century's worst genocides. Although this article examines primarily the legislative history of the Tribunal during its integral term (which ended 25 May 1999) and the administrative, investigative and judicial work undertaken, it also identifies a number of problems the Tribunal has encountered, as well as the means taken to resolve them.

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II. BACKGROUND

On 6 April 1994, a plane carrying the Presidents of Rwanda and Burundi, Juvenal Habyarimana and Cyprien Ntaryamira respectively, was shot down by unknown assailants as it was about to land in the Rwandan capital, Kigali.¹ During the next three months, Rwanda was plunged into a genocidal frenzy, which culminated in the deaths of between 500,000 and one million people and the displacement of one-third of the country's eight million inhabitants.²

Rwanda had been the most densely populated country in Africa and its mostly rural population spoke Kinyarwanda, a Bantu language.³ While 85% of its population were Hutu, 14% Tutsi and 1% Batwa, generations of intermarriage had substantially reduced inter-population physical differences.⁴ However, European colonists—by exploiting the existing social divisions to facilitate their own indirect rule—accentuated rather than diminished the social differences between the Hutu and Tutsi populations. Believing that they were more intelligent and better equipped to govern, the Tutsis were provided access to education and social institutions at the expense of the Hutu.⁵

With the end of colonialism imminent, the Belgian authorities began to support Hutu aspirations for a greater role in their country's affairs, believing that minority rule was unsustainable and fearful of the pan-African tendencies which they discerned among the Tutsi ruling class.⁶ As

1. Sam Kiley, *Tribal Violence Flares in Rwandan Capital*, *TIMES* (London), Apr. 8, 1994, at 12.

2. According to a report submitted by R. Degni-Segui, Special Rapporteur of the United Nations Commission on Human Rights,

the number of persons killed throughout the territory is to be numbered in the hundreds of thousands, estimates ranging from 200,000 to 500,000.

In fact, even the latter figure is probably less than the reality. Some observers think that the figure is close to a million. It is not sure that the exact number of victims will ever be known.

U.N. ESCOR, Hum. Rts. Comm., 51st Sess., ¶ 24, U.N. Doc. E/CN.4/1995/7 (1994).

3. Rwanda is divided into ten prefectures (Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali and Ruhengeri) each of which is governed by a prefect. The prefectures are further subdivided into communes, which are placed under the authority of bourgmestres. The bourgmestre of each commune is appointed by the President of the Republic upon the recommendation of the Minister of the Interior.

4. Paul Magnarella, *Expanding the Frontiers of Humanitarian Law: The International Criminal Tribunal for Rwanda*, 9 *FLA. J. INT'L L.* 421, 422 (1994). See also GERARD PRUNIER, *THE RWANDA CRISIS: HISTORY OF A GENOCIDE* 5 (1995).

5. *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement ¶ 82, Sept. 2, 1998.

6. FERGAL KEANE, *SEASON OF BLOOD: A RWANDAN JOURNEY* 18 (1995).

power passed to the Hutu, years of built-up resentment led to periodic outbreaks of violence against the Tutsis, forcing tens of thousands to flee to neighbouring countries.⁷

In 1973, Habyarimana came to power through a military coup. Following a trend common at the time on the African continent, President Habyarimana introduced the one-party system with the creation of the National Republican Movement for Democracy and Development (Mouvement Révolutionnaire National pour le Développement or "MRND") of which every Rwandan was a member. Although he claimed to share power, most key positions went to Hutu from the region of his birthplace in northwestern Rwanda. Furthermore, President Habyarimana promoted a policy of discrimination against the Tutsi. During his rule there were no Tutsi bourgmestre or prefects, only one Tutsi military officer, two members of parliament and one Tutsi cabinet minister. Hutu in the military were prohibited from marrying Tutsis; all citizens were required to carry ethnic identity cards; and Rwandan Tutsis living in neighbouring countries were routinely denied repatriation.⁸

In July 1990, internal and external pressure led President Habyarimana to accept the multi-party system in principle. Before any substantial changes took place, on 1 October 1990, an attack was launched from Uganda by the Rwandan Patriotic Front (RPF)—comprised mainly of Tutsi exiles demanding the resettlement of Tutsi refugees and the overthrow of the Habyarimana regime.⁹ Despite the fact that troops loyal to President Habyarimana repelled the invasion and killed the RPF leader, Fred Rwigyema, sporadic fighting continued for the next three years. In 1993, the Rwandan Government, under pressure from the RPF, domestic opposition, foreign donors and neighbouring countries, agreed to a comprehensive peace agreement and a transition to democracy. The agreements signed in the Tanzanian town of Arusha provided for power-sharing in all governmental institutions and the repatriation of Tutsi refugees under the supervision of 2,500 peacekeepers belonging to the United Nations Assistance Mission in Rwanda (UNAMIR).¹⁰

Since they were opposed to the concept of power-sharing, Hutu hardliners in the Rwandan Government began to strengthen their power. In March 1992, they formed the Coalition for the Defence of the Republic (Coalition pour la défense de la république or "CDR"). Extremist militia,

7. *Id.* at 19.

8. PRUNIER, *supra* note 4, at 75.

9. Mariann Meier Wang, *The International Tribunal for Rwanda: Opportunities for Clarification, Opportunities for Impact*, 27 COLUM. HUM. RTS. L. REV. 177, 181 (1995).

10. See S.C. Res. 872, U.N. SCOR, 48th Sess., 3288th mtg., U.N. Doc. S/RES/872 (1993).

known as the *Interahamwe* (“those who work together”), were established, trained and then deployed throughout the country.¹¹ At the same time, propaganda calling for the extermination of Tutsis and the assassination of Hutu opposed to the Habyarimana regime began to be broadcast throughout the country over the *Radio des Mille Collines* (RTLM).¹² These events led to an increase in extra-judicial killings, arrests and torture of Tutsis and opposition Hutu.

With the situation in Rwanda worsening, on 6 April 1994, President Habyarimana and other heads of State in the Great Lakes Region met in the Tanzanian capital, Dar-es-Salaam, to discuss the implementation of the Arusha peace accords. President Habyarimana never returned to Rwanda alive. Within thirty minutes of his death, barricades were erected in Kigali and the massacres began. The extremist militias along with the Presidential Guard and the Rwandan Armed Forces (Forces Armées Rwandaises or “FAR”) first singled out moderate and opposition Hutu and then turned their attention to the Tutsi population.¹³ Among the first to die were a number of Ministers in the coalition government, including its moderate Hutu Prime Minister, Agathe Uwilingiyimana. Ten Belgian peacekeepers, who were trying to protect the Prime Minister, died alongside her.¹⁴ This incident provoked the withdrawal of the Belgian contingent that formed the core of UNAMIR. On 21 April 1994, the United Nations Security Council announced the reduction of the peacekeeping force to 270 troops.¹⁵ Thousands of Rwandese who had sought protection at UNAMIR bases were thus abandoned to their fate.

Although initially confined to the Rwandan capital, the massacres soon spread to the countryside. Hundreds of thousands of Tutsis,

11. The *Interahamwe* was augmented by the *Impuzamugambi* (“those who have the same goal”), which was established by the CDR. The members of *Impuzamugambi* “were trained, armed and led by the Presidential Guard and other elements of the Rwandese government army.” *Final Report of the Independent Commission of Experts established in accordance with Security Council Resolution 935 (1994)*, ¶ 65, U.N. Doc. S/1994/1405 (1994) [hereinafter *Final Report*].

12. 1 VIRGINIA MORRIS & MICHAEL SCHARF, *THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA* 52 (1998).

13. *Id.* at 54.

14. *Final Report*, *supra* note 11, ¶ 68.

15. See S.C. Res. 912, U.N. SCOR, 49th Sess., 3368th mtg. ¶ 4, U.N. Doc. S/RES/912 (1994). As the massacres continued, the United Nations reluctantly reversed its position on peacekeepers. On 17 May 1994, the Security Council approved the upgrading of UNAMIR to 5,500 persons and provided it with an expanded mandate to protect civilians and provide security to humanitarian relief operations as well as an expanded right of self-defence against threats to protected sites and populations. See S.C. Res. 918, U.N. SCOR, 49th Sess., 3377th mtg., U.N. Doc. S/RES/918 (1994).

sometimes encouraged or directed by local administrative officials, on the promise of safety, gathered unsuspectingly in churches, schools, hospitals and local government buildings where they were slaughtered, with the victims' bodies being buried in mass graves or thrown in the rivers.¹⁶ Furthermore, "tens of thousands of Tutsi women were . . . raped . . . and/or sexually mutilated."¹⁷

In the meantime, taking advantage of the constitutional vacuum that now existed in Rwanda, Théodore Sindikubwabo, speaker of the former Parliament, created an interim Government and declared himself its President.¹⁸ However, the death of President Habyarimana sparked a new offensive by the RPF. On 8 April 1994, RPF troops stationed in Uganda invaded Rwanda. Facing weak opposition, they soon entered the Rwandan capital. Although the interim Government fled to Gitarama to escape the intensification of the hostilities, battle for control of the capital raged for a further two months.¹⁹ On 4 July 1994, the RPF captured Kigali, forcing troops loyal to the interim Government to retreat to the western regions of the country, near the border of Zaire. This did not stop the killings, which continued unabated until 17 July 1994 when Gisenyi, the last town in the hands of Government forces, fell to the RPF. A unilateral cease-fire was declared immediately, and a new government headed by President Pasteur Bizimungu and Prime Minister Faustin Twagiramungu, both moderate Hutus, was installed.²⁰

III. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

A. *Creation of the Tribunal*

On 1 July 1994, the Security Council adopted resolution 935 (1994), which reminded those involved in the conflict that "all persons who commit or authorize the commission of serious violations of international humanitarian law are individually responsible for those violations and should be brought to justice."²¹ In addition, the resolution requested the Secretary-General "to establish, an impartial Commission of Experts to

16. The Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgement ¶ 110, Sept. 2, 1998.

17. MORRIS & SCHARF, *supra* note 12, at 55.

18. See PRUNIER, *supra* note 4, at 232.

19. See *id.* at 268.

20. See *id.* at 300. The government of Bizimungu "committed itself to building a multiparty democracy and to discontinuing the ethnic classification system" adopted by the Habyarimana regime and utilised with genocidal effect by the interim Government. Magnarella, *supra* note 4, at 424.

21. Lyal S. Sunga, *The Commission of Experts on Rwanda and the Creation of the International Criminal Tribunal for Rwanda*, 16 HUM. RTS. L.J. 121, 121 (1995).

examine and analyse . . . evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide.”²²

The Commission of Experts submitted an interim report to the Secretary-General on 4 October 1994,²³ followed by a final report on 29 November 1994.²⁴ In its interim report, the Commission concluded that the conflict in Rwanda was, for the purposes of international humanitarian law, an armed conflict of a non-international character. The obligations set out in Article 3, common to the four Geneva Conventions of 12 August 1949, and in Additional Protocol II to the Geneva Conventions and relating to the protection of victims of non-international armed conflicts of 8 June 1977, therefore applied to the conflict. The legal norms prohibiting crimes against humanity and genocide were also applicable.²⁵ On the basis of the evidence they collected, the Commission concluded that individuals on both sides of the conflict “had perpetrated serious breaches of international humanitarian law.”²⁶ Furthermore, overwhelming evidence existed to prove that certain Hutu elements had carried out acts of genocide against the Tutsi minority “in a concerted, planned, systematic and methodical manner.”²⁷ On the basis of these findings, the Commission recommended that those individuals responsible for these crimes “be brought to justice before an independent and impartial international criminal tribunal.”²⁸

This recommendation was endorsed by the Secretary-General in a report to the Security Council of 6 October 1994.²⁹ Having determined that the “genocide and other systematic, widespread and flagrant violations of international humanitarian law” committed in Rwanda “constitute a threat to international peace and security,” on the 8 November 1994, the Security Council adopted Resolution 955 (1994) whereby it established a tribunal to prosecute “persons responsible for committing genocide and other serious

22. *Id.* On 26 July 1994, the Secretary-General appointed Mr. Amega Atsu-Koffi (Togo), Ms. Haby Dieng (Guinea) and Mr. Salifou Fomba (Mali) to serve on the Commission. *Id.* at 122.

23. *Preliminary Report of the Independent Commission of Experts*, ¶¶ 146-49, U.N. Doc. S/1994/1125 (1994) [hereinafter *Preliminary Report*].

24. *Final Report*, *supra* note 11.

25. Sunga, *supra* note 21, at 122.

26. *Preliminary Report*, *supra* note 23, ¶ 146.

27. *Id.* ¶ 148.

28. *Id.* ¶ 150.

29. *Progress Report of the Secretary-General on the United Nations Assistance Mission for Rwanda*, U.N. Doc. S/1994/1133 (1994).

violations of international humanitarian law” in Rwanda.³⁰ The Statute of the Tribunal was annexed to the Resolution.

B. *The Statute*

The Statute provided the Tribunal with jurisdiction over persons who violated Article 3 common to the Geneva Conventions and Additional Protocol II during the Rwandan conflict, as well as persons who committed acts of genocide and crimes against humanity in the territory of Rwanda and Rwandan citizens responsible for committing such acts in the territory of neighbouring states, between 1 January 1994 and 31 December 1994.³¹ It further provided that the Tribunal would consist of three organs: the Chambers, comprised of two Trial Chambers with three judges each and an Appeals Chamber with five judges, the Prosecutor’s office, and an administrative Registry.³² In its report, the Commission of Experts recommended that the jurisdiction of the Yugoslavia Tribunal be expanded to include the crimes committed in Rwanda.³³ While the Security Council did not follow this recommendation, it did not create a completely separate tribunal either. Although it has separate Trial Chambers from the Yugoslavia Tribunal, it shares the same Prosecutor, and the composition of its Appeals Chamber is the same as that of the Yugoslavia Tribunal.³⁴

30. S.C. Res. 955, U.N. SCOR, 49th Sess., 3453^d mtg. ¶ 1, U.N. Doc. S/RES/955 (1994). The resolution was adopted by a vote of thirteen in favour to one against (Rwanda), with one abstention (China). The Rwandan Government, which initially advocated the establishment of the Tribunal, objected to the fact that the Tribunal would only have jurisdiction over crimes committed in the 1994 calendar year and not, as they proposed, between 1 October 1990, when the conflict began, and 17 July 1994. They were further critical that the trials would be held outside Rwanda, that judges from certain States involved in the conflict would be biased and that convicted persons would serve their sentences outside Rwanda in countries offering prison facilities. Their final and principal reason for opposition was that the maximum sentence proposed by the Statute, that is life imprisonment, was too low. Since Rwandan law allowed for the death penalty, such a penalty would in their opinion satisfy the demands in Rwanda for justice equal to the gravity of genocide. Sungu, *supra* note 21, at 123. See also Magnarella, *supra* note 4, at 425.

31. “The rationale for this extension of territorial jurisdiction is that [various] Hutu militia and government forces continued to kill and intimidate civilians after they fled in July [1994] to refugee camps set up close to Rwanda’s borders in [neighbouring States].” Jaana Karhilo, *The Establishment of the International Tribunal for Rwanda*, 64 NORDIC J. INT’L L. 683, 698 (1995).

32. *Statute of the International Criminal Tribunal for Rwanda*, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453^d mtg., Annex, art. 10, U.N. Doc. S/RES/955 (1994), reprinted in 33 I.L.M. 1602 (1994).

33. *Preliminary Report*, *supra* note 23, ¶ 152.

34. By providing for common key institutions, such as a common Prosecutor and a common Appeals Chamber, the Security Council ensured that the interpretation and

C. *Initial Activities of the Tribunal*

1. The Seat of the Tribunal

In Resolution 955 (1994), the Security Council decided that the seat of the Tribunal would be determined by the Council "having regard to considerations of justice and fairness as well as administrative efficiency, including access to witnesses, and economy"³⁵ and invited the Secretary-General to submit recommendations as to its possible location. In a report dated 13 February 1995, the Secretary-General, after taking into account various political and practical factors, concluded that "the choice of Rwanda as the location of the seat would not be feasible or appropriate" and recommended that Arusha be selected as the seat of the Tribunal.³⁶ The Security Council agreed, and issued a resolution to this effect on 22 February 1995.³⁷ A Headquarters Agreement between the United Nations and Tanzania was duly signed,³⁸ and after concluding a lease with the management of Arusha International Conference Centre, the Tribunal began operating out of its premises on 27 November 1995.³⁹

2. The Election of the Judges and the Adoption of the Rules

Shortly after the adoption of Resolution 955 (1994), the Secretary-General invited nominations from State Members of the United Nations, as well as non-member States maintaining permanent observer missions at United Nations Headquarters, for the Judges of the two Trial Chambers of the Tribunal. Each candidate had to be of high moral character, impartiality and integrity, and had to possess, in their respected country, the qualifications required for appointment to the highest judicial office. All nominations received by the Secretary-General were forwarded to the

application of international humanitarian law would be consistent between the Tribunal and its counterpart in The Hague. Larry D. Johnson, *The International Tribunal for Rwanda*, 67 INT'L REV. OF PENAL LAW 211, 218 (1996).

35. S.C. Res. 955, *supra* note 30, ¶ 6.

36. *Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955 (1994)*, ¶ 35, U.N. Doc. S/1995/134. See also *First Annual Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 covering the period from 8 November 1994 to 30 June 1996, adopted at the Third Plenary Session of the Tribunal*, ¶ 2, U.N. Doc. A/51/399-S/1996/778, Annex (1996) [hereinafter *First Annual Report*].

37. *First Annual Report*, *supra* note 36, ¶ 3. See S.C. Res. 977, U.N. SCOR, 50th Sess., 3502^d mtg., U.N. Doc. S/RES/977 (1995).

38. *First Annual Report*, *supra* note 36, ¶ 4.

39. *Id.* ¶ 5.

Security Council, which—after drawing up a short list of twelve persons⁴⁰—transmitted the list of candidates to the President of the General Assembly by letter dated 24 April 1995. After eight rounds of balloting on 24 and 25 May 1995, the General Assembly elected Lennart Aspegren (Sweden), Laity Kama (Senegal), Tafazzal Hossain Khan (Bangladesh), Yakov A. Ostrovsky (Russian Federation), Navanethem Pillay (South Africa) and William Hussein Sekule (Tanzania) to serve on the two Trial Chambers.⁴¹

Although the Secretary-General recognised the need for the judges to be elected as soon as possible in order for the rules of procedure and evidence of the Tribunal to be adopted, it was decided that they would operate on an *ad hoc*, part-time basis until shortly before the commencement of the trial proceedings to avoid the financial consequences of them taking office too early.⁴² A special session of the Tribunal was therefore convened for the sole purpose of adopting the rules. Accordingly, between 26 and 29 June 1995, the six judges of the Trial Chambers and the five judges of the Appeals Chamber held the first plenary session of the Tribunal in The Hague, as its premises in Arusha were not yet available.⁴³ In addition to adopting the rules, the judges elected Judges Kama and Ostrovsky as President and Vice-President of the Tribunal, respectively,⁴⁴ and established the composition of the two Trial Chambers.

Over the course of the next six months it became evident that a number of amendments would have to be made to the rules in order to overcome practical problems uncovered during their implementation. Such amendments were adopted at the Tribunal's second plenary session held in Arusha between 8 and 12 January 1996. During the plenary, the judges

40. See S.C. Res. 989, U.N. SCOR, 50th Sess., 3524th mtg., U.N. Doc. S/RES/989 (1995).

41. *First Annual Report*, *supra* note 36, ¶ 7. The Statute of the ICTR was amended by the Security Council in its Resolution 1165 of 30 April 1998 to provide for a third Trial Chamber. Lloyd Williams of St. Kitts and Nevis, Dionysios Kondylis of Greece and Pavel Dolenic of Slovenia were duly elected. On 22 February 1999 the three Judges took up their positions. However, within one month of his appointment, Kondylis resigned and was replaced by Asoka de Zoysa Gunawardena (Sri Lanka). Press Release, *United Nations Secretary-General Appoints New Judge to the Tribunal*, U.N. Doc. ICTR/INFO-9-2-181 (Apr. 23, 1999).

The members of the Appeals Chamber at the time of writing were Gabrielle Kirk McDonald (United States), Mohamed Shahabuddeen (Guyana), Lai Vohrah (Malaysia), Tieya Wang (China) and Rafael Nieto-Navia (Colombia).

42. Karhilo, *supra* note 31, at 712.

43. *Id.*

44. Judges Kama and Ostrovsky were both reelected as President and Vice-President, respectively, at the fourth plenary session of the Tribunal held in Arusha from 2 to 6 June 1997. MORRIS & SCHARF, *supra* note 12, at 372-73.

took the opportunity to promulgate two texts drawn up by the Registrar, Mr. Andronico Adede (Kenya): the rules of detention and the directive for the assignment of defence counsel.⁴⁵

3. The Appointment of the Deputy Prosecutor

Conscious of the support the Tribunal would need from the Government of Rwanda and the deterrent effect that it would have, in Resolution 955 (1994) the Security Council decreed that the Tribunal establish an office in Rwanda itself.⁴⁶ Accordingly, in January 1995, the Tribunal opened an Investigative and Prosecutorial Unit in Kigali.⁴⁷ Two months later the Secretary-General appointed Honoré Rakotomanana, a retired chief justice from Madagascar, as Deputy Prosecutor to serve under Richard Goldstone, who was elected Prosecutor of the Yugoslavia Tribunal in July 1994.⁴⁸

Following his appointment, the Deputy Prosecutor—who was entrusted with overseeing the day-to-day running of the Kigali Office as the Prosecutor was based in The Hague—set out to establish a functioning Prosecutorial Office. His initial efforts in this regard were hindered by a number of security concerns,⁴⁹ in particular, the lack of protection offered to staff members stationed in Kigali and the inappropriate facilities available to safeguard numerous documents passed to the Tribunal by the Commission of Experts and other bodies of the United Nations.⁵⁰ Although such concerns were quickly resolved, the Deputy Prosecutor was forced to spend much of the following year arranging for the recruitment of key personnel and the establishment of the operational structures and procedures necessary for the conduct of investigations. The delays in

45. *First Annual Report*, *supra* note 36, ¶ 28.

46. *See* S.C. Res. 955, *supra* note 30.

47. Karhilo, *supra* note 31, at 711.

48. *U.N. Appoints Prosecutor for Rwandan Tribunal*, N.Y. TIMES, Jan. 15, 1995, at A6. At the start of 1996, Justice Goldstone announced he would leave the Tribunal as he wanted to return to South Africa. On 29 February 1996, the Security Council, by Resolution 1047 (1996), appointed Justice Louise Arbour of Canada as the new Prosecutor of the Tribunal. Justice Arbour took up her post when Justice Goldstone left the Tribunal on 1 October 1996. Barbara Crossette, *2 Tribunals on Atrocities will be led by Canadian*, N.Y. TIMES, Feb. 23, 1996, at A7.

49. Karhilo, *supra* note 31, at 711.

50. As part of their functions, "a number of United Nations organs were in a position to gather or receive information relating to the atrocities committed in Rwanda; notably the High Commissioner for Human Rights, the Special Rapporteur on Rwanda, . . . the Human Rights Field Office in Rwanda, the United Nations peacekeeping operations established for Rwanda and the United Nations Office of the High Commissioner for Refugees." MORRIS & SCHARF, *supra* note 12, at 433. *See also* Sunga, *supra* note 21, at 124.

investigative and judicial activities were caused by the fact that the Registrar was not appointed until September 1995, and that the initial budget allocated to his office was inadequate for the tasks that needed to be performed.⁵¹

4. State Co-operation

Frustrated with the snail-like pace at which the Tribunal was proceeding, many Rwandans became ambivalent towards the work of the Tribunal⁵²—such ambivalence being highlighted by the mass execution of twenty-two individuals found guilty of genocide by domestic courts in Rwanda on 24 April 1998.⁵³ Nevertheless, the support provided to the Tribunal by the international community, as a whole, has remained high. Due to a lack of enforcement mechanisms, the Tribunal is reliant on the cooperation it receives from member States to give effect to its orders, summonses, writs, warrants of arrest and transfer orders. Such cooperation is vital considering that the majority of the leading perpetrators of the genocide fled Rwanda to refugee camps in neighbouring countries or took refuge in sympathetic States.⁵⁴ In January 1995, the leaders of Burundi, Kenya, Rwanda, Tanzania, Uganda, Zaire and Zambia met in Nairobi, the Kenyan capital, and agreed to transfer to the Tribunal those persons responsible for carrying out the genocide.⁵⁵ The following month, the Security Council urged all States “to arrest and detain . . . persons found in their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the . . . Tribunal” and to inform the Secretary-General and the Prosecutor of the details of such cases.⁵⁶ As a result, in the first four years of the Tribunal’s existence, the Governments of the African States of Benin, Burkina Faso, Cameroon, the Ivory Coast, Kenya, Mali, Namibia, South Africa, Togo and Zambia have all surrendered indicted persons to the Tribunal.⁵⁷ Indicted persons have also been arrested in Belgium, Switzerland and the United States.

51. See Catherine Cissé, *The International Tribunals for the Former Yugoslavia and Rwanda: Some Elements of Comparison*, 7 *TRANSNAT’L L. CONTEMP. PROBS.* 103, 114-15 (1997).

52. *Id.* at 115.

53. Kingsley Moghalu, *A Shared Duty to Justice*, *LEGAL TIMES*, Aug. 17, 1998, at 30.

54. Payam Akhavan, *The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment*, 90 *AM. J. INT’L. L.* 501, 509 (1996).

55. Magnarella, *supra* note 4, at 438.

56. S.C. Res. 978, U.N. SCOR, 50th Sess., 3504th mtg., U.N. Doc. S/RES/978 (1995).

57. It should be noted that even though the Kenyan authorities have arrested twelve indictees, they have not been completely co-operative. In October 1995, the Kenyan President, Daniel Arap Moi, announced that not only would his country refuse to co-

The Tribunal has also received assistance from the Rwandan Government "in the transfer of detained witnesses to Arusha . . . and . . . in the . . . internal relocation of certain witnesses who feared for their safety following their testimony."⁵⁸ Other States have issued special travel documents to enable witnesses to appear before the Tribunal and return safely to their place of residence.⁵⁹ Since it does not have its own prison facilities, the Tribunal is reliant on the assistance of States for the enforcement of its sentences. Although only the Government of Mali has signed an agreement to this effect, the Tribunal is confident that a number of other States will sign similar agreements shortly.⁶⁰

With regard to material assistance,

[t]he General Assembly, by its resolution 49/251 of 20 July 1995 invited Member States and other interested parties to make voluntary contributions to the Tribunal both in cash and [in] the form of services and supplies acceptable to the Secretary-General. At the end of 1998, cash contributions to the Voluntary Trust Fund to support the activities of the [Tribunal] amounted to [approximately \$7,500,000.00]. . . .

These funds are used to supplement the regular budgetary funds of the Tribunal for activities in strategic areas such as witness support, investigations, and the transfer of detainees from the custody of various countries to the United Nations Detention Facilities in Arusha.⁶¹

IV. THE INDICTMENTS AND OTHER ACTIVITIES OF THE TRIBUNAL

Despite the aforementioned difficulties, soon after the establishment of the Tribunal, the Prosecutor compiled a list of four hundred suspects, the majority being military and political leaders who had fled Rwanda

operate with the Tribunal, it would actively prevent the arrest of suspects and accused residing therein. Although he subsequently retracted this statement, within months President Moi, along with the leaders of Zaire and certain other African States, were accused yet again of hindering the work of the Tribunal.

58. *Third Annual Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, ¶ 146, U.N. Doc. A/53/429-S/1998/857 (1998) [hereinafter *Third Annual Report*].

59. *Id.* ¶ 147.

60. Press Release, *Cooperation and Assistance of States Key to Success of ICTR*, U.N. Doc. ICTR/INFO-9-2-169 (Mar. 9, 1999).

61. *Id.*

following the collapse of the Hutu regime.⁶² Using the list as a basis for his investigations, the Prosecutor has been able to issue twenty-six public indictments against forty-eight individuals; of whom thirty-eight are in custody.⁶³ These indictments can be divided into four areas: those against the political leadership of Rwanda, the military leadership, individuals associated with the media, and senior government administrators. Accordingly, the investigative and the judicial activities of the Tribunal will be examined under these headings.

A. *Political Leaders*

1. Kambanda

On 18 July 1997, at the initiative of the Prosecutor, an operation code-named NAKI (Nairobi-Kigali) was carried out in which the Kenyan authorities arrested and transferred to Arusha seven prominent officials suspected of having participated in the genocide. Among the arrested was Jean Kambanda, the former Prime Minister of the interim Government and the highest ranking official indicted by the Tribunal to date.⁶⁴ During his initial appearance on 1 May 1997, before Trial Chamber I, composed of Judges Kama, Aspegren and Pillay, Kambanda pleaded guilty to committing genocide and crimes against humanity.⁶⁵ By pleading guilty, Kambanda acknowledged, *inter alia*, that as Prime Minister he “exercised *de jure* authority and control over members of his government,” as well as “senior civil servants and senior officers in the military”; he participated in the dismissal of Jean-Baptiste Habyalimana, the only prefect of Tutsi origin, thus making possible the commencement of massacres of the Tutsi population in the prefecture of Butare; between 8 April and 31 May 1994 he ordered the setting up of roadblocks with the knowledge that these roadblocks were used to identify Tutsi and moderate Hutu to separate and to eliminate them; and on or about 21 June 1994 he encouraged officials

62. “The investigation, which focuses on approximately 400 identified suspects, is being conducted both in and outside Rwanda, notably in other African countries, Europe and North America, where the principal planners of the crime of genocide are believed to be located.” *Further Report of the Secretary-General on Practical Arrangements for the International Criminal Tribunal for Rwanda*, ¶ 5, U.N. Doc. S/1995/533 (1995). See also MORRIS & SCHARF, *supra* note 12, at 451.

63. To enable the arrest of the accused, a number of other indictments have been issued subject to non-disclosure order. MORRIS & SCHARF, *supra* note 12, at 484.

64. The Prosecutor v. Kambanda, Case No. ICTR-97-23-I, Indictment, Oct. 6, 1997.

65. The Prosecutor v. Kambanda, Case No. ICTR-97-23-S, Judgement & Sentence ¶ 3, Sept. 4, 1998.

from "RTL M to continue inciting the massacres . . . stating that this radio station was 'an indispensable weapon in the fight against the enemy.'"⁶⁶

On 4 September 1998, Kambanda was sentenced to life imprisonment. In its judgment the Trial Chamber took the position that the aggravating circumstances surrounding the crimes committed by the accused far outweighed any mitigating circumstances.⁶⁷ In particular, it felt that the position he held within the interim Government at the time he committed the said crimes ruled out any possibility of a lesser punishment.⁶⁸ Three days later, the defence filed a notice of appeal arguing, *inter alia*, that the sentence imposed was excessive and no account had been taken of such mitigating factors as his guilty plea and the co-operation he had provided to the Prosecutor.⁶⁹

2. Niyitegeka

On 15 July 1996, an indictment was confirmed against the Minister of Information of the interim Government, Eliezer Niyitegeka.⁷⁰ Allegedly

[a]t various locations and times throughout April, May and June 1994, and often in concert with others, Eliezer Niyitegeka brought to the area of Bisesero [in the Kibuye Prefecture] armed individuals and directed them to attack the people seeking refuge there. In addition, at various locations and times, and often in concert with others, Eliezer Niyitegeka personally attacked and killed persons seeking refuge in Bisesero.⁷¹

The accused was arrested on 9 February 1999 in Nairobi and was transferred to Arusha two days later. On 15 April 1999, he entered a plea of not guilty to the charges contained in the indictment.⁷²

3. Ntagerura

On 10 August 1996, André Ntagerura, Minister of Transport and Communications and a prominent of the ruling party, the MRND, was charged with six counts of genocide, crimes against humanity and war

66. *Id.* ¶ 39(ii)-(iv), (vii).

67. *Id.* ¶ 62.

68. *Id.* pt. IV.

69. *The Prosecutor v. Kambanda*, Case No. ICTR-97-23-A, Notice of Appeal, Sept. 7, 1998.

70. *The Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-I, Indictment, July 15, 1996.

71. Press Release, *Former Minister of Information Pleads Not Guilty to Six Counts on His Initial Appearance*, U.N. Doc. ICTR/INFO-9-2-178 (Apr. 15, 1999).

72. *Id.*

crimes for his role in the killing of an estimated 100,000 Tutsi civilians in the Cyangugu prefecture between February and July 1994.⁷³ Ntagerura—who had been arrested in Cameroon in March 1996—was transferred to the Tribunal on 23 January 1997 and is currently awaiting trial.⁷⁴

4. Nyiramasuhuko and Ntahobali

In May 1997, Judge Ostrovsky confirmed an indictment against Pauline Nyiramasuhuko, Minister of Family, Welfare and the Advancement of Women in the Government of President Habyarimana and in the interim Government, and her son Arsène Ntahobali, former businessman, on charges of genocide and other violations of international humanitarian law.⁷⁵ Ntahobali allegedly helped establish roadblocks used “to identify, kidnap and kill members of the Tutsi population.”⁷⁶ He is also accused of participating in the kidnapping and raping of several Tutsi women.⁷⁷ Nyiramasuhuko—the first woman to be indicted by an international criminal court—was arrested as part of the NAKI operation on 18 July 1997. Six days later, her son was also arrested by the Kenyan authorities and transferred immediately to Arusha.⁷⁸

5. Karemera et al.

On 7 April 1999, five senior officials of the interim Government including two Ministers, Edouard Karemera, Minister of the Interior and Vice-President of the MRND, and André Rwamakuba, Minister of Education, pleaded not guilty to eleven counts jointly charging them with committing various violations of international humanitarian law.⁷⁹ The five

73. It was alleged that, prior to the outbreak of the genocide, the accused authorised the use of government vehicles for the transport of Interahamwe militia, as well as for the transport of arms and ammunition to and throughout the prefecture of Cyangugu. The Prosecutor v. Ntagerura, Case No. ICTR-96-10A-I, Indictment, Aug. 10, 1996.

74. *Second Annual Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 covering the period from 1 July 1996 to 30 June 1997, adopted on 6 June 1997*, app. III, U.N. Doc. A/52/582-S/1997/868 (1997) [hereinafter *Second Annual Report*].

75. The Prosecutor v. Nyiramasuhuko & Ntahobali, Case No. ICTR-97-21-I, Indictment, May 29, 1997.

76. MORRIS & SCHARF, *supra* note 12, at 490.

77. *Id.*

78. *Id.*

79. The Prosecutor v. Karemera, Case No. ICTR-98-44-I, Indictment, Aug. 28, 1998. Also included in this indictment were Mathieu Ndirumapatse, former Director General for

accused were “alleged to have conspired among themselves and with others to work out a plan with the intent to exterminate the Tutsi population and eliminate members of the opposition, so that they could remain in power.”⁸⁰ In an extensive 108-page indictment, it was claimed “that the components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen, as well as the preparation of lists of people to be eliminated.”⁸¹ The five accused were further alleged to have “organised, ordered and participated in the massacres perpetrated against the Tutsi population and moderate Hutu in Kigali, Butare, Gisenyi, Gitarama and Cyangugu prefectures, and in Kibuye region.”⁸²

6. Bizimungu et al.

On 23 February 1999, Casimir Bizimungu, who served as the Minister of Health in the interim Government, was transferred to Arusha after being arrested in Nairobi.⁸³ On 12 May 1999, Judge Pillay confirmed an indictment against Bizimungu and three other Ministers—Jérôme Bicamumpaka (Minister of Foreign Affairs), Prosper Mugiraneza (Minister of the Civil Service) and Justin Mugenzi (Minister of Commerce and Industry) who were arrested by the Cameroonian authorities the previous month.⁸⁴ The former ministers were jointly charged with committing genocide, complicity in genocide and crimes against humanity.

B. *Military Leaders*

1. Bagosora

On 17 May 1996, Trial Chamber I granted the Prosecutor’s proposal to address a formal request to the Belgian authorities to defer to the competence of the Tribunal the investigations and proceedings instituted

Foreign Affairs in the President’s Office, Joseph Nzirorera, former Speaker of Parliament and Juvenal Kajelijeli, former Bourgmestre of Mukingo commune in the prefecture of Ruhengeri. Two other individuals were included in the indictment; however, their identities have yet to be revealed by the Tribunal.

The five accused were arrested in various African countries in late 1998: Karemera in Togo, Ngirumpatse in Mali, Nzirorera and Kajelijeli in Benin, and Rwamakuba in Namibia. JOHN R.W.D. JONES, *THE PRACTICE OF THE INTERNATIONAL CRIMINAL TRIBUNALS FOR THE FORMER YUGOSLAVIA AND RWANDA* 30 (2d ed. 2000).

80. Press Release, *Five Senior Officials of the 1994 Interim Government of Rwanda Plead Not Guilty to Eleven Counts*, U.N. Doc. ICTR/INFO-9-2-177 (Apr. 7, 1999).

81. *Id.*

82. *Id.*

83. Press Release, *Casimir Bizimungu, Former Rwandan Foreign Minister, Transferred to Arusha*, U.N. Doc. ICTR/INFO-9-2-167 (Feb. 23, 1999).

84. *The Prosecutor v. Bizimungu*, Case No. ICTR-99-50-I, Indictment, May 12, 1999.

by the Belgian courts in respect of Théoneste Bagosora, former Directeur de Cabinet of the Ministry of Defence.⁸⁵ On the same day, Judge Aspegren issued an order requesting the Government of Cameroon to transfer Bagosora, who had been arrested in the country two months earlier, to the Tribunal's custody.⁸⁶

Before the necessary formalities could be completed, the Prosecutor submitted an indictment against Bagosora, which was confirmed by Judge Aspegren on 18 August 1996.⁸⁷ According to the indictment, the accused, who allegedly assumed official and *de facto* control of military and political affairs in Rwanda following the death of President Habyarimana, was responsible, by his acts or omissions, for the killing and serious injuring of an incalculable number of Tutsi men, women and children, as well as the murder of ten Belgian soldiers serving with UNAMIR.⁸⁸ In January 1997, the President of Cameroon, Paul Biya, authorised the transfer of Bagosora to the Tribunal.⁸⁹ On 7 March 1997, the accused pleaded not guilty to the charges contained in the indictment.

2. Nsengiyumva

On 12 July 1996, the Tribunal indicted Anatole Nsengiyumva, former Lieutenant-Colonel in FAR who served as commander of military operations in the Gisenyi prefecture at the time of the genocide.⁹⁰ It was alleged that, on the night of 6 to 7 April 1994, "Nsengiyumva presided over a meeting in Gisenyi prefecture, during which he ordered the participants to organise the killing of [the local Tutsi population]."⁹¹ Furthermore, between April and June 1994, the accused "presided over meetings of several hundred [*Interahamwe*] militia in the Umuganda Stadium in Gisenyi prefecture, where he urged those in attendance to [continue the killings]."⁹² Nsengiyumva, who had been arrested three months earlier in Cameroon at the request of the Prosecutor, was transferred to Arusha on 23 January 1997.⁹³ He is currently awaiting trial.

85. The Prosecutor v. Bagosora, Case No. ICTR-96-7-D, Decision of the Trial Chamber on the Application by the Prosecutor for a Formal Request for Deferral to the Competence of the International Criminal Tribunal for Rwanda in the Matter of Theoneste Bagosora (Pursuant to Rules 9 and 10 of the Rules of Procedure and Evidence), May 17, 1996.

86. MORRIS & SCHARF, *supra* note 12, at 489 n.1641.

87. The Prosecutor v. Bagosora, Case No. ICTR-96-7-I, Indictment, Aug. 18, 1996.

88. MORRIS & SCHARF, *supra* note 12, at 489.

89. *Id.*

90. The Prosecutor v. Nsengiyumva, Case No. ICTR-96-12-I, Indictment, July 12, 1996.

91. MORRIS & SCHARF, *supra* note 12, at 488 n.1634.

92. *Id.*

93. *Id.* at 488.

3. Kabiligi and Ntabakuze

On 18 July 1997, Gratien Kabiligi, former Brigadier-General in the General Staff of FAR, and Aloys Ntabakuze, Commander of the Para-Commando Battalion, FAR, were arrested as part of the NAKI operation and were transferred to Arusha where they were detained as suspects pursuant to Rule 40 *bis*.⁹⁴ After their provisional detention had been extended twice, Judge Aspegren confirmed an indictment against Kabiligi and Ntabakuze on 15 October 1997.⁹⁵ The accused allegedly “planned, incited to commit, ordered committed or in some other way aided and abetted the planning preparation or execution of the said acts” and “knew or had reason to know that their subordinates were preparing to commit or had committed the said acts and failed to take the necessary and reasonable measures to prevent them from being committed or punish those responsible.”⁹⁶ By advocating the elimination of the Tutsis “within a short period of time,” Kabiligi was also alleged to have “incited the *Interahamwe* militiamen to murder Tutsi civilians.”⁹⁷ Ntabakuze was similarly accused of making anti-Tutsi statements and was alleged to have “ordered his subordinates to avenge the death of President Habyarimana by killing the [Tutsi population].”⁹⁸

4. Nteziryayo and Nsabimana

On 16 October 1997, Colonel Alphonse Nteziryayo, former Commanding Officer of the Military Police and prefect of Butare from 21 June 1994 onwards, and Sylvain Nsabimana, whom he replaced as prefect, were jointly charged with committing genocide and other violations of international humanitarian law.⁹⁹ According to the indictment, the accused incited the population of Buture to massacre Tustis living in the prefecture. Nsabimana, who was apprehended as part of the NAKI operation, pleaded not guilty to the charges against him on 24 October 1997.¹⁰⁰ Nteziryayo entered a similar plea on 17 August 1998 after being arrested in Burkina Faso.¹⁰¹

94. *Second Annual Report, supra* note 74, app. V, ¶ 9.

95. *The Prosecutor v. Kabiligi & Ntabakuze*, Case No. ICTR-97-34-I, Indictment, Oct. 15, 1997.

96. *Id.*

97. MORRIS & SCHARF, *supra* note 12, at 491.

98. *Id.*

99. *The Prosecutor v. Nteziryayo & Nsabimana*, Case No. ICTR-97-29-I, Indictment, Oct. 16, 1997.

100. MORRIS & SCHARF, *supra* note 12, at 492.

101. Press Release, *Colonel Alphonse Nteziryayo Pleads 'Not Guilty' to Six Counts During his Initial Appearance*, U.N. Doc. ICTR/INFO-9-2-134 (Aug. 17, 1998).

5. Ntuyahaga

On 10 July 1998, Major Bernard Ntuyahaga—Officer in Charge of Logistics at the Kigali Military Camp from January to April 1994—surrendered himself voluntarily to the custody of the Tribunal.¹⁰² Ntuyahaga was suspected of being criminally responsible for the murder of the then Prime Minister of Rwanda, Agathe Uwilingiyimana, and ten Belgian soldiers who were members of UNAMIR. The accused was subsequently indicted on a single count of crime against humanity (murder),¹⁰³ and on 13 November 1998 he pleaded not guilty to said count.¹⁰⁴

However, before the trial on the merits could commence, in February 1999, the Prosecutor sought leave to withdraw the indictment against the accused. The Prosecutor argued, *inter alia*, that the withdrawal would promote the exercise of concurrent jurisdiction by Belgium, which had instituted criminal investigations against the accused.¹⁰⁵ On 18 March 1999, Trial Chamber I granted the request of the Prosecutor.¹⁰⁶ Since the withdrawal of the indictment was tantamount to a termination of proceedings, the Trial Chamber also ordered the immediate and unconditional release of the accused; thereby rejecting the Prosecutor's request to have the accused turned over to the Tanzanian authorities.¹⁰⁷

6. Serushago

On 9 June 1998, Omar Serushago, former businessman and local leader of the *Interahamwe* militia in the Gisenyi prefecture, voluntarily

102. Press Release, *Another Suspect Surrenders Voluntarily*, U.N. Doc. ICTR/INFO-9-2-131 (July 11, 1998).

103. The Prosecutor v. Ntuyahaga, Case No. ICTR-98-40-I, Indictment, Sept. 29, 1998.

104. Press Release, *Major Bernard Ntuyahaga Pleads Not Guilty to the Murder of Belgian Soldiers and the Former Rwandan Prime Minister*, U.N. Doc. ICTR/INFO-9-2-151 (Nov. 13, 1998).

105. ICTR Update, *Prosecution Seeks to Withdraw Indictment Against Bernard Ntuyahaga, a Former Major in the Rwanda Armed Forces, Belgium Seeks to Prosecute Him*, U.N. Doc. ICTR/UPD-013 (Mar. 16, 1999).

106. The Prosecutor also argued that prosecuting the accused on a single count indictment would not fit into the Prosecution's strategy of showing the genocide as a conspiracy. The Prosecutor v. Ntuyahaga, Case No. ICTR-98-40-T, Decision on the Prosecutor's Motion to Withdraw the Indictment, Mar. 18, 1999.

107. *Id.* Within days of being released from the United Nations Detention Facilities, Ntuyahaga was arrested by the Tanzanian authorities. A request to have Ntuyahaga extradited to Belgium was subsequently rejected on the grounds that the extradition treaty between the two countries did not allow extradition to a country other than where the alleged crimes were committed. At the time of writing, an extradition request from the Government of Rwanda is under review. See JONES, *supra* note 79, at 34-35.

surrendered to the authorities of the Ivory Coast.¹⁰⁸ On 24 September 1998, the Prosecutor submitted for confirmation an indictment against Serushago, which was confirmed by Judge Ostrovsky five days later.¹⁰⁹ On 14 December 1998, during his initial appearance before Trial Chamber I, the accused pleaded guilty to four counts of genocide and crimes against humanity (murder, extermination and torture), and not guilty to a fifth count of crimes against humanity (rape). The fifth count was then withdrawn by the Prosecutor with the leave of the Trial Chamber. After taking into account the substantial cooperation he had provided to the Prosecutor, his voluntary surrender and guilty plea, his family and social background, the assistance he gave to certain potential Tutsi victims during the genocide, and his expression of remorse and contrition, the Trial Chamber decided to mitigate his punishment, and accordingly sentenced him to fifteen years imprisonment.¹¹⁰ The accused has subsequently filed an appeal against the sentence.¹¹¹

C. *Media Leaders*

1. Nahimana

At the start of 1996, the Prosecutor became aware that the Belgian authorities were investigating those persons in charge of the station RTLM for helping incite the genocide by broadcasting messages designed to inflame inter-ethnic hatred and to encourage the Hutu population to kill and commit acts of violence and persecution against the Tutsi population and others on political grounds. Since his office was conducting its own investigations on the involvement of such individuals in the genocide, in March 1996 the Prosecutor sought an order requesting Belgium to defer its investigations to the Tribunal's competence.¹¹² The request was granted,¹¹³ and as a consequence of the Prosecutor's investigations, on 12 July 1996 an indictment was confirmed against the most senior official of the radio

108. *The Prosecutor v. Serushago*, Case No. ICTR-98-39-S, Sentence, Feb. 5, 1999.

109. *The Prosecutor v. Serushago*, Case No. ICTR-98-39-I, Indictment, Sept. 29, 1998.

110. *The Prosecutor v. Serushago*, Case No. ICTR-98-39-S, Sentence, Feb. 5, 1999.

111. *The Prosecutor v. Serushago*, Case No. ICTR-98-39-A, Notice of Appeal, Mar. 11, 1999.

112. *In the Matter of Case No. ICTR-96-6-D, In the Matter of an Application by the Prosecutor for a Formal Request for Deferral by the Kingdom of Belgium and In the Matter of Radio Television Libre des Mille Collines Sarl*, Mar. 10, 1996.

113. *In the Matter of Case No. ICTR-96-6-D, Decision of the Trial Chamber on the Application by the Prosecutor for a Formal Request for Deferral to the Competence of the International Criminal Tribunal for Rwanda in the Matter of Radio Television Libre des Mille Collines Sarl (Pursuant to Rules 9 and 10 of the Rules of Procedure and Evidence)*, Mar. 12, 1996.

station, Ferdinand Nahimana, on charges of conspiracy to commit genocide, incitement to commit genocide and complicity in the commitment of genocide.¹¹⁴ The accused, who had been arrested in Cameroon in March 1996, was transferred to Arusha on 23 January 1997. At his initial appearance he pleaded not guilty to the charges against him and is currently in custody awaiting trial.¹¹⁵

2. Ngeze

On 3 October 1997, Judge Aspegren confirmed an indictment against Hassan Ngeze—founder and editor-in-chief of the Rwandan newspaper, *Kangura*—who was arrested as part of the NAKI operation.¹¹⁶ According to the indictment, Ngeze knowingly, with his consent and direction, published or allowed to be published in *Kangura* certain materials used in the preparation of the genocide against the Tutsi population of Rwanda. At his initial appearance on 19 November 1997, Ngeze pleaded not guilty to the charges against him.¹¹⁷

3. Ruggiu

The seventh and last individual apprehended as part of the NAKI operation was Georges Ruggiu, a Belgian journalist and the only non-Rwandan to be accused by the Tribunal to date. Ruggiu—who was indicted on 9 October 1997 on charges of direct and public incitement to commit genocide and crimes against humanity¹¹⁸—allegedly “made broadcasts over RTLM in which he incited [the Hutu population] to kill and/or cause bodily and/or mental harm to Tutsis.”¹¹⁹

4. Barayagwiza

On 23 October 1997, Judge Aspegren confirmed an indictment against Jean Bosco Barayagwiza, former Director of Political Affairs in the Ministry of Foreign Affairs, member of the *Comité d’Initiative of RTLM* and senior officer in the administration of its Kigali radio station.¹²⁰ According to the indictment, the accused “presided over several meetings to plan the killings of Tutsis and certain Hutus, distributed weapons and money [to *Interahamwe* militia] and instigated and ordered killings and

114. The Prosecutor v. Nahimana, Case No. ICTR-96-11-I, Indictment, July 12, 1996.

115. MORRIS & SCHARF, *supra* note 12, at 488.

116. The Prosecutor v. Ngeze, Case No. ICTR-97-27-I, Indictment, Oct. 3, 1997.

117. See MORRIS & SCHARF, *supra* note 12, at 490.

118. The Prosecutor v. Ruggiu, Case No. ICTR-97-32-I, Indictment, Oct. 9, 1997.

119. MORRIS & SCHARF, *supra* note 12, at 490.

120. The Prosecutor v. Barayagwiza, Case No. ICTR-97-19-I, Indictment, Oct. 23, 1997.

acts of violence against [the Tutsi population]."¹²¹ Barayagwiza was arrested in Cameroon on 27 March 1996 and transferred to the Tribunal on 19 November 1997.¹²²

D. Senior Government Administrators

1. Nsabimana et al.

On 22 November 1995, the Prosecutor submitted for confirmation the first indictment in which eight persons—Clément Kayishema, Obed Ruzindana, Ignace Bagilishema, Charles Sikubwabo, Aloys Ndimabati, Vincent Rutaganira, Mikaeli Muhimana and Ryandikayo—were accused of having perpetrated various violations of international humanitarian law in connection with massacres alleged to have been committed at four locations in the prefecture of Kibuye during the summer of 1994.¹²³ The indictment was confirmed on 28 November 1995 by Judge Pillay, who also issued warrants for the arrest of each of the accused.¹²⁴ Three of the eight individuals who are the subject of this indictment have been arrested.

In May 1996, Kayishema, former prefect of Kibuye, was arrested by the Zambian authorities and transferred to Arusha. Four months later, Ruzindana, former businessman in Kibuye during the 1994 genocide, was arrested in Kenya.¹²⁵ On 6 November 1996, Trial Chamber II, comprising Judges Sekule, Khan and Ostrovsky, decided to join the cases against the accused in order to try them together and set the date for start of the trial on 20 February 1997.¹²⁶ However, as the Tribunal only had one courtroom

121. MORRIS & SCHARF, *supra* note 12, at 492.

122. *See id.*

123. The Prosecutor v. Kayishema, Case No. ICTR-95-1-I, Indictment, Nov. 28 1995. The first massacre site addressed in the indictment is the Catholic Church and St. John Home complex which is located in Kibuye town, Gitesi commune. According to the indictment, on or about 17 April 1994, thousands of men, women and children were massacred at this site. The second massacre site is the Stadium, which is also located in Kibuye town. At this location, on or about 18 and 19 April 1994, thousands of men, women and children were massacred. In addition, hundreds of men, women and children were injured. The third massacre site is the Church in Mubuga, which is located in the Gishyita commune. Between 14 and 17 April 1994, thousands of men, women and children were killed at this site and hundreds injured. The fourth and final massacre site is located in the area of Bisesero which extends through two communes in the Kibuye Prefecture: Gishyita and Gisovu. According to the indictment, from 10 April until 30 June 1994 attacks occurred almost on a daily basis in this area with a result that thousands of men, women and children were killed and numerous others injured. *Id.* *See also* MORRIS & SCHARF, *supra* note 12, at 484-85.

124. *See* MORRIS & SCHARF, *supra* note 12, at 485.

125. *Id.*

126. *Id.* at 518. On 10 April 1997, the Trial Chamber rejected a motion of the Prosecutor proposing a new superceding indictment severing the two accused from their six co-

available at the time and in order to provide the defence with extra time to prepare the case, the Chamber postponed the start of the trial to 9 April 1997. Some nineteen months later, the trial came to a close. In addition to expert witnesses and other witnesses who had served as investigators in the Office of the Prosecutor, fifty-one witnesses from Rwanda testified for the prosecution.¹²⁷ Twenty-eight witnesses appeared for the defence.¹²⁸

On 21 May 1999, the Trial Chamber convicted Kayishema of four counts of genocide—one for each of the mass-killing sites in the Kibuye prefecture—and sentenced him to life imprisonment. The Chamber found that as prefect, the accused not only ordered the massacres of tens of thousands of Tutsis hiding in churches and schools in the area, but also personally incited killers and sometimes fired the initial shot.¹²⁹ Ruzindana was convicted for participating in the massacres of Tutsis hiding in the wilderness of Bisesero and was sentenced to twenty-five years imprisonment. The Chamber held that he had used his position as a wealthy businessman to reward *Interahamwe* militia with money and alcohol and had helped transport them to the massacre sites.¹³⁰

Departing from the Tribunal's earlier judgements, in particular the Akayesu judgement, *infra*, the Trial Chamber dismissed several additional counts of crimes against humanity (murder and extermination) on the grounds that these offences are subsumed fully by the counts of genocide.¹³¹ Further counts of crimes against humanity (other inhumane acts) were set aside as vague,¹³² and war crimes allegations were dismissed as the Prosecutor had failed to demonstrate a direct link between the crimes committed by the accused and the armed conflict that was waging in Rwanda at the time.¹³³

On 20 February 1999, a third individual accused in the Kibuye indictment, Ignace Bagilishema, former bourgmestre of Mabanza commune in the Kibuye prefecture, was arrested by South African

accused. *Id.*

127. The Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-T, Judgement § 1.4, ¶ 21, May 21, 1999.

128. *Id.* § 1.4, ¶ 23.

129. *Id.* § 6.2, ¶¶ 551-69.

130. *Id.* § 6.2, ¶¶ 570-71.

131. *Id.* § 6.3, ¶ 577. The Trial Chamber held that “[a]ll counts for these crimes are based on the same facts and the same criminal conduct. These crimes were committed at the same massacre sites, against the same people, belonging to the Tutsi ethnic group with the same intent to destroy this group in whole or in part.” *Id.*

132. *Id.* § 6.3, ¶ 584.

133. The Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-T, Judgement § 6.4, ¶ 623, May 21, 1999.

authorities and transferred to Arusha. On 1 April 1999, the accused pleaded not guilty to the charges against him.¹³⁴

2. Rutaganda

In the first of two indictments confirmed by Judge Sekule on 16 February 1996, Georges Rutaganda, former businessman and Vice-President of the *Interahamwe*, was charged with organising and participating in massacres committed in April 1994 in the prefectures of Kigali and in the Masango commune in the Gitarama prefecture.¹³⁵ Rutaganda, who had been arrested in Zambia on 19 October 1995, was transferred to the custody of the Tribunal on 26 May 1996.¹³⁶ Although his initial appearance was held four days later—in which he entered not guilty pleas to each of the charges against him—Trial Chamber I did not begin to hear evidence against Rutaganda until 18 March 1997. After several postponements due to the ill health of the accused,¹³⁷ the Prosecution closed its case on 29 May 1998. At the time of writing, the presentation of evidence on behalf of the defence is still on-going.

3. Akayesu

In the second of the indictments confirmed by Judge Sekule on 16 February 1996, Jean-Paul Akayesu, former bourgmestre of the commune of Taba in the prefecture of Gitarama, was accused of being responsible for the killings of at least 2,000 Tutsis, including the direct ordering of the killing of eight detained men by a militia armed with clubs, machetes and other traditional weapons.¹³⁸ Akayesu, who had been arrested by the Zambian authorities at the same time as Rutaganda, accompanied his fellow accused to Arusha on 26 May 1996.¹³⁹

On 29 May 1996, Akayesu appeared before Trial Chamber I and pleaded not guilty to all the charges contained in the indictment. During the next few months, a number of interlocutory decisions were rendered

134. Press Release, *Indictee Bagilishema Surrenders to the ICTR in South Africa, is Transferred to Arusha*, U.N. Doc. ICTR/INFO-9-2-165 (Feb. 22, 1999).

135. The Prosecutor v. Rutaganda, Case No. ICTR-96-3-I, Indictment, Feb. 16, 1996.

136. Press Release, *Georges Rutaganda Begins Testimony in his own Defence*, U.N. Doc. ICTR/INFO-9-2-177 (Apr. 7, 1999).

137. On 25 September 1996, Trial Chamber I rejected a motion for the provisional release of the accused on the grounds of ill health since Rutaganda was receiving appropriate medical treatment at the civilian hospital near the United Nations Detention Facilities. The Prosecutor v. Rutaganda, Case No. ICTR-96-3-PT, Decision on the Request Submitted by the Defence, Sept. 25, 1996.

138. The Prosecutor v. Akayesu, Case No. ICTR-96-4-I, Indictment, Feb. 16, 1996.

139. MORRIS & SCHARF, *supra* note 12, at 486.

including two orders relating to witnesses who were scheduled to testify in the case. On 27 September 1996, the Chamber ordered that pseudonyms be given to certain prosecution witnesses and restrictions be placed on the sketching, photographing and audio-visual recording of such persons.¹⁴⁰ In the second ruling, issued on 2 October 1996, the Chamber ordered that a witness, who was at the time being detained in Rwanda, be transferred temporarily to the Tribunal's Detention Facilities in Arusha.¹⁴¹

On 9 January 1997, the first trial of the Tribunal commenced. After several witnesses had appeared, the Chamber permitted the Prosecutor to amend the indictment against Akayesu to include three counts of sexual violence.¹⁴² Since the accused pleaded not guilty to these charges, the Prosecutor then presented evidence in support of the additional allegations. In all, the Prosecutor called twenty-eight witnesses. Thirteen witnesses, including the accused and Major-General Romero Dallaire,¹⁴³ former force Commander of UNAMIR whose immunity had been partially lifted by the United Nations Secretary-General, appeared for the defence. A total of 155 exhibits were submitted during the trial. After hearing closing arguments, the Chamber began its deliberations on 28 March 1998, fifteen months after the commencement of the trial.¹⁴⁴

On 2 September 1998, Trial Chamber I found Akayesu guilty of genocide, direct and public incitement to commit genocide and crimes against humanity (extermination, murder, torture, rape and other inhumane acts) and acquitted him of charges of complicity in genocide and war crimes.¹⁴⁵ In the first pronouncement on the concept of genocide by an international tribunal, the Chamber held that there had been an intention amongst both the military and political leadership of the Hutu population to eliminate the Tutsis. In his capacity as bourgmestre, Akayesu was responsible for maintaining law and public order in the Taba commune. Although he initially tried to prevent the killings, after 18 April 1994 he not only stopped trying to maintain law and order but was also present during the killings and sometimes gave orders for bodily and mental harm to be caused to certain Tutsis, and endorsed and even ordered the killing of several Tutsi.¹⁴⁶ In particular, on 19 April 1994 Akayesu addressed a

140. *Second Annual Report*, *supra* note 74, ¶ 13.

141. *Id.* ¶ 14.

142. *Id.* ¶ 12.

143. *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Decision on the Motion to Subpoena a Witness, Nov. 19, 1997. See also MORRIS & SCHARF, *supra* note 12, at 444-45.

144. *Third Annual Report*, *supra* note 58, ¶ 19.

145. *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, Sept. 2, 1998.

146. *Id.* ¶ 704.

public gathering in Taba urging those present to unite and eliminate the *Inkotanyi*, a derogatory term used to refer to Tutsi.¹⁴⁷

The Chamber also found that numerous Tutsi women, who had sought refuge at the Taba communal office to escape the massacres, were systematically raped and subjected to multiple acts of sexual violence by armed Hutu militia.¹⁴⁸ Akayesu was found to have encouraged these acts by his attitude and utterances. On one occasion, the accused was purported to have said to the *Interahamwe* militia who were raping female victims, "never ask me again what a Tutsi women tastes like."¹⁴⁹

With respect to the charges of violations of Article 3 common to the Geneva Conventions and Additional Protocol II, the Chamber found that—although these provisions were applicable to the Rwandan conflict—the Prosecutor had failed to establish beyond reasonable doubt that Akayesu was a member of the armed forces and that he had the authority to support and carry out the war effort.¹⁵⁰

On 2 October 1998, Trial Chamber I sentenced Jean-Paul Akayesu to life imprisonment.¹⁵¹ The Prosecutor and the accused have both lodged appeals against the decision.¹⁵²

4. Ndayambaje

On 10 January 1996, Trial Chamber II heard a Prosecution proposal

147. The Chamber defined the crime of direct and public incitement to genocide mainly on the basis of Article 19 of the Rwandan Penal Code, as directly provoking another to commit genocide through speeches at public gatherings or through the sale or dissemination of written or audio-visual communication, and considered the crime to have been committed whether or not such public incitement was successful. *Id.* ¶¶ 549-62.

148. *Id.* ¶ 706. Since there was no commonly accepted definition of the crime of rape in international law, the Chamber defined it as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive." *Id.* ¶ 688. Sexual violence, including rape, "is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact." *Id.* It noted that coercive circumstance did not need to be evidenced by a show of physical force. "Threats, intimidation, extortion and other forms of duress which prey on fear or desperation could be coercion." *Id.*

149. *Id.* ¶ 706.

150. *Id.* ¶ 643.

151. The Trial Chamber found that although Akayesu was not a high official in the Government, his position as bourgmestre made him the highest Governmental authority in the Taba commune and as such he was entrusted with the protection of the population. He betrayed this trust by not only participating in the killings but also by inciting the Hutu population to murder Tutsis. *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Sentence, Oct. 2, 1998.

152. Press Release, *The Jean-Paul Akayesu Case: Parties Appeal*, U.N. Doc. ICTR/INFO-9-2-144 (Oct. 7, 1998).

for deferral in respect of three persons who had been detained by the Belgian authorities: Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro. The Chamber approved the Prosecutor's request and asked the Belgian authorities to defer their investigations and proceedings to the Tribunal's competence.¹⁵³

On 20 June 1996, Ndayambaje, former bourgmestre of Muganza commune in the Butare prefecture, was indicted on charges of genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II.¹⁵⁴ It was alleged that the accused along with the communal police, the gendarmarie, soldiers and armed civilians, murdered and injured large numbers of Tutsi refugees in Kibuye in April 1994.¹⁵⁵ Ndayambaje was transferred to the Tribunal on 8 November 1996 where he is currently awaiting trial.¹⁵⁶

5. Ntaganzwa

On 21 June 1996, Judge Khan confirmed an indictment against Ladislav Ntaganzwa, former bourgmestre of Nyakizu commune in the prefecture of Butare.¹⁵⁷ In addition to being accused of giving speeches encouraging the elimination of all Tutsi from the commune, Ntaganzwa was charged with ordering and personally participating in the killing and injuring of Tutsis who sought refuge in the Cyahinda parish complex.¹⁵⁸ The accused is still at large.

6. Ntakirutimana et al.

On 10 August 1996, the Tribunal issued an indictment against four individuals who allegedly organised and led an attack on 16 April 1994 on the Seventh Day Adventist Church in Mugonero, Kibuye prefecture, which resulted in the death of hundreds of unarmed Tutsi civilians who

153. In the Matter of Case No. ICTR-96-2-D, Decision of the Trial Chamber on the Application by the Prosecutor for a Formal Request for Deferral to the Competence of the International Criminal Tribunal for Rwanda in the Matter of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro (Pursuant to Rules 9 and 10 of the Rules of Procedure and Evidence), Jan. 11, 1996. While Ndayambaje and Kanyabashi were subsequently indicted, the Tribunal decided not to pursue the prosecution of Higaniro. MORRIS & SCHARF, *supra* note 12, at 322-23.

154. The Prosecutor v. Ndayambaje, Case No. ICTR-96-8-I, Indictment ¶ 4, June 20, 1996.

155. *Id.* ¶ 8.

156. MORRIS & SCHARF, *supra* note 12, at 487.

157. The Prosecutor v. Ntaganzwa, Case No. ICTR-96-9-I, Indictment, June 21, 1996.

158. It is estimated that over 5,800 Tutsi who had taken refuge in the church in Cyahinda were massacred. Only 200 people survived the killings. *Final Report*, *supra* note 11, ¶ 88.

had gathered there.¹⁵⁹ Two of the four accused, Obed Ruzindana and Charles Sikubwabo, had been previously accused of organising other massacres in the Kibuye prefecture. Gérard Ntakirutimana, a physician at the church, was arrested in the Ivory Coast in October 1996 and was transferred to Arusha the following month.¹⁶⁰ His father, Elizaphan Ntakirutimana, the Pastor of the Church at the time of the events in question, was arrested in the United States on 29 September 1996, at the request of the Tribunal.¹⁶¹ However, on 17 December 1997, United States magistrate M.C. Notzon denied the request for the transfer of the accused and ordered the immediate release of Ntakirutimana on two grounds:¹⁶² the manner in which the United States had implemented its obligations under the Statute of the Tribunal was unconstitutional,¹⁶³ and the information supporting the request did not rise to the level of probable cause.¹⁶⁴

Two months later Ntakirutimana was rearrested, and on 5 August 1998 Judge John Rainey "rectified" the ruling of his colleague. The Judge deemed that such a transfer was constitutionally valid and that the evidence presented was sufficient.¹⁶⁵ Despite his ruling, at the time of writing Ntakirutimana has not been transferred to Arusha.

On 7 September 1996, Elizaphan and Gérard Ntakirutimana were further indicted for leading armed bands of men into the countryside of the Bisesero region of Rwanda in an effort to hunt down and kill those Tusti who had survived the attack at Mugonero.¹⁶⁶

7. Musema

On 12 March 1996, the Tribunal addressed a request to the Swiss

159. *The Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10-I, Indictment, Aug. 10, 1996.

160. MORRIS & SCHARF, *supra* note 12, at 487.

161. *Id.*

162. *See In re Surrender of Elizaphan Ntakirutimana*, 988 F. Supp. 1038 (S.D. Tex. 1997).

163. *Id.* The Judge held that executive agreement with the Tribunal was effected by Congress through enacting enabling legislation rather than through a traditional ratification process by the Senate, as provided for in Article II, Section 2 of the Constitution of the United States. Göran Sluiter, *To Cooperate or not Cooperate?: The Case of the Failed Transfer of Ntakirutimana to the Rwanda Tribunal*, 11 LEIDEN J. INT'L L. 383, 389 (1998).

164. *Id.* at 391. The Judge found that the evidence against Ntakirutimana did not rise to the level of probable cause as the accusation was based on twelve unidentified witnesses whose credibility was not supported and whose testimony was taken by a Belgian police officer assigned to the Tribunal, who could not speak the Kinyarwanda language, in unspecified conditions and without them knowing that they were testifying under oath.

165. Moghalu, *supra* note 53, at 29; *see also* Jordan J. Paust, *The Freeing of Ntakirutimana in the United States and 'Extradition' to the ICTR*, 1 Y.B. OF INT'L HUMANITARIAN L. 205, 209 (1998).

166. *The Prosecutor v. Ntakirutimana*, Case No. ICTR-96-17-I, Indictment, Sept. 7, 1996.

authorities asking them to defer to its competence their investigations and prosecution of Alfred Musema, the Director of the Gisovu Tea Factory in the prefecture of Kibuye, who had been detained by the Swiss authorities in February the previous year.¹⁶⁷ On 12 July 1996, Musema was charged with responsibility for, and the direct participation in, the killings of thousands of Tutsi men, women and children between April and June 1994 in the area of Bisesero in the Kibuye prefecture.¹⁶⁸ The accused was transferred to Arusha on 20 May 1997, and during his initial appearance on 18 November 1997 he pleaded not guilty to all the counts against him.¹⁶⁹

The trial on the merits of Musema opened on 25 January 1999 before Trial Chamber I. In her opening statement, the lead prosecutor, Jane Adong, stated that the accused used his position at the factory to lead attacks against Tutsis taking refuge in the hills nearby. "The Tutsis were attacked on a daily basis for three months. It was relentless. It was thorough. It was bloody."¹⁷⁰ After five witnesses had testified that the accused had raped Tutsi women during attacks and had encouraged members of the extremist militias to engage in acts of sexual torture, on 29 April 1999 the Prosecutor filed an amended indictment to include three additional counts of rape.¹⁷¹ On 6 May 1999, Musema pleaded not guilty to these charges. The trial is expected to conclude towards the end of July 1999.

8. Kanyabashi

On 15 July 1996, Judge Ostrovsky confirmed an indictment against Joseph Kanyabashi, former bourgmestre of Ngoma commune in the prefecture of Butare, on various counts of genocide and other violations of international law.¹⁷² According to the indictment, in addition to facilitating and inciting the widespread killings of Tustis in his commune, the accused

167. The Prosecutor v. Musema, Case No. ICTR-96-5-D, Decision of the Trial Chamber on the Application by the Prosecutor for a Formal Request for Deferral to the Competence of the International Criminal Tribunal for Rwanda in the Matter of Alfred Musema (Pursuant to Rules 9 and 10 of the Rules of Procedure and Evidence), Mar. 12, 1996.

168. The Prosecutor v. Musema, Case No. ICTR-96-13-I, Indictment, July 12, 1996. It was alleged that the accused, at various locations and times throughout April, May and June 1994, and often in concert with others, brought to the area of Bisesero in Kibuye prefecture armed individuals and directed them to attack Tutsi people seeking refuge there from attacks and killings that began in Rwanda soon after the plane transporting President Habyarimana crashed. *Id.* See JONES, *supra* note 79, at 29.

169. MORRIS & SCHARF, *supra* note 12, at 489.

170. The Prosecutor v. Musema, Case No. ICTR-96-13-T, Transcript of Hearing, Jan. 25, 1999.

171. Press Briefing, *Musema Trial*, U.N. Doc. ICTR/INFO-9-13-001 (May 8, 1999).

172. The Prosecutor v. Kanyabashi, Case No. ICTR-96-15-I, Indictment, July 15, 1996.

participated in the removal and subsequent massacre of Tutsis from the University of Butare Hospital.¹⁷³ Following his transfer to Arusha, on 29 November 1996 Kanyabashi was brought before Trial Chamber II and asked to plead guilty or not guilty to the five counts of the indictment.¹⁷⁴ The accused declined to enter a plea,¹⁷⁵ arguing that he was insufficiently represented by counsel. Accordingly, the Trial Chamber registered a plea of not guilty to all the counts on his behalf.¹⁷⁶

On 17 April 1997, the defence filed a pre-trial motion challenging the jurisdiction of the Tribunal on five grounds. The defence contended that the establishment of the Tribunal violated the sovereignty of States, particularly Rwanda, because it had not been created by means of an international treaty upon the recommendation of the General Assembly; the Security Council lacked competence to establish an *ad hoc* tribunal under Chapter VII of the U.N. Charter; its establishment violated the principle of *jus de non evocando*; it was contrary to the U.N. Charter to confer jurisdiction over individuals on the Tribunal since the Security Council's authority was limited to states which pose threats to international peace and security and did not extend to individuals; and, as it was established by the Security Council, a political body, the Tribunal was not an impartial independent judicial body. Each of these arguments was rejected unanimously.¹⁷⁷

9. Bagambiki et al.

On 9 October 1997, three individuals were indicted for committing crimes against the Tutsi population and Hutu moderates living in

173. *Final Report*, *supra* note 11, ¶ 83. It is estimated that 170 Tutsi patients and five members of staff at the Butare University hospital were killed by members of the Presidential Guard and *Interahamwe* militia. *Id.*

174. MORRIS & SCHARF, *supra* note 12, at 520 n.1716.

175. *Id.*

176. *Id.*

177. *The Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Defence Motion on Jurisdiction, June 18, 1997. For an analysis of the decision, see Virginia Morris, *International Decisions: Prosecutor v. Kanyabashi, Decision on Jurisdiction*, 92 AM. J. INT'L L. 66, 67 (1997).

The Appeals Chamber dismissed an interlocutory appeal lodged against this decision on 29 July 1997 since the appeal failed to set out the grounds upon which it was based. The Appeals Chamber nevertheless stated that it would allow the defence to remedy the defect and accordingly extended the time for filing a new motion of appeal. In the meantime, the accused requested and was granted a change in counsel, and on 6 August 1997 the appeal was withdrawn in order to avoid delaying the trial proceedings. See MORRIS & SCHARF, *supra* note 12, at 555.

Cyangugu prefecture.¹⁷⁸ Emmanuel Bagambiki, former prefect of Cyangugu, was accused of publicly expressing anti-Tutsi sentiments and preparing lists of people to eliminate. These lists were given to soldiers and *Interahamwe* militiamen with orders to arrest and kill the persons whose names were listed. Together with Lieutenant Samuel Imanishimwe, former commander of the Cyangugu barracks—who was apprehended in Nairobi and transferred to Arusha on 18 August 1997¹⁷⁹—and Yusuf Munyakazi, leader of the *Interahamwe* militia in Cyangugu prefecture, who is still at large, Bagambiki is also accused of ordering refugees who had sought shelter at Cyangugu Cathedral to be moved to Cyangugu Stadium, where a large number were massacred. On 5 June 1998, Bagambiki was arrested in Togo and was subsequently transferred to Arusha where he pleaded not guilty to the charges against him on 19 April 1999.¹⁸⁰

10. Semanza

On 23 October 1997, Judge Aspegren confirmed an indictment against Laurent Semanza, former bourgmestre of Bicumbi commune and President of the MRND Party in the greater Kigali area.¹⁸¹ Semanza—who allegedly presided over several meetings to plan and organise the massacre of the local Tutsi population, “participated in the distribution of weapons to and the training of *Interahamwe* militiamen, and assisted in [the organisation and execution of] massacres at Ruhanga and Musha church in the Gikoro commune, as well as those in Bicumbi commune”—pleaded not guilty to seven counts contained in the indictment on 18 November 1997.¹⁸² The trial of the accused was scheduled to commence on 3 February 1999. However, it was postponed after the accused’s lawyer failed to appear in court.¹⁸³ A new date for the commencement of the trial has not yet been set.

E. Collective Indictments

In order to demonstrate that the Rwanda genocide was carefully planned and carried out as a result of collusion between senior political, military and civil officials, in March 1998 the Prosecutor submitted an indictment for confirmation which charged Theoneste Bagosora and

178. The Prosecutor v. Bagambiki, Case No. ICTR-97-36-I, Indictment, Oct. 9, 1997.

179. MORRIS & SCHARF, *supra* note 12, at 490-91.

180. Press Release, *Former Prefect of Cyangugu Pleads Not Guilty to Seven Counts on His Initial Appearance*, U.N. Doc. ICTR/INFO-9-2-179 (Apr. 19, 1999).

181. The Prosecutor v. Semanza, Case No. ICTR-97-20-I, Indictment, Oct. 23, 1997.

182. MORRIS & SCHARF, *supra* note 12, at 492.

183. Press Release, *Defence Counsel for Laurent Semanza Replaced*, U.N. Doc. ICTR/INFO-9-2-159 (Feb. 3, 1999).

twenty-eight others with conspiracy to commit genocide. However, Judge Khan dismissed the indictment on the grounds that it was not maintainable in the form presented and that as a single judge he lacked jurisdiction to confirm the indictment with respect to sixteen of the individuals named therein who had been indicted previously.¹⁸⁴ An appeal against the dismissal of the indictment failed.¹⁸⁵

Persisting with her strategy of trying the accused collectively, in August 1998 the Prosecutor filed three collective indictments. The first included the military leaders: Bagosara, Kabiligi, Ntabakuze and Nsengiyumva. The second indictment included those allegedly involved in organising various massacres carried out in the Butare prefecture: Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Ndayambaje and Kanyabashi. The third included the political leadership of the MRND: Karemera, Rwamakuba, Ngirumpatse, Nzirorera, Kajelijeli and two others whose identity has still to be disclosed. While the "political" indictment was confirmed without incident,¹⁸⁶ several persons named in the other indictments opposed the confirmation on the basis that since different judges had confirmed the original indictments against the ten accused and as a confirming judge could not hear the trial on the merits, neither of the presently constituted Trial Chambers could hear the two cases. They further maintained that they had the right to be tried by the same judges who had dealt with their case since their respective initial appearances. At the time of writing, this matter is currently pending before the Appeals Chamber.

V. INVESTIGATIONS CONDUCTED BY THE OFFICE OF INTERNAL OVERSIGHT SERVICES

Despite these achievements, the Tribunal has been plagued by severe managerial and administrative difficulties since its inception that have significantly affected the successful performance of its mandate. In response to a request from the General Assembly and following

184. Since eleven of the accused were in the custody of the Tribunal, namely Bagosora, Kabiligi, Ntabakuze, Nsengiyumva, Imanishimwe, Ntagerura, Nyiramasuhuko, Nsabimana, Kanyabashi, Ndayambaje and Ntahobali, Judge Khan held that only the Trial Chamber could amend the indictments against these persons. The five previously indicted persons who were still at large were under the jurisdiction of the confirming judges. The Prosecutor v. Bagosora, Case No. ICTR-98-37-I, Dismissal of Indictment, Mar. 31, 1998.

185. Press Release, *Appeals Chamber Dismisses Appeal by the Prosecution and the Defence in the Cases of Bagosora and Rutaganda Respectively*, U.N. Doc. ICTR/INFO-9-2-126 (1998).

186. See *supra* notes 79-81 and accompanying text.

complaints received from staff members and member States, the Office of Internal Oversight Services (OIOS) conducted an audit and investigation of the Tribunal, uncovering numerous operational deficiencies of a substantial nature.¹⁸⁷ In its report published in February 1997, OIOS found that the Tribunal constantly ignored the United Nations rules and regulations and had no accounting system, as well as incomplete and unreliable financial records; it had employed personnel in key positions who were unqualified for their posts, and despite its function, had a dearth of qualified lawyers and investigators; it lacked the courtroom and detention facilities necessary to cope with the increasing number of accused; and it was handicapped by insufficient support from the United Nations Headquarters in New York.¹⁸⁸ In addition, the report criticised the open feuding between the Office of the Prosecutor in Kigali and the Registry in Arusha and pointed out that “[t]he slow development of witness-related programmes hampered trial preparation and has the potential to impact negatively on the trials.”¹⁸⁹

The report concluded that substantial changes needed to be made to the Tribunal, and recommended that the United Nations provide it with more administrative and financial support and that better links had to be forged with its counterpart in The Hague in order to improve its performance.¹⁹⁰ On the basis of the report, the Secretary-General requested and received the resignation of both the Registrar and the Deputy Prosecutor, the two officials identified in the report as being largely responsible for the Tribunal’s problems.¹⁹¹ Agwu Okali (Nigeria) and Bernard Muna (Cameroon) were appointed as their replacements, respectively. Following his appointment, the new Registrar—in addition to implementing improved financial control measures—reorganised the structure of the Registry and replaced a number of senior officials.

In a follow-up investigation conducted by OIOS at the start of 1998, the Tribunal was commended for acting on the majority of

187. See G.A. Res. 213C, U.N. GAOR, 50th Sess., Supp. No. 49, U.N. Doc. A/50/49 (1996). The Office of Internal Oversight Services was requested to inspect the Tribunal “with a view to identifying problems and recommending measures to enhance the efficient utilization of resources, and to report thereon to the General Assembly at its fifty-first session.” *Id.* ¶ 9.

188. See *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services*, U.N. Doc. A/51/789 (1997).

189. *Id.* ¶ 54.

190. *Id.* ¶¶ 75-76.

191. Makau Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 TEMP. INT’L & COMP. L.J. 167, 185 (1997); see also *2 Dismissed from Tribunal on Rwanda*, N.Y. TIMES, Feb. 27, 1997, at A3.

recommendations made in the previous report. However, OIOS did highlight a number of areas in which corrective action was still required—namely the management of the defence counsels department, the use of voluntarily donated funds, witness protection, the management of the Prosecutor's personnel department, the information and press department and property management.¹⁹²

VI. CONCLUSION

Although it has essentially operated in the shadow of the Yugoslavia Tribunal since its inception, the achievements the Tribunal has made in the pursuit of international justice has enabled it to take its own place in the chronicles of the development of international humanitarian law. As a result of the strong support it has received from the international community, all but ten of the forty-eight individuals publicly indicted are in custody. Five of those individuals arrested have been convicted of genocide and sentenced to various terms ranging from fifteen years to life. In addition, two further trials are currently underway, with the verdicts expected in both trials by the end of 1999.

Since its resources are limited, it is inevitable that the Tribunal will be able to try only a small percentage of those persons who participated in the genocide. Nevertheless, given the sporadic outbreaks of ethnic violence that are still occurring in Rwanda and the surrounding States, "the symbolic effect of prosecuting even a limited number of the perpetrators, especially the leaders who planned and instigated the genocide, [will] have considerable impact on national reconciliation, as well as on deterrence of such crimes in the future."¹⁹³ If the international community is truly sincere about its wish to bring peace and security in the Great Lakes region, it is therefore essential that it continue to support the Tribunal's efforts to bring to justice the perpetrators of one of the worst genocides committed since the end of the Second World War.

192. *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services*, U.N. Doc. A/52/784 (1998).

193. Akhavan, *supra* note 54, at 509.