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RECENT DEVELOPMENTS

The Report of the OAU's International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events

Introduction

In July 2000, several months after the United Nations produced an independent report citing the failures of the organization in relation to the 1994 genocide in Rwanda (the Carlsson Report),[1] the Organization of African Unity's (OAU) Summit in Lomé, Togo, was presented with a several-hundred page report from its International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events (IPEP). While the Carlsson Report focused exclusively on the responsibility of the UN, the IPEP had a wide mandate to examine the situation which led to the genocide and the failures of the Genocide Convention, and to make recommendations for redress and action to prevent it happening again.[2] Similarly, although the UN document does acknowledge that the OAU failed to prevent the genocide, attributing this to a lack of resources and political will, the IPEP Report is more forceful in its condemnation of the influence and responsibility of several European states and the USA. The Panel considered the part played by these states as essential to an understanding of the genocide, despite the fact that its intention was not to determine the guilt of various actors.[3] This note provides a descriptive summary of the contents of the Report.[4]

The Panel was composed of seven eminent African and non-African individuals from a variety of backgrounds.[5] It obtained its information through available documentation, by meeting with persons involved and requesting the advice of experts on certain matters.[6] There was also a Senior Liaison Officer to co-ordinate relations with the OAU. The Panel held its first meeting in October

[1] United Nations, *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, 15 December, 1999.

[2] *Report of the Secretary-General on the Establishment of an International Panel of Eminent Personalities to Investigate the Genocide in Rwanda and Surrounding Events*, CM/2048 (LXVII). The creation of the Panel was approved in 1997, *Establishment of the Panel of Eminent Personalities to Investigate the Genocide in Rwanda and the Surrounding Events*, Doc. CM/2063 (LXVIII).

[3] *Project Document*, International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, at 1.

[4] *International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and Surrounding Events. Special Report, 7 July, 2000*. Hereinafter "IPEP Report". The full text of the Report can be found on http://www.oau-oua.org/Document/ipep/ipep.htm.

[5] The members of the Panel are: HE Sir Ketumile Masire, former President of Botswana, Chair; HE General Amadou Toumani Toure, former Head of State of Mali; Ms Lisbet Palme, Sweden, Chairperson of the Swedish Committee of UNICEF, Expert on the UN Committee on the Rights of the Child; Ambassador Stephen Lewis, Canada, former Ambassador and Permanent Representative of Canada to the UN and present Deputy Executive Director of UNICEF; Ms Ellen Johnson-Sirleaf, Liberia, former Government Minister and Assistant Administrator and Executive Director, Regional Bureau for Africa of the UNDP; Ambassador Hocine Djoudi, Algeria, Member of the National Council and Vice-President of Foreign Affairs Commission; Justice R.N. Bhagwati, India, former Chief Justice of the Supreme Court of India and Vice-Chairman, UN Human Rights Committee.

[6] *Project Document*, above n. 3 at 5–6.

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1998, where it adopted its work programme,[7] and visited Rwanda in early 1999, listening to victims, witnesses, government officials, political parties and NGOs. In the USA and Europe members of the Panel met with government and UN officials as well as Rwandans living in exile.

Historical background

The Report includes a history of the country from pre-independence to the present day, with chapters on the first republic, Habyarimana's regime, and economic destabilization after 1985, including the role of the media and moves to a militarized society.[8] The Arusha peace process is also discussed, its failings attributed by the Panel to, among other matters, the place given to the Rwandan Patriotic Front (RPF) in the government and the fact that the agreement seemed planned to "enrage virtually everyone in Rwanda with whom the RPF would need to work".[9] The Panel found, however, that there was little that could have been done by this stage and that "only the international community" could have prevented the final outcome, an opportunity which it "consciously chose to reject".[10] The Report stated that it "is possible to identify the key steps that led from the late pre-colonial period to the genocide a full century later".[11] It is here that one of the central themes of the Report is raised, namely, that although Rwandans themselves were responsible, "both the so-called international community and history have had powerful and decisive impacts on Rwanda specifically, and on the Great Lakes Region in general".[12]

In concluding consideration of the historical background the Panel highlights what it terms "three important truths": "there are hardly any aspects of the story that are not complex and controversial"; "interpretations of the past have become political tools routinely used by all parties to justify their current interests"; and "we have found major disagreements among students of Rwandan history on questions of numbers".[13]

The Panel examined the economic situation after 1985 and found that although "neither poverty nor economic collapse alone caused the Rwandan genocide", they did "increase social stress and . . . instability".[14] It supported the view that if "the seriously responsible criminals were some thousands, not millions, of people either in leadership positions or simply unleashed thugs, then the rest were ordinary Hutu men and women caught up in a temporary madness that has since dissipated".[15]

The International Criminal Tribunal for Rwanda (ICTR) and national courts

The Report pays some attention to the system that deals with trials for genocide at the national and international level, describing it as "rough" justice.[16]

[7] Press Release No. 002, *Rwanda Panel Ends First Meeting*, 28 October, 1998.
[8] IPEP Report, ch. 7.
[9] Op. cit. at 8.12.
[10] Op. cit. at 8.19.
[11] Op. cit. at E.S.3.
[12] Op. cit. at Introduction, para. 3.
[13] Op. cit. at 2.1–2.3.
[14] Op. cit. at 5.2.
[15] Op. cit. at 23.65.
[16] Op. cit. at 18.2.

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It recognizes the difficulties faced by the ICTR,[17] but warns against making comparisons with the Balkans.[18] The findings in the *Kambanda* case the Panel describe as "disturbing and inconclusive"[19] and a "missed opportunity to have him divulge everything he knew about the events leading up to and during the genocide".[20] Despite this, it does acknowledge the difficult task of the Rwandan Tribunal in "attempting to evolve a system of international criminal justice out of nothing, and it is simply unfair not to appreciate the magnitude of their task and the absence of simple solutions".[21] The Panel believes that among the ICTR's real contributions is its development of international law.[22]

It criticizes the ICTR for failing to indict members of the RPF for abuses committed. This is an issue dealt with by the Report in Chapter 22, where the IPEP states "we have been persuaded by the evidence that at least some and perhaps many of these charges are true",[23] despite some "contradictory data", even among human rights groups investigating the situation.[24] Although the Secretary-General promised the Panel the full co-operation of the UN and access to relevant material, there had been difficulties in obtaining information from the UNHCR and "requests have simply been ignored".[25] It does conclude on the information available to it, however, that "it is quite unrealistic" to say the RPF were not responsible for some serious abuses in months before and after the genocide and should not be excused, despite the situation prevailing at the time.[26] Besides noting the "crimes against humanity", which the Panel condemns "without equivocation" during the 1990 invasion, it draws particular attention to the situation in the camps in Lake Kivu and in the Democratic Republic of Congo (DRC) in general and the human rights abuses committed by the RPF there. Holding the RPF accountable the Panel believes is important for the government's credibility and commitment to human rights,[27] even though this risks the Panel being labelled as genocide sympathizers.[28] The members "implore the government to halt the indiscriminate attacks by its soldiers against innocent civilians, and . . . to punish fully those who are guilty of such attacks".[29]

In relation to the Rwandan national courts, the Panel notes the difficulties they have faced, but again "we should not underestimate the impact of the trials on the sense within Rwanda that Hutu Power impunity may, finally, have come to an end".[30] The Report highlights the possible use of the traditional community *gacaca* procedures, although it warns that the relationship between them and the national courts will need to be well thought out.[31] It emphasizes that the increased speed which it is hoped that these procedures will achieve must also be accompanied by standards of fair trial.[32]

[17] Op. cit. at 18.10–18.24.
[18] ". . . many of the issues and specifics are dramatically different", op. cit. at 18.22.
[19] Op. cit. at 18.25.
[20] Op. cit. at 18.31.
[21] Op. cit. at 18.22.
[22] Op. cit. at 18.18.
[23] Op. cit. at 22.1.
[24] Op. cit. at 22.5.
[25] Op. cit. at 22.13.
[26] Op. cit. at 22.19.
[27] Op. cit. at 22.37.
[28] Op. cit. at 22.36.
[29] Op. cit. at 22.42.
[30] Op. cit. at 18.41.
[31] Op. cit. at 18.45.
[32] Op. cit. at 18.48–18.49.

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Future difficulties raised by the Panel include the possibility of a truth and reconciliation commission and the controversial issue of amnesty. It concludes that "justice and reconciliation in Rwanda is not the function of the justice system alone" but that there must also be democracy.[33]

Themes

Besides these issues there are a number of themes which seem to underline the whole Report:[34]

The responsibility of particular states

It is with the responsibilities of certain states and the international community as a whole that the Panel seems most interested. The Report notes that although many actors had a role, "the evidence is clear that there are a small number of major actors whose intervention could directly have prevented, halted or reduced the slaughter",[35] namely, France, the USA and Belgium.

France

The Report notes that Rwanda had a strong relationship with France in the early 1990s and this contributed to the lack of action from the international community.[36] Its exact relationship, the Report states, is "a matter of great controversy",[37] although France was a major source of military supplies to the country.[38] Despite being the "closest foreign ally" of the Rwandan government, the Panel states that France deliberately failed to "use its undoubted influence" to end human rights abuses. These matters led the Panel to conclude that "the position of the French government that it was in no way responsible for the genocide in Rwanda is entirely unacceptable to this Panel".[39]

Not only did the French not take any action against the Hutu who had begun the massacres,[40] but they contributed to events after the genocide by assisting many of those in the Hutu Power to escape to Zaire. This is something the Panel terms "the single most significant post-genocide event in the entire Great Lakes Region, launching a chain of events that eventually engulfed the entire area and beyond into conflict".[41]

The United States of America

The Report is equally damning:

> "since we have already made clear our view that several nations, organisations and institutions directly or otherwise contributed to the genocide, we can hardly blame the catastrophe solely on the US. On the other hand, it is indisputably true that no nation did more than the US to undermine the effectiveness of UNAMIR.

[33] Op. cit. at 18.61–18.62.
[34] These are themes as suggested by the author of this note and are not necessarily reflected by the titles of the Chapters of the Report itself.
[35] Op. cit. at 15.40.
[36] Op. cit. at 9.3.
[37] Op. cit. at 12.4.
[38] Op. cit. at 12.27.
[39] Op. cit. at 12.30.
[40] Op. cit. at 15.58.
[41] Op. cit. at 15.69.

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> . . . Even in the midst of the genocide itself, Rwandan lives received no priority in American policy."[42]

It concludes, "throughout the genocide, American machinations at the Security Council repeatedly undermined all attempts to strengthen the UN military presence in Rwanda"[43] and

> "it was American support for Mobutu that led directly to the present crisis of the DRC and has provided fertile ground for this conflict to be played out. It was the failure of several states first to prevent or mitigate the genocide, then to prevent the genocidiaires' escape into Zaire, and finally to prevent Hutu Power from being resurrected in the camps, that led directly to this Africa-wide conflict. . . . This surely creates some kind of inescapable obligation on the part of those countries who have helped create the present situation."[44]

It also concludes its chapter on RPF abuses by stating that the US should "provide essential military support to Rwanda" and use its influence to prevent abuses by the government against civilians.[45]

Belgium

In considering the historical background, the Panel found that "it served the purposes of the colonizers to recognise the King and the Tutsi rulers surrounding him and to assign to them significant . . . political power and administrative duties".[46] It is this Belgian policy of ethnic separation which, besides the 1990 invasion by the RPF, the Panel believes was essential in leading to increased violence and ethnic polarization between Hutu and Tutsi.[47]

The international community and the UN

The Panel's view is clear:

> "there can be not an iota of doubt that the international community knew the following: that something terrible was underway in Rwanda, that serious plans were afoot for even more appalling deeds, that these went far beyond routine thuggery, and that the world nevertheless stood by and did nothing."[48]

As the Report goes on, "yet the argument of this entire report is that for 150 years, the outside world played a central part in carving out the building blocks that built the genocide. . . . In our very strong view, the world carried a heavy responsibility for the events in Rwanda. . . . Instead, world leaders chose to play politics and to pinch pennies as hundreds of thousands of innocent Rwandans needlessly died".[49] This leads it to comment that one of the worst things about the genocide was that it "did not have to happen",[50] citing evidence of a reduction in violations when the international community actually protested.[51] Instead the

[42] Op. cit. at 12.41–12.42.
[43] Op. cit. at 12.50.
[44] Op. cit. at 20.66.
[45] Op. cit. at 22.42.
[46] Op. cit. at 2.9.
[47] Op. cit. at 6.1 and 6.22, although it stresses later that there is no defining moment which can be identified as the plan to eliminate Tutsi, see 7.2 and ch. 7 generally.
[48] Op. cit. at 9.1 and 9.16.
[49] Op. cit. at 9.17.
[50] Op. cit. at 10.1.
[51] Op. cit. at 10.2.

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conflict was exacerbated by a "fundamental misunderstanding" of its nature[52] and the required solution.[53]

In this respect, the IPEP Report endorsed the findings of the UN's Carlsson Report,[54] namely, "the failure of the United Nations to prevent, and subsequently, to stop the genocide in Rwanda was a failure by the United Nations system as a whole. There was a persistent lack of political will by member states to act, to act with enough assertiveness".[55] The Panel believed that Western powers could organize troops quickly if required but were only likely to do so when their "direct self-interests" were under threat.[56] It concludes that "the familiar concepts of war are more comfortable for many nations to deal with and to take seriously than issues of human rights".[57] The Panel supported the suggestions of Commander General Romeo Dallaire who, at the time, had advocated a willingness to accept the costs of dealing with the situation[58] and a "serious international military force to deter the killers".[59]

The Security Council, instead, "chose to disregard explicit early warnings of the potential perils that such a mission would inevitably face".[60] This was emphasized by the fact that UNAMIR was a peacekeeping mission not a peace enforcement operation: "it was only too evident that the Security Council had no interest in a serious military mission".[61] Similarly, with the withdrawal of the UNAMIR force after the murder of members of the Belgian Blue Berets, "the international community actually chose to abandon the Tutsi of Rwanda at the very moment when they were being exterminated".[62] Because of this failure to use UNAMIR to the full, "countless more Rwandans died than otherwise might have"[63] and, as a result, the Panel concludes that the actions of the Security Council were "among the most irresponsible".[64]

The Report goes further, suggesting not only that there was indifference, but a deliberate intention to prevent adequate support being given: "the UN Secretariat went far beyond being merely neutral bureaucrats carrying out the wishes of their political masters in the Security Council. Time and again, they imposed on UNAMIR the tightest constraints imaginable, refusing it the slightest flexibility even where lives were directly at stake".[65] The Report notes that as none of the Security Council members or persons in the Secretariat have been held responsible for their failures, "it appears that international impunity is the rule of the day".[66]

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[52] Op. cit. at 10.6, cited from a UN Department of Peacekeeping Operations, Lessons Learned Unit, *Comprehensive Report on Lessons Learned from UNAMIR (UN Assistance Mission to Rwanda, October 1993–April 1996)*, December 1996, at 3.
[53] Op. cit. at 10.6.
[54] Above n. 1.
[55] Op. cit. at 13.2.
[56] Op. cit. at 13.5.
[57] Ibid.
[58] R. Dallaire and B. Poulin, "Rwanda: From peace agreement to genocide", (1995) 24(3) *Canadian Defence Quarterly*.
[59] Op. cit. at 10.8.
[60] Op. cit. at 13.21.
[61] Op. cit. at 13.22.
[62] Op. cit. at 10.12.
[63] Op. cit. at 10.16.
[64] Op. cit. at 13.45.
[65] Op. cit. at 15.34.
[66] Op. cit. at 15.41.

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In relation to the Security Council's decisions concerning the Kivu refugee camps, the Panel notes that they in effect were "leaving the fate of the camps, not to say of the entire region, in the hands of Hutu Power, a decision we find not easy to understand".[67] This leads it to conclude, "as a result, once again of a deliberate policy choice by the international community, the camps remained under the control of unrepentant armed killers . . .".[68]

The Report also identifies other actors involved in the tragedy

Catholic Church

The Panel cites the central role played by the Catholic Church from colonial times and its endorsement of the divide between Hutu and Tutsi. The Report states that the Church did not appear to be ashamed of official racism, it and colonizers supporting each other.[69] The Pope failed to make any mention of Rwanda in his apology in February 2000, although the Panel stresses that it was "by no means too late for him to do so" in order to encourage reconciliation and act as "a major contribution to healing in the country".[70]

Others

In addition,

> "large numbers of outside agencies must take a certain responsibility for Rwanda's tragedy—the churches, the international financial institutions, all the aid organisations that loved operating in Habyarimana's Rwanda and whose largesse made possible the increased coercive capacity of the state, and every nation that ignored the overtly ethnic basis of Rwandan governance and turned a blind eye to the ethnic-based massacres that had begun in 1990."[71]

Also responsible were the World Bank and IMF for failing to consider politics and economics together, which the Panel believes led to economic destabilization after 1985.[72]

In Chapter 19 the Panel examines in detail the situation in the camps in Zaire and the powerful role played by the media in this respect. The Panel criticizes the media for their inaccurate portrayal of the situation in the camps,[73] contrasting the response of the Americans to support UNAMIR with their ready assistance to the Kivu refugees.[74] It goes on to consider the role played by aid-donors, recognizing, on the one hand, their worthy motives, but highlighting their lack of co-operation, co-ordination and appropriate training, on the other.[75] The resulting situation was that "NGOs became in practice caterers to Ex-FAR and the militia, some of whom had committed crimes against humanity and genocide",[76] noting that the camps were the base of Hutu Power leaders and

[67] Op. cit. at 19.37.
[68] Op. cit. at 19.39.
[69] Op. cit. at 2.14.
[70] Op. cit. at 18.8.
[71] Op. cit. at 15.39.
[72] Op. cit. at 5.13.
[73] "Here was yet another example of African 'tribes' slaughtering each other, a simplistic notion good for an effective 10-second sound bite", op. cit. at 19.12.
[74] Op. cit. at 19.16.
[75] Op. cit. at 19.19–19.20.
[76] Op. cit. at 19.21.

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the Interahamwe who did not fit the international category of genuine refugees.[77] The Panel accuses NGOs of serving their own self-interest stating that Rwanda became "the new hot spot on their agenda, and few dared miss the opportunity to raise their profile for fund-raising purposes".[78]

Africa bears some, but not all, responsibility

The role of the OAU and Africa

This receives special mention by the Panel.[79] The OAU had been involved in Rwanda since 1990 and although the Panel recognizes that the Organization had no capacity to take decisions independent of states,[80] it criticizes the OAU for failing to say expressly that the situation in Rwanda was genocide. The Panel concludes that "under the circumstances of the time, . . . the silence of the OAU and a large majority of African Heads of State constituted a shocking moral failure"[81] and "the OAU's reluctance to take sides in the Rwandan conflict continued to result in practices that this Panel finds unacceptable".[82] The Panel stresses that "Africa must bear substantial responsibility for African challenges and crises".[83] In terms of the future of the continent, the Report calls on African leaders not to use ethnic hatred in the region to incite one group against another.[84]

There is an understanding, however, that the OAU could not deal effectively with the situation without the support of the international community,[85] calls to whom went unanswered.[86] The Panel credits the OAU with a "perception and far-seeing analysis of the region's problems" which required costly solutions "and those with the resources utterly lacked the will to make the necessary financial commitments".[87] The Report states that the OAU devoted an "enormous amount of energy and time . . . to finding sensible solutions . . . but in the end little was accomplished".[88] The genocide, therefore, made it clear that Africa was on her own. In this respect it was essential for the OAU's Mechanism for Conflict Prevention, Management and Resolution to be strengthened and for Africa to play a more central role, both military, diplomatic and political, in handling conflicts.

Considering the resource difficulties facing Africa, the Panel agrees that, although Africa is not poor in military resources, "the world has abjectly failed to live up to its financial obligations to Africa".[89]

[77] Op. cit. at 19.27.
[78] Op. cit. at 19.42.
[79] Op. cit. at ch. 11.
[80] Op. cit. at 11.19.
[81] Op. cit. at 15.87.
[82] Op. cit. at 15.92.
[83] Op. cit. at 20.70.
[84] Op. cit. at 20.76.
[85] Op. cit. at 11.21.
[86] Op. cit. at 15.90.
[87] Op. cit. at 21.3.
[88] Op. cit. at 21.10.
[89] Op. cit. at 21.19.

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The role of the Rwandan government and the Rwandan people

The Panel strongly disagrees with the Secretary-General's second in command, Iqbal Riza, that there had always been violence between Hutu and Tutsi through the 1970s and 1980s and that the genocide was a "tribal conflict". Indeed, the Panel finds it:

> "very troubling ... that one of the most senior members of the UN Secretariat still sees the genocide as some kind of mindless tribal clash that was inevitable sooner or later and still believes his actions were inconsequential to events in Rwanda. This stance does not enhance our confidence in the Secretariat's capacity to deal with other African crises in an appropriate manner."[90]

Similarly, although the Panel notes the highly structured nature of Rwandan society,[91] it argues that this does not take sufficient account of the complexities of the conflict: "the characterisation of Rwandans as natural followers minimises the effects on a people of systematic manipulation, indoctrination and coercion".[92] Anti-government protests and strikes held in 1990 were evidence, for example, that Rwandans did not always obey authority.[93]

The Panel notes the difficulties in obtaining reliable information and data on the situation in the country at present[94] and it is concerned with the debt burden shouldered by Rwanda[95] and its overreliance on external funds.[96] It disagrees, however, that Rwanda is, therefore, like any other poor country,[97] and, citing the Holocaust, urges that the genocide should not be dealt with as an aspect of history which occurred in the past: "there is no statute of limitation for those guilty of genocide and there is no statute of limitation on its memories and ramifications".[98]

The Panel concludes: "we do understand that many of the acts of this government have been in reaction to the abysmal failure of the international community since the genocide to disarm the genocidiaires".[99] However, it admits a dilemma that, while the Panel is sympathetic to Rwanda and the RPF, the aim to "eliminate the threat of Hutu Power" had resulted in abuses against all Hutus[100] which the members of the Panel "unequivocally condemn".[101]

African lives are of less value to the West than western lives

Throughout the Report there are several references to "an implicit racism", namely, that "African lives are not valued as highly as other lives".[102] The

[90] Op. cit. at 15.38.
[91] "Rwandan society resembled a steep, clearly defined pyramid ... Nearly every well-known study of the Rwandan people emphasises their respect for and deference to authority; some go as far as to describe a culture of blind obedience", op. cit. at 2.18–2.20.
[92] Op. cit. at 2.20.
[93] Op. cit. at 5.22.
[94] See, in general, op. cit. at ch. 23.
[95] Op. cit. at 23.13.
[96] Op. cit. at 23.14.
[97] Op. cit. at 23.24.
[98] Op. cit. at 23.38.
[99] Op. cit. at 17.42.
[100] Op. cit. at 20.77.
[101] Op. cit. at 20.78. "The RPF government and army have been guilty of major human rights violations in the past four years, which this Panel unreservedly condemns. There are no excuses for such behaviour", op. cit. at 17.42.
[102] Op. cit. at 21.15. See also, op. cit. at 10.15, the question whether there was "any conclusion we can draw from this incident other than that expatriate lives were considered more valuable than African lives?".

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instructions by the UN to evacuate western nationals was, in the view of the Panel, an indication of this attitude,[103] given that "no such latitude was ever authorised for the protection of Rwandan nationals" and that "millions of viewers around the world have seen the television documentaries showing western soldiers escorting white people to safety through crowds of Rwandans who would soon be slaughtered".[104] The Panel condemns this as a "flagrant double standard".[105] Furthermore, when considering the role of the OAU, the Report states that its position was exacerbated by the "indifferent" and sometimes "outright contemptuous" attitude of the UN Security Council to "African opinion on African questions".[106]

Need to view the conflict in wider geographical and socio-political context

The Report stresses the interrelationship between conflict, human rights and ethnic tensions, noting the necessity to see the situation in the DRC and Rwanda's involvement in such, as part of the process to peace for the latter.[107] It concludes that "solutions must be sought at the international, regional and national levels".[108] In this respect, the Panel considers it necessary to view the region as interdependent: "it seems difficult to conceive how peace, stability and any kind of meaningful economic and social development can come to one of these nations unless they come to all".[109]

In this context, the Report considers, in Chapter 19, the Kivu Refugee Camps and their contribution to the situation in Rwanda and surrounding countries. It concludes by stating that "since the world refused to intervene against the menace to Rwanda in the camps, the intended victims decided—as they had warned often enough—that they had little choice but to do the job themselves. The regionalisation of the conflict was now a step away".[110]

The Report also devotes a chapter to the situation of women and children,[111] noting that the "level of violence and overall trauma to which women and children were exposed in Rwanda was unique in many respects".[112] The Panel states that as women bear disproportionately the tasks required for economic and social reconstruction they are essential to the future development of the country.[113] The high incidence of rape during the genocide and the impact on its victims is mentioned, and the significant rulings and approach of the ICTR in this respect are highlighted.[114] In its conclusions and recommendations, the Panel believes that a future Survivors' Fund should consider the position of women as a priority,[115] the OAU's Conflict Mechanism should develop more

[103] Op. cit. at 13.5.
[104] Op. cit. at 15.8.
[105] Ibid.
[106] Op. cit. at 15.93.
[107] Op. cit. at 23.44–23.47.
[108] Op. cit. at 23.50.
[109] Op. cit. at 20.80.
[110] Op. cit. at 19.50.
[111] Op. cit. at ch. 16.
[112] Op. cit. at 16.5.
[113] Op. cit. at 16.7–16.8.
[114] Op. cit. at 16.28–16.32.
[115] Op. cit. at ch. 24, at 14.

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participation of women in conflict resolution and the Genocide Convention be re-examined to consider gender as a "genocidal category".

Conclusions and recommendations

The Report concludes with a series of recommendations, separated into three sections directed at Rwandans, Africa and the international community, although the focus of all appears to be on support from the latter.[116] The Panel urges the Rwandan people to work together towards national unity, suggesting some practical measures such as developments of school curricula and a political system based on democratic principles, bringing to trial leaders of the genocide, introducing *gacaca* and transferring the ICTR to Rwanda. Rwanda should also introduce legislation to prevent hate media and ensure free expression is protected.

For the rest of Africa, the Panel calls on countries to introduce teachings on genocide at school level and to co-ordinate economic policies for integration. The OAU is given specific tasks such as monitoring states' compliance with international standards on refugees and setting up procedures so as to be able to respond to conflict situations, including developing its Conflict Mechanism and early warning system. It calls on the OAU's African Commission on Human and Peoples' Rights to monitor human rights violations and to be provided with additional capacities to do so. There should be better links with African and international media and an independent inquiry should be undertaken by the NGO, the International Commission of Jurists, into the shooting down of the plane of Presidents Habyarimana and Ntaryamira.

The Panel calls on the international community to assist in extraditing genocide leaders and to provide resources to build the *gacaca* system. States are called upon to provide reparations and the UN Secretary-General is asked to set up a commission to consider the matter. The international community and NGOs should contribute to a Survivors' Fund and the IMF and World Bank, among others, should increase the funds to Rwanda. More support should be given to states which take in a disproportionate number of refugees. The international community should also assist the OAU in its endeavours to establish procedures to deal with conflict situations. There should also be a conference on the Great Lakes and NGOs should be better co-ordinated and "more respectful to the legitimate concerns of the host country".[117] The Panel calls for a "substantial re-examination" of the Genocide Convention including the definition of the term genocide and mechanisms to prevent its occurrence and to provide reparations for its victims.[118] Lastly, it urges strengthening of mechanisms to deal with genocide within the UN, including examining the possibility of creating a Special Rapporteur for the Genocide Convention under the High Commissioner for Human Rights.

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[116] Op. cit. at ch. 24.
[117] Op. cit., Recommendation no. 29.
[118] Op. cit., Recommendation no. 30.
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Money-Laundering: The FATF Lists Seychelles and Mauritius as Non-Co-operative Countries

During 1998/99 the Financial Action Task Force (FATF), under the chairmanship of Japan, considered that there were a number of countries and territories that posed a threat to the achievement of its goal of combating money-laundering and expressed its view that action needed to be taken to deal with jurisdictions which offered excessive bank secrecy and allowed shell companies to be used for illegal purposes.

An Ad-hoc Group on Non-Co-operative Countries and Territories was set up within the FATF to discuss the steps to be taken in this regard. The mandate of the Group was to examine all significant financial centres, including those outside the FATF membership. It was to define the detrimental rules and practices which impair the effectiveness of money-laundering prevention and detection systems. In particular it considered whether requests for assistance in the investigation and prosecution of money-laundering and its predicate offences has been successful. The assessments made were to form the basis of whether or not to assess a jurisdiction as non-co-operative. The Group was then to identify the countries and territories which met those criteria and list them. It would then agree on the necessary action needed to encourage the compliance of the non-co-operative jurisdictions.

Seychelles and Mauritius were two of the jurisdictions listed by the Group as being non-co-operative. The Ad-hoc report, which was considered by the Plenary in February 2000, spells out the criteria for defining "non co-operative" and recommends measures that FATF members should adopt in order to secure the co-operation of these jurisdictions. A non-co-operative jurisdiction is defined in the Report as having detrimental rules and practices which obstruct international co-operation against money-laundering and allow criminals to escape the effect of anti-money-laundering measures. In defining detrimental rules and practices, the ad-hoc group developed the following criteria:

- loopholes in financial regulations, such as insufficient supervision of financial services;
- impediments set by other regulatory requirements, for example allowing the operation of shell companies and the presence of inadequate commercial law requirements;
- obstacles in international co-operation including inability to exchange financial information without unduly restrictive conditions and without delay;
- inadequate resources for preventing, detecting and repressing money-laundering activities, for example the absence of Financial Intelligence Units.

Where a country or territory is listed as non-co-operative, the Report envisages the following possible consequences:

- FATF can make focused efforts, in the form of dialogues, to convince individual jurisdictions to improve legislation and domestic practices and to participate actively in international co-operation. Multilateral organizations like the OECD and World Bank can also be taken on board to convince jurisdictions to comply.
- FATF members can develop a new set of counter-measures to ensure that their economies are protected from moneys of unlawful origin, and make it

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difficult for individuals and entities established in non-co-operative jurisdictions to enter into the financial systems of FATF countries.

- FATF members could consider taking measures to restrict, target or prohibit financial transactions with non-co-operative jurisdictions as the ultimate recourse against countries that decide to preserve their detrimental laws or practices.

FATF also agreed that the process of classification should be more transparent. Jurisdictions listed in the Report of the Ad-hoc Group are first to be contacted by the Secretary of FATF who advises them of the proposal to review their systems. The specific review group for each jurisdiction is then to contact the listed jurisdiction. Countries subject to review are to be given the right or option to request a face-to-face meeting with members of the review groups. Concerns have been raised about the listing of non-co-operative countries, especially in that they were not privy to the determination of the criteria set by the FATF. Another concern was the imposition of external criteria to determine what were "adequate resources" to prevent money-laundering, given that many of the listed jurisdictions are developing countries with limited resources.

Overall, these actions represent the most significant response by FATF members to the problem of non-co-operation. If implemented the possible consequences for the viability of the financial services sector of that jurisdiction's economy could be severe.

Slow Progress on Establishing the International Criminal Court

The Rome Statute of the International Criminal Court was adopted on 17 July, 1998, following many tortuous years of negotiations. The Statute will come into force after 60 states have ratified it. As at 6 April, 2000, whilst 96 states are signatories to the Rome Statute only eight have ratified it.

As the following list indicates, most African countries are signatories but only two have actually ratified the Statute. In view of the importance of the Statute, renewed efforts to encourage African states to ratify are clearly needed. The call for ECOWAS members to do so that is contained in the recent Accra Declaration (see below) is therefore especially timely.

Signatories and ratifications by African states to the International Criminal Court Statute (as at 6 April, 2000):

Angola (7 October, 1998); Benin (24 September, 1999); Burkina Faso (30 November, 1998); Burundi (13 January, 1999); Cameroon (17 July, 1998); Central African Republic (7 December, 1999); Chad (20 October, 1999); Congo (Brazzaville) (17 July, 1998); Cote d'Ivoire (30 November, 1998); Djibouti (7 October, 1998); Eritrea (7 October, 1998); Gabon (22 December, 1998); Gambia (7 December, 1998); Ghana (18 July, 1998); Kenya (11 August, 1999); Lesotho (30 November, 1998); Liberia (17 July, 1998); Madagascar (18 July, 1998); Malawi (3 March, 1999); Mali (17 July, 1998); Mauritius (11 November, 1998); Namibia (27 October, 1998); Niger (17 July, 1998); Senegal (18 July, 1998); Sierra Leone (17 October, 1998); South Africa (17 July, 1998); Uganda (17 March, 1999); Zambia (17 July, 1998); Zimbabwe (17 July, 1998).

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Ratifications by African states (as at 6 April, 2000):

Senegal (2 February, 1999); Ghana (29 November, 1999).

The African Charter on the Rights and Welfare of the Child Comes into Force

This Charter came into force on 29 November, 1999. Originally adopted by the OAU in 1990, the following sixteen countries have now ratified it:

Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Lesotho, Malawi, Mali, Mauritius, Mozambique, Niger, Senegal, Seychelles, Togo, Uganda and Zimbabwe.

The Charter has several interesting provisions. In particular, a "child" is defined as a person below 18 years of age (compare this with the UN Convention on the Rights of the Child where the matter is left for determination by State Parties). This has wide implications for many African states as the Charter prohibits the recruitment of child soldiers; extends state obligations as regards child refugees to cover internally displaced children; and sets out measures to be undertaken by State Parties to protect children from economic exploitation.

The Charter also creates a minimum standard, deviations from which are only permissible provided that they are more conducive to the realization of the rights and welfare of the child. It provides for a "best interests of the child" test; prohibits child marriages; provides for non-discrimination and protection against harmful cultural practices. Such provisions will challenge several customary practices such as issues of custody and female circumcision. However, where there is any inconsistency, the Charter provisions are somewhat disappointing, providing only that the customary practice shall be "discouraged".

The African Committee of Experts on the Rights and Welfare of the Child is mandated to promote and protect the rights enshrined in the Charter. State Parties are required to submit a report within two years of its entry into force (and every three years thereafter) on the measures adopted to give effect to the provisions of the Charter. It is encouraging to note that the Committee can receive specific communications from any person, group or NGO recognized by the OAU and can also initiate an investigation into any matter falling within the ambit of the Charter.

There remains the pressing need for other African states to ratify the Charter, and the lack of commitment on the part of many to do so is highlighted in the Accra Declaration (see below).

Accra Declaration on War-Affected Children in West Africa

Preamble

At the invitation of the Government of Ghana in collaboration with the Government of Canada, with the active participation of the United Nations Special Representative for Children and Armed Conflict, and the Executive Secretary of ECOWAS, we ECOWAS Member States, meeting in Accra from 27–28 April, 2000, adopt the following declaration:

EXPRESSING DEEP CONCERN over the exploitation, abuse, torture, inhumane and degrading treatment of all war-affected children in the region,

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DEPLORING the involvement of children in armed conflicts,

PAINFULLY AWARE of the trauma suffered by war-affected children and the grave consequences for themselves, their families, and communities,

DISTURBED by the proliferation of small arms and light weapons including the indiscriminate use of landmines in the sub-region,

MINDFUL that there are many countries in the region which do not yet have comprehensive national legislation for the protection of children and children's rights,

EXPRESSING CONCERN over the lack of commitment towards the implementation of the African Charter on the Rights and Welfare of the Child and the United Nations Convention on the Rights of the Child,

RECOGNIZING the important role that training for military and other security agencies on the rights of the child can play in the protection of children, including child combatants,

MINDFUL of the important role that civil society plays in the protection, demobilization, reintegration and rehabilitation of war-affected children,

CONVINCED of the need for governments to promote democracy and good governance to increase tolerance and understanding,

AWARE that leadership and accountability are the responsibility of governments,

RECOGNIZING and APPRECIATING the role of neighbouring states in the reception and support of refugees,

ACKNOWLEDGING that children, as nation-builders, are the guarantors of the future,

RECOGNIZING the wish of the children to establish a children-to-children network,

RECOGNIZING that education and vocational training are important means of reintegrating war-affected children and of preventing the involvement of children in future conflicts,

RECOGNIZING the need for strengthened regional initiatives for the security and well-being of children,

FURTHER to the Declaration of ECOWAS Foreign Ministers on Child Soldiers, signed in March 1999 in Bamako,

FURTHER ALSO to the UN Security Council Resolution 1261 (1999) and 1265 (1999) concerning war-affected children and the protection of civilian populations in situations of armed conflict,

1. CALL FOR the immediate release by armed groups in the sub-region of all children abducted and held against their will,

2. RESOLVE to ratify and fully implement the provisions of international instruments on the rights of the child,

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3. CALL UPON ECOWAS Member States to take all necessary steps to fully implement and respect the aforementioned United Nations Security Council Resolutions, the four Geneva Conventions and their Additional Protocols, as well as the African Charter on the Rights and Welfare of the Child, the Convention on the Rights of the Child, the International Labour Organization Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the draft Optional Protocol on the Involvement of Children in Armed Conflict, and the Ottawa Treaty to Ban the Stockpile, Production, and Use of Anti-Personnel Mines and further calls upon all Member States to sign and ratify the Protocol once it is open for signature,

4. COMMIT to ratify the Statute of the International Criminal Court and to bring to justice those who commit violations against children,

5. COMMIT to working closely with civil society groups to ensure the protection, disarmament, and demobilization of child combatants and reintegration and rehabilitation of war-affected children into their families and communities,

6. RESOLVE to establish and strengthen programmes for the rehabilitation of all war-affected children, as well as programmes for the successful reintegration of those children within communities,

7. AGREE, in co-operation with donor agencies to work towards ensuring that all children have access to quality basic education, and as part of that effort, develop school curricula to support awareness of human rights and good governance principles, alternate dispute resolution methods, tolerance, and techniques for conflict management,

8. DECIDE to incorporate child rights and the protection of children in armed conflict, into training programmes for military forces and other security agencies,

9. RESOLVE to develop specific programmes to provide information, education and communication materials on child rights in order that the media are well informed to contribute to the rights, welfare and protection of children, and to develop media activities, particularly radio programmes, for the benefit of war-affected children, sensitive to, and consistent with the best interests of the child,

10. RESOLVE to implement early warning/response systems in the region to prevent armed conflicts and the victimization and abuse of children and their involvement in these conflicts,

11. COMMIT to promote sub-regional, cross-border initiatives to reduce the flow of small arms and light weapons, the recruitment and abduction of children, the displacement of populations and the separation of families, as well as illicit trade in natural resources,

12. CALL on the international community to provide more support to host countries and UNHCR, in order to reduce the social, economic, environmental and security impact of refugee outflow within the sub-region,

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13. Call on ECOWAS Member States to provide, with the support of UN agencies and donors, full protection, access and relief to refugees and internally displaced persons, the vast majority of whom are women and children, in accordance with international refugee law and the Guiding Principles on Internal Displacement,

14. COMMIT to support the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security signed by all ECOWAS Member States at the Lomé Summit on 10 December, 1999,

15. STRONGLY URGE ECOWAS Member States to support the implementation of the ECOWAS Moratorium in order to halt the proliferation of small arms and light weapons in the sub-region,

16. RESOLVE, with assistance from the international community, to keep duty tours of ECOWAS peacekeepers to a reasonable length, in keeping with UN Standards,

17. ESTABLISH an office within ECOWAS for the protection of war-affected children in the sub-region and DECIDE to review the activities of ECOWAS in the protection of war-affected children in the region and agree to remain actively seized of the matter,

18. AGREE to institute, in solidarity with any country in a conflict situation, an annual "West African Week of Truce for War-Affected Children" in all ECOWAS Member States, to coincide with the Day of the African Child (16 June) and to raise public awareness about the plight of war-affected children in the region,

19. COMMIT to work with community leaders to support efforts to strengthen and apply these norms in recognition of the important role of traditional values and norms which provide for the protection of children in situations of conflict,

20. COMMIT to take measures to involve young people as participants and advocates in the movement for the protection of war-affected children, including developing children-to-children networks within West Africa,

21. CALL on the donor community, UN agencies, and international NGOs, to support and strengthen national institutions, local NGOs, local civil society, and communities to offer support and build local capacities for protection and advocacy for war-affected children,

22. DECIDE to dedicate a meeting of ECOWAS Foreign Ministers within the next twelve months to examine the role of national governments and ECOWAS in the protection of all war-affected children,

23. ECOWAS Member States urge the international community to provide expertise, as well as moral and financial support for the implementation of these initiatives.

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The Right to a Fair Trial: The Dakar Declaration

Articles 7 and 26 of the African Charter on Human and Peoples' Rights provide for the right to a fair trial. At the end of a seminar organized by the African Commission on Human and Peoples' Rights in September 1999 in Dakar, Senegal, a Declaration was issued. This seeks to consolidate the standards on fair trial under the African Charter as well as taking into account relevant jurisprudence from the African Commission and other international human rights bodies.

In November 1999 at its 26th Ordinary Session in Kigali, Rwanda, the African Commission adopted the Dakar Declaration without amendment. The Declaration was then forwarded to the Lomé Summit of the OAU for consideration and possible adoption.

The African Commission also set up a working group to draw up basic principles and guidelines on the implementation of fair trial provisions and legal aid in Africa. It requested the working group to submit a text for consideration on or before its 28th Ordinary Session in November 2000.

The text of the Dakar Declaration is as follows:

THE DAKAR DECLARATION ON THE RIGHT TO FAIR TRIAL IN AFRICA

The right to fair trial is a fundamental right, the non-observance of which undermines all other human rights. Therefore the right to fair trial is a non-derogable right, especially as the African Charter does not expressly allow for any derogations from the rights it enshrines. The realisation of this right is dependent on the existence of certain conditions and is impeded by certain practices. These include:

1 Rule of Law, Democracy and Fair Trial

The right to fair trial can only be fully respected in an environment in which there is respect for rule of law and fundamental rights and freedoms. The rule of law includes the existence of fully accountable political institutions.

2 Independence and Impartiality of the Judiciary

While there are constitutional and legal provisions which provide for the independence of the judiciary in most African countries, the existence of these provisions alone does not ensure the independence and impartiality of the judiciary. Issues and practices which undermine the independence and impartiality of the judiciary include the lack of transparent and impartial procedures for the appointment of judges, interference and control of the judiciary by the executive, lack of security of tenure and remuneration and inadequate resources for the judicial system.

3 Military Courts and Special Tribunals

In many African countries Military Courts and Special Tribunals exist alongside regular judicial institutions. The purpose of Military Courts is to determine offences of a pure military nature committed by military personnel. While

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exercising this function, Military Courts are required to respect fair trial standards. They should in no circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.

4 Traditional Courts

It is recognised that traditional courts are capable of playing a role in the achievement of peaceful societies and exercise authority over a significant proportion of the population in African countries. However, these courts also have serious shortcomings which result in many instances in a denial of fair trial. Traditional courts are not exempt from the provisions of the African Charter relating to fair trial.

5 Independence of Lawyers and Bar Associations

An independent Bar Association is essential to the protection of fair trial guarantees. Bar Associations should protect and uphold the independence of their members. The ability of lawyers to represent their clients without any harassment, intimidation or interference is an important tenet of the right to a fair trial. In many countries lawyers who represent unpopular causes or persons or groups who are perceived to be opponents of the government themselves become targets for harassment or persecution. An important safeguard for lawyers is that they should not be identified with their clients or their clients' causes as a result of discharging their functions. Cross-border relationships between Bar Associations and the ability of African lawyers to represent a person in countries other than their own enhances the independence of lawyers and Bar Associations.

6 Other Human Rights Defenders

Paralegals, parents or families of victims of human rights violations and crime or of suspects and accused persons and human rights workers representing victims, suspects or accused persons should not be identified with the persons they represent and should not face harassment, intimidation or persecution when they act to protect human rights of such persons, including the right to fair trial.

7 Impunity and Effective Remedies

The failure of the state to deal adequately with human rights violations often results in the systematic denial of justice and, in some instances, conflict and civil war. In societies recovering from conflict situations, the right to effective redress and justice is often discarded in favour of political expediency. The right to fair trial does not permit the use of amnesty to absolve perpetrators of human rights violations from accountability.

8 Victims of crimes and abuse of power

The right to fair trial would be meaningless unless victims of crimes and abuse of power have access to the courts and to an effective remedy. Fair trial standards and national laws and procedures do not adequately protect the rights and

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interests of such victims who are entitled to judicial procedures that are fair and which protect their wellbeing and dignity.

9 Legal Aid

Access to justice is a paramount element of the right to a fair trial. Most accused and aggrieved persons are unable to afford legal services due to the high cost of court and professional fees. It is the duty of governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective. The contribution of the judiciary, human rights NGOs and professional associations should be encouraged.

10 Women and Fair Trial

Judicial processes and institutions reflect societal discrimination against women. Gender discrimination affects women in accessing justice and as prospective litigants, accused in criminal trials, victims of crime, witnesses and as legal representatives before judicial institutions. Women are not adequately represented in judicial positions and legal procedures are not sufficiently sensitive to issues that affect them.

11 Children and Fair Trial

Children are entitled to all the fair trial guarantees and rights applicable to adults and to some additional protection. The African Charter on the Rights and Welfare of the Child requires that: "Every child accused of or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect of human rights and fundamental freedoms."

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