reaction to President Habyarimana's assassination. But the order and detail with which the genocide was carried out suggest that everything had been organised long in advance. The reaction was systematic: on the morning of 7 April, barriers were set up and the hunt for Tutsi men began. The same method was used everywhere. The fishing boats on Lake Kivu were destroyed and the entire coast was heavily guarded to discourage those attempting to swim across.

The genocide was systematically administered. At the top, there were those who had been working in secret for a long time, the planners and real leaders, such as the Prefect Clément Kayishema. Training at town and area level was done by people given a mandate by the administration – burgomasters, councillors and cell leaders to which was added the enlightened layer of society, namely teachers, agronomists, judges and lower ministry authorities. The tasks of those who administered the genocide included choosing strategic areas where barriers were to be placed as well as drawing up lists with the order in which the victims were to be executed. For instance, the first priority was to kill intellectuals, then merchants – men and youth capable of building a resistance. Sometimes, deceptive strategies were adopted to avoid failure. The assailants travelled through the hills encouraging frightened people who had escaped to get into their trucks. These people were then taken to public places and killed.

The next category of genocidaires was in charge of distributing weapons. They were the intermediaries between the planners and underlings. Nevertheless, they could also give directives on killing the victims or they could join those doing the killing. Most of the time, they were trained to learn to handle firearms. Weapons used were mostly machetes (52,9%) and clubs (16,6%), which confirms the assumption that the killers were in large part made up of members of the local population who used ordinary weapons to kill their neighbours. Guns and grenades were a rare luxury reserved for good friends and for those who could pay.

That so many people could be killed in such a short time was the result of the systematic planning and administration of the genocide. Therefore it is here, at the organisational level, that strategies can be developed to prevent the methodical build-up of the conditions of genocide.

PIERRE ST HILAIRE[15]

During the three-month period beginning in April 1994, approximately 800 000 Rwandans were murdered by Hutu extremists seeking to eliminate the Tutsi minority. The genocide ended when the RPF seized power in July 1994, establishing the current Rwandan government. In the aftermath of

15 The author is indebted to Zachary Kaufman, Program Analyst at the US Department of Justice Office of Overseas Prosecutorial Assistance and Training, for his significant contribution to this paper. This work is a product of Mr Kaufman's tireless research and thoughtful reflection on this sad chapter in human history.

the genocide, the government faced the daunting challenge of rebuilding national institutions, as well as rendering justice to 115 000 genocide detainees held in deplorable conditions in the nation's prisons and communal jails or *cachots*. In dealing with these alleged violators of human rights, Rwanda had to decide which form of justice it should implement: 'retributive' (such as the Nuremberg Trials) or 'restorative' (such as the South African Truth and Reconciliation Commission [TRC]). Rwanda opted for retributive justice. That option, however, presented several problems.

The formal institutions of the Rwandan justice system were effectively destroyed during the genocide with most legally trained personnel killed, imprisoned or exiled. Since seizing power, the current government, with international donor support, has done a commendable job of rebuilding functional justice sector institutions, including police, courts and *parquets* (public prosecutors' offices). Nevertheless, the extreme shortage of skilled personnel, compounded by the lack of basic materials, has severely hindered the processes of justice and reconciliation. Having effectively established public order and security throughout Rwanda, including the volatile northwest region, the Rwandan authorities must seek to dismantle the culture of impunity that has subjected the country to brutal cycles of violence and vengeance. The beleaguered judicial branch has been assigned this task, as is appropriate. As should have been predicted, the judiciary was overwhelmed with the sheer magnitude of the task. For two years the formal justice sector machinery has struggled with this asphyxiating backlog, making very slow progress. Some observers predicted that without substantial external support, the backlog would not be processed for hundreds of years.

In late 1998, the Rwandan authorities began seeking unconventional methods of reducing its enormous genocide caseload. Conceding the impossibility of meeting this challenge with a still feeble and resource-starved formal justice system, the authorities decided to use a participatory, communal dispute resolution system known as *gacaca*. *Gacaca* were used in the past mainly to resolve land disputes, family matters and minor commercial disagreements. The Rwandan authorities expect to resolve all but the most egregious genocide cases by this method. The 1996 *Organic Law on Genocide* establishes four categories of offences based on the role of the individual and the acts committed during the genocide. Category one includes the architects of the genocide (the planners, organisers, instigators, supervisors and leaders of the genocide, and those who committed particularly heinous acts or sexual torture). The mandatory sentence for anyone convicted of category one offences is the death penalty. Category two is comprised of persons who were 'the perpetrators or accomplices of intentional homicide' or serious assaults resulting in death. Category three comprises persons who committed serious but non-lethal assaults. Category four covers crimes against property.

Sometime during the year 2001, approximately 110 000 category two to four prisoners will be turned over from the formal justice system to the *gacaca* system. It is therefore not surprising that donor attention is focused on the

imminent legislation and implementation of *gacaca*. Equally, if not even more vital to ending the brutal cycles of violence, retribution and impunity, and to advancing the prospects of justice and reconciliation in Rwanda, is the prosecution of those 2 500-5 000 category one offenders that will remain within the formal justice sector. The task of prosecuting those cases falls to the office and officers of the Prosecutor General. Their successful and prompt resolution will convince all Rwandans that the culture of impunity that has crippled national development for generations has been eradicated. Fair treatment and due process will serve to renew faith in the justice system and in government institutions among ordinary Rwandans.

RESTORATIVE VERSUS RETRIBUTIVE JUSTICE

Either during or after reparation and the compensation of human rights victims, the country must deal with the perpetrators. The ultimate success of the rule of law in the region, at least in part, will be predicated upon a society's admission of abuses during the previous regime or conflict, thus placing a premium on fundamental rights. There are at least six reasons why human rights violators should be brought to justice in a manner consistent with the principles of law that the nation wishes to establish: 1) to eliminate impunity for past human rights violations; 2) to deter future human rights violations; 3) to help rehabilitate criminals; 4) to help build society; 5) to establish a clear and public separation between the old regime and the new government; and 6) to take away the authority of the offending party and create greater obstacles for its return to power. Those administering this process, however, must be careful. The impulse to punish perpetrators of human rights violations can lead to human rights violations of the accused, including derogations from due process rights in their trials or the imposition of inhumane or arbitrary punishment. For example, violations, or the purging from the public sector of those who served the repressive regime, has been criticised as a violation of protection against discrimination based upon political affiliation or opinion.

MAKING THE CHOICE BETWEEN VARIOUS OPTIONS

The choice of method for pursuing justice must be based on the cultural values of the actors and the political and economic realities of their situation. In the past, experts treated accountability and reconciliation as opposite ends of a spectrum, but recent theories demonstrate transnational justice options that incorporate both elements. For example, legal scholar Jaya Ramji has proposed that in the case of Cambodia the cultural values of the region suggest that a trial of top leaders of the Khmer Rouge coupled with a truth commission for lesser members may be the best solution. East Timor and Sierra Leone

have proposed a similar approach. The choice of method for pursuing justice should conform to the specific characteristics of the given post-conflict situation.

The difference between retributive and restorative justice is most often cited in the comparison of the Nuremberg Trials and South Africa's TRC. Nuremberg focused on traditional retribution, while South Africa concentrated on alternative means for the restoration of human dignity. Albeit different, both were forms of reconciliation for the victims. Some people advocate the Nuremberg model in dealing with those who violate human rights, while others support the South African model. The truth is that neither is ideal nor can they be universalised. The work and political philosophies of the Nuremberg Trials and the TRC operated in different contexts. After the end of WWII, the allies had won decisively, whereas there existed a political stalemate leading up to the banning of apartheid. Thus, the allies had great latitude in choosing whatever 'victor's justice' they desired in the post-WWII climate – restorative or other – and did not have to consider the preferences of the Nazis. In South Africa, however, the pro- and anti-apartheid factions retained similar military might and either side could sabotage the transition to democracy if not satisfied by the conflict resolution procedures. The decision-making in South Africa was therefore more constrained. Unlike the victorious allied powers, South Africans needed to choose a solution that was reasonably satisfactory to all concerned parties.

Another factor that made the situations dissimilar was the proximity between opposing parties after the conflict. At the end of WWII and after justice had been rendered, the allies could return to their respective homelands. After the apartheid regime fell, South Africans would continue to live side-by-side. Thus, the post-WWII situation allowed the allies to fashion solutions without much consideration for further tensions between neighbours. In the post-apartheid climate, South Africans on all sides of the issue would remain 'neighbours', necessitating an increased sensitivity to mutually acceptable solutions, as both sides of the apartheid issue knew that whatever 'justice' was imposed victors and losers would have to continue to live side-by-side. In many ways, the same is true of Rwanda. At the end of the day Rwandans (Tutsi, Hutu and Twa) would all have to continue to live side-by-side. But the end of the conflict in Rwanda also shared a key similarity to the end of WWII. The RPF had won decisively and the views of the extremist Hutus did not have to be seriously weighed in determining which form of justice should be applied.

South Africans, if they wanted short-term peace and long-term prosperity, needed to choose a mutually agreeable process of reconciliation. The criterion of such a mechanism was that it would have to be acceptable to the pro-apartheid regime. The solution they chose was the TRC, which offered amnesty in exchange for truthful testimony. Such a proposition gave the anti-apartheid faction one of the most valuable things they wanted: the truth about what happened and public acknowledgment of crimes committed against

them. It also gave the former pro-apartheid regime what it wanted: an opportunity to move beyond the past with as little harm to itself as possible. This was a model that both sides agreed to endorse. Thus, the end of WWII and the end of apartheid were very different. As leaders of the anti-apartheid movement and others acknowledge, retributive justice would not have been possible in South Africa. The success of the South African TRC demonstrates that dealing with crimes through traditional prosecutions may not be the best solution in all cases. Justice for both the perpetrators and victims of human rights violations is a delicate balance. For some, Hammurabi's 'an eye for an eye, a tooth for a tooth' may be a lesser call to justice than Ghandi's consideration that 'an eye for an eye will leave the world blind'.

DISCUSSION

- So far our discussion entitled 'The Rwandan Experience' has addressed questions about the genocide in Rwanda and bringing the perpetrators of the genocide to justice. I think that when we talk about justice it implies fairness; it implies justice for all. In the latter days of the genocide there were fairly substantial retaliations against Hutus, both by the RPF and vigilante groups. Do we have any sense of the numbers of those who were killed and those who were involved in the killings?
- As a result of the genocide of 1994 a lot of people left the country. How best can you convince them today, as far as this debate is concerned, that they can maybe come back home?
- The facts about the role of the international community in the genocide are becoming increasingly well known: the deliberate blocking of UN intervention by the United States, the withdrawal of Belgian troops at pivotal moments, the establishment of a 'safe-zone' by the French, which served as a getaway corridor for the genocidal regime and its forces, etc. What right does the international community have now to denounce Rwanda's cross-border raids into the Congo in pursuit of known genocidaires?
- Given that over 80% of the country is classifiable as Hutu, does the present Tutsi-dominated composition of the Rwandan government not undermine the possibility of Tutsi-Hutu rapprochement?
- I'm a Rwandan genocide survivor. I would like to ask Pierre St Hilaire a question about justice and fairness for the victims and for the suspects, knowing (that) when the genocide started the international community ignored it or judged it, at that time, to be something other than it was and, accordingly, didn't really act to prevent the genocide. It seems ironic to now have so many suspects in prison in Rwanda, and have this same international community judge it to be a human rights violation. Instead of judging Rwanda for committing these human right violations, why don't these other countries help more? What do you think they can do and how