

STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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Introduction

The International Criminal Tribunal for Rwanda (ICTR) is the first international court of law established to prosecute high-ranking individuals for massive human rights violations in Africa. The purpose of this court is to prosecute those allegedly responsible for the 1994 Rwandan Genocide.

Background

Following the assassination of Hutu President Juvenal Habyarimana on 6 April 1994, the Great Lakes country of Rwanda descended into civil war and genocide. Hutu extremists in the National Republican Movement for Development and Democracy (MRND) and the Rwandan Armed Forces (RAF) launched an extermination campaign against moderate Hutu and the entire Tutsi ethnic minority. By the time the civil war and genocide ended on 19 July 1994, over 800,000 Rwandans had been murdered.

In an effort to punish those responsible for genocide, the United Nations established the International Criminal Tribunal for Rwanda. On 8 November 1994, the United Nations Security Council adopted resolution 955 (1994), which established “an international tribunal for the sole purpose of prosecuting 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 neighboring States, between 1 January 1994 and 31 December 1994.”

As a Chapter VII Security Council resolution, the ICTR asserts primacy over the domestic laws and national courts of third States, and has the ability to force the surrender of an accused, be they a Rwandan citizen or not, located in Rwanda or any third State. As provided in Security Council resolution 977 (1995) of 22 February 1995, the ICTR is headquartered in Arusha, Tanzania, with additional offices located in Kigali, New York and The Hague.

Composition of the ICTR

The ICTR is governed by its Statute, which is annexed to Security Council resolution 955 (1994). The ICTR consists of three major organs: the Chambers, the Office of the Prosecutor and the Registry.

There are four Chambers in which judges adjudicate trials and motions before the ICTR: three lower Trial Chambers and one Appeals Chamber. Although all three of the

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lower Trial Chambers are located in Arusha, the ICTR Appeals Chamber also adjudicates for the International Criminal Tribunal for the former Yugoslavia, and is located in The Hague, Netherlands.

In total, the Chambers consist of 16 permanent judges and 9 *ad litem* judges, all chosen by the United Nations General Assembly. There are three permanent judges for each of the three Trial Chambers, and seven permanent judges for the Appeals Chamber; however, only five of these seven permanent judges sit on the Appeals Chamber at any given time.

Although 9 *ad litem* judges serve on the ICTR, they are selected from a pool of 18 *ad litem* judges. The pool of 18 *ad litem* judges was created to expedite the judicial process on 14 August 2002 through Security Council resolution 1431 (2002). Originally, only four *ad litem* judges could serve on the ICTR at any given time, but due to the pressures of the judicial calendar and the Security Council's desire to close down the Tribunal by 2009, the number of serving *ad litem* judges was increased to nine on 27 October 2003 through resolution 1512 (2003).

The Office of the Prosecutor is responsible for investigating all crimes under which the ICTR has jurisdiction, prepares indictments, and prosecutes defendants. The Registry is responsible for providing all administrative support to the Chambers and the Prosecutor.

Major Cases before the ICTR

On 9 January 1997, the ICTR held its first trial, one of the most momentous cases in international law: *The Prosecutor v. Jean-Paul Akayesu*. During the 1994 Rwandan Genocide, Jean-Paul Akayesu served as the mayor of Taba, a city in which thousands of Tutsis were systematically raped, tortured and murdered. At the start of his trial, Akayesu faced 12 charges of genocide, crimes against humanity and violations of common article 3 of the 1949 Geneva Conventions in the form of murder, torture and cruel treatment. In June 1997, the Prosecutor added “three counts of crimes against humanity and violations of common article 3/Additional Protocol II for rape, inhumane acts and indecent assault” (Report of the ICTR (S/1997/868)). These additional counts marked the first time in the history of international law that rape was considered a component of genocide.

On 2 September 1998, the ICTR found Akayesu guilty of nine counts of genocide, direct and public incitement to commit genocide and crimes against humanity for extermination, murder, torture, rape and other inhumane acts. The conviction of Akayesu marked “the first in which an international tribunal was called upon to interpret the definition of genocide as defined in the Convention for the Prevention and Punishment of the Crime of Genocide” (See ICTR Fact Sheet No. 1, *The Tribunal at a Glance*). According to the Convention, genocide is defined as “the act of committing certain crimes, including the killing of members of the group or causing serious physical or mental harm to members of the group with the intent to destroy, in whole or in part, a national, racial or religious group, as such” (Genocide Convention, article 2). As well as interpreting the definition of genocide, the ICTR also indicated that the crime of rape was “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive” (*The Prosecutor v. Jean-Paul Akayesu*, para. 598) and underscored that sexual assault constitutes “genocide in the same way as any other act as long as [it was]

committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such” (*ibid.*, para. 731). Akayesu is currently serving life imprisonment in Mali.

In addition to the important jurisprudence generated from the Akayesu trial, the ICTR also set two major precedents in the trial against Jean Kambanda (*The Prosecutor v. Jean Kambanda*). Kambanda served as Prime Minister of the Interim Government of Rwanda throughout the entire 100 days of genocide. Kambanda was brought before the ICTR in October 1997 and pleaded guilty to six counts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity. Kambanda’s guilty plea and subsequent conviction marked not only the first time in international law that a Head of Government was convicted of genocide, but also that an accused person acknowledged his guilt for genocide before an international criminal tribunal. Like Akayesu, Kambanda is currently serving life imprisonment in Mali.

Also noteworthy were the ICTR prosecutions of Ferdinand Nahimana and Jean-Bosco Barayagwiza, leaders of Radio Television Libre Milles Collines (RTL), and of Hassan Ngeze, the founder and director of *Kangura* newspaper. The ICTR consolidated the indictments of these three men into a single trial, which is more commonly referred to as “The Media Case” (*The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*). This trial was the first time since Nuremberg that the role of the media was examined as a component of international criminal law. In 2003, Nahimana, Barayagwiza and Ngeze were convicted on counts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and crimes against humanity. Originally, Nahimana and Ngeze were sentenced to life imprisonment and Barayagwiza was sentenced to 35 years. Upon appeal, Nahimana’s and Ngeze’s sentences were respectively dropped to 30 and 35 years.

According to Prosecutor Hassan B. Jallow, it is expected that between 1997 and the end of 2008, roughly 86 people will have been tried before the ICTR (Statement by Mr. Hassan B. Jallow, Prosecutor of the ICTR, to the United Nations Security Council, 4 June 2008 (S/PV.5904)).

Completion Strategy and Problems

On 28 August 2003, the Security Council adopted resolution 1503 (2003), ordering the ICTR to “take all possible measure to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all work in 2010”. Since the issuance of resolution 1503 (2003), the ICTR has been involved in an active Completion Strategy campaign to comply with this mandate. In 2002 and 2003, the Security Council increased the number of judges serving on the ICTR, via resolutions 1431 (2002) and 1512 (2003), in order to expedite cases before the Tribunal. In addition to speeding up the trials, the Office of the Prosecutor has tried, where possible, to transfer cases to competent national jurisdictions, particularly in Rwanda. Since November 2007, the Office of the Prosecutor has been training the Rwandan judicial sector “in such areas as international criminal law and practice, prosecution strategies, law on indictments, advocacy, court-related information management and online legal research” so that it may be better able to handle any and all transferred cases from the ICTR (Report on the Completion Strategy (S/2008/322), para. 60). Currently five case referrals to Rwandan

national courts, including the case of one fugitive, are awaiting judicial determination (*ibid.*, para. 50).

Despite these efforts, however, the ICTR faces many challenges in executing its Completion Strategy. According to Prosecutor Jallow in a June 2008 statement before the Security Council, “it is now evident that there will still be pending trial activity at the ICTR by the end of 2008... [and] ...the need for a proper completion would be best sustained by permitting the ICTR to continue with trial activity beyond the end of 2008 in order to conclude pending cases” (Statement by Mr. Hassan B. Jallow, Prosecutor of the ICTR, to the Security Council on 4 June 2008 (S/PV.5904), p. 9).

In 2008, three high-level fugitives, Callixte Nsabonimana, Dominique Ntawukuriryayo and Augustin Ndirabatswe, were arrested. Due to their leadership roles in the Rwandan Genocide, none of these men can be transferred to national jurisdictions. Although the Office of the Prosecutor has been preparing for these trials, it is highly unlikely that all three cases will be adjudicated by the end of 2008.

In addition to the recent increase in workload due to fugitive apprehensions, the ICTR is also threatened with an increased workload due to the inability and unwillingness of national jurisdictions to accept ICTR case referrals. Despite talking to several African countries about the possibility of transferring cases, the Office of the Prosecutor has managed to secure an agreement with only one African State, Rwanda, to accept case referrals (Report on the Completion Strategy (S/2008/322), para. 48). Furthermore, merely because Rwanda agrees, in theory, to accept ICTR referrals, does not mean that it will try any cases. Recently, the Trial Chambers rejected the Prosecutor’s request to transfer the case of Yusuf Munyakazi to Rwanda, a ruling that the Prosecutor is appealing (*The Prosecutor v. Yussuf Munyakazi*). In total, five cases can potentially be transferred to Rwanda. However, if none of these five cases are brought under Rwandan jurisdiction, the ICTR would be faced with additional work in 2009, “given that so far no country other than Rwanda has indicated a desire to receive any of these cases” (Statement by Mr. Hassan B. Jallow, Prosecutor of the ICTR, to the Security Council on 4 June 2008 (S/PV.5904), p. 10). Outside of Africa, only three States have agreed to accept ICTR transfers. To date, only two cases have been successfully transferred, and both were sent to France. Recently, the Netherlands revoked its offer to try ICTR defendant Michel Bagaragaza, thus increasing the ICTR’s judicial calendar and further straining its Completion Strategy.

Finally, the ICTR is experiencing difficulty executing its Completion Strategy due to the existence of 13 indicted fugitives and the unwillingness of third party States to help apprehend these men. Since the ICTR can not try any of the 13 fugitives in absentia, it is imperative that they be caught as soon as possible in order for the ICTR to comply with the timeline set forth by the United Nations Security Council. However, several countries, particularly Kenya and the Democratic Republic of the Congo, have, according to Prosecutor Jallow, done little to catch fugitives known to be within their territory and must “intensify cooperation with and render all necessary assistance to the ICTR in connection with efforts to bring” all indictees to the ICTR (Statement by Mr. Hassan B. Jallow, Prosecutor of the ICTR, to the Security Council on 4 June 2008 (S/PV.5904), p. 10). Of the 13 fugitives, 4 are earmarked for trial at the ICTR and 9 face the possibility of a trial under national jurisdictions, should their cases be accepted for referral. Nevertheless, the ICTR is

expecting a substantial increase in the number of cases to be adjudicated, well beyond the current timeline, should any of these fugitives be caught.

Although the ICTR has already begun to downsize its activities and staff in compliance with the Completion Strategy, ICTR President Dennis Byron requested in the latest ICTR Completion Strategy report to the Security Council that “in light of the new developments due to exceptional circumstances...the Security Council and Member States...consider an extension of the judges’ mandates [which are due to expire by the end of 2008] so that they may complete the cases at trial... [and] that the Tribunal be provided with adequate resources to respond to the new additional workload [because] the Tribunal’s ability to maintain or improve upon its current level of efficiency is largely dependent on the retention of its highly experienced and qualified judges and staff” (Report on the Completion Strategy (S/2008/322), para. 68).

Related Materials

A. Legal Instruments

Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948, United Nations, *Treaty Series*, vol. 78, p. 277.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, United Nations, *Treaty Series*, vol. 75, p. 31.

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Geneva, 12 August 1949, United Nations, *Treaty Series*, vol. 75, p. 85.

Geneva Convention relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, United Nations, *Treaty Series*, vol. 75, p. 135.

Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, United Nations, *Treaty Series*, vol. 75, p. 287.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), Geneva, 8 June 1977, United Nations, *Treaty Series*, vol. 1125, p. 609.

B. Jurisprudence

International Criminal Tribunal for Rwanda, *The Prosecutor v. Jean-Paul Akayesu* (ICTR-96-4-T), Judgement of the Trial Chamber of 2 September 1998.

International Criminal Tribunal for Rwanda, *The Prosecutor v. Jean Kambanda* (ICTR 97-23-S), Judgement of the Trial Chamber of 4 September 1998.

International Criminal Tribunal for Rwanda, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze* (ICTR-99-52-T), Judgement of the Trial Chamber of 3 December 2003.

International Criminal Tribunal for Rwanda, *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor* (ICTR-99-52-A), Judgement of the Appeals Chamber of 28 November 2007.

International Criminal Tribunal for Rwanda, *The Prosecutor v. Yussuf Munyakazi* (ICTR-97-36-R11bis), Decision of the Trial Chamber of 28 May 2008 on the Prosecutor's request for referral of case to the Republic of Rwanda.

C. Documents

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, 13 November 1997 (S/1997/868).

International Criminal Tribunal for Rwanda: Fact Sheet No. 1, The Tribunal at a Glance.

Report on the Completion Strategy of the International Criminal Tribunal for Rwanda, 1 May 2008 (S/2008/322).

D. Doctrine

V. Morris and M. P. Scharf, *The International Criminal Tribunal for Rwanda*, Irvington-on-Hudson, NY, Transnational Publishers, 1998 (volume one contains analysis, volume two contains documents related to the Tribunal).