

The International Criminal Tribunal for Rwanda: Time for Pragmatism

EXECUTIVE SUMMARY AND RECOMMENDATIONS

One year ago, the International Criminal Tribunal for Rwanda (ICTR) was mired in trouble, under serious time constraint because of the firm date by which its work had to be finished. It faced three challenges. First, to organise a program of investigations that would give it a realistic chance to finish all its initial proceedings by 2008. Secondly, to set up a time-table for cases that reflected its priorities, including the need for greater efficiency. Thirdly, to resist pressure from the Rwandan government, which was attempting to stymie any possibility that members of the Rwandan patriotic army (RPA) would be tried. With respect to all three challenges, the ICTR has become more pragmatic.

A deadly overburdening of the tribunal's workload has been avoided. The flood of arrests and charges has been decisively dried up. However, there is still room for this realistic approach to be carried to its logical conclusion – namely for the court to show the courage to put a stop to new cases. It has charged 82 persons with genocide. Quite simply, the ICTR does not have the capacity to deal with any more cases. More importantly, the main suspected perpetrators have already been indicted. The departure of Carla del Ponte as prosecutor, forced by the United Nations Security Council on 28 August 2003, and her replacement by the Gambian judge Hassan Jallow do not change the court's priorities. It needs to complete the outstanding cases and re-launch its enquiries into the war crimes presumed to have been committed by the RPA, which have been suspended for more than a year.

The cold reality is that the ICTR needs to be a good deal more efficient in handling trials. Among other things, it should maintain its priority of judging the main suspects from the army and 1994 government, whose trials have been set to begin in the last three months of 2003. It will only be possible to wrap up the initial proceedings within four to five years if the court vigorously reforms how its judges conduct the trials and if it refuses to start any new genocide investigations. The new president judge, Erik Mose, who presented a final four-year trial calendar to the UN General Assembly for the first time, shows a welcome sense of responsibility. The judges and the court must prove their total commitment to this process. Reform of the registry's management of defence costs has also become vital.

There is one further issue. A year ago, the Rwandan government provoked a serious crisis in its difficult relationship with the court when it prevented the travel of witnesses whose presence was required for cases to proceed because it objected to the prosecutor's inquiries into war crimes presumed to have been committed by the RPA in 1994. The formal suspension of Carla del Ponte's investigations in September 2002 and the establishment of a U.S.-sponsored deal between the prosecutor's office and the Rwandan authorities seemed to have improved the situation. At a tripartite meeting in Washington in May 2003 an agreement was

reached in principle whereby Kigali would take responsibility for the trials, and the ICTR would only intervene if Rwanda was unable to carry them out satisfactorily. However, the ejection of Carla del Ponte from the prosecutor's seat following the Security Council decision to separate the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY) means that there will probably never be a trial of the RPA in Arusha. This triumph of pragmatism, however, does not absolve the prosecutor's office of its responsibilities.

The Rwandan government is offering, in effect, no guarantee that justice will be rendered for crimes committed by the RPA. It is of the highest importance, therefore, that the ICTR resumes outside the country its investigation into the crimes allegedly committed by the RPA and does not set an end date to this investigation. The reopening of the investigation need not be done publicly but this is the minimum that would allow the tribunal to reclaim these cases should the Rwandan authorities fail to prosecute them adequately. Otherwise, the Washington "agreement" will be a total failure and bear heavy responsibility for the negative consequences with respect to reconciliation in Rwanda that would result from the ICTR's inability to complete part of its mandate.

RECOMMENDATIONS

To the judges of the ICTR:

1. Apply systematically and firmly a genuine control on hearings, fix the end dates of proceedings currently underway and stick to them.
2. Respect scrupulously and collectively the trial calendar that the president of the court has set up for the next four years.

To the prosecutor's office of the ICTR:

3. Stop at once the filing of new charges on genocide dossiers and redirect the court's entire investigation service towards the final preparation of existing charges, so that all cases will be ready for trial by the end of 2004, the initial date fixed for the completion of investigations.
4. Evaluate the ways in which information and evidence collected in other dossiers that remain in the investigation stage could be made available to national jurisdictions having both the desire and ability to begin proceedings against suspects.
5. Re-launch discreetly outside Rwanda the investigation into crimes alleged to have been committed by the RPA, keep the cases open past 2004 and be ready, if necessary, to bring indictments.
6. Ensure that while the responsibility for trials of RPA members is given in the first instance to the Rwandan government, there is an effective mechanism for monitoring the progress of proceedings and verifying their equity and integrity.

To the ICTR registry:

7. Undertake a major reform of the management of defence costs with the aim of holding all parts of the ICTR responsible, identifying and sanctioning those who have abused the system and allowing for the smooth and transparent work of the defence teams.

To the government of Rwanda:

8. Begin trials against RPA members suspected of having committed war crimes and crimes against humanity in 1994, in accordance with the agreement made at the Washington meeting and its inherent obligation to punish such crimes severely.

To the United Nations Security Council:

9. Extend, without delay, the articles of Regulation 1841 on the competencies of the judges ad litem, and welcome the increase in numbers of these judges given to the ICTR between now and the end of 2003.
10. Ensure that crimes committed by the RPA in 1994 are effectively prosecuted, whether left in the first instance to the Rwandan authorities or remaining within the remit of the ICTR.

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