Chapter 3
International Criminal Tribunal for Rwanda

Following its creation in 1994¹ thousands of witnesses have presented testimony before the ICTR. The Tribunal’s judicial process has been centred on witness testimony as the cornerstone of the trial process and the basis for the determination of individual criminal responsibility.² The reason being, with respect to many important elements of the indictment, no other evidence than testimonial evidence has been available. Documentary evidence was hard to come by, hence created the necessity to base cases on testimonial evidence.³ Like chapter two, this chapter shall examine the ICTR witness-scheme with its treaty⁴ and Rules⁵ similarly structured to that of the ICTY. In seeking to establish jurisdiction and judicial authority over witnesses and the justification of imposing sanctions on them, the chapter explains what the Tribunal has been doing through relevant case law. It evaluates its practice in light of the cosmopolitan reading as indicated in chapter one. In so doing, establishes

to what extent the Tribunal exhibits cosmopolitan features. Can the claim that
the ICTR is cosmopolitan be substantiated by the way the Tribunal functions
through its practice and jurisprudence with regards to witnesses?

3.1 Witness Journey

3.1.1 Sourcing
A major challenge for the ICTR was the diverse geographical spread of witnesses.
Witnesses came from Rwanda and abroad. The prosecution for instance used
a large number of informants and witnesses who resided outside Rwanda.
Informers, many of whom became witnesses, were tracked down in 26 differ-
ent countries by the prosecution.6 The international community also supported
in bringing to the Tribunal, over 2000 witnesses from more than 40 countries.7
Furthermore, the ICTR Investigation Unit went to great lengths to ensure the
continued availability of witnesses for future proceedings. It has guidelines and
manuals for investigators, outlining basic instructions to carry out missions
and interviews with witnesses. It also maintains a database with the list of wit-
nesses and has contacts with witnesses on a quarterly basis.8 According to Chris
Mahony, cultural sensitivity was an imperative in order to obtain information
from witnesses, especially in cases involving sexual violence offences. Local
elements had to be incorporated in the investigation process, as communica-
tion with the witnesses was very sensitive. The gender perspective also had to
be considered, as most witnesses were women who also turned out to be victims
as well.9

3.1.2 Modelling
3.1.2.1 Crime-Based
A majority of the witnesses before the Tribunal have been eyewitnesses, either
victims or survivors of the genocide importantly rape victims. Others include,
several detainees in Rwanda acting as crime-based witnesses or UN officials

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6 Chris Mahony, The Justice Sector afterthought: Witness Protection in Africa (Institute of
7 ICC sixth session ICC-ASP/6/INF.2, p. 42 para. 6; Report of the International Criminal
Tribunal for Rwanda, A//65//S/2010//408, 30 July 2010; Francois-Xavier Nsanzuwera,
Justice 944, 946 fn. 4.
8 Chris Mahony, The Justice Sector afterthought: Witness Protection in Africa (Institute of
9 Ibid; see also ICC sixth session ICC-ASP/6/INF.2, p. 42 para. 5.