STATE COOPERATION AND ITS CHALLENGES FOR THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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1. Introduction

State cooperation is a highly contentious topic that preoccupies the existence of the International Criminal Tribunal for Rwanda (ICTR), for herein simmers the normative conflict between State sovereignty and individual accountability to the international community. The ICTR is heavily dependent on the cooperation of States in ensuring justice for the Rwandan population, deterring perpetrators of international crimes, ensuring a fair trial, and contributing to the development of international criminal law. Without State assistance, parties to the proceedings before the Tribunal are unable to conduct thorough investigations to prepare their cases. Consequently, the Tribunal is hindered from ascertaining truth and delivering judgments based on deliberation of the full array of facts. The ICTR’s history also demonstrates the sensitivity of its credibility to the political interests of States. As the Tribunal applies the rules to secure State cooperation, it risks attracting politically motivated embargos on assistance as well as criticism regarding its impartiality.

The concern of encouraging State collaboration is reflected in the many provisions within the ICTR Statute and the ICTR Rules of Procedure and Evidence (ICTR Rules). However, these rules do not seem to adequately respond to the needs of the Tribunal to fulfil its mandate. The opportunity is therefore ripe to develop further rules to govern the fragile relationship between the Tribunal and States. This paper takes as its central project a critical debate regarding the current rules and jurisprudence addressing State cooperation.

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cooperation. If the ICTR is to concurrently insist on State cooperation and maintain its independence, it must re-imagine how it may more effectively enlist States to assist it in its goals. To demonstrate this point, the discussion will commence with a survey of the legal regime establishing the duties of States in Part 2 before proceeding to analyze the jurisprudence and the challenges State cooperation presents for the ICTR in Part 3. The latter will focus specifically on the principle of equality of arms, as well as the credibility of the Tribunal as an impartial institution. By situating the debate in this context, this paper hopes to engage a dialogical process that highlights the genuine need to advance the current regime governing State cooperation.

2. The Statutory and Regulatory Regime Governing State Cooperation

A. Cooperation of State and Non-State Entities with the ICTR

The primary provision governing State cooperation is Article 28 of the ICTR Statute which states:

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to:
   (a) The identification and location of persons;
   (b) The taking of testimony and the production of evidence
   (c) The service of documents;
   (d) The arrest or detention of persons;
   (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda

Although Article 28(2) establishes broad categories under which the Trial Chamber may issue orders, it also empowers the Tribunal to issue orders requiring State cooperation beyond these matters. As indicated by the term “shall”, the obligation of States to cooperate is clearly imperative.

Generally, national courts and the ICTR exercise concurrent jurisdiction as per Article 8(1) of the ICTR Statute. Therefore, national courts may prosecute crimes that fall within the subject matter jurisdiction of the ICTR. This is qualified by Article 8(2), which establishes the primacy of the