COUNTDOWN TO 2010: A CRITICAL OVERVIEW OF THE COMPLETION STRATEGY OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

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1. Introduction

The ICTR was conceived and established by the United Nations Security Council as part of a broader plan aimed at achieving multiple objectives. One of the objectives was to put an end to the culture of impunity arising from the genocide and systematic, widespread and flagrant violations of international humanitarian law in Rwanda. Another crucial pursuit was to take effective action in bringing those responsible for the crimes to justice. A third objective was based on the Security Council’s conviction that the ICTR could, through dispensing justice, contribute to the process of national reconciliation, as well as the restoration and maintenance of peace in Rwanda.1

Despite very difficult beginnings, the ICTR has made a significant contribution to the development of international criminal jurisprudence and the emergence of an international criminal justice system.2 As at 30 November 2005, the trials of twenty-six accused persons had been completed and cases involving twenty-six others were in progress. Seventeen accused were still awaiting trial. They include high-ranking government officials, military officers and business leaders. The first ICTR

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1 Resolution 955 (1994) of 8 November 1994
2 The rule of law and transitional justice in conflict and post-conflict societies, report of the Secretary-General, UN Doc. S/2004/616. paragraph 41

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judgment handed down in September 1998\(^3\) represented the very first conviction in history for the crime of genocide, following the enactment of the genocide convention of 1948.

Furthermore, the Tribunal has reshaped the definition of rape by issuing the first judicial pronouncement defining rape as a constitutive element of genocide. Another trailblazer crafted at the ICTR was the guilty plea entered by Jean Kambanda, the first ever such plea by a head of government before an international judicial body, for his involvement in atrocities committed by his administration. This case, together with other cases, points to the fact that heads of government and government officials are no longer immune from prosecution for mass violations of human rights. Through its case law and proceedings, the ICTR is contributing on behalf of future generations to the establishment of an historical account of events that took place in Rwanda during 1994. With its successes and shortcomings, the ICTR has undoubtedly influenced the creation of subsequent international tribunals, mixed courts and mechanisms, such as the East Timor Panels, the Special Court for Sierra Leone, the Special Court for Cambodia and the International Criminal Court, and continues to serve as a benchmark against which the performance of these bodies can be measured.

Having said this, various criticisms from the most diverse quarters have repeatedly been directed at the ICTR. Though it is widely acknowledged that the Tribunal started off under extremely difficult circumstances which were characterized by inadequate and/or unreliable infrastructure and support – even from UN Headquarters – a number of other difficulties and weaknesses subsequently accrued over the years and put confidence in the Tribunal to the test, raising questions as to whether it could effectively achieve the mandate entrusted to it by the international community.\(^4\) Several years down the road, that same international community became convinced that the ICTR and its sister institution, the International Criminal Tribunal for the Former Yugoslavia (ICTY), were not only too costly, but also too inefficient and ineffective. Worse, in their view, “as mechanisms for dealing with justice in post-conflict societies, they exemplif[ied] an approach that [was] no longer politically or

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\(^3\) The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment, 2 September 1998.