CHALLENGES OF INVESTIGATING AND PROSECUTING INTERNATIONAL CRIMES

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Introduction

From the inception of the United Nations International Criminal Tribunal for Rwanda (UN-ICTR or ICTR), investigation and prosecution of persons suspected of committing crimes under the Statute of the Tribunal has continued to pose serious challenges to the Office of the Prosecutor (OTP). Such challenges are not only inevitable, but also continue to spur practitioners in the OTP, considering the ever pressing need to improve investigation techniques and speed up presentation of evidence. This is done in light of the need to prosecute as many high level indictees as possible within reasonably short periods in order to contribute to the realization of the mandate of the Tribunal. In so doing, the OTP is not oblivious to the fact that justice should not be sacrificed at the altar of speed. This paper proposes to identify the salient policy and practical challenges the OTP has faced in the investigation and prosecution of the Rwandan genocide, and outlines measures taken and efforts made to meet those challenges.

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2 See Articles 1, 6(1) and 6(3) of the Statute of the Tribunal.
Initial Challenges to Investigations

The Prosecutor constitutes a separate and independent organ of the Tribunal, with authority to investigate and prosecute persons responsible for serious violations of International Humanitarian Law in the territory of Rwanda and Rwanda citizens responsible for such violations in the territory of neighbouring States between 1 January 1994 and 31 December 1994.\(^3\) Investigations may be initiated on the basis of information received from “any source”. In carrying out investigations the Prosecutor may seek the assistance of a state and international authorities when necessary.

Initial investigations into the genocide that occurred in Rwanda in 1994 were done by Non-Governmental organizations (NGOs), the media, Governments, Inter Governmental Organisations (IGOs), the Special Investigation Unit (SIU) and UN Commissioned agencies. Although each of these organizations adopted their own investigative techniques\(^4\) in establishing what happened, they reached the conclusion that genocide did in fact occur in Rwanda in 1994. It was principally on the basis of their information that the international community decided to set up this Tribunal.

One of the earliest challenges facing the OTP related to the evidential value of the material collected by the various groups mentioned above. Reports from NGOs proved very helpful in enabling the OTP to gather pertinent, substantiated data. Though NGOs are not in essence investigatory bodies the extent of the investigations underlying these reports and the level of analysis they achieved indicated a true effort and genuine commitment by many such organizations to produce verifiable facts. Witness interviews, for instance, were very useful not only for learning about the incidents they described but also for corroborating other events and reports.

However, as with other reports submitted, further data was required in order to construct effective cases against those groups or individuals responsible for alleged violations. Although many international and local NGOs were a better overall source of information, some did not provide the OTP with the supporting documentation it needed. They maintained that

\(^3\) See Articles 1, 15 and 17 of the Statute of the Tribunal.