

Some Thoughts on Issues at the ICTR

ICTR Defence Conference
The Hague, The Netherlands
November 2009

ICTR Issues

What Will *Not* Be Part of This Presentation

- Jurisprudence
- Rules of Evidence
- Rules of Procedure
- Subject of other presentations

ICTR Issues

Overview of Presentation

- Cost
- Length of Proceedings
- Electronic Document Handling
- Physical facilities
- Relationship between the Tribunal and the Rwanda Government
 - ▶ Victor's Justice
 - ▶ Effect on jurisprudence

ICTR Issues

Overview of Presentation

- Problems for Defence
 - ▶ Relationship with Rwanda
 - ▶ Staff
 - ▶ Delays in payments
 - Fees
 - Expenses
- Complex litigation
- Ethical Standards

ICTR Issues

Cost

- 2008-2009 budget
 - ▶ \$286,138,700
 - ▶ \$121,381,300 Increase from previous binnerium (net)
 - ▶ 4.9 percent increase
- Budgeted positions
 - ▶ Reduce from 1,042 to 693 over period
 - ▶ Supplemental budget keep slots through

September 2009

ICTR Issues

Cost

- Budget Allocation Regular UN Budget
 - ▶ Registry: 60.7 percent
 - ▶ OTP: 19.1 percent
 - ▶ After Service Health Insurance and Judges Pensions: 14.5
 - ▶ Chambers: 3.0 percent
 - ▶ Archives: 2.7 percent

ICTR Issues

Costs

- Combined cost of ICTR and ICTY is very high percentage of UN operating budget
- Lesson for ICC
- Failure to centralize functions
 - ▶ Personnel and Administration
 - ▶ Finance
- Free Standing Courts Inherently Expensive

ICTR Issues

Length of Proceedings

- **Government II Case**
 - ▶ Arrests April 1999
 - ▶ Trial Began November 2003
 - ▶ Argued December 2008
 - ▶ Judgment Expected mid-2010
- **Butare**
 - ▶ Trial Began June 2001
 - ▶ Argued April 2009

ICTR Issues

Length of Proceedings

- **Complex litigation**
 - ▶ Hotly contested
 - ▶ Numerous witnesses for both parties
 - ▶ Large number of documents
- **Lack of Facilities**
 - ▶ Only 4 Courtrooms
 - ▶ Share courtrooms among trials

▪ **Deficient legal system**

ICTR Issues

Length of Proceedings

- Multi-accused trials
 - ▶ General Rule:
 - Multi-accused trials help prosecution
 - ▶ Inherently lengthy
- Working in 3 languages
- Document translation
- Witness transportation
- Current focus on completion strategy

ICTR Issues

Length of Proceedings

- Administrative disputes
 - ▶ OTP vs. Registry
 - Statute says Secretary General appoints OTP staff on recommendation of Prosecutor
 - ICTR Registrar took position it was his choice under UN administrative regulations
- OTP messed up recruitment of deputy Prosecutor and Chief of Prosecutions
 - ▶ Vacant from 2001 through 2003

ICTR Issues

Length of Proceedings

- Violation of Right to Trial Without Undue Delay
 - ▶ 10+ years in Government I & II and no judgment
 - ▶ 12+ years in Butare and no judgment
- Human Rights Violation by UN
 - ▶ Human Rights Committee Applying ICCPR
 - Orders cases dismissed
 - ▶ No one seems to care

ICTR Issues

Electronic Document Handling

- Outstanding
- State of the art for its time
- Reduces costs
- Makes it easier to deal with documents
- Available to parties/public timely and easily

ICTR Issues

Physical Facilities

- AICC *not* designed as court
 - ▶ Designed as office building
 - ▶ Forced to jam courtrooms into office space
- Same problem with ICTY
 - ▶ Aegon Insurance building
 - ▶ ICTY does *not* provide defence office space
- Failure to use court facilities effectively
- Contributes to delays, slows trials

ICTR Issues

ICTR Relationship with Rwanda

- Tribunal reliance on government
 - ▶ Witnesses and witness protection
 - ▶ Access for investigations
- Perception of “victor’s justice”
 - ▶ Same charges as made about Nuremberg/
Tokyo
 - ▶ Only the losers indicted
 - ▶ No RPF indicted

ICTR Issues

ICTR Relationship with Rwanda

- Witness issues
 - ▶ Rwandan government knows who are witnesses
 - ▶ Retaliation against defence witnesses
 - The “Mugiraneza 10”
 - Public document, RP 27472-507
- Effect on jurisprudence
 - ▶ Barayagwza dismissal
 - ▶ Trial Chamber sentence 35 years rather than