THE POSITION OF THE GOVERNMENT OF THE REPUBLIC OF RWANDA ON THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

· *INTRODUCTION*

The ICTR was established by Security Council Resolution 995 of 8 November 1994. The Government of Rwanda made the initial request to the establishment of the ICTR. The ICTR was given the mandate :

"To prosecute persons responsible for genocide and other serious violations Of international humanitarian law committed in the territory of Rwanda and Rwanda citizens responsible for genocide and other such violations committed in the territory of neighboring states between 1st January 1994 and 31st December 1994".

The principal objectives of setting up the ICTR were :

(a) to act as a deterrent against genocide and other serious violations of international humanitarian law

(b) to bring to justice persons responsible for these crimes

(c)to contribute to the process of national reconciliation and the restoration and maintenance of peace in Rwanda.

Ever since the ICTR was established, the Government of Rwanda has scrupulously respected its independence and reiterates its support to it.

However, the Government of Rwanda has grave misgivings on the structure and functioning of articles in the international media, coverage which reflects poorly on the ICTR and has been a psyched of bitter disappointment to the Government and the people of Rwanda.

The government has time and again drawn the attention of the successive prosecutors to these problems affecting the ICTR's operations.

All efforts to get the ICTR to redress these evident shortcomings have however to date been in vain.

If the ICTR is remain relevant to the people of Rwanda to achieve the goals for which it was set up, it is imperative, the Government of Rwanda believes, for the United Nations General Assembly and the Security Council to take urgent and far reaching remedial measures in the following areas of concern :

· *ORGANIZATION OF THE TRIBUNAL*

There is one joint chief prosecutor for the Rwanda and Yugoslav tribunals. The prosecutor is based at the Hague. The Rwanda arm of the Prosecutor's office is based at Kigali and by a Deputy prosecutor. When the establishment of the tribunal was being considered by the Security Council, the Government of Rwanda was of the view that this arrangement was unworkable.

The Security Council decided to have joint prosecutor, it was said for reasons of economy and efficiency and to enable the new Rwanda tribunal to start work quickly since the prosecutor for the Yugoslavs tribunal had already been appointed . In practice, the costs involved in running the ICTR from three centers have made it more, not less expensive.

The Government of Rwanda, having reviewed the situation and carried out its own independent investigations, has come to the conclusion that the arrangement of having a joint prosecutor is at the heart of ineffectiveness of the prosecutor's office.

The current prosecutor had centralised all decision making in the Hague. Her day to day contact with the Deputy Prosecutor is minimal. Both prosecutors have not made any extended visits to Rwanda. Judge Goldstone visited Rwanda for only eleven days during his eighteen month tenure. The rare visits which have taken place have been insuficient for meaningful dialogue with the authorities and direction to staff. Under the current arrangement, Yugoslavia is the prime focus of the prosecutor's attention. It is where the prosecutor devotes most of the time and the bulk of the resources. Genocide in Rwanda receives scant attention.

· *II. PERSONNEL*

The tribunal has got certain personnel problems, some of which the report of the Secretary General on the ICTR has confirmed. There are members of staff who do not possess the qualifications or experience their jobs demand.

However, the OIOS report fails to address the very disasterous performance of the investigations department, which more than any other department of the tribunal, is responsible for the tribunal's failures to date.

The Government of Rwanda would hope that these problems will be addressed without undue delay.

The Government of Rwanda is also concerned about the serious internal divisions ans tensions the ICTR is experiencing which the OIOS report does not bring to light.

· *III. PROSECUTION AND INVESTIGATION STRATEGY*

The office of the prosecutor has by far been the weakest link in the chain of organs that constitute the tribunal.

The tribunal was intended to persue, first and foremost, the leaders who conceived, planned and organized genocide and other serious violations of international humanitarian law. When the ICTR was established, these architects of genocide had fled the country and remained out of reach of the national courts of Rwanda. The ICTR was set up to persue them where they were, particularly in the refugee camps in Zaire and to a lesser extent Tanzania, and to bring them to justice.

Unfortunatly the international community in general, and the ICTR in particular, looked the other way while these perpetrators continued their hate propaganda and incitement to genocide in the camps, in direct contradiction of the spirit, mission and purpose which the ICTR had been mandated to carry out.

The ICTR has since its inception operated without and discernible strategy for investigation and prosecution of the crimes covered by its mandate.

The prosecutors have never determined policy as to whom the tribunal should pursue. They have never indicated the kind of cases they wish to prosecute before the tribunal and those they expect to be tried by national courts.

As a result, investigations and indictments proceed on an ad hoc basis, usually at the direction of the various investigation and legal officers concerned.

After almost two years of work, the ICTR has indicted slightly over two dozen suspects for atrocities which have claimed more than a million lives. Only one trial has started. Most have been and continue to be a subject of postponements. The predominant majority of the suspects that the tribunal has indicted have been low level functionaries and small time businessmen. The leaders of the government, political parties and the military who orchestrated the atrocities of 1994 have conspicuously and rather mysteriously been ommitted from those indicted, although there exists evidence in the public domain incriminating most of them. Most of them travel country to country openly, and the ICTR has made no effort whatsoever to secure their apprehension.

The majority of indictments made by the ICTR so far, by and large have been an opportunistic response to the arrests of suspects in foreign countries, often at the behest of the Government of Rwanda but, sometimes, other governments as well.

Although the ring leaders of the 1994 genocide remain at large, the Prosecutor has indicated both to her own staff and to officials of the Ministry of Justice of the Republic of Rwanda that she does not in the foreseable future plan to issue any new indictments and plans from now onwards to concentrate only on the prosecution of suspects who have so far been indicted.

· *IV. CONDUCT OF INVESTIGATIONS*

The manner in which the ICTR's investigations have so far been conducted leaves a lot to be desired.

For example, the personnel of the ICTR have for a long time failed to carry out investigations in prefectures such as Cyangugu where some of the worst atrocities took place, allegedly because UN regulations forbade them to travel to such places. At the time, however, many other UN agencies such as UNHCR and the UN High Commission for Human Rights Field Mission, bound by the same UN rules and regulations, and other international organizations

such as the ICRC were operating in Cyangugu itself and other areas such as Kibuye prefecture where a tribunal team was stationed, although it was not different from Cyangugu from a security point of view. No attempt has been made to solicit the assistance of the government in providing security to investigators visiting the areas where insecurity is feared.

A disproportionate amount of time and resources are wasted purportedly to carry out investigations abroad instead of concentrating resources on the localities in Rwanda where the crimes were committed and where most of the witnesses remain.

When investigators go to interview witnesses at their homes, they travel in marked cars clearly aggrevating risks to the security of the potential witnesses. Survivors and witnesses have complained on the discourteous and sometimes threatening manner in which investigators have handled them. Several witnesses including Emmanuel Rudasingwa, a witness in the Akayezu case who was subsequently murdered have complained to the tribunal about the dangers posed by visits to their homes or shops by ICTR personnel in marked cars.

· *V. PROSECUTOR'S INTERPRETATION OF THE TRIBUNAL'S MANDATE*

The tribunal was not established simply to try suspects. It was set up to try persons responsible for genocide to the end that justice may be a tool for promoting reconciliation and peace in Rwanda. The current Prosecutor of the Tribunal would appear not to be a believer in this raison d'etre for the tribunal's existence.

In her public utterances as well as communications with staff, she stresses time and again that her main concern is the view that history will have of the tribunal and herself and the jurisprudence as the international community ponders the establishment of a permanent international crime tribunal.

As a result of this regretable misconception of the role and mandate of the tribunal, the Prosecutor has made decisions which are difficult for the Rwandese public to comprehend or accept. She is on record, for example, as saying that her objective is to render "deluxe justice." She has also issued instructions to prosecution attorneys never to oppose applications for adjournment of proceedings, although the defendants efforts at procrastination are evident and well documented.

These policies of the current prosecutor are at variance with the spirit of resolution 995 (1994) which seeks to promote national reconciliation and maintenance of peace in Rwanda by bringing to justice the perpetrators of genocide and other serious violations of international humanitarian law.

The urgency with which the tribunal is supposed to undertake its task is not reflected in the priorities of the prosecutor.

As her record on the Ontario Bench of the Canadian legal system reveals, the Prosecutor's performance in similar cases leaves a lot to be desired. In 1992, Justice Louise Arbour acquitted Imre Finta, a gendarme officer in World War 2 Nazi occupied Hungary. Mr. Finta stood accused of shipping over 8,000 Jews to death camps. The following year, Justice Arbor concurred with a court ruling that overturned the conviction of Paul Moyer, who had been charged with staging an anti-semitic photo shoot at a Jewish Cemetery in Ontario, a case that was later overruled by the Supreme Court of Canada. As a practicing lawyer, Justice Arbour successfully argued in favor of striking down Canada's rape shield law.

The cases the ICTR was constituted to try are about genocide, rape and discrimination, similar to the above examples. As the three Canadian cases involvong justice Louise Arbour clearly demonstrate, she is simply not equpped to handle the trials, let alone heading the Tribunal.

· *VI. ATTITUDE OF THE PROSECUTOR'S OFFICE TOWARDS THE GOVERNMENT AND THE PEOPLE OF RWANDA*

Resolution 995 (1994) stresses the need for international co-operation to strengthen the courts and judicial system of Rwanda, having regard to the necesity for those courts to deal with large numbers of suspects.

The tribunal as an international judicial body should be at the fore front in spearheading efforts to rehabilitate and reconstruct the judicial system of Rwanda.

One would also have expected the tribunal to show understanding for the people (especially genocide survivors), sensitivity for their customs and a minimum respect for their institutions.On the contrary, personnel of the tribunal, specifically the Prosecutors office, have behaved with hostility, arrogance and insensitivity that is difficult to explain.

They have exhumed mass graves without notice to the authorities or relatives of the dead and left the remains on site, an abomination in our culture. Some have consistently displayed bitter hostility to Rwanda's new judicial and political institutions which calls into question their fairness and impartiality.

The Prosecuter herself has convened meetings of diplomats accredited to Rwanda at which she has openly attacked the government and made highly derogatory and grossly unfair statements of the country's system of justice which we are painstakingly reconstructing.

As a result of this overbearing and insensitive attitude on the part of the office of the Prosecutor, it has been difficult for the Goverment of Rwanda to establish an appropriate system of cooperation between the two institutions. The tribunal demands and often receives assistance but it loaths working with the government, let alone assisting it.

On the other hand, the government's efforts to secure the signing of a memorandum of understanding on how the two institutions should work together has been futile.

· *VII. APPLICABLE LAW*

The tribunal is an international judicial institution. It has recruited personnel from both common law and civil law backgrounds.

One of the first issues that should have been thrashed out as a prelude to mapping out a prosecution strategy is to how to marry these two major legal systems. It was one of the first problems Nuremberg tried to grapple with.

The ICTR has never addressed this fundamental problem. It has proceeded on the false and unfare assumption that only people from common law backgrounds are sufficiently competant to do its work, dismissing decades of professional work spent by people from civil law backgrounds.

Unless and until this issue is addressed and dealt with in a serious manner, the tribunal's prosecutions will continue to be marred and it's personnel will continue to be at each other's throats.

· *RECOMMENDATIONS*

The Government of Rwanda remains firm in its commitment to support the concept of an international tribunal to bring to justice persons responsible for genocide and other violations of international humanitarian law committed in Rwanda in 1994. It believes that the tribunal still has the potential to make a necessary and meaningful contribution to Justice, peace and reconciliation in Rwanda.

The tribunal has however been discredited in the eyes of the Rwandan people who have been bitterly disappointed by the seeming inability of the tribunal to make serious and sustained efforts in bringing to justice the architects of the genocide, which would assist in ending the culture of impunity in Rwanda. It risks becoming an expensive but yet futile institution.

The Government of Rwanda proposes the following recommendations to resolve the crisis of confidence facing the ICTR:

· *1. Independent Prosecutor for Rwanda*

The work that the ICTR was established to carry out is without parallel in recent history. There are no precedents or experiences to draw or learn from. The work involved in co-ordinating the investigation and prosecution of genocide and war crimes in Rwanda and the former Yugoslavia is enormous.

The fact that the prosecutor has to oversee work going on in four different centers (The Hague, Arusha, Kigali and the former Yugoslavia) separated by long distances makes the challenge even more daunting.

This is work that demands close attention and constant supervision. It requires permanent presence in Rwanda and proximity to the current seat of the tribunal.

It can never be effectively undertaken by a single person. The office of the Chief Prosecutor should be split and an independent prosecutor be appointed to give his undivided attention to justice for the more than a million lives that were lost in the Rwanda genocide of 1994. For purposes of uniformity of international jurisprudence, the Appeals system in force would remain.

The new prosecutor should be a person with wide experience in investigation and prosecution of crimes. The person must be of the highest moral and judicial integrity. He or she should be a person that cares about the genocide in Rwanda and understands the human as well as the social and political dimentions of the tribunal's work. He or she should be a person of strong leadership abilities.

· *2. Seat of the Tribunal*

The OIOS report concedes that the location of the office of the Chief Prosecutor, her office in Rwanda, and the chambers in three separate places hinders efficiency.

The location of the chambers outside Rwanda, in particular, has led to an unfortunate development whereby the Rwandese public knows very little about its work. By making so little effort to establish a good working relationship with the people of Rwanda, the ICTR has denied itself information and support vital to its work.

It is timely that serious consideration be given to transferring the chambers of the tribunal from Arusha to Rwanda. If the seat of the tribunal cannot be immediately transferred to Rwanda, the tribunal should begin discussions with the government of Rwanda viability of proceedings to be conducted in Rwanda as envisaged in paragraph 6 of Security Council Resolution 995.

In any event, the proposed independent prosecutor for Rwanda should be permanently based in Kigali.

· *3. Powers and responsibilities of the Prosecutor*

The effective functioning of the office of the prosecutor is indispensable to the success of the tribunal as a whole.

The office of the prosecutor will not function properly when every day decisions relating its functioning can only be made by another authority.

The office of the prosecutor should be strenghtened. The prosecutor should be granted wider powers in the administration and management of the affairs of the office.

· *4. Personnel*

Effort should be made to recruit more qualified personnel with appropriate practical experience, particularly in the field of investigation of crime which has been the tribunal's worst weakness.

The tribunal's personnel should be drawn from as wide a cross section as possible in order to preserve its truly international character. The tribunal should not be a colony of any one country, or legal system.

The leadership of the tribunal should move quickly to resolve festering internal conflicts, which undermine the effectiveness of the institution.

· *5. Co-operation with the Government of Rwanda*

The tribunal should cease its policy of hostility and antagonism toward the government of Rwanda, and acknowledge the government as a partner in the pursuit of justice.

It should understand that such cooperation does not constitute an infringment of its independence but is instead indespensible to its success.

To this end, the tribunal and the government should conclude an agreement covering all pertinent areas of co-operation.