

## International Crisis Group (ICG)

### The International Criminal Tribunal For Rwanda: The Countdown (Report in French)

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#### EXECUTIVE SUMMARY AND RECOMMENDATIONS

There are just over five years left for the International Criminal Tribunal for Rwanda (ICTR) to complete the mission conferred upon it by the United Nations Security Council in November 1994. The Tribunal is halfway through its mandate, and in the past eighteen months, a number of new trials have begun. However, despite significant improvement and a marked increase in activity, the Arusha Tribunal has not established the judicial priorities that will enable it to fulfil its mandate before 2008. Just over a year ago, ICG published its first report on the activities of the ICTR, *The Rwanda Tribunal: Justice Delayed*. Unfortunately, the essential situation remains.

Five cases of utmost importance have been waiting a long time to be heard ? one dealing with the media, two involving the military, and two involving former ministers and political party leaders. These trials are crucial to revealing important truths about the preparation, launch and execution of the Rwandan genocide in 1994. The media case is the only one that is actually underway. The first military case, that of Colonel Theoneste Bagosora, who is suspected of being one of the masterminds and organisers of the genocide, opened in a strictly symbolic fashion on 2 April 2002 but will not properly start until September. None of the other three cases are on the tribunal calendar, and they seem unlikely to be heard for a year.

While the debate on the future of the institution goes on, the tribunal cannot ignore the ticking of the clock. Using current systems, the ICTR will not be able to complete its work in the given time. There are two internal obstacles to this. The first is the overly ambitious prosecution plan drawn up by the office of the Chief Prosecutor, Carla Del Ponte, as well as the lack of preparation by the same office in certain cases. The second is the lack of effective reform that is necessary to speed up proceedings.

The Chief Prosecutor and the judges must address these issues as a matter of priority if they want to fulfil the mandate given to them by the international community and for which they are responsible. The ICTR should redouble its efforts and relaunch initiatives for a *rapprochement* with Rwandan society. It should produce a realistic judicial calendar, which meets its mandate and is sensitive to the political

environment. Unless this is done, confusion and obstruction will threaten the Tribunal's mission and reduce its impact on the political reconstruction of Rwanda and the region to zero.

At the same time, not one case has been brought after eight years against members of the Rwandan Patriotic Army for grave violations of human rights allegedly committed on the territory of Rwanda in 1994. There has been no cooperation at all from the Rwandan authorities on these matters. The reluctance and refusal of the current government in Kigali in relation to these cases is the reason for the unprecedented crisis that has existed since June 2002 between the ICTR and Rwanda. The Rwandan government must honour its obligations to cooperate with the Tribunal and stop all forms of obstruction ? such as the restriction of access to witnesses living in Rwanda.

In future, the tension between the Tribunal's need for cooperation with the government of Rwanda and the independence that is essential to its mandate is likely to worsen. Passive, defensive or short-sighted responses, as have been made recently, will only weaken the Tribunal and make it a prisoner of its own contradictions and of the interests of the Rwandan government.

The ICTR should not face alone the upcoming period, which will be highly sensitive politically. It is crucial that the international community, and the members of the UN Security Council in particular, give strong and unambiguous support if they want to ensure its credibility and independence. More than ever, they must show their determination not to allow the Arusha Tribunal to be the poor cousin of international justice. In this context it is unfortunate that the UNSC delegation did not visit the ICTR in its annual trips to Central Africa in 2001 and 2002. This sent a dangerous signal of disinterest about the mission of the UN Tribunal and its role in ending the crises in Congo and in Burundi.

The Tribunal must give absolute priority to its core task, punishment for genocide, but it should not ignore the rest of its mission and become an instrument of victors' justice. The current Rwandan government cannot claim to support reconciliation and an end to impunity while blocking cases involving its own troops. Whatever its domestic electoral agenda and the uncertainty of its political base, to respond in this way to crimes allegedly committed by its own soldiers is not in the long term interests of the government and the country.

In terms of attempts to resolve the crisis in the Congo, in which the Rwandan government has demanded the arrest of *g?cidaires* on Congolese territory for the past four years, it is paradoxical that just as the DRC government agreed to open an office to assist ICTR investigations in Kinshasa in response to international pressure, the Rwandan government decided to paralyse the work of the Tribunal. In the Congo war, it is clear that the two states have toyed with international justice: the Democratic Republic of Congo has supported armed groups led by criminals and scoffed at its international legal obligations, while Rwanda has used punishment of genocide to legitimise its military actions. The only way to end the politicisation of justice is to require of both states respect for their international obligations and cooperation with a reformed and credible Tribunal.

## **RECOMMENDATIONS**

### To the Office of the Prosecutor of the ICTR:

1. Review the prosecution schedule and drastically reduce the number of trials for genocide to around 100 in order to enable the Tribunal to meet the 2008 deadline for completion of its work.
2. Concentrate efforts on preparations for priority cases against the military and political figures.
3. Immediately fill the posts of deputy prosecutor and chief of prosecutions.
4. Finalise indictments against elements of the Rwandan Patriotic Army.

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### To the Judges of the ICTR:

5. Set a date for the political and military cases and give clear and strict schedules to the parties.
6. Increase control of the preparatory phase of the cases and of the proceedings, and use available mechanisms to reduce the length of trials.
7. Organise judicial field trips to Rwanda in respect of ongoing trials.

### To the Registrar of the ICTR:

8. Ensure the rapid training of simultaneous translators in Kinyarwanda and make them available in all the courts.
9. Revive initiatives to reconcile Rwandan society with the judicial process, including by promoting the permanent presence in Arusha of representatives of Rwandan survivors and human rights groups, visits by Rwandan law students and judiciary, and the production of information programs for radio and television.
10. Inform and explain fully the nature of and limits to the system of witness protection and the conditions for witnesses before the Tribunal at Arusha.

### To the Government of Rwanda:

11. Respect legal obligations to cooperate with the ICTR, especially in relation to investigations of crimes allegedly committed by members of the Rwandan Patriotic Army, and end all efforts to obstruct the Tribunal, such as by blocking the appearance of witnesses, without whom justice cannot be delivered to the victims of genocide.

To countries harbouring suspects wanted by the ICTR, in particular the Democratic Republic of Congo, Congo-Brazzaville, Gabon, Kenya, France and Belgium:

12. Immediately and unconditionally cooperate with the ICTR to support the arrest of indictees and suspects on their territory.

To the United Nations Security Council:

13. Pass an urgent resolution demanding that the Democratic Republic of Congo and Congo-Brazzaville, on the one hand, and Rwanda, on the other, cooperate with the ICTR, and vote without delay to provide *ad litem* judges for the Tribunal.
14. Affirm strong political support for the Tribunal that the UN Security Council established so that it can carry out its mission totally independently, and include the Tribunal in the next UNSC tour of the Great Lakes.

To the member states of the UN, donors to the ICTR and the government of Rwanda:

15. Give financial support to the ICTR through voluntary contributions for the development of reconciliation and information programs between the Tribunal and Rwandan society.
16. Include the arrest of suspects on their territory as one of the conditions that must be fulfilled by the DRC and Congo-Brazzaville in order to receive international aid.
17. Press the Rwandan government to cooperate with the ICTR over investigations into the alleged crimes of the RPA in 1994.
18. Find, promote and put forward candidates for judges who have clear, solid and recognised experience in criminal matters.
19. Promote and accelerate investigations and trials against Rwandan genocide suspects on their territory.

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