



Sustaining the legacy of the International Criminal Tribunal for Rwanda

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Meeting:

105. Government Libraries, GIOPS, Knowledge Management, Preservation and Conservation and Law Libraries

WORLD LIBRARY AND INFORMATION CONGRESS: 76TH IFLA GENERAL CONFERENCE AND ASSEMBLY

10-15 August 2010, Gothenburg, Sweden

<http://www.ifla.org/en/ifla76>

Abstract:

The International Criminal Tribunal for Rwanda is due to close soon. There is a relationship between the legacy of the courts and the preservation of information. This presentation examines the primary and secondary use of the archives generated from the judicial proceedings and the evidentiary database. It explores the issues related to ownership, protecting the interests of the affected societies and post-tribunal access rights, the types of information within the archives, the legal and moral obligations of the courts with respect to confidentiality, the security of victims and witnesses and other challenges related to the uniqueness of this collection.

Two United Nations international criminal tribunals were established by the Security Council of the United Nations acting under its Chapter seven powers to maintain peace. Having determined that the mass atrocities which occurred in the former Yugoslavia and Rwanda constituted a threat to peace, both tribunals were established within a year of each other, the International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. (Slide 2) The purpose

of both was to bring justice to the victims of serious violations of human rights, thus promoting peace and reconciliation in affected communities. While courts have a permanent place within countries, the ad hoc tribunals have a finite lifespan. The ICTR is mandated to complete trials and appeals by 2012 and, at the latest, 2013. The case study for this presentation will be the International Criminal Tribunal for Rwanda. To date, the ICTR has concluded first instance trials with respect to 51 accused. Judgement is awaited with respect to 14 accused and only a couple of trials expected for the rest of the mandate of the tribunal. The completion strategy seems well on course. In the course of the trials, significant amount of digital, hardcopy and multimedia records were generated; the challenges related to their continued relevance and availability will be the subject of this presentation.

The completion imperative has raised legal, political and moral considerations on the continued use and management of the archives to be left behind by the tribunal. (Slide 3) On the legal side, there is a recognition that the tribunals will continue to have continuing obligations such as the enforcement of sentences, review of judgments and other issues under the current statute. For much of the life of the Tribunal, the courts issued protection orders in order to elicit the cooperation of victims and witnesses. The protection measures thus accorded will continue after the courts close. There is therefore a need for judicial capacity to continue to manage, enforce and/or vary such protection orders.

The tribunal was established to send a message that impunity will not be tolerated when there are grave violations of human rights; there is therefore a need to create conditions that will enable the continued prosecution of the perpetrators if, when and where they are caught. During the phase of active prosecutions, the tribunal depended largely on the cooperation of states to execute arrests and conduct investigations for the purpose of prosecutions while, on the reverse side, there has been increased sharing of information by the ICTR with national prosecuting authorities who are investigating or prosecuting Rwandan suspects under the principle of universal jurisdiction.

Apart from the more obvious legal obligations, how about the moral obligation to ensure that the closure of the tribunal does not create an impunity gap where perpetrators that have hitherto escaped arrest will forever go unpunished. How will the archives continue to have relevance in such future cases? (Slide 4) There is also the recognition that, with time, such perpetrators may begin a political campaign of revisionism and, more seriously, is the

possibility that they may attempt to deny that genocide occurred at all in Rwanda if there is lack of easy access to information on adjudicated facts. How can the tribunal prepare to facilitate this future access? How can we plan for the right of the victims and witnesses to access information on their past testimony?

On a structural level, the tribunal has operated as three independent organs: the Prosecutor, The Chamber and the Registry. (Slide 5) Each organ has generated a wealth of information in the course of delivering its mandate. How do we unite such silos of information in order to produce a complete and coherent documentation of the legacy of the tribunal? Presently, the tribunal maintains information centers and a full fledged law library in Rwanda. What will happen to such centers at the closure of the tribunal?

There exist primary (See Slide 6) and secondary (See Slide 7) use of the tribunal's vast archives especially those generated from the judicial proceedings and the evidentiary database. The types of information within the archives and the legal and moral obligations of the courts with respect to confidentiality, the security of victims and witnesses present unique challenges. Of no less importance are questions raised on ownership and the interests of the affected communities. Our information management planning is tied to the uniqueness of this collection and the long-term relationship between the legacy of the courts and the preservation of information. This also provides an opportunity for those of us who currently work with the tribunal's information points to put in place the technical infrastructure and a documented framework that guarantees the authenticity, confidentiality and relevance of the collections. (See Slide 7) A "to do list" of such planning has become part of the work-plan in terms of completion. (Slide 8)

In the short term, there will be financial requirements to prepare for the future and, even after this is done, there will continue to be need for the provision of financial and human resources to continue the management of the records as well as the dissemination of the jurisprudence to a wider world audience. (Slide 9 & 10) The rest of the presentation will focus on the current initiatives within the tribunal and the United Nations. (Slide 11& 13).

Sixty years after Nuremberg, with significant advances in technology and facility in information delivery, we believe that the archives will provide a lasting testimony to the efforts of the international community in ending impunity for war crimes. (Slide 13) Our planning acknowledges the potential of the collection; firstly for service to the residual

organization, secondly, service to foreign jurisdictions where some of our indictees have been transferred, thirdly, service to foreign authorities requesting assistance for domestic trials and fourthly, as a historical record for stakeholder communities, the victims and witnesses in particular and to humanity as a whole. (Slide 14)