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On Support Measures to Victims and Witnesses Summoned to Appear Before the Tribunal.
Background

1. I would like to thank the organizers of this very important conference on challenging impunity. This topic is not only the focus of the Tribunal’s mandate but is also one which would continue to engage the prowess of all stakeholders for several years after the tribunal must have long completed its mandate. My contribution to the debates will focus on ICTR support measures to witnesses including victims of rape and other forms of gender based violence summoned to appear before the tribunal as witnesses. The wider objective of my presentation is to review the legal framework which informs the Registrar’s executive directive and administration of the ICTR’s witnesses’ and victims support program; to examine the operational context and mechanisms for implementing support to witnesses; the impact of international cooperation in providing support to witnesses; challenges faced, lessons learnt and strategies for rendering support to witnesses more sustainable within the context of the Tribunal’s completion strategy.

Legal framework of providing support to witnesses.

2. Pursuant to the provisions of Security Council Resolution 955 of 8 November 1994 creating the Rwanda Tribunal, Articles 14 and 21 of the Tribunal’s Statute, the witnesses’ support mechanisms of the Tribunal are tailored to its mandate, the judicial processes deriving from that mandate and above all, the operational environment. Rule 34 of the Tribunal’s Rules of Procedure and Evidence(RPE) not only confers on the Registrar the authority to set up a Witnesses and Victims Support Section(WVSS), but also seems to have captured the gender concerns of the post-genocide Rwandan “environment” very aptly. It provides in its section A (ii) that the Victims and Witnesses Support Unit of the Tribunal shall “ensure that (witnesses) receive relevant support, including physical and psychological rehabilitation, especially counseling in the cases of

\(^1\)“Destruction of human resource as well as the social and economic structures of the country is the critical aftermath of the genocide. Rwandese women suffered a lot and to some extent more than the men did. Many of those who survived from the 1994 genocide were raped, humiliated and are widows with a heavy burden of responsibilities they were not socialized to carry.” Marie MUKANTABANA, Rwandan Minister of Gender and Women ’s Promotion in “The National Gender Policy”(2003)
rape and sexual assault. Equally, Rule 34 A (iii) provides for the development of “short term and longer term plans for the protection of witnesses who have testified before the Tribunal and who fear a threat to their life, property or family”.

3. Further, considering that about one-third of the witnesses who have testified before the tribunal so far are female, a significant number of whom were also victims of rape during the genocide; section B of Rule 34 underscores the need for “a gender sensitive approach to victims and witnesses protective and support measures”. I would like to note that gender sensitivity in the Tribunal’s judicial procedures and within the context of support has targeted both male and female witnesses with the objective of creating a conducive environment for the effective deposition of testimony by all witnesses irrespective of their sex, origin, colour or creed.

4. Furthermore, other Rules of Procedure established by the Judges have impacted on the support provided victims and witnesses appearing before the Tribunal. These include inter-alia: Rule 69, granting exceptional circumstances under which either the prosecution or the defence may apply to a Trial Chamber to order the non-disclosure of a victim or witness who may be in danger of grave risks; Rule 75 providing for measures to safeguard the privacy and security of victims and witnesses provided these are consistent with the rights of the accused.

5. Rule 75 authorizes a Chamber to hold in camera proceedings to determine whether to apply: measures preventing disclosure of identifying data of a victim or witness and persons related to them to the public or media; expunge names and identifying material from the Tribunal’s public records; Non-disclosure to the public of any records identifying the victim; giving of testimony through image or voice scrambling methods or one-way closed circuit television for the protection of vulnerable victims and the assignment of pseudonyms. In practice, virtually all witnesses are treated as protected witnesses and also given pseudonyms except for expert witnesses. Section D of Rule 75 also mandates a Chamber to control the manner of questioning to avoid any harassment or intimidation.
6. Rule 79 provides for closed sessions as deemed necessary. Either party to the cases or the Registry (WVSS) can apply to a chamber for the application of the provisions as cited above, subject to Article 20 of the Statute regarding the rights of the accused. The rights of the accused are an important consideration in providing support to witnesses. Article 20 provides to the accused/defendant, the following rights among which figure the right to a fair trial and public hearing (subject to Article 21 of the statute providing for in camera hearings where applicable in the protection of witnesses and victims’ identity); to Counsel; to examination of witnesses both for and against him or her under the same conditions; to interpretation; and shall not be compelled to testify against him or herself or to confess guilt. Rule 75 C also requires the WVSS to ensure that the witness has been informed before giving evidence by the party calling that witness that his/her testimony and identity may be disclosed at a later date in another case pursuant to Rule 75F.

7. Lastly, in the case of witnesses who are also victims of sexual assault, Rule 96 of the Rules of Procedure and Evidence provides that no corroboration of the witness’s evidence is needed notwithstanding Rule 90(C) and that prior sexual conduct of the victim shall not be admitted in evidence or as defence.

8. In practice, Judges of the Tribunal have been seen to play a more pro-active role in procedures concerning rape victims aimed at protecting them from irrelevant and embarrassing questions during court proceedings. The Muhimana trial with a record number of rape witnesses since the Akayesu trial was also the first trial in the Tribunal whereby the judges exercised their statutory powers by allowing a psychological counselor recruited by the Registrar within the framework of the ICTR Trust Fund Support Programme for Witnesses, to also stay in the dock throughout with the witnesses in order to mitigate trauma during cross-examinations. In addition, the Office of the Registrar and that of the Prosecutor including Chambers have organized several training sessions since

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2 Rule 96 equally provides that in cases of sexual assault, consent shall not be allowed as a defence if the victim:
(a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression; or (b) Reasonably believed that if the victim did not submit, another (person) might be so subjected, threatened or put in fear; (iii) Before evidence of the victims consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible.
2003 designed to build the capacity of all frontline staff in contact with witnesses and senior legal personnel on gender sensitivity during questioning and cross-examination of witnesses.

**Operational context and mechanisms for rendering support measures to ICTR witnesses**

9. Apart from the Statutory Rules and Regulations which lay the basis for the Registry’s victims and witnesses’ support program, the *operational context* of the program ought constantly to be borne in mind. The operational context bares particular relevance to the effective support of witnesses summoned to appear before the Tribunal, some of whom were also victims of rape and sexual assault during the genocide. It is important in this connection, to note that Rule 34 placing the Witnesses and Victims Support Section under the authority of the Registrar, also confines implementation to the impartial provision of logistical support and protective measures to all witnesses both for the Prosecution and the Defence during the post-investigative, trial and post trial phases.

10. Further, it is worthwhile noting that as a Section of the Registry, which is a **neutral** organ in the judicial proceedings, the WVSS may not go close to the investigations unless so ordered by the Court upon a specific request made by either the Prosecution or the Defence.\(^3\) The neutrality of the Registry in the implementation of protective and support measures for victims and witnesses is central to the establishment of fairness and the judicial effectiveness of the Tribunal. Hence services extended to victims and witnesses by the Registry at the investigative phase might be perceived as inducement and compromising that neutrality and impartiality. It is for this reason that the Tribunal administers a dual mechanism of support to witnesses - one at the investigative phase for potential witnesses administered by the parties to the cases, and another at the post-investigative and trial phases administered by the Registry for confirmed witnesses as referred by the prosecution and the defence.

11. In addition, because of the dual principles of **neutrality and impartiality**, the lesson learnt for an effective victims and witnesses’ support program is that there must be a harmonious and

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\(^3\) See ICTR WVSS Operational Manual Pages 11 and 49 para. 1
stringent coordination between the parties and the Registry (WVSS) regarding effective documentation for each victim or witness. This is particularly relevant at the inter-face when potential witnesses, hitherto under the investigative jurisdiction of either the defence or the prosecution are disclosed to the WVSS as confirmed witnesses summoned to appear before the Tribunal.

12. Issues crucial in the transitional interface from the investigative to the post–investigative pre-trial phases as described above include: the health status of each witness in terms of their physical and psychological well being; their socio-economic status and how this might be impacted by traveling to Arusha, the Seat of the Tribunal, to give evidence (disclosures such as dependent infants needing to be taken care of during a parents absence, farms, a sick spouse, lost earnings during travel are relevant considerations etc); a witness’ immigration status and readiness for travel; including any specific security concerns that apply to their case deserving the attention of the WVSS for their adequate protection. It should also be noted as mentioned earlier, that although the Tribunal has special procedures for protected and non-protected witnesses, in practice all witnesses particularly victims of rape benefit from special security measures during the pre-trial, trial and post-trial phases. The Personal History Proforma developed for each witness is therefore an important working tool to be initiated and correctly filled from the investigative phase in order for support measures and follow-up to be effected in a timely, coordinated and effective manner.

**The Role of international cooperation in support measures to witnesses.**

13. Besides the in-house Tribunal mechanisms operational in the provision of support and protection to witnesses it is of particular relevance to underscore the significance of international cooperation on a successful victims and witnesses’ support program. As an institution of the United Nations, the ICTR has no law enforcement mechanisms of its own to guarantee States compliance especially when faced with the very complex issues involved in providing logistical support for witnesses to appear on time to testify before the Tribunal. Without international cooperation, the 1994 genocide conspiracy in Rwanda would perhaps never have unfolded, much less the holding of trials and
the conviction of genocide perpetrators. This is so because much of the evidence provided so far in the cases has been by way of oral testimony from witnesses, who have had to travel across international borders for this purpose.

14. The operational exigencies have required the Victims and Witnesses Support Section of the Registry to rely heavily on the goodwill and cooperation of States in the execution of its tasks particularly in relation to the movement of witnesses to and from Arusha. For the most part, these witnesses, especially those appearing for the Defence, are refugees or illegal aliens scattered all over the world and living under very complex circumstances. Their removal, return and protection in their places of residence after testifying is a challenge that has required high-level negotiations and cooperation from United Nations Member States. Despite these complexities, about one-thousand and six hundred witnesses (both prosecution and defence) have to date been brought to testify before the Tribunal and returned without a hitch. The operation has involved some two dozen countries (African, European and North American). This is due in no small measure to international cooperation but also to the growing global acceptance of the rule of law as an instrument for peace in the decade following the 1994 genocide in Rwanda and the “ethnic cleansing” of 1993 in the Balkans. There is opportunity here to convey the indebtedness of the Tribunal toward the Government of Rwanda which has cooperated in the movement of about 80% of the total number of witnesses having appeared in the Tribunal so far particularly for the prosecution.

Persisting challenges, coping strategies and perspectives for the future.

15. Increased international cooperation should not however fore-shadow the special operational circumstances and realities of the Rwanda Tribunal in the area of victims and witnesses support. If the protection and support of victims and witnesses is a pioneering experience for the United Nations, the notion is equally new in the geo-political African context within which the Tribunal operates. Few African nations can afford the huge financial implications involved in the movement of witnesses under international jurisdiction, much less their physical and
psychological protection. The lesson learnt in this area is that for the most part, once the procedural immigration and related issues are cleared at the diplomatic level, the Tribunal is often left on its own to grapple with the financial costs of supporting these witnesses movement from and to their places of residence. Practical implementation of witnesses’ movement has entailed extensive logistical and administrative involvement of ICTR staff. This has presented not only a challenge for the institution but has also conferred on its Witnesses and Victims Support Section a unique pioneering experience hardly replicated outside its operational context. In this connection, it is noteworthy that in the case of our sister Tribunal in The Hague witnesses’ movement and related protection and safety issues are undertaken by The Hague police with little or no involvement of Hague Tribunal staff.

16. Further, the common law *adversarial system of cross-examination* adopted by the Tribunals is such that few victims/witnesses coming from a civil law background can easily relate to much less comprehend. This discrepancy has unfortunately fuelled much discontent regarding support to witnesses particularly witnesses of rape most of whom are ill-prepared for the common-low adversarial system of cross-examination. Rather than cast a cloud on the court proceedings of a Tribunal otherwise reputed for having championed and ushered path-breaking international jurisprudence defining rape for the first time as a crime of genocide, 4 administrative procedures for solving this problem have included a re-appraisal of some basic concepts in cross-examination, 5 aimed at changing the attitude of Attorneys in advocating for their clients and with a view to extending basic courtesies to the victims even during rigorous cross-examination to establish their credibility; strengthening the victims’ preparedness for such cross-examination; striking a balance between the victims’ rights and those of the defendant as per the Statutory provisions and Rules by the Chambers; and the production of a Tribunal Manual on “Testifying before the International Criminal Tribunal for Rwanda” to mobilize informed consent for witnesses and

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4 See ICTR’s 1998 Judgment on the *Prosecutor v Jean-Paul Akayesu)*
5 See “Integrating a Victim Perspective within Criminal Justice” International Debates, Crawford Adam and Goodey Jo at 200
6 idem
7 idem
potential witnesses before accepting to provide evidence at the Tribunal.

17. Furthermore, the issue of strengthening the witnesses’ preparedness for cross-examination is one that falls outside the legal ambitions of the Registry which may not in any way tamper with witnesses’ testimony. Adequate preparedness in this case is a matter for the parties to the cases (the Prosecution and the Defence).

18. In addition, from an administrative perspective, there is a felt need to clearly define the scope of the Witnesses and Victims Support Program so that its supporting function is closely coordinated to meet its major objectives. This is imperative especially within the wider context of the Registrar’s mandate pertaining to:

   a) Recommendation and adoption of protective measures for victims and witnesses in accordance with Article 21 of the Statute;

   b) Ensuring relevant support to witnesses, including physical and psychological rehabilitation, especially counseling in cases of rape and sexual assaults; Rule 34 A (ii)

   c) Responding to the Trial Chamber upon consultation, in the determination of protective measures for victims and witnesses; and

   d) Requesting a Judge or a Chamber to order appropriate measures for the privacy and protection of victims and witnesses subject to the respect of the rights of the accused.

20. The lessons learnt from the above point to the extremely broad mandate of the Registry in these issues and the need to prioritize with a view to rendering more effective and more sustainable some of the operations envisaged. The need to prioritize becomes even more imperative given the deadlines for completion of the Tribunal’s work. Each aspect of the mandate is important in the judicial proceedings, but each needs to be clearly defined in terms of scope, the activities to be carried out and with what resources. A clear example in this regard is the definite time span for which victims and witnesses are to be protected after the post-trial phase and the availability of resources for such protection. It is also not too early to conceptualize the end game in view of making the support programs currently undertaken more sustainable. Concerted solutions to these will complement the provisions of the Statute.

8 2008 for trials at first instance and 2010 for the Appeals.
21. With regard to the **determination of priorities in a context of limited resources** and other practical limitations, it has become imperative to weigh these against the roles and capacities of all stakeholders including relevant Governments, such as, the Rwandan Government, other United Nations Agencies; and local or international organizations. A crucial lesson learnt in this regard, is that it is essential to work in a manner that complements rather than duplicates activities where mandates overlap. In practical terms the ICTR being a Tribunal with a precise and ad-hoc mandate, has undertaken measures to refer its witnesses to other agencies with the mandate and expertise in issues relating to the socio-economic rehabilitation of its witnesses outside the scope of trauma counseling and related medical support.

22. Moreover, continued **sensitivity and collaboration with Government is needed in threat assessment** and the monitoring of victims and witnesses testifying before the Tribunal especially at the post-trial stage. This should also include relevant institutions and eminent members of the civil society. In this domain, getting the international community to assist in the **relocation** of sexually assaulted victims and other witnesses under threat is desirable. It will be recalled that despite all efforts made, the Tribunal has so far not been successful in signing a bilateral agreement with any Government in the issue of relocation of witnesses.

23. With reference to **trauma management** and psychological rehabilitation of witnesses, especially victims of rape and sexual assault, the fact remains and I must be recognized that this is a major task. The issue at stake is that as the number of witnesses in on-going joint trials have increased, so also has the demand for more specialized services in psychotherapy and other medical support. This situation obtains throughout the judicial proceedings including in the post-trial phase given that rape and sexual assault often have a devastating and long lasting impact on the victim or witness. The elements of stigmatization by the family and community including fear of reprisals upon testifying are almost permanently present.

24. In recognition of the above, the Registrar authorized in December 2003, expansion of the ICTR Trauma Management and Medical Support Program for Rwanda based Witnesses. His administrative directive restructuring the witnesses and victims support section and the WVSS Sub-office in Kigali provided for the recruitment of an in-house contractual Psychologist, a Nurse-Psychologist, Gynecologist and Lab-technician for implementing and monitoring medical support to witnesses. The Programme delivery has been coordinated by the Gender Adviser, Office of the Registrar, in coordination with the Chief ICTR Medical Officer and under the Registrar’s direct supervision. A post of Witnesses Management Coordinator at the P-3 level was also established for WVSS - Kigali. In terms of financing the expanded project, since the Regular Budget of the ICTR provides very little funding for the medical support of witnesses, budgetary allocations for the medical support program have emanated from the ICTR Voluntary Trust Fund and within the framework of the Trust Fund Support Programme for Witnesses. Despite the depleting status of the
ICTR Voluntary Trust Fund, earmarked voluntary contributions from the European Union and more recently from the Government of Ireland have accounted for project sustainability. Additional funding is however required for the permanent deployment of relevant expertise, particularly in the context of continued treatment and monitoring of ICTR witnesses living with HIV and AIDS and the on-going replication of similar additional services in support of witnesses while in transit in Arusha. Also, from the point of view of sustainability and networking, there is on-going training to build the capacity of ICTR frontline staff in contact with witnesses and relevant partners in the area of trauma management. More bilateral and multilateral assistance will be required for the sustainability of this trend and within the framework of the Tribunal’s completion mandate.

25. As pertains to the confidentiality of witnesses identity, more cooperation is needed to ensure confidentiality of the identity of victims and witnesses particularly during movement. Some Governments and stakeholders are better at it than others but the fear of reprisals remain and impacts on a victims/witnesses willingness to testify if they were to be unduly exposed on departing to or returning from the Tribunal.

26. Greater efforts are also still required to ensure a more informed consent of victims and witnesses prior to the deposition of their testimony. The objective still centers on getting them to be more acquainted with the court arrangements and proceedings, within the framework of United Nations standards and regulations.

27. The issue of compensation for victims of the Rwanda genocide still has to be effectively addressed by the international community since the Tribunal’s Statute has very limited provisions in this regard and in relation to a restorative justice approach. In this connection, it would be recalled, that the Rwanda Tribunal used the lessons learnt from this lacunae in its Statute to successfully advocate for a victims compensation scheme during the negotiations leading to the adoption of the Statute for the International Criminal Court (ICC). It is to be hoped that concerted action by the international community will bring pressure to bear on the Security Council to also put in place a system of funding that will take into account the sustainable rehabilitation of the victims of the Rwanda genocide. Successive Presidents of the Rwanda Tribunal, including the current Tribunal President, Honourable Judge Erik Mpel, have made representations to the Security Council in support of a compensation scheme for victims of the Rwanda genocide; however action on this is still pending.

Conclusion

28. In concluding I wish to avail myself of this opportunity to underscore the public duty rendered by victims and witnesses who agree to testify before the Tribunal and the Court’s recognition
through its Statute and its Rules of Procedure and Evidence and related programs, of its obligation to protect and support them in that function. While the Registry of the Tribunal is mandated with overseeing the implementation of such support and protection, the ingredients for its smooth and effective application, besides the expertise of its staff, lie on the one hand with the parties to the cases, and on the other hand on the continued goodwill of the international community, the Government of Rwanda and specialized institutions in contributing their expertise and resources aimed at making such support sustainable.

29. Continued networking with the Rwandan authorities and all stakeholders at the bilateral and multilateral levels is the way forward for effective and longer term physical support and psychological rehabilitation of victims and witnesses summoned to appear before the Tribunal. The future strategy in view of sustainability should not only concern the ICTR and the Government of Rwanda but also liaison with other United Nations agencies, survivor groups and local NGO’s with a proven commitment to assist.

30. I thank you for your kind attention.