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Appeal to the UN Security Council to ensure that the mandate of the International Criminal Tribunal for the Rwanda is fulfilled

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On 15 December 2006 the (UN) Security Council will conduct its biannual review of the implementation of the "completion strategy" for the International Criminal Tribunal for Rwanda (ICTR). The "completion strategy" sets an arbitrary 2010 deadline for all trials, including appeals, to be completed, even though 18 accused persons have not yet been arrested and Rwandan courts are unable or unwilling to conduct genuine and effective criminal proceedings in accordance with international standards for fair trial, without the death penalty. Amnesty International remains concerned that the completion strategy is hampering the delivery of justice for victims of genocide, crimes against humanity and war crimes committed during the 1994 genocide and may result in impunity for such crimes.

Although the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), which is subject to the same deadlines to complete its mandate, has recently indicated that she intends to request an extension to complete its cases, the ICTR has not yet done so. Instead, the ICTR has indicated in its previous reports to the Security Council that to meet the deadlines it proposes to transfer approximately 17 cases to national jurisdictions pursuant to Rule 11 *bis* of the ICTR's Rules of Procedure and Evidence. In its report to the Security Council on 1 June 2006 (UN Doc. S/2006/358), the ICTR stated that it intends to request the transfer to national jurisdictions of five persons awaiting the commencement of their trials and 12 of accused currently at large. The proposed approach raises serious concerns that, unless other national courts step in, cases will be transferred to Rwanda.

Rule 11 *bis* on the Referral of the Indictment to another court provides that two conditions have to be fulfilled before referring a case: (1) the accused will receive a fair trial and (2) the death penalty will not be imposed or carried out. Although Rwanda has begun a process to abolish the death penalty, Amnesty International opposes the transfer of cases to Rwanda at this time on the basis that government is unable to guarantee full security to returned suspects before, during and after their detention and that the Rwandan legal system cannot guarantee suspects the right of fair trial in accordance with internationally-recognized law and standards, in particular:

The right to trial within a reasonable time or release from detention. Amnesty International has documented several cases of people, accused of crimes of genocide, who have been in pre-trial detention for more than 12 years.

The right not to be subjected to torture or other cruel, inhuman or degrading treatment. Rwanda has not ratified the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Amnesty International believes that there is a real risk that transferred persons would be exposed to torture or other ill-treatment.

The right to trial by a competent, independent and impartial tribunal established by law. Over the last two years, Amnesty International and other international organisations have documented the lack of independence, competence and impartiality of *Gacaca* courts. Although *Gacaca* courts do not have jurisdiction to try the suspects transferred from ICTR, this situation raises serious concern regarding the approach of the Rwandan judiciary in dealing with cases of people suspected of involvement in the genocide.

Moreover, recognizing that the Rwandan authorities are already experiencing long-delays in prosecuting of more than 48,000 other persons suspected of involvement in genocide, war crimes and crimes against humanity, there are serious concerns about the capacity of Rwandan legal system to take on additional cases.

Efforts to transfer cases to other national courts have also encountered difficulties. Most notably, on 30 August 2006, the ICTR Appeals Chamber confirmed the Trial Chamber's decision not to allow the transfer of the case of

Prosecutor v. Bagaragaza to Norway because that country lacks jurisdiction to try the accused for the serious violations of international law including genocide, for which he has been charged. Although other countries may not have the same legislative problems as Norway, it still raises concerns regarding the ability of the ICTR to find states that are both willing and able to conduct effective prosecutions.

As long as the authorities of Rwanda remain unwilling or unable to tackle impunity for such crimes, it remains the responsibility of the international community to ensure that justice is done, both at the international level and at the national level. In establishing the ICTR under Resolution 955, the Security Council committed itself to "prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994." Accordingly, Amnesty International urges the Security Council and UN member states to ensure that the following steps are taken:

Support the extension of the completion strategy, if requested. Amnesty International remains concerned that there is inadequate time to complete the trials and appeals of persons indicted by the ICTR before 2010, even if all 17 persons are transferred to other courts as planned. The organization calls on the Security Council to consider extending the completion strategy if requested by the ICTR in order to complete the cases. In the event that the 17 cases cannot be transferred to national courts for prosecution, the Security Council should extend the completion strategy to enable the ICTR to complete its mandate and prosecute these cases.

Reinforce its determination that the 18 persons at large to be arrested and surrendered to the ICTR. It is imperative that all persons indicted by the ICTR should be prosecuted and that no individuals should benefit from impunity as a result of the completion strategy. Amnesty International calls on the Security Council, which continues to consider the situation under Chapter VII of the Charter of the United Nations as a threat to international peace and security, to take appropriate measures to ensure that the 18 persons are arrested and transferred to the ICTR's custody without further delay.

Oppose the transfer of cases to Rwanda. As set out above, Amnesty International opposes the transfer of ICTR cases to Rwanda at this time. In particular, the organization believes that the legal system in Rwanda is unable now to ensure that the right to a fair trial will be fully respected. Amnesty International urges the Security Council to instruct the ICTR not to transfer any cases to Rwanda until the problems with the national legal system are resolved.

Call on states to exercise universal jurisdiction over cases which the ICTR seeks to transfer. Amnesty International supports the transfer of cases to national jurisdictions which are genuinely able and willing to prosecute crimes under international law in accordance with international fair trial standards and without recourse to the death penalty. Indeed, as the Security Council has recognized since its Resolution 978 of 27 February 1995, the use of universal jurisdiction as a tool for addressing crimes under international law should be promoted as an effective mechanism to ensure against impunity. The organization would, therefore, urge the Security Council to call on states to support the effective completion strategy of the ICTR by exercising universal jurisdiction over cases which the ICTR seeks to transfer. In doing so, the Security Council should also call on states to review their national legislation to ensure that they are able to exercise universal jurisdiction over the crimes under the jurisdiction of the ICTR to avoid a repetition of the problems faced in transferring the *Bagaragaza* case to Norway. Furthermore, to encourage states from all regions to accept cases from the ICTR, the Security Council should ask the General Assembly to establish a fund which would contribute to the costs of the universal jurisdiction cases.

Commit to providing sufficient resources to the ICTR. In order to complete its work, the ICTR will require continued funding. Amnesty International calls on the Security Council to commit itself to providing sufficient resources for the ICTR until it has completed its work and not to change the existing system of paying for the ICTR from the assessed budget of the UN. The reliance of international criminal courts in Sierra Leone and Cambodia on voluntary funding has hampered their work and undermined their independence.

Establishment of a long-term comprehensive action plan in Rwanda to end impunity. Amnesty International urges the Security Council to use this opportunity to promote other efforts to address impunity in Rwanda, including taking measures to ensure the investigation and prosecution of the thousands of other crimes under international law which the ICTR has not been able to investigate or prosecute in accordance with international standards. In particular, the organization requests that the Security Council call on all states to contribute sufficient personnel, material and financial resources to Rwanda enabling them to develop a long-term, comprehensive action plan to end impunity by addressing all crimes under international law committed between 1990 and 1994. They should do so in a transparent manner in close consultation with civil society.

Furthermore, Amnesty International urges the Security Council to call on all other states to cooperate in the investigation and prosecution of crimes under international law committed in Rwanda, and to exercise universal jurisdiction to investigate and prosecute crimes committed in Rwanda before their national courts.

Amnesty International remains seriously concerned by the failure of the ICTR and the Rwandan authorities to investigate and prosecute crimes committed by all sides in Rwanda between 1990 and 1994. In particular, the organization notes that up to 60,000 civilians are estimated to have been killed by Rwanda Patriotic Front (RPF) forces between April and July 1994. Although the ICTR has stated that it has "taken into the mandate of the ICTR, as emphasized by Resolution 1503, to investigate reports of violations by the Rwanda Patriotic Front" no public indictments against the RPF have been issued. There are serious doubts about the political will of Rwanda authorities to investigate and where there is sufficient admissible evidence, to prosecute those suspected. In 2004, any reference to the Geneva Conventions and their additional protocols, in particular Article 3 common to the Geneva Conventions, were taken out of Rwandan national law. Therefore, no courts in Rwanda have jurisdiction over alleged war crimes and other violations of international humanitarian law.