**ICTR - Definition of the Crimes**

**1. ICTR Statute 2010**

**A. Genocide**

***Article 2: Genocide***

*1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.*

*2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

*(a) Killing members of the group;*

*(b) Causing serious bodily or mental harm to members of the group;*

*(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*

*(d) Imposing measures intended to prevent births within the group;*

*(e) Forcibly transferring children of the group to another group.*

*3. The following acts shall be punishable:*

*(a) Genocide;*

*(b) Conspiracy to commit genocide;*

*(c) Direct and public incitement to commit genocide;*

*(d) Attempt to commit genocide;*

*(e) Complicity in genocide.*

**B. Crimes against Humanity**

***Article 3: Crimes against Humanity***

*The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:*

*(a) Murder;*

*(b) Extermination;*

*(c) Enslavement;*

*(d) Deportation;*

*(e) Imprisonment;*

*(f) Torture;*

*(g) Rape;*

*(h) Persecutions on political, racial and religious grounds;*

*(i) Other inhumane acts.*

**C. Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II**

***Article 4: Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II***

*The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:*

*(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;*

*(b) Collective punishments;*

*(c) Taking of hostages;*

*(d) Acts of terrorism;*

*(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;*

*(f) Pillage;*

*(g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples;*

*(h) Threats to commit any of the foregoing acts.*

**D. Individual Criminal Responsibility – relevant in this context…**

***Article 6: Individual Criminal Responsibility***

*1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.*

*2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.*

*3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.*

*4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.*

**2. Further information**

**> HRW ICTR Case Law Digest**

**> papers…**

“ICTR jurisprudence correctly recognizes the mental element of genocide in the chapeau of Article 2(2) as its distinguishing feature, namely the requirement of a specific intent (dolus specialis) to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. This mental element applies to all material acts of genocide enumerated under Article 2(a)-(e) of the Statute.15 Since the underlying acts - such as killing or causing serious bodily or mental harm - are not international crimes as such, '[i]t is this specific intent that distinguishes the crime of genocide from the ordinary crime of murder''16 Thus, in addition to defining genocide, the requisite mental element also delineates the normative sphere of international criminal law from that of domestic law.” (Akhavam 2005: 992)

* Conflict/overlap between Art. 2(3)(e) “complicity in genocide” and Art. 6 (1) “or otherwise aided and abetted planning, preparation or execution of a crime referred to in Articles 2 to 4”. There are, according to Akhavam, different interpretations of the ICTR regarding the dolus specialis/dolus generalis requirement for liability.