Index

actus reus 99, 104–8, 138, 208, 450, 457, 458
ad hoc tribunals 18, 393, 394
Advisory Committee on Administrative and Budgetary Questions (ACABQ) 239, 240
Akayesu, Jean-Paul 51, 145, 147
Akayesu case 22, 23, 40, 54, 88, 89, 97–9, 100, 104, 105, 183, 197, 199, 411
Akayesu trial judgement 126, 128, 134, 139, 215
Al Bashir case 460
Al Bashir Decision 455, 456
Al Bashir Warrant of Arrest Decision 451, 466
appeal process 315–26
additional evidence and review of judgement 322–5
appellant’s brief (AB) 316
brief in reply (BiR) 317
ersors of fact 320–22
ers of law 319–20
fairness and expeditiousness 317
notice of appeal (NA) 315–16
overview of 315
remedies on appeal 325–6
respondent’s brief (RB) 316–17
right of appeal from final trial judgements 317–18
standards of appellate review 318–25
types of errors 318–25
Appeals Chamber (AC) 52, 53, 56, 61, 63, 68, 69, 80, 84, 87, 89, 93, 113, 118, 133, 148, 155, 162, 185, 194, 203, 291, 471, 496
Arbour, Louise 35, 52, 166, 170
arrest and transfer 265–89
Article 2 ICTR Statute 80
Article 2(2) ICTR Statute 82, 96
Article 2(3) ICTR Statute 83
Article 2(3)(a) ICTR Statute 83
Article 2(3)(b)–(d) ICTR Statute 83, 89, 90
Article 2(3)(b) ICTR Statute 220
Article 2(3)(c) ICTR Statute 212, 213, 222
Article 2(3)(e) ICTR Statute 88, 89
Article 2(3) ICTR Statute 220, 221
Article 4 ICTR Statute 80, 144, 146, 151, 153, 154, 473–81
Article 6 ICC Statute 80, 86, 87
Article 6 ICTR Statute 83, 144
Article 6(1) ICTR Statute 88, 89, 160, 202, 206, 207, 210, 213, 214, 220, 222
Article 6(3) ICTR Statute 87, 214, 226, 227, 228
Article 7(1) ICTY Statute 202
Article 7(2)(f) ICC Statute 106
Article 9(1) ICC Statute 86
Article 9(3) ICC Statute 86
Article 19(1) ICTR Statute 357
Article 21(1)(a) ICC Statute 86
Article 22(2) ICC Statute 98
Article 25(3)(c) ICTR Statute 90
Article 25(3)(e) ICC Statute 91, 231
Article 25(3)(e) ICC Statute 5
Article 25(3)(f) ICC Statute 91
Article 28 ICC Statute 231
Article 28 ICTR Statute 50, 267
Article 38(1)(b) IJC Statute 81
Article 38(1)(c) IJC Statute 81
Article 103 UN Charter 267
Article VI 1948 Genocide Convention 18

Bagambiki, Emmanuel 156, 491
Bagaragaza, Michel 60
Bagilishema, Ignace 149
Bagilishema Appeals Chamber 229–30
Bagilishema Trial Chamber 210, 229
Bagosora, Theoneste 33, 60, 61
Bagosora et al. case 158, 189, 472
Barayagwiza, Jean-Bosco 62, 152, 277–86
Barayagwiza case 6, 266, 271, 277–86, 288
Basebya, Yvonne 71
Bazaramba, Francois 72
Bemba case 187
Bensouda, Fatou 41
Ntuyahaga case 164
Bicamumpaka, Jerome-Clement 59
Bikindi, Simon 63
Bizimana, Augustin 60, 164, 287, 492
Bizimungu, Augustin 433, 491
Boutros-Ghali, Boutros 17
Bugingo, Sadi 73
Butare case 51, 55, 56, 61, 64, 67, 161, 200, 422
Butera, John 167
Čelebič judgement (1998) 184
chapeau/contextual threshold elements crimes against humanity, ICTR 111–18
accused, attacks and mental elements 117–18
against civilian population 114–15
national, political, ethnic, racial or religious grounds 116–17
widespread or systematic attack 112–14
Civil Defence Program 479
civilian population 114–15, 116, 117, 250
Coalition pour la Défense de la République (CDR) party 152
co-conspirators 248
common law jurisdictions 331
complicity 224
concentration camp cases 205
conspiracy, crime of 220–21
Control Council Law No. 10 110
Convention on the Prevention and Punishment of the Crime of Genocide of 1948 103
co-perpetration 203–5
crimes against humanity 110–39, 463–73
broader attack 464–6
chapeau or contextual threshold elements 111–18
civilian population, attack against 467–8
extermination 469–70
individual crimes and 468–9
other inhumane acts 471–3
part of attack 467
persecution 470–71
prohibited acts 118–38
rape 127–35
sexual violence as 179–82
torture as 125–7
widespread or systematic broader attack 466–7
criminal responsibility modes 481–7
command/superior responsibility 485–7
commission 481–3
joint criminal enterprise (JCE) liability 483–5
Croatia v. Serbia case 107
cultural genocide 108
Cyangugu case 156
Dallaire, Romeo 45, 196
defence counsel 354
defendants, ICTR 57–64
media and church 62–3
military, police and militarized groups 61–2
overall characteristics of 63–4
politicians 59–61
Delalić et al. case 230
Del Ponte, Carla 30, 52, 53, 63, 166, 167, 170, 239, 241, 243, 254, 368
de novo evidence 318
Des Forges, Alison 27, 246
detention camps 205
determinate sentences 59, 60, 61, 63, 67, 74
deterrence 441
Dieng, Adama 26
dolus specialis (the mental element) 84–94, 223, 449
Index  505

aidering and abetting 88–90
Article 2(2) 84
complicity in 88–90
gravity of crime, intentionality impact 93–4
ICC Elements of Crimes 85, 86
ICTR Appeals Chamber 85
inchoate crimes 90–91
intentionality, evidentiary aspects 91–3
superior responsibility 87–8
donor-driven justice 21
Elements of Crimes (ICC) 85–7, 119,
124, 182, 186–7, 250–51, 457–8,
465–6
ethnic balancing act 73
ethnic groups 98, 99, 101, 117
European Convention of Human Rights (ECHR) 275, 352
European Court of Human Rights 361
evidence assessment 373–81
appeals chamber evaluation 379–81
obstacles 374–6
presumption of innocence 373–4
weight determination 376–9
evidentiary system 328–50
documentary evidence 340–43
evidentiary exclusions 343–5
gathering and sharing of evidence 330–36
general admissibility rules 339
issues, ICTR trials 336–46
specific categories, admissibility of 339–43
testimonial difficulties 345–6
_ex hypothesi_ 92
expressivism 441
extended JCE (JCE III) 205
extermination 120–24
Félicien, Kabuga 492
forced pregnancy 106
forcible transfer of children 107
forgotten fugitives 287, 288
Fulgence, Kayishema 61
_Furundžija_ case 184
_Furundžija_ trial judgement 130
gacaca courts 24, 38, 40, 43, 70, 71,
168, 358, 491
Gacumbitsi, Sylvestre 69
_Gacumbitsi_ Appeal Judgement 185
_Gacumbitsi_ case 106
_Gamma_ list 253, 255
Gashirabwoba football field 157
_Gate_ case 463
gendarmerie 490
Geneva Conventions
Additional Protocol I 468
Additional Protocol II 143, 473–81
genocidaires 96
genocidal rape 4
genocide 48, 79–109
acts of genocide 460
_actus reus_ 456
admixture of criteria 452–5
1951 Advisory Opinion’s reference 82
_Akayesu_ case 97–9
Article 2(2) 104
bodily or mental harm to members,
rape 458
crime, ICTR Statute 82–3
crime against humanity 103
crime of 449–63
crime of conspiracy 462–3
definition of 82–3
destruction, extent of 94–6
direct and public incitement 460–62
dolus specialis (the mental element) 84–94
killing members of the group 457
masterminds of 493
material elements of 83
means of destruction (material
elements or _actus reus_) 104–8
normative rooting of 82
objective and subjective criteria 452–5
primary mental element 83
prohibition, peremptory norm of international law 80–82
protected groups 96–102
protected groups – group-victims of 450–55
in Rwanda 46, 47
secondary mental element of 83
sexual violence as 105, 179–82
stability and permanence 450–52
subsequent case law developments 99–104
‘Genocide, Impunity and Accountability: Dialogue for a National and International Response’ conference 27
Genocide Convention 10, 79, 98
Article 2 of 80, 83, 102, 449
Article 2(2) of 99
Article 4 of 103
Article 3 of 80, 83
Article 3(a) and (e) of 83
Article 3(b)–(d) of 83
Article 3(e) of 88
Article 4 of 18
ECCC definition of genocide 104
travaux préparatoires of 98, 99
Genocide Convention Advisory Opinion 81
Genocide Convention verbatim 180
Gersony Report 21
Goldstone, Richard 30, 31, 40, 43, 52, 237, 238, 240, 242
Government I case 56, 59
Government II case 59, 152
guilty plea cases 55, 67
guilty-plea negotiations 244
habit corpus writ 270, 279
Hague Convention 387
Hategekimana, Idelphonse 496
hearsay statement 339
Higaniro, Alphonse 72
Host Country Agreement 415
Human Rights Watch (HRW) 254
Hutus 44, 165, 166, 171–5, 257, 365, 368, 490
Hutu women 128, 173–5, 195
Imanishimwe, Samuel 125, 156–7
imprisonment 124–5
incitement 223, 224
individual criminal responsibility 202–31
direct commission 203–5
forms of assistance 215–19
forms of encouragement 210–15
genocide, forms of participation in 220–26
indirect commission 210–19
joint criminal enterprise (JCE), participation 205–9
physical and co-perpetration 203–5
preliminary remarks 202
superior responsibility 226–30
inhumane acts 137–8
insider witness 247, 248
instigation 223
Interahamwe 45, 46, 58, 138, 140, 149–51, 478
International Court of Justice (ICJ) 26
International Covenant on Civil and Political Rights (ICCPR) 275, 388
International Covenant on Civil and Political Rights (ICCPR), Article 15(2) 82
international crimes, rights of victims of 386–92
international criminal justice 384
International Criminal Police Organization (INTERPOL) 273
International Criminal Tribunal for Rwanda (ICTR) 1, 2, 4, 5, 7, 11, 12
admissibility of evidence 339–46
appeal processes 292
arrest and transfer procedures 268–77
Article 28 ICTR Statute 50
in Arusha, Tanzania 26
assessing early record of 31–40
contribution for Rwandans 488–502
crimes, modes of liability and conviction rate 64–6
creation of 15–43
crimes against humanity 110–39
criticisms 29
defendants 57–64
divided opinions on significance of 20–24
establishment and functioning of 49–56
evidentiary system 328–50
facts and figures 44–75
failure nor success 28–31
first plenary session of 26–7
inauspicious beginnings 24–8
international law-making and 38
international relations experts and 23
jurisprudence 23
last trial judgement by 51
legal documents governing 50
and legal innovation 40–42
national reconciliation contribution in Rwanda 492–4
political leaders impunity, fight against 490–92
post-Nuremberg international tribunals 17–20
presentation of evidence 336–9
prosecutors and judges 52–4
recognition 399–402
rule of law, Rwanda 495–500
Rwandan government and 31–3
Rwandan participation in 40
Rwandan system of justice, strengthening of 495–500
sceptical engagement and confrontation 21
sentencing, appeals and imprisonment 66–9
Trial Chambers 52
trial proceedings 64–6
trial processes 292
trials 54–6
victims at 397–9
victims reparations, absence of 500–501
war crimes 140–70
International Criminal Tribunal for the former Yugoslavia (ICTY) 1, 5, 7, 18, 19, 49, 65, 141, 495
International Military Tribunal (IMT), Statute 64–5, 81, 202
International Organization for Migration (IOM) 501
investigation 243–51
investigations and case selection 235–64
investigator(s) 247
Jallow, Hassan B. 15, 30, 53, 167, 254, 368
JCE liability 191
joint criminal enterprise (JCE) 205–9
doctrine 5
extended JCE (JCE III) 205
liability 483–5
joint trials 298
judicial appreciation 96
jurisprudence 3, 4, 7, 122, 242
jus cogens 82
Kabgayi incident 30
Kabiligi, Gratien 61, 491
Kabuga, Félicien 62, 287
Kagame, Paul 24–5, 34
Kajelijeli, Juvenal 151, 491
Kajelijeli case 189
Kalimanzira, Callixte 60
Kama, Laïty 26, 52
Kamanzi, Innocent 34
Kambanda, Jean 59, 67, 491
Kambanda case 22, 25
Kambanda Judgement 79
Kamuhanda, Jean de Dieu 149
Kangura newspaper 62, 172
Kanyarukiga, Gaspar 63, 496
Karagyesa, Richard 18, 25, 31, 38, 40
Karemera, Edouard 59, 491
Karemera et al. case 191
Kayisema, Clement 148
Kayishema, Fulgence 496
Kayishema case 99, 105
Kayitare, Emmanuel 154
Krstić approach 90
Kumarac trial judgement 131
lack of consent (rape) 185, 186
Lemkin, Raphäel 109
life imprisonment 67
mass atrocities 17
mass-killings 95, 102
Mbanenande, Stanislas 73
Mechanism for the International Criminal Tribunals (MICT) 51, 52, 54, 58, 60–62, 69, 74, 177, 286–8
Media case 31, 41
mens rea 104, 119, 121, 131, 134, 138, 209, 212, 219, 225, 449, 455
Meron, Theodor 52, 54, 74
Mikaeli Muhimana Trial Chamber 197
militarization process 22
Military I case 28–9, 31, 33, 39, 61
Military II case 61
Miluntinović case 335
Moise, Erik 39, 52, 53
Mouvement Républicain National et Démocratique (MRND) party 59, 149
Mpambara, Joseph 71
Mpiranya, Protais 61, 287, 492
Mugenzi, Justin 59
Mugiraneza, Prosper 59
Muhimana case 184, 197
Muhimana Trial Chamber 133
Muhimana trial judgement 132
Muhumuza, Richard 500
Mukabutera, Julienne 72
Mukangango, Consolata 72
Muna, Bernard 238
Mungware, Jacques 72
Munyakazi, Yussuf 55
Munyarugarama, Phénéas 287
murder 118–20
Musabyimana, Samuel 58, 62
Musemba, Alfred 63
Musena Appeal 154
Musena case 92, 149, 103, 184
Musena trial judgement 130
Muvunyi case 189
Muvunyi trial judgement 134
Nahimana, Ferdinand 62
Nahimana Appeal Judgement 101
Nahimana et al. case 3, 136, 471
Nazi crimes, condemnation of 2
Nchamihiyo, Simeon 63
Ndashyikiriza, Samuel 72
Ndayambaje, Elie 56
Ndimbati, Aloys 60, 287
Ndindabahizi, Emmanuel 55
Ndindabahizi case 454
nepotism 32
Ngeze, Hassan 62
Ngirabatware, Augustin 60, 191
Ngirabatware case 51, 422
Ngirumute, Mathieu 59, 491
Niyitegeka case 184
Niyitegeka, Eliezer 150, 196, 197
Niyitegeka trial judgement 130
Niyontze, Fulgence 72
non-consensual intercourse 128
see also rape
non-international vis-à-vis international armed conflict 476
Nowrojee, Binaifer 189
Nsabimana, Sylvain 491
Nsengimana, Hormisdas 62
Nsengiyumva, Anatole 61, 68
Ntabukuze, Aloys 61, 491
Ntagerura, André 156
Ntagerura et al. case 124–6
Ntahobali, Shalom Arsène 64, 491
Ntakirutimana, Elizaphan 64, 150
Ntakirutimana, Gerard 62, 63, 150
Ntezimana, Vincent 72
Nyiramahaza, Bernard 57, 72
Nullem crimen sine lege principle 81, 82, 86, 96, 98
Nyiramasuhuko, Pauline 59, 64, 192, 193, 434, 435, 491
Nyiramasuhuko et al. case 1, 494
Nzabirinda, Joseph 63
Nzabonimana, Callixte 164
Nzabonimana, Etienne 72
Nzirorera, Joseph 58, 59, 491
obiter dicta 106, 107
Office of Legal Affairs (OLA) 237
Office of the Prosecutor (OTP) 5, 52, 236
beginning for 237–43
investigation and 243–51
recruitment process 238
selection of cases 251–8
Okali, Agwu Ukiwe 395
Operation Turquoise 48, 49
OTP Rape Database 189, 201
Paragraph 73 of Military I case judgement 33
partie civile 388
penalties
ICTR Statute and Rules 425–30
UNMICT instruments 425–30
penological objectives 439–42
Pillay, Navanethem xvi–xix, 52, 390, 405
plea bargains 163–5
Pocar, Fausto 53, 136, 326
post-genocide creation 244
post-Nuremberg international tribunals 17–20
post-trial evidentiary issues 346–9
pre-trial brief (PTB) 296, 297, 355
pre-trial investigation dossier 332
prima facie case 255, 260, 261, 268, 376
proceedings, ICTR 64–6
prohibited acts, ICTR Statute 118–38
extermination 120–24
imprisonment 124–5
inhumane acts 137–8
murder 118–20
political, racial and religious grounds, persecutions 135–7
rape 127–35
torture 125–7
prosecutorial discretion 244
Prosecutor v. Kayishema and Ruzindana 148
Prosecutor v. Laurent Semanza 154
racial group 117
Radio-Télévision Libre des Mille Collines (RTLM) 41, 44, 62, 152, 257, 471
rape 127–35
definition of 128–30, 182–7
rationae personae 480–81
victims 481
ratione loci 481
ratione materia 474–9
Referral Chamber 256, 496, 498
Renzaho, Tharcisse 158
Residual Mechanism 20, 28
rights of defence 351–84
adequate and timely disclosure 356–61
difficult state cooperation 364–9
exonerating evidence 361–4
fair trial, meaning and scope 352–4
indictments 354–6
right to be informed 354–64
selective prosecutions 372–3
state cooperation 370–71
subpoenas 371
unresolved issues 381–3
witness interference 372
rights of victims 385–421
of international crimes 386–92
rudimentary beginnings 396–402
Rules of Procedure and Evidence (RPE) 408–10
sole purpose myth 392–6
tribunal’s substantive and procedural law 402–10
victims’ protection 410–21
Roman-Dutch jurisdictions 260
Ruggiu, Georges 41, 62, 491
Rukeba, Dieudonne 167
Rukundo, Emmanuel 63
Rule 2(A) ICTR RPE 269
Rule 11bis ICTR RPE 256
Rule 28A ICTY RPE 261
Rule 39(iii) ICTR RPE 273
Rule 40bis ICTR RPE 269
Rule 40bis(H) ICTR RPE 271
Rule 40 paragraph (A)(i) ICTR RPE 269
Rule 50 ICTR RPE 199
Rule 55 ICTR RPE 273
Rule 58ICTR RPE 267
Rule 65 ICTR RPE 274
Rule 65ter ICTR RPE 295
Rule 73bis ICTR RPE 296
Rule 90(F) ICTR RPE 304
Rule 105 ICTR RPE 500
rule of law, Rwanda 495–500
Rules 48 and 48bis ICTR RPE 297
Rules of Procedure and Evidence (RPE) 236, 260, 265, 387
Rusatira, Leonidas 57, 164
Rutaganda, Georges 35, 153, 169
Rutaganda case 100, 154
Rutaganira, Vincent 60
Ruto Confirmation of Charges Decision 466
Ruzindana, Obed 63, 71, 148
Rwabijongo, Daniel 470
Rwabukombe, Onesphore 73
Rwanda crisis 252
Rwandan Armed Forces (RAF) 174, 478
Rwandan Bar Association (RBA) 499
Rwandan judicial reform 494
Rwandan Patriotic Army (RPA) 35, 44
Rwandan Patriotic Front (RPF) 11, 21, 30, 44, 167, 489
Rwandan Penal Code 224
Rwandan prisons 490
Rwandan system of justice 495–500
death penalty, abolition of 497
Rwandan Lawyers, training of 499–500
witnesses, availability of 497–9
Ryandikayo, Charles 63, 287
Security Council 18
Sekule, William 54
sentence bargaining 163
sentences 67–9
sentencing and penalties 422–43
sentencing practice 430–39
aggravation and mitigation factors 433–7
ICTR Statute and Rules 425–30
overall methodology 430–33
quantum and logistics 437–9
UNMICT instruments 425–30
World War II legacy 423–5
Seromba, Athanase 63, 69
Seromba Appeals Chamber 105
Serugendo, Joseph 62
Serushago, Omar 55, 56
Setako, Emphrem 159
sexual assault see rape
sexual violence 41, 47, 105, 127–35, 137–8, 171–201, 401
as crimes against humanity 179–82
definition of rape 182–7
female perpetrators of 192–4
as genocide 179–82
male victims of 195–8
and modes of liability 188–91
procedural issues relating to 198–200
prosecutions, ICTR statistics 176–9
in Rwanda in 1994 171–6
as war crimes 179–82
see also rape
Sierra Leone 391
Sikubwabo, Charles 60, 287
Simbikangwa, Pascal 73
Special Court for Sierra Leone (SCSL) 65, 291
Special Tribunal for Lebanon (STL) 265
Srebrenica massacre 49
Stakić Chamber 101
substantial effect requirement 218
sui generis 292
Tokyo Military Tribunals 16
torture 125–7
transitional justice process 16, 17, 33
trial and appeal processes 290–327
Trial Chambers (TC) 63, 69, 113, 118, 119, 149, 155, 180, 183, 189, 203, 204
trial process
case presentation, joint or separate trial 297–9
chamber fact-finding 302–5
evidence presentation 301–2
expert evidence 310
fair and expeditious trial 294–5
hearsay evidence 307
judicial notice 309–10
nature and admissibility of evidence 306–10
on-site visits 310
openning statements 299–300
parties – in nutshell, roles of 293
pre-trial and pre-defence conferences 295–7
prosecution’s and defence’s evidence 301–2
rule of orality 307–8
testimonies, classes of persons 308
trial chambers, mandate of 293
trial judgement and sentence 313–15
trial management powers 302–5
tribunalization 23
  post-conflict interventions 21–2
tribunal prosecutors 333
Truth and Reconciliation Commission 108
Tutsis 19, 44, 47, 52, 61, 95, 99, 109, 125, 150, 162, 166, 171–5, 196, 197, 257, 401, 490, 494
Tutsi women 128, 162, 378, 459, 484
Ukwishaka, Wilson 167
UN Charter, Chapter VII 18, 49, 50
United Nations Assistance Mission for Rwanda (UNAMIR) 45, 48
United Nations Development Programme (UNDP) 396
United Nations Security Council (UNSC) 44
  resolution 955 23, 50, 79, 489
UN Mechanism for International Criminal Tribunals (UNMICT) 1, 6, 266
UN Secretary General to the Security Council 144
Uwilingiyimana, Agathe 59, 173, 472
Uwinkindi, Jean 498
victim rights 198–200, 386–92, 402–8, 410–21
victim witnesses 378
victims of sexual violence 171–201, 409, 413
war crime provision 4
war crimes 140–70
  convictions 153–62
  crime charges withdrawal and transfers 163–5
  elements of 474
  and ethnic balancing debate 165–9
  legal mandate on 141–5
  plea bargains 163–5
  practice – jurisprudential developments 145–65
sexual violence as 179–82
war nexus 465, 474, 476–7
weapons exporters 22
Witness 95 reaction 186
witnesses’ statements 246
witness-proofing 356
Witness/Victims Support Section of the Office of the Prosecutor (WVSS-P) 415
Witness/Victims Support Unit (WVSU) 397, 413
women 128, 162, 171–5, 194, 195, 378, 459, 484
World War II legacy 423–5
Zigiranyirazo, Protais 56, 63
Zigiranyirazo case 347