The International Criminal Tribunal for Rwanda: bringing the killers to book

by Chris Maina Peter

> *No matter how many atrocities cases these international tribunals may eventually try, their very existence sends a powerful message. Their statutes, rules of procedure and evidence, and practice stimulate the development of the law.*[1]

In the spring of 1994 more than 500,000 people were killed in Rwanda in one of the worst cases of genocide in history. The slaughter began on 6 April 1994, only a few hours after the plane bringing the Presidents of Rwanda and Burundi back from peace negotiations in Tanzania was shot down as it approached Kigali Airport.

It would seem that the genocide had been planned long in advance and that the only thing needed was the spark that would set it off. For months, *Radio-Télévision Libre des Mille Collines* (RTMC) had been spreading violent and racist propaganda on a daily basis fomenting hatred and urging its listeners to exterminate the Tutsis, whom it referred to as *Inyenzi* or "cockroaches".[2] According to one source:

> The genocide had been planned and implemented with meticulous care. Working from prepared lists, an unknown and unknowable number of people, often armed with machetes, nail-studded clubs or

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Chris Maina Peter is Associate Professor at the Faculty of Law, University of Dar es Salaam, Tanzania. He is also Defence Counsel for indigent suspects and accused persons at the International Criminal Tribunal for Rwanda.

[1] Theodor Meron, "The international criminalization of internal atrocities", *American Journal of International Law*, Vol. 89, 1995, p. 555.

[2] See *Prosecuting genocide in Rwanda: The ICTR and national trials*, Lawyers' Committee for Human Rights, Washington, D.C., July 1997, p. 4.

> grenades, methodically murdered those named on the lists. Virtually every segment of society participated: doctors, nurses, teachers, priests, nuns, businessmen, government officials of every rank, even children.[3]

In Rwanda, a person's ethnic identity became his or her death warrant or a guarantee of survival. The crusade was led by the Rwandan armed forces and the *Interahamwe* (those who stand together) and *Impuzamugambi* (those who fight together) militias. Its main targets were Tutsis and moderate Hutus. Surprisingly, these killings took place while a contingent of UN peacekeeping forces — the United Nations Assistance Mission to Rwanda (UNAMIR) — was in the country trying to facilitate the peace negotiations between the Hutu government of the time and the Tutsi-dominated Rwanda Patriotic Front (RPF). The International Criminal Tribunal for Rwanda (hereinafter referred to also as the Rwanda Tribunal or simply as the Tribunal) was set up to prosecute those involved in instigating, leading and perpetrating the genocide.

International criminal tribunals

The International Criminal Tribunal for Rwanda is not the first of its kind. In fact, it is almost a branch of the International Criminal Tribunal for the Former Yugoslavia, established in 1993.[4] The two Tribunals share certain facilities and officers; in particular, they have the same Chief Prosecutor and Appeals Chamber. That is why some commentators argue that the Rwanda Tribunal was grafted onto the Yugoslavia Tribunal.[5]

Further examples of tribunals such as the Rwanda Tribunal can be pointed to in modern times. They include the International Military Tribunal in Nuremberg[6] and the International Military Tribunal for the Far East in Tokyo,[7] both of which were set up in 1945 to prosecute and punish major Axis war criminals in Europe and Japan. The main difference

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[3] *Ibid.*

[4] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia since 1991 was established by United Nations Security Council Resolution 808 of 1993.

[5] See Makau Mutua, "Never again: Questioning the Yugoslav and Rwanda Tribunals," *Temple International and Comparative Law Journal*, Vol. 11, No. 1, 1997, p. 167.

[6] See Hans-Heinrich Jescheck, "Nuremberg Trials", in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. 4, North-Holland Publishing Company, Amsterdam/New York/Oxford, 1982, p. 50.

[7] See Bert V. A. Röling, "Tokyo Trial", *op. cit.* (note 6), p. 242.

between those earlier tribunals and the recent ones is that while after the Second World War it was the victors who set the rules for punishing the vanquished, today it is the international community as a whole which is seeking to bring perpetrators of genocide and other crimes against humanity to justice. In doing so, the international community, acting through the United Nations, has taken into account the development of both international law and international humanitarian law since 1945. That is why, for example, the Statute of the Rwanda Tribunal takes note of both the Geneva Conventions of 1949 and their 1977 Additional Protocol II.

The International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda was established by the UN Security Council Resolution 955 of 8 November 1994. The purpose was to prosecute 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 and 31 December 1994. At the same time, the Security Council adopted the Statute of the Tribunal and requested the UN Secretary-General to make political arrangements for its effective functioning.

On 22 February 1995, the Security Council passed resolution 977 designating the town of Arusha in the United Republic of Tanzania as the seat of the Tribunal. An agreement between the United Nations and Tanzania concerning the Tribunal's headquarters was signed on 31 August 1995.

The Tribunal, which has a relatively wide jurisdiction, is supposed to prosecute persons responsible for genocide and other serious violations of international humanitarian law. The Statute of the Tribunal more or less follows the Genocide Convention of 1948 in defining genocide as any act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Such acts include: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures to prevent births within the group; and forcibly transferring children of the group to another group. According to the Statute, genocide itself, conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide and complicity in genocide are all punishable.[8]

[8] Article 2 of the Statute.

In addition, the Tribunal has powers to prosecute persons charged with crimes against humanity, which include: murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecutions on political, racial or religious grounds; and other inhumane acts.[9] Since such crimes can be committed in various circumstances, the Statute specifies that they only fall within the purview of the Tribunal when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

Opening a completely new area for tribunals of this nature, Article 4 of the Statute empowers the Tribunal to prosecute persons who commit or order to be committed serious violations of Article 3 common to the 1949 Geneva Conventions for the protection of war victims and of 1977 Additional Protocol II relating to the protection of victims of non-international armed conflicts. Such violations include: violence to the life, health and physical or mental well-being of persons, in particular murder and cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishments; the taking of hostages; acts of terrorism; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; pillage; 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 civilized peoples; and threats to commit any of the foregoing acts.

To date the Tribunal has issued several indictments and arrest warrants for persons suspected of having been involved in masterminding the genocide in Rwanda in 1994. Some of these persons have been arrested in various States and brought to Arusha, where three trials are under way. First of all there is the case of Clement Kayishema, the former Prefect (Governor) of Kibuye, who is facing 25 charges related to massacres committed at various places. He is being tried jointly with Obed Ruzindana, a businessman accused of having organized massacres in western Rwanda. Then there is the case of Georges Rutaganda, from Gitarama, a senior official in the party of assassinated President Juvenal Habyarimana. As Vice-President of the *Interahamwe* militia, Rutaganda is alleged to have helped arm the militia in Kigali, placed road-blocks and ordered the militia to kill Tutsis. He is also alleged to be a shareholder in *Radio Télévision Libre des Mille Collines*, which made regular broadcasts inciting its lis-

[9] Article 3 of the Statute.

teners to genocide. Finally, there is the case of Jean-Paul Akayesu, the former Mayor of Taba, near Gitarama, who is charged on 12 counts, including genocide and crimes against humanity.

Also indicted by the Tribunal is Colonel Theoneste Bagosora, who appeared before the Tribunal on 23 January 1997, charged with genocide and crimes against humanity and on two counts of violations of Article 3 common to the Geneva Conventions. He pleaded not guilty on all counts. According to one report, Bagosora is the "biggest fish" that the Tribunal has so far managed to catch.

The problems facing the Rwanda Tribunal

The Rwanda Tribunal has been the object of stinging criticism, which has come mainly from two sources: the current RPF-led government of Rwanda and the Western countries, led by the United States. The Rwandan government opposed the very creation of the Tribunal in the first place, citing two main reasons. To begin with, the most severe punishment to be meted out by the Tribunal would be imprisonment and not death (for the government, those proved to have been involved in the genocide deserved the death penalty, which still exists in Rwanda). Secondly, the Rwandan government argued, it was unrealistic to limit the Tribunal's temporal jurisdiction to the period 1 January to 31 December 1994 since equally serious crimes had been committed before then and these crimes were related to the ones perpetrated in 1994. Other reasons included the likelihood that judges from countries which had been in one way or another involved in the war would show bias; and the fact that those found guilty would serve their sentences in countries offering prison facilities and not in Rwandan jails.[10] In the eyes of the Rwandan government, therefore, the Tribunal would be ineffective; moreover, it would serve no useful purpose since it would not meet the expectations of the Rwandan people: at most, it would be used to appease the conscience of the international community, which had stood by while the genocide took place and had made no effort to stop it. The government has continued to take a very hostile attitude towards the Tribunal, whose personnel in Kigali have reportedly been subjected to harassment and even manhandled in the course of their work.[11]

[10] At present six countries have indicated their willingness to provide prison facilities for persons convicted by the Rwanda Tribunal: Austria, Belgium, Denmark, Norway, Sweden and Switzerland.

[11] See *Prosecuting Genocide in Rwanda*, *op. cit.* (note 2), p. 39.

Western governments have been critical of the Tribunal as part of their broader criticism of the United Nations system as a whole. Among other things, they have alleged that it is not making any headway and that it is generally dysfunctional. As a result, Dr Adede, the Tribunal's Registrar, and Deputy Prosecutor Honoré Rakotomanana, a retired Chief Justice from Madagascar, have been dismissed.[12] In the author's view, such criticism has little, if any, basis in fact and the new appointees will not perform any miracles. The Tribunal was set up from scratch by its senior staff, with no support from the UN itself and under very difficult conditions. Their efforts have gone largely unappreciated.

The influence of the Rwanda Tribunal in Africa

In the final analysis, it is clear that the significance of tribunals like the International Criminal Tribunal for Rwanda does not lie in the number of persons who appear before them, but in the signals sent out by their creation. As Meron says:

> No matter how many atrocities cases these international tribunals may eventually try, their very existence sends a powerful message. Their statutes, rules of procedure and evidence, and practice stimulate the development of the law. The possible fear by States that the activities of such tribunals might preempt national prosecutions could also have the beneficial effect of spurring prosecutions before the national courts for serious violations of humanitarian law.[13]

By creating such tribunals, the international community delivers a warning to those who do not value human life.

The establishment of the Rwanda Tribunal is even more significant in Africa itself, where its presence on the continent will help raise people's awareness of the importance and value of human life. Serious crimes have been committed against the African people by all sorts of dictators, and so far they seem to be getting away with it. Dictators like Idi Amin, the former President of Uganda, who killed hundreds, if not thousands of his people, are comfortably living in exile without being made to answer for their deeds. Others, like Mobutu Sese Seko of Zaire (now the Democratic Republic of the Congo), have died in exile, having bankrupted their

[12] Agwu Ukiwe Okali (Nigeria) was appointed as the new head of the Registry, and Bernard Acho Muna (Cameroon) as the new Deputy Prosecutor.

[13] *Op. cit.* (note 1), p. 555.

countries by transferring huge amounts of resources abroad with the assistance of those very Western countries which day and night preach about democracy, freedom and good governance. And there are still many others on the continent who are shielded and pampered by the West. The establishment of the Rwanda Tribunal in Arusha has thus come as an unpleasant surprise for the power-hungry leadership in Africa. It is a clear signal from the international community that human life is precarious, that it should be respected and protected, and that those who abuse it will be held responsible and be sought wherever they are hiding.

Furthermore, the Rwanda Tribunal has dealt another blow to those African leaders who have violated the fundamental rights and freedoms of their peoples with impunity for many years by taking shelter behind Article 3 of the Charter of the Organization of African Unity. While this article provides for non-interference in the internal affairs of member States, it is now plain that the violation of such rights and freedoms is no long a restricted domain of the State but concerns the international community as a whole: the world has both the right and the duty to raise questions and demand satisfactory answers.

In addition, the creation of the Tribunal has reopened the debate on the possibility of establishing a human rights court on the African continent. African leaders have been adamant that the African Commission on Human and Peoples' Rights[14] provides sufficient guarantees and that such a step is therefore unnecessary. Their case is slowly but surely loosing ground. The fact that perpetrators of genocide are being prosecuted in Arusha argues in favour of establishing a court where victims of human rights violations might also seek redress. The very existence of the Tribunal, notwithstanding its ad hoc status, is thus a great inspiration to the African people, many of whom are looking forward to the establishment of a permanent international criminal court with the same status as that of the International Court of Justice.

Although the Rwanda Tribunal may thus be viewed as a positive development on the African continent, it has little in common with a body such as the Truth and Reconciliation Commission in South Africa.[15] The

[14] The African Commission on Human and Peoples' Rights was established under the African Charter on Human and Peoples' Rights, adopted in 1981 by the Organization of African Unity.

[15] On this Commission see Gerhard Werle, "Without Truth, No Reconciliation: The South African *Rechtsstaat* and the Apartheid Past", *Verfassung und Recht in Übersee*, Vol. 29, No. 1, 1996, p. 58.

main difference between the two is that the Truth Commission is an internal mechanism whereby South Africa is bravely attempting to come to terms with its past and shed light on the terrible deeds committed during the apartheid era. This stage has not been reached in Rwanda, where peace has yet to be achieved on a basis that is acceptable to all. It will take time for the two warring ethnic groups — Hutu and Tutsi — to find their way towards a genuine reconciliation; meanwhile, the Rwanda Tribunal can only further the process. Whatever their shortcomings, such institutions will certainly contribute to the effort to find a lasting solution to problems of this nature facing mankind at the end of the twentieth century.

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