

The politics of transitional justice: case study rwanda article review example

[Sociology](#), [Racism](#)



That there was genocide in Rwanda culminating to the death of close to 1 million people is no secret. It has been 19 years since the world watched in disbelief as a nation descended upon itself in a move to exterminate one another. In order to bring justice to the victims, the International Criminal Tribunal for Rwanda (ICTR) was formed to prosecute the core perpetrators. This court was established in November 1994 by the United Nation Security Council to try those responsible for the genocide and other violation of international law in Rwanda. These crimes ranged from planned exterminations of the minority Tutsis and Twa, incitement, sexual violence and patronage. Based in Arusha, Tanzania from 1996 the court is yet to officially conclude its mandate. However, the court has overseen the prosecution of several high ranking government and influential personalities such as Jean Kambanda (the interim Prime Minister of Rwanda during the genocide) and Jean-Paul Akayesu amongst others.

Given the extent and the deep resentment leading up to the genocide; the post-genocide government under Paul Kagame sought to make reconciliation part of the justice process. In the course of the genocide, the majority Hutu meted all forms of violence against the minority Tutsi and even the Twa (a smaller ethnic block comprising of less than 1% of the total Rwandese population). The enormous scale of atrocities was daunting to any justice system. To make reconciliation part of the justice process, the government formed a transitional justice system that was a blend of a formal legal process and the traditional reconciliation strategy; the gacaca courts. These courts have been touted as an innovative alternative to the formal justice

system that ignores the reconciliatory aspect and is often slow. At its slated closure, the Gacaca Courts had presided over close to a million trials.

Victor's Justice

In a letter addressed to Mr. Hassan B. Jallow (ICTR Prosecutor), dated 11 January 2005, Professor Filip Reyntjens lamented about the apparent lack of ICTR's commitment to prosecute Rwanda Patriotic Front (RPF) suspects. At the height of the conflict leading up to the genocide, RPF had been a rebel outfit fighting against the Rwandese government based in Uganda. Through its army wing there has been serious claims and documentary evidence that RPF equally committed crimes against humanity. There is evidence that RPF was responsible for between 20, 000 to 30, 000 deaths as it sought to end the genocide or through reprisal attacks. Yet the ICTR has never shown intent to prosecute the suspect. Moreover, the Gacaca Courts are strictly controlled and any allegations against RPF will not be entertained.

The post-genocide Rwanda has seen tremendous strides towards making the country better, but what has been a constant source of worry is the repressive nature of the Kagame-led government. There are claims that the government's control is rampant and pervades all aspects of the Rwandese lives. The Gacaca Courts have been widely acknowledged as a faster way of getting justice to the victims whilst providing an opportunity at reconciliation. But what is apparent is that this is a product of state power and a government-led initiative, which has in effect led the courts to roundly condemn the Hutu as the perpetrators and the Tutsi the victims. Even the Twa who equally bore the brunt of the genocide have been denied audience. Does this mean that retaliatory attacks meted at the Hutus by RPF do not

warrant prosecution? Is there a deliberate attempt to deny these Hutus justice because doing so would annoy the established government of Rwanda?

ICTR is now on its closing strategy, it should have wound up by 2012, yet Professor Filip in his letter alludes to the fact that by 2003, there had been compelling evidence gathered on RPF's involvement in a number of massacres. While these crimes fall within the mandate of ICTR; as the professor rightly pointed out, they remain unprosecuted. It has been claimed that some of the RPF perpetrators at the height of the genocide are yet to face justice. There is enough evidence that links RPF to these crimes; some of the suspects are known, some are working in the government; yet there is not attempt locally or internationally to bring them to justice.

The issue of 'victor's justice' is not a new concept. For the human rights advocates, it has become distasteful particularly since Nuremberg and Japan at the close of World War II. The same was witnessed during the International Criminal Tribunals for the Former Yugoslavia (ICTY). This leads the serious doubts as to the extent to which the victorious protagonists will go to ensure justice to all at the end of an armed conflict. Of serious concern is the ability of such regimes to cooperate with the international tribunals if the goal is to prosecute their 'own' and stark the blame on them. Currently, a similar scenario is unfolding in Kenya. After the post-election violence that rocked the country in 2007-08, three individuals were indicted at the ICC. The current regime under President Uhuru Kenyatta and his deputy William Ruto are pulling all stops to have the cases dropped. These two are among the three inductees at the ICC for crimes against humanity committed at the

height of the violence. Rwanda which alongside Kenya, Uganda, Tanzania, and Burundi forms the East African Community seems to have set precedence.

President Kagame's regime has repeatedly denied any atrocities committed by RPF even in the face of glaring evidence and exercises strict control. The extent of government control in Rwanda permeates all spheres, including the justice system. In an article by Susan Thomson and Rosemary Nagy; Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's Gacaca Courts; the authors paint a gloomy picture of the reconciliatory purpose of these courts. From numerous interviews conducted in 2006, they found that the gacaca process was conducted in a way that left the citizens powerless in pursuit of real reconciliation. They argued that the government's preoccupation with harmonizing traditional justice with the formal one had left many people wallowing in conditioned reconciliation. Of note were the strict rules that made participation mandatory and the abhorrence of any mention of the RPF. This renders the transitional justice a selective process that seeks to nail one group while remaining blind to the crimes of the other.

The mandate of the ICTR was to investigate and to prosecute the main perpetrators of the genocide, setting for itself international standards justice. But as professor Filip Reyntjens amply states, ICTR in turning a blind eye to the crimes committed RPF had failed to 'contribute to the process of national reconciliation and the restoration and maintenance of peace'. The form national reconciliation that is needed in Rwanda goes beyond public declarations as was imposed by the National Jurisdiction of Gacaca Services

(NJGS). The root causes of the genocide dated back to many years of mistrust and attempt to by both Hutu and Tutsi subjugate one another; politically, socially, and economically. While there have been efforts to ensure that citizens are not polarized along ethnic lines, other social problems still persist. The conditions leading to the genocide were dire, with Rwanda ranking as one of the dense populated in the world, poverty, and high levels of illiteracy. The situation is much better now, though there is still widespread poverty with many living below two dollars a day. The post-genocide politics has been dominated by RPF with Paul Kagame as President since 1994. Ideally, one would argue that real reconciliation is yet to root. The ICTY and ICTR have been regarded as the initial steps leading to the formation of the International Criminal Court (ICC) under the Rome Statute. But having noted the flaws in that have plagued them, particularly on the issues of deciding who to prosecute. There should be a deliberate effort in any such tribunal to prosecute in equal measure suspects from both the winning and the losing side of the conflicts. This concern first arose after the critique of ' victor's justice' that still haunts the Nuremberg and Tokyo tribunals; the reasons being that these tribunals only prosecuted the crimes committed by the Axis Powers while they ignored those committed by the Allied in bombing civilians in Europe and Japan. This is exactly the kind of selective justice that Professor Filip Reyntjens is protesting against.

Conclusion

In the aftermath of World War II, the human rights movement has been built on the principle of universal human rights. This principle espouse that all

victims of human rights abuses should be granted justice regardless of which side of the conflict belong to. The ICC was created on this premise, as a court whose mandate would to get to the truth and give justice to all. While looking forward to the tribunal's creation, the then U. S ambassador to the United Nations, Madeleine Albright vowed that the ICC ' will be no victor's tribunal'. The ICC has now been in existence for some time, and while we can argue that the ' victor justice' problem has been alleviated by specific regulations and institutions within it tasked with investigation; its broad mandate may not serve in providing the required level of justice to guarantee a ' closure' in the minds of the victims. There is also the requirement that states cooperate in ensuring that tribunals discharge their mandate; as such the victorious government may select not to cooperate when it feels threatened by the process.

Works Cited

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