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Rwanda: No Conspiracy, No Genocide Planning ... No Genocide?

By Peter Erlinder

JURIST Guest Columnist **Peter Erlinder** of William Mitchell College of Law and a Lead Defense Counsel at the International Criminal Tribunal for Rwanda (ICTR), says that if - as the ICTR recently ruled in the "Military I" trial - alleged "masterminds" Colonel Theoneste Bagosora and fellow top Rwandan military officers engaged in no conspiracy and no planning to kill ethnic civilians, the tragedy that engulfed Rwanda in 1994 may not properly be called a "genocide" at all...

The media reports of the December 18 judgment of Chamber-1 at the International Criminal Tribunal for Rwanda focused primarily on the convictions of three of four former top military leaders, who were the supposed "masterminds" of the Rwandan genocide. But, as those who have followed the ICTR closely know, convictions of members of the former Rwandan government and military are scarcely newsworthy.

Ever since former ICTR Chief Prosecutor Carla Del Ponte and ICTR Chief Investigative Prosecutor Michael Hourigan went public in 2007-8 exposing US-UK manipulations to grant *de facto* impunity to current Rwandan President Paul Kagame and his henchmen, between 1997 and the present, convictions of the vanquished in the Rwanda war are a given.

The real news was that ALL of the top Rwandan military officers, including the supposedly infamous Colonel Bagosora, were found not guilty of conspiracy or planning to commit genocide. And Gen. Gratién Kabiligi, a senior member of the general staff was acquitted of all charges! The others were found guilty of specific acts committed by subordinates, in specific places, at specific times - not an overall conspiracy to kill civilians, much less Rwandan-Tutsi civilians.

This raises the more profound question: if there was no conspiracy and no planning to kill ethnic civilians, can the tragedy that engulfed Rwanda properly be called "a genocide" at all? Or, was it closer to a case of civilians being caught up in war-time violence, like the Eastern Front in WWII, rather than the planned behind-the-lines killings in Nazi death camps? The ICTR judgment found the former.

The Court specifically found that the actions of Rwandan military leaders, both before and after the April 6, 1994 assassination of former Rwandan President Juvenal Habyarimana, and Burundi's President Ntaryamira, were consistent with war-time conditions and the massive chaos brought about by the four-year war of invasion from Uganda by Gen. Paul Kagame's RPF/Ugandan army, which seized power in July 1994.

Although the Chamber did not specifically mention more recent events, it is worth noting that this is the same Kagame government that was named in a UN Security Council commissioned report on December 12, 2008 as having invaded the eastern Congo (with Uganda) in 1996 and again in 1998 and as occupying an area 15-times the size of Rwanda since that time. Similar UN Security Council reports in 2001, 2002 and 2003, make clear that Rwanda and Uganda's economic rape of the eastern Congo, and the resulting 6 million-plus civilian deaths, have long been an "open secret."

As Lead Defense Counsel for Major Aloys Ntabakuze, who was convicted of three specific crimes committed by troops without evidence they were acting under his authority, I would say the judgment was actually a victory. Our defense was based on previously suppressed contemporaneous UN and declassified US documents that showed Kagame's RPF as the war-time aggressor, which was responsible for the assassination of the former President and for preventing military intervention to end the predicted civilian massacres.

The ICTR oral judgment specifically refers to this “alternative” explanation of the tragic events in Rwanda, as being a basis for rejecting the conspiracy and planning charges against the former military leaders. But the documents show more.

As early as May 17, 1994, UNHCR was receiving reports of massive civilian killings by Kagame’s RPF in the 1/3 of Rwanda they had occupied since April 22. Other documents from August, September and October 1994 describe a conscious attempt by UN and US government officials to “cover-up” reports of RPF killings, including memos to Secretary of State Warren Christopher. Apparently, US policy to create “impunity” for Kagame began nearly as soon as he took power.

Had the US “impunity policy” not been in place, Kagame might well have been prosecuted along with Military-1 defendants Bagosora and Nsengiumva, as ICTR Prosecutor Michael Hourigan recommended in early 1997. Kagame’s responsibility for the assassination of Habyarimana has been known to the ICTR Prosecutor since at least that time, if not early.

Had the US “impunity policy” not been in place, Kagame might well have spent the last decade awaiting trial at the ICTR, rather than getting rich from the resources of the Congo, and the blood of millions of Africans.

*Peter Erlinder is a professor at William Mitchell College of Law, St. Paul, MN. He is a past-President of the National Lawyers Guild, a Lead Defense Counsel-UN International Criminal Tribunal for Rwanda, and the President of the ICTR-ADAD (Association des Avocats de la Defense).
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