

NAZI HUNTING AND THE PROSECUTION OF GENOCIDE IN AFRICA

Gerald Gahima

My topic is Nazi hunting and the prosecution of genocide in Africa. Obviously, this is something about which there is so much to say and I cannot say much in twenty minutes. So you will excuse me if what I say is not coherent or comprehensive. You understand the limitations.

You all know who the Nazis are. I don't need to explain what Nazi hunting is all about. But as for the prosecution of genocide in Africa - to my knowledge, there have been gross violations of human rights in Africa, in many countries, over the last thirty years. But there are only two places to my knowledge where genocide is being prosecuted as a crime - Rwanda and Ethiopia. I've not been able to find much information about the status of affairs in Ethiopia, so I hope our friend [Edward Kissi] will tell us more about it. I would ask him to. I will basically be talking about efforts to look for and to prosecute Nazis, and efforts to prosecute the genocide which took place in Rwanda in 1994.

Obviously, many of you have heard or know a lot about the Holocaust. Not many of you may know a lot about what happened in our country. In 1994 our country had a population of about seven million people. The government of the day just sat down and organized murder of about one-seventh of the population, about one million people. All resources of the country - the military, the financing, everything - for a period of one hundred days was devoted to that one purpose: the extermination of a section of the population, who are called Tutsis. We estimate that about a million people died. Conservative estimates of outsiders have put it at about five hundred thousand after the first hundred days. About two hundred to three hundred thousand of the Tutsis that lived in Rwanda before survived. So this is the context in which I am talking about the prosecution of genocide in Rwanda.

Now, the Holocaust will always, of course, remain a singular act of horrific proportions. But as events in Rwanda have shown, the fact remains that mass murder, based on ethnic, national or religious differences, is by no means a thing of the past. As long as genocide remains, justice still remains important.

People ask, "Why must there be justice? Why must we hunt Nazis? Why must those people who committed genocide or who may commit it in the future be pursued and prosecuted?" As lawyers, we have a very simple answer. We say, "It's the law. You commit a crime, you have to be punished." It's a very simple answer that even a child will understand. But it does not explain everything. There are other answers to the question as to why there must be justice.

Most important is that there must be justice to commemorate those who died. Once people are dead through genocide, there is nothing that you could ever do to undo the harm that has been done. The most we can do for the victims is commemoration. It is the most important reason why people who commit genocide must be pursued and must be made to account. But commemoration looks to the past. It's necessary, it's important, but it's not all that we need.

Fortunately [even] where there has been a genocide there remains a remnant. Those who have survived genocide will always live in fear of the next one. It is a duty that our societies owe to those who have been victims of genocide, or those who are potential victims of it in the future, that we work to eradicate impunity. The need to eradicate impunity for past crimes is very, very important. There must be something done to make sure that people do not think they can take the liberty to kill, to murder, and get away with it. This is the only assurance for a society that has been a victim of genocide. There must be justice to eradicate impunity.

Knowing that peoples other than the Jews have been victims of acts of genocide, societies like Rwanda – also coming out of such catastrophic events – encourages concerted efforts to portray ourselves as viable societies. There can be no better foundation for such societies than to recreate the rule of law. Ultimately, only the respect of that rule of law guarantees our other aspirations. Justice is also a tool for reconciliation.

Unlike the Jewish people, the people of Rwanda, victim and perpetrator, have got to live together and seek to build their lives anew, living side by side. Not everyone has the opportunity that the Jewish people had of establishing a new state - like Israel was established in 1948 - to live alone in one homogeneous society, where you know as a society you are focused on working for your survival without having to think about coping or leaving or coexisting with your former enemies. But in societies like ours, justice is very important because unless there is a reckoning with the past there is no foundation for reconciling people.

So with those introductory words about why there must be justice, I would move to talk about the obstacles to the pursuit of justice for genocide - for the Holocaust first, and then the experience in Rwanda, and the obstacles that were faced as we sought to bring to justice people responsible for the genocide in our country.

As all of you are aware, at the end of the Second World War, the international community was by and large agreed that those who committed the Holocaust would be brought to justice. The first response of the international community was the Nuremberg trials. An international criminal tribunal was set up with the mandate to try crimes against peace, war crimes, and crimes against humanity, including the murder of six million Jews. But only about twenty-two people were indicted and only twenty-one were ever tried. (One was tried in absentia). Now, given the magnitude of the crimes committed against the Jews, one can legitimately ask whether this was an adequate response to the Holocaust. Clearly, the fact that only twenty-two people were tried for the murder of six million people displays a serious lack of commitment on the part of the powers-that-be of the time to bring to justice the perpetrators of the Holocaust.

Now after the Nuremberg trials, the task of bringing other perpetrators of the Holocaust to justice was left to the respective national jurisdictions. In practice, most of those people were never brought to justice. With the exception of Germany and the Soviet Union, hardly any other countries have really made a serious attempt to try any people at all. There are many reasons. First, humanity being what it is, many countries in which these crimes were committed tried to downplay the role played by their nationals in the atrocities. You can talk of the Lithuanians, the Ukrainians, the Polish - all states where the Holocaust was carried out have one way or another tried to downplay the role of their own nationals. In the case of

Rwanda, we do have a government that is committed to trying the people who committed the genocide.

[After the war], the Jews were not a political force in the countries where these crimes had been committed. Most of those who survived immigrated either to the West or to Israel. The lack of a presence of Jews with political influence in these places where the crimes were committed played a role in ensuring that these people were never brought to justice. Those who were left behind were keen to defend their kith and kin. Now, when it was set up in 1948, the state of Israel did pass a law that made genocide committed in other countries punishable in Israel. But there was a problem - although there was a law that would enable [Israel] to try these people, these people were outside its jurisdiction. Although a few were transferred or extradited from other countries not many of them could be brought to justice.

Another problem: After the Second World War, for the Western countries - the major powers - the Holocaust ceased to be a priority. The main concern was the Cold War: how to contain the Soviet Union. So much so that if in a country like the United States there were former Nazis - like the scientists who had been in charge of development of weapons in Nazi Germany - their crimes were ignored. In fact they were asked to stay in [the U.S.] so that they should help in the development of arms, [and] also as a precaution that they should not fall into Soviet hands. So a strategic decision was made to grant citizenship to large numbers of genocide suspects.

Now another problem that arose that made it difficult for the prosecution of the people who were responsible for the Holocaust is that there were large movements of so-called refugees at the end of the Second World War. Millions of them moved, many resettled in Western countries. There were not many mechanisms existing to verify that people were either genuine refugees or fugitives fleeing from justice. So you ended up having a lot of people who had committed genocide fleeing to countries like the U.S., Canada, Australia, New Zealand, England and many other places. Quite often they adopted new identities and as time passed it became difficult to trace, identify, and have them apprehended. But quite apart with the passage of time many countries decided that the prosecution of genocide was not a priority. [The attitude was] for people to "move on." Although different pieces of legislation have been passed in many countries - like the United Kingdom, Canada, Australia, and New Zealand - [there has been no] decision to ensure the trial of perpetrators of the Holocaust. Not many of them have been tried, because of lack of political will.

One last problem, of course, with regard to the past and future of perpetrators of the Holocaust is that it has been a long time. Fifty-five years. Perpetrators and victims who survived are dying. As time passes, it becomes ever more unlikely that many of these people will be brought to justice.

Now with regard to Rwanda, we have passed legislation that has enabled us to try the people who participated in genocide. But we have problems. First of all, the problem of a society [where] kith and kin [of perpetrators and survivors live side by side]. We have a problem with the fact that the majority of the people who organized the genocide - especially the leadership - are in exile, and they are in countries where we do not have extradition treaties. Like what happened at the end of the Second World War, many of these people are adopting new identities and it's difficult to trace them. We have problems with countries which are

sympathetic to some of the suspects, countries like France that were supportive of their government and still help them. We have problems with countries that do not understand the nature of what happened. They think it's a civil war and so handing over these suspects is taking sides in a domestic dispute. We have problems in that many countries do not have rules that would permit them to try a genocide that was committed in Rwanda, and are not party to some of the [treaties] like the Torture Convention or the conventions that would have allowed them to try these people. And of course we do have problems with lack of material and financial resources necessary to ensure the pursuit of the suspects.

An international court has been set up to try these people. It is based in Arusha. It has not been entirely successful. It has had problems of mismanagement and lack of cooperation with states. Its outcome is not entirely satisfactory. Apart from national trials, and trials by the [international] courts, we do have situations where countries other than Rwanda or the international court are carrying out trials of their own. Their domestic laws do allow them to try the people that committed genocide in our country. So there have been trials in Switzerland, and one trial is now going on in Belgium. We expect that in the coming years there should be trials in France and Canada because there are ongoing investigations by the judicial authorities to try to bring some of these people to justice.

The people of Rwanda can relate to what happened to the victims of the Holocaust. We too have had our experience of a genocide. We understand the disappointment that our people feel when the entire world abandons them to destruction and stands by and does nothing as a genocide is being committed. We share with the victims of the Holocaust the frustration that real justice seems unattainable. We too have come to the realization that a people targeted by genocide owe themselves, and the future generations, a duty to ensure that they do whatever it takes to ensure their survival. Like the victims of Holocaust we believe that there must be accountability for genocide. There must be justice for what happened if we are to ensure our own survival. Justice is very important if we are to ensure that what happened does not happen again.

DISCUSSION

Panelists

Edward Kissi: [There is a point of view] that Africans are not as litigious as Western people and therefore, for Africans, if you suffer immense atrocities, what you do is a truth and reconciliation commission. For the Ethiopians to get into a trial is to forget what the South Africans are doing. An appropriate way of seeking moral compensation for those who were wronged is to do it the South African way. It is also taking the heat [away] from the prosecution. And it seems to me that the trial is just simply a tactical move...

The Holocaust presents us with an opportunity to talk about accomplices to genocide. Here I want to ask us, as Africans, to do a housecleaning exercise. What is the special prosecutor doing about Egypt and South Africa that provide instruments of terror - arms - to the perpetrators of genocide in Rwanda?

Chivy Sok: We started a conversation earlier this morning and never had a chance to finish, so I am going to take advantage of this opportunity to ask Mr. Gahima. The Khmer Rouge trial, being discussed at this point, is very complicated. I was asked on a radio interview what I thought was a suitable punishment for the crimes that the Khmer Rouge committed. I got stumped, because when he asked that I just couldn't answer. I thought about all of the different things that you can do and I found myself saying, "I'm not for capital punishment." That was my first answer. You're in the middle of one of the most historic trials and I wonder if you could share your thoughts on what you think is a suitable punishment for the crime of genocide. Can you also relate a little about the development of the international criminal court and how this relates to the Rwanda trial?

Locksley Edmonson: The impressions some people like me had is that for a long time the Tutsis and Hutus were living in peace and relative harmony, [with] intermarriage and that type of thing. I don't know if that is so or not. What were the critical factors which led to this breakdown? I also would like to ask: What is the significance of similarities and differences of neighboring Burundi in this regard, where you also have that political demographic imbalance and potential competition?

Audience

Dimitri Anslem: I work with Facing History and Ourselves. What is the likelihood that this discussion of rule of law will have [an effect on] the growth of democratic governments throughout the continent of Africa that are much more responsive to their own citizenry? What is the likelihood for this discussion in Rwanda, for democracy in Rwanda itself, and for democracy throughout the continent?

Professor Patrick Manning: Mr. Gahima, I wanted to thank you for the presentation focussing on bringing perpetrators to justice and underscoring the importance of setting up and carrying out procedures for that purpose. Certainly it's an important step.

In the court procedures themselves, one talks about what happened. So I would like to follow up the previous question and also follow up your comment this morning by asking a particular example of what happened. Would you be willing to venture an interpretation of the place in this of Madame Agathe Uwilingiyimana, the prime minister of Rwanda at the time? Of the airplane being shot down. The two presidents killed and so forth. Would you care to discuss it a little bit more, just the place of this person in the overall story of what was clearly, overwhelmingly [the] elimination of the Tutsi population of the country?

Richard Connolly: Daniel Goldhagen came out with a book a few years ago that was controversial. What happens if you buy his premise? How do you prosecute somebody when all of civic society was involved in this mass murder? You point out that the Nuremberg trials only tried twenty-two people. They would have been quite busy for six years shooting people to get six million people, then eleven million people dead. In the same way, I don't think twenty-two people in Rwanda could have killed a million people by themselves in a hundred days.

Two questions: Who decides who actually gets punished? How far down the chain of command do you work until you decide to stop? I mean, if you take just the people that

organized it right at the top, in a board meeting like the Wannsee group, you get those people. But at what point do you not prosecute the guy who drives the train to take people to the camps? And the same thing in Rwanda. I would imagine lots of people have fled, but if you have got seven, six million people - lots of them involved - where do you decide to draw the line?

Gerald Gahima Responds

Edward Kissi talked about the role of South Africa and Egypt which provided arms. There are other countries apart from these two which provided arms, including France, which provided arms even as the genocide was going on. Unfortunately, under international law it does not appear as if there are possibilities of bringing leadership to justice any time soon. It's a long debate and it's something that we've considered. As a public servant, there are things that I cannot say in public, so I'd leave it to you to speculate. Suffice it to say that we do have problems as how to deal with these situations.

Chivy Sok has asked what would be an appropriate punishment for crimes committed by the Khmer Rouge. I'll give you a reply by showing you how we've tried to deal with this issue in Rwanda. In our country, the leadership [was responsible for planning the] killings, but the killings were committed by ordinary people - your neighbors - in large numbers. Every morning all work stands still and every able-bodied person - young, old, male - went to work. And work meant going to kill. In trying to have justice, you do not have justice just for its sake. You have to have justice so that you have accountability, so that you eradicate impunity. But in societies like ours or Cambodia, where people must still live together, you also must have justice to promote reconciliation, to promote stability, to promote peace.

Under the penal code every murderer is subject to capital punishment. But you cannot kill everyone who committed murder. So we've responded by categorizing suspects according to their responsibility. We do still have capital punishment on the statute books, but we reserve it for the top leadership. Even then, we do sentence people to death but in the current international climate it's much more difficult to actually execute them. There are limits to how far you should go, how far the world will allow you to go, in executing people that commit these terrible atrocities.

I used to advocate the abolition of capital punishment in my country after the genocide. But since I was appointed a prosecutor, I've come to the realization that I can no longer, if I'm honest with myself, continue to advocate the abolition of capital punishment. There is no punishment that can ever be satisfactory for these crimes, but my personal belief is that some of the leadership should at least be punished with capital punishment because I think it's the closest. It is a position that I am comfortable with.

As to your question about the development of the ICTR, the international court, and how it relates to our legal system. I told you - it's inefficient, it's ineffective. They have a budget of something like eight million dollars a year but they cannot conclude a trial, even one trial on average a year. It's not a satisfactory solution to the need for justice for the large numbers of fugitives who are at large. But in light of the fact that we do not have the likelihood of getting

these people returned to Rwanda, it's the only prospect of these people ever being brought to justice. So we support the tribunal and we work with them in every way we can.

Professor Edmonson [asked about] the critical factors that made people who had lived together peacefully for a long time turn against each other. Genocide does not happen in a vacuum. Genocide takes time. In fact 1994 was really the culmination of a long history of killings. I grew up as a refugee. The killing started in 1959. I left in the 1960's. My own father was killed in 1961. Hanged on a cross. These are terrible things that have been happening over time. People promote hate, they promote prejudice. They use, they promote hatred in school, in the newspapers, on the radio. And although people intermarry and there is social interaction, there is still a lot of hatred and prejudice that has been built over time. The critical factor that changed things from mere hatred or prejudice to mass murder is the role of the government, there being in place a government that incites people to commit genocide. There cannot be a genocide unless there is someone with political power using it for personal advantage, for his own ends. I think the critical factor is that there was a government that needed a scapegoat. The scapegoat they identified were the Tutsis, and then the genocide happened.

As for similarities with Burundi: It is true that Rwanda and Burundi are very similar. What happened in Burundi in 1992 actually does amount to genocide. There is the possibility that genocide may still happen in Burundi. [Our military] drove the people who committed genocide in our country, Rwanda, out of the country but [did] not totally destroy [them.]. They are still at large in the forest in Congo - armed, still prepared to come and attack Rwanda and continue where they stopped. They have allies with the rebels in Congo. There is the possibility that there could be a genocide in Burundi unless there's a peaceful settlement.

Patrick Manning asked about the role of Madame Agathe Uwilingiyimana. She was the prime minister. Along with Tutsis, Hutus who were opposed to the government of the day were branded accomplices of the Tutsis. Because they were accomplices of the Tutsis - of the "vermin", "snakes" (because that's how the propaganda portrayed Tutsis) - they were also killed. She was killed because she was deemed sympathetic to Tutsis. She was killed by soldiers, who have been apprehended, whose leader has been apprehended. Because she was killed with Belgians who were guarding her, Belgian peacekeepers, the Belgians arranged for the [international] tribunal in Arusha to release the suspects to them. But we intervened and requested extradition from Tanzania. We hope that these criminals will be brought to justice once extradition proceedings in Tanzania are completed.

Lastly, the question of who decides who gets punished, how far down the ladder do you go? These are very difficult decisions. On one hand, we are all agreed that the people ultimately responsible for the killings are the top leadership, the organizers, the people in control of state machinery. At the same time, the survivor knows who killed his relatives. It is the people he knows who he saw coming to kill. That is what is difficult about deciding not to punish some people. But on the other hand, we know that we cannot punish everyone. As I said, in my country we decided to categorize them, but we've realized that we cannot try everyone through the courts. So we've decided to try ordinary people through informal courts, where they receive lenient punishment, and to leave the leadership to be tried in ordinary courts, subject to most rigid penalties.