

International Criminal Justice Bares Its Colonial Fangs

Why are acquitted and freed Rwandans sitting in modern-day penal colonies?

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The inhuman manner in which the United Nations International Criminal Tribunal for Rwanda (ICTR) treats Rwandans who have been acquitted or who have been freed after serving their sentences obliges us to reexamine totally the body created by the UN Security Council in late 1994 (it is now known as the International Residual Mechanism for Criminal Tribunals, also referred to as the IRMCT or the Mechanism).

As in the time of penal colonies, the UN ships acquitted or freed Rwandans from one African country to another, where they are often held under house arrest with no travel documents, no hope of joining their families, and constantly in fear of being extradited to Rwanda or to some ‘Devil’s Island.’

How has this come to pass? Why has the UN not transferred them to The Hague where the UN International Court of Justice and the International Criminal Court are located? Has the UN created its own system of judicial apartheid?

The eight Rwandans in Niger—and others

Eight Rwandans—Zigiranyirazo Protais, Nzuwonemeye François-Xavier, Nteziryayo Alphonse, Muvunyi Tharcisse, Ntagerura André, Nsengiyumva Anatole, Mugiraneza Prosper, and Sagahutu Innocent—including three acquitted and five freed after serving sentences, have spent more than two months under house arrest in Niamey, Niger. They are now awaiting transfer back to Arusha, Tanzania, where they will join former Rwandan Foreign Affairs Minister [Jérôme Bicamumpaka](#), another acquitted man who had refused to leave Arusha, Tanzania, where he has resided since being taken into the care of the ICTR Registry.

The eight in Niger had agreed under pressure to be transferred from Arusha to Niamey (the capital and largest city of Niger) on December 5, 2021, with the promise of obtaining permanent residence status, travel and identity documents (which Rwanda refused to provide) and a semblance of freedom.

Some had spent up to 25 years in Arusha, awaiting trial or after being acquitted or freed. They were also waiting to get permission to join their families in France, Belgium, Canada, the United Kingdom, or Denmark. Their wait has been in vain. These countries that constantly lecture others about justice and human rights, are now refusing to respect the rulings of a tribunal they had backed both financially and diplomatically.

At the same time, five other Rwandans living in Mali and freed after serving sentences imposed by the ICTR were recently informed that their residency permit in Mali would not be renewed. They too have become stateless and vulnerable to extradition to Rwanda or to transfer to another country, not of their choice.

Victor's justice from the get-go

The loftiest of principles were invoked when the UN created the tribunal. Madeleine Albright, then United States Ambassador to the UN and future Secretary of State, [declared](#) that the new international court "will be no victor's tribunal. The only victor that will prevail in this endeavor will be the truth." Louise Arbour, chief prosecutor from 1996 to 1999, [echoed her](#).

Yet it was victor's justice from the very beginning. The reason is that the regime of the Rwandan Patriotic Front (RPF), victor of the war in 1994, held, and still holds, the power to indict people simply because it controls the facts and the territory where the alleged crimes took place.

The UN Security Council invested the chief prosecutor with the power to indict, arrest and prosecute suspects. Yet their power was more mirage than fact. To establish charges against people or prepare a defense, the prosecutor or defense counsel had to have the approval of the masters of Kigali.

The power given to those who determine who will be indicted should never be underestimated. In Rwanda, that power was effectively handed over to those who won the war. Inevitably, the only people indicted were the enemies of the victorious army. As Ramsay Clark pointed out, "it really is war by other means and it is very cruel."

The RPF government made it very easy for witnesses for the prosecution to appear before the tribunal in Arusha. This gave rise to many cases of perjury. Defense witnesses on the other hand were very reticent to appear in court or file affidavits for fear of reprisals against them and their families by the Rwandan authorities.

This made it virtually impossible to indict military leaders of the RPF. The most serious crime attributed to the party, and specifically to Paul Kagame, was the shooting down of the plane carrying the presidents of Rwanda and Burundi on April 6, 1994. Both presidents were killed. That assassination also killed the Arusha Peace Accord of August 1993 when the army of the RPF immediately resumed the war.

As early as 2000, Arbour's successor as chief prosecutor, Carla Del Ponte, declared that if it proved to be true that the RPF shot down the Rwandan president's plane, the history of the Rwandan genocide had to be rewritten.

No RPF member has ever been indicted and any attempts to investigate the RPF have been either thwarted or abandoned.

To her credit, Arbour confirmed in 2016 that the ICTR worked like a victor's tribunal. The Kagame government, she said to the [Globe and Mail](#), "could turn on and off the co-operative tap at will, depending whether they were pleased or not with the work that was being done ... The office of the prosecutor was sitting right in the middle of the country, where allegedly some of the leadership elements had to be investigated ... That's not, frankly, very doable." The tribunal was "constantly in a conflictual position vis-à-vis President Kagame." She added that the nothing could be done "without the full co-operation of the [Rwandan] government."



Former United Nations Secretary-General Ban Ki-moon (second from left, front row) addresses the staff of the International Criminal Tribunal for Rwanda (ICTR). Official United Nations photo/Flickr.

Where do the acquitted and freed people go?

In the rush to create the tribunal in 1994-95, the planners, mainly Americans, failed to ask the most basic questions. This becomes evident in the case of the acquitted and freed Rwandans. Justice was obviously not the concern of those who set up the ICTR.

Where would those sentenced serve their time? The fact is that they have been sent to different African countries far away from their families. Then they have been transferred to other countries depending on the internal political situation of the host country. But never to The Hague, the headquarters of international justice.

What was to be done with the acquitted and wrongly accused? Did they even foresee the possibility? Where would they go? Who would provide the necessary identity documents? Who would indemnify them in case they were wrongly accused? Had the planners of the tribunal decided that there would be no acquittals?

Where would those freed after serving their sentences live?

Sacrificed to imperialist strategy

Twenty-eight years after the Rwandan tragedy, Canada, France, Belgium, the UK and the US maintain strong diplomatic and trade relations with the Rwandan regime. They turn a blind eye to all the devastating reports about its involvement in extra- and intra-territorial executions, disappearances, arbitrary imprisonment, and military incursions in other countries.

Does the establishment of good relations with the victors of the 1994 war grant them the right to flout the decisions of the ICTR even though they had been its most ardent supporters? Or is this just further proof that international criminal justice is no more than an instrument to advance the interests of major imperial powers?

If any doubts persist, David Scheffer, former US Ambassador for War Crimes Issues, provides an insight into how the tribunal was perceived in Washington:

[T]he tribunal was a potent judicial tool, and I had enough support from President Clinton, Secretary of State Madeleine Albright, Secretary of Defense William Cohen, and other top officials in Washington to wield it like a battering ram in the execution of US and NATO policy.

The problems raised by an international criminal court did not begin in the 1990s. Former US Attorney General Ramsay Clark observed:

There would be no UN had it been implied in any way in the Charter that there would be a criminal tribunal. If it had been put in directly, the meeting would have been over. People would have packed their bags in Washington before the San Francisco meeting and left. The United States would have been the first to leave. Power does not like to be judged and if it has the power, it won't be.

A 'special' regime for Africans?

The late Boutros Boutros-Ghali, former UN Secretary-General, admitted that he was responsible for putting the ICTR in Arusha and not in The Hague. He also admitted that it was a mistake in a 2002 interview he granted me. It was an error agreed upon by the members of the Security Council who therefore bear responsibility for the error.

When asked what the tribunal would do with the defendants, the people sentenced, and the acquitted, Boutros-Ghali replied,

"None of us, jurists included had given any thought to the parallel and paralegal aspects, such as political and material questions. So we convict somebody. Where is he to serve his sentence? Who is responsible for overseeing his imprisonment? Why? None of this has been studied seriously."

The acquitted and freed Rwandans are thus paying for a serious error and gaping flaws in the ICTR that have been known since the tribunal began its work. It has created a sort of judicial apartheid for Africans characterized by a new form of penal colonization.

It is never too late to repair past errors. Through the Mechanism, the UN must take charge of the Rwandans acquitted, freed or still serving their sentences.

The UN must protect them from the whims of the imperial powers and their allies and ensure they are in safety and stability.

Finally, the UN must also see to it that the countries where their families live respect the decisions rendered by the ICTR, and not just those they agree with. Selectivity is the opposite of equality, which is the mother of justice.

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