

The International Criminal Tribunal for Rwanda (ICTR): An Anglo-American Creation in Support of the Kagame Dictatorship

The ICTR exists to impose “victor’s justice” upon the Hutu remnants of the vanquished former regime

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It is widely recognized by independent analysts and observers of the International Criminal Tribunal for Rwanda (ICTR) that it is a creature largely of the United States and Britain, established in late 1994 to support the Rwandan dictatorship of Paul Kagame’s Tutsi-led Rwandan Patriotic Front (RPF), and that it has imposed a system of “victor’s justice” that is the epitome of injustice.

This is displayed most prominently by the ICTR’s exclusive focus on alleged crimes committed by the Hutu political, military, and civilian leadership of the regime that Kagame’s RPF drove from power by July 1994, and the complete impunity of the members of the RPF, not one of whom has ever been charged with a crime by the ICTR. This is despite the fact that RPF killings of civilians was massive in Rwanda in 1994, just as it has been in the years that followed its conquest.

Thus, in the exceptional case where ICTR Chief Prosecutor Carla Del Ponte opened her “special investigations” of RPF crimes in 2002, with the goal of bringing indictments against members of the RPF, her job was terminated in 2003, and in her memoir of the events, she is unequivocal that the United States and Britain forced her firing in order to preserve the RPF’s impunity at the ICTR.[1]

Similarly, even though Del Ponte’s predecessor at the ICTR, Louise Arbour, had encouraged investigators in 1996 to look into the responsibility for the April 6, 1994 shoot-down of Rwandan President Juvenal Habyarimana’s jet on its return to Kigali, when Michael Hourigan found credible evidence that Kagame’s RPF was responsible, Arbour suddenly did an about-face, and ordered Hourigan to terminate the inquiry.

Again, this was the result of longstanding U.S. and U.K. political influence at the ICTR, and their commitment to protecting Kagame’s RPF.[2]

In late November 2014, Alex Obote-Odora, a former Chief of Appeals and Legal Advisory Division at the ICTR, took to the Pambazuka News website to challenge our “The Kagame-Power Lobby’s dishonest attack on BBC documentary on Rwanda”[3] on these questions of victor’s justice and RPF impunity, and he offered an across-the-board defense of his former employer.[4] That defense consisted of a stream of misrepresentations and wild accusations without merit, and we will respond to them here.

Obote-Odora claims that there is “no evidence that the RPF” shot down Habyarimana’s jet. But, in fact, a series of former close associates of Kagame have gone on record describing the RPF’s responsibility in detail, despite the threat posed to their lives for challenging the dictator. This group includes former Rwandan Army Chief of Staff Kayumba Nyamwasa, who has survived more than one attempt on his life, and Theogene Rudasingwa, a former ambassador to the United States and former chief of staff to Kagame.[5] Moreover, a several years long investigation by the French Judge Jean-Louis Bruguière came to the same conclusion,[6] as did the court of Spanish Judge Fernando Andreu Merelles,[7] both of whom brought charges against the RPF, something the captive ICTR has never done. As noted, the Hourigan investigation that came to the same conclusion was terminated by Louise Arbour almost surely on the advice of her political superiors.

Obote-Odora even makes the amazing claim that at the moment of the shoot-down, the Habyarimana jet was a “legitimate military target” and therefore the shoot-down a legitimate “act of war,” so that “no crimes within the ICTR Statute were committed,” and the ICTR is right not to investigate responsibility for the act.[8] He bases this claim on the fact that the jet was carrying four members of the government who had a military status, including Habyarimana, who then held the title of general in the Armed Forces of Rwanda (FAR). But under the August 1993 Arusha Accords, a ceasefire between the RPF and the FAR was officially in place. Indeed, it was the RPF’s shoot-down of the Habyarimana jet that broke the ceasefire, and it was the RPF that immediately used its successful assassination of Habyarimana to resume the war, launching its final offensive that same evening and eventual seizure of state power over the next 104 days. Does anybody outside the Kagame-Power Lobby honestly believe that if credible evidence could have been found of “Hutu Power” or “Akazu” responsibility for the shoot-down at any time over the past 20 years, the Prosecutor at the ICTR wouldn’t have brought war crime indictments against the Hutus involved? But, since the accumulated credible evidence points at Paul Kagame’s RPF, the Prosecutor “made the correct decision to not proceed with investigations into the matter,” Obote-Odora concludes. Thus is the real culture of RPF impunity preserved at the ICTR.

Obote-Odora’s response has a great deal of sophistry, and misrepresentation like the preceding, but it is also generous with fabricated straw men arguments. In one of the grossest, he alleges that we “conflate the mandate of the ICTR to include Rwanda’s political system, its democratic deficit, alleged abuses of human rights and the prosecution of perpetrators for all manner of crimes.” Of course, Obote-Odora produces not a single quote from our work in which we commit this error. The reason why he doesn’t is that there are no examples. Clearly, Obote-Odora is counting on Pambazuka’s readers taking his word for it, rather than checking his allegation against our work. This may have been a useful strategy in the Office of the Prosecutor at the ICTR, but we hope that it doesn’t work here.

Obote-Odora writes that our article is “untenable with regard to three key legal issues.” We have already addressed the second of these straw men: The ICTR’s failure to follow up on credible evidence long in its possession that Kagame’s RPF shot-down Habyarimana’s jet. We now turn, briefly, to the other two.

Straw Man Two: That we get the ICTR’s legal mandate wrong

Obote-Odora claims that when we write about the actions of the RPF before January 1, 1994, as well as after December 31, 1994, the two dates which mark the beginning and the end of the ICTR’s temporal jurisdiction under UN Security Council Resolution 955,[9] we are arguing that the ICTR is at fault for not prosecuting RPF crimes that fall outside its temporal

jurisdiction. Thus, Obote-Odora writes: “Repeated reference to these crimes by Herman and Peterson in their article cannot bring these crimes within the jurisdiction of the ICTR.... For Herman and Peterson to criticise the OTP in particular, and the ICTR in general, for failure to investigate and prosecute acts and omissions that fall outside its mandate is at best based on ignorance of the applicable law, or at worst is a mischievous, disingenuous and irresponsible attack on the integrity of the OTP and the ICTR.”

It is more foolishness for Obote-Odora to throw this straw man at Pambuzuka’s readers, and claim that we have ever contended, in any venue, that the ICTR (not to mention the ICC!) should prosecute alleged crimes that fall outside its temporal jurisdiction. Nowhere in the material that Obote-Odora quotes from us do we ever argue this. Therefore, for Obote-Odora to claim that we do, and to reproduce quotes from our work as if it is evidence that we did, is deeply dishonest. Once again, Obote-Odora is counting on Pambazuka’s readers to take his word for it, rather than carefully checking his allegations against our work.

Straw Man Three: That we get the ICTR’s jurisprudence on the “conspiracy to commit genocide” charge wrong

Obote-Odora writes that “Herman and Peterson are in error to suggest that cases of conspiracy to commit genocide were never fairly adjudicated by the ICTR’s Trial and Appeals Chambers.” He quotes at length from our November 12, 2014 article. But he left out nearly 50 percent of the paragraph from which he quotes, including our reference (note 26) to two sections in our recently published book, *Enduring Lies: The Rwandan Genocide in the Propaganda System, 20 Years Later*, [10] where we direct readers to our treatment of how the “conspiracy to commit genocide” charge has fared in the ICTR’s trial and appeals chambers. In fact, as we show in our book and write in our article for Pambazuka News, “even the U.S.- and U.K.-vetted ICTR uniformly rejects the charge that Hutu political and military figures engaged in a ‘conspiracy to commit genocide’ against the country’s minority Tutsi population prior to the April 6, 1994 shoot-down of the Habyarimana jet” (emphasis added).

Those italicized words are crucial. As we have argued elsewhere, the “conspiracy to commit genocide” charge ought to refer exclusively to a conspiracy among Rwanda’s Hutu political, military, and civilian leadership that existed some time prior to April 6, 1994, as any meaningful plan to exterminate the country’s minority Tutsi population must have been developed before the Habyarimana jet was shot down and before the violence that followed. But in fact all of the findings of “conspiracy” in ICTR proceedings relate to events that occurred after the assassination of Habyarimana, typically falling within a time-frame that ranges from April 8 or 9, 1994, through the months of May and June, 1994. It follows, therefore, that any alleged conspiracy that dates from some time after the assassination falls outside what is properly understood as the Hutu “conspiracy to commit genocide.” In the context of Rwanda 1994, this is a false and fallacious use of the “conspiracy” notion, and ought to be disqualified.

Obote-Odora then proceeds to list seven cases that have been argued before the ICTR. Why he chose these seven is inexplicable, because not one of them contradicts what we have argued. In Appendix I to our book, *Enduring Lies*, we reviewed the judgments and/or judgments on appeal in no fewer than 24 major cases in which the defendants faced the “conspiracy to commit genocide” charge. In 23 of these, the defendants were either acquitted of the charge or a previous guilty verdict was reversed on appeal; and in the one case in which the defendant was found guilty (i.e., Pauline Nyiramasuhuko), this verdict will

likely be reversed on appeal (which is pending). (See the Appendix below, where we analyze the verdicts in the seven cases that Obote-Odora cited.)

Finally, Obote-Odora makes the remarkable claim that “In the conduct of criminal prosecutions, it does not matter how many judgements support a given line of argument. As a matter of practice, the fact that the Appeals Chamber has confirmed two Trial Chamber convictions for conspiracy to commit genocide suffices.”

This is preposterous. Aside from the early coerced and railroaded plea bargains of the type to which the essentially defenseless Jean Kambanda, the prime minister in the post-Habyarimana Interim Government, were subjected, all of the major cases argued before the ICTR led either to acquittals or reversals on appeal on the conspiracy charge. In short, the weight of ICTR jurisprudence lies on our side, not Obote-Odora’s.

Concluding Note

Alex Obote-Odora clearly has a penchant for sophistry, misrepresentation, and outright fabrication. We have no doubt that this trait served him well in his role with the Office of the Prosecutor at the ICTR. Now having read his November 28, 2014 response to our November 12, 2014 “The Kagame-Power Lobby’s dishonest attack on BBC documentary on Rwanda,” he has convinced us more than ever that the ICTR exists to impose “victor’s justice” upon the Hutu remnants of the vanquished former regime, and that the real culture of Rwanda Patriotic Front impunity for the crimes that it committed in Rwanda during 1994 still flourishes.

Notes

[1] See Carla Del Ponte, with Chuck Sudetic, *Madame Prosecutor: Confrontations with Humanity’s Worst Criminals and the Culture of Impunity: A Memoir* (New York: Other Press, 2009), Ch. 7, “Confronting Kigali 2000 to 2001,” pp. 177-192; and especially Ch. 9, “Confronting Kigali 2002 and 2003,” pp. 223-241. Also see Peter Erlinder, “The Rwanda War Crimes Coverup,” *Global Research*, September 3, 2009. < <http://tinyurl.com/o7z5jk5> >

[2] For copies of documents related to Michael Hourigan’s experience as the head of the National Investigative Team on behalf of the Office of the Prosecutor at the ICTR, see Annexe 49 : Le rapport de Michaël Hourigan, enquêteur du TPIR, à la procureure Louise Arbour sur l’attentat du 6 avril 1994 (janvier 1997). This PDF reproduces partially redacted copies of Hourigan’s original 1997 memorandum to Louise Arbour (pp. 2-5); an August 1, 1997 confidential note in which Hourigan assesses his experiences as the head of the National Team (pp. 6-8); a February 7, 2007 report about Michael Hourigan written by Nick McKenzie for *The Age* (Australia) (pp. 9-13); and the November 27, 2006 Affidavit of Michael Andrew Hourigan used by defense attorneys before the ICTR (pp. 14-20). < <http://tinyurl.com/p437ug5> > Also see the “Prepared Statement of Mr. James R. Lyons,” April 6, 2001, as archived by the All Things Pass website. Lyons was Hourigan’s immediate superior at the ICTR. < <http://tinyurl.com/ndy7b56> >

[3] Edward S. Herman and David Peterson, “The Kagame-Power Lobby’s dishonest attack on BBC documentary on Rwanda,” *Pambazuka News* (Issue 702), November 12, 2014. < <http://tinyurl.com/k5q6v95> >

[4] Alex Obote-Odora, “The Kagame-Power Lobby’s dishonest attack on BBC documentary on Rwanda: A rejoinder,” *Pambazuka News* (Issue 704), November 28, 2014. <

<http://tinyurl.com/m6oq6lt>>

[5] For an account of former close associates of Paul Kagame who have since broken with him and the risks they have faced, see Phillip Reyntjens, *Political Governance in Post Genocide Rwanda* (New York: Oxford University Press, 2013), especially “The RPF Challenged from Within,” pp. 85-96. According to Reyntjens, “knowledge of the RPF’s role in the downing of former President Habyarimana’s plane” is what qualifies someone to be “considered a threat” to Kagame; Kagame’s solution is their physical elimination (p. 91).

[6] See Judge Jean-Louis Bruguière, Request for the Issuance of International Arrest Warrants, Tribunal de Grande Instance, Paris, France, November 21, 2006. < <http://tinyurl.com/kas5n57>>

[7] See “Spain judge indicts Rwanda forces,” BBC News, February 6, 2008. < <http://tinyurl.com/qzd9qgq> >

[8] Obote-Odora, “A rejoinder.” < <http://tinyurl.com/m6oq6lt>>

[9] UN Security Council Resolution 955 (S/RES/955), November 8, 1994, para. 1, which states that the ICTR is charged with (among other things) “prosecuting persons responsible for the genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and...neighboring States, between 1 January 1994 and 31 December 1994....”. < <http://tinyurl.com/ljyu9n> >

[10] See Edward S. Herman and David Peterson, *Enduring Lies: The Rwandan Genocide in the Propaganda System, 20 Years Later* (Baltimore, MD: The Real News Books, 2014), Sect. 7, “The alleged Hutu ‘conspiracy to commit genocide’ that never was,” pp. 43-46; and Appendix I, “More on the alleged Hutu ‘conspiracy to commit genocide’ that never was,” pp. 78-82. < <http://tinyurl.com/mvafkae> >

Appendix: The “conspiracy to commit genocide” charge at the ICTR

As we previewed in our article (above), Alex Obote-Odora claims that the judgments filed by the trial and appeals chambers at the International Criminal Tribunal for Rwanda provide the “necessary legal precedent for prosecution of present and future perpetrators for conspiracy to commit genocide. It is misleading and irresponsible for Herman and Peterson to suggest that ICTR Trial and Appeals Chambers have not fairly adjudicated on cases of conspiracy to commit genocide.”[1]

To the contrary (and the term “fairly” aside), what we have consistently argued is that, “In their judgments, [the trial and appeals chambers] have been either acquitting Hutu defendants on the ‘conspiracy to commit genocide’ charge, or reversing on appeal previous convictions on this charge.”[2]

But as we have also argued in our article, the “conspiracy to commit genocide” charge ought to refer exclusively to a conspiracy among Rwanda’s Hutu political, military, and civilian leadership that existed some time prior to April 6, 1994, as any meaningful plan to exterminate the country’s minority Tutsi population must have been developed before the Habyarimana jet was shot down and before the violence that followed. But in fact all of the findings of “conspiracy” in ICTR proceedings relate to events that occurred after the assassination of Habyarimana, typically falling within a time-frame that ranges from April 8 or 9, 1994, through the months of May and June, 1994. It follows, therefore, that any alleged conspiracy that dates from some time after the assassination falls

outside what is properly understood as the Hutu “conspiracy to commit genocide.” In the context of Rwanda 1994, this is a false and fallacious use of the “conspiracy” notion, and ought to be disqualified.

Table 1. The “conspiracy to commit genocide” charge at the ICTR

The Accused [3]	Verdict on the “conspiracy to commit genocide” charge
Justin Mugenzi	“Count 1: GUILTY of Conspiracy to Commit Genocide” [4]“The Appeals Chamber reverses...Mugenzi’s... convictions for conspiracy to commit genocide and enters a verdict of acquittal under Count 1 of the Indictment.” [5]

Prosper Mugiraneza “Count 1: GUILTY of Conspiracy to Commit Genocide” [6]“The Appeals Chamber reverses... Mugiraneza’s convictions for conspiracy to commit genocide and enters a verdict of acquittal under Count 1 of the Indictment.” [7]

Ferdinand Nahimana “Count 1: Guilty of Conspiracy to Commit Genocide” [8] “REVERSEsthe convictions of Appellant Nahimana based on Article 6(1) of the Statute for the crimes of genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, and extermination and persecution as crimes against humanity...” [9] Callixte Nzabonimana “Count 2: Guilty of Conspiracy to Commit Genocide.” [10]“GRANTS Nzabonimana’s Seventh Ground of Appeal and REVERSES his conviction for conspiracy to commit genocide in relation to events at the Tambwe commune;...AFFIRMS Nzabonimana’s conviction of conspiracy to commit genocide in relation to the Murambi meeting on 18 April 1994...” [11] Pauline Nyiramasuhuko “Count 1: GUILTY of Conspiracy to Commit Genocide” [12] Jean Kambanda Not applicable. [13] Elizer Niyiyegeka “Count Three: Guilty of Conspiracy to Commit Genocide.” [14]

Notes

[1] Alex Obote-Odora, “The Kagame-Power Lobby’s dishonest attack on BBC documentary on Rwanda: A rejoinder,” *Pambazuka News (Issue 704), November 28, 2014*. < <http://tinyurl.com/m6oq6lt>>

[2] For our discussion of the alleged Hutu “conspiracy to commit genocide,” see Edward S. Herman and David Peterson, *Enduring Lies: The Rwandan Genocide in the Propaganda System, 20 Years Later* (Baltimore, MD: The Real News Books, 2014), Sect. 7, “The alleged Hutu ‘conspiracy to commit genocide’ that never was,” pp. 43-46; and Appendix I, “More on the alleged Hutu ‘conspiracy to commit genocide’ that never was,” pp. 78-82. < <http://tinyurl.com/mvafkae>>

[3] The seven accused listed in Table 1, column 1 are drawn from Obote-Odora’s “The Kagame Power Lobby’s dishonest attack on BBC documentary on Rwanda: A rejoinder.” < <http://tinyurl.com/m6oq6lt>>

[4] Judge Khalida Rachid Khan et al., Judgment, Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, September 30, 2011, Ch. VI, “Verdict,” para. 1988, p. 538. < <http://tinyurl.com/mc985pr>>

[5] The complete wording here is: “The Appeals Chamber reverses, Judge Liu dissenting, Mugenzi’s and Mugiraneza’s convictions for conspiracy to commit genocide and enters a verdict of acquittal under Count 1 of the Indictment.” Judge Theodor Meron et al., Judgment on Appeal, Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor, Appeals Chamber, Case No. ICTR-99-50-A, para. 94, p. 34. < <http://tinyurl.com/mjlj4un>>

[6] Judge Khalida Rachid Khan et al., Judgment, Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, September 30, 2011, Ch. VI, “Verdict,” para. 1988, p. 539. <

<http://tinyurl.com/mc985pr>>

[7] The complete wording here is: “The Appeals Chamber reverses, Judge Liu dissenting, Mugenzi’s and Mugiraneza’s convictions for conspiracy to commit genocide and enters a verdict of acquittal under Count 1 of the Indictment.” Judge Theodor Meron et al., Judgment on Appeal, Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor, Appeals Chamber, Case No. ICTR-99-50-A, para. 94, p. 34. < <http://tinyurl.com/mjlj4un>>

[8] Judge Navanethem Pillay et al., Summary of Judgment, Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, December 3, 2003, Ch. IV, “Verdict,” pp. 28-29. <

<http://tinyurl.com/qasq7kn>>

[9] Judge Fausto Pocar et al., Judgment on Appeal, Ferdinand Nahimana et al. v. The Prosecutor, Appeals Chamber, Case No. ICTR-99-52-A, November 28, 2007, Ch. XVIII, “Disposition,” p. 346. In the words of the Appeals Chamber’s reversal of the original Judgment: “The Appeals Chamber finds that a reasonable trier of fact could not conclude beyond reasonable doubt, on the basis of the elements recalled above, that the only reasonable possible inference was that the Appellants had personally collaborated and organized institutional coordination between RTLM, the CDR and Kangura with the specific purpose of committing genocide. The Chamber allows this ground of appeal of the Appellants and sets aside the convictions of Appellants Nahimana, Barayagwiza and Ngeze for the crime of conspiracy to commit genocide....” Ibid., “Conclusion,” para. 912, p. 292. <

<http://tinyurl.com/ljm5lyj>>

[10] Judge Solomy Balungi Bossa et al., Judgment, The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, May 31, 2012, Ch. V, “Verdict,” para. 1800, p. 360. Note well, however, that Nzabonimana’s alleged conspiracy is said to have begun on April 18, 1994; therefore, by its timing alone, it falls outside what is properly understood as the Hutu “conspiracy to commit genocide.” <

<http://tinyurl.com/lyy9rzp>>

[11] Judge Mehmet Güney et al., Judgment on Appeal, Callixte Nzabonimana v. The Prosecutor, Case No. ICTR-98-44D-A, September 29, 2014, Ch. VI, “Disposition,” para. 497, p. 169. <

<http://tinyurl.com/ktt5uwl>>

[12] Judge William H. Sekule et al., Judgment, Prosecutor v. Pauline Nyiramasuhuko et al., Case No. ICTR-98-42-T, June 24, 2011, Ch. V, “Verdict,” para. 6186, p. 1449. < <http://tinyurl.com/n6k63xz> > It is important to add, however, of the six defendants in the “Butare cases” whose cases had been joined and tried together, Pauline Nyiramasuhuko was the only person among the six defendants whom the court found guilty of the “conspiracy to commit genocide” charge—the other five were found “not guilty” of the charge. As we have argued elsewhere, given the contradictory character of Nyiramasuhuko’s conviction in the context of the five acquittals, does the court expect us to believe that Nyiramasuhuko conspired with her co-conspirators, but her co-conspirators never conspired with her? Note additionally that Nyiramasuhuko’s alleged conspiracy is said to have begun on and after April 9, 1994; therefore, by its timing alone, it falls outside what is properly understood as the Hutu “conspiracy to commit genocide.” Nyiramasuhuko has appealed her conviction on the conspiracy charge, and we fully expect it to be reversed, like the others.

[13] Jean Kambanda served as prime minister of Rwanda’s Interim Government, which was formed on April 8-9, 1994, in the aftermath of the assassination of President Habyarimana, and existed in a largely nominal sense until sometime in July 1994. For reasons related to how Kambanda was badly mistreated and deceived by agents of the ICTR (including by his court-appointed counsel) between the date of his arrest in Nairobi in July 1997, and the date he finally agreed to enter a plea agreement with the Prosecutor at the ICTR, in late April, 1998, we reject any attribution of the “conspiracy to commit genocide” charge to him, and do not believe that his name belongs on this list. (See John Laughland, *A History of Political Trials from Charles I to Saddam Hussein* (Oxford: Peter Lang, 2008), Ch. 16, “Jean Kambanda, Convicted without Trial,” pp. 207-220.)

[14] Judge Navanethem Pillay et al., Judgment, The Prosecutor v. Elizer Niyitegeka, Case No. ICTR-96-14-T, May 16, 2001, Ch. IV, "Verdict," para. 480, N.P. Note well, however, that Niyitegeka's alleged conspiracy is said to have begun on and after April 9, 1994; therefore, by its timing alone, it falls outside what is properly understood as the Hutu "conspiracy to commit genocide." < <http://tinyurl.com/q8nmajq>>

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