HATE SPEECH AND THE RWANDA GENOCIDE: ICTR JURISPRUDENCE AND ITS IMPLICATIONS

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‘We must kill the Tutsi cockroaches’

INTRODUCTION

I believe that a book of essays on international law in honour of Navi Pillay must acknowledge her crucial contribution to the International Criminal Tribunal for Rwanda’s groundbreaking jurisprudence on a number of issues, including—and more relevantly for present purposes—the issue of freedom of speech and hate propaganda. The so-called ‘media trial’, over which Judge Pillay presided, marked the first time since Nuremburg that hate speech has been prosecuted in the context of international justice.

In this paper I therefore wish to focus on the jurisprudence of the ICTR concerning hate speech based on ethnicity has contributed significantly to the situation in which this genocide could happen in Rwanda in 1994 and its implications for national legislation.

1. THE JURISPRUDENCE OF THE ICTR

The Media Trial

‘The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences.’¹ This is a quote from one of the landmark rulings of the ICTR in 2003 when a Trial Chamber convicted three high rank media persons for genocide, incitement to commit genocide and crimes against humanity. In 2007, the Appeals Chamber confirmed many parts of this judgment, in particular the charge of

¹ The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Case No. ICTR-99-52-T, Judgment, 3 December 2003, para. 945.
incitement to commit genocide, but differed in some important legal and factual points.

For the first time since the conviction of Julius Streicher at the Nuremberg trials, the case addressed the role of the media in the context of international criminal justice. It is our knowledge that Streicher was executed after World War II for his anti-Semitic publication Der Stürmer. No other international tribunal has since then addressed the issue of criminal responsibility for media hate speech.

At the ICTR, after 230 trial days, Ferdinand Nahimana, founder of The Radio Télévision des Mille Collines (RTLM) and Hassan Ngeze, Chief editor of Kangura newspaper were sentenced in December 2003 to life imprisonment, Jean Bosco Barayagwiza, high ranking board member of the steering committee of the RTLM, was sentenced to 35 years imprisonment. The Appeals Chamber in November 2007 reduced the sentences to 35 and 32 years. The main reason was that it acquitted all three of charges of conspiracy to commit genocide and of genocide relating to their media activities.

The role of the media in the 1994 was essential: In a radio interview broadcast at the height of the genocide on 25 April 1994, Ferdinand Nahimana talked of the ‘war of media, words, newspapers and radio stations’, which he described as a complement to bullets. In sentencing him, Judge Pillay told Nahimana, ‘You were fully aware of the power of words, and you used the radio—the medium of communication with the widest public reach—to disseminate hatred and violence….Without a firearm, machete or any physical weapon, you caused the death of thousands of innocent civilians.’

Hassan Ngeze was convicted by the Trial Chamber for genocide in relation, amongst others, to his writings in Kangura. This newsletter, which Ngeze founded, owned and edited, was published between 1990 and 1995 and widely read in Rwanda. The Trial Chamber found that in Kangura Tutsi women, in particular, were targeted for persecution through the portrayal of the Tutsi woman as a femme fatale, and the message that Tutsi women were seductive agents of the enemy. The ‘Ten Commandments of the Hutu’, published by Kangura in December 1990, warned Hutu men of the dangers of Tutsi women and deemed as a traitor any Hutu man who married a Tutsi woman.

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2 The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Case No. ICTR-99-52-T, Summary, 3 December 2003, para. V