105th Great Lakes Policy Forum
Meeting Report
April 1, 2004

Introduction

To mark the 10th anniversary of the Rwandan genocide, the Great Lakes Policy Forum welcomed four well-acknowledged experts to discuss *Impunity and Accountability in the Great Lakes: Remembering Rwanda*. Louise Mushikiwabo offered her expertise as a genocide survivor and as the International Coordinator of Remembering Rwanda; Simone Monasebian, Esq., as a former prosecutor at the International Criminal Tribunal for Rwanda (ICTR) and as the Principal Defender for the Special Court for Sierra Leone (SCSL). In addition, Thierry Cruvellier, journalist and co-founder of *International Justice Tribune*, formerly *Diplomatie Judiciaire*, provided commentary as the only journalist to have covered the ICTR since its inception in 1997. Finally, Lars Waldorf spoke from his experience running Human Rights Watch's field office in Rwanda and as Visiting Fellow of the Human Rights Program at Harvard Law School. This rich panel explored the notion of impunity, its legacy, and various ways the Rwandan government and the international community have attempted to reconcile the dilemmas and restrictions that arise when dealing with cases of mass atrocities and genocide. Ozong Agborsangaya, Director of the Sub-Saharan Africa Program at Search Common Ground, moderated the forum.

Ozong Agborsangaya, Louse Mushikiwabo, and Thierry Cruvellier speak frankly on the issue of impunity in Rwanda.

Impunity

Non-Rwandan people often muse on the horrific atrocities of 1994 and think to themselves that there is something innate in the Rwandan mentality and culture that conveys the message that one can get away with murder. This characteristic combined with the entrenched hatred that Rwandans feel for their neighbor is what many believe led to the genocide. This, in fact, is not true. Not as an excuse for mass murder, but impunity has been a reality in Rwandan society for decades. The elites and political leaders have always been untouchable and unaccountable for their actions, in contrast to the general population who have held accountability as an important value of Rwandan culture. This has not changed since 1994 and is one of the hypocrisies that is very clear to *genocidaires* and Rwandan society en masse. Those who orchestrated and supplied the instruments of genocide are protected from the death penalty and are living in reasonably good conditions protected by certain rights under the International Criminal Tribunal for Rwanda, while those who followed orders to kill are in the overcrowded national prison system. The orchestrators took much of this into consideration before 1994 and it weighed heavily in their decision-making process. At the same time, there is little or no compensation fund for victims, no repatriation law, and the national court system has been decimated by the genocide. Many of the judges either have been killed or fled during the atrocities. All of these circumstances have confounded the reconciliation process in Rwanda and are vital pieces to achieving national understanding and unity.

Most westerners define impunity as the lack of accountability that should be resolved with punitive justice. Rwanda, however, has and continues to invent new ways of dealing with this issue. To hold all perpetrators and collaborators accountable for the 100 days of violence in 1994 is impossible and not necessarily compatible to fostering national reconciliation and unity. The enormity of the genocide brings with it a certain level of impunity with which Rwandans unfortunately must deal. In

the end, justice to ordinary Rwandans often simply means fairness in the search for the truth about what happened. The International Criminal Tribunal for Rwanda and the *Gacaca* Courts are working toward this goal.

International Criminal Tribunal for Rwanda

Since the ICTR began in 1995, 80 people have been indicted: 21 tried, three acquitted; 21 are on trial; 22 are awaiting trial; and 16 suspects remain at-large—all this for the price of $115 million per year. This record does not seem adequate in relation to the expectations that were placed upon the process. Many believe that the ICTR is inefficient and moves too slowly for the cost of keeping it running. It has also been criticized as being too far removed from Rwandan society and lacking in quality, legitimacy, and credibility. For example, the ICTR is located in Arusha, Tanzania, and there are no Rwandans in high-level positions. For many, the ICTR is a form of "victors' justice" that is highly influenced by the international community and the Rwandan government and excludes from its mandate killings by the Rwandan Patriotic Front (RPF) that accompanied the genocide. There is no recourse for victims of revenge killings at the hands of RPF soldiers. For all of this denigration, there are also some positive points. Because of the ICTR, the fact that there was indeed a genocide in Rwanda can no longer be denied; it is forever part of the historical record. The ICTR has also acted as a political instrument that succeeded in neutralizing hardliners from the former Hutu extremist regime. Former Rwandan leaders can no longer speak in public and incite violence, as they are seen internationally as criminals. Finally, many lessons can be drawn for future humanitarian interventions and attempts to curb impunity for crimes against humanity.

Simone Monasebian, Esq. and Lars Woldorf consider the lessons drawn from various forms of Rwandan justice.

In December 2003, the prosecutors for the ICTR did achieve a resounding success. They convicted three leaders of hate media that dehumanized Tutsis and laid the groundwork that made genocide possible: Jean-Bosco Barayagwiza, Ferdinand Nahimana, and Hassan Ngeze. These men led a popular hate radio station, Radio Télévision Libre de Mille Collines (RTLM), which planted the seeds of genocide. They used propaganda to call for the "final solution." During the genocide, they would direct people to places where Tutsis were hiding and even read the names of people to be killed on the radio. Hate media in Rwanda was described as pouring petrol on the country and waiting for it to ignite.

The *Special Court for Sierra Leone* (SCSL) has taken many lessons from the ICTR. Because the ICTR has been viewed as being detached from Rwandan society, the SCSL, which is based in Freetown, is a "mixed court" comprised of both national and international prosecutors, judges, lawyers, and legal staff. It has been given only three years to achieve its mandate as opposed to the fifteen allotted for the ICTR, and it is only responsible for investigating and indicting the composers of the mass human rights violations that took place in that country.

Gacaca

Gacaca is an established community-based practice in Rwanda dating back to the time when Rwanda was ruled by kings. It was a method used to hear the grievances of the community and to punish community members through exposure and shame. Originally used for petty crimes, domestic violence, and such acts, *gacaca* was not used for cases of murder. However in 1994, something was needed as a judicial remedy to handle cases of genocide. As mentioned previously, the Rwandan

government was faced with the dilemma of mass participation in the genocide and tens of thousands of people awaiting trial in incredibly over-crowded prisons; neither of these situations helps contribute to national reconciliation and unity. Therefore, the initial *gacaca* pilot project began in June 2002 and included 260,000 elected judges, and 11,000 communities. The idea was for prisoners to be brought in front of their communities and "plea bargain" to receive a lighter sentence for their crimes. Instead of spending years in prison and becoming a drag on the Rwandan economy, they were to be tried sooner in their home communities. Many prisoners who have confessed to their crimes have been released back into the community, having already served longer prison time than their maximum guilty sentences would have been. As can be imagined, this has been difficult for victims. For the first time, they must live and work with those who killed or were suspected as having killed their beloved family and friends.

The pilot phase of *gacaca* was to include a mere 10% of the country. As of January of this year, only 13% of the operational courts in that segment had finished the pretrial hearings. The quorum of 100 community members and 15 judges needed for the local proceedings has consistently not been met. In a country where the population is 90% subsistence farmers, and many people have lost most of their families, not many people can take the time to participate, nor is there incentive for Hutus or Tutsis to do so. There is a general fear of testifying both by Tutsis and Hutus. Tutsis fear reprisal killings, and Hutus fear being implicated in crimes. For this reason, there have been several documented cases of coerced participation that undermine the process. When hearings do take place it is mostly the survivors who testify while Hutus remain silent, thereby seeming to reinforce mistrust and fear. As with the ICTR, the RPF war crimes are not addressed by *gacaca.* For all of these criticisms of *gacaca*, there have not been offered any more viable solutions to the dilemma of dealing with genocide. For Rwandans it is better than nothing and better than a general amnesty.

Conclusion

Rwanda has taught us many lessons. Sometimes achieving perfect punitive justice is not a possibility. Mass participation carries the implicit notion of limited accountability, therefore it is not so surprising that limited justice results. Seeking justice in the aftermath of the Rwandan genocide has been a search for solutions to impossible problems. The mechanisms put in place have not been perfect, but given the context, they have had some effect on creating reconciliation and promoting security in Rwanda.

You may ask yourself if the threat of punishment in an international tribunal is a deterrent against such atrocities as Rwanda experienced during the 100 days in the spring of 1994, but one must remember that the *International Criminal Tribunal for Yugoslavia* was up and running in 1994 and the ICTR was in full force when Sierra Leone and DRC were experiencing their own horrific conflicts. Humanitarian intervention at the time of such incidences is the true deterrent and it is the hope that the international community has learned this lesson well. Something as simple as jamming the airwaves and shutting down hate media could have saved lives and cost the international community much less than the price it is paying now.

End.