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The Rwanda Tribunals: lessons learned

During 100 tragic days in 1994 some 800,000 Rwandans were murdered -- and many more raped, wounded or maimed. Many years later the world is still dealing with the Rwandan genocide, attempting to bring some measure of justice to its victims. While the Rwandan Government is trying the genocide's foot-soldiers through a people's court system known as "Gacaca", United Nations prosecutors go after the ringleaders through an international court in the Tanzanian town of Arusha.

What lessons have been learned in prosecuting those most responsible for the genocide? How much time will it take, and how much will it cost, to bring a formal closure to the legal proceedings against the Rwandan *genocidaires*? And what can other international human rights courts learn from the experience at Arusha? These are some of the questions discussed in this episode of World Chronicle with Adama Dieng, Registrar for the UN's International Criminal Tribunal for Rwanda (ICTR).

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ANNOUNCER: From the United Nations in New York, an interview programme on major global issues. This is **World Chronicle**. And here is the host of today's **World Chronicle**.

WILLIAMS: Hello, I'm Mary Alice Williams. The place: Rwanda.

The time: 100 days of genocide in 1994. The result: some 800,000 Rwandans murdered - and many more raped, wounded or maimed. Many years later the world is still dealing with this tragedy, attempting to bring some measure of justice to its victims. The Rwandan Government is trying the genocide's foot-soldiers, while the United Nations prosecutes the ringleaders through an international court in the Tanzanian town of Arusha. Today we'll begin talking about lessons learned in prosecuting those most responsible for the Rwandan genocide. Our guest is Adama Dieng, Registrar for the UN's International Criminal Tribunal for Rwanda, the ICTR. Welcome Mr. Dieng. The International Criminal Tribunal has been operating since November of 1994. It has cost well over half a billion dollars, so far. It's convicted a few dozen people perpetrating one of the great horrors of modern times. Is this what was supposed to happen?

DIENG: Definitely this was what was supposed to happen. One has to realize that, at a time, the international community decided to set up this Ad-Hoc Tribunal, the ITCR, it was at the end of one of the worst tragedy which ever occurred in Africa. And, at that time, it was clear that one needed to set up, first of all, this Tribunal by identifying a place where to locate it. It was not an easy task. The fact is, the tribunal started practically to operate only in 1997. I think the second aspect which needs to be highlighted in the complexity of the cases brought before that Tribunal and also the difficulties faced by the Tribunal to bring witnesses from all part of the world. As of today, the Tribunal has brought more than 1 400 witnesses from 36 countries of around the world. When I say, bring in witnesses, most of those witnesses are people who are living, either illegally in their country or residence or people who are still awaiting a decision to be granted refugee status. In such conditions it was not easy, for instance, to

bring those people easily because you have to secure, first of all travel documents, you have to make sure these people are escorted from the place they come and you have to make sure they return to the place they came from.

WILLIAMS: We want to have you explain why all of the witnesses are so scattered, but first of all I would like to introduce our panel joining us in the studio for this discussion today are Oyiza Adaba of African Independent Television and Bessan Vikou of BBC Afrique. Bessan...

VIKOU: Mr. Dieng we know that the tribunals schedule has to end at 2010 and I am wondering, if by that time, every appeal will be like finished and decided. Are you sure you will be done at that time?

DIENG: Well let's go by step. The tribunal will conclude the first instant cases by the end of 2008. That is for sure. By 2010 it is supposed to now be finished with the appeal cases. However, one has to bear in mind the fact that the appeal chamber sits for both tribunals, the ICTY – the tribunal dealing with the crimes committed in the former Yugoslavia and the ICTR. I am not sure that by 2010 that will be possible. The reason being that, almost all the convicted will appeal the judgment. Secondly, because of the set-up of this common appeal chamber one cannot affirm categorically that 2010 will be achieved as a target date. If you refer to the last statement made by the president of ICTY before the Security Council he introduced some kind of dart about ICTY finishing its mandate by 2008. That was due to the fact that a group of 20 indicted surrendered just recently and this was not taken into account in their completion strategy.

WILLIAMS: So the deadlines can slide if they have to.

DIENG: Yes, for the appeal.

ADABA: Now I would like to go back to the witness protection measures you initially talked about. What is actually, because I know the tribunal it's one of the

highest criticisms it's faced. What exactly are the measures you have in place right now? What hasn't worked and what do you intend to change?

DIENG: Well I should say that contrary to some statements which have been made, particularly from within Rwandan circles, the ICTR is proud of having put in place, for the first time in history, a scheme of witness protection. As you may know, very few African countries, including Rwanda, have a witness protection scheme. What we did at that time when this program was put in place, that witness protection, because most of the witnesses, I can say 98 of them are protected witnesses. So which means that when they appeal we have to make sure that their identity will remain unknown so that they remain protected. As of today, there has not been a single witness who appeared before Arusha tribunal and whose life has been put in danger. We have been able, for instance, to relocate internally witnesses, even within Rwanda. I mean, a witness for instance who was in the Gisenyi was relocated let's say in Chibuya.

WILLIAMS: And this was necessary because at the very beginning of the tribunal, certainly the first three years, all the witnesses were murdered. So you had to come up with something to protect people to get those that fled as refugees and scattered back and ensure their safety, yes?

DIENG: I don't know if there were witnesses who were murdered.

PANEL: There were.

DIENG: But they have not yet witnesses before Arusha. What you have to realize is that what we call the potential witnesses. So the process prosecutor, for instance, or the defense, they will have to, in Rwanda or other parts of the world, identify the witnesses, interview them and when they are definitely convinced that X or Y can be of interest for their case then they will come before the trial chamber and ask for that witness to be protected. So far, none of those people who were identified and brought have been murdered.

VIKOU: I want to go back to the Gacaca court system, which the Rwanda government set-up to help the court. So do you think they are respectful of

international standards because recently they face a lot of criticism? So what is your comment on that?

DIENG: Let me first of all say that the Gacaca is a traditional system which existed in Rwanda before, and I will say that it was a really great idea from the Rwandan authorities to re-introduce that system which enabled them to set free many prisoners. You may remember that president Kagame at some stage even took a decree to release about 25,000 prisoners, namely all the people, children and people who were sick. I would say that if you take the Gacaca tribunals, what is important is that you will have, first of all the judges are elected by the people at all levels - at the village and community level. You have, so far, more than 250,000 judges who were elected. Second, the trial takes place in the public. So that means the principle of publicity is respected. The accused person will have also the possibility to defend himself, to get also people to defend him. Which means, those principles are respected. Now if you want of course to go by the International Covenant on Civil and Political Rights, and precisely Article 14 of the covenant, you may wonder if really all those elements are within the Gacaca system. I think that was really considered in the Gacaca systems was to make sure that this process would be kind of a healing process which will facilitate the reconciliation process. I think that is something that is extremely important because people when they appear before those traditional courts they feel really more comfortable and also the victims will feel relieved when these people acknowledge, confess their crimes and more or less assume that they're also asking for pardon. I think that is extremely important, otherwise if one had to try these people through the ordinary court it would have taken more than a century to try all these, more than 100,000 people.

ADABA: Mr. Dieng, I don't want to dwell on the criticisms of the tribunal because I know it is doing great work, but one of those is that it has been highly criticized for not being transparent. Thereby, it has been called ineffective, distant and in some cases inaccessible. There's the suggestion that they should embark on the training of local Rwandan judiciary. Is that a possibility that we are going to be seeing in the future?

DIENG: Well recently we held a training similar in Rwanda and for the members of the judiciary. We were able to raise funds to try to help strengthen the judiciary in Rwanda. The reason being that at the end of this tragedy, almost all the judiciary disappeared in Rwanda. Thanks to the efforts made by the Rwandan government things are being put in place, but that is not enough. Rwanda will still need support of the international community and I can say, for instance, the European Union has been very supportive and we have set a program through our outreach project, which aims to train, not only the prosecutors but also the registrars within the country. We have been able also to train young, legal assistants. But this is a long process and we do hope that support will follow. Unfortunately, through the assessed budget of the ICTR, there is no provision for the outreach. Therefore we have found ourselves to go and try and secure funding from voluntary contribution. Unfortunately, they want also the Rwandan tribunal to be the proof balance. Just by way of comparison the ICTY in The Hague was able to secure 53 million dollars for its trust fund... 53 million dollars while the

VIDEO AND AUDIO IN

NARRATION: This court is not in session to consider any ordinary criminal case. It's sitting to deliberate on the fate of a group of people who allegedly committed crimes against humanity. It's the International Criminal Tribunal for Rwanda. Seated in Arusha, in northern Tanzania, the court was established in 1994 by November United Nations Security Council Resolution 955. The court is mandated to prosecute those who were responsible for serious violations of International humanitarian laws committed in Rwanda. During 1994, more than half a million Rwandan civilians were massacred and more than a million became refugees in neighbouring countries.

VIDEO AND AUDIO OUT

WILLIAMS: Mr. Dieng, the ICTR has had some very important firsts. In 1998, the first conviction for genocide by an international court. The first time an international court punished sexual violence in a civil war. The first time that rape was found to be an act of genocide. Will these stand as judicial precedents that will affect all countries? Will rape from now on be considered an act of war?

DIENG: Definitely, definitely and I may say that already the ICTR has impacted a lot in the development of international criminal law. And its jurisprudence has been even used, listen to me, by the House of Lord in the Pinochet case. It has been used by the military tribunal in Switzerland. It is my sincere hope that also the African governments, when facing situations of serious crimes, crimes against humanity like torture, we'll make sure that the jurisprudence of the ICTR will be used by their tribunals. Because it is my belief that unless those African governments apply the principles of the rule of law, they will have no right to complain when those warlords are being chased and threatened to be brought before justice in a European country or an international criminal court. I think it is extremely important that Africa take a clear stance on fighting against impunity. In that regard, I would say that the ICTR, despite the past criticism, some of them which were well founded in the early days of its existence, has made a lasting contribution to the fight against impunity. In that regard, I think it is

really something important that we make sure that the outreach program of the ICTR goes far beyond the boundaries of Rwanda and impact all around the world.

VIKOU: We know that at least 8 suspects are still running, I would like to know what kind of cooperation you received so far from the member states in terms of, for example, extradition?

DIENG: Well when we refer to those, you use the word extradition we used the word transfer. Because, as you know, the tribunal has been established by the Security Council and that resolution establishing the tribunal making it binding to all states, all member states to cooperate. Once we identify the presence of a suspect in a country X, that country has the obligation to transfer that person to the jurisdiction of Arusha. I would say that most of the countries, if not all of them, have shown full cooperation. If not, we would not have been able to arrest this large number of ring leaders. As you mentioned earlier we, the first head of a government who have ever been tried by an international criminal tribunal was Jean Kambanda who was the Prime Minister of the Interim Government in Rwanda. You may note also that we were able to arrest members of government, the leadership of the military, the men responsible of media, etc. I think that is something very important. Referring to the media, which is another dimension regarding the importance of the jurisprudence of the ICTR. The media judgment which is now, of course, under appeal, I will not be able to comment a lot about it, but this was really almost a premiere after Nuremberg. But Nuremberg, the journalist was brought before Nuremberg and convicted. But that is only in Arusha for the first time in history that the media, which was called the hatred media – Radio Mille Collines - were brought before a tribunal and they were convicted. Now we will see what will be the outcome of their appeal against that judgment.

ADABA: Is there a discrepancy in the fact that the foot soldiers are being tried in Rwanda while the ringleaders are facing the international tribunal?

DIENG: Well that was unavoidable because you cannot expect, after that tragedy, that people be tried in Kigali. In fact the Rwandan government, at the time of the adoption of this statute by the Security Council, voted against. Why, because they wanted A - the death penalty be imposed, two - they wanted the tribunal to be

located in Kigali. But you would agree certainly with me that in a post conflicted situation like the tragedy that happened in Rwanda, the serenity, I mean the quietness needed for justice would not be there. Another dimension that is important, most of the witnesses for the defense would not be able to come down to Kigali because, as I said, they are themselves refugees and as a refugee, if you return to your country of origin you lose your status. Some of those may also be indicted by the Rwandan government. For those reasons it was not possible to have those people, those ringleaders tried in Kigali along the same line with the foot soldiers.

ADABA: Just to follow up on that. Currently there are over 30,000 Hutu rebels and their families still in Congo and certain regions of Uganda. You have a voluntary repatriation program in place for them which they are not using, they are clearly not prepared to use. And they are the measure that there are alternatives for these soldiers to be brought back to Rwanda.

DIENG: Well I would say that some of them have started returning and once they return they are further put in a reeducation camp for a period of two months and then they return to their villages. What we have to realize, this is an effort which should bring not only the UN, Rwanda, but also the African Union. And I have had a meeting with the delegation of the African Union recently to see how they can also help. Because when they had their meeting with the council of security and peace in Libreville, Gabon, we took a decision to encourage the disarmament of those, the rebels in DRC. Since that time, I would say, that there are many people who are now feeling encouraged to return. Also because they are afraid that if they do not do so, at the end of the day, they will have definitely to leave. Because DRC is going for election in a couple of months and I think they desperately need to have their country settling in peace. Those people who were not really the ringleaders, who may have been, of course, foot sold

DIENG: Our relationship were not that good in the past but I would say for the last two years they are pretty good. But we have to realize that we are a tribunal, the Rwandan government is a political government but I think we share the same concern that leads to bring to justice those who are suspected of having committed the most outrageous crime.

WILLIAMS: Thank you so much Mr. Dieng, thank you for being with us. Our guest was Adama Dieng, Registrar for the UN's International Criminal Court for Rwanda. He was interviewed by Oyiza Adaba of Africa Independent Television and Bessan Vikou of BBC Afrique. I'm Mary Alice Williams inviting you to be with us for the next addition of **World Chronicle**.

ANNOUNCER: Electronic transcripts of this programme may be obtained free of charge by contacting **World Chronicle** at the address on your screen:

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