



GRIEF

AND

A PROSECUTOR LOOKS AT
THE RWANDA TRAGEDY

HOPE

RWANDA, A SMALL COUNTRY LOCATED IN EAST CENTRAL AFRICA BETWEEN UGANDA, KENYA, AND TANZANIA, WAS FORMERLY HOME TO EIGHT MILLION PEOPLE. IN 1994, BETWEEN APRIL 6 AND MID-JULY, 1,100,000 MEN, WOMEN, AND CHILDREN WERE BRUTALLY MURDERED THERE WHILE AN IGNORANT OR AN INDIFFERENT WORLD STOOD BY. THEY WERE KILLED BY HUTUS BECAUSE THEY WERE TUTSIS, ALTHOUGH THEY SPOKE THE SAME LANGUAGE AND SHARED THE SAME TRADITIONAL CULTURE. RWANDA LOST AN EIGHTH OF ITS POPULATION.

BY HASSAN JALLOW, CHIEF PROSECUTOR, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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On November 18–19, 2005, the second annual Orrin Hatch Distinguished Trial Lawyers Conference was held at the J. Reuben Clark Law School. Jim Parkinson, '76, organized the program and introduced Hassan Jallow, who addressed the conference.

I KNOW THOSE WHO DID IT,

IN SEPTEMBER of this year I went to Africa with a small group that included Judge Monroe McKay from the 10th Circuit. Our host and guide was Mississippi trial attorney Will Colom, who is with us today.

The highlight of the trip for us was visiting the United Nations tribunal in Arusha, Tanzania. There we met and spent time with Hassan Jallow, former Supreme Court Justice from Gambia and the current chief prosecutor for the human rights trials being held in Arusha. He was selected for this position by the secretary general.



I don't know if any of you have seen the movie *Hotel Rwanda*, a remarkable motion picture that tells the story of how one million people were killed in one hundred days in Rwanda in 1994. They were not killed with a bomb; they were killed one by one, most of them with machetes and bullets and suffocation. Horrible, horrible atrocities were committed, and now there is a tribunal being held in Arusha. Hassan Jallow and Alex Obote-Odora, his assistant, are with us today. Judge McKay, Will, and I had the opportunity to interview Mr. Jallow in Arusha and ask him about what happened. During the interview the three of us looked at each other and said, "He must come to our program and share the message of what he is doing. He is not involved in a murder trial, he is involved in a genocide trial, and we need to hear from him."

Dr. Alex Obote-Odora has also had a remarkable career as an attorney. He is from Uganda and was arrested by Idi Amin after defending two men who were found not guilty. Tortured and taken out of the country, Dr. Obote-Odora ended up in Stockholm, Sweden, where he became a law professor. He has dedicated his life to human rights. If I were going to title this portion of the program, it would be: "What in the World Is Going on in Arusha, and Why Should the World Care?"

The colonial power in Rwanda took the Tutsi minority and made them the dominant ruling class in Rwanda until 1959, when independence came. With independence came democratic rule, and the Hutu majority won with an extremist who was elected and came to power bent on retribution. That is what tragically unleashed the events that occurred in 1994.

The United Nations decided to set up an international tribunal in Rwanda and charged it with the mandate to prosecute all those persons who were responsible for the serious violations of international human law that occurred there. The tribunal was set up in 1995 in Arusha, Tanzania, across the border from Rwanda for security reasons. The tribunal was set up by the United Nations Security Council under statute that is binding on all members of the United Nations. The court has the jurisdiction to prosecute for three offenses: (1) genocide, (2) crimes against humanity, and (3) war crimes.

We, the tribunal, have been in existence now for slightly over a decade. Many, many people are involved in these prosecutions, but we cannot prosecute all of those charged, because the Rwanda tribunal is essentially an ad hoc court. We have a fixed lifetime and must be finished by 2010. That means we prosecute the people who played a political leadership role in the government during the genocide, such as the former prime minister, the secretary of state, the heads of the military services, the heads of the political party that

was then ruling in Rwanda, leaders of the local government, and leaders of the provincial administration.

So far we have been able to conclude the cases of 26 such accused people. They have been prosecuted successfully. They have been convicted and imprisoned. We don't impose the death penalty because we have been set-up by the United Nations, which does not accept the death penalty. We send the prisoners to other jurisdictions for them to serve their terms. At the moment, almost everybody is in the Republic of Mali in West Africa.

We have in process another 26 cases, and it is our intention to have 17 more cases commence. Still another 16 people have been indicted but cannot be traced. They are at large, hiding in various countries, mostly in Africa. We have a special tracking unit whose responsibility it is to gather information on insurgents and their movements and, in collaboration with the national police, to find their whereabouts.

You might wonder when we say that in 10 years or more we have managed to do only 26 cases. That is not many cases to show for a decade. But one thing you have to remember is that when this process was embarked on in 1995, there really was no precedent to go by. The last times that the international committee tried to prosecute in an international court were after WWII at Nuremberg and Tokyo. Those two courts, while they did establish the principle of accountability for these kinds of offenses, did not really provide any useful precedents in terms of how to investigate these offenses or in terms of the legal principles relating to evidence and trial and the principles of substantive law that would help us in our own work.

So right from the beginning it was really very experimental, and the tribunal had to invent its own rules of evidence and procedure, and at the same time we had to bring together the selection of lawyers and investi-

gators from different legal traditions and different cultures and different languages and try to weld them all together as one body. It has not been an easy task, but the process, I think, has been quite successful, and we think we will move much more quickly now than ever before.

There are new challenges as well. When the genocide occurred and the ruling party was overthrown, all those people in positions of leadership fled Rwanda. So we have had to engage in a process of looking for them worldwide and ensuring their arrest and bringing them back to Rwanda. As I said, 16 of them are still at large.

Witnesses have to be brought in from all over the world. So far we have had about 1,500 witnesses from 40 countries worldwide who have testified before the tribunal, and we have had to trace them and arrange for their transportation to and from Arusha and provide protection.

We cannot effect any arrests. All we can do is to try and locate the people that we are interested in. Then we rely on the national police authorities to effect the arrests. When we prosecute them we don't have any place to send them for imprisonment. We have to rely on states to take them and see that they serve their sentences.

What we do in Arusha is very significant. It is important because we try to hold to account those who were responsible for the genocide. Many people have suffered in Rwanda and in very tragic ways. I'll tell you about one of them. His name is Rubaka. He is my chauffeur when I go to visit the investigation divisions. He lost all of the members of his family and is alone in the world today. For several days when I learned of this, I couldn't take my eyes off of him. I couldn't help wondering how he was surviving and how he was carrying this very heavy burden with him. Eventually, I got the courage to ask him: "How do you manage to cope with this?" He said to

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me, "Well, I know those who did it, I know they are in custody, and it is all on the prospect that the law will catch up with them, and I will be patient." To me, that underscores the important role that the law has to play in this respect.

At the same time, of course, it increased the load, the weight, the burden on my shoulders as a prosecutor. I realized that as prosecutors we carry a lot of responsibility. We actually carry on our shoulders the expectations of the survivors, of the victims who look up to us to ensure that justice is done. That is one reason why the law is so important in this respect. But that is not enough; the law itself is not enough.

For instance, the creation of the tribunal did not take into account the plight of the victims and survivors. The result is that a lot of times our energy and resources have been spent on bringing to account those we presume innocent and I, as prosecutor, presume are guilty. I always tell the judges that for me there is no presumption of innocence; so when I bring them on indictment, I am fully satisfied that they are guilty. We spend a lot of money in maintaining the detainees in excellent conditions and, given the nature of the process and the fact that it takes many years to process these cases, we are forced to credit against their time of imprisonment whatever period they have spent in custody. So there is no urgency as far as they are concerned to bring the cases.

When you sit in court and compare these very healthy and affluent-looking people, very well dressed, with the witnesses for the prosecution who come in with the survivors, you see women who have been the subject of sexual violence, most of whom, as a result, are now suffering HIV infection. It is heart wrenching, because as you observe it you

come to the conclusion that the plight of the survivors has really been ignored altogether. There are also orphans and widows who should be part of the process of ensuring that justice is delivered to the people of Rwanda. A very big gap exists in the system at the moment.

Apart from the issue of the victims, a great breach of trust occurred at various levels. First you had a government that is sworn to protect its people actually planning and implementing the slaughter of those people.

Then you had the breach of trust by the military, the heads of the army, and the heads of the police. They were all sworn and by law they were obliged to defend the civilian population. Yet in their strategy to combat the armed rebels who had invaded the country, they sent out to war all the soldiers and all the policemen, all the security services, defining the civilians as a part of the enemy that had to be eliminated. That was a great breach of trust.

And there was the breach of trust by the clergy. This is not the first time that people have been killed on a large scale in Rwanda, but this was the largest scale. Between 1959 and 1994 there have been a number of occasions when hundreds, sometimes thousands, have been killed. Each time when the people feared for their lives, they ran to the churches, and they survived as a result. This time they entered places of religious worship (and Rwanda is largely Christian) and the clergy failed to protect them. In many instances the clergy walked with the armed militia to surrender these refugees to the militia or to open the doors of the churches and invite in the militia. As a result, in Rwanda today you'll find the remains of people lying in the churches, people who

were slaughtered where they came to seek refuge. Many survivors who lost relatives in these churches find it difficult to enter any church now because of having no confidence in the clergy. Not all the clergy behaved that way, of course. Some were outstanding in their protection of these poor innocent civilians. As a result, we have prosecuted some members of the clergy. Some have been convicted, and some are awaiting trial.

You had doctors, medical doctors, who worked in the hospitals, who, contrary to the oath that they had taken, actually killed their patients in the hospital. They killed their patients, or they surrendered them to other people who killed them. We have prosecuted some doctors, one who is currently on trial.

You had media people, journalists, radio broadcasters, who used their profession, their pens, and their tongues for the business of inciting ethnic hatred and calling on Hutus to slaughter civilians.

You had neighbors, people turning on their neighbors and other people they had once respected and killing them. This is what happened in Rwanda. That is why I describe it as a great breach of trust.

If we want to address the last question as to what we do to prevent the recurrence of these kinds of tragedies, I think that we need to keep this in mind. It is important that all those who were engaged in these actions be

BUT THE LAW ITSELF IS NOT ENOUGH.

prosecuted. But we should also devote some attention to why it happened and what we can do to prevent a recurrence. I don't have the answer to that. It is a question that we will have to try to answer collectively, but I can say a few things.

I think the problem started first with bad government. In this bad government there was no culture, no tradition, no commitment to good government on the part of the leadership. It is therefore important that we seek to encourage in all countries a legal system that provides respect for fundamental rights and freedoms, where we try to implicate in all our communities a culture of tolerance, a culture of respect for human rights, a culture of legality and constitutionality—particularly on the part of those in positions of leadership.

We also need to return as individuals to those basic values of respect for each other, of respect for good neighborliness, and for compassion and for mercy. What better way is there than through our religions, our three great religions, Islam, Christianity, and Judaism? In Rwanda, as we said, over one million people were killed, but there were also good examples of courage and compassion and good neighborliness. I think most of you have seen the movie *Hotel Rwanda*. The movie showed the Hutu manager of a hotel who saved hundreds of civilians at great risk to himself and to his family. That story was played out not just at the hotel but in many places in Rwanda.

Finally, there is the international dimension. The world was in a position to have prevented the Rwanda tragedy. There was enough force in

the world to have stopped it. It would not have taken 10,000 troops to do that. Our failure to do so is a blot on all of us. When one million people are murdered anywhere in the world, whether it is Africa or America or Europe, it diminishes all of us; it diminishes the humanity in all of us. We must, therefore, at the international level carry forward the principle of good neighborliness and of respect for each other, of compassion, and of concern for each other. We must live by the principle that the violation of human rights anywhere is a concern for all of us everywhere.

