

Are Some Humans Less Human Than Others?

Alexandra Richards QC

MY time in Arusha, Tanzania, in March to June of last year involved working as a consultant to the Office of the Prosecutors of the International Criminal Tribunal for Rwanda where I was assigned the task of “money and weapons” as requested by the Senior Trial Attorney in the Military 1 case. The Military 1 case (presently part heard) concerns charges laid against Colonel Bagosora (director of services in the former Rwandese Ministry of Defence and effective leader and creator of the provisional government created after the assassination of President Habyrimana on 6 April 1994) and alleged leader and organiser of the genocides with the assistance of his co-accused Brigadier General Gratien Kabiligi, Colonel Anatole Nsengiyumva (who is also said to have directed the slaughter in Gisenyi) and Major Aloys Ntabakuze, commander of paratroopers. These are not the only persons accused of genocide and acts against humanity: so far the Tribunal has apprehended and detained 66 persons out of approximately 81 persons indicted to date. Since the first trials started in 1997 to date, a total of 18 people have now been convicted for their part in the 100 days of killing.

Arusha, known as the gateway to the safaris, is situated in the north of Tanzania close to its border with Rwanda. The ICTR sits in a monolithic concrete structure testimony to Tanzania’s socialist era of the 1950s and 1960s. Arusha, and in particular its convention centre, is known as the Geneva of Africa — indeed the place where the Arusha Accords were signed (which I will refer to below).

This story, which has been told and will be told again and again in different ways, surrounds the events which occurred over a period of 100 days commencing on 6 April 1994 and ending in mid July 1994 in Rwanda when approximately 800,000 people were slaughtered as part of a systematic campaign of eradication of an ethnic group.



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By way of pictorial detail, Rwanda is a tiny country of approximately 26,000 sq km huddled inland on the east coast of Africa and bounded by Tanzania to its south east, Burundi to the south, the Central Democratic Republic of the Congo (formerly Zaire) to the west and Uganda to its north. It is a land of hills rather than mountains, with the country lying between 1000 to 2000 m above sea level and the Rift Valley to its west occupied by Lakes Kivu and Tanganyika.

Rwanda’s popular name is “the land of the 1000 hills”: seen from one hill as far as the eye can see the land is taken up by hills of similar height to the east, south, north and west. The country has an average annual temperature of 18 degrees C. Its unique geographical and ecological environment has seen agriculture and the Rwandese population prosper with “African wildlife” long ago departed (but for the gorillas).

Once described as the “Garden of Eden” families comprising the basic social unit of this highly populated society prior to 1994 lived side by side in small compounds

with the whole of the land described as a garden being tilled and sown. There are three ethnicities to be found in Rwanda in proportions prior to the events of the 1994 genocide as to Hutu approximately 84 per cent, Tutsi approximately 15 per cent and the Twa approximately 1 per cent.

This paper is not an historical discourse of the Rwandese kingdoms of pre-colonial time, colonial occupation by the German, Belgian and French or for that matter any in depth treatment of the myriad of factors which culminated in wholesale slaughter of men, women and children with those proactive in the killings necessarily as many as those killed.

The genocide was sparked by the death of the President of Rwanda, a Hutu, Juvenal Habyarimana when his plane was hit by a missile attack over Kigali airport on 6 April 1994.

Within hours of the attack, a campaign of violence swept over the capital of Kigali and then throughout Rwanda and did not subside until three months later. The scale and speed of the slaughter was astounding.

This century has witnessed ethnic tension in Rwanda. But this was not always the case. The animosity grew between the groups over the colonial period. Indeed, the two ethnic groups had lived in harmony together for centuries, speaking the same language, inhabiting the same areas and sharing the same traditions.

When the Belgian colonists arrived in 1916 they saw the two groups as distinct ethnicities both in physical terms and intellectually and declared as superior the Tutsi over the Hutus, producing identity cards which classified people accordingly. Not surprisingly, the Tutsis were content to be so preferred and for the next 20 years they enjoyed better jobs and educational opportunities than their neighbours. They came to occupy the positions of authority whilst their neighbouring Hutus were relegated to lowly occupations and denied opportunities of advancement.



UN lawyers Andra Mobberley (NZ), Richard Haragyesi (Uganda) with baby Oliver and Drewe White (Canada).

Resentment sprung amongst the Hutus which gradually built up and culminated in a series of riots in 1959. More than 20,000 Tutsis were killed and many more fled to the adjacent countries of Burundi, Tanzania and Uganda.

In 1962, Belgium relinquished power and granted Rwanda independence but not before they, on the crest of a newfound philosophy of so-called humanitarianism renounced the separation of ethnicities and the divisions they had caused, and endeavoured to bestow upon the Hutus equality. The Hutus in any event were in a large majority and over subsequent decades the Tutsis became the scapegoats for any difficulties suffered by the young independent nation.

At the same time, Tutsi refugees

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in Uganda were forming the Rwandan Patriotic Front (the RPF). Their aim became one to overthrow the Hutu Government and secure their return to Rwanda.

In time, Habyarimana as the Hutu President came to exploit this threat in garnering Hutu support for his government and political party by managing to persuade many but not all moderate Hutus sympathetic to the Tutsi people. In doing so he accused the Tutsis resident within Rwanda of being accomplices with and sympathetic to the RPF collaborators.

In August 1993, under international pressure to democratise (particularly from the USA) after months of negotiation a peace accord was signed between Habyarimana and the RPF whereby the Government and army were to be divided and represented by Hutus as to 60 per cent and Tutsis as to 40 per cent.

But the Arusha Accords had only been agreed to by the Hutu government under threat of funding withdrawal. There was no genuine preparedness on the part of the Hutu Government to relinquish their power and as the appointed date drew nearer the situation became increasingly uncomfortable and exploded with the shooting down of the President's plane on 6 April 1994 killing Habyarimana and the

newly appointed Burundi president who was also on board.

Who was responsible for the missile which shot down the plane has remained an intriguing question. A part of my work involved a consideration of the particular arms available to each of the Hutu and Tutsi forces in an endeavour to establish the source. France also has had its own independent inquiry into the establishment of that source and although it had been widely assumed that the Tutsis were responsible there is a considerable body of thought that the inner Hutu strongholds fearing that Habyarimana had gone too far with the Arusha Accords were responsible, using the incident as evidence of treason and as an additional tool to incite the Hutu people to arms for fear of their own lives. Both the Hutu army and the RPF had missile capacity and indeed both had the use of the specific missiles used in the attack on the President's plane.

Whoever was responsible, however, the outcome was both instantaneous and catastrophic. The genocide was carried out by the Hutus largely by hand with the use of machetes, spades and clubs and largely by the militia known as the Interahamwe ("those who fight together") which comprised, in the main, young boys and men who were unemployed and pleased and



On the road to Ngorongoro Crater.



Mother and child, Stonetown.

proud to be given a uniform, a rifle, food, beer and cigarettes as their recompense. Local officials assisted in rounding up victims: Tutsi men, women and children and any moderate Hutus. All children had to be annihilated in order that the race could be expunged. They were killed in churches, stadiums and hospitals. Clergy colluded in the crimes.

An experience common to the lawyers in the OTP in and during preparation for trial is the surprise discovery of a diminution in their minds of the numbers of victims involved in the relevant massacre:

first, because their previous prosecution experience in their country of residence had in the main involved one or a few victims and, secondly, because when one is referring to a particular massacre where thousands of people are killed it understandably becomes an almost impossible task to maintain a mental image of the numbers of victims involved. An arithmetical exercise, however, demonstrates the scale of the killings: to kill 800,000 people in 100 days one would need to kill approximately six persons per minute every hour of every day for 100 days to arrive at that number. Of macabre irony, this was the precise number that the Interhamwe had been instructed and trained to kill: the imperative of their training was the killing of 1000 Tutsis every 20 minutes.

Having given some background and established a scale for the killings I now wish to ponder the imponderable and the theme of this paper: are all humans human or are some more human than others? This question was posed at an address given in November 2003 to the Carnegie Council for Ethics and International Affairs by the French Canadian General Romeo Dallaire who was the commander of the United Nations Assistance Commission to Rwanda (UNAMIR), the UN peacekeep-

ing force, numbering some 2500 troops present in Rwanda at the commencement of the killings. But UNAMIR's mandate rendered it and them totally and utterly powerless: they were not able to act otherwise than in self-defence.

I acknowledge my admiration for General Dallaire who had, on 11 January of 1994, sent out an urgent facsimile and alarm to the UN peacekeeping administrators in New York. General Dallaire was in receipt of information from a credible informant within the higher echelons of the Rwandese Government army alerting UNAMIR to the existence of large caches of weapons stockpiled and hidden within the cellars and basements of the buildings of Kigali, Rwanda's capital.

In a secret inspection Dallaire and Colonel Luc Marchal, the commander of the Belgian force contingent of UNAMIR, had become convinced that the type and number of stockpiles of weapons, if used in the manner informed, would ensure mass killings of Tutsi people by Hutu extremists and the occurrence of a veritable bloodbath. The Commanders were also informed as to the training and arming of a civilian army, the militia drawn from the unemployed youth.

In short, all of Dallaire's information proved to be true three months later.

On the same day as Dallaire urgently communicated to New York his information he received a response from Kofi Annan, the then head of UN peacekeeping, signed by Iqbal Riza, directing him not to raid the arms caches as planned but instead to go directly to the President and pass on the information received from the informant, despite it being the President's own inner circles who were planning the massacres. So much occurred and thereafter despite numerous requests by Dallaire for reinforcements and the power to seize weapons (let alone defend the lives of Tutsis being slaughtered after the massacres commenced) all that the UN managed to direct under the auspices of the Security Council was the withdrawal of forces and the effective abandonment and betrayal of hundreds of thousands of Tutsis and moderate Hutus.

There is little doubt (indeed no denial) that each of the member states of the Security Council had access to reliable and accurate information before the killings commenced on 6 April 1994 and certainly thereafter.

As Ambassador Heinbecker of the Canadian Department of Foreign Affairs and International Trade at the Carnegie Council stated:

In January 1994, General Dallaire sent out the alarm with credible information of an impending catastrophe. The United Nations and the membership of the Security Council failed General Dallaire, it failed the people of Rwanda, and it failed humanity. "Never again" was what we had all said [in relation to the Jewish Holocaust]. General Dallaire told us that "never again" was happening again, and the Security Council played word games with the Genocide Treaty. It was one of the darker moments of history.

And on this subject of word games, the Convention for the Prevention and the Punishment of the Crime of Genocide which was voted into existence by the General Assembly of the United Nations in 1948 contains this definition of genocide (as amended and it stands today). Four constituent elements must be present:

- a criminal act;
- with the intention of destroying;
- an ethnic, national or religious group;
- targeted as such.

In the event of a case of genocide signatory countries to the Convention agreed to intervene. It is with some pathos that the transcripts demonstrate the considerable lengths employed to avoid the use of the singular word "genocide" by the Clinton

administration of 1994 in preference for the term "acts of genocide" in relation to the catastrophes in Rwanda in order that the Convention's requirement for the US to act by intervention should not be triggered. As Samantha Power states:

Although everybody talked about the systematic killing and extermination of the Tutsi, "G" was not bandied about in nongovernmental circles until two weeks into the genocide. Most people who noticed that extermination and cared about it were afraid that if they used the "G" word, it was like crying wolf — that somehow if it proved not to be genocide, you wouldn't get invited to the next meeting, that you would have exaggerated your claim; it's better to stick to the facts as they were understood.

At the higher levels there was a reluctance to use the word for fear of triggering American obligations under the Genocide Convention, which were read, actually wrongly, to demand military intervention in the face of genocide. In fact, what the Convention demands is that the signatories undertake steps to prevent and punish.

So by "undertake steps", you could have done many things. We could have denounced at a high level, threatened prosecution, frozen foreign assets, imposed an arms embargo, rallied troops from other countries, created safeguards, done radio jamming. But the fear was "use the word 'genocide' and you have to go the whole way."

I cite an example of this transcribed in PBS's "Frontline — The Triumph of Evil" and quoting Christine Shelly, State Department Spokeswoman for the US, in interview which took place on 10 June 1994:

Christine Shelly, State Department Spokeswoman: [June 10, 1994] We have every reason to believe that acts of genocide have occurred.

Reporter: How many acts of genocide does it take to make genocide?

Christine Shelly: That's just not a question that I'm in a position to answer.

Reporter: Is it true that you have specific guidance not to use the word "genocide" in isolation, but always preface it with these words "acts of"?

Christine Shelly: I have guidance which — to which I — which I try to use as best as I can. I'm not — I have — there are formulations that we are using that we are trying to be consistent in our use of. I don't have a categorical prescription against something, but I have the definitions. I have

a phraseology which has been carefully examined and arrived at to —

And why did the member states of the Security Council wish not to intervene or at least morally feel inclined to act? Once again there are myriad reasons, economic and political, which may explain the different member states' reluctance (I except, in particular, Czechoslovakia). In the US, for example, an election was imminent and the torture and mutilation of 18 US armed personnel in October of 1993 in Somalia shown publicly on CNN had produced American outcry as to why Americans were being sent to war in a country in relation to which the US had no interest. The war in Bosnia was raging at the time of the Rwandese killings. The world outlook was murky and complicated, full of self-interest, whether of a commercial or political nature or both. General Romeo Dallaire, speaking on the launch of his book *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, said:

.... instead of recommending sending troops to Rwanda, a nations' officer came to me and said they wouldn't send them because there was no strategic interest, no strategic resources. And, in fact, they said, "The only thing that's here are humans."

And as Samantha Power states:

We had had the Sarejevo Olympics. If we had had the Olympics in Kigali at some point, that might have created a humanizing. The racism, or the "otherism", or the writing-off of provincial places that are out of our sphere of influence, is a proxy for something else, part of which is just "they're not like us". But part of it is that we've never been there; we don't have a personal connection. There's nothing that can take them out of the realm of "the other" and make them human.

And the victims — Armenian Christians, Jews, Tutsi, East Timorese, Cambodians, Bosnian Muslims, potentially Chechnyans — are people of all kinds of shapes, colors, sizes, geographic zones.

If you don't want to do anything, if the risks of getting involved on humanitarian grounds are so much greater than the non-costs of staying out, then you're going to be all the more prone to see difference rather than similarity.

Whiteness had something to do with it, but I would argue that there are other factors, and we did characterize those people who were dying as tribes. It was a

problem from hell about which we could do nothing.

Regardless of the multiplicity of factors, acknowledging the fact of the genocide was to take some time. It took the Security Council members until April 2000 before discussions were held and gestures of regret were made. In total their contribution had been to direct that the peacekeeping security forces be withdrawn, leaving 200 army personnel in Rwanda and, of course, a total evacuation of expatriates was undertaken. The UN Secretary General, who by 1994–1995 was Kofi Annan, apologised for the UN's part of the failure but with the important but unfortunately accurate caveat that it can only be as good as its member states direct it through the Security Council to act and resource it accordingly.

So the world failed Rwanda. Boutros Boutros-Ghali had been far more reticent and unavailable in his capacity as the UN Secretary General during the Rwandese slaughters, stating: "Such situations and alarming reports from the field, though considered with the utmost seriousness by United Nations officials, are not uncommon within the context of peacekeeping operations." Boutros Boutros-Ghali's presence and visibility during the Rwandese catastrophe and in relation to that topic was one that can only be described as low level.

During my time at the Tribunal and in acquitting my task to research and consider the outcome of investigations of the money trails and arms deals pacts entered into by the former Habyarimana Hutu Government I read in particular public documents and publications which bore witness to a past policy of reluctance on the part of the Egyptian Government to supply arms to the Habyarimana Hutu Government. In approximately 1991 Rwanda's foreign minister was sent on a personal mission to Egypt for the purpose of endeavouring to reverse this policy. There he conducted personal negotiations with Boutros Boutros-Ghali (then Egypt's foreign minister) which culminated in Ghali's intervention such that the arms policy was reversed and Egypt entered into its first Rwandese arms contract worth \$US6 million. A year later Boutros Boutros-Ghali was to be elected Secretary General of the UN.

But I return to General Dallaire's question as to whether there are some humans who are less human than others. General Dallaire, prior to his mission to Rwanda, was an atheist. He is famously reported as

having stated on his return from Rwanda: "I know that God exists because I met the devil." I pondered this statement for some time on my return. It had not been an easy task examining the witness statements and photographs. I learned, in particular, that in addition to the obvious tools of war such as weapons and propaganda, the weapon of fear propagates loathing and a desire to kill the other person before he or she kills me. The more imaginative and extreme the forms of torture, the greater the fear campaign and the more effective it is. Popular radio played top hits inciting Hutus to kill their Tutsi neighbours. The prevailing method of killing (as the photos evidenced) was to slice first the archilles tendon so that the victim could not run away. The Nyaborongo River, a tributary of the Nile, turned red and its shores rose metres as bodies dumped within it flowed into neighbouring countries.

A few scenes remain indelibly in my mind. One account, in particular, which disturbed my somewhat feminist view of women as pacifists: it concerned a young Hutu mother whose neighbour and best friend was Tutsi: the Hutu mother with her 12-month baby straddled on her back chased her Tutsi neighbour, who similarly was carrying her 12-month baby on her back, hacking the baby and her mother to death with a machete.

I had to grapple with scenes and knowledge of evil which I had not previously considered man or woman capable of. Somehow there had to be a counterbalancing of the evil so that one's belief or conviction in the continued existence of humans and in humanity itself could be restored and maintained.

There has been a considerable tendency and body of writing which refers to the dark continent: where tribalism and

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pagan practices thrive, cannibalism is rife and the African native is generally primitive, dark and ignorant. This view, challenging notions of political correctness, has its appeal: how else are the atrocities that seem to abound in Africa, in particular, to be explained?

In his book titled *The Graves are Not Yet Full*, New York reporter, Bill Berkeley analyses the West's endeavour to find cause and effect for Africa's apparent chaos and brutality. He refers to his personal experiences on the Continent and cites the massacres and killings of Rwanda, the Congo, South Africa, Liberia and the Ivory Coast amongst others. "Drawing out fundamental similarities" in these conflicts Bill Berkeley "builds an argument that blames despotic leaders for large-scale violence. Without the ruthless machinations of tyrants in pursuit of power and loot, Africa's ethnic pluralism alone would not make its societies combustible. But as despots struggle to outflank their opponents or keep their regimes afloat without Cold War patronage, they find it expedient to stoke ethnic rivalries and spawn anarchic conditions. That way, they absolve themselves. 'Tribalism' is thus no less orchestrated in Africa than in Serbia or other places where dictators have played the ethnic card."

In a similar vein an article in a June 2003 edition of the *Guardian* advanced the view that Africa, having no infrastructure, technology or manufacturing skills and with all of its mineral resources being vested in Western interests was and could only be in the business of war, there being nothing else.

In his extraordinary and formidable opus, *Africa, a Biography of the Continent*, John Reader raises the same theme but takes the debate in a different direction, having considered the issue from a paleontological, geographical and historical context. In his preface he comments:

That people have behaved barbarically in Africa is undeniable but, as events in other parts of the world have demonstrated time and again this is not an exclusively African tendency. Indeed, civilisation — as an expression of cultured behaviour — is a very transitory feature of the human story. Civilization is not a predetermined consequence of human progress, as the Victorians believed, with the white Anglo Saxon leading the way, the rest of the world following in their wake, and the Africans straggling several centuries behind. On the contrary, civilisation is more like a protec-

tive skin of enlightened self-interest that all societies develop as they learn to regulate their interactions with the environment, and with other people to the long term benefit of all parties.

The Reader theory, although it more comfortably sits with concepts of equality, is not without difficulty, and to posit that civilisation is but a mere veneer also challenges our dearly held Western notions of civilisation.

However, John Reader in his excursus qualifies the African circumstances, stating that Africa throughout its history has been woefully misunderstood and misused by the rest of the world, citing Joseph Conrad's description of Belgian occupation in the Congo as "the vilest scramble for loot that ever disfigured the history of human conscience". Reader tracks through the history of the export of slaves over four centuries until finally when the white man decided he could no longer in conscience tolerate such trade indigenous Africans continued within their own geographical confines the European precedent which had been firmly established. Importantly, it is to be borne in mind that being a poor country the major commodity with which to bargain and prosper was labour. In payment for the slaves John Reader estimates that over four centuries the white man provided and imported into the country 20 million guns, finally culminating in a continent which was to be carved up without rational basis into a fragmented series of states agreed between white men at European conventions in Europe where no African person was present. A survey has shown that no fewer than 177 ethnic "culture areas" in Africa are divided by national boundaries, with every land boundary cutting through at least one.

In May 1995, a Catholic theologian in Rwanda, Laurien Ntezimana confessed to having been shocked by the genocide in Rwanda but not astonished:

People live behind a mask, he said, which the winds of history occasionally blow aside. The genocide was shocking, but only those who were naïve about human nature could be astonished. He told an inquiring reporter: "I have the impression that you have not yet discovered man, either in his grandeur or in his misery; he can always surprise us."

I find the statement resounds of reconstruction after the event but I for my part can rationalise no other way with which

to describe the evil and depravity of the events we continue to witness in this century.

However, I find to my misfortune that I am able to empathise more with the following statement of Retired General Romeo Dallaire who has now completed his testimony in the Military 1 case. At the Wilfrid Laurier University Lecture he delivered on 6 November 2003 he had this to say:

I'm unable to reconcile this life with the reality of Rwanda — the fighting, the dying, the crass barbarism. Too often, I reel back and find myself despising this artificial life and wanting to go back into the horrors. My real dream is to become a pilgrim in Rwanda, just to walk the hills and valleys, to give a little hand here and a little hand there. That, I think is where I'll find solace, among all the spirits and the carcasses.

Our view of the world and human capacity is limited and naïve: not only a lack of appreciation of the depths of depravity that man, woman and child can descend to but also, to our loss, the heights that man women and child can aspire to in their compassion and courage when called upon to do so.

And it does seem that once one has learned and experienced the horrors that humans are capable of, the world we live in appears as artificial, somewhere in the middle of an extremely controlled mainstream propped up by media, insulated by Western television experiences of "life" or "reality life". On my return I experienced Australia as a sheltered workshop: not only were we privileged beyond comprehension on a scale that residents of Rwanda and its neighbouring states could only imagine and dream of after seeing Western television, but that our view of the world and human capacity is limited and naïve: not only a lack of appreciation of the depths of depravity that man, woman and child can descend to but also, to our loss, the heights that man women and child can aspire to in their compassion and courage when called upon to do so.

As General Romeo Dallaire questioned his American interviewer:

General Dallaire: On the morning of April 7 — and remember that on April 6th the presidential plane was shot down and the killing commenced — your ambassador to the United Nations said to the Security Council: "We will not get involved in Rwanda, and we will support no one who does."

Many of these nations do not put our countries at risk. I mean Canada was not at risk with Rwanda. So the real question is: is the Western world prepared to spill blood for advancing human rights in far-off lands that mean nothing, except for one small fact: they are exactly the same as us. People are not different; the circumstances are different.

Driven to Drink

A worker in receipt of weekly payments under the Accident Compensation Act due to incapacity from a work-caused injury was referred by the WorkCover agent to a rehabilitation service. As part of his rehabilitation the worker was required to demonstrate that he was able to complete a letter applying for employment. Perhaps exhibiting some frustration with his plight his offering was:

Dear Sir or Madam,
I wish to register my interest in any present or future positions your company may have for a wine taster.

I am currently employed by XYZ Company, however, I have not actually worked there since July 2002 due to injuries sustained at work.

Although I do not drink alcohol, I have been told it is good for numbing pain, and seeing as I have been in pain for a year, and on WorkCover (and in the care of a rehabilitation provider) to help me find a job, despite the fact that I am certified by my doctor as being unfit to return to work, I am considering becoming an alcoholic. I note from your ad in the yellow pages you make wine. I have bills to pay. It seems to me to be to our mutual benefit for you to employ me should you ever be in the need of someone to drink your wine for reasonable recompense.

A resume and references are attached.

Thank you, in anticipation of your most earnest consideration.

The rehabilitation service described the worker's offering as "a very inappropriate" letter for prospective employers!