Rescuing (cosmopolitan) locals at the International Criminal Tribunal for Rwanda

written by Nigel Eltringham
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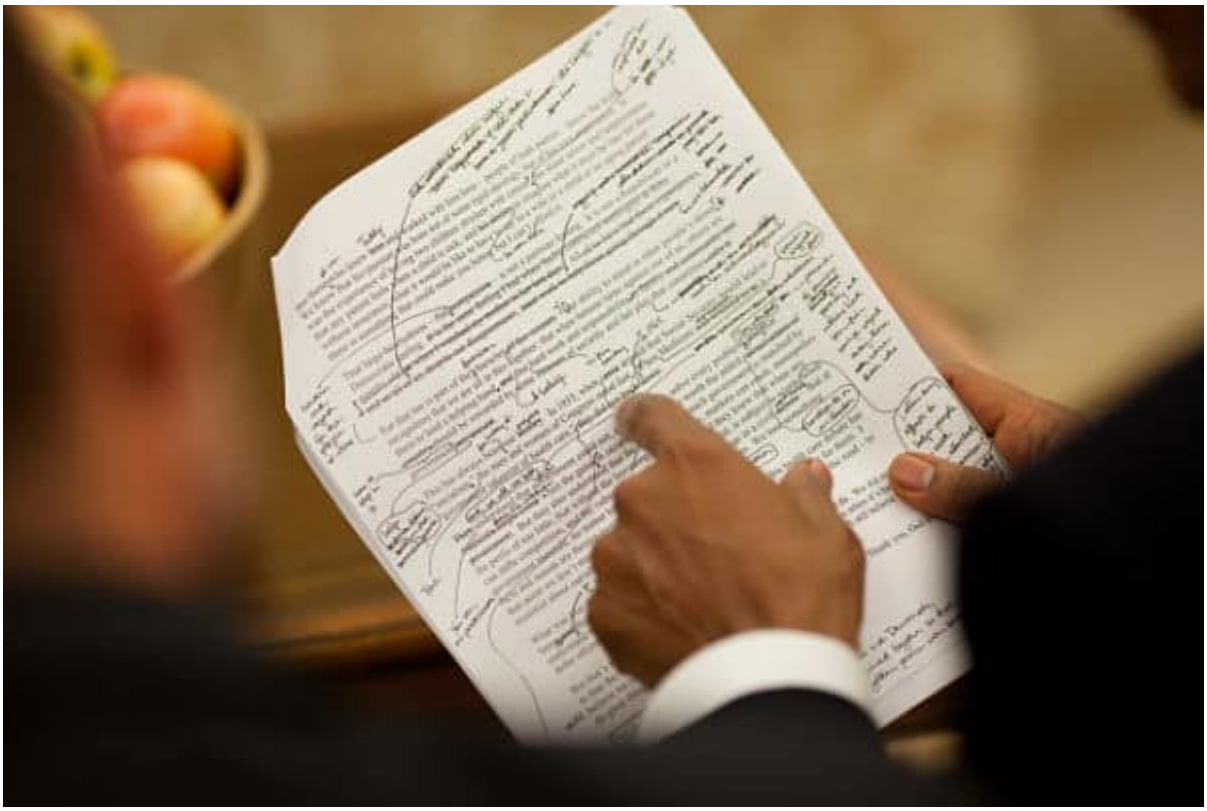

On the 31st December 2014, after twenty years of existence, the International Criminal Tribunal for Rwanda (ICTR) finally ceased operations. Established in November 1994 by the United Nations Security Council, the ICTR was tasked with putting on trial any person accused of committing the following in Rwanda in 1994: genocide (as defined by the 1948 UN Convention for the Prevention and Punishment of the Crime of Genocide); crimes against humanity (a widespread or systematic attack on a civilian population) and 'war crimes' (Article 3 common to the 1949 Geneva Conventions). With its seat and four courtrooms in Arusha, Tanzania, the ICTR indicted ninety one individuals; of whom sixty one were

convicted; fourteen were acquitted; ten were referred to domestic jurisdictions; three died prior to or during the trial; and three remain ‘at large’.

With the closure of the ICTR, debates that have surrounded the Tribunal since its inception continue. While some praise its accomplishments at both the local (ending a ‘culture of impunity’ in Rwanda) and global levels (clarifying international crimes) others denounce the ICTR’s weaknesses, including the length of trials (lasting an average of four years – one lasted nine years); the cost ($1.5 billion); the failure to be sensitive to the ‘culture’ of Rwandan witnesses; the lack of engagement with the Rwandan population and so on. Given that (along with the International Criminal Tribunal for the Former Yugoslavia created in 1993) the ICTR was an innovation, resuscitating the project of international criminal justice that had stalled after the International Military Tribunal at Nuremberg (1945-6) and The International Military Tribunal for the Far East (1946-8), any serious assessment of both complementary and negative commentary on the Tribunal, requires an appreciation of the daily conditions under which the trials were pursued. And yet, a substantial literature on the ICTR written by legal scholars has concerned itself not with daily conditions, tasks and routines, but with outcomes, the Tribunal’s legal precedents (defining rape and sexual violence as international crimes; the right to counsel etc.).

Omitting attention to process impedes praxis and obstructs an adequate assessment of the arguments made in favour and against the Tribunal. For example, listening to lawyers and judges speak of the challenges of simultaneous translation from Kinyarwanda to French to English and back again sheds light on why trials took so long. Likewise, recording how lawyers from different legal traditions forged a common practice in the courtroom is an achievement rarely acknowledged by advocates of the Tribunal. The omission of the daily conditions from the ICTR literature reflects other transitional justice institutions.

> *The bulk of the literature on the South African Truth and Reconciliation Commission, for example, contains 'literally no information about its everyday aspects … as if the everyday work is just a neutral medium for information gathering and processing, a means to an end' (Buur 2003: 67n68).*

While my ethnographic research at the ICTR has sought to remedy this omission, the question remains why there is such apparent resistance to incorporating daily conditions, tasks and routines into scholarly accounts of these institutions?

Part of the reason may be the concern among legal practitioners (especially in common law) with legal precedent (the outcome). This is always future-oriented, anticipating future utility for which the conditions in which the precedent was forged are irrelevant (Bourdieu 1987: 845). In terms of the reproduction of the legal profession, it has been observed that, in the case of UK barristers at least, those who teach law portray it as only having life in 'the gradations of the printed word: case notes, legislation, law reports' (Morison and Leith 1992: 3). And yet, analysis of law in practice has revealed a 'completely different view of the nature of law' (Morison and Leith 1992: vii). Such analysis has, not surprisingly, revealed that knowledge other than that of texts and precedents is important for the lawyer including knowledge of the temperament of judges, personal networks with other practitioners, ability to deal effectively with bureaucracies and so on. The preference of scholars for ''the gradations of the printed word' masks the importance of this 'extra-legal' knowledge. In contrast, an appreciation of the lawyer as social individual and of law as, therefore, a 'necessarily flawed human process' (Morison and Leith 1992: vii) would contribute to our assessment of the ways in which the ICTR has been both celebrated or condemned.

Two other, interrelated, reasons may also explain why the daily conditions, routines and tasks of lawyers and judges have not been considered worthy of sustained concern. Both involve what constitutes the 'local'. Critical literature on transitional justice has been concerned with how the supposedly universal mechanisms of 'transitional justice' are 'localised' (see Shaw et al. 2010). This has had an unintended effect. Just as development scholarship has tended to be interested in the complexity of 'developees' and ignore the similar complexity of 'developers' (Hindman and Fechter 2011: 12), so in emphasising the complexity and diversity of the 'locals', there has been a tendency in transitional justice literature to homogenise the 'internationals'. By portraying 'transitional justice' as a disembodied, unified set of discourses and practices, this approach has obscured another locality with its own complexity and variations, the interstitial locality of the transitional justice institution and its community of (cosmopolitan) 'locals'.

The specific sites occupied by this diverse group in which their varied interests,

> *realities and needs are played out must also be recognised as localities, that there is no such place as the 'international' divorced from the contingency of daily practice.*

This concern with 'local' responses to transitional justice rather than cosmopolitan locals, may also be influenced by long-standing undercurrents on what is considered 'authentic' research. Akhil Gupta and James Ferguson (Gupta and Ferguson 1997: 13) describe a 'hierarchy of purity' in anthropological field sites, where those at the top of the hierarchy are 'distant, exotic and strange'. It can be argued that this perpetuates 'dominant-subordinate' relationships with pliable 'locals', privileging the culture of powerlessness over the culture of power (Nader 1969: 289) (Hannerz 1998: 109). In discussing his analogous ethnography of the cosmopolitan locals of Médecins Sans Frontières Peter Redfield (2012: 358) suggests that it may be received by some readers as the 'antithesis of ethnographic authenticity' because it is only 'subaltern' views that 'count' as ethnography. There is a parallel between this and the place of the 'charismatic victim' (Bonacker 2013: 115 101) in the discourse that legitimises institutions such as the ICTR that require a 'tragic spectacle of suffering – the spectre of a victim representing the condition of oppression in need of salvation' (Clarke 2009: 15). The insinuation that ethnography must concern the powerless and the ICTR's need to place powerless victims centre stage combine to eclipse lawyers and judges.

Privileging disembodied ‘victims’ can also be seen as part of a wider set of practices whereby those who speak on behalf of the ICTR cultivate a ‘public image of cohesion and shared belief’ (Scott 1990: 55).

> *This includes a tendency to speak of the ICTR as an entity.*

For example, the Tribunal’s Registrar (head of administration) would speak of ‘The Tribunal’ having adopted a particular strategy in who had been indicted. And yet, it was not ‘The Tribunal’ who had taken these decisions, but the Prosecutor.

Similarly, the Tribunal’s spokesperson while speaking of ‘the Tribunal’s’ achievements, would denounce criticism of ‘the Tribunal’ by defence lawyers. On one hand, any achievements claimed for the ICTR must also implicate defence lawyers because without them, there would be no trials and, in any case the defence lawyers the spokesperson referred to had criticised the Registry, not ‘The Tribunal’.

To speak of the Tribunal in this manner is not to engage in an innocent figure of speech. Rather, this tendency is also a means of avoiding scrutiny. Employing the idea of the institution as ‘super-person’ indicates an unwillingness to ‘reveal the everyday muddle to be found there’ (Czarniawska 1997: 2). This parallels David Mosse’s (2006: 938) observation regarding the analogous institutions of

international development, that such institutions maintain knowledge systems that 'constantly organize attention away from the contradictions and contingencies of practice and the plurality of perspectives'. Barbara Czarniawska (1997: 46) suggests that portraying the institution as a singular 'person' persists because 'the rules for constructing personal and organizational identities are very much alike', in that both are dependent on a 'continuous process of narration'. But, Czarniawska also notes that,

> *each person who receives the organization's narrative is also a narrator. Each judge and lawyer at the ICTR was constantly 'involved in formulating, editing, applauding, and refusing' (Czarniawska 1997: 46) the narrative disseminated by those tasked with speaking for the ICTR.*

And it is there, in that critical response to the narrative that one can find, if one is willing to look, a commentary on daily conditions, tasks and routines that can contribute to a more balanced assessment of the ways that the Tribunal has been celebrated and condemned.

A legal concern with the 'cult of the text' (Bourdieu 1987: 851); the foregrounding of the powerless; and presenting the organization as 'super-person' are all reasons why the daily conditions under which lawyers and judges operate have been obscured. Transitional justice may seek static texts (judgments and precedents) and it may be those 'gradations of the printed word' that are of interest to legal scholars,

these, but these are a residue of daily, situated encounters. Just as the judgment of a precursor institution, the Nuremberg Tribunal, stated that

> *'Crimes against international law are committed by men, not by abstract entities' (1947: 223),*

so, in turn, there is a need to appreciate that such crimes are tried not be abstract entities but by persons in a specific locale under specific conditions. After all, as one judge told me 'The process is much more challenging than the end result'.

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