The banality of evil

Observations of the International Criminal Tribunal for Rwanda

By Peter Skinner

The International Criminal Tribunal for Rwanda has successfully prosecuted persons responsible for genocide and crimes against humanity, committed between April and July 1994. In 2004 Peter Skinner visited Arusha, a city in northern Tanzania, where the ICTR sits. He was fortunate enough to observe a trial in progress and to meet some of the tribunal's personnel. In this article, he tells how, from the vantage point of the public gallery, he observed the 'banality of evil' – 'men in suits' who stand accused of committing unspeakable atrocities.

The International Criminal Tribunal for Rwanda was established in late 1994 as a result of a decision of the United Nations to investigate and bring to trial the alleged instigators of the massacres that took place in Rwanda from April to July 1994.

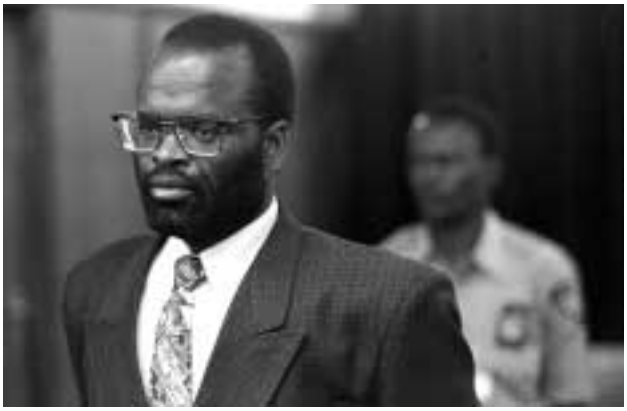
Rwanda has a tragic history of conflict between the Hutu majority and the Tutsi minority, going back many decades before 1994. The killings began following the death of the former president, Juvénal Habyarimana, when his aircraft crashed in suspicious circumstances near Kigali airport, on 6 April 1994.

The killings had obviously been planned for some time. A United Nations report concluded that 500,000 people were killed, but this figure may be conservative. A different estimate is reached by deducting the confirmed number of Tutsi survivors from the 1991 census, with statistically valid adjustments. The estimated death toll using this calculation is 800,000 - 850,000 Tutsis, as well as 10,000 - 30,000 Hutu. In other words, the Tutsi population was reduced from approximately 930,000 to not more than 130,000 in the space of 100 days.[1] It is astonishing that such carnage could be inflicted by such crude weapons as machetes.

Although the current government of Rwanda eventually restored order on 18 July 1994 and immediately began using the domestic justice system to bring to trial many of the perpetrators of the massacres, rapes and other crimes, there were too many persons involved to prosecute them all individually. The killings could not have been so thorough, with approximately 10 per cent of the population perishing, without the active participation of much of the other 90 per cent of Rwandans. In any event, the nature of the crimes committed required something more.

Much has been written and otherwise documented about these dark 100 days of human history[2], and this will continue for some time yet. A recent movie *Hotel Rwanda* dramatises established facts. The horrors committed were documented thoroughly in a number of reports commissioned by the United Nations Security Council in 1994. They contain thousands of pages recording the testimonies of survivors and helpless onlookers who witnessed the killings and other crimes, and their scale and brutality. One commentator, John Reader, wrote: 'Page after page, the reports are numbing to the point of disbelief. Inhuman. How could people do these terrible things?'[3]

To speak of these events, people are compelled to use terms such as 'evil', and to invoke the devil. General Romeo Dallaire, the Canadian commander of the small force of 200 UN troops, who was ordered not to interfere with the killings, has said that he was



Jean Kambanda, 42, appearing before the International Criminal Tribunal for Rwanda Thursday 3 September 1998. Kambanda earlier pleaded guilty of 6 counts of genocide, accessory, complicity and incitation to genocide. Kambanda was prime minister of Rwanda during the 1994 genocide.
Photo: AP Photo / Jean-Marc Bouju

an atheist prior to his mission to Rwanda. He was quoted worldwide upon his return as saying: 'I know now that God exists, because I met the devil'.

Alexandra Richards QC of the Victorian Bar has written a fascinating article about her time working as an investigator with the tribunal in Arusha.[4] She quotes General Dallaire, and adds: 'I had to grapple with scenes and knowledge of evil, which I had not previously considered man or woman capable of.' She also explains some of the background to the massacres, and how the United Nations and the rest of the world stood by while the holocaust happened, even though there had been clear warning well in advance that it was about to commence.

Nonetheless, when the slaughter subsided, it was apparent from the scale, speed and ferocity of the atrocities that there had clearly been much organization and planning involved. It was the will of the members of the United Nations that led to the establishment of the International Criminal Tribunal for Rwanda to prosecute the ringleaders – on behalf of the whole of humanity, not just the state of Rwanda – for what were obviously crimes against humanity.

The tribunal was established by UN Security Council Resolution 955 of 8 November 1994, for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda, or committed by Rwandan citizens in the territory of neighbouring states, in the period between 1 January 1994 and 31 December 2004.

The definition of the international crime of genocide is laid down in the Genocide Convention of 1948, and broadly, requires proof that the acts of killing having been committed with 'intent to destroy, in whole or in part, a national ethnic, racial or religious group'.[5] The other crimes charged and tried in the tribunal are 'crimes against humanity', defined as murder, rape and other inhumane or violent acts 'when committed as part of a widespread or systematic attack against any civilian population on national, ethnic, racial or religious grounds'.[6]

The tribunal was voted a generous budget by the UN, to enable it to conduct the necessary investigations in Rwanda, and surrounding countries where many of the perpetrators and victims had fled and to apprehend and bring the alleged offenders to trial. There was provision for funding not only the prosecution legal teams but the defence lawyers as well, if the defendants were apparently indigent (as most claim they are), and for the costs of the lengthy incarcerations of any persons convicted.[7]

The investigative arm of the tribunal is based in Kigali, but it was decided that the trials themselves would be conducted nearby, in the Tanzanian town of Arusha. That town had the advantage of being accessible from Rwanda, yet removed from that country's turbulent domestic politics. This is important in a part of the world where there are no railways to speak of, and such roads that do exist are frequently impassable. Even air travel into Rwanda is hazardous, due to the deep, narrow valleys and mountainous terrain. By contrast, several decades as a centre for safari tourism in the vicinity of Arusha had brought with it infrastructure of a standard higher than is usual in Africa. The town is the gateway to the famous wildlife reserves of northern Tanzania; the Ngorogoro Crater, Lake Manyara and the Serengeti Plain. There was even a supply of large, under-utilised Tanzanian Government buildings left over from the central-planning policies of Julius Nyerere.

The final advantage for Arusha was historical symmetry. Negotiations between President Habyarimana's government and the Rwandese Patriotic Front ('RPF') to resolve the armed conflict in Rwanda, which had been going since October 1990, led to the signing of treaties known as the Arusha Accords, in August 1993. Many say that it was the concessions granted by Habyarimana to the RPF in those agreements that led to his apparent assassination the following year and the awful events that then ensued.

My arrival in Arusha

I was accompanying my daughter Georgina, and a group of students and teachers from New England Girls' School, Armidale. The main purpose of their trip was to visit a school for impoverished children, which was started in a village outside Arusha just over two years before by Gemma Sisia, a former teacher at NEGS.

I was able to organise a semi-official visit to the tribunal, courtesy of a letter of introduction, kindly provided by Harrison SC in his capacity as president of the Australian Bar Association.

To some extent, Arusha fits the description of African cities, penned recently by the travel writer Paul Theroux:

> 'even at best, African cities seemed to me miserable, improvised ant-hills ... a sprawl of shanty towns and poor markets, idle people and lurkers, an appalling vastness and a look of desperate improvisation. [An African city] is in no sense a metropolis but ... a gigantic and unsustainable village.'[8]

Spread everywhere over the fields surrounding the old town limits of Arusha were one-room huts made out of a mixture of mud and cow dung daubed on rough wooden slats, with tin or thatched rooves with no guttering, in groups of ten or so around a shared well and with the surrounding bush for ablutions. Individual clusters are connected by dirt roads and interspersed with desultory open air markets.

I was told that the population of Arusha is now approximately one million people, having grown to that size from a population of approximately 250,000 in only the few years that the tribunal has operated there, since 1995. Clearly this extraordinary growth is largely as a result of the multiplier effect of the money that the UN has poured into the establishment and running of the tribunal, which I was told had a budget for 2004 of some US$70 million. I was told that the multiplier effect was deliberate – it had been part of the reason why the UN had decided to establish the tribunal in Arusha, rather than say in Geneva, or the Hague, or somewhere in South Africa.

Arusha's extravagant growth has strained the infrastructure beyond its capacity. Except for a few tarred kilometres around the town centre[9], where the ICTR and other government buildings were located, and a few highways out of the city to the safari destinations or the neighbouring countries, the roads were dirt, and full of potholes in which you could hide a refrigerator. Naturally, four wheel drive vehicles are the main form of transport, and they require a constant supply of replacement axles, suspension systems, drive shafts, wheels and tyres to keep them running.

Electricity, which comes from a grid which includes Uganda and Kenya, was feeble and intermittent. There seemed to be a permanent state of brown-out for the two weeks that we were in Arusha. The few street lights, mostly confined to the town centre, were very dim. At the school we had to use kerosene lamps after nightfall to supplement the dim electric lights. Travelling around Arusha after nightfall there were small campfires everywhere. On the one night that I was in Dar Es

Salaam, later in the trip, there were no street lights at all in the city centre. To a traveller, this lack of power and lighting at night is a practical demonstration of the difference between developed and developing nations. Dar Es Salaam is a huge city, rivalling Sydney in size, and it was quite disconcerting to be in its dark central business district.

Tanzania contains the southern part of the fertile Rift Valley, which is not too far from Arusha, and the people I saw seemed well fed. But it is a very poor country, like all of sub-Saharan Africa, with the exception of South Africa. There are few natural resources or products that the rest of the world wants, or cannot produce cheaper itself. Unemployment is high, and the economy is unsophisticated, and largely cash based. The taxation base is almost completely reliant on duties and tariffs levied at unavoidable catchment points, such as the border. World economic organisations and informed commentators agree that corruption is endemic in the public sector, and I was informed that public services are essentially provided upon a pay-as-you go basis, and that public servants are used to foraging on their own account to supplement their meagre incomes.

The general mass of people in the crowds in the endless street markets are brightly attired in synthetic materials emblazoned with slogans – the usual East Los Angeles gear, which apparently comes off a delivery line commencing with the used clothing bins of the West[10], and could have originated in Australia or Holland just as easily as in East LA. There were however many traditional Masai, still wearing their vivid red, or purple robes, and their distinctive sandals made from strips of rubber cut from old car or motorcycle tyres.

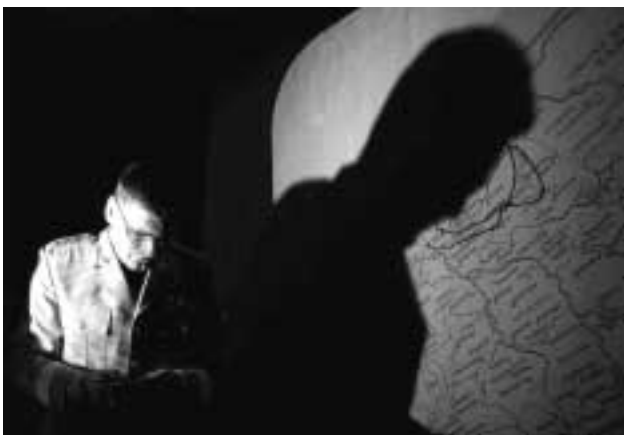
There is no fixed-line telephone system to speak of. As well as the usual difficulties in cabling for long distances in poor countries, Tanzania has unique hazards for overhead wires. Elephants don't like them at all, apparently, but do enjoy rubbing their tusks on the poles. However, like many less developed countries, modern telecommunications, using internet and satellite technology, has simply leapfrogged over the lack of cables and land line infrastructure, with the introduction of quite a good mobile telephone network.

This development was very much accelerated, I was told, as a result of the UN input into the economy. The tribunal required a workable communications system as quickly as possible. The UN official who had been in charge of setting up and running the tribunal in Arusha, from 1995, told me that when he first arrived, he worked out of one room in the local hotel and for the many international calls he had to make he had to use two operator-connected land line telephones. Quickly, satellite dishes were installed and investment was also made into the wireless infrastructure that the new influx of international workers needed.

There has been a quick pick-up of these new services by the locals as well. When we visited a traditional Masai village on the way back from safari, an impressive warrior came out to greet us, fully kitted out in robes, assegai and short dagger. After introductions, he produced a Nokia and asked whether he could charge it in our vehicle while he showed us around.

Crime is rampant in Arusha. In a country where a skilled tradesman in the building industry earns US$2 a day, petty theft abounds. A taxi I was in ran out of petrol, but the cheerful driver immediately leapt out and began filling the tank with a jerry can that he kept in the boot. When I enquired why he stored his petrol in that manner rather than in the fuel tank, he replied that it was to minimise his risk of petrol theft to only one jerry can at a time.

More serious incidents are an everyday occurrence also. On a trip to the local food market for daily supplies for the girls back at the school, I witnessed a commotion as a crowd chased a youth, 13 or so by the look of him, who evidently had moments before perpetrated a snatch-and grab. My driver hastily insisted that we get out of there as fast as we could, which we did as the crowd caught the boy and the commotion increased and the dust rose. I heard the next day that the boy was kicked to death, there and then.



Casting his shadow over a projected map of Rwanda, the former commander of the United Nation force in Rwanda during the country's 1994 genocide, Canadian Gen. Romeo Dallaire, returns to his seat on the witness stand at the International Criminal Tribunal for Rwanda, in Arusha, Tanzania, Wednesday, February 25, 1998. Photo: AP Photo / Brennan Linsley / AAP Image

I was told that such events are not uncommon, and this was confirmed when a few days later I read an article in the national newspaper that the government was starting a publicity campaign to try and convince Tanzanians to not commit such acts of mob justice, but to rely more on the police.

As for the police, later that week we had to prevent the girls going to the Post Office to send their postcards, when it was reported back by an earlier visitor that the bullet-riddled body of a bank robber had been propped in the foyer. Apparently, this was a part of a 'Police Targeting Bank Robbers' campaign, Tanzanian style. The message on a sign around his neck explained that he had been shot by the police during an unsuccessful heist.

I did get the feeling that the rule of law was a little fragile in other ways as well. The school where we stayed was within a compound and armed watchmen with dogs patrolled it at night. Travel after dark was strictly in vehicles only.

AIDS, like everywhere in Africa is at astounding epidemic proportions in Tanzania. I was told by an international health worker that in some areas of East Africa well over 30 per cent of the population is HIV positive. Many of the children at the school were HIV positive, and had lost one or both of their parents. We organised a soccer tournament for the kids one day. They were fabulous players with amazing skills, and tore into each other with enthusiasm. We had to impose a blood bin rule.

The water is poisonous, particularly to someone not used to it. It is full of parasites of one form or another and requires sterilisation by some reliable method – not just whisky. I discovered the latter salient fact after a great evening at the

Greek Club[11] in Arusha, where I went to watch a live telecast of the Euro 2004 soccer final between Portugal and Greece. Shortly after arriving back at the school it was brought home to me most powerfully that I should have cross-examined the bar-tender in greater detail as to the provenance of the ice cubes he put in my drink.

Malaria is so rife it is like a public servant getting a cold in the Canberra winter. Three of the girls and one of the teachers in our thirteen person group contracted it. This was despite the fullest medical precautions being taken on this very well planned and run school trip. It was a mild form thankfully, but still extremely debilitating for several days.

Despite all these difficulties, the infrastructure of and around Arusha is improving, the economy is expanding, Gemma's school is thriving[12], and the International Criminal Tribunal for Rwanda has successfully investigated, arrested and conducted criminal trials of persons charged with the international crimes of committing genocide or crimes against humanity.

Visiting the tribunal

When I visited, the tribunal had secured the arrest of 61 individuals accused of the genocide or crimes against humanity. Some nine trials, most of them of several accused at a time, had been completed, including through the appellate process. One accused was acquitted. Six convicted persons were serving lengthy sentences in Mali, including Jean Kambanda, the prime minister of Rwanda at the time of the atrocities, who is the first head of government convicted of such crimes. Twenty-two detainees were on trial, and the remainder were in custody awaiting trial. As well as the trials of the ringleaders of the actual massacres, both civilian and military, one of the most important trials running was the 'media' trial, where the accused were running a radio station and broadcasting messages of hate and invocations to killing.

The tribunal has developed a jurisprudence that will serve other international criminal tribunals and, it is hoped, other domestic courts all over the world. The co-operation of not only the neighbouring African countries but also of the wider international community has been substantial in the daunting tasks of investigation, the arrest and detention of suspects, the travel of witnesses to the trials in Arusha, and the provision of experienced prosecutors and defence lawyers and of judges at trial and appellate level

The well known phrase '*the banality of evil*'[13] was brought home to me in Arusha as I watched one trial. Through the glass separating the body of the court from the public gallery I saw men in suits, not devils. But the facts and the statistics speak for themselves, and although a revisionist of the likes of David Irving may in years to come seek to dispute them, the historical record and the body of jurisprudence created by the tribunal, and the will in the international community to extend the rule of law into even the most inaccessible and intractable places on the planet, will not go away.

After a morning in the tribunal, talking to some of its personnel and observing some of the trials, I would return to the little school founded by Gemma and her now registered charity, the East Africa Fund, the motto of which is 'Fighting poverty through education'. I would meet my daughter and her friends, with their wide eyed optimism about the world and their energy to do something worthwhile, and I would roll my sleeves up and go back to painting a classroom. Gemma Sisia and people like her will change Africa, and change the world. And I agree with what Nicole Kidman's character in *The Interpreter* says at the end of that movie – the United Nations, for all its limitations, is still the best hope for humanity.

1 See *The Rwanda Crisis 1959-1994. History of a Genocide*, Gerard Prunier, London, Hurst, 1995, cited in *Africa – A Biography of a Continent*, John Reader, Vintage Books, New York, 1999, at p 676.

2 See e.g. Prunier, above; or *We Wish to inform you that tomorrow we will be killed with our families – Stories from Rwanda*, by Philip Gourevitch, Picador, 1998.

3 Reader, ibid, p. 677.

4 See the Spring edition of the *Victorian Bar News*, at 33.

5 *Basic Documents* for the International Criminal Tribunal for Rwanda, No 1, August 1999, p. 12.

6 Ibid, p. 14.

7 The United Nations cannot support capital punishment within the terms of its Charter. Also, although it could, and did in the case of Rwanda, set up a temporary police force to investigate and bring offenders to trial, and a judiciary to try them, it did not wish to create an international prison system. Thus, persons convicted by the ICTR will serve their terms of imprisonment in neighbouring countries agreeing to participate in that regard.

8 *Dark Star Safari*, Penguin Books 2003, which is about his trip through Eastern Africa from Cairo to Capetown.

9 such as it was – think the main street of Gloucester, or Booroowa, or Condoblin, or Dungog, or any number of very small Australian towns.

10 Theroux writes about this as well.

11 Like much of the city, it had certainly seen better times. Apparently there was once a large and thriving Greek community in Arusha, constituting much of the business class, but the collapse of the economy as a result of the incompetent central planning of the Nyerere government led to the community's disintegration and diaspora.

12 There is a queue of eager and bright students and the school is quickly expanding in numbers and size. It is all fully funded by donations, including the sponsorship of the children, mostly from Australians in the Armidale area. Anyone interested to help with donations or even hands-on volunteering (I painted a class-room when I was over there) should see the recent documentary on Gemma and her school, broadcast on ABC Story, 15 August 2005.

13 Which Hannah Arendt coined in 1963 when reporting on the trial of Adolf Eichmann in Jerusalem.