

DRC and ICC: New Developments

By Christopher C. Black and Alexander Mezyaey

On 17th August 2012 counsel (1) for several Rwandan and Congolese (DRC) political and civil organizations, (2) delivered a complaint to the Prosecutor of the ICC concerning crimes allegedly committed by the current President of Rwanda Paul Kagame which are within the jurisdiction of the ICC. (3)

The complaint filed included UN reports dating back to 1994 concerning Kagame's mass atrocities in Rwanda and Congo. These reports, two of which were suppressed by the UN and the prosecutors of the ICTR (4), are just a small sample of the extensive and overwhelming evidence which exists in the possession of the ICTR prosecutors that establish that serious crimes against humanity and war crimes were committed by Kagame and his Ugandan and western allies in Rwanda and Congo since 1990. The reports filed include the report of Robert Gersony of USAID who was tasked by the UNHCR in later 1994 with determining the conditions for the return of Hutu refugees who had fled the RPF forces into then Zaire that year. In his October 1994 report, Gersony states that the RPF forces committed systematic and sustained massacres of Hutus civilians beginning in April 1994 and that they were continuing. The UNHCR marked this report confidential and it was suppressed. However, it was placed in the hands of the prosecutor at the ICTR but the various prosecutors there have also kept it suppressed and even denied its existence.

The second report is that of Michael Hourigan, the Australian lawyer and Lead Investigator for Louise Arbour when she was Prosecutor. She tasked him with the mission of determining who had assassinated the Hutu presidents of Rwanda and Burundi and the Rwandan Army chief of staff on April 6, 1994 when their plane was shot down over Kigali. She did so thinking those responsible were Hutu «extremists». However, Hourigan learned, and had the documentary evidence and testimony to prove it, that the Zero Network of the RPF shot down the plane on Kagame's orders, with the help of a foreign power. When Hourigan presented this evidence to Arbour she ordered the investigation terminated and the file handed over to her. No further action has been taken on that evidence since. There is evidence that she stopped the investigation on the orders of the American government. This had three consequences; it hid the truth of who was responsible for the events in Rwanda in 1994 from the world, it made Louise Arbour an accessory to a mass murder, and at the same time, it established her value as a cooperative asset that the USA could use in the aggression against Yugoslavia in 1999 when she was told by Bill Clinton to prevent negotiations and prolong the war by charging President Milosevic with false accusations of crimes against humanity.

The third report included in the complaint is the Mapping Report of 2010 to the UN Secretary General that details the large-scale atrocities that were committed by the RPF and the Ugandans and the Congolese in Rwanda and Zaire (DRC) from 1993 to 2003. The final UN report is the Addendum report of the Special Committee of the Security Council (Group of Experts) on the situation in the Congo of June 2012.

These UN reports are supported by the evidence held by the Prosecutors at the ICTR and by the evidence presented by the defence in several of the trials as to what actually transpired in Rwanda from 1990 to 1994. This evidence is completely at odds with the accepted western version but has been studiously ignored by both the western media and academics and many so-called experts.

The UN Report giving the ICC jurisdiction over Kagame is known as the Addendum. It is a supplement to a letter to the Secretary General of the UN submitted by the Group of Experts. Once again, it appears there were efforts to suppress this report as the United States tried to prevent its release. These documents present findings that provide a reasonable basis to conclude that crimes within the jurisdiction of the International Criminal Court have been and are being committed by Paul Kagame and others under his command and control and which could not escape the attention of an ICC Prosecutor who was dedicated to eliminating impunity for war crimes. The documented

evidence establishes that the Rwandan authorities, led by President Paul Kagame, and including, among others, his minister of defence, General James Kaberebe, General Charles Kayonga, the Rwandan Defence Forces Chief of Staff, and his Permanent Secretary of the Ministry of Defence, General Jack Nziza, committed serious international crimes in the DRC by supporting the M23 «rebel» group.

Specifically the Addendum provides reliable and documented evidence that these officers are providing direct military assistance to the M23 rebellion inside the DRC including the use of children under the age of 18 as M23 combatants (5), and forced former enemy combatants of the Democratic Forces For the Liberation of Rwanda (FDLR) to serve with units sent by the Rwanda Defence Forces to reinforce M23 (6). The criminal responsibility of the President Paul Kagame and his subordinates for these crimes is based on Article 28 of the Rome Statute of the ICC concerning superior responsibility.

The Mapping Report of 2010, which covers the period 1993 to 2003, provides evidence that the crimes committed by Kagame and his allies amounting to genocide against the Hutu people in Rwanda spread into the territory of the Democratic Republic of the Congo, beginning in 1996 through to 2003, where the armed forces of Rwanda, Uganda and of the DRC committed genocide against the Hutu ethnic group in the DRC. One Hutu witness at the ICTR who fled 3,000 kilometers through the Congo forest to escape this attempted extermination called it the «genocide with no name and further testified, along with other witnesses, that they observed UN and US spotter planes over them before each RPF attack». (7) During the entire period of time in which these crimes were committed Paul Kagame had command responsibility over the Rwandan armed forces. (8)

The Complainants in the action of August 17 represent various civil society groups in Rwanda and Congo and include former senior members of the RPF government in Rwanda. This action is perhaps the first of its kind by Hutus and Tutsis acting in cooperation against the Kagame regime and provides a basis for optimism that Hutus and Tutsis can come to an accord and can lead Rwanda and its people forward together. They have requested the Prosecutor to commence an investigation with a view to laying charges against Paul Kagame and any other person or persons complicit in the crimes set out in the Addendum and they have relied on the stated intention of the ICC, set out in its preamble, that no one has impunity for crimes committed within the jurisdiction of the ICC.

The Complaint also notes that there is a vast amount of evidence against Kagame in the hands of the Prosecutors of the ICTR and that, while neither this evidence nor that of the Gersony, Hourigan or Mapping reports provide the ICC with evidence of crimes within its jurisdiction, they do provide evidence that the crimes of Kagame are of a continuing and grave nature and reveal a systematic pattern and intention and add credence to the Addendum Report. The Complainants also note that this protection of Kagame and his allies from prosecution at the ICTR has had the direct consequence of giving him a sense of impunity and has encouraged him to commit more crimes. An example of the evidence in the hands of the ICTR, (the Hourigan Report being another cited above) is the testimony of defence witness Abdul Ruzibiza, a former officer of the RPF, who testified in the Military I trial that the assassination of the Rwanda and Burundi presidents in 1994 was planned and committed by the Rwandan Patriotic Front under command of current President Kagame and that he was a member of the shoot down team. (9) In September of 2010, Ruzibiza died in Norway at the age of 40 under unclear circumstances and amid rumours of threats against him by the CIA.

This is not the first death of witnesses who gave testimony or others who were intent on exposing the crimes of the RPF and Kagame. Witness GAP, a prosecution witness in the Military II trial against General Bizimungu, the Rwandan army chief of staff, and who had recanted his testimony as false and extorted by threats of the RPF regime was recalled in 2009 to the ICTR to explain his recantation. He never reached the courtroom. He arrived in Arusha and was placed in a UN safe house to await his testimony. The day before he was due to testify he disappeared from the UN safe house and has not been seen by anyone since. Protests and a demand for an investigation by defence

counsel about how he could disappear from a UN guarded safe house were ignored.

Seth Sendashonga, the former RPF Minister of Interior, was assassinated by an RPF death squad in Nairobi May 16, 1998, after he announced he was going to testify at the ICTR that the witnesses provided by the RPF to the tribunal were all forced to give false testimony by the RPF government (10). In December 2005, Juvenal Uwilingiyimana, a Hutu, and former Minister of Trade and Commerce, was found floating in a canal in Brussels, naked, with his hands cut off, after disappearing a few weeks earlier. He had been in contact with Steven Rapp and two of his investigators, who were pressuring him to give false testimony for the prosecution at the ICTR, according to a letter he had sent to the President of the ICTR prior to his disappearance. In the letter to the President of the ICTR and to Rapp, he said that Rapp's two Canadian investigators had threatened to kill him and cut his body in pieces unless he cooperated. He refused to do so and refused to meet with them again. Shortly after that letter was sent he was murdered. Again, a demand by defence counsel for the suspension of Rapp and the two Canadian investigators pending an investigation into their possible involvement was ignored.

One of the writers (11), counsel to General Augustin Ndindiliyimana, chief of staff of the gendarmerie of Rwanda in the Military II trial, was himself threatened in July 2008 by a CIA officer working at the ICTR that if he did not watch his step he would be killed. This threat, echoing previous threats by the RPF, was reported to the President of the Tribunal but he was disbelieved. Scottish lawyer Andrew McCartan, Scotland's foremost military lawyer, was killed in October 2003 when his car went off a cliff in Scotland just a few weeks after having told the same writer at a meeting in Toronto that he had tried to confront Bill Clinton about the US role in Rwanda and that he had learned secrets about the US involvement in Rwanda in 1994 and its control of the ICTR. Scottish police could find no cause for the car crash. In her memoirs the former Chief Prosecutor of International Criminal Tribunal for Rwanda, Carla del Ponte, reported that Paul Kagame torpedoed the investigation of crimes committed by RPF and that the US government also put pressure on her to leave Kagame alone and when she refused to sign a document to that effect she was soon replaced. (12) To no one's surprise the new Prosecutor, Hassan Jallow, immediately lost interest in the RPF and Kagame. In 2010, American defence counsel, Peter Erlinder was arrested by the RPF regime the day he arrived in Rwanda to try to defend FDU-Inkingi politician Victoire Ingabire, facing political charges by the regime, because he had merely repeated publicly what the evidence was at the ICTR about RPF crimes. He was only released after extensive intervention by other defence counsel and the reluctant intervention of the US State Department.

The Rwandan and Ugandan invasions of the Democratic Republic of the Congo beginning in 1996 created a severe problem for Africa. Year by year the situation became worse. In 1999 the Democratic Republic of the Congo initiated proceedings against Rwanda in the International Court of Justice. (13) That proceeding was later discontinued because of the Congo's expressed belief in their ability to resolve the matter by negotiation. But in 2002 Congo was forced to institute new proceedings against Rwanda. Because of technical reasons (with very questionable argumentation) (14) the ICJ found no jurisdiction in the case, so the Congolese claims stay unanswered. (15)

The attempts by the NATO powers to indict heads of state for actions committed on the territory of foreign countries, using the UN as their tool, have become more and more frequent but the leaders targeted for this treatment are those who stand in the way of western interests, never those that bend to their interests. We can cite as examples the case against Yugoslav president Slobodan Milosevic for the alleged planning and fuelling of the war crimes in Bosnia, that against Liberian President Charles Taylor for his alleged aiding and abetting crimes committed in Sierra Leone, and finally the case against the vice-president of the DRC J-P.Bemba for the military assistance in CAR.

Kagame is an example of an American supported leader whose crimes go unpunished because he is useful to them and because they are party to his crimes. The Prosecutors of the ICTR have wasted 17 years protecting Kagame from his responsibility for the crimes he and his forces committed in Rwanda in 1994. The consequence has been a continuation of those crimes into the Congo,

drowning the Great Lakes region of Africa in blood. Since the ICTR has refused to act on its responsibilities, it is now up to the ICC to take up the burden and to commence an investigation into the crimes set out in the Addendum report and the crimes committed by Kagame and others who support him since 2003, the date on which the jurisdiction of the ICC begins. The impunity given to Kagame and his allies can only come to an end, and with it the wars in the Great Lakes region, when his crimes and those of the powers that support him are exposed and brought to justice. It is not enough to study the consequences of these wars. It is necessary to understand the reasons and the causes for these wars. The August 17 action at The Hague is an attempt to start the long delayed process of bringing Kagame and his allies to justice. Only when this is achieved can Africans begin to create the conditions for the restoration of peace and the conditions necessary to develop Africa's immense potential. The August 17 action should be supported.

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- (1) Christopher Black
- (2) The United Forces For Democracy in Rwanda (FDU), the Rwanda National Congress (RNC), le Réseau International des Femmes pour la Démocratie et la Paix (RIFDP) – *from Rwanda*; and L'Association Pour la Promotion de la Démocratie et du Développement de la RDC (APRODEC) and Congonova, represent significant elements of the civil society of the Democratic Republic of Congo – *from the DRC*.
- (3) Article 15 (1) of the ICC Statute states that «The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court». And article 53 of the ICC Statute requires the Prosecutor to «initiate an investigation unless he or she determines there is no reasonable basis to proceed...».
- (4) The report of Robert Gersony to the UNHCR of October 1994 and the report of ICTR Lead investigator for Louise Arbour of 1997 to the UN OIOS (Office of Internal Oversight)
- (5) See Addendum (para 19). This action constitutes a war crime under Article 8(b)(xxvi) and 8(e)(vii) of the ICC Statute.
- (6) See Addendum (paras 20-21). This action constitutes a war crime under Article 8(2)(a)(v) of the ICC Statute (that forbids compelling a prisoner of war or other protected person to serve in the forces of a hostile power).
- (7) Transcripts, Military II Trial, ICTR.
- (8) DRC Final Report (the Mapping Report) of June 2010 (made to the Secretary-General of the United Nations by United Nations High Commissioner for Human Rights N.Pillay,). Paras 20-33.
- (9) *Prosecutor v. Bagosora et al.*, transcript of 9 March 2006. See also the book of this witness «Rwanda. L'Histoire Secret». Paris. 2005.
- (10) Prunier, Gerard (2009) *Africa's World War: Congo, the Rwanda Genocide, and the Making of a Continental Catastrophe*, Oxford
- (11) Christopher Black
- (12) C. Del Ponte, *The Hunt. Me and the War Criminals*. 2008, Oxford, Oxford University Press pp 366-367.
- (13) Application instituting proceedings see on the official website of the International Court of Justice on the Internet: <http://www.icj-cij.org/docket/files/117/7071.pdf>. The Livre blanc prepared of the Government of the DRC is available: <http://www.icj-cij.org/docket/files/117/13461.pdf>.
- (14) Two judges expressed their dissenting opinions and eight judges – separate opinions to the judgment.
- (15) *Armed Activities on the Territory of the Congo (New Application: 2002)* (Democratic Republic of the Congo v. Rwanda). ICJ Judgment of 3 February 2006.

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