

ICTR legacy: fragile and confusing

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When former Rwandan MRND leaders Edouard Karemera and Mathieu Ndirumpatse received life sentences in December 2011, the conclusion of 17 years of work at the International Criminal Tribunal for Rwanda (ICTR) was remarkable: there was no plan at the state or party level to exterminate Tutsis prior to the shooting down of former President Habyarimana's plane on 6 April 1994.

By Thierry Cruvellier

"The Prosecution has not proved beyond a reasonable doubt that Karemera and Ndirumpatse, or other leaders, planned the massacre of Tutsis in advance of the assassination of President Habyarimana," judges wrote in the summary of their yet unpublished decision.

The last major judgement It is the last major judgement that an ICTR trial chamber is likely to hand down. And it underlines the fragile and confusing legacy of the court regarding the narrative of the 1994 genocide. To date, 11 former cabinet ministers have been tried (four of whom were acquitted), two are still on trial and two more are at large or dead. In effect, almost the entire government that presided over the genocide has been brought to book. On May 25, when the genocide was almost complete, Karemera became Minister of the Interior, while Ndirumpatse acted as a special envoy for the interim government. They were "inextricably linked with the policies of the Interim Government," judges wrote, meaning they agreed with its decision to mobilise militiamen and civilians to destroy Rwanda's Tutsis. Given how cursory the oral judgement was, it is not yet possible to assess how it may hold up on appeal. But it is enough to wonder if the ICTR's genocide narrative has given as much material to its victims as it has to its deniers. According to prosecutors, Karemera (MRND's vice president) and Ndirumpatse (MRND president) formed, trained, armed, and financed the Interahamwe militia, the youth branch of the party created in 1992 and the leading civilian perpetrators of the Rwandan genocide. The prosecutor also claimed that both men participated in meetings and rallies that fostered the Hutu Power movement and anti-Tutsi extremism. But judges dismissed all those charges.

Short of proof "The Prosecution has not proved beyond a reasonable doubt that the military training of the Interahamwe or the distribution and stockpiling of arms were intended to facilitate the killing of Tutsis," judges wrote. "The Chamber considers it reasonable to infer that Karemera and Ndirumpatse... were merely seeking to protect themselves and their supporters from attacks from other opposition political parties, or the RPF [the Rwandan Patriotic Front, the rebel army that overthrew the government in July 1994]." Similarly, prosecutors failed to prove that Interahamwe rallies

were called for killing Tutsis. "It is reasonable to infer that [the accused] merely held the political rallies to galvanise support for their party and speak out against opposition parties and the RPF," the Chamber said. From one judgement to the next, ICTR judges have tried to establish when Rwandan authorities may have agreed to set the genocidal machine in motion. This particular Chamber decided it was after April 12, contradicting other ICTR judgements. Judges are likely to trigger further outrage among survivors by giving some weight to the accused's theory of a "spontaneous" genocide. "The Chamber acknowledges that the genocide may have started as a spontaneous reaction to the assassination of President Habyarimana, which was fuelled by the belief that the Tutsi-led RPF was responsible, and prior anti-Tutsi propaganda," judges wrote.

Guilty by inference In recent judgements against top military and political leaders, the key word has been "inference." According to judges, no documents explicitly "manifest an agreement to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population." However, there were instructions to arm regional authorities, including with "cutting and thrusting weapons." After the plane was shot down and the massacres began, "the only reasonable inference is that Karemera knew that the civil defence forces were killing innocent Tutsis" with those weapons.

Conviction on what the documents "don't say" "Karemera and Ngirumpatse failed to take necessary and reasonable measures to prevent their subordinates from further killing Tutsis, and to punish them." This is the main line that has increasingly been used as the basis for convicting some of the court's most prominent suspects. A key element in Karemera's conviction is the role the civil defence plays in mobilising civilians to murder Tutsis rather than to fight rebels. But judges admit that the available documents do not show any such plan. The conviction, then, rests on what the documents "don't say," judges found. "The Chamber considers that any individual or organisation which opposed the killings and wished to restore peace to the country, would have stated in obvious and emphatic terms that the mass slaughter of innocent civilians of mostly Tutsi ethnicity must end immediately." The documents issued by the government did not. Therefore, they were an implicit approval of the massacre.