

# IAP: War crimes – whose crime is it?

## Exercise of Domestic Jurisdiction Finnish Experiences

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# The Genocide-case (1994 Rwanda, Prefecture of Butare, Commune of Nyakizu)

- Person B came to Finland from Zambia as a refugee March 2003
- He appealed for asylum on the basis that he, as an educated hutu, had had to flee from Rwanda due to the actions of the tutsi-regime in connection with the time after the genocide

- Asylum was not granted, but the asylum procedure indicated that the name of B appeared in the report "Leave none to tell the story" published by the organisation Human Rights Watch
- Finnish Immigration Services therefore requested the National Bureau of Investigation to do further research

- The initial research by the National Bureau of Investigation resulted in a hit on the list published by the Rwandese authorities 2006 containing names of 93 people suspected of involvement in the genocide in Rwanda
- Subsequently it appeared that the Rwandese authorities had issued an international arrest warrant on B

- B was arrested on the 6<sup>th</sup> of April 2007
- Rwanda requested B to be extradited to Rwanda, the request was received in February 2008
- The request for extradition was rejected with a decision by the Ministry of Justice on the 20<sup>th</sup> of February 2009
- The decision is based on the fact that the Ministry of Justice considers that Rwanda is not able to guarantee B a fair trial
- Due to the decision, the consideration of charges had to be done in Finland ("Extradite or prosecute")

# Jurisdiction

## *Penal Code (20.6.1963/320) chapter 1 section 3 subsection 2:*

- “Regardless of what is stated above in subsection 1, a foreigner may be sentenced according to Finnish law even though the offence the person has committed is not punishable according to the law at the location where the offence has been committed provided that the offence is a war crime, a violation of human rights, a genocide or a conspiracy to commit genocide.”*
- The jurisdiction in Finland is in other words based on the principle of universality.*

# The applicable law

## ***Penal Code (1974/987) chapter 13 section 4:***

- “A person who for the purpose of entirely or partially destroying a race, a national, ethnic or religious group, kills members of the group or inflicts grievous bodily or mental damage to the members of the group, degrades the living conditions of the group, takes measures to prevent procreation among the group or forcibly moves children from one group to another, shall be sentenced for genocide to imprisonment for at least four years or for life.***
- An attempt is punishable.***
- Two people or more, who have agreed to commit a genocide, shall be sentenced for conspiracy to commit genocide to imprisonment.”***

- The present penal provision (11.4.2008/212) reflects the content of the Rome Statute (or the International Criminal Court Statute)
- This provision does, however, not displace the provision in force at the time of the suspected offence, hence it will not lead to a more lenient punishment (the principle of leniency of the law)

# Prosecution

I prosecuted the case in late May 2009.

I demanded that B be punished for acts of genocide that took place in 1994 in Southern Rwanda.

Alternative prosecution: 15 murders (in case the court of law does not accept my claims of genocide)



# Trial

The trial began with two preliminary sessions in June 2009 in Finland

MLA requests to Rwanda authorities

The main hearing began on 1st September 2009 in Finland; some witnesses were heard

In mid-September the court (+ prosecutors, two defence lawyers, interpreters, technical experts) moved to Rwanda to hear the witnesses

The defendant B participated in the trial from a Finnish prison via video link, assisted by one defence attorney

Before hearing the witnesses, the court arranged an inspection on the scene of the crime

4 interpreters were employed

Almost 40 prosecution witnesses were heard, as well as two witnesses by the defence

Hearing took 5 weeks.

The court continued its work in Finland up to February 2010; more witnesses were heard

In the end of February the court moved to Tanzania (Dar es Salaam), where 20 defence witnesses will be heard

# Claims of the defence

The charge is disputed in its entirety.

1. It is a case of a “manhunt” by the ruling Tutsi administration / a conspiracy against B
2. Wealthy and educated Hutus (such as B) were forced to flee Rwanda in summer 1994 because the Tutsis who came to power envied the elite and held them all responsible for genocide

3. The current administration has systematically issued arrest warrants about members of the elite, Hutus who have escaped abroad, even if these had nothing to do with the genocide.
4. All the Rwandan witnesses of the prosecution have been manipulated by the current administration, for which reason their statements should not have been heard or at least used in the court's decision making.

5. Many of the prosecution witnesses have served time or are still in prison. They are all Hutus who have parties to the genocide in some way. They have been tortured while under arrest or in prison under orders of the Tutsi administration in the late 1990s and still in the first half of the 2000s. During this time they have made many false confessions in order to survive or to gain certain advantages for themselves. The prosecution witnesses have named B under these conditions.

6. The prosecutor's Tutsi witnesses in turn have named B under false pretences, as it is easy to name him as the culprit when he is abroad. Furthermore, the defence claims that the victim support organisation IBUKA manipulated Tutsis for the same reasons. The defence also claims that the current possessors of the property of B in Rwanda are afraid of losing this property if B is not convicted and then returns to Rwanda.
7. The defence also claims that several of the prosecutor's witnesses belong to the same local clan. Members of the clan are forced to relate events in the same way.

8. A witness who dares to speak in defence of B would face big trouble with the current Rwandan administration.
9. For the above-mentioned reasons, the witnesses named by the defence cannot speak freely about B in Rwanda. If a witness does so, however, Rwandan officials would immediately announce an international arrest warrant about the person, or the witness and his or her family would be disturbed. For the above-mentioned reasons, the defence witnesses should have been summoned to be heard by a court of law outside of Rwanda.

# General problems

- Understanding the history of Rwanda and the context of genocide; comprehending the social instability following the genocide
- Finding reliable interpreters
- Finding reliable experts
- Evidence about the involvement of the suspect in the genocide should be as close to the event as possible (e.g. reliable investigations immediately after the genocide; the risks connected with information gathered from prisons or cacaca trials should be noted)

- Understanding the culture: the concept of truth (a person may believe that he or she should tell things in a certain way – as the persons asking the questions wants to hear), the concept of personal experience and rumour (rumour begins to be held as the truth)
- The lack of evidence in writing; if more was available, it would support well personal evidence
- Information that is requested and delivered must be obtained in an absolutely reliable way. Information obtained from Rwanda will in any case be called into question during the trial
- Rwandan officials lack the resources to carry out major investigations: our own personnel must be provided to support our Rwandan counterparts

# International co-operation; what can we do together?

- When we receive tips about a genocide suspect, we should find out immediately whether another country has information about the same individual
- Establishment of an international investigation team
- Establishment of a “field office” in Rwanda
- Pools of witnesses and experts
- Survey of reliable NGOs and utilization of information that they possess

- Information about sentences (other than ICTR sentences), claims made in trials (cf. claims that Rwandan officials practiced torture and manipulation and the current administration's conspiracy theories about the genocide)
- Utilization of ICTR archives and transfer of expertise of former prosecutors and judges to colleagues outside the ICTR
- Utilization of Eurojust and networks (EU, IAP, Nordic countries)
- Organisation of seminar on the Rwandan genocide and network with colleagues involved in these criminal issues

# Nordiska krigsbrottskommissionernas nyhetsbrev

Datum:

NR:

## Aktuella ärenden

Ärendenamn	Beskrivning	Övrig information	År/tidsperiod	Land/område	Kontaktperson
"Daylight"	Folkmord i Ruanda			Butare -prefekturen	Raija Toiviainen

## Avslutade ärenden

Ärendenamn	Beskrivning	Övrig information	År/tidsperiod	Land/område	Kontaktperson
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## Kontakter

Nya kontakter som andra kan ha nytta av att känna till

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## Utbildningar

Kurser eller andra utbildningar som kan vara av intresse för andra.

Namn	Beskrivning	Kontakt information
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## Personal

Förändringar i personalsammansättningen. Kontaktuppgifter till ny personal.

## Övrigt