

Book Review: Nicholas A. Jones, *The Courts of Genocide: Politics and the Rule of Law in Rwanda and Arusha*

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Abstract.

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Book Review

Nicholas A. Jones, *The Courts of Genocide: Politics and the Rule of Law in Rwanda and Arusha*. New York: Routledge, 2010. Pp. 229, cloth. \$130.00 US.

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Countries emerging from the dark night of conflict and oppression into the light of a new dawn face an almost limitless number of seemingly intractable problems. Think of Cambodia after the Khmer, South Africa after apartheid, Rwanda after the genocide. The economy, unemployment, infrastructure, governance, public service, schooling, health care, reconciliation, justice, trauma—all need to be dealt with, and all simultaneously. Yet over the last two decades, of all these daunting challenges it has been issues related to post-conflict justice and reconciliation that have received most public attention. An entire industry of professionals and institutions who claim to be expert in guiding such societies in transition to new levels of justice and harmonious living has grown up in response to this. In tandem, a related academic discipline of scholars studying these experiments and evaluating them has sprung up.

We need to hope these specialists can deliver on their promises, for issues related to justice are extraordinarily complex, far more than is often assumed. The subject includes its own multitude of sub-concepts, many of them entirely contradictory of and conflicting with others. For some time after South Africa escaped from apartheid, its Truth and Reconciliation Commission was the best-known example of a dramatic attempt to deal with the issue. The very title implied that the truth about apartheid would lead to reconciliation between white and black South Africans. This reflected the idealistic notion of restorative as opposed to retributive justice, a concept embraced by Bishop Tutu but not the mothers of Africans who discovered how the apartheid intelligence services had tortured and murdered their children. The truth can make you bitter.

In recent years, among those who pursue the elusive goal of transitional justice, South Africa has been replaced as the center of attention by Rwanda. This has reflected both the number of Rwandan institutions involved in the apparent search for post-genocide justice and their inherent fascination—the regular Rwandan justice system, which had been almost entirely destroyed during the genocide; the International Criminal Tribunal for Rwanda (ICTR) set up in Arusha, Tanzania, by a guilt-ridden Security Council; and the *gacaca* courts, a unique institution developed in Rwanda by Rwandans to deal with the vast number of accused who could not be accommodated at either of the other two judicial levels.

Naturally, scholars have been racing to observe and study this remarkable phenomenon for several years already, and now that *gacaca* is over and the ICTR is winding down, we can expect the number of books and articles to explode as a result. Some of these contributions have been welcome and enlightening; for example, Timothy Longman's essay in the latest *Peace Review* and Clark and Kaufman's recent collection of edited essays, *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*. (See my review in *Pambazuka*

News.) That Longman, Clark, and Kaufman reach substantially different conclusions about the *gacaca* process merely underlines the complexity of the issues involved and the need for rigorous scholarship at all times.

Nicholas Jones's book, which is the subject of this review, has a daunting title, *The Courts of Genocide: Politics and the Rule of Law in Rwanda and Arusha*, and is yet another contribution to the subject. But it is not, I fear, up to the standards the subject demands.

There are several problems. First, Jones is a very awkward writer, apparently unaware at times of common syntax, grammar, and word meaning. For example, he writes of "a part of Rwanda history that people do not contend," by which he means that experts don't dispute this aspect of Rwandan history. He states that the "racist underpinnings of the Hutu social revolution became the moniker for the future ethnic divide," although 'moniker' is simply an informal word for 'name'. He quotes another author, making the statement "justice becomes the causality of a political calculation," when it is clear that the original author had written "casualty." Plus we are told, "The capacity for achieving reconciliation will be argued to be associated with the type of justice . . ." There's really no excuse for such clumsiness and so many errors of literacy.

There are also too many errors of fact, some of them perhaps of only minor consequence. Even so, can we not expect that the names of his sources be spelled correctly? I was not thrilled to find my own name misspelled as "Kaplan" in several places, even though it was spelled correctly elsewhere. Scott Straus' name is also frequently misspelled. It suggests a certain sloppiness about the work in general, and calls the author's credibility into question.

More consequential errors include the following examples. The RPF did not "force the Hutu army and militias west, past the French lines of Operation Turquoise and into the DRC." The French army, on its own initiative, allowed the *génocidaires* to escape into Congo, setting the stage for the appalling tragedy that has befallen the eastern part of that country in the last fifteen years. The French establishment must not be let off the hook by the assertion that the RPF was responsible for France's brazen negligence and their complicity with genocidal killers.

Jones seems confused, and certainly confuses us about the number of Hutu who participated in the genocide. On page 28 he says "recent estimates . . . suggest that projections place the number between 760,000 and one million," and cites his interview with J.B. Mutangana. But he fails to explain who J.B. Mutangana is. (In fact, there is no appendix listing his interviewees and giving their backgrounds, a serious omission in this kind of study.) Then in footnote 22 on page 103, he introduces the "Scott Strauss" (*sic*) estimate of 200,000 perpetrators. But he never reconciles these impossibly different estimates, even though the number of alleged perpetrators directly affected the functioning of the justice system.

On page 39 he refers to a person with the last name of "Morgenthau," who is never identified and is not named in the index. A paragraph later he refers to another individual called "Stimson" who is in the index but about whom not a word of description is offered. Who are these people, and what is their expertise with relation to Rwandan history?

On page 67 he refers to the massacres of the 1960s as "early trial runs of genocide." This is a very problematic assertion and can't be stated in such an absolute way. But it's possible he is simply reporting what a source said; this is a problem we run into on several important occasions in the book, where it's not clear whether Jones is agreeing with a source or merely reporting an individual's statement. He

does this again on the same page, where he cites Kigabo as saying that “the Catholic Church was not strong enough to prevent these people [Hutu] from going to kill those people [Tutsi] because basically they [Church and state] had become one body.” Does Jones agree with this statement? And who is Kigabo? This is yet another interviewee about whom we know absolutely nothing. As to the statement, it lets the Catholic Church off far too easily. The church had whatever agency it chose to exercise, even if it was the virtually official state church of Rwanda, and those within the hierarchy might even have been able to stop the genocide in its tracks. Not only did the Church never come close to trying, it at least implicitly condoned the killings, along with offering critical legitimacy to the government.

Some of these errors are related to the central issues of the Rwandan genocide, which means they undermine the reader’s confidence in Jones’s grasp of the subject. One of the worst examples is his description of the tension caused by the “lack of concordance in the sentencing practices of the ICTR and the Rwandan courts.” Jones basically states that the instigators and leaders of the genocide convicted in Arusha would be sentenced to life imprisonment while those who played smaller, more localized roles “are liable to receive the death penalty from Rwandan courts.” This is an unacceptably distorted statement.

The post-genocide government hasn’t executed anyone since 1998, when twenty-two convicted *génocidaires* were hanged in public. The hangings resulted in outrage from the international public, even though, nations such as the United States and China still perform executions for less far-reaching and society-damaging crimes than what were committed in Rwanda. The RPF government claims to disdain international opinion, having been betrayed by virtually the entire world during the genocide. Yet it doesn’t always ignore its critics. By the time I got to Rwanda in 1999, it was already believed that the executions had caused the government too much unnecessary damage. At that time, it was widely expected that while criminals might still be sentenced to death, they were unlikely to be hanged. As each year passed and no death sentences were carried out, it became increasingly apparent that none ever would be. Rwanda was abolitionist in practice.

This did not stop the ICTR or foreign governments from refusing to send accused *génocidaires* to Rwanda for trial on the grounds that the death penalty was still in existence. In 2007, Rwanda formally abolished what it had informally stopped practicing years before. (Jones notes this in an entirely different part of the book, referring to “the recent decision” to abolish the death penalty.) Uganda and DRC have still not eliminated the death penalty. Kenya has abolished it in practice, but not legally. Fifty-eight countries around the world still retain the death sentence. Yet the Kagame government can rightly argue that their practice of a decade ago receives greater criticism today than those countries that still retain the death penalty. And Jones’s book will not assist in alleviating that sentiment.

Jones’s discussion of the ICTR adds little to what others have said long ago, including my own report nine years ago for the Organization of African Unity’s international panel on the genocide. The tribunal cost too much, and should have prosecuted more defendants than it did, but it has produced highly valuable, path-breaking jurisprudence in the area of genocide on which the International Criminal Court can build. It should also be noted that for a book dated 2010, Jones’s data on the number of convictions, acquittals, and appeals are already outdated.

On the *gacaca* trials, Jones has little to offer. He did most of his field research just as the system was being fully launched. As a result, he was only able to watch the preliminary trials. One wonders why he didn’t go back and see how the actual

system worked in practice before he offered the world his observations. In fact, in many ways the book already seems predominately out of date. Most of his written sources are several years old. It is clear that the bulk of the writing was done several years ago, along with the majority of his interviews. In a case like Rwanda's, where change is a constant and new developments are forever emerging, far more immediacy is fundamental to a proper understanding of the situation.

Jones's major contribution to the subject is to remind us of the unfairly high standards that critics of the Rwandan justice system have demanded since the moment the genocide ended. In fact, a double standard seems often to apply when outsiders criticize Rwanda. My own view is that these critics somehow expect the victims of genocide to live up to a higher morality than other mortals. Human rights organizations have relentlessly demanded of Rwanda international legal standards that are not only absent in many Africa countries but also are not fully practiced in rich countries. Jones describes the utter devastation of the system during the 100 days and the long, difficult task of rebuilding—only one of the huge challenges facing the neophyte government. To expect ideal Western or international standards under such circumstances has never made sense, and the contempt of the Rwanda government for many international organizations—duly earned during and immediately after the genocide, when the Hutu escapees in the Kivus received far more attention than the country itself—has only been strengthened by these persistent and unbalanced criticisms.

Jones's conclusions are typically confusing. On page 100 he argues that “there remains evidence that the Rwandan government is seeking to create an environment conducive to the realization of a justice system worthy of its name.” Yet on the following page he concludes that “victor's justice continues to be ever present [in Rwanda], thereby continuing to severely undermine the government's efforts in operating fair trials. The perceived and real operation of fair trials is crucial in progressing towards national reconciliation” (101).

This last sentence is wholly speculative. Whether in Rwanda or elsewhere, there is in fact no way of knowing, other than through intuition, whether fair trials impact reconciliation one way or another, and Jones never discusses this important reality. As for the victor's justice, this refers to the high-profile failure of any jurisdiction dealing with the genocide—ICTR, national courts, or *gacaca*—to prosecute the war crimes of the ruling RPF. Jones refers to this deeply controversial issue many times, as is appropriate, but without really examining the issue critically. It is true that the RPF was guilty of war crimes before, during, and after the genocide; an entire chapter of my report is dedicated to this matter. And from the first, the new government's critics, including major human rights organizations, have repeatedly demanded that the RPF accused must be tried, just as *génocidaires* were. But there are issues of common sense, morality, and triage here.

When has anything other than the victor's justice prevailed anywhere? Did anyone advocate that the Allied bombers who firebombed German cities in World War II be tried at Nuremberg alongside Nazi war criminals? Should the pilots who dropped the atom bombs on Hiroshima and Nagasaki—or their commanding officers—have been put in the dock at the Tokyo war crimes trials? Even today, one would be crucified for raising these issues. Is genocide not the crime of crimes? Is it not arguing for the moral equivalence of the *génocidaires* and those who defeated them to demand the prosecution of the RPF well before most of the leading *génocidaires* have been tried?

And then there are the simple, practical issues of logistics and capacity. If the ICTR cannot work its way through all the cases on its roster, how can we demand that a whole new category be added? The same can be argued about the courts in Rwanda. But those demanding the prosecutions of the RPF have shown little sympathy for these practical realities.

Still, it is true that Rwanda pays a potentially severe penalty for the failure to go after anyone but *génocidaires*. To use language that is now situationally banned in Rwanda, what has happened at every judicial level is that, with few exceptions, only Hutu are being tried. Tutsi hardly ever are. Everyone knows this. That means that the vast majority of Rwandans, who are of course Hutu, know it. It means that the members of the Tutsi minority consider themselves the innocent victims of dastardly crimes of which only Hutu are guilty. When the slogan for the annual commemoration rituals includes only the genocide of the Tutsi, it is too easy to conclude that all and only Tutsi were victims, and all and only Hutu were perpetrators. This does not appear to be a formula for solidifying reconciliation, though few Rwandans in the elite seem able to grasp this fairly obvious contradiction.

The complex world of justice is still in its long transitional phase in Rwanda. We must hope for some penetrating new scholarship that illuminates the process and offers useful directions for the future. Both the scholarship and the directions are much needed.