



First question, part a – 2 marks

Why, according to Source B, did the government release 40,000–60,000 prisoners back into society?

First question, part b – 3 marks

What do you think the author means in Source A when she states, “*Yet his scar testifies to another truth: the stunning capacity of humans to heal from the unthinkable*”?

Second question – 4 marks

With reference to the origins, purpose and content, analyse the values of Source D for those looking at the role of justice in a post-conflict situation.

Third question – 6 marks

Compare and contrast the attitudes towards the burden of responsibility in Source B and Source C.

Second question – 4 marks

Is the distinction between revenge, retribution and restoration as paradigms of justice a new concept for you? If so, what aspects of each appeal to you and which aspects of each might concern you?

Third question – 6 marks

Read the information about Gacaca in Source C. Then research the approach taken by the TRC in South Africa versus the Nuremberg method of prosecution. What do you think is the purpose of justice? Should it be retribution or rehabilitation?

True peace is not merely the absence of tension: it is the presence of justice.

— Martin Luther King Jr, 1955

The establishment of the International Criminal Tribunal for Rwanda (ICTR)

As the genocide began in April 1994, the UN Security Council, without naming what was happening in Rwanda, called for the creation of a body to investigate violations of human rights, and in November, the ICTR was established through Resolution 995. Modelled on the tribunal already created for the former Yugoslavia, South African judge Richard Goldstone was named as chief prosecutor for the new court. The website for the tribunal (indicated below) states that the purpose of the tribunal was,

to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region. The International Criminal Tribunal for Rwanda was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994.

In 1995 the seat of the tribunal was located in Arusha, Tanzania where the ill-fated accords had been negotiated two years before. In line with the process of reconciliation the preamble to the statutes of the ICTR states:

... the prosecution of persons responsible for serious violations of international humanitarian law would ... contribute to the process of national reconciliation and to the restoration ... of peace.

<http://www.icrc.org/eng/who-we-are/mandate/index.jsp>

Problems with the ICTR

As we have already seen, the concept of justice is crucial to understanding how this tribunal and other forms of judicial process such as Gacaca might function in post-genocide Rwanda. The new Rwandan government and the majority of the Rwandan people envisaged that those involved in the genocide would be tried by Rwandan courts, according to the law of the country. However, the practicalities of so doing were extremely difficult. The devastation meant that holding the trials in Tanzania was a practical way of delivering justice as close to the scenes of the crimes as possible and, at the same time, ensuring that those charged with implementing justice would be safe. However, this was not popular with the newly formed government of the country who were still – understandably – deeply suspicious of the international community because of its inaction during the genocide. In addition, there were some outsiders who were concerned that the Rwandans could not be entrusted to administer justice fairly, especially when the maximum sentence the ICTR could hand down was life imprisonment while Rwanda still had the death penalty.

Legally, the findings of the tribunal should take precedence over the national courts of the member states. This potentially could cause problems in challenging the national sovereignty of states. This did occur in the case of one suspect, Pastor Elizaphan Ntakirutimana, a resident in the United States, who was to be extradited to face charges in Arusha. He appealed against his extradition successfully and was released in the USA in 1998. It was only temporarily however, as he and his son Gerard were later sent to the ICTR and received sentences of 10 and 25 years respectively for their part in the deaths of thousands of Tutsi in Mugonero. However, the greatest difficulty the tribunal faced were those regarding administration and mismanagement. The lack of funding and the unavailability of well-trained staff hampered the work of the ICTR in its early years. It wasn't until the end of 1995 that formal proceedings began and the first indictments against eight individuals were processed. The hope had been that those leading the genocide would be tried first, but instead the early prosecutions dealt with local officials who were not the masterminds of the genocide, but people who had come into the hands of the tribunal. In 1998 it was pointed out that the court was functioning with only 50 investigators, while at Nuremberg after the Second World War, there were 2,000 investigators available for handling just 24 Nazi defendants.

Other problems for the ICTR concerned its relationship with the Rwandan government who had been critical of the tribunal. Initially, the RPF government voted against the resolution that created the court over some of the terms of its mandate. This scepticism was reinforced when the tribunal failed to achieve much in its early years up to 1998. Rwandan justice, apart from imposing the death penalty for certain crimes, was also completed quickly, and the slow pace of the ICTR proceedings was incomprehensible to many Rwandans. The ICTR has also been criticized for acting in an uneven manner in not bringing charges against any members of the RPF-led government for human rights abuses and crimes against humanity allegedly committed in the years after the genocide.



The implementation of justice is vital in a society ravaged by the trauma of genocide but was more problematic with the sheer numbers involved in Rwanda as well as the nature of the genocide. Without justice being seen to be done the likelihood of reconciliation is much more challenging to achieve and all of these issues – the lack of a coherent policy, administrative failings, the scarcity of funds and differences in the concept of what constitutes justice – served to hamper the work of the ICTR in its early years. By the end of 1998 only 28 indictments had been issued and 7 of the accused had been convicted. It has since been estimated that there are around 150,000 perpetrators and the vast majority never faced the criminal justice system. In the past 20 years, only 71 people – generally the most severe offenders – have been convicted by the ICTR. The majority (who were mostly living in rural areas, among those whom they killed) confessed and pleaded their case through the Gacaca system. With strong encouragement from the government, most of the survivors have, under the most difficult circumstances, accepted the perpetrators back into their communities.

Achievements of the ICTR

The ICTR did accomplish a number of milestones in its work, which was to be completed by the end of 2015. The first conviction came in 1998 when Jean-Paul Akayesu, a member of the Democratic Republican Movement (MDR) and mayor of Taba commune from April 1993 until June 1994, stood trial on 15 counts of genocide, crimes against humanity and charges of rape during the genocide. He became the first man ever to be convicted for rape as a crime against humanity and was sentenced to life imprisonment.

This ... is the first time high-ranking individuals have been called to account before an international court of law for massive violations of human rights in Africa. The tribunal's work sends a strong message to Africa's leaders and warlords.

— Roland Amoussouga from the ICTR



▲ Jean Kambanda listens to the court before being sentenced to life in prison by the ICTR in 1998

TOK connections

The crimes which were identified by the International Criminal Court (ICC) included genocide, war crimes and crimes against humanity.

- 1 Why do you think the ICC identified these three crimes?
- 2 Do you agree with the ICC's decision?
- 3 What other crimes do you consider could come under the jurisdiction of the ICC?

ATL Self-management and thinking skills

Read Jean Kambanda's court case and other court cases at:

<http://www.unict.org/Portals/0/Case/English/Kambanda/indictment/index.pdf>

Rwandan survivor testimonies can be found at:

<http://www.un.org/en/preventgenocide/rwanda/education/survivortestimonies.shtml>

Later that year former Rwandan Prime Minister **Jean Kambanda** was put on trial. Kambanda, a Hutu, was accused of inciting massacres and ordering roadblocks to help round up Tutsi and in distributing weapons for their slaughter. (For more details see <http://www.theguardian.com/world/2014/apr/02/rwanda-genocide-fight-justice>).

Kambanda was the first man to plead guilty to the charge of genocide and was sentenced to life imprisonment. Chief Judge Laity Kama said "*Jean Kambanda abused his authority and the trust of the population. Nor has he expressed contrition, regret, or sympathy for the victims in Rwanda even when given the opportunity.*"

Another milestone achieved by the ICTR was in the case of **Pauline Nyiramusuhuko**, the former minister of women's affairs arrested in 1997, who became the first female to be convicted of genocide when the ICTR eventually completed its case against her in 2011.

Other landmark cases include those against the head of the RTLM "hate radio", Ferdinand Nahimana and the editor of Kangura, Hassan Ngeze, in 2003. Both were charged with genocide, incitement to genocide, and crimes against humanity; the court finding both guilty and sentencing them to life imprisonment. These sentences were later reduced to 30 and 35 years respectively. The principle that those responsible for radio broadcasts and newspapers which fomented hatred against in this case, the Tutsi, established the precept that anyone who incites the public to commit genocide can be penalized for crimes against humanity.

Although on paper the ICTR had only brought to justice a relatively small number of those involved in the genocide, the reality of trying to deal with what had happened was an almost impossible task. Challenged by over-burdened prisons and the knowledge that hundreds of thousands of individuals had participated in the genocide, the Rwandan government cautioned that it would take more than 200 years for the ICTR to deal with all outstanding accusations.

TOK: Ethics and Justice

Statement 1: Luis Moreno-Ocampo, the Chief Prosecutor for the International Criminal Court, (ICC) believes that people need judicial institutions to help them behave well. Apart from institutions that may help control behaviour, Moreno-Ocampo states, "*You have to educate people in values*".

- 1 What values do you think need to be nurtured in order to sustain peaceful, productive communities?
- 2 What are effective ways of instilling these values?

Statement 2: Former UNHCR commissioner José Ayala Lasso, has said, "*A person stands a better chance of being tried and judged for killing one human being than for killing 100,000.*"

- 3 What do you think Lasso is trying to express in this comment?
- 4 How far do you agree with this argument?
- 5 What are the possible consequences for a community or nation if wrongdoers are *not* brought to justice?

- 6 From your own experience and knowledge, what evidence suggests that crimes can be prevented if individuals believe they will be punished for committing them?
- 7 Can you think of any evidence that demonstrates that the fear of being caught and punished does *not* prevent individuals from committing crimes?
- 8 How does this connect back to your responses to the questions following statements 1 and 2?
- 9 What do you think can be done to prevent people, especially those in positions of power, from committing crimes?
- 10 Do you consider that if those in power do commit crimes they should be punished more harshly than others because of their responsibilities?