

Crime & punishment



Recent decades have witnessed horrible atrocities. But a new system of international justice is slowly rising from the carnage. Wayne Ellwood looks at global efforts to confront impunity.

'The long arm of the law' is one of those familiar sayings that must be ringing with particular clarity in the ears of Désiré Munyameza. After all, when he fled Rwanda five years ago, who would have thought that his past would catch up with him in the French-speaking city of Montreal, 10,000 miles from his central African homeland?

But catch up with him it did.

In October this year the 39-year-old Munyameza became the first person to be arrested under Canada's five-year-old war crimes legislation. The Hutu exile has been charged for his alleged part in the murder of nearly a million members of the Tutsi ethnic minority in 1994, during a 100-day killing spree by machete-wielding Hutu gangs in the hills of Rwanda. After six years of investigation, the Royal Canadian Mounted Police

charged Munyameza with two counts of genocide, two counts of crimes against humanity and three counts of war crimes.

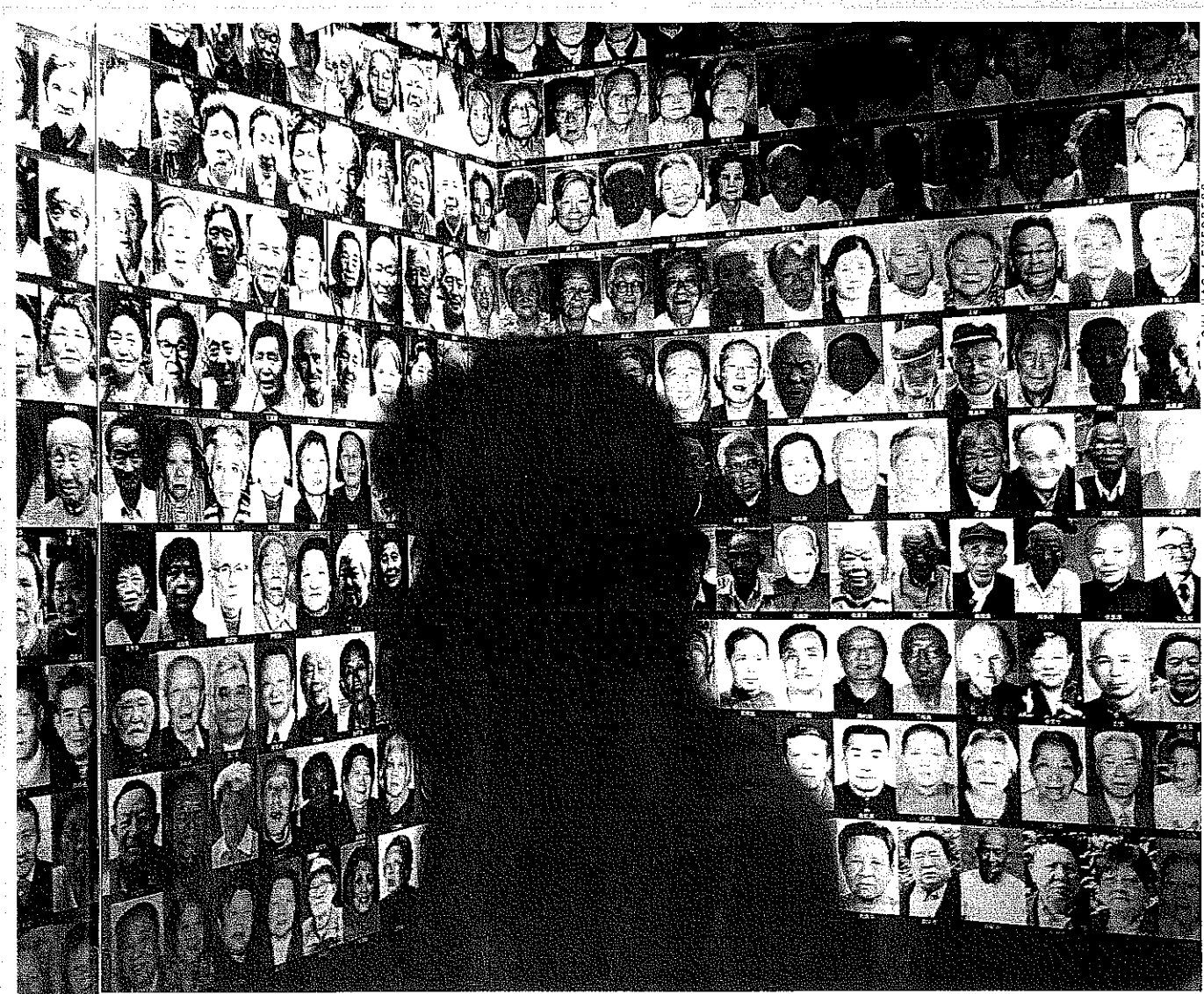
Louise Arbour, UN Human Rights Commissioner and ex-chief prosecutor of the UN Tribunal on Former Yugoslavia, applauded the arrest as a part of 'a long, recent but solid line of accountability'. Rwandan human rights activists around the world joined her. And they were right to do so.

Genocide, 'ethnic cleansing' and mass murder have been depressingly familiar aspects of human history. But, as the arrest of Désiré Munyameza shows, there are glimmers of hope and reasons for optimism. The move by Ottawa is the latest signal that the international community is gradually building a global legal system to demand accountability from perpetrators of mass human rights violations – those who murder and mutilate with impunity.

The UN-mandated International Criminal Tribunals in former Yugoslavia (ICTY) and Rwanda (ICTR), along with 'hybrid' court models in Sierra Leone and East Timor, have established new means of bringing gross human rights violators to justice.

The International Criminal Court (ICC) is the most ambitious example of this tremendous shift in the international mood (see 'Challenging Impunity', p20).

Alongside this are many other paths to what is called 'transitional justice' – the myriad ways that



Confronting the past: a young man in Beijing is stunned by a wall of portraits of victims of the 1937 Nanjing massacre. More than 300,000 Chinese were slaughtered by Japanese troops.

societies torn apart by ethnic strife, civil war and brutal dictatorships can seek truth, justice, healing and reconciliation.

"There are no easy answers or neat definitions of transitional justice," notes Alex Boraine, the former vice-chair of the South African Truth and Reconciliation Commission (TRC). Prosecution, truth-telling, reconciliation, reparations, institutional reform, memorials and official apologies are all important. But they must be held 'in tension to one another' and 'informed by the political space of the transition itself.'¹

The concept of transitional justice didn't exist in 1944 when the *émigré* Polish jurist Raphael Lemkin coined the term 'genocide' (from the Greek *genos*, race or tribe, and *cide*, killing). Lemkin was working in a very different political space: the end of the Second World War and the emerging truth of Nazi Germany's murderous spree through the heart of Europe. But he was also struck by the 1915 mass murder of the Armenian minority in Ottoman Turkey. Up to a million Armenians were killed in this early attempt at 'ethnic cleansing'. It was, in the words of an observer at the time, 'a massacre that changes the meaning of massacre'.²

Lemkin's work led to the adoption of the UN Genocide Convention in December 1948. The Convention defines as genocide the intent to destroy 'in whole or in part' a population defined by race,

nationality, religion or ethnicity. Under pressure from the Soviet Union, where Stalin's 'Great Terror' had just ended, the definition purposely excluded groups defined by their political interests or class background. Despite this legal hair-splitting, there is a growing consensus today that genocide covers a whole range of horrendous crimes, including the deliberate targeting of political or class enemies.

But before the Genocide Convention came the post-war trials of German and Japanese war criminals in Nuremberg and Tokyo. The Nuremberg Tribunal was organized in 1946 by the four main Allies (Britain,

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France, the US and the USSR). It has sometimes been dismissed as 'victors' justice' because the crimes of the winners, from the fire-bombing of Dresden to the use of atomic weapons on Hiroshima and Nagasaki, were not examined. Nuremberg did have its flaws – defendants had no right to appeal and verdicts were reached quickly. But it was the first attempt to call to account the perpetrators of murder on an industrial scale. In the aftermath of the Hitler's death camps and the Holocaust – the systematic extermination of Europe's Jews – it was important that the guilty be held accountable.

After Nuremberg efforts to build a system of international justice were shunted aside by Cold War rivalries and the global arms race. It wasn't until the fall of the Soviet empire and the horrors of former Yugoslavia and Rwanda hit home that the international community began to look again at how to deal with grave human rights violations like genocide and 'ethnic cleansing'.

Of course there was genocide before this, and before Nazi Germany – even if the term had not yet been coined. In Mexico, the Aztec population fell from 12 million to a million, less than a century after the Spanish conquest in 1519. In North America disease, forced relocation and murder wiped out 90 per cent

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of the native population by the beginning of the 20th century. Meanwhile, in the Congo the Belgians under King Leopold ran a brutal system of forced harvesting of rubber from the jungle – nearly 10 million Congolese died between 1885 and 1920. Well before the Lord's Resistance Army in northern Uganda was amputating arms and legs, the Belgians were hacking off hands for failing to meet rubber quotas.³ In 1965 the Suharto regime in Indonesia murdered half a million suspected 'communists' in Java and Bali while Western governments turned a blind eye.

And then there was Cambodia: Year Zero, the 'killing fields' and Pol Pot. The Khmer Rouge (KR) seized power in Cambodia 30 years ago, attempting to build a fundamentalist communist state in less than five years. Nearly two million people, a third of the population, died from starvation, disease, forced labour and execution – the largest per-capita genocide of the century.

Class enemies were purged. Cities were evacuated, schools and monasteries closed, families torn apart. To this day, no senior leader of the Khmer Rouge has been brought to trial to answer for these crimes.

In the dock: Rwanda's former health minister, Cassim Bizimungu, charged with inciting genocide, at the International Criminal Tribunal in Arusha, Tanzania.

Cambodian history text books barely mention the 'killing fields' and according to the country's leading NGO, the Documentation Centre for Cambodia (DC-CAM): 'Just a generation after the genocide, many young Cambodians can't believe their parents endured such hardships under the KR.'⁴

After years of self-interested political battles, Cambodia's culture of impunity may be about to change. The 'Extraordinary Chambers' Tribunal agreed to by both the Government and the UN last April is a 'hybrid' model – based in the capital, Phnom Penh, with three Cambodian and two international judges.

Both the Rwandan Tribunal in Arusha, Tanzania, and the former Yugoslavia Tribunal in The Hague, have been criticized for being too distant from where the atrocities took place. DC-CAM

Director Youk Chhang argues that the trials need to take place locally to have real meaning for Cambodians. 'It is important to involve our people. We can learn lessons and affirm our trust that Cambodians are capable; people must participate in the process.'⁵

The Cambodia Tribunal is likely to try only a handful of top Khmer Rouge leaders and it will deal only with the period from 1975 to 1979, when Pol Pot was in power.

Without this restricted mandate, it's doubtful any deal could have been reached. Cambodia is a case study of how Western political interests continue to set the agenda for international justice. Whether it's the Russians in Chechnya, the Chinese in Tibet or the illegal US invasion of Iraq, the world's most powerful states are able to fend off accountability for their own human rights infractions.

China, Thailand, the US, Britain, the UN and ASEAN (Association of Southeast Asian Nations) all played key roles in either laying the groundwork for the Khmer Rouge or in supporting Pol Pot long after he was driven from power by Vietnamese forces in 1979.

US Secretary of State Henry Kissinger supervised the carpet bombing of Cambodia in the early 1970s which killed more than half-a-million civilians and paved the way for the Khmer Rouge victory two years later. Margaret Thatcher, Jimmy Carter and Ronald Reagan all supported the regime after it was driven from power. And China supplied Pol Pot with weapons throughout the 1980s. Because of this the genocide was buried for nearly 20 years. The Khmer Rouge survived until 1992.⁶

Western and Chinese complicity is the key reason it's taken so long to reach agreement on bringing the Khmer Rouge to justice – and why the timeframe of the Tribunal is so narrow.

Nonetheless, it is an important step for the country in coming to terms with its past. Cambodian scholar Craig Etcheson argues that the Tribunal, even with its limitations, is essential for reconciliation and national reconstruction.

"Though it will not solve the problem of impunity in its entirety, bringing the leadership of the KR to justice before a fair and impartial court of law is the most reasonable way to begin putting the demons of Cambodia's tortured modern history to rest and to teach Cambodia's children that there is a better way."⁷

Criminal trials of the world's worst human rights

abusers are absolutely essential. They signal that impunity is being replaced by accountability. They can give victims a sense of security. And they are a clear warning to those who might contemplate abuses in the future.

But alone they are not enough – for the simple reason that it would be impossible to put the tens of thousands of accused in Rwanda or Serbia on trial. For example, the UN Special Court for Sierra Leone will try just 25 of the country's worst offenders – the 'big birds' as they're called – from all sides of that devastating 11-year civil war.

Cost is another factor. Running these complex, international tribunals, with hundreds of staff, is phenomenally expensive. The Rwandan tribunal has been in session for nearly a decade with barely a dozen convictions, each of which has cost more than \$60 million. The ICTY budget alone is more than \$200 million a year. Hybrid models like Sierra Leone, Timor-Leste and Cambodia are meant to be leaner and cheaper. The budget for the Cambodian Tribunal has been set at \$56 million, a fraction of the cost of the others.

Prosecution is important to re-establish the rule of law. But for societies recovering from massive trauma, it is equally important to tackle the notion of truth itself.

Truth commissions are one way of doing this. They attempt to analyze both the abuses themselves and the political, social and economic structures that allowed them to take place. They are not designed to replace judicial accountability, but to complement it. More than that, a truth commission can provide a means for sick

the accounts of 'truth' given by victims and survivors are not about facts. They are about the impact of facts and 'the continuing trauma on their lives created by past violence'.¹⁰

No-one accepts that truth-telling is an automatic ticket to reconciliation. Indeed, in the short term reconciliation may be unrealistic. Other factors may be just as important: an end to the threat of future violence; reparations for the victims; symbolic acts of public apology or memorials. Or, simply, the healing hands of time.

Even if forgiveness is possible, it does not mean forgetting. The pursuit of ex-Chilean dictator Augusto Pinochet by the Spanish courts, though ultimately unsuccessful, was applauded by human rights activists around the world. It also had an important spillover effect, spurring national courts in Argentina, Belgium and elsewhere to bring charges against alleged human rights offenders. The recent arrest of Désiré Munyameza in Canada is part of this growing international desire to confront impunity. Arguably, it might never have happened if the Chilean dictator's crimes had been erased from the memory of those who suffered under his regime.

Memory of the past has the power to heal – but only if it is confronted honestly and openly. Indeed, it is impossible for a nation or a people to forget a past scarred by murder and injustice. It will sooner or later come back to haunt. The legacy of slavery and racism haunts the US, where only last June the Senate issued a belated official apology for its failure to enact an anti-lynching law. (Both Mississippi senators refused to support the statement.) During the

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societies to heal themselves – a space for victims to be heard and for perpetrators to come forward.

Commenting on his experience in South Africa, Alex Boraine stresses that truth-telling can be both cathartic and therapeutic.

'A sick society needs healing; one of the ways to bring that about in a land of contested truth is to establish a common memory. A memory of those who have perpetrated the deeds and never acknowledged them; a memory of those who suffered and were silenced; and a memory of those who stood alongside and said it never happened.'

It must be forensic truth, of course. We want to know what happened, the why, when and where. But the stories of the victims, the breaking of the silence, the returning to people of their human dignity is critical. New truth emerges when people talk honestly and openly with one another, which is why the truth can never be found in isolation.⁸

The truth itself is sometimes unclear, even to the victims of violence. Memory confuses and language fails. Jeanette Ayinkamiye, a 23-year-old seamstress, lost her mother, her father and seven brothers during the Rwandan genocide. When interviewed by French journalist Jean Hatzfeld she said: 'We forget the details, confuse the dates, mix up the attacks, make mistakes... Over time we still have very precise lists of memories; they become more and more truthful, but we hardly know anymore how to order them in the right way.'⁹

According to psychologist Pumla Gobodo-Madikizela,

trial of Nazi war criminal Klaus Barbie in the 1990s the French were awakened to the anti-Semitism of the Vichy regime and the inflated myth of a national French *résistance* to Nazi Germany. Both China and Korea are still demanding that the Japanese apologize for war crimes committed during the Japanese occupation of the 1930s and 1940s.

The truth may not lead automatically to justice. But without it there is no hope. It is not possible for a society to build a democratic future on a rotting foundation of denied or forgotten history. People and nations need to acknowledge their murderous pasts for justice to be done.

To paraphrase a couple of other familiar sayings: the truth can set you free; but unless we confront our history, we may be condemned to repeat it. *

1 'Transitional Justice as an Emerging Field', Repairing the Past symposium, Ottawa, 11 March 2004. 2 R Gellately and B Kiernan, 'The Study of Mass Murder and Genocide', in *The Spectre of Genocide*, Cambridge University Press, 2003. 3 Adam Hochschild, *King Leopold's Ghost*, Houghton Mifflin, 1998. 4 'What remains to be done', in *Searching for the truth*, DC-CAM, second quarter, 2005. 5 T Hawthrop and F Jarvis *Getting away with genocide*, Pluto, 2004. 6 B Kiernan, 'Conflict in Cambodia, 1945-2002', in *Critical Asian Studies*, 34:4, 2002. 7 G Etcheson, *After the killing fields*, Praeger, 2005. 8 From a presentation to 'Facing the Legacy of Indian Residential Schools in Canada' colloquium, Toronto, 17 September 2005. 9 Jean Hatzfeld, *Into the quick of life: the Rwandan genocide, the survivors speak*, Serpent's Tail, 2005. 10 Pumla Gobodo-Madikizela, 'Memory and trauma', preface from M Edelstein, *Truth & lies: stories from the TRC in South Africa*, New Press, 2002.