Public Promise, Private Doubt: Views on the Efficacy of International Criminal Justice from within the International Criminal Tribunal for Rwanda.

Nigel P. Eltringham[1]

[1]. University of Sussex, Social Anthropology, Falmer, United Kingdom

n.p.eltringham@sussex.ac.uk

On my first day of ethnographic fieldwork at the International Criminal Tribunal for Rwanda (ICTR, based in Arusha, Tanzania), a senior official in the registry handed me a copy of a pamphlet entitled "ICTR: Challenging Impunity" saying "Here's the propaganda. Now go and speak to [a senior member of the Office of the Prosecutor] who claims that a purpose of the ICTR is deterrence. But what's deterrence? Just look at what's happening in Darfur", waving his hand northwards. A few weeks later, in conversation with a judge, I asked a number of questions about the "purpose" of the Tribunal, framing my questions according to the Preamble to the UN Security Council's 1994 Tribunal Statute which states that the Tribunal "would contribute to the process of national reconciliation". Evidently exasperated by this form of questioning, the judge conceded that "if the Tribunal does its work properly it will contribute to reconciliation", but added "The introduction of such political objectives would undermine the quality of justice. We judges simply evaluate the credibility of evidence and relate it to the nature of the crimes alleged. The Tribunal is likely to have a positive effect, but we are judges. This is a judicial process and cannot have a political objective". Both these views are in tension with the rhetoric that has accompanied the emergence of a global architecture of international criminal justice in the last fifteen years (with the creation of tribunals for the former Yugoslavia, Rwanda, Sierra Leone, Cambodia and in the creation of the International Criminal Court). This rhetoric claims that international criminal trials will "end impunity", act as a deterrent and facilitate "reconciliation". In contrast to these claims, ethnographic fieldwork at the ICTR suggests that those actually tasked with the daily enactment of international criminal justice take a far more ambivalent attitude to the rhetoric on which their work is premised. Taking the three key terms of "deterrence"; "ending impunity" and "reconciliation" (corresponding with sentiments in the Tribunal's Statute), the paper explores the views of lawyers (for both the defence and prosecution) and judges on the rhetorical claims made for their work. While acknowledging that the reception of the work of the ICTR (and analogous institutions) in affected communities is an important avenue of research, the paper argues that attention to the opinions of implicated legal practitioners may assist in avoiding inflated claims for such intuitions that cannot, ultimately, be fulfilled.