2014-07-17

Fråga-svar

Rwanda. Vittnesskydd

Fråga

Vilka möjligheter finns det att söka skydd hos myndigheterna om man hotas av personer eftersom man har bevittnat att personerna i fråga var delaktiga i folkmorden 1994?

Svar

Vittnesskydd

I en omfattande rapport beskriver Redress forskning som gjorts genom SOAS, University of London och University of Oxford samt Kings College London vittnesskydd i Rwanda.

Redress (2012):

> The sheer number of genocide witnesses who have testified before the ICTR, foreign state jurisdictions, the Rwandan national courts but particularly the gacaca courts – to which hundreds of thousands have given evidence – poses major protection problems. Furthermore, the proximity of convicted génocidaires, suspects, survivors and their families in tightknit communities complicates security efforts, particularly as a wide range of actors – including neighbours and family members – are considered potential threats to survivors and witnesses.
> That some of these actors are perceived as both protectors and threats underscores the complexity of post-genocide relations across Rwandan society. Witnesses' substantial mobility between different communities – either in search of safer places to live or to testify in multiple jurisdictions – also renders them extremely vulnerable to

intimidation. In all of these settings, witnesses are subjected to various types of threats, ranging from highly visible acts of physical violence to more subtle menacing such as throwing rocks on their roofs during the night and ostracising survivors and witnesses from their communities. Other consequences of testifying to genocide include a significant risk of re-traumatisation. All of these consequences must be addressed through tailor made protection mechanisms.
On the basis of these contextual elements, there are clear shortcomings in domestic and international witness protection frameworks that need to be addressed. There was at first substantial international critique of the Rwandan government's ability to protect witnesses in genocide cases, as highlighted by the initial refusal to transfer cases from the ICTR to Rwanda.
At the time, Rwanda was in the process of reforming various aspects of its legal and judicial system, including regarding witness protection, mainly in response to threats and murders of genocide witnesses after the nationwide start of gacaca trials in 2006. Rwanda's decision to further reform its witness protection programme in line with the ICTR's processes was key to the ICTR's eventual decision to begin transferring cases to Kigali. (sid. 40)

Rättsvårdande myndigheter

UN News Service (2014):

> Justice Hassan B. Jallow, Prosecutor of the ICTR as well as of the Mechanism for International Criminal Tribunals (MICT), said that as the Tribunal prepares for its imminent closure and the complete takeover of its functions by the Mechanism, it is important to recognize, "despite many achievements, much remains to be done to bring the process of legal accountability to a proper end."

United States Department of State (2014):

> The government generally took steps to prosecute or punish officials who committed abuses, whether in the security services or elsewhere, but impunity involving civilian officials and the SSF was a problem.
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> There were several reports that the government committed arbitrary or unlawful killings both inside and outside of the country. The government typically investigated SSF killings and prosecuted perpetrators. The government investigated sporadic grenade attacks and continued to prosecute individuals who threatened or harmed genocide survivors and witnesses.
> On July 17, Transparency International Rwanda office coordinator Gustave Makonene was strangled to death and his body dumped on the shores of Lake Kivu near the town of Rubavu. Government officials condemned the killing and denied involvement but did not

> initiate a credible investigation. Domestic observers noted that Makonene was investigating cases of local police corruption at the time of his death. The killing remained unsolved at year's end.

Många fall med felaktiga domslut eller allvarliga fel i rättsförfarandet beskrivs i nedanstående källor.

Human Rights Watch (maj 2014):

> Since 2010, Human Rights Watch has documented a number of cases of people accused of being FDLR members or collaborators, or charged with state security offenses, and who were detained incommunicado by the military and forced to confess to crimes, or implicate others, sometimes under torture. When they were eventually brought to trial, some of the defendants told the judges that their confessions had been extracted under torture. However, in many cases, the judges disregarded their claims and proceeded to convict them in the absence of any other evidence.

United States Department of State (2014):

> Police at times lacked sufficient basic resources, such as handcuffs, radios, and patrol cars, but observers credited the RNP with generally strong discipline and effectiveness. Nevertheless, there were reports of police arbitrarily arresting and beating individuals, engaging in corrupt activities, and demonstrating a lack of discipline. The RNP institutionalized training in community relations, which included appropriate use of force and human rights. The National Police Academy offered an undergraduate program in professional police studies…
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> …The law requires authorities to investigate and obtain a warrant before arresting a suspect. Before arrest, police may detain suspects for up to 72 hours without a warrant. Prosecutors must bring formal charges within seven days of arrest. Authorities sometimes disregarded these provisions, particularly in security-related cases…
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> The constitution and law provide for an independent judiciary, and the judiciary operated in most cases without government interference; however, there were constraints on judicial independence, and government officials sometimes attempted to influence individual cases. In February the Ministry of Justice announced that 10 judges and clerks were dismissed during the previous 24 months due to corruption. Authorities generally respected court orders.
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> The law provides criminal penalties for corruption by officials. While the government continued to make implementation of these laws a national priority, corruption remained a problem.

Human Rights Watch (januari 2014):

> … Most Rwandan journalists also avoid investigating or reporting on sensitive cases. Rwandan authorities should revive their investigations into Makonene's murder, Human Rights Watch said, both to deliver justice and to reassure anti-corruption and human rights activists that the police and prosecuting authority treat such cases with the seriousness they deserve. Transparency International said that it was continuing advocacy to press law enforcement authorities in Rwanda for a conclusion to the police investigations. "In most other countries, the unresolved murder of an anti-corruption campaigner would have made the headlines, and independent groups would be clamoring for justice," Bekele said. "Instead, it seems everyone is just hoping the issue will go away….

Amnesty International (maj 2013):

> *Laws on 'genocide ideology' and 'sectarianism'*
> Vaguely worded laws on "genocide ideology" and "sectarianism" were misused to criminalize legitimate dissent and criticism of the government. A new draft "genocide ideology" law was before parliament.
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> The government failed to investigate and prosecute cases of illegal detention and allegations of torture by Rwandan military intelligence. In May and October, Amnesty International published evidence of illegal and incommunicado detention and enforced disappearances. The research included allegations of torture, including serious beatings, electric shocks and sensory deprivation used to force confessions during interrogations, mostly of civilians, in 2010 and 2011.

Amnesty International (mars 2013):

> The exclusionary rule applies not only to statements made by the accused, but also to statements made by any other person, whether or not called to testify as a witness.79 In addition, the fact that a person confesses or confirms a coerced statement to an authority different from the one responsible for the ill-treatment does not preclude the possibility that such confession or later statement is resulting from the ill-treatment endured and must therefore be excluded from the proceedings.80 (sid. 21)
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> The court did not properly examine or investigate the circumstances in which the confessions of the co-accused could have been made. When it was stated that the statements were given after a period of unlawful detention in a military camp where torture is known to be used, the court did not act appropriately. No information was provided or requested by the court about the interrogation notes from Camp Kami, if they were handed over to the police, and why they could not be submitted to the court as evidence.

> The accused was not treated in a fair and impartial way. The judges displayed signs of hostility and anger towards the defendant and regularly interrupted her. There was an inequality of arms and the evidence presented by the defence was repeatedly undermined, whereas basic questions about the evidence presented by the prosecution were not asked. The defendant was repeatedly challenged by the court, in a manner which appeared intentionally confrontational. (sid. 26)

Human Rights Watch (2011):

> Yet there are multiple shortcomings and failures with gacaca: basic violations of the right to a fair trial and limitations on accused persons' ability to effectively defend themselves;
> flawed decision-making (often caused by judges' ties to the parties in a case or preconceived views of what happened during the genocide) leading to allegations of miscarriages of justice; cases based on what appeared to be trumped-up charges, linked, in some cases, to the government's wish to silence critics (journalists, human rights activists, and public officials) or to disputes between neighbors and even relatives; judges' or officials' intimidation of defense witnesses; corruption of judges to obtain the desired verdict; and other serious procedural irregularities.
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> The government argued that traditional fair trial rights were unnecessary because local community members—who witnessed the events of 1994 and knew what really happened—
> would participate in the trials and would step in to denounce false testimony by other community members or partiality by the judges. Contrary to these expectations, however, Rwandans who witnessed unfair or biased proceedings decided not to speak out because they were afraid of the potential repercussions (ranging from criminal prosecution to social ostracism) and instead passively participated in the gacaca process. Without active popular participation, trials were more easily manipulated and did not always reveal the truth about events in local communities. Another significant factor restricting the success of gacaca was the limited training given to gacaca judges, most of whom had little or no formal education and, in the vast majority of cases, no formal legal experience or training. Judges were not bound by evidentiary rules …(sid. 4)
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> One of the serious shortcomings of the gacaca process has been its failure to provide equal justice to all victims of serious crimes committed in 1994….
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> As gacaca draws to a close, the Rwandan government faces another challenge: correcting the grave injustices that have occurred through this process. There have been numerous gacaca cases involving miscarriages of justice or serious procedural irregularities, many of Justice Compromised 6 which have not been resolved by existing gacaca appeals procedures.(sid. 5)

Lagstiftning

UN Human Rights Council (2014):

> In the wake of the 1994 genocide, the post-conflict Government of the RPF built a legal framework to prevent it from ever happening again. The Special Rapporteur paid particular attention to the following legal provisions of the Organic Law on instituting the Penal Code 01/2012/OL. These are related to further national legal provision on penalizing and punishing the crime of genocide. (sid. 5)
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> The Special Rapporteur notes the progress Rwanda has made in meeting the needs of preventing acts of genocide and gross violations of human rights. However, he sees areas for improvement, as certain legal provisions ostensibly meant to prevent genocide also interfere with the full enjoyment of the rights to freedom of peaceful assembly and of association. He expresses concerns over the aforementioned provisions of the Organic Law 01/2012/OL and laws 84/2013 on the crime of genocide ideology and other related offences and 47/2001 on prevention, suppression and punishment of the crime of discrimination and sectarianism. He considers them overly broad and open to abuse with a view to limiting any opposition, even moderate and peaceful, to the Government. (sid. 6)

Rwanda: Law No. 18/2008 of 2008 Relating to the Punishment of the Crime of Genocide Ideology:

> ***Article: 3 Characteristics of the crime of genocide ideology***
> The crime of genocide ideology is characterized in any behaviour manifested by facts aimed at deshumanizing a person or a group of persons with the same characteristics in the following manner:
> 1° threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;
> 2° marginalising, laughing at one's misfortune, defaming, mocking, boasting, despising, degrading creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;
> 3° killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology.
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> ***Article: 13 Penalties against false accusers***
> Any person found guilty of false accusations of the crime of genocide ideology referred to in Article 4 of this Law shall be liable to the punishment provided for by the penal Code.

Rwanda Law N° 13/2004 Relating to the Code of Criminal Procedure [Rwanda], 13/2004:

Article: 54

A public prosecutor can summon by using written notice, summons to appear or warrant bringing by force, any person he or she thinks has some important information to give. The summoned person is given a copy of the summoning document.

Witnesses are summoned through the administrative organs, by using court bailiffs or security organs although they can as well appear voluntarily.

Any person summoned in accordance with the law is obliged to appear.

Persons who, by the nature of their trade or profession, are custodians of secrets are exempted from testifying as regards those secrets.

Article: 55

A public prosecutor can issue a warrant to bring by force any witness who has defaulted to appear.

Any witness who is legally summoned and falls to appear without any lawful reason, or who refuses to discharge the obligation of testifying can be handed over to court without any further formalities.

A witness who defaults to appear after being summoned for the second time or who, after being called by warrant to bring him or her by force advances legitimate reasons is absolved from punishment.

Article: 56

After submission of their particulars and swearing to tell the truth, witnesses are interviewed, each separately in the absence of the accused. Statements of their testimonies are recorded in writing.

Article: 57

A witness who falls to appear to testify without advancing any justifiable excuse after being summoned in accordance with the law or refuses to take an oath or to testify after being ordered to do so can be sentenced to a maximum punishment of one month and a fine which does not exceed fifty thousand francs (50.000) or one of them. If need be, public force can order his or her arrest following a warrant to bring him or her by force issued by a public prosecutor charged with investigation of the case.

Article: 58

A witness who is punished due to disobeying a summon and who is called for a second time or is sent a warrant to appear by force and later shows legitimate reasons for the default, he or she may be exempted from the intended penalty.

Article: 59

Persons against whom the prosecution has evidence to suspect that they were involved in the commission of an offence cannot be heard as witnesses.

Article: 60

Children who have attained the age of 12 can testify as adults. Children under the age of 12 can also be heard but a court's decision cannot be solely based on their testimony. In this respect, the evidence of a minor should be supported by other corroborative evidence.

Article: 61

Every page of a statement is signed by the prosecutor and the person interviewed. The latter should be asked to read the statement to see whether it conforms to what he or she said before signing it. If he or she does not know how to read, the statement is read to him or her. If he or she refuses to sign or unable to do so, it is indicated in the statement.

Article: 62

Statements should be recorded with enough spacing between line and words. Words erased or crossed should be approved by both the prosecutor and the witness.

Failure to do so may render the words worthless. The same applies to statements that do not bear the required signatures.

Article: 63

If a witness is unable to appear before a public prosecutor, the latter shall go to interview the person where he or she is or delegate someone else to do it on his or her behalf.

Article: 65

A public prosecutor can immediately proceed to carry out the interview or confront witnesses if a witness is likely to die or if some evidence is likely to disappear. A statement made to the effect indicates reasons for the urgency.

Article: 66

Where it is necessary, the public prosecutor who is charged with the investigation of a case can carry out confrontation between accused persons, between witnesses or between accused persons and witnesses either on his or her own initiative or at the request of any interested party.

Diskriminering – utsatta grupper

United States Department of State (2014):

The constitution provides that all citizens are equal before the law, without discrimination based on ethnic origin, tribe, clan, color, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, or physical or mental disability. The constitution and law are silent on sexual orientation and gender identity. The government generally enforced these provisions, although problems remained.

Discrimination: Women have the same legal status and are entitled to the same rights as men….

There are no laws that criminalize sexual orientation or consensual

> same-sex sexual conduct, and cabinet-level government officials expressed support for the rights of lesbian, gay, bisexual, and transgender (LGBT) individuals. LGBT individuals reported societal discrimination and abuse, and staff working for LGBT rights groups reported occasional harassment by neighbors and police.
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> Discrimination against persons living with HIV/AIDS occurred, although such incidents remained rare.

Canada: Immigration and Refugee Board of Canada (2013):

> Along those same lines, an anthropology researcher affiliated with the University of Sussex, who did field research in the border region of Rwanda and of the DRC, stated in correspondence sent to the Research Directorate that the government of Rwanda is known to favour the Tutsi, at the expense of the Hutu, regardless of their nationality (Anthropology researcher 9 Apr. 2013). During a telephone interview with the Research Directorate, an assistant professor in anthropology at the University of Louisville, who studies conflict and reconciliation issues in the Great Lakes region of Africa, and particularly in Rwanda, also stated that the Congolese Tutsi are generally favoured by the government in place (Assistant Professor, University of Louisville 11 Apr. 2013).

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