

# Kazneni progon novinara na Međunarodnom kaznenom sudu (ICC)

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UNIVERSITY OF ZAGREB  
FACULTY OF CROATIAN STUDIES

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**Prosecution of Journalists by the  
International Criminal Court (ICC)**

BACHELOR THESIS

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## **1. Introduction**

The entrance of humanity into Information Age was characterized not only by a growing wish, need and sense of connection amongst people, but also by a struggle to regulate the influx of information and assure the continuity and propriety of that influx. Throughout the past 50 years, since the so-called “Information Age” began, the focus in media (if we disregard the struggles of media companies adapting to new technologies) was grounded on regulating the functions of media, controlling access to social networks and maintaining the ethical principles of journalism on newfound platforms. The societal focus concerning media aimed at things such as maintaining or improving media freedoms, raising the quality of shared information, battling clickbait and improving the understanding of media literacy.

Despite the continuous aim to achieve progress in media freedoms and practices, many countries (as well as their media representatives) have not yet managed to fulfill their previously set goals within the same domain: unifying the concept of media freedoms, aligning media work with the principles of journalistic ethics and prosecuting individuals that go against the set legal guidelines.

This paper will engage with miscarriages of the journalistic profession – primarily through the principles of international law. The focus within the paper is aimed at journalists acting as propaganda actors during times of war – thus, violating ethical regulations of their profession as well as international war treaties. Furthermore, it will aim to define legitimacy of legal prosecution of journalists for such acts – thus, answering the question of why has only a handful of journalists been prosecuted by the International Criminal Court and its tribunals.

I will firstly define ICC as an institution, as well as the postulates on which it operates. Following that, I will present how the ICC operates in the realm of media, after which I will analyze media-related cases at ICC and its tribunals for war crimes committed in Rwanda, as well Yugoslavia. Finally, I will offer a conclusion established on the analysis of different media-related cases.

## **2. International Criminal Court**

The International Criminal Court (ICC) is a judicial body, formed as a tool for implementation and sustainment of international law. Its primary purpose is to investigate and prosecute individuals charged with some of the gravest crimes known to mankind, such as genocide, war crimes, crimes against humanity and the crime of aggression (as well as their subcategories including rape, torture, forceful deportation and many more).

The court was founded almost 60 years after the idea of such an institution was originally formed. The initial plan for ICC was constructed in the 1940s, when the world was actively attempting to design a mechanism that would guarantee and prolong the global state of peace (Schabas, 2007). Two out of three founding documents of ICC were presented and accepted in 1948 by the United Nations General Assembly. The first of the documents was GA resolution 216 B (III) which determined the need for the creation of a statute upon which such a court could act. The second document, GA resolution 217 A (III), ratified the Universal Declaration of Human Rights – creating the first legislative framework of human rights (by that, the framework of how they can be breached).

In July 1998, 50 years later, the final founding document was created – the Rome Statute of the International Criminal Court was drafted, and, finally, enforced in 2002. Establishing of the court was postponed for half a century as a result of growing Cold War tensions – the entire project was suspended in 1954 and remained untouched until 1989 (Schabas, 2007).

Despite being the last founding document, the Rome Statute is also the most important document of the ICC. Its primary purpose is to define what ICC is and how every segment of the court functions. The Rome Statute defines ICC as a court, its relationship to other international organizations, its jurisdiction, principles of general law, characteristics of crimes subject to the court, composition and administration of the court, proceedings of research and investigation, procedures of individual trials, appeals and revisions, funding of the court and all other relevant aspects (Rome Statute).

In addition to its core, focal tribunal – ICC has jurisdiction over the two *ad hoc* Tribunals established before ICC itself: the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) (Schiff, 2008). Both *ad hoc* tribunals were established by the United Nation's Security Council, ICTY in 1993 and ICTR in 1994. Formally speaking, the main reason for their establishment was the wish and need of the international community to stop internal violence by taking a symbolic step toward international criminal accountability and responsibility. This symbolic step was additionally reiterated by the fact that it followed the original principles and dealings of the previous Nurnberg and Tokyo trials designated for prosecution of war crimes that occurred during World War Two (Schiff, 2008).

Many authors researching the violent dissolution of Yugoslavia believe, though, that ICTY was not formed as a manner of peacebuilding symbolism, but rather a mechanism devised to overlook the failures of the international community in preventing such a horrendous war through diplomatic means. Thus, ICTY was only formed after the public was faced with images

of starved and tortured populations inhabiting areas of war, as well as camps for prisoners of war – that bore a ghastly resemblance to Nazi camps (Clark, 2014). Similarly, a widely accepted opinion is that the quick establishment of ICTR was a maneuver of repentance introduced by the international community, in order to compensate for the lack of intervention before and during the Rwandan genocide (Cruvellier, 2010; Thompson, 2007; Jones 2010). This notion is extremely noteworthy, considering the well-represented belief that the genocide in Rwanda could have been easily prevented by the presence of only several educated and armed units<sup>1</sup>.

While the proceedings conducted by the ICTY greatly resembled the proceedings of ICC itself, the proceedings of ICTR were less systematic and vastly dissimilar – dichotomizing its methods from defined principles of international law practices. Examples of these include (but are not limited to) appointing active ICTY prosecutors as ICTR prosecutors, setting up a local court in Tanzania whilst keeping the main body in the Hague, legitimizing *gacaca* courts<sup>2</sup> as ICTR courts (contrary to the previous practices by the ICC and the UN) (Clark, 2010), prosecuting only Hutu nationals (responsible for the genocide) and, in accordance with the Tutsi government in power, disregarding the war crimes committed by Tutsi nationals and their military organizations (Rwanda: Mixed Legacy for Community-Based Genocide Courts, 2011).

### **3. ICC and the media**

Aside from the three founding documents of the ICC, noteworthy documents also include laws and conventions that define what characterizes a war crime and who is held accountable when war crimes are committed. Thus, besides the Rome Statute, relevant documents also include the Geneva Conventions of 1949, the 1925 Geneva Protocol, Hague Conventions of 1954 and 1907, UN documents defining human rights as well as additions and amendments of all documents specified within this paragraph (International Committee of the Red Cross). Despite the fact that ICTR and ICTY are regulated by their own founding statutes, this paper will primarily focus on the documents relevant for ICC – firstly, because ICC is the superior institution and, secondly, because the statutes of ICTR and ICTY are for the most part equalized to the rules and proceedings of ICC<sup>3</sup>.

In the specific realm of media and journalism – the only defined war crime is included within the Rome Statute, Article 25, section 3, subsection e: “In accordance with this Statute, a

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<sup>1</sup> Especially considering the fact that the Rwandan forces taking part in the genocide were primarily armed with machetes for purposes of agronomy.

<sup>2</sup> Gacaca courts are public, community courts founded in traditional communal law practices of Rwanda, introduced to stimulate and hasten peacebuilding, but judicially intricate and potentially hazardous since they do not recognize principles of legal representation or similar other legal practices.

<sup>3</sup> Especially concerning the topic of media prosecution.



person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: in respect of the crime of genocide, directly and publicly incites others to commit genocide“ (Rome Statute).

This definition is problematic in several aspects: firstly, it does not offer a satisfactory description of what falls within the category of direct and public incitement of genocide. Secondly, it includes solely the act of inciting genocide – media professionals inciting mass murders without the aim of contributing to genocide cannot be held accountable for their acts. In other words, there is no structured legal framework of what the media should not do in times of war. Thirdly (and most importantly), it treats the media only as a platform, rather than an entity in itself – thus, it underestimates the power of the media and neglects the potential effects of continuous messages. Its primary focus is a single message – with that, it is systematically less likely that the full context of a message can be understood, or that long-term effects of propaganda can be fully recognized.

Apart from this single article within the Rome Statute, there is no further mention of legislation inherently correlating to media professionals in any of the previously mentioned documents.

The ICC and its tribunals remain susceptible to other postulates of international law (as it is stated in Article 21 of the Rome Statute) – but this also remains inapplicable to cases of journalist prosecution since there is no unified media legislation bearing judicial power.<sup>4</sup>

Despite this, the ICC as an independent institution has never prosecuted a case with the charges of incitement to commit genocide (ICC Cases). ICTY, on the other hand has included similar charges within their indictments – including acts of hateful propaganda (Prosecutor v. Brđanin, 1999; Prosecutor v. Babić, 2003; Prosecutor v. Mucić *et al.*, 1996), incitement to commit violence (Prosecutor v. Kvočka *et al.*, 1998; Prosecutor v. Galić, 1998), instigation of armament of civilians (Prosecutor v. Stakić, 1997) etc.<sup>5</sup> However, none of the mentioned cases aimed to prosecute media professionals (i.e. those manufacturing and/or enabling said crimes), but rather aimed to prosecute political and governmental representatives – as those initially constructing ideas behind the conducted acts of propaganda. This paper will provide a short insight into the mentioned cases, in order to cover the full narrative surrounding media prosecutions at the ICC.

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<sup>4</sup> International Principles of Professional Ethics in Journalism published by UNESCO is the only document that comes close to international legislation, but it bears no judicial power.

<sup>5</sup> ICTY, much like ICC, did not try a case with charges of incitement to commit genocide – most likely because its proceedings never legally proved or defined genocide apart from the case of Srebrenica.

ICTR, though, includes cases tried for incitement to commit genocide, as well as cases of media professionals being charged with other correlating charges. Most relevant ICTR cases for this paper include the infamous *Media case*, formally known as Nahimana *et al.* (ICTR-99-52), indicting founders and editors of national print and radio in Rwanda, as well as the heavily publicized case of Georges Ruggiu (ICTR-97-32), a Belgian journalist living in Rwanda and working for one of the biggest radio stations in the country at the time of the genocide. Both cases were alleging the responsibility of the accused for direct and public incitement to commit genocide.

Alongside the two mentioned cases, it is important to analyze and define the proceedings related to media, but not necessarily aimed at media professionals: the cases of Simon Bikindi (ICTR-01-72), Eliezer Niyitegeka (ICTR-96-14), Felicien Kabuga (ICTR-98-44B), and Joseph Serugendo (ICTR-05-84) in order to define the principle set forth by ICTR in trying media cases.

The mentioned cases of journalists prosecuted at ICTR carry significant value for the overall study of legal responsibility of journalists and media companies – especially in times of war. Firstly, they exemplify a rare case of implementation of international law in the media realm. Secondly, they are the only cases of legal prosecution aimed at media professionals for war crimes since the beginning of the Information Age (Hickman, 2019). Thirdly, they provide palpable evidence of potential outcomes caused by unethical actions of the media – thus, can serve as guidance for creation of international legislation. And, finally, they aim to clearly define the levels of variation between freedom of speech and hate speech in times of war – as well as differentiate what outcomes can come from hate speech, propaganda, active calls to violence and other manners of reporting.

#### **4. Case analysis – ICTR**

In order to properly understand the proceedings in question, as well as their implications, it is crucial to contextualize them – both historically and societally. Thus, when speaking about the ICTR cases, we must firstly understand why the genocide in Rwanda happened, how it developed and what was the role of media companies in the genocide. This paper will not provide a detailed overview of the context but will provide a short insight – sufficient for understanding the cases in question.

The genocide in Rwanda began on April 7<sup>th</sup>, 1994 and lasted until mid-July of the same year. The genocide was led by Hutu extremists with the aim of eradicating the Tutsi population in Rwanda and setting up a Hutu government. The victims of the genocide were all Tutsi people,

along with moderate Hutus or those Hutus who were politically inclined toward Tutsis (Prosecutor v. Nahimana *et al.*, 1999).

Hutu extremists used civilian mobilization as their primary tactic in battle – the goal was to get as many Hutus out on the streets, killing as many Tutsis as possible. Following such a plan, the civilian forces were not educated or properly armed, but were rather encouraged to use their own machetes to contribute to the mass murders (Wallis, 2007).

Throughout the duration of the genocide, two radio stations in Rwanda had the authorization to broadcast their program nationally, whereas one additional radio station was picked-up nation-wide, but only in specific areas of the country. The two authorized stations were *Radio Rwanda* and *Radio Television Libre des Mille Collines* (referred to as RTLM, also known as *Hate Radio*), whereas the unauthorized station was *Radio Muhabura* – the station set up by the Tutsi lead Rwandan Patriotic Front (Prosecutor v. Nahimana *et al.*, 1999).

Before the genocide, many described Rwanda as a “radio country”, where almost every person had a radio, villages practiced collective listening of radio and many people could be seen carrying their own portable radios through the streets (Caplan, 2007).

Press publications were another popular form of media in Rwanda. A noteworthy newspaper often mentioned in ICTR cases is *Kangura* (Prosecutor v. Nahimana *et al.*, 1999) – most commonly, *Kangura* and RTLM are defined and referred to as hate media (Thompson, 2007).

The legal framework of media in Rwanda required everyone who wished to operate or establish a radio company to register it with the Rwandan government. Alongside that, the media was forbidden by law from committing offences against individuals or groups (hate speech, discrimination, offensive content etc.) and any form of public behavior designed to cause an uprising of citizens against each other was also forbidden. The institution responsible for supervising media broadcasts, issuing authorizations and financially supporting the media system was The Rwandan Information Agency (ORINFOR) (Prosecutor v. Nahimana *et al.*, 1999).

Thus, the radio in itself was a crucial element of the Rwandan genocide, since it was limited to only a couple of stations, reached the entire country – and, enabled the Hutus to incite violence, mobilize civilians and spread their message of hatred with unbelievable ease and unbelievable power. With that in mind, it is clear why the ICTR had a more significant responsibility in prosecuting journalists than ICC itself or ICTY.

#### 4.1. *Nahimana et al. (ICTR-99-52)*

The case ICTR-99-52 was a case against three individuals operating media companies in Rwanda at the time of the genocide. Ferdinand Nahimana, the founder and main ideologist of RTLM, Jean-Bosco Barayagwiza, a high-ranking board member of RTLM and Hassan Ngeze, chief editor of *Kangura* newspaper were all charged with counts of a) genocide, b) conspiracy to commit genocide, c) direct and public incitement to commit genocide, d) complicity in genocide, and e) crimes against humanity.

One of the biggest and most important points brought forth by the prosecution was the claim that the named individuals conspired together in order to create a propaganda narrative with the goal of extermination of Tutsi population. Aside from the claim that named individuals conspired amongst themselves, the prosecution involved the names of individuals accused in other ICTR media cases: Georges Ruggiu and Felicien Kabuga. The stated propaganda included designed messages of ethnic hatred, but also (and more importantly) open incitement to violence (Prosecutor v. *Nahimana et al.*, 1999).

All three of the men charged within the Media case had a background in politics and were politically and ideologically involved in the newly established regime. Despite their involvement in the regime, their conduct within RTLM and *Kangura* was done by their own accord, rather than by the influence of others in power. A good example of their autonomy in decision-making is the fact that *Kangura* was formed in alliance with one of the Hutu political and military leaders, Joseph Nzirorera (ICTR-98-44), but had followed the ideological pathway set forth by the Media case individuals rather than other members of the political/military elites in power. Another argument in favor of their sovereignty in the crimes includes their refusal to comply to the requests of the Minister of Information before the genocide, in late 1993 when they were told to stop airing illegal messages of hatred and violence (Prosecutor v. *Nahimana et al.*, 1999).

Interestingly, the accused were found guilty of all counts except for the count of complicity to genocide. In this case (and similar cases) complicity to genocide could be understood as a behavior of assistance or encouragement, or as Greenfield defines it – any purposeful act of violence whose final goal might not be clearly defined by the perpetrator, but the act of violence still contributes to the end goal (committing murders without necessarily aiming to commit genocide) (Greenfield, 2008).

Following their appeals, after the initial trial, all men were acquitted of some aspects of their original sentence.

Nahimana's conviction for instigating genocide was partially reversed due to the Appeal Chamber considering his broadcasting prior to the genocide (before April 1994) unable to contribute to violence (since there was no violence to contribute to at that time). Furthermore, they considered that his actions after April 1994 did not play a significant role in the broadcasting program of RTLM, thus they did not contribute to occurring violence (Kagan, 2008).

It is important to note, though, that Nahimana was found guilty of instigating genocide, but primarily because he was the founder and main ideologist of RTLM. The acquittal in question maintains that Nahimana's own reporting did not contribute to the genocide, but that his role within RTLM did. Considering he knew RTLM contributed to mobilization of Hutu civilians and consequential killings of Tutsis, his position of superiority within RTLM's hierarchy, as well as his ideological compliance to the goals of the genocide – it is easy to conclude that his acts within RTLM contributed to the genocide in Rwanda (Prosecutor v. Nahimana *et al.*, 1999).

Barayagwiza was acquitted for the charges of superior responsibility over journalists at RTML after the genocide began, but all other charges were kept (Kagan, 2008).

Ngeze, similarly to Nahimana, was acquitted of the charges for the early works of *Kangura* – the Appeals Chamber considered *Kangura*'s earlier editions did incite a climate of hatred but did not substantially contribute to the genocide itself (Prosecutor v. Nahimana *et al.*, 1999).

It is important to note, though, that the Appeals Chamber disagreed with the initial decision in certain nuances of practical doing (e.g. what was the precise duration of producing hateful content; was the hateful content produced only by the individual, or by those subordinate to them as well etc.), but they completely and fully supported the principle of RTML and *Kangura* playing a key role in devising a hateful climate in society and inciting violence (with that, encouraging genocide). Thus, all accused were still found overall guilty for the crimes stated previously and have been sentenced to a minimum of 30 years in prison (Nahimana was sentenced to 30 years, Barayagwiza to 32 years and Ngeze to 35 years) (Kagan, 2008).

Nahimana *et al.* set a precedent both for prosecution of media professionals as well as prosecution of propaganda actors. ICTR was the first court to try a case not only based on the practical effect that certain news coverage resulted in, but also on the connotation and impact the choice of words used in news coverage had. Thus, direct instigation of violence stopped being the sole, essential segment of an indictment for inciting violence during periods of war. The main reason behind such a precedent was the inherently contentious undertone that many

hateful words possessed. Referring to someone as *umwanzi* carried two meanings; the initial denotation (meaning *enemy*), as well as the initial connotative call to violence that became acutely integrated to the denotation of the word in question (Ruzindana, 2012).

Furthermore, this case was the first instance (along with the Ruggiu case<sup>6</sup>) of prosecuting true media professionals, rather than prosecuting those acting as journalists in order to comply with the national propaganda plans. Several authors tend to point out that the first cases of media professionals charged with war crimes occurred in the 1940s during the Nurnberg and Tokyo trials. We cannot treat the cases of media professionals at ICTR as equal to those tried at Nurnberg and Tokyo. A crucial difference between the tribunals is the individual accountability of the accused. For the majority of cases presented at Tokyo or Nurnberg, there was a proven connection between the governing bodies of the state and the accused individual (they were part of the propaganda machinery, political leaders or individuals purposefully appointed to run a media service with the goal of propaganda spreading). Thus, they became media professionals as a direct consequence of their political activity, whereas the individuals tried at ICTR were legitimate media professionals who, by their own accord, became propaganda actors (Hickman, 2019).

Another important precedent was set in terms of the definition of “freedom of speech”, since the defendants used the said notion as a means of their defense. Seeing how this precedent was present in other ICTR cases, its full elaboration will be given later in the paper (Prosecutor v. Nahimana *et al.* 1999).

#### 4.2. Ruggiu (ICTR-97-32)

The case of Georges Ruggiu (ICTR-97-32) was somewhat related to the Media case, but was a special (thus, well publicized) case since it involved the only Belgian national (with that, the only non-Rwandan) accused and tried at the ICTR.

Ruggiu was a journalist working for RTML at the time of the genocide. He was a foreigner that moved to Rwanda in 1993 and got ideologically indoctrinated by the extremist Hutus and started aligning with the idea of Tutsi extermination. Another peculiarity in this case was the fact that Georges Ruggiu admitted guilt in front of ICTR as a part of the offered plea bargain. The plea bargain Ruggiu accepted granted him a shorter sentence, but also involved him in the Media case as one of the key witnesses (Li, 2007).

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<sup>6</sup> The Ruggiu case was the first to be tried, but Nahimana *et al.* was the originating case, first to be investigated.

Ultimately, he was charged with the direct and public incitement to commit genocide and persecution as a crime against humanity – he pleaded guilty to both charges and was sentenced to 12 years in prison (Prosecutor v. Ruggiu, 1997).

His prison sentence was supposed to be served in Italy, but in April 2009, a year after his trial finished, Ruggiu was granted early release by an Italian court (thus violating the Statute of ICTR) (Convicted journalist released early in violation of ICTR Statute, 2009).

Despite having several ties to the Hutu extremists in power at the time, Ruggiu is an ideal example of an average journalist prosecuted for his role in encouraging war crimes. As it is stated within his judgement – he did not strike a blow or fire a shot, yet he profoundly contributed to the deaths of thousands (Prosecutor v. Ruggiu, 1997).

His legal, professional responsibility is comparable to the responsibility established in the Nahimana *et al.* case, but an important distinction is the lesser extent of cooperation with the political leaders of Hutu extremists.

#### 4.3. *Other media related cases*

One of the most prominent media cases at ICTR is that of Simon Bikindi (ICTR-01-72). This case is particularly interesting because the accused is a musician, singer and composer whose music was alleged to incite violence and encourage genocide. Apart from his music as a means of inciting hate, Bikindi was also held accountable for his public encouragement of the killings – amplified by his status of a popular musician in Rwanda. He was indicted and tried on six counts before the ICTR and finally convicted of one of the counts. The initial counts included: a) conspiracy to commit genocide, b) genocide, c) complicity in genocide, d) direct and public incitement to commit genocide, e) murder as a crime against humanity and f) persecution as a crime against humanity. Bikindi was found guilty only of direct and public incitement to commit genocide – in the elaboration of the verdict, it was made clear that his music wasn't the key object in the trial (thus respecting freedom of speech as an important principle and differentiating it from hate speech), but the Chamber more so focused on Bikindi's active participation in hate convoys, organized to directly incite violence and call for extermination of Tutsis. His participation in those convoys was especially relevant since Bikindi was a well-known public figure, whose songs were played both on Radio Rwanda and RTLM as a part of calls for genocide. Through his songs, Bikindi himself became an important symbol in encouraging violence towards Tutsis – thus, his participation in the convoys had greater value than it initially seemed.

The case of Simon Bikindi set a very important precedent concerning the international legislative framework for freedom of expression. Considering that Bikindi was an artist charged for the impact his art had on the development of the genocide, the court deemed it necessary to accentuate the importance of freedom of expression, as well as its limitations.

Bikindi was finally found not guilty of inciting genocide, but the elaboration behind such a decision plays a more important role in the grand scheme of things.

The reasoning behind such a decision was primarily founded in the idea that hate speech could be defined as discriminatory, it could be defined as inciting violence and it could be understood as a means of instigating hatred – however, none of these classification are found to be criminalized under the statute of ICTR (or ICC) (Prosecutor v. Bikindi, 2001).

Thus, the decision made in the Bikindi case became a principle for other similar cases, as well as a principle for interpreting postulates of international law correlating to freedom of expression.

Finally, it is important to note the cases of Eliezer Niyitegeka (ICTR-96-14), Felicien Kabuga (ICTR-98-44B) and Joseph Serugendo (ICTR-05-84) – these cases are considered media cases, but they do not reflect the acts of journalists or people exposed to the public through media – rather, they speak of those funding media campaigns, offering technical support to the media and creating a legal framework for the media. Regardless, it's important to mention them in order to paint a full picture and give a complete characterization of media prosecution at ICTR. In the case of Joseph Serugendo, the accused was tried for offering technical assistance and moral support to those working for RTLM.<sup>7</sup> Serugendo pleaded guilty and was sentenced to 6 years imprisonment. Kabuga was a businessman who financially supported many aspects of the Rwandan genocide – ranging from funding for RTLM and *Kangura* to importing machetes in the country. Kabuga hasn't been tried by the ICTR, thus he hasn't been found guilty or not-guilty, due to him fleeing the country and living as a fugitive for the past 25 years.<sup>8</sup> Eliezer Niyitegeka was a professional journalist, unsuccessfully tried for his pre-genocide broadcasting, but successfully convicted of his participation in the genocide as the Minister of Information. Holding the position of the Minister, Niyitegeka had the authority and possibility of creating media-related legislation as well as the authority over those working in the broadcasting industry.

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<sup>7</sup> Serugendo was also accused for leading milita rallies, but that fact was left out due to it not being relevant to the context.

<sup>8</sup>Kabuga has finally been arrested in May, 2020.



## 5. Case analysis – ICTY

The International Criminal Tribunal for Former Yugoslavia was created to prosecute cases of war crimes committed during the violent dissolution of Yugoslavia. During the 1990s, the multinational, multiethnic Yugoslavia broke down to Slovenia, Croatia, Bosnia and Herzegovina, Macedonia and the Federal Republic of Yugoslavia (later Serbia and Montenegro). With the fragmentation of the country, violence broke out – Serbia deployed its army attempting to militarily occupy republics that formally left Yugoslavia. While Croatia and Slovenia fought for their independence, Kosovo was fighting for its autonomy, restricted by legal changes in the 1980s. Ethnic conflicts arose all around the country – most prominently in Bosnia and Herzegovina, a country populated by and divided amongst Croats, Serbs and Bosniaks (The Conflicts).

Out of 161 cases opened by the ICTY, there is a total of 0 journalists prosecuted by the Tribunal. Depending on the definition of propaganda, there is between 5 and 15 cases of individuals indicted for acts of propaganda (ICC Cases).

Considering only the cases where acts of propaganda were directly listed as a part of the indictments and were described as propaganda carried out through the media, there is a total of 4 cases charging 11 individuals with acts of propaganda. These include: Brđanin (IT-99-36), Kvočka *et al.* (IT-98-30/1), Mucić *et al.* (IT-96-21) and Stakić (IT-97-24).

In the case of Brđanin (IT-99-36), this includes propaganda campaigns against Bosnian Muslims and Bosnian Croats in Bosnia and Herzegovina. The same applies to Kvočka *et al.* (IT-98-30/1), as well as Mucić *et al.* (IT-96-21).

In the case of Mucić *et al.* it is additionally specified that the acts of propaganda were not limited to media broadcasts, but also included armament of local Serbian civilians.

Similarly, the case of Stakić (IT-97-24) also included armament of civilians, but it differs from other cases because the propaganda in question was not aimed against Bosniaks and Croats, but rather towards empowering Serbs as well as inciting them to arm themselves in order to defeat the enemy (or as it was phrased – to avoid being massacred).

ICTY propaganda cases best exemplify the problem presented earlier on in the paper – treating the media as a platform rather than an entity. These cases aim to prosecute the individuals directly responsible for certain propaganda messages displayed in times of war, rather than prosecute those that have orchestrated and designed the entire propaganda machinery – with that, created a hateful atmosphere that will surpass the times of war and in itself create a potential for further misuse of information as a foundation for continued discrimination and violence.

## **6. Conclusion**

The cases presented in this paper give a very good depiction of the power media platforms possess, especially when misused. Apart from just describing what atrocities can happen when media professionals disregard their own ethical and moral codes, it also points out the need to control, limit and regulate the media as an entity. Considering that the Rome Statute defines only and solely the incitement to commit genocide as a war crime in the realm of media points to a very big issue. The entire scope of international law has no documents or regulations concerning media – by that, it has no mechanism of punishing those who cause thousands and thousands of deaths purely by misusing the media.

To conclude, the trials that occurred at the ICTR (and to some extent ICTY) are specific because they depict a violent extreme in media culture that has not happened since Nazi Germany. They present humanity with a palpable threat potentially created by tolerating propaganda. Thus, they should be taken as a learning experience and a foundation for creating further research, with the aim of defining journalistic responsibilities and the extent of their mandates both in times of peace and in times of turmoil, as well as create new legislation intended to better define propaganda and public incitement of violence.

In summary, journalists as individuals have not been prosecuted by the ICC due to inadequate and unclear legislation concerning media professionals and propaganda, as well as an undefined notion of command responsibility in news institutions.

## 7. Bibliography

- Caplan, G. (2007). Rwanda: Walking the Road to Genocide. in K. Annan and A. Thompson (Ed.), *The Media and the Rwanda Genocide* (pp. 20-41). London: Pluto Press.
- Clark, J. N. (2014). *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia*. New York: Routledge.
- Cruvellier, T. (2010). *Court of Remorse: Inside the International Criminal Tribunal for Rwanda*. Madison: The University of Wisconsin Press.
- Greenfield, D. (2008). The Crime of Complicity in Genocide: How the International Criminal Tribunals for Rwanda and Yugoslavia Got It Wrong, and Why It Matters. *Journal of Criminal Law and Criminology*, 98(3), pp.921–952.
- Hickman, J. (2019). Why Have Few Journalist Been Prosecuted for Incitement to War Crimes? *European Journal of Communication*, 33(6), pp. 658-672.
- International Committee of the Red Cross, Advisory Service on International Humanitarian Law. (n.d.). *War Crimes under the Rome Statute of the International Criminal Court and their source in International Humanitarian Law*. Geneva: International Committee of the Red Cross.
- Jones, N. A. (2010). *The Courts of Genocide: Politics and the Rule of Law in Rwanda and Arusha*. New York: Routledge.
- Kagan, S. (2008). The “Media Case” Before the Rwandan Tribunal: Nahimana *et al.* The Appeal Judgement. *Hague Justice Journal*, 1, pp. 87-95.
- Li, D. (2007). Echoes of Violence: Considerations on Radio and Genocide in Rwanda. in K. Annan and A. Thompson (Ed.), *The Media and the Rwanda Genocide* (pp. 90-110). London: Pluto Press.
- Ruzindana, M. (2012). The Challenges of Understanding Kinyarwanda Key Terms Used to Instigate the 1994 Genocide in Rwanda. in P. Dojčinović (Ed.), *Propaganda, War Crimes Trials and International Law* (pp. 145-171). New York: Routledge.
- Schabas, W. A. (2007). *An Introduction to the International Criminal Court*. New York: Cambridge University Press.
- Schiff, B. N. (2008). *Building the International Criminal Court*. New York: Cambridge University Press.
- Thompson, A. (2007). Introduction. in K. Annan and A. Thompson (Ed.), *The Media and the Rwanda Genocide* (pp. 1-12). London: Pluto Press.
- Wallis, A. (2007). *Silent Accomplice: The Untold Story of France’s Role in the Rwandan Genocide*. New York: I. B. Tauris & Co Ltd.

## Internet Sources

About the International Criminal Court. (1998, July 17). Retrieved March 04, 2020, from [www.icc-cpi.int/about](http://www.icc-cpi.int/about)

The Conflicts. (n.d.). Retrieved April 17, 2020, from [www.icty.org/en/about/what-former-yugoslavia/conflicts](http://www.icty.org/en/about/what-former-yugoslavia/conflicts)

Convicted journalist released early in violation of ICTR Statute. (2009, May 29). Retrieved April 04, 2020, from [www.haguejusticeportal.net/index.php?id=10688](http://www.haguejusticeportal.net/index.php?id=10688)

ICC Cases. (n.d.). Retrieved April 04, 2020, from [www.icc-cpi.int/Pages/cases.aspx](http://www.icc-cpi.int/Pages/cases.aspx)

ICTR, Case No. ICTR-01-72: International Criminal Tribunal for Rwanda: Case No. ICTR-01-72, Prosecutor v. Simon Bikindi, <https://unictr.irmct.org/en/documents>.

ICTR, Case No. ICTR-05-84: International Criminal Tribunal for Rwanda: Case No. ICTR-05-84, Prosecutor v. Joseph Serugendo, <https://unictr.irmct.org/en/documents>.

ICTR, Case No. ICTR-96-14: International Criminal Tribunal for Rwanda: Case No. ICTR-96-14, Prosecutor v. Eliezer Niyitegeka, <https://unictr.irmct.org/en/documents>.

ICTR, Case No. ICTR-97-32-I: International Criminal Tribunal for Rwanda: Case No. ICTR-97-32-I, Prosecutor v. Georges Ruggiu, <https://unictr.irmct.org/en/documents>.

ICTR, Case No. ICTR-98-44B: International Criminal Tribunal for Rwanda: Case No. ICTR-98-44B, Prosecutor v. Felicien Kabuga, <https://unictr.irmct.org/en/documents>.

ICTR, Case No. ICTR-99-52: International Criminal Tribunal for Rwanda: Case No. ICTR-99-52, Prosecutor v. Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze, <https://unictr.irmct.org/en/documents>.

ICTY, Case No. IT-03-72: International Criminal Tribunal for the former Yugoslavia: Case No. IT-03-72, Prosecutor v. Milan Babić, <https://icr.icty.org/>.

ICTY, Case No. IT-96-21: International Criminal Tribunal for the former Yugoslavia: Case No. IT-96-21, Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo and Zejnil Delalić, <https://icr.icty.org/>.

ICTY, Case No. IT-97-24: International Criminal Tribunal for the former Yugoslavia: Case No. IT-97-24, Prosecutor v. Milomir Stakić, <https://icr.icty.org/>.

ICTY, Case No. IT-98-29: International Criminal Tribunal for the former Yugoslavia: Case No. IT-98-29, Prosecutor v. Stanislav Galić, <https://icr.icty.org/>.

ICTY, Case No. IT-98-30/1: International Criminal Tribunal for the former Yugoslavia: Case No. IT-98-30/1, Prosecutor v. Miroslav Kvočka, Dragoljub Prcać, Milošević, Mlado Radić and Zoran Žigić, <https://icr.icty.org/>.

ICTY, Case No.IT-99-36: International Criminal Tribunal for the former Yugoslavia: Case No.IT-99-36, Prosecutor v. Radoslav Brđanin, <https://icr.icty.org/>.

Key Figures of the Cases. (2019, August). Retrieved April 21, 2020, from [www.icty.org/en/cases/key-figures-cases](http://www.icty.org/en/cases/key-figures-cases)

Rome Statute of the International Criminal Court. *Publishing on the Internet*. Available at: <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

Rwanda: Mixed Legacy for Community-Based Genocide Courts. (2011, May 31). Retrieved April 04, 2020, from [www.hrw.org/news/2011/05/31/rwanda-mixed-legacy-community-based-genocide-courts](http://www.hrw.org/news/2011/05/31/rwanda-mixed-legacy-community-based-genocide-courts)

UN Resolution 216 B (III). *Publishing on the Internet*. Available at: <https://digitallibrary.un.org/record/90483>

UN Resolution 217 A (III). *Publishing on the Internet*. Available at: [https://undocs.org/A/RES/217\(III\)](https://undocs.org/A/RES/217(III))