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## Witnesses to Justice

*For 15 years, Shearman & Sterling sent legions of associates to support the International Criminal Tribunal for Rwanda.*

*By Michael D. Goldhaber*

**WHEN SHEARMAN & STERLING NEEDED TO SLIM DOWN** A few years ago, it was willing to shutter storied outposts in Munich and Düsseldorf. But Shearman's unofficial office in Arusha, the dusty third city of impoverished Tanzania, was sacrosanct.

Shearman House in Arusha is a cinder-block bungalow without an address, on a street that was only recently paved. The water must be boiled, the lights routinely flicker out between 8 and 10 p.m., and the beds need protective mosquito netting. In the mornings, Shearman lawyers awaken at the residential compound to the sounds of Maasai warriors or Muslim barterers whizzing by on "picky picky" motorbikes or propane 4x4s at the foot of Mount Kilimanjaro.

Over the past 15 years, Shearman has sent a relay team of 136 associates on one- to two-month Arusha sabbaticals to support the International Criminal Tribunal for Rwanda, which at the end of this year is winding up its United Nations mandate to bring Rwandan genocidaires to justice.

"Our partnership with Shearman & Sterling demonstrates the collaboration possible between public international law and private practice," says ICTR chief prosecutor Hassan Jallow. "I'm not aware of any other firm that's made such a long-standing and consistent contribution to international justice," adds appellate chief James Arguin. "In the face of uncertain litigation, the one constant we've had is a good stream of Shearman associates."

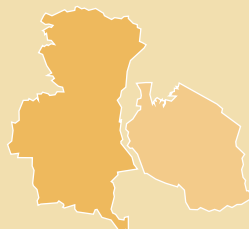
The history of Rwanda's tribunal and Shearman's program are deeply intertwined. As both prepare to close their doors, the time is ripe for an evaluation.

**THE U.N. ESTABLISHED THE ICTR IN** November 1994, a few months after Rwanda's Hutus massacred 800,000 Tutsis, and the court in Arusha opened a year later. After a 7-week multinational stakeout in 1997, ex-prime minister Jean Kambanda surrendered and pleaded guilty, leading to the world's only standing genocide conviction for a head of state. The ICTR's first trial, of the small-town mayor Jean-Paul Akayesu, initially focused only on killings. But when a witness let slip on the stand that three men had raped her 6-year-old daughter, the judges took an acute interest, and women's groups persuaded prosecutors to add rape to the indictment. The 1998 Akayesu judgment was notable not only as the world's first trial conviction under the Genocide Convention, but also as the

first case to recognize that genocide may take the form of sexual violence. Kelly Askin, now of the Open Society Justice Initiative, called it "the most important decision rendered thus far in the history of women's jurisprudence." In light of the Islamic State's rape crimes, says Leila Sadat of Washington University School of Law, Akayesu is of "tremendous contemporary importance."

Meanwhile, in 1998 Shearman associate Helen MacFarlane did a pro bono gig for

**Honoree:**  
Shearman & Sterling  
Location: Rwanda, Tanzania





Kosovar refugees. She and pro bono director Saralyn Cohen resolved to focus on international justice, and two years later convinced Arusha to accept their help. MacFarlane's team played a bit role in the Akayesu appeal, and an important one in the "Media case," researching the law on hate speech around the world. In its landmark Media ruling, the ICTR would agree that the directors of the extremist Hutu radio station and newspaper were guilty of public incitement to genocide.

Shearman's involvement deepened. In 2001, partner Frederick Davis (now of Debevoise & Plimpton) and partner Stephen Fishbein led the first of a half-dozen training sessions for Arusha prosecutors. Among the teachers was future Attorney General Loretta Lynch. During the Senate confirmation process, Lynch cited her experience in Rwanda as the most meaningful of her career.

The same year, Daniel Schimmel (now of Foley Hoag) devoted his law firm sabbatical to prosecuting genocide. An unbroken caravan of Shearman attorneys followed, donating more than 55,000 hours of time. Squirreled away in the Serengeti building of Arusha's drab conference center, Shearman lawyers have prepped witnesses, drafted briefs and attended murder boards for every key case since.

Prosecutor Jallow calls the 2006 Karamera ruling especially significant, and cites it as "one of many cases for which Shearman provided valuable support." In Karamera, the appeals chamber accepted the Rwandan genocide "as a matter of undisputed fact." This "streamlined the presentation of evidence in all the remaining cases," Jallow notes, "provided formal recognition of the crimes perpetrated," and—most importantly—insulated the historical record against the insult of denialism.

Put it all together, says professor Sadat, and the ICTR "made a real significant contribution to building the modern corpus of international criminal law."

**FOR ALL THAT THE SHEARMAN LAWYERS GAVE AFRICA**, Africa probably gave them more. Another legacy of the ICTR, Sadat writes, is that "thousands of non-Africans have come to this continent who probably would not otherwise have done so, have grappled with the complexities of the Rwandan genocide, and have, one hopes, come away with a deeper appreciation for the peoples and nations of Africa." Says Davis: "Virtually everyone



Shearman partners Paula Howell Anderson and Stephen Fishbein led their firm's efforts in international justice.

who went was blown away by how real it was. Everyone I talked to sort of had their life changed."

New York litigator Paula Howell Anderson experienced a truly global cultural moment with a young Tutsi woman who had survived the unimaginable, connecting over a song by the reggae artist Kevin Lyttle of St. Vincent and the Grenadines. For Andreas Kafetzopoulos (now of Skadden, Arps, Slate, Meagher & Flom), the memory that lingers came over dinner at the home of a Tutsi man on the shores of Lake Kivu. The antitrust attorney from Brussels was moved to discover that two of the other dinner guests were the recently released murderers of his host's brother and two nephews. For Kafetzopoulos, the most searing lesson of his experience at a court devoted to retribution was the human capacity for forgiveness.

Leslie Haskell and Dan Segal recall staring into the face of evil at close range—Haskell at the trial of the genocidal mastermind Theoneste Bagosara, and Segal at the trial of the diabolical priest Athanase Seromba. Father Seromba offered more than 2,000 Tutsi parishioners refuge in his church. Then he tried to set the brick church afire, and when that didn't work, slaughtered them with bulldozers and machetes. M&A associate Grace Jamgochian recalls sitting in court amid the family of the



extremist Hutu party leader Edouard Karemera. She came away appreciating that even someone who oversaw the murders of innocents “can also love and be loved.”

After returning from Africa, Brussels associate Julie Vandebussche was moved this summer to host a 20-month-old Rwandan girl, Honorine, as she underwent life-saving surgery to repair a heart defect. Several associates went on to devote their careers to the public interest, among them Segal at RTI International and Haskell, who became a loyal critic of the tribunal at Human Rights Watch.

For despite its impressive jurisprudence, the ICTR is sharply criticized on at least three scores.

First, the tribunal is accused of carrying out one-sided “victor’s justice.” The ICTR never put a Tutsi in the dock for the reprisals they committed (on a vastly smaller scale) after their return to power under the militia leader Paul Kagame. “The failure to go after those cases really tarnishes the tribunal’s legacy,” Haskell says. Part of the problem, Sadat notes, is that the court’s jurisdiction didn’t extend far enough forward in time to deter reprisals. But some Tutsi crimes occurred during the period with which the court was concerned, and critics say the ICTR caved to pressure by Kagame, who is now Rwanda’s president, not to pursue cases against his men. Appellate chief Arguin responds that the court referred those cases to Rwandan courts when they were mature enough to handle them, and that the cases were prosecuted fairly. Indeed, Arguin counts Rwandan reforms of legal aid, criminal law, prisons and sentencing (including abolition of the death penalty) as among the ICTR’s achievements.

Second, critics say the tribunal did a poor job of getting its message out. Haskell recalls touring Rwanda as a Shearman intern with Prosecutor Jallow, trying in vain to explain to victims how one higher-up’s acquittal for lack of evidence is part of the justice process, and does not discredit the witnesses. “The tribunal did excellent work,” Haskell says, “but it didn’t resonate in Rwanda because we didn’t do enough outreach, and the government manipulated the coverage it got. One of the great lessons of the ICTR is that justice needs to be seen as well as done.” Arguin agrees that more community outreach should be built into the U.N.’s budget.

Third, some say the procedures were shambolic. Davis is disappointed that his training sessions didn’t help to standardize practices in international justice. “It’s a failure that the court didn’t evolve effective procedures,” he says. “Even toward the end they were compromising and coming up with jerry-built solutions, and as a result they took forever. Five years on a case to me is fairly ridiculous.”

All told, it cost about \$1.75 billion over two decades for the U.N. to indict 93 top genocide suspects. (This excludes more than 10,000 lower-level suspects tried in Rwandan courts, and

2 million cases in the informal village system of “gacaca” justice.) The ICTR convicted 61 and sent 10 for trial elsewhere. Two indictments were withdrawn, and three suspects died during legal proceedings. Three escaped arrest, and 14 were acquitted. “The judges disbelieved an extraordinary number of witnesses,” Davis says, and “the acquittals on appeal were very high.”

Davis voices special frustration that the U.S. practice of prosecutors preparing witnesses has never been fully or consistently accepted in either Arusha or The Hague. American litigators tend to see “witness proofing” as essential if simple villagers are to relate a traumatic and distant memory in a credible way.

#### ANOTHER PIONEER OF SHEARMAN’S RWANDA PROGRAMS

strikes a more forgiving attitude. Now a counsel at Hesketh Henry in New Zealand, Helen MacFarlane says Arusha was a crazy quilt of legal cultures. An overarching tension existed between Africa and the West. Africa was split between Anglophone and Francophile lawyers. The West divided into civil and common law camps. Among common lawyers, there was a schism between the Yanks and the British Commonwealth.

“You’ve got to deal with the realm of the achievable,” MacFarlane says with a laugh. “Did the ICTR run like an efficient well-run U.S. Attorney’s office? Absolutely not. I mean, that was just never going to happen.”

Shearman’s Fishbein notes optimistically that the International Criminal Court has become more open to witness proofing over time. The project of improving international justice continues—with Fishbein holding three training sessions at the ICC for an ever larger and more senior crowd of prosecutors. Shearman has helped to conduct the first ICC trial for recruiting child soldiers in Kenya, and represents dozens of civil parties at the Khmer Rouge trial in Cambodia.

Most of the Shearman diaspora who passed through the cinderblock bungalow in the shade of Mount Kilimanjaro insist that they accomplished something important. They are inclined to accept the generous assessment of David Scheffer, who helped to create the ICTR as the first U.S. ambassador-at-large for war crimes issues.

“Despite its many administrative and political setbacks,” writes Scheffer in his memoir, “All the Missing Souls,” “the Rwanda Tribunal rendered credible justice for the genocide that mercilessly swept through Rwanda in 1994. Never before has the rule of law been rendered so thoroughly against so many leaders responsible for atrocity crimes in Africa. The endeavor has proven its worth many times over.”

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