

State Sovereignty versus Individual Human Rights in the Case of the Rwandan Genocide of 1994

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**STATE SOVEREIGNTY VERSUS INDIVIDUAL HUMAN RIGHTS IN THE
CASE OF THE RWANDAN GENOCIDE OF 1994**

**BY
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**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT FOR THE
AWARD OF A DEGREE OF MASTERS OF ARTS IN INTERNATIONAL
RELATIONS AND DIPLOMACY OF NKUMBA UNIVERSITY**

2006

DEDICATION

This book is dedicated to my late DAD and MUM without whom I would not have been here in the first place.

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ABSTRACT

State sovereignty versus individual human rights in the case of the Rwandan genocide of 1994

This study entitled 'State sovereignty versus individual human rights' is a critical reflection of the relationship between sovereignty and (individual) human rights especially as it related to the Rwandan genocide in which about a million people perished in only 100 days. The fact that Rwanda government conducted a genocide against its citizens and continued to enjoy the benefits of sovereign rights of independent states such as the protection from foreign interference, well knowing that peoples rights were being violated, moved me to question the legitimacy of state sovereignty of an abusive government.

The purpose of this study was to find out whether the people's sovereignty had been hijacked by the state, and misused as a shield to mask violations of individual rights from international scrutiny. And further determine whether state sovereignty was made an excuse for non-intervention to stop the genocide. Therefore, the study set out to accomplish the following objectives; to establish the attitudes of the citizens about their sovereignty in light of the past and present governments; to assess the role of sovereignty and

international response to the 1994 genocide; to examine the current level of human rights observance in the country; and make recommendations.

I employed a qualitative Ex-post facto study design since I was looking at the conditions that had already occurred. In such a case there is no manipulation of conditions i.e. the genocide had already occurred. So the design was deemed appropriate in as far as the descriptions of facts.

The study was conducted in Kigali, which was the epicentre of the genocide. Using purposive and simple random sampling techniques, a sample of 100 respondents was selected from a study population of 1000 people comprising civil servants, government officials, church leaders, civil society leaders and locals. Using self-administered questionnaires and interview guide data was collected and responses got, were organized, tabulated, and the frequencies determined.

The discussion and analysis of data collected gave the following findings; that sovereignty was not a common right in pre-genocide Rwanda and that the 1962 independence was a Hutu independence rather than Rwandan; it was found out that there was gross misuse of sovereignty by the state government, which culminated in the successive and 1994 genocide; the international community breached the 1948 Geneva Convention obligation; there is considerable observance of human rights by the current government although there are still serious human rights concerns.

It was recommended that human rights education be incorporated in the education curriculum at all levels to combat cognitive dissonance among Rwandans. Secondly, that those countries that were concerned in one way or another, should account for the untold suffering that the people went through, and thirdly, that the international community (UN) should be restructured to

have new standards for prompt humanitarian intervention and that state sovereignty should cease to be used as justification to shield human right abuse. And finally, it is recommended that a regional Crisis response force be established for prompt deployment to the crisis area as an African initiative. I believe these recommendations are relevant to the UN, AU, and the civilized nations in the quest to protect human rights of all peoples everywhere.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Despite the many and growing bodies of international Human rights laws, Governments in many countries, under the guise of state sovereignty, have harassed, persecuted, tortured, starved and above all, killed large segments of their own populations and fear little of greater rebuke than a resolution of condemnation (Schulz, 2003:1). Despair comes easily to the observer of human right scene staged especially in Africa. Periodic starvation; slaughter of political opponents; systematic torture of political dissidents; racism and discrimination, absence of democratic procedures and to higher level, illegal detentions of Afghans at Guantanamo bay by a democratic government.

After all, governments are protected by the UN charter from any interference in matters essentially domestic in character. The standard judgment on when sovereign rights of citizens are to be protected by the international law seem to be a matter of whose interests it may be. Evidently, although most states have bound themselves to implement the contents of several human rights conventions, securing the honouring and enforcement of these instruments of international law is by no means as easy as securing signatures.

In an ideally law-abiding world, sovereignty and independence would be synonymous. However, in real world where power is important, independence is not absolute. A small country (weak state) is so dominated by the powerful so that its independence is dubious at best. This notwithstanding, state sovereignty is one of the most basic and durable foundations of international system. Current conceptions of state sovereignty maintain that the constitutional and territorial independence need to be recognized in international relations. International order is therefore dependent on mutual recognition of state sovereignty. These principles are enshrined in article 2 of the United Nations charter. International relations necessitate 'the principle of sovereign equality', freedom from intervention, "in matters which are essentially within the domestic jurisdiction of any state", and the prohibition of 'the threat of force against the independence of any state' (UN Charter).

In the name of respect for sovereign equality of states, unprecedented privileges have been accorded to abusive governments; leaving UN in an ambiguous position as regards its mandate. Natural justice demands that man-made laws should be set aside when life is at stake. This basic Biblical principle is exemplified in the book of Mark 2:23-28. In this text, Jesus taught that man's hunger knows no law, so is the state sovereignty if misused against people. This divine principle is manifested in the natural

law that governs human conscience, and as such no state sovereignty can hinder the protection of life of citizens.

History of state practice proves that mankind often is moved by threats to life and cannot be silent except if compelled by stronger forces. The failure of mankind to intervene in the 1994 Rwanda genocide, begs for serious answers to hard questions. Historically, Rwanda was once under the trusteeship of UN after world war1, then handed over to Belgium. While Belgium constructed Rwandans into permanent foes i.e. Tutsi against Hutu, UN watched. In 1962, UN was instrumental in the independence, which turned out to be a Hutu independence from both the Tutsi and Belgium. With terrible exactness, the Hutu government turned the racism and discrimination the Hutus suffered during the colonial administration of Belgium, against Tutsis and thereby effectively treating them as foreigners in their own country.

The 1994 genocide that claimed about 800,000 to a million lives was the fruit of the seeds long sowed and nurtured by the imperialists. When the call for intervention was presented to the UN general assembly, it was they, who had sowed the seed that objected. The denial that genocide was happening, and the notion of none interference in matters essentially of domestic jurisdiction were good excuses for the imperialist west.

State sovereignty derives its legitimacy from people's sovereignty and as such, the role of a state is that of an agent; therefore the preservation of the latter cannot be done at the expense of the former. Individual sovereignty is a natural right that man comes into life with. Man was created with this right; he is by nature a sovereign citizen of earth and by this status, his/her inalienable rights of life, liberty, and property are inviolable.

In the Bible's Genesis 1:26, man is created with regal power over all other lower creatures but not fellow man. In the above text, man's sovereign position is articulated. Man is subordinate to none but his maker. Man's status in a state he created has been the issue for politicians, philosophers and legal experts for centuries. On the social contract, Jack Rousseau argues "state was created by way of man agreeing to surrender his political rights to an association where he is a member with equal rights. And that man was free to withdraw the rights at will".

This is reflected in case where Alexander Chisholm in 1792 sued the state of Georgia in the Supreme Court to force payment of claims made against the state.

In (1793) the Supreme Court judge ruled thus:

It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the prince as the sovereign, and the people as his

subjects; it regards his person as the object of allegiance... No such ideas obtain here; at the revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects and have none to govern but themselves. Each individual, at least so far as respects his unalienable rights are his own sovereign. These rights weren't given to any government. In fact, they can't be. Perhaps you can give up all of your rights, if you so choose, but who has the power to give your rights up for you? In America, no one can, because we're all equal.

The foregoing ruling sums up the status of man in his country. Government exercises guardianship just as a parent to children. Parenthood provides a telling analogy. Virtually, all cultures recognize that parents have a great deal of latitude when it comes to rearing their children. Article 16 of the Universal Declaration of Human Rights affirms, "Men and Women of full age ... have the right to marry and to found a family" and goes on to say that "the family is the natural and fundamental unit of society and is entitled to protection by society and the state. Yet, no matter how respectful we may be of parental prerogatives, virtually all societies also recognize some limits to parental authority. If a child is being abused or neglected, if a child is being deprived of education, or if a parent fails to attend to a child's health such that the child's life is in danger, or the child may become a purveyor of diseases – in all such circumstances the state authorities have a wide recognized right to intervene, even to the extent of taking custody away from parents. Parental claims are not unconditional; they entail a measure of responsibility as well.

Similarly, with the recognition of national sovereignty by the international community, principally through membership in the UN, come certain expectations; these include: the protection of individual human beings, not those who abuse them (UN Charter). The charter restricts intervention in matters “essentially in the domestic jurisdiction of the state”. But the argument here is that sovereignty vests also in individuals. By implication, to the extent that a state violates the latter type of sovereignty, it sacrifices some of its claims to the former. In signing the UN charter, a state accepts the responsibilities of membership... there is no transfer or dilution of state sovereignty. But there is a necessary re-characterization: from sovereignty as control, to sovereignty as a responsibility for the welfare of its citizens.

Thus, as put by Schulz (2003:4), if an individual sovereign state is unable or unwilling to exercise its responsibility to protect the sovereignty of its citizens, then it is up to international community to do so for it. What then took place in Rwanda beats every uprightly thinking person, in relation to this analogy.

It is without doubt that United Nations with its affiliated agencies was formed to ensure world peace. The failure in Rwanda calls for questions such as; is UN a trade union of heads of states world over? Does UN interpret “member nation” to mean governments irrespective of how they treat citizens provided they pay the annual subscription fees? Does UN

exist to serve the interests of superpowers in relation to resource areas?
When is it appropriate to intervene? When thousands are already dead?
Are there no pre-emptive actions that can be undertaken to forestall
human loss? What is the measuring stick of the 'necessary shock' required
for human kind to act?

Linda Melvern (2000:228) observes:

The failure to act in Rwanda is one of the greatest scandals of the 20th century. But while in the past 10 years attention has focused on a lack of intervention when the genocide began, there has been little scrutiny of the interference of states in Rwanda's affairs in the years immediately beforehand - intervention that can be shown to have positively encouraged the extremists who were plotting the killing.

Two persons have competed for what is known as sovereignty. On one hand there is man, and on the other is the state. State is a creation of man. Man has right to set aside a state but a state cannot set aside man, because before state came into being, man existed. Therefore, it is more reasonable that whenever man comes in confrontation with state, he must prevail, but yet not for transient causes. Man is the object of respect, honour and protection as well as the institution put in place for his good. It is unbelievable that innocent Rwandans could perish in the very eyes of those who profess faith in the fundamental universal values of human dignity. The realities of international relations reveal that both sovereignty and independence do not shield any weak state when a stronger one has

vested interests. But, ironically they do where there are no interests; Rwanda is the case in point.

1.2 Problem Statement

Many governments world over have used the principles of sovereignty as a shield to mask gross violation of human rights of their citizens, when they are considered to be the best placed to protect them. What happened in Chile, Nicaragua, Cambodia, East Timor, and in Rwanda (1994), tells it all.

Although Rwanda was a signatory to several human rights conventions; under the cloak/cover of sovereignty, the state committed heinous, gross violations of fundamental human rights of its citizens for many years; and under the immunity from foreign intervention provided by correlates of sovereignty in the UN and OAU charters, the racist ideology was propagated for years, a genocide was planned and executed while the international community watched. The contestation that exists between upholding sovereignty by the international community in the wake of violation of human rights by the sovereign nation-state is responsible for non-compliance. It's inconceivable that the state, but a creature of man's want for the preservation and protection of his rights, turns out the abuser.

1.3 Purpose of the Study

The purpose of this study was to find out whether the people's sovereignty has been hijacked from the Rwandans by the state, and misused it as a shield to mask violations of individual rights from international scrutiny.

And further determine whether state sovereignty was made an excuse non-intervention to stop the genocide.

Conversely, the international community under the influence of the US and Britain only acts when they have vested interests in any country; instead of protecting the oppressed, the oppressors are protected by the very UN charter. A country's sovereignty has been understood in practice, as an attribute possessed by state/government rather than the citizens on whose behalf government functions whose survival in international relations seem to transcend in importance the rights of the citizens.

4.5 Objectives

The Study aimed at the following specific objectives although each objective attracted related themes for in-depth study.

- a) To establish the attitudes of the citizens about their sovereignty and independence in light of the past and present governments.
- b) To assess the role of sovereignty and international response to the genocide of 1994.
- c) To examine the current level of human rights observance in the country
- d) To make recommendations regarding sovereignty and observance of human rights in the country.

2.5 Research Questions

The study was guided by the following questions:

- i) What are the attitudes of the citizens about their sovereignty and independence?
- ii) What role did state sovereignty and international community play in the 1994 genocide of Rwanda?
- iii) How is the current human rights situation in the country?
- iv) Should international community intervene when state fails to protect people?

1.6 The Scope of the Study

The study was confined to Kigali the capital city of Rwanda. This area was chosen for convenience as it was the epicenter of the 1995 genocide. The study covered a period of nine months in the year 2005. It covered Government officials, civil servants and locals in the Rwandan setting. Issues covered include; the attitudes people held towards sovereignty and independence as related to the past and present governments/ regimes; the role state sovereignty played before and during the events leading to the worst genocide of all, the country experienced after independence; and the current level of human rights abuses in Rwanda if any.

1.7 Theoretic framework

This work was guided by the Jack Rousseau's theory of the origin of state: the social contract- and accordingly, a state is created by individuals by means of voluntary consent. The sovereign created to exercise corporate sovereignty is not an absolute figure because it is the whole body of citizens who are sovereign not the ruler. As such a state is a creation of

man's want and therefore its survival cannot be at the expense of the citizens.

1.8 Significance of the Study

The significance of this study lies in the hope that the findings shall be useful to the following stakeholders;

Government i.e. those people who hold the instrument of state power, make and implement policies. The results of the study will help in pointing out the loopholes of the state in as far as application of sovereignty is concerned, especially in the light of human rights observance.

Individual citizens are called upon and to know their rights and demand for their observance. They will be in position to tell who is responsible for what and when.

International community, i.e. the sister countries, the UN and its security council, International NGOs, local and regional human rights organizations and the AU, expected to enforce human rights observance in the victims' countries. The findings will be useful in consideration of intervention and in assessing their relevancy in the execution of the roles they were formed for.

The researchers have got empirical data for reference in their endeavour to uncover the many underlying contradictions between state sovereignty and individual human rights.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter explores the contributions made by other scholars and / or writers in the area of sovereignty as it relates to human rights observance and/ or violations. It reviews books; papers journals, and magazines with a view of unveiling the gaps there in, and there by justify the study. The literature is reviewed under the following extended study objectives in the following topical headings. This was done in order to clarify the related themes to state sovereignty, such as the citizen's status in the state he formed for his wants, the international law relating to state practice and the external actors involvement in the politics of Rwanda that shaped its tragic 1994.

- 4 1. The state, sovereignty and human rights observance in Rwanda
- 5 2. Causes of the Rwanda Genocide of 1994
- 6 3. Sovereignty, and International Response to the Rwanda Genocide
- 7 4. Humanitarian intervention and international law

2.2 The state, sovereignty and human rights observance in Rwanda

The State: According to the oxford dictionary, sixth edition 1978, state is defined as “ organized political community under one government”. For instance Uganda is made up of several communities (nations) organized (by force though) under one government headed by a president. Mark Boyer 1996:21 defines a state as “ a political structure or a country under one government”. A state is not synonymous with the nation. A nation is composed

of people who identify with one another and have aspirations to political independence or autonomy.

Jean Jacques Rousseau 2003 argues that, “ A political society (state) was created by means of social contract” and that the social contract represents an agreement or consent of the people that legitimizes the authority. In the social contract each individual gives up all his /her natural rights but to a community of which he/she is a member. Therefore, this act of association does not entirely absorb the individual. It is this social contract that created a public person and referred to him as a sovereign when exercising political power; which is a collective right of the governed. Normally, Government of the state exercises sovereignty of the people and as such is expected to observe the very reason for its existence- protection of human rights; written, known or not.

On why state exists, Mark Boyer (1996:21) says,

The interests of the state or its regime are supposed merely to serve the nation. The state is to act as an agent of the nation. Therefore, it is reasonable to argue that the test of how well a state is fulfilling its duty is how well it is serving the interests of its people.

The evolution of the state of Rwanda is characterized by coercive subjugation of indigenous communities by firstly the Tutsi monarch (Nyiginya dynasty) and latter by the colonialists. Rwanda at the time of invasion by the colonialists (first Germans and later Belgians) was a peasant/pastoralist society made up of several Chiefdoms.

Kamukama (1997:9) says,