James Parker

The Musicology of Justice: Simon Bikindi and Incitement to Genocide at the International Criminal Tribunal for Rwanda

Introduction

How we think about music always matters, but it matters especially in legal contexts where the consequences can be both particularly direct and extremely severe. Strange, then, that the musicology of justice has received so little academic attention. What happens when music becomes the subject of legal thought and practice? How do legal institutions deal with musicological questions? What theories, assumptions and prejudices circulate, why and with what juridical results?

Between September 2006 and December 2008, Simon Bikindi stood trial at the International Criminal Tribunal of Rwanda (ICTR), accused of committing six se-

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1 Thanks go to my supervisors Shaun McVeigh and Andrew Kenyon for their support and guidance. Thanks also go to Karen Crawley, Luis Eslava, Rebecca Goodbourn and Laura Griffin.

2 Copyright law is one exception to this (Seeger 1992; Kurzon 2007; Frith and Marshall 2004; Demers 2006; Weintraub and Yung 2009). Even here the quality of the discourse has not always been high. In most other contexts, treatments of law’s approach to music have involved largely uncritical statements of legal doxa.

3 The International Criminal Tribunal for Rwanda is situated in Arusha, Tanzania. It began officially on 8 November 1994 by virtue of UN Security Council Resolution 955 and with the consent of the Rwandan government. Legally, it is governed by its Statute (1994) and by its own framework of procedural and evidentiary rules (1995). Structurally, it consists of three organs: the Chambers and the Appeals Chamber (comprising sixteen independent judges, no two of whom may be nationals of the same state); the Office of the Prosecutor (in charge of investigations and prosecutions); and the Registry (responsible for providing overall judicial and administrative support to the Chambers and the Prosecutor). Officially the Tribunal operates in French and English, but testimony is often heard in Kinyarwanda as well (Parker 2011).
rious violations of international law: conspiracy to commit genocide; genocide or, alternatively, complicity in genocide; direct and public incitement to commit genocide; murder as a crime against humanity; persecution as a crime against humanity (Indictment 2001, p. 1). In the end, he was cleared of all charges except one. On the basis of two short but inflammatory speeches he was said to have made at a roadblock one day in June 1994 (Judgment 2008, paras 417–26), Bikindi was convicted of incitement to genocide and sentenced to fifteen years imprisonment (Judgment 2008, para 461). It was his songs, however, that had been the centrepiece of the trial.

In the early 1990s, Bikindi was one of Rwanda’s most well known musicians and popular figures—a bona fide celebrity, ‘Rwanda’s Michael Jackson’ (McNeil 2002), ‘probably the most talented artist of his generation’ (ICTR 13 February 2007, p. 11)—and his songs had quite literally soundtracked a genocide. They were sung even as its perpetrators ‘hacked or beat to death hundreds of Tutsis with government issued machetes and homemade nail-studded clubs’ (McNeil 2002). Music was at the heart of the Bikindi case, therefore, in two related senses. First, symbolically: had he not been such a prominent musician, Bikindi would probably never have been prosecuted. In the context of a genocide in which there were nearly as many genocidaires as there were victims, the ICTR’s stated policy was to prosecute only those it regarded as having played a particularly significant role in the events of 1994, with the rest of the significant juridical burden being left to Rwanda’s own Gacaca courts.4 Had Bikindi ‘only killed’, as one UN official put it (McNeil 2002), he would not have been targeted by the Tribunal at all. One of just ninety-two people to be indicted in total, he was a ‘big fish because of his musical compositions’ (McNeil 2002). In this sense, we can understand Bikindi’s prosecution as a statement from the ICTR about the importance of the role played by music in conflict situations, its relation to certain forms of ethnic and national identity and the severity of its perceived abuse. But Bikindi’s songs were not just of symbolic importance at trial. They were central to three of the charges against him in substantive terms too, specifically, the charges in relation conspiracy to commit genocide, incitement to genocide and murder as a crime against humanity. It was specifically in his capacity as a musician that he stood accused. Bikindi, the prosecution argued, ‘had consciously

4 A total of around 400,000 cases have now passed through Rwanda’s Gacaca courts. For a comprehensive treatment of this system see Clark (2010). For the ICTR’s policy in relation to prosecutions see First Annual Report of the ICTR (1996).
and deliberately made his artistic works the vehicle for inciting other Rwandans who respected his talent to indulge in the atrocities of 1994. His music had ‘infected people’s mind[s] with ethnic hatred and persecution’ and ‘served to mobilise the youth […] to join the Interahamwe militia’ (ICTR 18 September 2006, p. 4).

Just three of Bikindi’s songs were directly in issue at trial. The Chamber devoted some eighteen pages of its one hundred and sixteen-page long judgement directly to the question of the songs’ ‘meaning and interpretation’ and another couple to what it considered to be the separate question of their ‘deployment’ (Judgment 2008, paras 186–264). By the end of these it had determined the following. With respect to one song, Twasezereye (We Bade Farewell), the evidence was apparently insufficient to establish Bikindi’s intentions. However, it ruled that where the other two were concerned, the ‘only reasonable inference’ was that Bikindi had ‘composed’ them

5 The defence’s attempt to argue that Bikindi’s entire body of work should be considered, including the traditional wedding songs that made him famous at the start of his career, failed (Judgment 2008, paras 200–201). See also ICTR 11 October 2006, p. 40; ICTR 20 February 2007, p. 25; ICTR 9 October 2007, pp. 36, 55; ICTR 17 October 2007, p. 14.

6 The two song titles were hotly contested at trial. Bikindi claimed that one should be Akabyutso (The Awakening) and the other Intabaza (The Alert). The prosecution, however, prefers Nanga Abahutu (I Hate the Hutu) and Bene Sebahinzi (The Descendants of Sebahinzi). The problem was that the question of title was directly bound up with the question of Bikindi’s criminal intent. The titles offered by the prosecution, Bikindi argued, had been chosen by certain radio broadcasters in order to distort the meaning of his songs in concert with the station’s genocidal agenda. In its judgement, the Chamber attempted to side-step this problem entirely. ‘For the sake of symmetry with the Indictment’, it said it would ‘refer to the three songs by the titles selected by the prosecution’ (Judgment 2008, para 190), and take those offered by the defence into account when it came to inferring Bikindi’s intent with respect to the songs’ meanings as a whole. Its decision to do so, however, is not neutral. By giving the prosecution’s titles default status simply by virtue of their structural location in the technics of the trial, the Tribunal accorded the indictment a sort of semantic gravitational pull. The prosecutor was effectively being permitted to set the terms of the debate years in advance of the trial. The results of this decision, moreover, have been significant. In the vast majority of the secondary literature on the Bikindi case, Bikindi’s songs have been referred to by the titles originally given by the prosecution with little or no critical awareness that doing so might be in any sense problematic, involving a history and politics. But the titles we choose nest a whole range of interpretative judgements and symbolic alignments which the Chamber’s attempt to side-step seems unfortunately to have both concealed and entrenched. Thus, in a chapter about the way in which the ICTR understood music for the purposes of judgement, it behooves me to point out the politics at work and leave open the question of title.
with the 'specific intention to disseminate pro-Hutu ideology and anti-Tutsi propaganda, and thus to encourage ethnic hatred' (Judgment 2008, para 254). While the evidence also showed that all three songs had been ‘deployed in a propaganda campaign in 1994 in Rwanda to incite people to attack and kill Tutsi’ in the final analysis, the Chamber concluded that there was ‘insufficient evidence to conclude beyond reasonable doubt that Bikindi composed these songs with the specific intention to incite such attacks and killings, even if they were used to that effect in 1994’ (Judgment 2008, para 255). The argument comprised three distinct steps. First, at least two of Bikindi’s songs had been intended to encourage hatred. Second, they had been used by presenters on Radio Rwanda and RTLM to incite genocidal killings. Third, this use of the songs had not coincided with Bikindi’s intentions: although he might have intended to ‘extol Hutu solidarity […] against a common foe’ this did not extend as far as ‘directly and publicly inciting genocide’ for the purposes of the Statute (Judgment 2008, para 254).

What musicological factors proved decisive in reaching this determination and why? How did the ICTR ‘think’ about music for the purposes of judgement in the Bikindi case? (Douglas 1986). These are the questions with which this chapter is concerned. They are worth asking in a book about The Soundtrack of Conflict because they go right to the heart of the problem of music’s relation to justice. This is a relation which has been thought through many times before, of course (Plato The Republic; The Laws), but what the Bikindi case makes abundantly clear is that it is just as important as ever today. If institutions like the ICTR are going to assert jurisdiction in relation to music such as Bikindi’s, they need to be able to provide an adequate account of how music means, what it does and the particular ways in which we can and should be responsible for it. Justice is not simply a matter of retribution or punishment. To the extent that the international community shares a ‘sense of solidarity’ with the victims of horrors such as those inflicted during the Rwandan genocide, to the extent that we share, or should share, collectively in the wrongs suffered as members of what Gaita has called a ‘common humanity’ (2002), we also share ‘a collective responsibility to respond to those wrongs by calling the perpetrators to account’ (Duff 2010, p. 602). Central to that calling to account is our ability to do so with good reasons. That is the imperative which this chapter addresses: the responsibility we all share—lawyers, judges, jurists and scholars alike—to take seriously the musicology of justice.
What we will see is that, for the most part, the Tribunal avoided dealing explicitly with Bikindi’s music altogether. Music’s significance was treated as being both self-evident and strictly irrelevant in juridical terms. Legally, music did not seem to matter at all. The argument below is divided into three sections. It begins with a close reading of the Chamber’s treatment of music in its judgement because it is there that the results of the Tribunal’s logic unveil themselves in their most distilled and dramatic form. In just eleven revealing lines, music is first ‘backgrounded’ by the Chamber and, then, having been rendered as ‘score’ rather than sound, it is silenced altogether in order that the judgement could proceed with an exclusively textual analysis. Music was considered relevant to a song’s ‘popularity’ but not to its all-important ‘meaning’, with the result that it could be safely ignored. If this treatment was not necessarily inevitable, it was certainly not surprising given the various different ways in which musicological discourse was similarly marginalised at trial.

The focus in the second part of the chapter is on the three expert witnesses who appeared during the course of the Bikindi case. Both the kinds of expert called and the way in which they were treated, I argue, are suggestive of certain hermeneutic predispositions at an institutional level. Finally, in the third part of the chapter, I turn to the source of these dispositions. Although the relevant International Law may be silent on the question of music per se, we can nevertheless observe a mediology at work in the juridical distinction between form and content. When this distinction was mapped on to Bikindi’s songs at trial, a slippage occurred whereby music was mapped onto form and lyrics were conceived as content, even though, of course, the two are inextricably intertwined.

Prosecutor v Simon Bikindi: from ‘background’ to silence

The pertinent section of the judgement for our purposes reads like this:

The Chamber notes that several witnesses highlighted the background music of the songs, for example, the accompanying sitar, the mixed Rwandan-Congolese rhythm and the accompanying traditional dance. Many witnesses spoke positively of his music, describing it as captivating, catchy, having good rhythm and melody, and making listeners want to dance.
While the Chamber does not doubt Bikindi is a talented and popular musician, the Chamber is less interested in the score than the lyrics of his compositions. While the Defence argued that the principal purpose of a song is usually entertainment based on melody and rhythm, and need not even have a message, the Chamber finds that, if anything, emphasising the popularity of the songs may have the effect of assisting the Prosecution’s case regarding their impact (Judgment 2008, para 195–196).

We will consider just how much argumentative work the Chamber has distilled into these two short paragraphs in a moment (Parker 2007). But, first, it is worth pausing to note that a form of rhetorical and performative marginalisation of Bikindi’s music as a juridical problem is already at work here. The most obvious feature of the Chamber’s treatment of music in the Bikindi judgement is how incredibly brief it is. The whole question of music is confined to just eleven lines so that, in the remaining seventeen and three quarter pages of this part of the judgement, the Chamber can treat the three songs in question as if they had been nothing but texts all along: as if the particularity of their form—their sonority—was completely irrelevant. Bikindi’s music is simply not addressed again. That this process is presented as if it were nothing but a simple expression of common sense—as if nothing controversial were being claimed at all—makes the Chamber’s dismissal of the music all the more complete. From the reader’s perspective, even before we come to consider the content of the Chamber’s argument here, we already know that it doesn’t consider music to be of any real relevance for the purposes of judgement.

The Chamber begins by separating Bikindi’s songs into parts. The ‘lyrics’, which are foregrounded and primary, and the ‘music’, which is backgrounded and secondary: ‘several witnesses highlighted the background music of the songs, for example the accompanying sitar’ (Judgment 2008, para 195). ‘Music’ here is simply ‘accompaniment’. It might be ‘captivating’, ‘catchy’, ‘rhythmic’, ‘melodic’ and eminently danceable, but we understand that these factors do not contribute to the songs’ signification. ‘Music’, for the Chamber, might contribute to a song’s ‘popularity’, but when it comes to ‘meaning and interpretation’ it is simply not relevant. Where meaning is concerned, the Chamber professes to be more ‘interested’ in the lyrics. As if the act of interpretation were simply a matter of stating a preference between the two and moving on.
From a musicological perspective, the obvious problem with this position is the
distinction upon which the foreground/background distinction rests: the idea that
‘music’ and ‘lyrics’ are separable. What the Chamber failed to realise is that the is-
sue in lyrical analysis is not words, but words in performance: acoustic, resonant
and sonorous. Lyrics, as Simon Frith argues, are a form of rhetoric or oratory: ‘We
have to treat them in terms of the persuasive relationship set up between singer and
listener. From this perspective, you might say that a song doesn’t exist to convey the
meaning of the words. The words exist to convey the meaning of the song’ (1996,
p. 166). This is no less true in Bikindi’s case. The Chamber’s failure to consider, even
for a moment, that the ‘music’ might bear some relation to the songs’ ‘meaning and
interpretation’, rather than simply maximise their entertainment value and popular-
ity, involves a profound misunderstanding of how songs work, what they do and
how they mean.

The error begins to make sense, however, once you realise that, for the Chamber,
the act of interpretation operates according to an essentially scriptural logic. This
is a common critique of Western legal thought and practice: that it is logo- or even
grapho-centric, obsessed with words and, especially, texts (Goodrich 1990, 2001;
Douzinas and Warrington 1991). In this respect, the Chamber’s use of the words
’score’ and ‘composition’ as synonyms for ‘music’ is revealing, because at the level
of the score the separation between ‘music’ and ‘lyrics’ is virtually complete.7 Once
both have been rendered graphically as script, the notion that music is nothing
more than an embellishment of a central and privileged lyrical content or ‘message’
is not necessarily difficult to arrive at. But a score is, and has only ever been, an aide-
memoire: a technology for the subsequent production of sounds and a necessarily
incomplete one at that. ‘Think of all the things a singer or instrumentalist can do,’
Michael Chanan writes, ‘for which a conventional score rarely contains even the
vaguest suggestion, such as vibrato, portamento and rubato: the wobbles, the scoops
and slides, and the subtle alterations in tempo, not to mention variations in tone
colour, which are nevertheless regarded as necessary parts of creative interpretation’
(Chanan 1994, p. 77). Music and score have never been equivalent. The Chamber’s

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7 I say virtually because even in writing a language always has a certain ‘music’ to it,
the ‘sound’ of the words in one’s head, which it is precisely a part of the poet’s craft,
of course, to exploit. See Don Ihde on the possibility of ‘voiceless’ reading (2007,
p. 152). See also Adriana Cavarero on the inseparability of word and song (2005,
pp. 117–45).
elision between the two as if they were interchangeable—‘while the Chamber does not doubt Bikindi is a talented and popular musician, the Chamber is less interested in the score than the lyrics of his compositions’ (Judgment 2008, para 196)—expresses a dematerialisation, a willingness to treat music as if its sonority were somehow marginal or irrelevant and a preference for the visual and composorial over the acoustic or performative. This was simply the final step in the ICTR’s relentlessly scriptural logic, the seeds of which had been planted long beforehand.

Experts and expertise: the hermeneutic frame

The Chamber did not just pluck this approach to Bikindi’s songs from the ether. Although it was never quite made explicit, the hermeneutic frame, which we see in distilled form in the Bikindi judgement, was already clearly operative at trial. Numerous witnesses were called upon during the course of the trial both to explain how Bikindi’s songs were received at the time of the genocide and to venture their opinion as to what his intentions might have been as their author. None, however, was posed these questions either for as long or in quite as direct terms as the three expert witnesses called to testify: two for the prosecution and one for the defence. In addition to the one hundred and eighteen pages of ‘expert report’ filed between them, together they spent a total of eight full days in the witness stand. During the course of the trial, no one testified for longer than the lead expert for the prosecution, Jean de Dieu Karangwa, including Bikindi himself.

It is safe to say, then, that the experts occupied a privileged position in relation to the overall technics of the trial. In juridical terms, their influence was considerable. And yet this was not simply a matter of one institution reaching out to another—the ICTR to the Academy—in order to ‘bring in’ knowledge from the ‘outside’. The expertise which manifested itself at trial was the function of certain pre-existing hermeneutic dispositions at the level of the institution as a whole. The production of expertise was managed and co-ordinated by the Tribunal in at least two senses. First, by the kinds of expert it had sought out, and second, by the limited capacity in which they were called. Both of these factors are crucial because together they go a long way to accounting for the otherwise mysterious poverty of musicological discourse in a trial which professed to be centrally concerned with music.
The first point is a simple one. All three experts were sought out by the Tribunal because they were, in one way or another, linguists. The kind of experts chosen, in other words, was as significant as anything they actually testified. Or, to put the same point another way, what they testified was at least in some respects already a foregone conclusion. From its selection of experts, we can already infer a lot about what the Tribunal regarded as important about Bikindi’s songs. Foreshadowing precisely the kind of logic which would eventually be applied in the Chamber’s judgement, where ‘meaning and interpretation’ was concerned, music (sound) simply did not register as juristically relevant data.

No one put this point more succinctly than Eugène Shimamungu in the opening lines of the report he tendered as expert for the defence (ICTR-01-72-0149). Evidently, the adoption of such an approach was actually a condition of his employment by the Tribunal. ‘According to the contract’, he wrote, ‘the work should not extend to questions of musicology (a field in which I am not competent) but rather to the texts of the so-called ‘political’ songs which should be analysed relative to the historical, socio-political, national and international context in which they were created’ (ICTR-01-72-0149, p. 4). It is not simply that the Tribunal regarded linguistics as the appropriate disciplinary lens through which to view Bikindi’s songs: musicology was both actively and overtly proscribed by rule; the Tribunal’s scriptural logic was sedimented at the level of contract. Although I have been unable to find evidence of a similar contract in relation to the prosecution’s experts, it is reasonable to suppose that there was one. Counsel for the prosecution, at least, was adamant that his experts’ ‘topical analysis’ of Bikindi’s songs was ‘about the meaning of the words, nothing else’. ‘Go through the entire report’, he pleaded to the Chamber at one point, and they would ‘see for themselves’ (ICTR 12 February 2007, p. 7). Clearly, as far as the Tribunal was concerned, an anti-musical perspective was a virtue.

This is particularly obvious in relation to the Tribunal’s treatment of prosecution expert Gabriel Mbonimana. As well as being a professor of history, Mbonimana was, as Bikindi himself put it at one point during the trial, ‘a great Rwandan musician’ (ICTR 16 February 2007, p. 19). He had regularly served on and presided over juries in music competitions throughout Rwanda since 1984, including one in which Twazezereye was selected to be performed by Bikindi at a celebration to mark the twenty-fifth anniversary of Rwanda’s independence from colonial rule. He had lectured on and published extensively in Rwandan musicology for even longer
(ICTR-01-72-0149, pp. 8–10). Out of every witness to be called before the Tribunal, Mbonimana was the only one who could claim actually to have studied and judged songs for a living. He was not just a linguist and historian; he was a musicologist too. One would hardly know from his testimony. In part this was because it was so exceptionally brief when compared with that of Shimamungu and Karangwa. Where they were given three and four days each respectively, Mbonimana got three hours. No explicit justification for the differential treatment is given anywhere in the archive, but what is clear is that the Prosecution had not wanted Mbonimana to testify at all. On 9 February 2007, just seven days before he would eventually appear before the Tribunal, the Defence had filed a ‘very urgent’ motion objecting to the ‘presentation’ of the expert report by Karangwa alone. ‘The presentation of the report by only one witness’, it argued, would ‘prejudice the Accused’s right to challenge the evidence of both witnesses as provided under Article 20 of the Statute’ (ICTR-01-72-0208, p. 4). Perhaps because of the late notice—although because the discussion in this respect did not take place during ‘official’ proceedings, the rationale here was not recorded in the transcript—it was apparently ‘not possible’ to get him to Arusha in person (ICTR-01-72-‘T). Mbonimana was forced to testify at great expense to the Tribunal (a factor which undoubtedly contributed in part to the brevity of his testimony) via video-link from Kigali (ICTR 16 February 2007, p. 2). The Prosecution declined to examine the witness at all, electing simply to have him confirm that he ‘adopted’ the joint report as his own (ICTR 16 February 2007, p. 5). During his limited cross-examination by the defence, Mbonimana was never asked to comment explicitly on the musical aspects of Bikindi’s songs. As far as the Tribunal was concerned (and quite possibly as a matter of contract too) Mbonimana was not an expert on music at all. Or, more precisely, that was not the capacity in which he appeared at trial. As counsel for the prosecution put it at one point, for the purposes of the Bikindi case he was ‘a linguistic expert with a history background’ (ICTR 16 February 2007, p. 15). With Karangwa having testified at length already, the prosecution was unclear as to what another linguist could possibly add and the defence was simply hoping for another opportunity to undermine the prosecution’s interpretation of Bikindi’s ‘texts’. In both discursive and procedural terms, any explicitly musicological expertise on offer had already been rendered irrelevant.
The musicology of international justice: the form/content distinction

So how is this persistent institutionalised ‘anti-musical’ stance in the Bikindi case to be explained? At least a partial answer to that question can be found in the texts of International Law. In its discussion of the relevant international jurisprudence relating to ‘freedom of expression’, the Chamber explained that ‘the international definitions of expression and speech are broad enough to include artistic expression such as songs’. ‘Expression’, it said, ‘has been defined as the freedom to ‘impert information and ideas’, ‘either orally, in writing or in print, in the form of art, or through any other media of his choice’; and ‘express and disseminate his opinions’; (Judgment 2008, para 384) citing the Universal Declaration of Human Rights (article 19), the International Convention on Civil and Political Rights (article 19), the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 10), the American Convention on Human Rights (article 13), the African Charter on Human and Peoples’ Rights (article 9) and the UN Declaration on the Elimination of all Forms of Racial Discrimination (article 9) by way of authority. On this basis, the Chamber went on, it was happy to consider ‘the words accompanying a score of music’ (here is that revealing use of the word ‘score’ again) as ‘comparable from a legal perspective to the words used in a speech’, since it was therefore both limited and protected by international criminal law in a similar way (Judgment 2008, para 384). More specifically, ‘depending on the nature of the message conveyed and the circumstances’, it could not exclude ‘the possibility that songs may constitute direct and public incitement to commit genocide’ (Judgment 2008, para 389). The same went for persecution as a crime against humanity (Judgment 2008, para 392).

Although the authority cited by the Chamber for this position is silent on the question of music per se, its mediology comes through loud and clear. Expression, for the purposes of the relevant International Law, is about ‘information’, ‘opinions’ and ‘ideas’, or in the predominating language of the Tribunal in the Bikindi case, ‘messages’ (Judgment 2008, paras 204, 226, 260) or content. As far as form is concerned, the relevant statutes and treaties are ambivalent. Any medium will do. The problem is, however, that it is very easy to move from this mediological ambivalence to the mistaken idea that form is more or less irrelevant as far as the task of interpretation is concerned. As counsel for the prosecution said during the trial:

8 The language in each case is so similar that they are virtually in unison in this respect.
'the fact that it's a song is not the point [...] They were openly talking about killing the Tutsi. And when I say 'openly talking' about it, they sang about it too. And it's simply a means of communicating that direction. Whether it is a song or a speech or a written pamphlet' (ICTR 17 October 2006, p. 11). Music, on this account, is an empty vessel, a delivery system, a way of getting some discrete nugget of thought—'Hutu solidarity', for instance, or the idea 'to attack and kill Tutsi' (Judgment 2008, para 217)—from A to B; the equivalent of posting a letter or sending a telegram. This is the musicology which flows from the form-content, medium-message binary established by the legal texts cited by the Tribunal. In practice, the effect of framing music as 'simply a means of communication' was to make it juridically irrelevant at the level of hermeneutics. Once it had been rendered as a mere method of delivering linguistic content, the Tribunal was free to get on with the 'proper' legal work of verbal analysis. 'The Chamber, therefore, considers that the words accompanying a score of music are comparable from a legal perspective to the words used in a speech' (Judgment 2008, para 384). It thus employed linguists as experts and contracted music out of the problem.

The issue with this framing, of course, is that it misses the crucial fact that, although it may not express 'ideas' or 'opinions' exactly,9 music does nevertheless express. Music itself is a kind of expression.10 This is true whether or not there are lyrics involved. But where there are, music can bear on the meaning of those lyrics in all sorts of different ways. Sometimes it will emphasise one aspect of the lyrical

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9 Music is neither a 'language' nor an instrumental means to convey 'concepts', as some authors have occasionally maintained (Lerdahl and Jackendoff 1985; Ruwet 1967). Music is, however, certainly capable of possessing 'explicit denotative value' as Umberto Eco puts it (1977, p. 11). Eco gives the example of trumpet signals in the army, but we could think also of the peal of church bells (Corbin, 1998). It is also worth noting here the many west African traditions in which drums have been used to convey messages not through code but by imitating the rhythmic and prosodic qualities of speech (Carrington, 1949; Gleick, 2011; Herzog, 2008; Ong, 1977).

10 Vladimir Jankélévitch (2003, p. 62), for instance, who famously argued for music's fundamental 'inexpressibility', allowed that 'music is not purely and simply inexpressive'. 
‘content’ over another. Sometimes it will colour or embody the sense of the lyrics as a whole. Sometimes it will overshadow the lyrics altogether, making them inaudible or peripheral to the total listening experience. And sometimes music will completely undermine, or at least vastly complicate, the lyrical ‘message’ being peddled. In all of these examples, contra counsel for the prosecution, ‘the fact that it’s

11 The Beatles’ *She Loves You* is a clear case of a song in which musical form is bound up with lyrical content. The meaning of the classic line depends on whether ‘she’ (rather than someone else), ‘loves’ (rather than hates), or ‘you’ (rather than me, him or her) is emphasised. Musically, however, the meaning is clear, even before one hears the entire song. The stress falls on the middle term: ‘She loves you.’ Through key (major), tempo (an upbeat 4/4), rhythm (‘love’ falls on the downbeat), melody (its pitch raises to the tonic) and delivery (emphatic), we ‘know that can’t be bad’ (Frisch 1996, p. 181).

12 To take an example from the classical idiom, ‘in contrast to the keyboard treatment in most eighteenth-century Lieder’, writes Marie-Agnes Dittrich (2004, p. 86), ‘Schubert’s piano parts are no longer structured as simple, subordinated supplement to a more important vocal line; the piano has at least become its equal and sometimes more than that, for frequently it sets the tone for an entire Lied. This could encompass the rapid motion of the trout in the brook in *Die Forelle*; the rocking of the boat in *Gondelfahrer or Des Fischers Liebesglück*; the rattling chains of the dogs in *Im Dorfe* (Winterreise, No. 17).’ Schubert’s ingenious setting actually affects the way in which the lyrics are heard, felt and understood.

13 My Bloody Valentine, for example, was one of the most popular and acclaimed ‘alternative rock’ or ‘shoegaze’ acts of the late 80s and early 90s, but fans who know more than a handful of the lyrics to their seminal 1991 album ‘Loveless’ must be few. The guitars are so constant, thick and distorted on the album’s opening track *Only Shallow*, for instance, that Bilinda Butcher’s vocals are barely audible. Moreover, this subjugation of the singer’s ego to the thrill of the guitars was a key part of what made the band’s sound so distinctive and important (Fisher 2008).

14 Bruce Springsteen’s *Born in the USA* provides a perfect example. Lyrically, it is a ‘protest’ song. It is about growing up as a downtrodden working class American and being sent to fight in Vietnam only to return to a country with little sympathy. Lyrically, the famous central refrain around which the song is organised ought to sound ironic, sour or acerbic. But it does not. In musical terms, the chorus is positively triumphant, anthemic. The apparent irony of the chorus’ lyrics is subverted in their setting and performance which conveys pride, assertiveness and patriotism. As Cowie and Boehm (2006, p. 360) explain, ‘the artistic decision to juxtapose the song’s two contrasting dimensions ought to be central to any approach to understanding the essence of *Born in the USA*. ‘The heart of the song,’ they write, ‘rests at the conjunction, not the selection of its internal oppositions’. Music and lyric. Patriotism and critique.
a song’ is precisely the point. To adapt Marshall McLuhan’s (1964, pp. 23–35) famous maxim, the medium is a crucial part of the message.

Conclusion

The ICTR’s main approach to music in the Bikindi case was to marginalise it. Its logic was scriptural and, on this basis, the musical qualities of Bikindi’s songs were systematically neglected. Both in its judgement and in its selection of experts, the sound of Bikindi’s songs was treated as irrelevant to their meaning and effect. But the strange deafness of the Tribunal in the Bikindi case was no mere aberration or anomaly. It was a deafness of the law itself: the result of an institution attempting to think music juridically in a situation where the relevant jurisprudence seemed to privilege content over form and, by extension, lyrics over music. It was by means of this juridical deafness that Bikindi’s alleged crimes were both defined and prosecuted.

Given how central Bikindi’s songs were to the case against him, both in symbolic and substantive terms, it is difficult to understand this juridical deafness as anything other than a failure on the part of the international community in its collective responsibility to hold Bikindi properly to account. That is not to say, however, that if the Tribunal had been more open to musicological concerns it would necessarily have resulted in a ‘better’ or more just result. To argue that the musicology of justice deserves more attention is by no means to suggest that musicology as a discipline has all the answers. This is not a case of one field intervening to somehow ‘redeem’ another. For one thing, ‘musicology’ is hardly a stable or uncontested term to begin with. Like any discipline, it has its fair share of internal disputes: methodological, theoretical, political, ethical and otherwise (Kerman 1985; Hooper 2006; Williams 2001). More importantly, though, the very particular problems of judgement posed by law—in particular its pairing of judgement with institutionalised and apparently ‘legitimate’ violence (Cover 1986; Derrida 1990)—surely exacerbate problems of this sort rather than diminish them.

As tempting as it is, therefore, to conclude with an attempt to offer a better, more responsible analysis of Bikindi’s songs than the one proposed by the ICTR, I will refrain from doing so. Too many questions remain unasked. Too much about these songs remains uncertain. In that sense, Bikindi’s trial represents not only a failure
of law but also a missed opportunity from a musicological perspective. As things currently stand, the literature, both on Bikindi's songs in particular and on contemporary Rwandan music in general, is exceptionally thin on the ground (Gansemans 1988; Nkulikiyinka 2002). Recently, in fact, law has tended to be the lens through which both have been discussed (Berkeley 1994; Craig and Mkhize 2006; Gordon 2010; La Mort 2010; McCoy 2009; Snyder 2007), leaving the consequences of the ICTR’s juridical deafness to quietly proliferate, amplify and entrench themselves. The musicology of justice, in other words, is not just a problem for law. It is a problem for musicology too.

Judgement and indictment in the Bikindi case


Other primary materials in relation to the ICTR and the Bikindi case

ICTR, 11 October 2006. Transcript of Proceedings, Prosecutor v Bikindi.

15 There is also an unpublished work entitled La Musique Rwandaise Traditionnelle, written by Gamaliel Mbonimana in 1971.

Charters and statutory law


Other sources


London: Weidenfeld and Nicolson.
New York: State University of New York Press.
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