

SEXUAL VIOLENCE AT NYARUBUYE: HISTORY, JUSTICE, MEMORY
A CASE STUDY OF THE 1994 RWANDAN GENOCIDE

(Thesis format: Monograph)

by

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Abstract:

This dissertation raises complex questions about historical truth, the pursuit of justice, and processes of memorialization vis-à-vis one case study of the Rwandan genocide: the Nyarubuye Church massacre, where members of the *Interahamwe* militia and their accomplices murdered tens of thousands of (mainly) Tutsi men, women and children, April 15th-17th, 1994. As a microcosm of larger patterns of the genocide and its aftermath, I analyze official discourses to uncover how this specific event is framed and understood, with a focus on the widespread perpetration of sexual violence. Specifically, I provide a chronological reconstruction of the massacre, investigate transcripts of the ICTR *Prosecutor v. Gacumbitsi* trial in detail, analyze the memorial site in a comparative perspective, and explore theoretical discussions about how rape functioned during the genocide, and how it has been understood and represented in post-genocide Rwanda. This dissertation contributes to an interdisciplinary scholarly trajectory that takes a narrow focus on one event, drawing out analyses and questions with wider implications, at the intersection of genocide studies, feminist work on sexual violence, developments in international law, and the politics of memory. Nyarubuye is a site that offers meaningful insights about genocidal rape – how it functioned in the Rwandan genocide, how it was dealt with from a judicial perspective, and how it has been imprinted in national memory.

Keywords: Rwandan genocide, sexual violence, rape as a weapon of war, international law, memorialization, post-genocide politics, official discourse, Nyarubuye

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¹ Note: Figures (Photographs) 3-8 were taken myself with CNLG permission, October 2013.

Introduction: Official Discourses

“If we read stories not for what they say, but for what they psychically perform, what can we learn about our social and political responses to events such as war, genocide, political conflict, as well as colonial and postcolonial traumas?”

...In our stories we imagine our safety, we resist threat, we construct the terms of community, we find ego ideals. Our stories offer psychic consolation to pain. They are indeed our strategies to abate suffering and difficulty. We live by our stories; sometimes we even die for them” (Georgis 2013, 1-2).

In her recent book *The Better Story*, Dina Georgis argues that narratives “give us access to the deeply human qualities of how political histories get written from the existential experience of trauma, loss, [and] difficulty,” (2013, 1) suggesting that we must read historical representations as human constructions emerging from responses to difficult situations. Although Georgis is focusing on the aesthetics of stories from the Middle East as a form of queer affect, the central idea that particular narrative discourses emerge to construct the past, seek and transmit knowledge, and influence the future, is highly resonant in post-genocide (and post-conflict) contexts. My dissertation project simultaneously engages with (re)constructing a micro-history of the Rwandan genocide, while also questioning the power relations of how ‘collective’ and ‘official’ memory is constructed; It uncovers what reading between the lines of official discourse can reveal, and the repercussions of this analysis for understanding the broader story of the Rwandan genocide.

In the anthology *Disturbing Remains*, Michael Roth and Charles Salas pose the philosophical question, how do “we make our histories, our memories, and ourselves in relation to events so dire that they exceed the categories available to us?” (2001, 3). This is a central query facing transitional justice scholars. As an emerging and expanding area

of scholarly inquiry, transitional justice entails studying the worst aspects of human actions, including genocide and mass atrocity, alongside mechanisms to rectify and recover from them, including justice-seeking bodies (local, domestic, and international), post-conflict reconstruction, the possibility of reparations, and the difficult task of reconciliation. Critical scholarship is attentive to the power relations and imbalances that both propel violence and persist in post-conflict contexts, including deeply entrenched axes of oppression such as gender inequality. While we often see testimony as communicating the ‘truth’ of what happened, past events are necessarily recalled and understood through a mediated, constructed narrative – what gets emphasized and left out, forgotten or embellished, and the particular viewpoint from which it is communicated all influence what we know about the past; That is, narratives and discourses retrospectively frame our view of historical events, including the violence of war and genocide, and this dominant metanarrative becomes increasingly solidified and circumscribed as time passes. As Carlos Severi poignantly articulates, “no memory is imaginable without a narrative frame” (2001, 178), and we shape memories and history as a cyclical and intertwined process. Remembering is not static, and perhaps the most productive way to view memory is on a continuum from personal, individual recollections to public testimony and official commemoration, with much in between (Eltringham and Maclean, 2014). Nicola Henry points out that legal ‘truth’ shapes, selects, and solidifies the way the past is remembered, declaring which crimes are deserving of international recognition and justice. Domestic and international courts are a powerful arbiter of memory, including gender-based crimes, which were long overlooked historically (Henry 2011, 2). The following chapters address several divergent but interrelated discourses in order to understand, through a specific case study, how sexual

violence is understood, represented, and narrativized following the Rwandan genocide. History is collected through witness testimony and available evidence, and legal judgments can solidify this information in an official record, while memorial spaces bear witness to the evidence of this shared trauma. Across these three different mediums - recorded history, judicial mechanisms, and memorial representation - we see the emergence of entwined official discourses that produce particular meanings and understandings about the event in focus. My central, overarching theme in this dissertation is an inquiry into what we can know about the Nyarubuye massacre, how we know what we know, and why it is significant.

The 1994 Rwandan genocide has become internationally recognized, studied, and commemorated, and in its aftermath, Rwanda underwent arguably the most ambitious project in transitional justice ever attempted (Waldorf 2010), seeking to punish all perpetrators responsible for the violence, at multiple levels (from the local to the international). While most scholarly analyses have concentrated on macro-level issues, including the country's colonial history, the motivation of perpetrators, the lack of intervention by the international community, the role of the media in the genocide, and the political situation in post-genocide Rwanda, few have focused intensively on one particular massacre. My dissertation analyzes questions about historical truth, the pursuit of justice, and processes of memorialization, vis-à-vis one case study: the Nyarubuye Church massacre, where members of the *Interahamwe* militia murdered tens of thousands of Tutsi men, women, and children, April 15th – 17th, 1994. The massacre included widespread sexual violence, the evidence of which is still being uncovered. In many ways it is a microcosm of larger patterns of the genocide, and reveals broader insights and important lessons about this history. Narrowing my research to this particular case study

allowed me to investigate court transcripts in detail, analyze the memorial site in a comparative perspective, and explore theoretical discussions about how rape functioned during the genocide, and how it has been understood and represented in post-genocide Rwanda.

This dissertation explores several interrelated research questions, including: What ‘historical truths’ do official/collective/dominant narratives² communicate about the 1994 Rwandan genocide, and this massacre in particular? How is the widespread sexual violence³ that was perpetrated during the genocide understood and represented? How has the International Criminal Tribunal for Rwanda (ICTR) *Prosecutor v. Gacumbitsi* case both contributed to international jurisprudence on rape and sustained or diverged from some of the common problems with prosecuting sexual violence? How do national memorialization processes in Rwanda - massacre sites in particular - represent the genocidal violence, and how does the post-genocide political situation impact these vestiges of memory? What does a gendered perspective add to this discussion, and how do these traces of the past influence Rwanda’s future?

The UN Secretary-General’s report *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (2004) defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with

² Due to numerous constraints, this dissertation focuses mainly on official forms of memory. An interesting project for future consideration would be to examine marginal or suppressed forms of memory, perhaps through primary research with the Rwandan population, although that is becoming increasingly difficult to do. Jennie Burnet’s ethnographic work (2012) and Jan Meierhenrich’s ‘underprivileged forms of memory’ (2009) both embark on this type of research.

³ Generally, sexual violence is considered a broader category than rape, including acts that do not involve penetration, although definitions of rape are still highly debated. Throughout my writing I refer to rape in specific instances, or when utilizing scholars who discuss rape in particular, and sexual violence as a more general category of sexual violations, not necessarily involving penetration. Gender-based violence is an even broader category of violence committed on the basis of their gender, including acts such as forced marriage, sex trafficking, infanticide, and so on, and is a larger category than I am focusing on here.

the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.” Increasingly, a multi-pronged approach that includes retributive and restorative measures - such as international and/or domestic criminal trials, truth commissions, and administrative sanctions, as well as reparations and memorialization - constitute the transitional justice ‘toolkit’ (see Shaw & Waldorf 2010). This body of scholarship frames my research, and temporally, both transitional justice and this project are concerned with the past, present, and future. This dissertation is divided into three large sections: it focuses on the past by reconstructing history, the present through an examination of justice, and the future through understanding memorialization practices and their lasting legacy.

Theoretical Framework

This dissertation project contributes to an interdisciplinary scholarly trajectory that takes a narrow focus on one event, drawing out analyses and questions with wider implications, at the intersection of genocide studies, feminist analysis of sexual violence, developments in international law, and the politics of memory. In particular, my dissertation unravels the complexities of documenting, understanding, prosecuting, and memorializing rape in post-genocide Rwanda, transmitting knowledge about Nyarubuye while at the same time maintaining a critical eye on discursive constructions and questions of power. This micro-level historical account compiles what is known about the massacre, without falling into the trap of viewing it as static ‘truth,’ or an absolute

account – rather, acknowledging the gaps and contradictions.⁴ Legal truth is always limited and individualistic, and I focus on the gap between the ICTR transcript record and what the final judgment states about the Gacumbitsi case; and memorialization, in Rwanda particularly, follows an official discourse heavily circumscribed by the government. In this single example various multifaceted stories exist, but some narratives are emphasized and have become hegemonic, while others are left out or suppressed. We can extrapolate this to much larger dilemmas in terms of scholarly and historical understandings of the genocide. The Rwandan government's control over dominant discourses and what is acknowledged and permitted for open discussion has significant consequences, particularly for survivors who are left out. More often than not, official discourses erase their constructed nature, and are passed off as a given, as 'the truth,' while simultaneously silencing dissenting voices that could force a dialogue or contradict the official narrative. As Dauge-Roth suggests,

What is at stake here, ultimately, is the relationship that survivors of the genocide are able to forge between their personal history and the official understanding of Rwanda's past, which is currently debated and negotiated. The risk for survivors is to find themselves dispossessed of the right and the ability to tell their story according to their understanding and, therefore, to be silenced and alienated a second time if unable to recognize themselves in the new framework through which they will be asked to address their trauma and their survival (2010, 266).

Historical representations are always human constructions, and these narratives encompass how people understand the past, communicate knowledge, work through pain and trauma, and imagine the future (see Georgis 2013). While the object of study in my

⁴ For example, Eltringham cites Clifford and Taylor, arguing that "there is no whole picture that can be 'filled in,' since the perception and filling of a gap will lead to the awareness of other gaps. The Rwandan genocide will always defy all but partial and contradictory understanding" (2004, xiii).

dissertation is one particular genocidal massacre, the theoretical foundation of my research is oriented more broadly around what stories are being told, and how we know what we know about this violent history. I have attempted to ‘mine’ the record,⁵ including testimonies, journalistic accounts, legal transcripts, and commemorative practices, to uncover details that contribute to a more comprehensive understanding of these events, while remaining conscious of how I am acquiring such knowledge. This gendered lens reveals the centrality and systematic nature of sexual violence as part of the genocidal crimes, allowing us to further understand this phenomenon and acknowledge its victims. I am not proposing that this dissertation provides a complete and accurate account of what happened at Nyarubuye, which I acknowledge is an impossibility because there are always multiple viewpoints and often contradictions and contesting accounts of events. As Eltringham points out in reference to Rwandan history, different questions asked of a specific chronicle of events can generate different interpretations (Eltringham 2004, 155). Instead, through a reconstruction of the Nyarubuye massacre and examinations of the major international trial and national memorial site that followed, this research contributes to a detailed and holistic picture of this place. Acknowledging that official histories often serve the purposes of those writing them, an analysis attentive to the relationship between power and knowledge can contribute to a fuller understanding of what happened and what lessons it holds.

The discussion of historiography is important in the case of Rwanda, as standard approaches to historical representation are inadequate for this complex and volatile history. Although there is truth to the common slogan that ‘those who cannot remember

⁵ For example, as Doris Buss has suggested regarding the ICTR, “the record of Tribunal decisions can be mined for rich evidence of types of sexual violence during the 1994 genocide” (2010, 72).

the past are condemned to repeat it,' as Eltringham articulates, "a persistent appeal to absolute history has been a central element in instigating violence and ultimately genocide in Rwanda" (Eltringham 2004, 178). Examining these issues in detail, he poignantly argues, "single, absolutist narratives and representations of genocide actually reinforce the modes of thinking that fuelled the genocide in the first place" (Eltringham 2004, back cover). While individuals will necessarily have partial views of the events that occurred, we must study the relationship between divergent accounts of what happened and the insights that emerge from their intersections. Informed by feminist theory and affirming the importance of focusing on genocidal sexual violence, I primarily undertake a critical discourse analysis and focus theoretically on what stories are being told, while examining the details of the Nyarubuye massacre and its significance both in the broader context of the Rwandan genocide and within current scholarship across multiple disciplines.

As discussed below, a discourse analysis attentive to power reveals what version of history and which 'truths' have become dominant and hegemonic, often necessitating the suppression of alternative versions. Scholars have been highly critical of this process in Rwanda, arguing that the government's post-genocide strategy is restructuring the country in significant ways that may not be as beneficial to the population as it portrays to the rest of the world (see, for example, Straus and Waldorf 2011). As Michel Foucault has articulated most powerfully, truth is never outside of power, and each society has particular 'regimes of truth' – that is, the discourses that it accepts and makes function as true, enabled by institutional mechanisms, and sanctioned by those with the power to determine what counts as truth (1976, 131). Writing history and defining truth and justice is an exercise of power, thus we must be attentive to which discourses become

hegemonic, which histories become official, and which versions of events may be overlooked or discarded. Thinking about memorialization as a political process, and the impetus to truth-tell (to testify) both as performative acts, that is, producing particular meanings and understandings, we can unravel what is privileged as ‘official memory’ and what is left out. As Brants and Klep articulate, “truth-finding promotes the development of a collective memory by establishing a version of history that informs, and is informed by, the memories of those involved – a shared truth about crime and injustice that allows sense to be made of a traumatic past” (2013, 36). But truth is explicitly political, and a function of power, thus I aim to unravel official truths –recorded history, legal truth, and official memory - regarding this particular massacre, in order to understand both their contributions to our understanding of the event, as well as the gaps and problems that arise from the deconstruction of these discourses.

Methodology

This project is interdisciplinary and utilizes a mixed methodological approach. Each larger section includes the relevant and necessary background information as a preamble to these body chapters individually. Since the sections are divergent, on different aspects of one case study, and the project is highly interdisciplinary, I opted against one large literature review, which would have been confusing and scattered, and instead included a separate contextual background for each chapter.⁶ The main methodological tools I utilize include critical discourse analysis, systematic review, close readings, and observations at memorial sites, in conjunction with feminist theorizing

⁶ That is, sections 1.1, 2.1 and 2.2, and 3.1 include the necessary background information and set the context for the chapters dealing specifically with history, justice, and memory, respectively, at Nyarubuye.

about sexual violence and rape as a weapon of war.

Informed by the work of Pierre Bourdieu and Michel Foucault, critical discourse analysis draws attention to how power relations are reinforced linguistically, and how knowledge and power are always intertwined. Many scholars have pointed out that this is particularly pronounced in Rwanda, where history and the origin of the Hutu/Tutsi distinction is highly contested and has been a significant cause of the violence, but it is also an important preoccupation in genocide studies generally. Jennie Burnet states that “given Rwanda’s long history of strong, centralized state power, the ways that individuals make sense of the past are caught up in local and national politics, state building, and the (re)writing of Rwandan history” (2012, 11). Official discourses are highly deterministic of what is understood about histories of violence, as historians take the evidence of events that have happened, arrange it chronologically, decide what to include and exclude, and shape the stories based on their own preoccupations. As Judith Surkis (2014) writes, gender historians fill in gaps, raise epistemological as well as archival questions focusing on women’s experiences, and in the process, contribute to more comprehensive narratives of historical events. Following the background section on the Rwandan genocide, Chapter One undertakes a systematic review to provide the most comprehensive examination of this massacre to date. The chronological picture comes out of available interdisciplinary scholarly work, news articles, books, court transcripts, testimonies, and archival research on Nyarubuye. It highlights testimony from survivors, journalistic accounts of what happened, and perpetrator confessions, corroborated with legal evidence and historical scholarship, to detail the events at Nyarubuye in April of 1994.

Generally, the writing of an historical record is politicized and contested. Often in post-conflict contexts there are attempts to create a collective history, imposed by those in

power, and these can be exclusionary of the experiences of women and other minority groups (see, for example, Brants & Klep 2013). One facet of the unique contribution my dissertation will make within the literature is to explicitly focus on women's experiences of the genocide, of memorialization, and of the judicial process that dealt with sexual violence against women. A gendered analysis will reveal the ways the high prevalence of genocidal rape is understood, remembered, and represented. This research project is feminist in its approach, in that it is "framed by feminist theory, and aims to produce knowledge that will be useful for effective transition of gendered injustice and subordination" (Ramazanoglu 2002, 147). With the staggering rates of sexual violence, predominantly (but not solely) committed by men against women across the world today, this subject necessitates a feminist analysis. While the field of transitional justice has attempted to 'add women' or 'add gender' to its perspectives and processes (see Bell & O'Rourke 2007), centring this project around sexual violence ties these divergent discourses together around an important facet of feminist struggle for recognition. In beginning to articulate a feminist theory of transitional justice, Bell and O'Rourke articulate how "grounded empirical research into the gender implications of current transitional justice mechanisms can inform best practice in setting the mandate, composition and rules of operation of future transitional justice mechanisms" (Bell and O'Rourke 2007, 43). While sexual violence has received increasing attention in international activist and legal circles, much work remains to be done in terms of ultimately attempting to lessen and deter its use as a weapon of war and genocide.

Although gathering evidence (physical and testimonial) that proves sexual violence presents complicated challenges, especially since victims may be reluctant to

come forward, experts estimate that between 250,000 and 500,000 women were victims of rape during the short 100-day period of the Rwandan genocide (de Brouwer and Chu 2009; Gerecke 2010; Nowrojee 2005). While rape was a widespread tactic used during the genocide, its concentration and extreme brutality in particular places raises questions about the intent behind it; thus, I have chosen to focus on Nyarubuye because it was a site at which an inordinate number of victims were subjected to sexual violence. Testimony by survivors and perpetrators attests to the prevalence of rape during the massacre, and the recovery of numerous female bodies in the latrines afterward provides hard evidence. In attempting to reconstruct the violence that occurred, examine the related court cases, and analyze the memorial site itself, I construct a detailed picture of the perpetration of sexual violence during this genocidal massacre. Scholars including Debra Bergoffen, Nicola Henry, Valerie Oosterveld, and Doris Buss (among others) have critically examined recent changes to international criminal law largely brought about by feminists, to highlight some of the problematic aspects that remain, analyzing specific court proceedings within wider feminist discussions about the treatment of rape victims in the courtroom. It is within this trajectory that I will add an analysis of one international trial and its implications for prosecuting rape under international law. Through a close reading of the transcripts, the second chapter of this dissertation (section 2.3 in particular) looks meticulously through the trial record of the International Criminal Tribunal for Rwanda's⁷ *Prosecutor v. Gacumbitsi* case, and focuses particularly on the testimony of a specific witness who was a victim of rape. Predominantly, this project contributes to emerging

⁷ The full title of the 'International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994' will be condensed and referred to as the ICTR throughout the rest of the paper.

scholarly research on wartime sexual violence.

The final chapter examining the Nyarubuye memorial site draws on my own experience visiting the site, as well as a comparative examination with other memorial sites, and an analysis of the politics of memory. In his chapter “Among the Dead,” journalist Philip Gourevitch describes his visit to Nyarubuye, a year after the massacre, including the unburied ‘dead Rwandans that will be with him forever’, and how his responses: revulsion, alarm, sorrow, grief, shame, and incomprehension, felt like nothing truly meaningful. He mentions (briefly) how Sargent Francis of the Rwandan Patriotic Front showed him a room full of victims, ‘mostly women who had been raped,’ and how the bodies were left as they were found after the massacre, in a state of violation, on display as monuments to the crimes committed against them (Gourevitch 2001, 67). Beyond this, little has been written in the academic realm about the sexual violence at Nyarubuye and how it is explained to visitors at the site.

Pierre Nora has investigated the recent global upsurge in memory activities, arguing that processes including the ‘acceleration’ and ‘democratization’ of history have led to our current ‘age of commemoration,’ in which there has been a dramatic increase in use of the past for political purposes (2002). Frequently, memorialization overlooks the significance of gendered experiences, and may not acknowledge sexual violence, in part because it is often considered secondary to the act of murder or opportunistic rather than part of the overall criminal plan. Also, this silence is linked to the general silence and barriers to disclosing sexual violence in post-conflict societies, and the shame and stigma for victims of sexual violence that endures globally. Often women’s experiences have been left out of post-conflict commemorative practices, and in Rwanda, some women have demonstrated reluctance to participate in certain facets of public memory (see

Burnet 2012). As James Young (1994) suggests, memorialization has a dialogic nature, in that while states may attempt to control the narrative through official memorials, visitors and survivors always imbue these spaces with meaning, and they are not static but rather evolving, with consequences for future generations. As well, it is not only the historian who is now interpreting the past, but rather judges, witnesses, and media outlets also have important roles in shaping what is understood, acknowledged, and silenced about major historical events.

The interdisciplinary nature of the field of women's studies and feminist research makes it an ideal place in which to conduct this research, at the crossroads of transitional justice, international law, trauma studies, and memorialization. Through historical reconstruction, studying the legal transcripts, and a discursive analysis of memorialization, this detailed case study speaks to larger issues about the simultaneous prevalence, acknowledgement, and paradoxically hidden nature of genocidal rape in Rwanda.

Overview

Following this introduction, I begin with a concise history of the Rwandan genocide, which sets the stage for my historical reconstruction of this case study. The first chapter compiles a record of what scholars and journalists have documented about the Nyarubuye massacre, synthesizing media reports, perpetrator and victim testimony, and academic writing to produce a detailed and comprehensive examination of this history. Methodologically, I undertake a systematic review, including a cross-disciplinary academic search and broader internet search, merged with journalistic accounts, legal transcripts, survivor testimony, and I followed any leads from the works cited by these

sources to assemble a comprehensive chronological account of what happened. It is clear that sexual violence was widespread during the massacre, and much of our understanding comes from journalists who visited the site in the aftermath. This chapter reconstructs a narrative of what happened at Nyarubuye as a microcosm of the larger patterns of the genocidal violence, including the widespread rape of Tutsi women. This close reading of the events provides an important contribution in elucidating minute details of this history. Although we cannot necessarily deem these facts generalizable, as they are not replicated in every massacre in identical ways, such a case study is important for providing detailed information that may be overlooked in more general studies of the genocide. This chapter establishes some of the key genocidal tactics of perpetrators, survival strategies of those who managed to escape murder, and patterns that were part of perpetrating the violence in April of 1994. However, since writing history is imbued with power - and this has certainly been the case in Rwanda - my chronology is both meaningful and necessarily incomplete, as I reject absolutist proclamations of 'truth'.

The second chapter (2.1) begins with a brief contextual examination of why sexual violence is a weapon of war and reviews theories about why it was so prevalent during the Rwandan genocide. Section 2.2 looks at how international law has changed with respect to prosecuting sexual violence crimes, focusing on the record of the International Criminal Tribunal for Rwanda, and its positive and negative contributions. In 2004, the ICTR Trial Chamber III found Sylvestre Gacumbitsi, former Mayor of Rusumo Commune in southeast Rwanda, guilty of genocide and crimes against humanity for rape and extermination for his part in leading the Nyarubuye massacre. This case makes significant contributions to international jurisprudence. Part 2.3 of my second chapter then focuses in on the important testimony of one female victim of rape, carefully

analyzing the trial transcript. Her testimonial revelation, mistreatment and re-traumatization, and ultimate erasure are examined in detail. Highlighting her testimony points us to stories that are too often lost in hegemonic and official narratives about violent histories. Using the ICTR *Gacumbitsi* trial as a case study, this chapter critically examines not only the problems that endure during rape trials, but also instances where the outcomes (that is, the judgment) silence important stories of sexual violence during the genocide.

The third chapter of this dissertation details my visit to the Nyarubuye memorial site, and the insights gained through my research on representation, commemoration, and official history. It begins with background on memorialization generally (3.1), before moving on to my own experience of visiting the national memorial sites in Rwanda. Sexual violence is discussed, if only briefly, at 5 of the 6 national memorial sites, and this is an important acknowledgement. This chapter looks at questions concerning how to represent sexual violence, as well as debates around the primary reliance on artefacts (including human remains) and guides' narratives, at these memorial sites. While history is highly contested in Rwanda, representation and understandings for those who visit the memorial sites are very much under government control. Since scholarly studies about memorialization in Rwanda are limited, this chapter provides detailed descriptions of the Nyarubuye memorial site in a comparative perspective, and asks what is being omitted in the circumscribed information available to visitors. The second part of the chapter (3.2) examines the politics of memorialization in Rwanda, where critics have argued that the governments' hegemonic national narrative is divisive, highly politicized, and incomplete. How this massacre, and evidence of the genocide, has been imprinted in official memory has significant implications for the future. Finally, my conclusion will

examine the intertwined relationship of history, justice, and memory, and counter-discourses to the official narrative, as well as directions for future research coming out of this scholarly contribution.

Gaps and Limitations

Each section of this project recognizes the heterogeneity of rape victims, their differing experiences, needs, conceptions of justice, and reactions to trauma. I acknowledge that not enough is being done to address their needs, in Rwanda and in many other contexts, and do not want to generalize their experiences. But my research objective is more focused on these three forms of official discourse, and what story emerges about sexual violence, with Nyarubuye as a synecdoche of the genocide and the violation of women that was an integral part of its destruction. As Thomson's work (2013) articulates, a focus on critical discourses and a localized case study can make visible the power relations inherent in controlling post-genocide narratives within different spheres, both inside Rwanda and in terms of the rest of the world's perception of these events of the past.

Reflecting on the power relations inherent in research, I chose not to conduct primary research such as interviews during my dissertation. I wanted to avoid research that is not self-reflexive about the position of a Western researcher, particularly when extensive primary research has already been conducted with genocide survivors that is available for analysis. As well, conducting research in Rwanda, particularly on sensitive issues like sexual violence, has become increasingly difficult (sometimes prohibited),

time-consuming, and costly.⁸ The power relations inherent in collecting testimony from survivors are highly problematic, for example the ways in which ‘speaking for’ victims can contribute to their further disempowerment (see Eltringham 2014; Koomen 2013), and is in many ways selfish, as it is often of little benefit to the survivors themselves. Without the means and time frame to conduct a sensitive, long-term ethnography such as the project undertaken by Jennie Burnet, (which became her 2012 book on women, memory, and silences), I decided against conducting interviews on such sensitive and personal topics when I do not have a relationship with survivors nor experience in trauma therapy. I have instead drawn from already established sources, and focused my research on writing as comprehensive as possible of a history, analyzing transcripts, exploring my own visit, analyzing discourse and drawing comparative conclusions.

Throughout this project, I have acknowledged my own position as a researcher outside of the context of Rwanda, a privileged visitor during my time there, and as an individual analyzing from a Western perspective who may come to different conclusions than other scholars and researchers working on these topics. As it is important not to lose sight of the positionality of those writing histories of mass atrocity, making judicial decisions, and constructing memorial sites, it is also important to acknowledge ones’ own social origins, positions in relations to the research, preoccupations and theoretical background, and to disavow claims of objectivity. While I deeply empathize with the victims of sexual violence during the genocide, I do not claim to speak for them, nor to make assumptions about their lives, recovery, and needs. Thus, this project is largely a text-based exploration of how bearing witness (to sexual violence at Nyarubuye) is borne

⁸ See, for example, Susan Thomson’s book *Whispering Truth to Power* (2013), the introduction to which details the many barriers to researching in Rwanda, including recurrent government interference.

out in these official discourses.

Regrettably, that text-based exploration is necessarily incomplete. *Gacaca* courts, (Kinyarwanda for ‘justice on the grass,’) established in 2001 by the Rwandan government, are an important facet of the transitional justice project. Based loosely on a traditional form of communal law enforcement, they were intended to speed up the process of justice and promote reconciliation in villages throughout the country. Although my original intent was to explore the decisions of *gacaca* courts alongside the ICTR prosecution, unfortunately gaining access to these transcripts is increasingly difficult in Rwanda, and was not possible (due to confidentiality reasons) in cases related to sexual violence. Another limitation of my research is the lack of first-person testimony which counters the official discourses I uncover, as the increasingly repressive political climate in Rwanda has stifled and made dangerous any vocal opposition to government policies and narratives – as discussed by many Western scholars focused on Rwanda.⁹ Here I am not looking in-depth at suppressed or dissenting voices (although this is an important future project), nor am I drawing a rigid binary between official and unofficial discourses. Rather, this project looks below the surface of some key loci of official narratives, which have recorded and solidified understandings of this past (at Nyarubuye), for what they say and do not say.

Ultimately, this project analyzes official discourses – that of history, law, and memory – to uncover how one particular massacre is framed and understood, with a focus on the widespread perpetration of sexual violence. In highlighting areas that are

⁹ Much of my discussion of counter-discourses comes from sources such as Straus and Waldorf 2011; Burnet, 2012; Dauge-Roth 2010; and Mibenge 2013 – all of which cite the incredible difficulty of locating alternative voices to the dominant official discourse in Rwanda, and the consequences for those who speak out against the current government.

understudied concerning Rwanda, Peter Uvin calls for more theoretically informed micro-level work on the specifics of the genocide, arguing that "there is currently a major gap between the explanations developed by scholars - almost all situated at the macro level - and the details of the genocide as a series of acts of violence" (Uvin 2001, 98). This micro-level study of one site in-depth reveals important questions and insights that can be extrapolated for further study into what stories are being told about the Rwandan genocide today. Specifically, I uncover the prominence of an increasingly dominant official narrative in Rwanda across multiple mediums, pointing to the silences it creates. Using an interdisciplinary feminist perspective, I bring together scholarship from history and memory studies with scholarship in international criminal law. Nyarubuye is an important site for thinking about rape – how it functioned in the genocide, how it was dealt with from a judicial perspective, and how it has been imprinted in national memory.

1.1: Background

The 1994 Rwandan Genocide

There is great variation in perspectives regarding Rwanda's recent past.

Understanding the causes of conflict in Rwandan society is not a simple task, particularly given that “misconceptions, flawed interpretations and deliberate distortions of the country's history have played a role in shaping and driving conflict” (Gahima 2013, p.32; see also Des Forges 1999, 31-64; Prunier 1995, 1-40). Although a comprehensive account is not feasible, I will provide a succinct overview of the historical context, contributing factors and key events of the 1994 Rwandan genocide, before moving on to a specific account of the Nyarubuye massacre.

While the terms ‘Tutsi’ and ‘Hutu’ existed in pre-colonial times, the significance of these terms has changed over time. By the eighteenth century, Rwanda was a centralized state, inhabited by the Twa,¹⁰ Tutsi, and Hutu communities and organized as an absolute monarchy with a predominantly Tutsi ruling class.¹¹ The *Mwami* (King) Rwabugiri and his military chiefs conquered and established most of what is now considered Rwanda in the 19th century. As Gerald Gahima argues, “it is accurate to say that exploitation, exclusion and marginalization in pre-colonial Rwanda affected the Hutu more detrimentally, as they were the majority of the population and less likely to rise politically, economically, or socially” (Gahima 2013, p.33). Centralized power and a high degree of social control has long been characteristic of the region. Although there is no real consensus on what term best describes the distinction between the Hutu and Tutsi -

¹⁰ Historically, the Twa were pygmy hunters believed to have been the region's first inhabitants.

¹¹ In general, it is estimated that historically Hutu made up about 85% of the Rwandan population, with the Tutsi minority around 15% (Des Forges 1999, 35).

‘castes,’ and ‘classes,’ are more accurate than ‘tribes’ or ‘ethnic groups,’ as they share cultural and religious characteristics. Whether the Hutu and Tutsi can be considered ‘ethnic’ groups is the subject of an ongoing debate among social scientists (see Eltringham 2004, 5-16). The source of the distinction is most often characterized as the fact that, generally speaking, Hutus were cultivators and Tutsis were herdsmen (Mamdani 2001); Tutsi owned the cattle and Hutus tilled the land and provided labour, but these identities were fluid and permeable until colonization (Jones 2011, 348). There are two competing narratives with respect to pre-colonial relations: one suggesting that ethnic discord is rooted in pre-colonial history with divisions exacerbated by colonial domination, and the other claiming a peaceful state of co-existence between the Hutu and Tutsi prior to colonization (Jones 2013, 18). The latter characterization has become part of the current government’s official rhetoric about restoring unity and pre-colonial harmony.

Colonialism is often cited as one of the most important precursors to the contemporary genocidal violence (see Prunier 1995; Mamdani 2001). The Berlin Conference of 1884 (at the height of the ‘Scramble for Africa’) assigned the territory of Rwanda to Germany, soon followed by Belgian invasion during World War I, commencing a period of more direct colonial rule. The Hamitic idea,¹² which presumed that Tutsis, as descendants of Ethiopia, were culturally superior, was used to legitimize their supremacy under the Belgian colonizers. A centralized power structure gave Tutsi greater opportunity in positions of power, including in government, in business, and in education, as the view was often espoused that Tutsi were closer to and looked more

¹² The corpses of thousands of Tutsi victims were dumped into the Nyaborongo river during the genocide, following this hypothesis in symbolically sending Tutsis ‘back to their origins’ North, toward the Nile (Jones 2011, 350).

European. As Adam Jones describes, “as was typical of imperial racial theorizing, the mark of civilization was grafted on to physiognomic difference, with the generally taller, supposedly more refined Tutsi destined to rule, and shorter, allegedly less refined Hutus to serve” (2011, 349).¹³ In 1935 Belgium introduced identity cards, labeling and solidifying individuals to a Tutsi, Hutu, or Twa identity. While the origin of these identities remains a contentious issue, it is well established that the policies of the colonial administration played a significant role in fuelling the resentment, hatred, and divisions that led to widespread atrocities in Rwanda in the twentieth century (Mamdani 2001; ¹⁴ Prunier 1995; Longman 2011; Gahima 2013).

With decolonization came volatile political shifts. Tensions mounted as the colonial administration attempted to transfer power from the Tutsi aristocracy to Hutu elites (Prunier 1995, 41-54; Lemarchand 2009). During the 1959 Revolution, Hutu activists attacked the Tutsi population and forced tens, if not hundreds of thousands of Tutsi to seek refuge in neighbouring countries (see Mamdani 2001, 164; Prunier 1995). Following independence in 1962, the government became increasingly intolerant of opposition, with power concentrated narrowly in the hands of politicians from Southern Rwanda, and in 1972 Juvénal Habyarimana took power in a military coup. Despite cultivating a liberal image to attract foreign aid, the Habyarimana regime was made up of a tight-knit group of Hutus that gradually escalated ethnic hatred against the Tutsis (Jones 2011, 350). Tens of thousands of Tutsi were killed during this period, discrimination

¹³ During the genocide, physical markers were significant, as taller Hutus and those who ‘looked Tutsi’ were frequently killed, even if their identity card said they were Hutu.

¹⁴ Mamdani has a very interesting take on the distinction in his book *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (2001). He argues that Hutu and Tutsi changed as identities alongside changes in the organization of power in the Rwandan state. Essentially, Tutsi became identified with an alien race and Hutu with the indigenous majority, which is the basis for the attempt to eliminate the Tutsi invaders.

became institutionalized, Tutsis were removed from positions of power, and government policy left over a hundred thousand Tutsi refugees in enduring exile (Lemarchand 2009; Gahima 2013). As survivor Jean Baptiste Kayigamba explains,

In implanting such views in the population, the colonial rulers sowed the seeds of hatred that led to later massacres of Tutsi. For over 30 years, many Hutu were trained to kill Tutsi, and did so with impunity. Few Hutu killers were ever brought to account, while many government figures who excelled in inciting the killings were rewarded with promotion. What we witnessed in 1994 was the culmination of a series of pogroms against Tutsi carried out regularly since our national independence (Kayigamba in Clark and Kaufman 2008, 35).

Other factors set the stage for the widespread violence of the 1990s, including significant population growth that led to competition for land, in a poor, densely populated country, and regional conflict in neighbouring countries, as the Great Lakes region of Africa has long been a volatile area (see Prunier 1995). As Jones writes, “invasion from without; economic crisis; growing domestic and international support for extremists- it is hard to imagine more propitious circumstances for genocide” (Jones 2011, 351).

Deprived of the right to return to Rwanda, many Rwandan refugees living in Uganda joined the National Resistance Movement (NRM), which came to power in Uganda in 1986. These refugees were able to organize a grassroots movement of supporters, setting the stage for armed military confrontation to retake power in Rwanda. From this, the Rwandan Patriotic Army (RPA), the military wing of the Rwandan Patriotic Front (RPF)¹⁵ launched their invasion on October 1st, 1990. Meanwhile, the ruling Hutu elite attempted to rally the population behind its regime with anti-Tutsi

¹⁵ The Rwandan Patriotic Front is the current ruling political party in Rwanda, led by now-President Paul Kagame.

rhetoric and policies, including using government-owned media to incite hatred, equating all Tutsi with ‘the enemy’ (Des Forges 1999). Propaganda targeting the Tutsi for extermination became commonplace, and a series of small violent outbreaks took place, attacking Tutsi in different parts of the country (Jones 2011, 351).

At 8:30 pm. on April 6th, 1994, the plane carrying President Habyarimana¹⁶ was shot down as he was returning from a summit in Dar es Salaam, although responsibility for this crime has never been clearly established.¹⁷ The assassination of the President provided extremists within the military and ruling party with the pretext they needed to disrupt the peace agreement and attempt to hold on to their power, setting in motion the premeditated violence that led to the genocide (Gahima 2013, 39; see also Mamdani 2001; Prunier 1995). The exact details of the planning for the genocide – its origins, the leadership that formulated the plan, and its ultimate goal – remain a matter of speculation and debate.¹⁸ Massive amounts of small arms were stockpiled, lists were prepared, and there were open discussions about eliminating the Tutsi ‘problem.’

By April 1994, many Hutu in Rwanda had come to believe that the elimination of the Tutsi was a civic duty and necessary to end their own poverty. The genocide plot was developed and perpetrated according to a conspiracy involving the Rwandan military, the *Interahamwe*¹⁹ and propagandists who helped spread the genocidal ideology throughout the population. Far from being a spontaneous atrocity, the 1994 Rwandan genocide was premeditated, meticulously planned and

¹⁶ As well as the President of Burundi, Cyprien Ntaryamira, and their aides.

¹⁷ While this issue remains very controversial, the Rwandan government blames Hutu extremists in the Rwandan army, and a recent French investigation confirmed that the missile fire came from a military camp and not Tutsi rebels, as the Hutu extremists maintained. (See, for example: <http://www.theguardian.com/world/2010/jan/12/rwanda-hutu-president-plane-inquiry>).

¹⁸ For example, Lemarchand argues that the ‘institutional apparatus’ for the genocide was in place as early as 1992 (2009, 408).

¹⁹ President Habyarimana’s party, the MRND, formed its own youth group, the *Interahamwe*, (‘those who fight together’ in Kinyarwanda) who were trained by the Rwandan military – initially to handle weapons and explosives, and later to kill with speed (Melvern 2008, 28). They are held responsible for the majority of killing during the 1994 genocide.

systematically perpetrated (Melvern 2008, 31).

The militarisation of society was justified on the basis of self-defence, following the RPF invasion. While at the time Rwanda was regarded by international media as the epitome of chaos and anarchy, in fact, the genocide was the product of authoritarian order, highly organized and presented as a solution to the long-standing suffering and injustice of the majority Hutus (Gourevitch 1998; Straus 2006). In her influential Human Rights Watch report, *Leave None to Tell the Story*, Alison Des Forges explains the killing as the result of the “deliberate choice of a modern elite to foster hatred and fear to keep itself in power... believing that the extermination campaign would restore the solidarity of the Hutu under their leadership and help them win the war” (Des Forges 1999, 2). She goes on to address how tens of thousands of Rwandans, swayed by fear, hatred, or hope of profit, made the choice to kill, rape, rob, and destroy ‘the enemy’ around them, including their neighbours. Of course, thousands more participated in the genocide reluctantly, some only under duress or out of fear for their own lives, demonstrating the complexity of dividing the population into clear-cut categories of victims and perpetrators in the aftermath. But in contrast to the militarized or bureaucratic nature of other twentieth-century genocides, in Rwanda, the civilian Hutu population comprised the bulk of those who committed the killings (Jones 2011, 346). “Without massacres by machete-wielding civilian mobs, in the hundreds and thousands, there would have been no genocide” (Mamdani 2001, 225).

In *The Order of Genocide: Race, Power, and War in Rwanda*, Scott Straus argues that three main factors drove the Hutu to participate in the systematic annihilation of Rwanda’s Tutsi minority. The first of these is war, without which, he argues, there would

not have been a genocide. The civil war legitimized killing, compelled the involvement of soldiers and militias, and provided the elimination of a threat - the Tutsi enemy - as the rationale. The assassination of Rwanda's President was part of this dynamic, as it created a gap in authority and empowered hardliners. The second main factor, according to Straus, is the Rwandan state: the central power structure has unusual resonance at local levels, with a history of large-scale mobilization, as well the country's dense population leaves people very visible and vulnerable, with little physical room for escape. The third factor he cites is ethnicity, but in ways distinct from the most common narratives about Hutu-Tutsi conflict. Straus argues that the majority of perpetrators were not motivated primarily by ethnic prejudice and a pre-existing hatred of the Tutsi; rather, he argues, collective ethnic categorization was the driving force. He writes, "during the genocide, Tutsis were labeled the enemy, and many Hutus, most of whom had no apparent history of antipathy toward Tutsis, accepted the claim" (Straus 2006, 7-9).

The genocide was marked not only by the speed at which it was carried out and the popular participation that it attracted, but also by the acts of extreme brutality which the killers committed (Gourevitch 1998; Jones 2011). Within days of the crash, violence spread through the countryside and Tutsi fled their homes (Lemarchand 2009, 411). Army and militia forces went from street to street, house by house, in Kigali and every other major city.²⁰ One particularly horrific aspect of the genocide was the treatment of Tutsi women (see Human Rights Watch 1996). Hundreds of thousands of women were subjected to rape, often gang rape, and other sexual torture. Neither the children nor the very old were spared. Rape was fuelled by hate propaganda, and sexual violence aimed to

²⁰ The only exception was Butare in the south, which resisted the genocide for two weeks before its prefect was deposed and killed, replaced by a compliant *génocidaire* (Jones 2011, 352).

“humiliate and dehumanize the victims, to inflict maximum pain and ultimately to physically destroy the victims personally as well as to destroy the reproductive capacity of the Tutsi” (Gahima 2013, 45).

According to Des Forges and Prunier, local government officials relied heavily on the militia and extremist factions of political parties to spearhead the massacres in their respective provinces, districts, sectors and villages, while the military and police provided weapons, ammunition, and reinforcements to ensure successful massacres of all Tutsi (Des Forges 1999; Prunier 1995). Key strategies included: using national identity cards to identify those to be killed and setting up roadblocks to apprehend anyone who tried to flee, intimidating the international community to ensure they did not intervene by killing Belgian peacekeepers,²¹ and encouraging potential victims to congregate in large numbers at public places (with the promise of protection) such as churches, schools, stadiums, and hospitals.

Entire communities were wiped out, without witnesses left to tell the story, and the bodies of victims were strewn everywhere, piled high in rivers and lakes. While the Rwandan government claims there were more than one million victims,²² there is still substantial debate amongst Rwandans and scholars, about how many people were murdered during the approximately 100 days of genocide in 1994. The number most commonly cited is that *genocidaires* killed 800,000 people – the vast majority Tutsi, but

²¹ One of the first targets was the Rwandan Prime Minister Agathe Uwilingiyimana, (a moderate Hutu politician), and the ten Belgian UNAMIR peacekeeping soldiers assigned to protect Uwilingiyimana were murdered along with her, which added to international reluctance to intervene.

²² The Rwandan government estimates that more than a million people had lost their lives by the time the genocide came to an end (*Ministère de l'Administration Local, de l'Information et des Affaires Sociales* 2002, cited in Gahima 2013, 45), and that more than two million Rwandans were internally displaced.

also some moderate Hutus²³ -- during the genocide (Prunier 1995; Gourevitch 1998; Jones 2011). Alison Des Forges estimated that at least half a million people died, perhaps as many as three-quarters of the total Tutsi population in Rwanda at the time (1999).²⁴ Linda Melvern cites up to one million victims (2008). While a concrete number of deaths will likely never be established, and it is difficult to know in retrospect what could have happened had there been an intervention, one of the most salient lessons to come out of the Rwandan genocide is an indictment of the international community's failure to act. As Des Forges charges:

The Rwandans who organized and executed the genocide must bear full responsibility for it. But genocide anywhere implicates everyone. To the extent that governments and peoples elsewhere failed to prevent and halt this killing campaign, they all share in the shame of the crime. In addition, the U.N. staff as well as the three foreign governments principally involved in Rwanda bear added responsibility: the U.N. staff for having failed to provide adequate information and guidance to members of the Security Council; Belgium, for having withdrawn its troops precipitately and for having championed total withdrawal of the U.N. force; the U.S. for having put saving money ahead of saving lives and for slowing the sending of a relief force; and France, for having continued its support of a government engaged in genocide²⁵ (1999, 19).

²³ In a report cited by Linda Melvern, the government indicates that 93.7% of victims were killed because they were identified as Tutsi, 1% because they were related to, married to, or friends with Tutsi, 0.8% because they looked Tutsi and 0.8% because they were opponents of the Hutu regime at the time or were hiding people from the killers (Melvern 2004, 251).

²⁴ Des Forges points out that numbers are especially difficult to establish when census data pre-genocide may have underestimated the Tutsi population, as the Hutu government downplayed their significance, and there were countless cases of questionable reporting of identity.

²⁵ There have been several accusations that France was complicit in the genocide, supporting the genocidaires, articulated by scholar Linda Melvern and the organization Human Rights Watch, among others. They accuse the French government of supplying arms to the Francophone Hutu Power movement, establishing humanitarian mission 'Operation Turquoise' to stop an RPF victory, and protecting those accused of atrocities following the genocide (See Melvern 2006; Des Forges 1999; Dallaire 2003). As Adam Jones articulates, Operation Turquoise could potentially have saved many Tutsi lives, but this was not the main purpose of the intervention, rather it was a continuation of the long-standing French support for the Hutu Power government (2011, 359).

Linda Melvern's book *Conspiracy to Murder* argues that in the initial stages of the genocide, Hutu Power gauged international reaction, and when it became clear there would be no outside impediment, murder swept rapidly across areas under extremist control. Government officials, of the United States in particular, were warned to avoid using the term 'genocide' in public, due to the moral and legal obligations that would follow, and instead stressed the 'chaotic' nature of the violence. In an infamous briefing, U.S. State Department spokeswoman Christine Shelly stated that there was reason to believe that "acts of genocide" had occurred in Rwanda, to which a reporter pressed whether she had specific guidance to not use the word 'genocide' in isolation, thus triggering an obligation to intervene. Despite pleading to the United Nations for a stronger mandate and 2,000 more peacekeepers (to be added to General Dallaire's ill-equipped 3,000-man force) instead, his forces were cut down to a mere 500 men, and resources were focused on getting foreign nationals out of the country. Dallaire sent urgent messages to the UN about the impending massacre, but was ignored. For all the lofty rhetoric of 'never again,' Alison Des Forges suggests that it seemed "Rwanda was simply too remote, too far, too poor, too little, and probably too black to be worthwhile" (quoted in Jones 2011 347, from NFB *Chronicle of a Genocide Foretold*).²⁶

Scholars have provided well-established evidence that news media played an important role in the Rwandan genocide²⁷ - while international media ignored or seriously distorted the events, local print and radio media fuelled the killings. Two prominent examples include *Kangura* newspaper, which early on incited hatred by publishing the

²⁶ In *Shake Hands with the Devil* (2003) General Romeo Dallaire echoes Des Forges' assessment: that the genocide displayed the "indifference, self-interest and racism" of the international community.

²⁷ For a more detailed account of the role of propaganda in fueling the genocide see Allan Thompson's anthology *The Media and the Rwandan Genocide* (Pluto Press, 2007).

‘Hutu Ten Commandments’ and other hate propaganda, and Radio Télévision des Mille Collines (RTLM), an extremist radio station that repeatedly referred to the Tutsi as *inyenzi* (cockroaches) and read lists of those to be killed. In a prominent ICTR trial dubbed the ‘Media Case’ (*Prosecutor v. Nahimana, Barayagwiza and Ngeze*) key architects of the genocidal media campaign were convicted for their role in inciting hatred and driving the genocide.

The RPF ended the genocide, defeating the interim government and its army, taking the capital of Kigali on July 4th, and declaring victory on July 17th, 1994. The Liberation Day for Rwanda, July 4th, is now commemorated annually as a public holiday. Anticipating the possibility of Tutsi retaliation, approximately 2 million Hutus who participated in the genocide fled from Rwanda, many to Zaire (now the Democratic Republic of Congo), and others to Burundi, Tanzania and Uganda.²⁸ While often celebrated as victors and liberators, the RPF has been accused of committing grave violations of international humanitarian law in the weeks after combat ended. Alison Des Forges claims, “the crimes committed by RPF soldiers were so systematic and widespread and took place over so long a period of time that commanding officers must have been aware of them. Even if they did not specifically order these practices, in most cases they did not halt them and punish those responsible” (Des Forges 1999, 16). In fact, mounting criticism of the RPF regime’s authoritarianism has been “accompanied by an increasingly skeptical appraisal... of the actions of the RPF during the genocide, when its forces almost certainly massacred tens of thousands of Hutu in revenge for the scenes of

²⁸ Much controversy has arisen over the refugee crises immediately following the genocide, including accusations that the international community supported and sent resources to the genocidaires rather than genocide victims, but this is beyond the scope of my work (See, for example, Gourevitch 1998, ch.13).

carnage that their troops discovered as they advanced” (Jones 2011, 360). As section 3.2 examines more in-depth, post-genocide politics is highly polarized in Rwanda today. In the aftermath of genocide, questions of truth and redress are quite complicated, and following what many have called the most clear-cut case of genocide²⁹ since Hitler’s extermination of the Jews during the Holocaust, Rwanda provides a fascinating case in which to investigate issues of transitional justice and post-conflict reconciliation, twenty years later.

²⁹ Although the politics of revisionism is highly contested in Rwanda, very few citizens, scholars, and organizations actually deny that genocide took place in 1994.

1.2

The Nyarubuye Massacre: A Chronology

*In Nyarubuye
we push open a gate on a courtyard
of Hell. Tangles of limbs junked. They'd come here
to this church hoping God would save them but
it only made it easier to be
hacked to pieces.*

- The War Reporter Paul Watson on Suicide



"I had seen war before. I had seen the face of cruelty. But here in southeast Rwanda, in a churchyard at a place called Nyarubuye, I walked into a nightmare zone. Here my capacity to rationalize, to understand was overwhelmed. At Nyarubuye the house of God had become one of Rwanda's most terrible killing grounds."

- Fergal Keane, quoted in the film *Valentina's Nightmare*

Figure 2: Photo copyright Gilles Peress (Magnum Photos), reprinted with permission.

In the province of Kibungo in eastern Rwanda, on a rocky hill near the Tanzanian border, there is a Catholic Church compound called Nyarubuye, where Hutu perpetrators (mainly *Interahamwe* and communal police, as well as civilians) targeted and brutally slaughtered thousands of Tutsi civilians in mid-April 1994. The above photo, taken by French photographer and Professor Gilles Peress, is symbolic of the violence of the Rwandan genocide. The decaying corpse with arms outstretched mimics the statue of Jesus above the church doors, and reveals that this sacred place was turned into a brutal

massacre site, juxtaposing death and violence with religion and the sacred. The victim lies on the grounds of what would presumably be a place for refuge, but rather became a slaughterhouse, a key site in the genocidal campaign. In the second week of the 1994 Rwandan genocide, between April 15th and 17th, members of the *Interahamwe* slaughtered an estimated 20,000³¹ civilians (overwhelmingly Tutsi, but also politically moderate Hutu³²) at Nyarubuye Catholic Church (Keane 1996; Rwembeho 2014). Nine days after the plane carrying President Habyarimana was shot down, thousands of Hutu, intent on murder, crowded the narrow street heading toward Nyarubuye. Most of the victims had sought refuge in the church, believing that they would be protected in this sacred space, just as they had been during previous eruptions of violence (see Rittner, Roth, and Whitworth 2004). According to the International Criminal Tribunal for Rwanda (ICTR), Rusumo mayor Sylvestre Gacumbitsi led a caravan of communal police and *Interahamwe* to Nyarubuye church, ordering the crowd to separate Hutu refugees from Tutsi, and proceeded to attack the Tutsi with grenades, machetes, firearms, and other weapons (*Gacumbitsi* Trial Judgment p.26, para. 108-16). Many women were raped before they were killed (*Gacumbitsi* Trial Judgment p.57, para. 226), likely more than has been established, as so many were subsequently murdered. The following day, the killers returned to ensure that there were no survivors. Today, the parish once again functions as a church for the community, but hundreds of skulls and piles of bones belonging to the victims remain nearby, a haunting display of the evidence of this massacre. What

³¹ Although exact figures are difficult to find and are still disputed, the estimate of more than 20,000 killed at Nyarubuye has been cited repeatedly, for example see: www.genocidearchiverwanda.org.rw and <http://genocidememorials.cga.harvard.edu/nyarubuye.html>. But the National Commission for the Fight against Genocide (CNLG) now cites that an estimated 51,000 bodies are buried at Nyarubuye, with bodies moved from smaller massacre sites in the area.

³² Hohenhaus and others state that the victims at Nyarubuye were mostly Tutsi refugees on their way to Tanzania (2013, 148). At the ICTR Gacumbitsi trial, Defense witness ZIZ testified that the Tutsi were not the only ones targeted in the massacre at Nyarubuye, and that Hutu were also killed.

happened at Nyarubuye first became known to the world through the reporting of Fergal Keane of the BBC.³³ The site haunted those who visited in the aftermath, as journalists such as Keane, and later, Philip Gourevitch,³⁴ have described in detail.

While there has been a proliferation of research from academics on the Rwandan genocide - its causes, the killings, and the aftermath – most are on a macro level (see Melvern 2009; Prunier 1995; Straus 2006; Thompson 2007, Des Forges 1999). Here, I will compile a record of what scholars and journalists have documented about the Nyarubuye massacre, synthesizing media reports, perpetrator and victim testimony, and academic writing to produce a detailed and comprehensive examination of this history. Following James Young’s work on the politics of memory (1994), I view this as a “collected history” (rather than collective) in gathering the many layers and dimensions of understanding about this event, including discrepancies and what is missing from accounts, to produce a more complete chronology of what happened. I developed a significant portion of this chapter using the ICTR records and journalists’ accounts of the history. Unfortunately there are structural, political, and bureaucratic barriers that limit access to testimonies, for example from the *gacaca* courts, as obtaining permission from the Rwandan government to conduct such research is becoming increasingly difficult and expensive. As well, in the case of Nyarubuye, there were few survivors. Histories are not static and this chapter is an additional contribution to the evolving understanding of regional massacres during the Rwandan genocide, with wider implications for the written record, memorialization, and understanding of the perpetration of genocidal sexual

³³ See Keane 1996, 1997, 2004.

³⁴ It should be noted that both Fergal Keane and Philip Gourevitch are journalists, not historians or academics. Both of their books (*Season of Blood* and *We Wish To Inform You*) are important to this project. Keane was the first western journalist to provide an eyewitness account of the massacres, in large part from his visit to Nyarubuye church in May 1994, and Gourevitch’s book begins with a detailed discussion of the Nyarubuye site.

violence. At the same time, the Nyarubuye massacre in some ways functions as a microcosm of the larger genocide, including demonstrating the hatred, brutality, and state-sponsored quest for complete annihilation of the Tutsi in Rwanda.

Methodology

This chapter undertakes a systematic review (also called a structured literature review) that is often used in medical and health-related disciplines but also highly useful in social science research (see Petticrew and Roberts 2005). A systematic review aims to provide an exhaustive summary of relevant literature and research on a particular topic or question: in this case, the Nyarubuye church massacre in April 1994 in Rwanda. A comprehensive search of available documentation, judicial and journalistic, alongside synthesis of available historical materials forms the basis of this chapter. I used five key strategies to locate all available information on Nyarubuye. First, I carried out a comprehensive, cross-disciplinary academic search, including major bibliographic indexes such as ProQuest, Ebscohost, Project MUSE, JSTOR, and so on. The precise keyword (Nyarubuye) allowed me to locate all relevant scholarly sources. Secondly, I undertook a broader Internet search for non-academic literature, including popular media resources such as films. I searched the terms ‘Nyarubuye,’ (and ‘Nyarabuye,’ as some sources have spelt it incorrectly), ‘Rusumo’ and ‘Gacumbitsi,’ as well as conducting a general search through sources on the 1994 Rwandan genocide. Thirdly, I scanned newspaper archives,³⁵ including international and Canadian sources, for journalistic information about the massacre through major databases including Factiva, Canadian

³⁵ My search was limited to newspaper archives in English. In 1994, newspapers largely set the agenda for network television news, thus I excluded the latter from my search. There were only a few relevant reports – many repeated the work of Keane and Gourevitch.

Newsstand Major Dailies, and ProQuest Historical Newspapers. Another crucial source of information for this history are the judgments and transcripts from the International Criminal Tribunal for Rwanda,³⁶ particularly the *Prosecutor v. Gacumbitsi* trial. And finally, I used the snowball technique to follow sources and publications cited in bibliographies of useful texts. My research was limited to English-language sources, other than one notable source, a French language book, *Genocide à Nyarubuye*, written by Privat Rutazibwa and Paul Rutayisire. Published by the Rwandan government,³⁷ it includes first-hand information about this particular massacre from survivors, witnesses, prisoners and former officials, and parts have been translated for use in this chapter. While a completely accurate narrative of the Nyarubuye massacre is impossible, theoretically because everyone involved has a unique perspective, and practically due to the chaotic nature and aftermath of genocidal violence, by triangulating accounts this compilation provides important insights into what is known about what happened at Nyarubuye. Microhistories such as this are important because they add more detailed, in-depth observations about the specific ways perpetrators killed so many victims, the timelines, weapons, and actors involved, as well as the aftermath and consequences of the violence for individuals and groups. Macro-level understandings of the patterns of genocide necessitate such minute chronologies and their meticulous research.

³⁶ Some of the ICTR transcripts are published in full online with open public access in the TRIM database. For particular transcripts of the Gacumbitsi trial, which included content about sexual violence, I am grateful to Professor Doris Buss who gave me the contact information of a UN ICTR employee who then was able to locate the relevant transcripts.

³⁷ Of course, as a government resource this source has a particular (biased) viewpoint.

One young girl has become a somewhat recognizable symbol³⁸ of the Rwandan genocide, as her incredible story was recorded and shared by Fergal Keane in the weeks that followed the Nyarubuye massacre. She is the subject of a PBS Frontline documentary called *Valentina's Nightmare*, appears in the film *Ghosts of Rwanda*, and testified at the ICTR in the trial against Gacumbitsi. Her own testimony, recorded by the UK organization Survivor Fund (SURF), describes how she was 11 years old, living in Kibungo Province when the genocide erupted. Her family had heard that violence against the Tutsi had begun in Kigali, and the *Interahamwe* had killed Tutsi in the local marketplace, thus they fled to Nyarubuye church. She describes the chaos as the *Interahamwe* opened fire on April 15th, led by Mayor Gacumbitsi, and the Tutsi inside the church were screaming and clamouring to find a place to hide. She had a panoramic view of the massacre, watching people she knew being hacked to death, blown up by grenades, and children's heads being smashed. When the killers returned, Valentina managed to hide in a small cubbyhole until she was discovered and dragged outside along with 15 other victim-survivors. Her sister was killed in front of her, and in her testimony Valentina describes how Antoine, a neighbour she knew, began smashing her hands with a clubbed stick, breaking her fingers and beating her on the head. When Valentina regained consciousness, she was bleeding from the head, but crawled back into the church to hide amongst the dead, lying beside her mother's body. She had seen the *Interahamwe* kill her mother, her father, her sister and her brother. She described the horror as the bodies around her rotted, and wild dogs began to eat them. Valentina survived in the church for 43 days virtually without food, only rainwater to drink, "convinced that the

³⁸ Although perhaps not on the level of Romeo Dallaire or Paul Rusesabagina, those researching Rwanda will likely have come across Valentina's name or one of the films in which her survival story is discussed.

world had come to an end” (Izibagiza 2011). On the 26th of May, a man who lived near the church caught sight of her, and helped her to safety. Keane describes first seeing Valentina, who “seemed more shadowlike than human, a skeletal apparition lying on a camp bed in a country where corpses littered the roads and fields” (Keane 1997, 1). She had deep gashes on the back of her head and a badly chopped hand that had become black with infection. The nurse told him she was not expected to live.

Three years later, when Keane returned, he learned that Valentina had, in fact, survived. She recounted to him in detail the horror she witnessed, and one of Valentina’s classmates told Keane how he had seen a man decapitated in front of him and then a pregnant woman cut open, as the victims were begging for mercy (Keane 1997).

Valentina detailed how in the weeks that followed the massacre, a few other children emerged from hiding places around the church, and the stronger ones lit fires and cooked what food they could find. In the documentary about Valentina, Keane describes how this was the most difficult story of his journalistic career to tell, marvelling at her courage but deeply angry that this could happen to any child. He comments that, “the story of what happened at the church of Nyarubuye is more than a straightforward commentary on humanity’s capacity for evil. It is a very particular story about the cruelty inflicted upon children by adults, people who were their neighbours and whom they trusted” (Keane 1997, 2). Years later, Valentina was in good health, living with her aunt and two other orphans, and back in school (Izibagiza 2011). In her testimony published by SURF³⁹ she describes the difficulty of testifying at the Tribunal, where she had to re-live the horrors of Nyarubuye, and a recurring dream she still has of her mother. Her story demonstrates

³⁹ Survivors Fund (UK). Available at: http://survivors-fund.org.uk/wp-content/uploads/2011/08/SURF_Survival_Against_the_Odds.pdf

the unimaginable horror endured by the few victims who managed to survive the Nyarubuye massacre. What follows is my own reconstruction of available sources, arranged chronologically, to give a detailed picture of what happened at Nyarubuye in April of 1994.

Chronology of the massacre

{ April 10th-14th, 1994 }

According to journalist Jacques Pauw, the term Nyarubuye means ‘hard, stony place’ in Kinyarwanda (Pauw 2007, 65). Ferdinand Rwakayigamba, one of the few survivors of the Nyarubuye massacre, described the days preceding the massacre to Hironnelle News Agency personnel (Hironnelle 2004, 1). He explained that on April 11th and 12th Nyarubuye was still peaceful, as Tutsi refugees from the area were mainly fleeing the killings in neighbouring Rukira. On April 13th, both the Hutu and Tutsi drove back an attack coming from Rukira, fighting a hard battle and capturing two *Interahamwe* leaders, Francois Gisagara and Antoine Hakizamungu, tying them up and taking them to a police station to be punished. When the police demanded to know who tied up the captives, “naively, Vincent, a young man, stepped forward proudly announcing that he had been among those who captured the two,” Rwakayigamba explained. “He had thought that the police would congratulate him for having neutralized the two, instead they shot him” (Hironnelle 2004, 1). After this incident, the few Hutus who had fought alongside the Tutsi resistance crossed to join the attackers (*Ibid*). Rutazibwa and Rutayisire state that the Nyarubuye prefecture knew little of the violence that had erupted in Rwanda in the early days of the genocide (2007, 65). They describe a number of meetings by high-level officials including the Mayor, Colonels, policemen and

Interahamwe members between April 9th and 12th, in which the leaders instructed Hutus to kill all the Tutsi so there would be no witnesses (Rutazibwa and Rutayisire 2007, 70).

The ICTR indictment of Rusumo Mayor Sylvestre Gacumbitsi accuses him of organizing a campaign against Tutsi civilians in the lead up to the Nyarubuye massacre. On or around April 10th he and a number of soldiers distributed cases of grenades, machetes, and bladed weapons to each mayor of Kibungo prefecture. Around April 12th, Gacumbitsi ordered soldiers and boatmen along the lakes to stop refugees from escaping across the border to Tanzania (*Gacumbitsi* Trial Judgment, p.9 para. 7). Research by Rutazibwa and Rutayisire reveals that on April 14th Gacumbitsi made stops at the malls in both Kanyinya and Gisenyi, where he urged Hutu to kill Tutsi and throw their bodies into the Akagera River (2007, 73). Confirmed by witnesses, during this week the Mayor circulated around Rusumo commune, accompanied by police and *Interahamwe*, in a vehicle loaded with machetes. On April 14th, Gacumbitsi arrived in Nyabitare sector, distributing machetes and instructing that all Tutsi in the region should be killed by nightfall, and that whoever killed a Tutsi could then appropriate his belongings (*Gacumbitsi* Trial Judgment, p.10 para. 12).

Attacks at the nearby Nyakarambi market forced Tutsi in the area to begin to flee (*Gacumbitsi* Trial Judgment, p.23 para. 97). In *Season of Blood*, Fergal Keane describes how prior to the massacre, some of the Tutsi men from Rusumo went to see Gacumbitsi, believing only he could save them because of his powerful position, but he would not give them protection. Gacumbitsi told them to go to the church and find safety there. Thousands of Tutsi from the surrounding area fled to Nyarubuye church with their children, their livestock, and whatever belongings they could carry, signalling that they did not expect to return home. Keane reports that the Tutsi men had bows, arrows and

spears, and when the militia arrived at the church, the men and boys were initially able to drive them away with their homemade weapons.⁴⁰ The militia retreated but as they left the men could hear them swearing that they would return (Keane 1996, 89). In their interviews with eyewitnesses, Rutazibwa and Rutayisire reveal that in the beginning, the Tutsi inside the church tried to resist by throwing bricks and stones, and some launching arrows at the attackers, who responded with gunfire and grenades (2007, 95). There was no way out because all the roads were blocked by *Interahamwe*, and Keane reports many Tutsi simply went into the church and prayed for deliverance.

An ICTR witness (pseudonym ZIZ) accused of participating in the massacre testified that Hutu men and youth from the area were forced to participate in the attack, failing which they would have been considered as accomplices to the Tutsi. Witness ZIZ and his friend were beaten up and forced to accompany the attackers, who told them that there was ‘work to do’ at Nyarubuye Parish (*Gacumbitsi* Trial Judgment, p.33 para. 131). The Hutu perpetrators came from neighbouring towns - Rukira is the most commonly cited, along with the Mulindi military camp.⁴¹ These leaders mobilized the local population to commit the killings, arriving in vehicles and on foot (Rutazibwa and Rutayisire 2007, 91). They state that Nyarubuye was a meeting place for refugees who fled the violence elsewhere, and it was particularly appealing to the attackers as a large concentration of Tutsi refugees had been living in the area since 1959 (particularly on the Karagwe side, on the road to Tanzania). The myth of the sanctity of places of worship, which was previously respected, led to a large gathering in the church (Rutazibwa and Rutayisire 2007, 92).

⁴⁰ Soon after the genocide, Keane (1996) interviewed Tutsi survivors, Hutu farmers from around the hillside, and later perpetrators, about what happened at Nyarubuye.

⁴¹ One ICTR witness mentioned the presence of Burundians as well in the crowd of attackers.

{April 15th, 1994}

According to Alphonse Karido, deputy mayor of the new district of Nyarubuye, there were thousands of Tutsi refugees at Nyarubuye on April 15th, in the church, the primary school, the gardens, and the grounds around the complex (Hirondelle 2004). Most reports cite Mayor Gacumbitsi arriving at Nyarubuye around 3 o'clock in the afternoon on this day, accompanied by policemen and *Interahamwe* militia (Rutazibwa and Rutayisire 2007, 96; *Gacumbitsi* Trial Judgment, p.40 para 152). Survivors, including Rwakayigamba, explained that when they saw the mayor, they thought he had come to save them, so they could return to their homes in peace. But others recall hearing the *Interahamwe* singing 'let's exterminate them' (Rutazibwa and Rutayisire 2007, 96).

Leading the attack, Gacumbitsi approached the church in a caravan of several vehicles as the perpetrators unloaded machetes from the vehicle and placed them before the church. He addressed the crowd with a megaphone and ordered Hutu refugees to separate themselves from the Tutsi. Three Tutsi refugees – Murefu, an old teacher, Simon Buhonogo and Rujigena– asked the Mayor what the Tutsi had done and why they were being killed (*Gacumbitsi* Trial Judgment, p.27 para. 112). An ICTR Witness (known as TAQ) heard him reply that he had no answer, but “the Tutsi hour had come” (*Ibid*). He then took a machete from an *Interahamwe* member, striking Murefu on the neck, and he dropped dead immediately. This story is cited in witness accounts of the violence as the signal to start the massacre (Wallace 2005; *Gacumbitsi* Trial Judgment p.27). Gacumbitsi instructed the killers to attack the refugees and prevent them from escaping. He stated, “everybody should take up their weapons, and to kill a snake you have to aim at the head and spare no one” (*Gacumbitsi* Trial Judgment, p.37 para 140).

Many authors, including Timothy Longman (2011) and Emmanuel Katongole (2009) have argued that the Catholic Church was complicit in the 1994 Rwandan genocide, citing examples such as in Nyange, where a Catholic Priest was convicted of genocide for leading perpetrators to the church with bulldozers, which they used to crush everyone inside.⁴² In this particular instance, it is alleged that three of the five parish priests decided to abandon the crowd and flee to Tanzania, and the other two were taken away by the militias before the killings started (Musoni 2014). Musoni argues that Nyarubuye is a clear example of how clerics abandoned the people who had come to them for safety, leaving them to be killed.

The ICTR judgment also cited how on or about April 15th, Gacumbitsi circulated in Rusumo commune aboard a vehicle and announced over a loud speaker that Tutsi women and children could safely return to their homes, but that Tutsi men would be killed; “His announcements were a ruse to facilitate attacks upon women and children that would come out of hiding, and an inciting call to exterminate the Tutsi men” (*Gacumbitsi* Trial Judgment, p.96). David G. Harrison⁴³ remembers meeting a widow, “who recalled a meeting near Rusumo where Gacumbitsi had urged Hutus to attack Tutsis, stating ‘don’t let them get away, burn their houses.’” The next day she was caught and raped by a man who told her, “we can do what we want because we have Gacumbitsi’s permission“ (Harrison 2005, 268).

At the ICTR *Gacumbitsi* trial, Prosecution witness TAQ, a young Tutsi woman who lived in Rusumo and was pregnant in April 1994, fled the killings carried out against

⁴² For a summary of the case against Athanase Seromba, see: <http://www.haguejusticeportal.net/index.php?id=7123>

⁴³ A journalist who visited the site with Fergal Keane, co-producing the PBS Panorama documentary ‘The Killers’.

the Tutsi in neighboring Nyarutunga and took refuge at Nyarubuye parish with her family on April 14th. She testified that around 8:00 am on April 15th she saw a group of youth arrive wearing banana leaves around their waists and branches of eucalyptus on their heads – typical *Interahamwe* attire - armed with clubs, sticks, and bows. At around 3 pm. on April 15th she saw the white-cabin vehicle belonging to Rusumo commune pull up in front of the church, and in it was Sylvestre Gacumbitsi, wearing glasses and civilian clothing. In the back of the vehicle were uniformed police and weapons including guns and machetes. She personally witnessed Gacumbitsi take a machete and strike Murefu on the neck, from which he dropped immediately, and a young man allegedly ‘cut up’ Simon Buhonogo with a machete, while the policemen shot the other Tutsi refugees behind Murefu (*Gacumbitsi* Trial Judgment, p. 27 para. 112). Witness TAQ testified that she witnessed the Accused tell the *Interahamwe* to act quickly so that the refugees could not flee. She hid in a doghouse, near the presbytery where she heard Gacumbitsi tell the Hutu to come out, and after a young woman obeyed his order, grenades were thrown into the crowd. When the grenades exploded, witness TAQ saw the militia attacking people with machetes, and everyone was screaming (*Gacumbitsi* Trial Judgment, p.28 para. 114). She further testified that that she saw the *Interahamwe* looting in the compound, carrying away vehicles and motorcycles. Witness TAQ fainted soon after, in the doghouse where she was hiding, and regained consciousness later that night, under the bodies of many seriously wounded people. She fled the parish compound the following morning, but testified that more than 100 members of her extended family were killed during this massacre.

Some scholars contend that there were orders to avoid damaging the church and convent at Nyarubuye. In *Hope for Rwanda*, Sibomana describes how the Mayor personally ensured that, even in the frenzied massacre, the assailants did not damage the building; thus perpetrators mainly killed victims with machetes and hammers, leaving the church intact. Katongole (2009) echoes this contention, stating on his visit to Nyarubuye:

In that village, one of the town officials had intervened to ask the *interahamwe* if they would be careful not to fire any shots or throw grenades that might damage the beautiful church building. Respecting his request, the killers entered the church, full of people who had sought shelter there, and killed everyone inside by hand. Small children were pounded to death with hammers. Adults were dismembered with machetes. The building was not damaged, but the church was slaughtered (Katongole 2009, 35).

Other reports contradict this idea, stating that grenades were thrown into the church to kill Tutsi (Panorama 2004; Rutazibwa and Rutayisire 2007). However, much of the compound remains intact considering the scale of the violence. Somehow, even in this unprecedented frenzy of killing (in which ‘Satan took over’⁴⁴ and the scene was ‘one from hell,’ according to many witnesses) there was some consideration for avoiding destroying the church itself, but none for the victims, many of whom were known to the killers personally.

{ April 16th–17th, 1994 }

Although the sequence of events is often difficult to compile accurately years after the violence, it is clear that the majority of killings at Nyarubuye took place on April 15th,

⁴⁴ These statements are a common trope among perpetrators in the genocide literature (see, for example, *Panorama*, 7).

16th and 17th, 1994. In the opening of his early account of the genocide,⁴⁵ *We wish to inform you that tomorrow we will be killed with our families*, Philip Gourevitch provides a detailed description of his visit to the Nyarubuye memorial site in eastern Rwanda. He describes how “the killers killed all day at Nyarubuye. At night they cut the Achilles tendons of survivors and went off to feast behind the church, roasting cattle looted from their victims in big fires, and drinking beer... And, in the morning, still drunk after whatever sleep they could find beneath the cries of their prey, the killers at Nyarubuye went back and killed again ” (Gourevitch 1998, 18). Much of Gourevitch’s book comes from accounts of his guided visit to Nyarubuye in May of 1995, and his travels around the country speaking to survivors at that time.

Fergal Keane recounts the story of Flora Mukampore, who survived the Nyarubuye massacre by hiding underneath dead bodies for a week and a half. She did not think anyone would dare to attack this holy place, and thought because so many people had sought refuge together, they would not all be killed. She recalls how the Tutsi praying for help in the church were first attacked, and a few days later when the *Interahamwe* returned, she saw Gacumbitsi hand out weapons before the violence ensued. Keane writes, “The soldiers moved in first and began to shoot; the bows and arrows were no use against guns. People were running everywhere. After the first lot of killing the militias went through finishing people off with machetes. Flora saw Gacumbitsi giving them their orders” (Keane 1996, 90). A militiaman attacked her, she was hit in the head with a machete, collapsed, and bodies fell on her. Flora was knocked to the ground and hid

⁴⁵ Gourevitch’s book has probably influenced public perceptions of the Rwandan genocide, at least in North America, to a greater degree than any other book, but I should note that other researchers, including René Lemarchand, have argued that it has serious shortcomings, as it is not a scholarly work and is very much written from a simplistic, pro-Kagame point of view.

amongst the bodies, covered in blood so the killers thought she was dead. Later, one of the perpetrators spotted her moving and smashed her head with a hammer. She survived, and was found on May 15th, one month later, but lost 17 members of her family in the massacre (Keane 1996; 1997). Keane writes, “All day the military, the police and the *Interahamwe* were chasing people around and killing them. They hunted them down in rooms and in the fields around the church and inside the building itself. When they had killed everyone, or so they thought, Gacumbitsi’s gang left” (Keane 1996, 90). Many of the weapons used during the massacre remain on display at the memorial site today. In *The Warrior’s Honour*, Michael Ignatieff also describes the massacre vividly:

Tutsis were hacked to death while cowering behind the pews of the church or under the desks in the classrooms, or while hiding in the swamp in the valley below, or while climbing into the trees. When the militia grew tired of killing, they immobilized their victims by slicing the tendons of their arms and legs, went off to rest, and returned later to finish the job. [Survivors] decided to leave the corpses – in the thousands – where they lay: between the church pews, beneath the school desks, in the yard outside. The survivors turned the church compound at Nyarubuye into the Yad Vashem of African genocide” (Ignatieff 1998, 76).

Journalist Scott Peterson depicts a scene in which few were killed with bullets or grenades, “except those victims in the back rooms, which were so choked with the dead that no other method of killing could have been so effective.” He continues describing how “children were lined against a wall, their softer skulls cut cleanly with the edge of a machete. Other skulls showed broad holes with jagged star edges, where the blow of a club forced bone and calcium fragments into the brain. Outside, few escaped such blows” (Peterson 2001, 306). No one was spared. During Gourevitch’s visit, his guide (Sergeant Francis of the RPF) explained that at Nyarubuye, even the little terracotta votive statues

had been systematically decapitated, as they were associated with the Tutsi (Gourevitch 1999, 24). The memorial exhibition today contains a damaged statue from the church, and, as the guide explains, the Hutu attackers deliberately targeted it because its facial features were associated with the Tutsi - long nose, small lips, and so on. (Hohenhaus 2013, 148). Hohenhaus describes this artefact as a damaged statue of Jesus, although during my visit in 2013, a decapitated statue of Mary was on display at the memorial site (see photograph on p.146). “The church was turned into a slaughterhouse where people were attacked with machetes and blunt objects, guns and grenades. A sacred place was turned into a brutal murder scene and a final resting place for so many. It is sad that people were slaughtered in a sacred place,” says Nsengiyumva, a representative of Ibuka Genocide Survivors Organization, “they used machetes, grenades and guns to murder innocent civilians. The only survivors of the massacre are those who had been covered by corpses and stayed underneath for days” (Rwembeho 2014).

On the days following the initial massacre, Sylvestre Gacumbitsi and a group of attackers returned to the devastated church compound armed with machetes, spears, and bows and arrows. Led by Evariste Rubanguka (the President of Rusumo Court at the time), the attackers killed any survivors they could find lying among the corpses. “Afterwards, the attackers looted the church compound, removing cupboards, tables, radios, beds and clothing” (*Gacumbitsi* Trial Judgment, p.26 para 18).

Prosecution witness TAP testified that around 8 am. on April 16th she was hiding in a classroom with about thirty other refugees, when a group of *Interahamwe* and soldiers, (led by Bagaruka and Liamuguiza) came to loot, and the survivors fled. She saw Judge Rubanguka wandering among the many scattered bodies, throwing crushed pepper

to spot survivors (*Gacumbitsi* Trial Judgment, p. 35 para. 136). The ICTR found that, on 17 April 1994 at about 9 a.m., Gacumbitsi addressed a group of attackers who had gathered 15 Tutsi survivors in front of the Church, ordering them to kill - to aim at the head and spare no one. According to the ICTR prosecutor, “There is no doubt that by these words, the Accused was ordering the murder of each of the 15 Tutsi survivors, given that once these words were uttered, the attackers attacked the survivors with machetes, with two of them mutilating Witness TAX, despite her pleas, leaving her for dead” (*Gacumbitsi* Trial Judgment, p.42, para. 163).

{ April 18th – 19th, 1994 }

Numerous accounts - including those found in Gourevitch (1999), Keane (1996), and ICTR testimony - report the killers returning to Nyarubuye for days after to ensure there were no survivors. The killers threw pepper on the bodies to burn the victims’ wounds (Gahiji 2012) and when they reacted, signaling they were still alive, the killers beat them to death. One perpetrator in particular, Judge Rubanguka, reportedly “came out of the church holding an incense burner filled with pepper. Rubanguka then wandered among the corpses in the building. Those who were still alive started sneezing because of the smoke from the incense burner and, once they were discovered, they were ‘finished off’” (*Gacumbitsi* Trial Judgment, pp.35-36).

The number of victims killed at Nyarubuye is still debatable, as estimates by those who visited the site in the immediate aftermath varied largely. Some underestimate the corpses, describing hundreds of victims, such as Donald Wallace, who states “the bodies of 600 to 800 people, slaughtered over two days last April in the churchyard at Nyarubuye in southeast Rwanda, have decomposed exactly where they fell” (Wallace

1995). Keane estimates between five and ten thousand Tutsi were killed (2004), and the journalist Jacques Pauw cites ‘three or four or six thousand’ decomposing bodies (Pauw 2007, 66). A representative of Ibuka (Genocide Survivors organization) says at least 20,000 people were slaughtered in the church (Rwembeho 2014). According to Rutazibwa and Rutayisire, there were approximately 26,000 victims killed in the church, with 35,000 total killed in Nyarubuye prefecture. The Rwandan government cites an estimate of more than 20,000 killed at Nyarubuye,⁴⁶ and the National Commission for the Fight against Genocide (CNLG) now estimates that 51,000 bodies are buried at Nyarubuye, with bodies moved from smaller massacre sites in the area. Although the number will likely never be confirmed or agreed upon, this was one of the largest single massacres of the Rwandan genocide.

Survivor testimony is a crucial part of the reconstruction of specific events of the 1994 Rwandan genocide, and their voices greatly add to our understanding of the violence. The following is the testimony of Leoncia Mukandayambaje, published as part of the ‘100 Stories’ Kwibuka (Remembrance) Collection⁴⁷ at the Nyarubuye Memorial Site in 2014:

“When the Genocide started after Habyarimana’s death, we stayed in our homes as we were told through the radio. But I lived near the Parish. In a few days, we started to see many refugees from Rukira, Kirehe, and other neighboring districts coming in. We visited them and talked to them; they told us that they were fleeing *Interahamwe*. After few days, on 14th of April, that’s when *Interahamwe* came and started shooting in

⁴⁶ See www.genocidearchiverwanda.org.rw

⁴⁷ This is my transcription from video testimony, translated by Kwibuka into English. Retrieved at: <https://www.youtube.com/watch?v=TvfUTQlmxJg>

neighboring village called Nyarutunga. We were all afraid. My family and I slept in the bushes that day; we did not go to the Parish. We all came here on the 15th of April; the same day they attacked us. We arrived here at around 10 am. and the *Interahamwe* came around 3 pm. That day, they didn't kill everyone because there was so many people even though the killers were also many. We were many in these houses. Before killing people, it was still open there and there was a door going into the priest's home [points to building behind]. *Interhamwe* surrounded this place and started shooting at us. One could die if you were standing as we are now, so we all ran. Arriving at the door, we found a lot of *Interahamwe* waiting for us. They said that any Hutu among us should come out; they came for Tutsi and not for Hutu. We all decided to say that we were Hutu but as the killers were our neighbors with whom we used to share everything, that strategy did not work. So they run after us with machetes, hammers, and nail-studded clubs. They hit me with a machete in the temple then I felt [sic] down and lost consciousness [shows scar]. They hit us with machetes and I had my 3-year child on my back who was also hit by the machete and died. It was around 5 pm; they started killing at 8 am and left at 5 pm. They left and fortunately it was the rainy season. As I was all wet, I regained consciousness and found my child and family members dead. I thought that they would come back and kill me also. In that rain, I wanted to get up but it was hard for me. I did my best and crawled to the latrine and remained there. The *Interahamwe* came back at 8 am. as they did not kill all the people the day before. I remained in the latrine. So they killed the injured people except that children had been crying all night. After killing people, they left. I remained in the latrine until the third day when they came back to see if anyone had survived. They came with cars and pillaged cupboards and other things from the church while I watched." Journalist Mark Huband writes "Leoncia was saved by her baby

daughter, whom she held close to her while the murderers hacked both with machetes. Her daughter's blood covered her. The murderers assumed both mother and child were dead."⁴⁸

Without many such eyewitness accounts, much of the detail about what occurred over these few genocidal days at Nyarubuye was largely revealed through the testimony of perpetrators, both to journalists and at the international, national and local courts. For example, perpetrators cite the large number of *génocidaires* who participated in the killings: "When we moved in, it was as if we were competing over the killing. We entered and each one of us began killing their own. When we were walking into the rooms we were wearing rubber boots because of all the blood. There was so much blood it was flowing like a river," stated Hutu perpetrator Gitera Rwamuhizi (Panorama 2004). Journalist Fergal Keane, through interviews with perpetrators, gathered much of the available testimonial work in his visit to the site in the immediate aftermath of the genocide. In his BBC 'Panorama' documentary,⁴⁹ the killers describe how on the morning of April 15th they woke up knowing where to go, as the plan to kill the Tutsi at Nyarubuye was made the night before. The perpetrators recounted Mayor Gacumbitsi's orders to kill all the Tutsi, as he had lured them into the church and then armed local *Interahamwe*. Rwamuhizi describes killing one man, but how some of the perpetrators did not find someone to kill because there were more killers than victims:

Each person we cut looked traumatized. They looked like their hearts had been taken away. No one was asking for mercy. They looked like they were already

⁴⁸ Huband, Mark. (2011). Rwanda. *Crimes of War*. Retrieved at: <http://www.crimesofwar.org/a-z-guide/rwanda/#sthash.IInB3GNp.dpuf>

⁴⁹ Keane's BBC Panorama documentary entitled "The Killers" was aired on BBC on April 4th, 2004, and included interviews with perpetrators of the Rwandan genocide with a focus on what happened at Nyarubuye. In it are clips from Keane's initial visit in the final weeks of the genocide, 1994.

dead. The way I saw people, people whose hands had been amputated, those with no legs, and others with no heads. I saw everything. People [were] rolling around and screaming with agony with no arms and no legs (Panorama 2004).

As the killers moved in, the Tutsi recognized some of them as their neighbours. Many perpetrators have repeatedly stated that it was as if they “were taken over by Satan” (see, for example, Schneiderhan 2013, 294; PBS ‘Ghosts of Rwanda’). This is a common explanation for this gruesome violence, that a supernatural force is responsible for such evil. Laren Renzaho, a father of ten children, attacked a neighbour whose home he had often visited. He admits he had never killed anyone before, but the group had planned to kill Tutsi and it was in their mind to kill. “It came like madness,” he said (Panorama 2004). Unlike others in the film, Renzaho feels remorse for what he did, for killing a neighbour he knew well. “Mercy wasn’t part of the deal,” describes Silas Ngendahimana, who blames the government for the killings. Another convicted perpetrator, Cyasa Habimana, says he was a tool of more powerful men. The *Interahamwe* group leader says the colonel gave him a new set of tires for his truck and threatened to kill him if he did not obey (Keane 2004).

In December 2003, a court in Rukira sector found 18 people guilty of genocide crimes, convicted for taking part in the killings at Nyarubuye. Gitera Rwamuhizi was sentenced to 25 years in prison after he plead guilty to having killed 10 people, and the rest, many of whom confessed, were sentenced to terms ranging from 7 to 16 years (IRIN, 2003).⁵⁰

⁵⁰ Available online: <http://www.irinnews.org/report/47515/rwanda-court-convicts-18-of-genocide-crimes>.

A more detailed explanation of this case is in chapter 3.1.

In *Season of Blood*, Fergal Keane describes his search for Sylvestre Gacumbitsi. Shortly after the genocide, Silas, a survivor, takes Keane to the Mayor's house, which has been ransacked, and then follows a tip and searches for him in a Tanzanian refugee camp called Benaco. He finds him acting as a leader in the UN refugee camp in charge of distributing food to the people from Rusumo. In the interview, Gacumbitsi repeatedly denies any involvement in the massacre:

Keane: 'Mr. Gacumbitsi, I want to ask what you know about the massacre at Nyarubuye?'

Gacumbitsi: 'I know nothing about any such event. Nothing.' He looks around him at the other men. But his face remains confident...

K: 'Mr. Bourgmestre, I have spoken to eyewitnesses and survivors and they all say you were there and that you organized the killings. They also say you helped to finish people off who were dying.'

G: 'No, no, no... I am the Bourgmestre of the Commune. Why would I do that? Why would I do that? That thing had nothing to do with me. Who are these people who say this against me?'

He is starting to seem less composed. I can tell he is struggling to keep the anger from boiling up. It then occurs to me that he may not have known before now that there were survivors. Perhaps Gacumbitsi thought the militia had done for everyone.

K: 'I have talked to the survivors, the Tutsis who survived the killing at Nyarubuye.'

He stops and takes a step backwards and gives a mocking laugh. 'Ah, I see. The Tutsis. The Tutsis.' There is real venom in his voice. 'The Tutsis. What would you expect them to say? I am a Hutu. They hate me. What would you expect them to say except to blame me?' Gacumbitsi looks around into the faces of his henchmen and nods his head. He smiles and they smile. 'Let me tell you, my conscience is clear. I had nothing to do with that episode,' he repeats (Keane 1996, 104-105).

In this encounter, it is very clear that Gacumbitsi is a powerful figure, even within the refugee camp to which he fled. He repeatedly, even mockingly, denies any involvement whatsoever in the Nyarubuye massacre. Keane aggressively questions him, and in the latter part of the meeting, Gacumbitsi became increasingly angry, vehemently maintaining his innocence. Keane writes that his senses tell him that this man is a killer. Gacumbitsi has now been tried and convicted by the ICTR, and his role in inciting the violence is a central part of the story of Nyarubuye. The issue of the refugee camps taking in the *génocidaires* was a source of much controversy in the year after the genocide.⁵¹

In another interview, Keane spoke with Bagaruka, a grandfather with eight children who witnesses say was an enthusiastic killer. He stated that at Nyarubuye, everyone had to be killed, including the children. The orders were to kill everyone. He himself had been an orphan and a Tutsi man who had been his guardian was also killed in the massacre. “I almost become crazy when I think about that,” he remarks (Keane 1997). Evariste Maherane confessed and apologized for his crimes at a *gacaca* hearing. He remembers killing a 10-year-old boy, burying him alive. He had a 10-year-old son of his own at the time and is haunted by the memory.

Callixte Mwizerwa, a Coordinator of Genocide Survivor Organizations has suggested that Nyarubuye is the most inhuman of all of the massacre sites in Rwanda (Gahiji 2012), if such a ranking has any meaning. At visits to the memorial site, the guides describe how it is alleged that cannibalism was part of the massacre, including

⁵¹ A refugee crisis ensued after the genocide, particularly in neighbouring Zaire. There was much controversy and many non-governmental organizations left in protest, as they argued it was *génocidaires* controlling and benefitting from the refugee camps. See Mills, Kurt. “Refugee Return from Zaire to Rwanda: The Role of the UNHCR” in *War and Peace in Zaire-Congo: Analyzing and Evaluating Intervention, 1996-1997* and Prunier, Gérard. *Africa’s World War: Congo, The Rwandan Genocide, and the Making of a Continental Catastrophe* (2008).

killers cooking and eating the hearts of Tutsi victims.⁵² Whether this is a rumour or true has never been established. Some reports cite a notorious genocide perpetrator named Daniel Rwamukama, nicknamed Simba (Lion), who ‘would allegedly kill Tutsis and remove their hearts which he would carry home for roasting and eating,’ says Ferdinand Rwakayigama, a genocide survivor of Nyarubuye (Gahiji 2012). Other sources, such as in interviews conducted by Rutazibwa and Rutayisire, also mention Daniel Rwamukama and his particularly gruesome crimes, including killing babies by throwing them in the air, and eating the hearts of victims. The memorial site guides describe Nyarubuye as unique in this phenomenon of alleged cannibalism, a particularly disturbing feature of this massacre (Rutazibwa and Rutayisire 2007).

Focus on Sexual Violence

It is difficult to estimate the number of women who were raped during the Nyarubuye massacre, and there are no cited reports of men experiencing sexual violence or torture.⁵³ Recently, as a visitor to the memorial site, I was struck by the guides’ very visceral stories of rape as a genocidal tactic at Nyarubuye. Amanda Grzyb described to me an active process of recovery at the site: For example, in 2012 workers found the bodies of sixteen women in the latrines, thrown there to die after perpetrators gang raped them in an adjoining room.⁵⁴ The guides told both Grzyb and myself, during separate research trips to the site, that a significant amount of rape occurred at Nyarubuye. While

⁵² In my own personal visit in November 2013 I was told the killers roasted and ate the hearts of victims, as well as collecting and drinking their blood, at Nyarubuye. The guides and my interpreter raised the question of why this was the most gruesome of all the genocide sites - the only one with reports of cannibalism. This is discussed further in chapter three.

⁵³ There have been a few isolated reports of male survivors of rape during the Rwandan genocide, which have been largely overlooked.

⁵⁴ Personal communication, June 2013. Publication forthcoming.

some accounts neglected the details of sexual violence at Nyarubuye, evidence about rape emerged at the post-genocide trials.

It is established in the ICTR records that on or about April 17th 1994, Sylvestre Gacumbitsi gave a specific directive to rape women. As he travelled along the Nyarubuye road in a caravan of vehicles, he announced with a megaphone “Search in the bushes, do not save a single snake... Hutu that save Tutsi should be killed. Tutsi girls that have always refused to sleep with Hutu should be raped and sticks placed in their genitals” (*Gacumbitsi* Trial Judgment, p.101, count 5, para. 39). In this instance, after Gacumbitsi drove by, a group of men attacked and raped Tutsi women that were hiding nearby. One of the women was killed and a stick was thrust in her vagina (*Gacumbitsi* Trial Judgment, p.51 para. 39). Around the same time, on April 17th Sylvestre Gacumbitsi “lured Tutsi women to a specific location by announcing over a megaphone that Tutsi women would be spared, and that only Tutsi men would be killed. When a number of Tutsi women gathered in response to Sylvestre Gacumbitsi’s exhortations... several attackers surrounded, raped, and then killed them. Attackers also sexually degraded a number of Tutsi women by inserting objects in their genitals” (*Gacumbitsi* Trial Judgment, p.51). The killers cut off women’s breasts, thrust tree branches into their vaginas after raping them, and allegedly forced boys to have sex with their mothers (Rutazibwa and Rutayisire 2007, 123). Witnesses testifying against Gacumbitsi described gang rapes of several women simultaneously by more than ten men, and women (young, old, pregnant, and also Hutu women) were held in sexual slavery and raped repeatedly (Cole 2008, 64).

The two main journalists focused on Nyarubuye cite instances of rape during the massacre. In Gourevitch’s account, his guide (RPF) Sergeant Francis showed him a

particular area and “said that the dead in this room were mostly women who had been raped before being murdered” (Gourevitch 1999, 16). In his interviews, Fergal Keane also encountered Marie, a woman captured near Nyarubuye by Hutu militia who took her as a sex slave and raped her more than 100 times. She contracted HIV and died soon after (Keane 2004). Accounts cite a particular area to which the killers took women to be raped: “In the absence of clerics the *Interahamwe* exercised the most cruelty known to mankind. They established a rape joint in the nuns’ convent where women and girls were taken, raped then killed” (Musoni 2014). Journalist Jacques Pauw describes vividly his experience at Nyarubuye, including a visit to the dispensary, where he ‘smelt death long before he saw it:’

Six or seven or eight female corpses lay on their backs in a neat row. Shreds of colourful sarongs still clung to their blackened and bloated bodies. Flesh peeled off their white cheekbones and rib bones poked like chopsticks from their hollowed chest cavities. Swarms of maggots wriggled around the bodies and pools of black body fluids stained the bare cement floor. Some had their feet chopped off, while others had sharpened sticks forced into their vaginas. Their skirts were hitched around their thighs and they had been raped before they were killed (Pauw 2007, 65-66).

Panorama: The Killers briefly mentions the important story of Pendo Uwimana.⁵⁵ The girl, 20 years old at the time, describes how when she saw Mayor Gacumbitsi at Nyarubuye he had changed. He was a friend of her father, and when he used to hold meetings he seemed nice, but on this day ‘he looked like an animal’. Pendo alleges she was dragged into a room, and when Gacumbitsi entered, he stated that they were not going to waste bullets on her. Gacumbitsi told her to lie down, and then raped her, and

⁵⁵ This accusation will be elaborated on further in the ICTR *Gacumbitsi* chapter (2.3).

after he finished he called the police in. Six of them also raped her, both with their penises and with their truncheons (Panorama 2004). But a Hutu man, Gacumbitsi's deputy Matthew Fashingabo and his wife gave her shelter and managed to smuggle her out of the country. Her story is contested, highly significant although not well known, and will be discussed in detail in the next chapter.

Aftermath: Visits to the Site

In early June 1994, Donatella Lorch⁵⁶ wrote in the *New York Times* that although the area had been under RPF control for about a month, the Nyarubuye massacre was not discovered right away because of its relatively remote location. She describes the site as such: “the frenzy of killing was evident at the rear compound. There eight rooms are filled with hundreds of corpses, shoulder to shoulder, piled onto one another. One hundred more killed in a courtyard are now half skeletons, their flesh in shreds. There are so many that it is impossible to walk through without treading on them” (Lorch 1994). Keane describes visiting Nyarubuye weeks after the killing, “where rotting bodies lay twisted terribly, skulls smashed open, faces frozen in the last terrible expression of violent death” (2004). In her seminal work *Leave None to Tell The Story*, Alison Des Forges mentions “Nyarubuye in eastern Rwanda, where the cadaver of a little girl, otherwise intact, had been flattened by passing vehicles⁵⁶ to the thinness of cardboard in front of the church steps” (Des Forges 1999, 6). Smith and Rittner echo, “for several weeks the dead and rotting bodies, terribly twisted, lay where they fell, their skulls smashed, their arms and legs severed, their faces frozen in the last terrible expression of violent death” (Smith

⁵⁶ James Dawes describes how Donatella Lorch was one of the journalists taken to the Mille Collines Hotel in Kigali by an ICRC convoy at the height of the killing, before her and other Westerners were flown to safety out of Rwanda (Dawes 2007, 231).

and Rittner 2004, 200). Vivid descriptions of the terrible violence that occurred here abound, as visitors in the immediate aftermath struggled to comprehend what had occurred.

In his oft-cited account, Phillip Gourevitch struggles psychologically with visiting the site, commenting that “the dead at Nyarubuye were, I’m afraid, beautiful” (1999, 18). He struggles with the reality of this unimaginable crime, not knowing how to react, and what would be a meaningful response to this horror. He describes the sight of “a woman in a cloth wrap printed with flowers lay[ing] near the door. Her fleshless hipbones were high and her legs slightly spread, and a child’s skeleton extended between them. Her torso was hollowed out. Her ribs and spinal column poked through the rotting cloth. Her head was tipped back and her mouth was open: a strange image – half agony, half repose” (1999, 15-16). Gourevitch recounts his resistance to the idea of leaving the bodies as they fell, ‘forever in their state of violation.’⁵⁷ Survivor Dimas Nkunda describes an unforgettable scene of sexual violence: “there was a dead woman seemingly staring at us. A stick had been pushed through her private parts and it was protruding near the collarbone. Inside the church was like hell itself” (Nkunda 2014). Most of the early descriptions of those who visited the site remark on how the bodies were decomposing exactly as they fell, the evidence of their violent death glaringly apparent. They were piled in rooms on top of each other. It is also clear that the horrific memory of the events at Nyarubuye stayed with those who visited in the aftermath. For example, in 1996, Keane recorded a letter to his newborn son: “There is one last memory. Of Rwanda, and the churchyard of the parish of Nyarubuye where, in a ransacked classroom, I found a

⁵⁷ Chapter 3 examines in detail the Nyarubuye memorial site and debates around displaying the corpses of victims.

mother and her three young children huddled together where they'd been beaten to death. The children had died holding onto their mother, that instinct we all learn from birth and in one way or another cling to until we die" (BBC 1996, cited in Foley 2013). Much of what has been written about Nyarubuye in popular accounts narrates the horror of journalists who visited the site. The gruesome nature of this particular massacre is evident in the documentation describing what happened here in mid-April, 1994. By compiling available testimony and historical documentation from journalists, academic sources, and legal transcripts, this systematic review reveals a detailed history of Nyarubuye. This microcosm⁵⁸ of the events of the Rwandan genocide reveals important insights into questions of perpetration, intent, methods of killing, the suffering of victims, and the historical record.

While I have done my best to reconstruct a chronological picture of what happened at Nyarubuye Parish in April 1994, mainly from testimony and journalists, gaps remain, because there are always limitations on reconstructing history. As many contemporary critical scholars have articulated, one can never get at the 'truth' of events, as there are multiple perspectives and plural truths to every story (see Foucault, 1976). With so few survivors, some accounts are verified by evidence or corroborated, and here I have integrated many sources to compile a comprehensive picture, but inevitably much is lost with the victims. What happened after – how the story gets shaped – is also important. For example, the fact that women's bodies were only recovered from the

⁵⁸ In many ways, the Nyarubuye massacre echoes other major massacres during the Rwandan genocide – perpetrated by the *Interahamwe* and their recruits over a few short days, who were attempting to ensure that all the Tutsis were killed; As in many other cases, the setting was a rural church, where many Tutsi had sought refuge, and rudimentary weapons were used, inflicting gruesome crimes on victims, and so on. In some ways, it was distinct, as is detailed in this chapter, but insights can definitely be extrapolated to address larger questions about the genocide itself.

latrines at Nyarubuye a few years ago, because visitors needed to begin using them again, is quite significant, and will be discussed further in chapter three on the memorial site. In a way, it is symbolic of the larger difficulty of uncovering all of the evidence, an active process that is still continuing, over twenty years later. Indeed, scholars have been discovering new evidence and information about the Holocaust and other genocides for many decades after. Writing history is always an exercise in interpretation, as the historian takes evidence of events that have happened, arranges them chronologically, decides what to include and exclude (sometimes only limited to what is available), and answers questions about what happened, how, and why. This chapter has compiled a chronological record of what happened at Nyarubuye, including the sexual violence that was a significant component. As social historians have articulated, microhistories are important for examining minute details that may otherwise be overlooked, including lived experience, contextualizing, establishing patterns, and bringing different perspectives into conversation with one another. This detailed account provides insights into the genocidal violence, including the motivations of individual perpetrators (in their own words), the horrors children faced, the tactics and methods of killing, and the coordination between those in powerful positions, specifically in this case led by Mayor Gacumbitsi. The Nyarubuye case also demonstrates the determination of the perpetrators for the complete annihilation of the Tutsi, evidenced in their repeated return to the church to kill any remaining survivors. From a feminist perspective, the Nyarubuye massacre extends our understanding of the sexual violence against women that was integral to the genocide. Unique in its chronicling of this massacre, this chapter both solidifies some of the larger patterns in the scholarship on the genocide, but also reveals some important, lesser-known details of the historical events.

The next chapter will look specifically at the ICTR case against Mayor Gacumbitsi, and what the judgment and trial records show - another important official discourse framing what we know about what happened at this church, and the wider lessons it holds. First I will illustrate some important theoretical background about sexual violence as a weapon of war and genocide, and its evolving prosecution under international law.

2.1: Sexual Violence as a Weapon of War & its Role in the Rwandan Genocide

During the Rwandan genocide, ‘rape was the rule, its absence the exception’ (see Nowrojee 2005; Human Rights Watch 1996; Mibenge 2013), and women were victimized in virtually every locale, commune, and sector, at roadblocks, churches, schools, in homes, fields, stadiums, and beyond. The possibility of seeking justice for these victims, and precisely what that should look like is extremely complex, perhaps unrealizable, as the lasting effects of such intimate physical and psychological violation is enduring. This chapter establishes the relevant context for my particular case study of the ICTR trial of former Mayor Sylvestre Gacumbitsi, focusing specifically on sexual violence during war. In this section (2.1) I will consider the question of why sexual violence is a longstanding and enduring weapon of war, and look at some explanations for its systematic perpetration during the Rwandan genocide. Patriarchal attitudes spread through propaganda were crucial components leading to widespread rape as a weapon of the genocide. The next section (2.2) will examine how international law has evolved in the past two decades to deal with this issue, and detail the record of rape prosecution at the ICTR. These failures and missed opportunities provide important insights into gaps that future international mechanisms of justice must address in order to successfully prosecute sexual violence crimes. The primary contribution will be in section 2.3, as I scrutinize the transcripts of one particular ICTR case and the testimony of one witness, for the wider lessons it holds in terms of prosecuting sexual violence internationally. This section makes an important contribution by uncovering, through the Nyarubuye case study and

the ICTR Prosecutor v. Gacumbitsi case, the specific problems that endure today with bringing to justice those who perpetrate sexual violence crimes in the context of war and genocide – a key component in current efforts to deter such violence in the future.

Women experience a wide spectrum of violence, both in conflict and outside, and feminist analyses point to the continuity of these instances, viewing rape as an extreme end of the continuum of discrimination, misogyny and gender-based violence that is generally ubiquitous (see Brownmiller 1975; Enloe 2000; MacKinnon 2006). While the 20th century saw the advent of a new system of universal human rights recognition and declarations, it also saw the erosion of a distinct combat-centered battlefield, with ever-increasing civilian casualties of war. As Hynes articulates, war indiscriminately harms women and men as civilian casualties of weapons, bombs, and combat. But women⁵⁹ are also harmed discriminately as targets of rape and sexual exploitation fuelled by armed conflict, as targets due to their reproductive capacities,⁶⁰ and by the increased domestic violence both within the military and that which persists beyond war (Hynes 2004, 435; see also Jones 2010; Henry 2011). Although here I will focus specifically on sexual violence and rape,⁶¹ gender-based violence encompasses a much wider range of crimes committed based on social gender hierarchies and unequal power relationships. Men are also victims of rape and sexual violence, but women are disproportionately affected – routinely, systematically, sexually violated in every country in the world (MacKinnon

⁵⁹ When I refer to women throughout this section, I am also including girls in this category, as they have often been targeted as victims of sexual violence during war as well (it seems redundant to keep stating ‘women and girls’ and definitions based on age are inconsistent).

⁶⁰ See, for example, Card 2008.

⁶¹ Although definitions have been widely debated, currently international law defines rape as “the penetration of the anus or vagina with any object or body part or any body part of the victim or perpetrators body with a sexual organ, by force or threat of force or coercion, or by taking advantage of a coercive environment, or against a person incapable of giving genuine consent” (ICC 2000, Article 8[2]).

2006, 181). Sexual violence against men is still exceptional, although common in particular circumstances,⁶² and has not been given the attention it deserves.⁶³

Because militias and genocidaires raped women so pervasively during the Rwandan genocide, and these were the only cases dealt with in post-genocide justice mechanisms, herein lies my analysis. As background to a more specific discussion of the ICTR Gacumbitsi trial, this chapter explores sexual violence as a common feature of war and genocide, some explanations for why it was so widespread during the Rwandan genocide, and how international law has changed to deal with this issue.

In discussing whether women's rights are in fact human rights, Catharine MacKinnon argues that "what is done to women is either too specific to women to be seen as human or too generic to human beings to be seen as about women" (2006, 181). Such violations are acts of domination - sexualized violence (not violent sex), deliberate and purposeful. Everyday sexism and misogyny has led to a world in which violence against women is universal, its absence exceptional. Today, one is hard-pressed to find a conflict in which sexual violence and rape are not part of the strategies, tactics, or consequences of war.⁶⁴ An intersectional feminist analysis alerts us to the fact that when

⁶² See, for example, the 2001 Human Rights Watch report "No Escape: Male Rape in U.S. Prisons."

⁶³ It is important to acknowledge that sexual violence and rape against men is a grave problem, and an under-researched and rarely acknowledged issue. But even in such instances, a feminist analysis reveals the gendered character of such acts, as the intent is to feminize or demasculinize the victim. See, for example Sandesh Sivakumaran, (2013) "Prosecuting Sexual Violence Against Men and Boys" in Anne-Marie de Brouwer et al., eds, *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Antwerp: Intersentia); Sandesh Sivakumaran, (2007) "Sexual Violence Against Men in Armed Conflict" *European Journal of International Law* 18, 2; Valerie Oosterveld (2014) "Sexual Violence Directed Against Men and Boys in Armed Conflict and Mass Atrocity: Addressing Gendered Harms in International Criminal Tribunals" *Journal of International Law and International Relations* 10, 1.

⁶⁴ For some exceptions, see Wood, Elisabeth Jean. (March 2009). "Armed Groups and Sexual Violence: When is Wartime Rape Rare?" *Politics and Society* 37, 1:131-162. Some situations of mass atrocity are generally assumed to not have involved sexual violence – such as the Khmer Rouge regime in Cambodia – but, upon closer inspection are rife with such violence: See, for example, Silke Studinzky, (2013). *Victims of Sexual and Gender-Based Crimes Before the Extraordinary Chambers in the Courts*

rape is a genocidal act, it is simultaneously an attack on both the victims' gender and ethnicity (Buss 2007). It is not an inevitable by-product of war, nor is it detached from the high rates of rape women face in their daily lives. Sexual violence is not an aberration – it embodies unequal social norms prevalent across the globe, perhaps in an even more pronounced way during the anarchy of war. As Debra Bergoffen powerfully articulates, “So long as the gender codes of patriarchy mark a raped woman's body as an affront to the honour of her community and as a sign of the failure of its men, so long as the raped woman's body carries the threat of social pollution, so long as raping a woman effectively removes her and her future children from the fabric of communal life, rape will be available as a weapon of war” (Bergoffen 2006, 24).

Rape and sexual violence are intimate violations of individuals' bodily integrity, as sexuality is, for many, central to their identity, and private, sacred. This subjugation is both literal and symbolic,⁶⁵ and the often-public spectacle of rape attests to the latter. Sexual violence can break apart communities, and lead to stigma and shame for the victims.⁶⁶ As is evidenced in Rwanda and the former Yugoslavia, as well as by the Special Court for Sierra Leone, rape often involves heightened sadism, including repeated violation in 'rape camps,' forced rape in front of or by family members, and rape with weapons, including sticks and guns. The spread of HIV⁶⁷ is a significant consequence of

of Cambodia: Challenges of Rights to Participation and Protection, In Anne-Marie de Brouwer *et al* (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches*. (Antwerp: Intersentia).

⁶⁵ Mibenge details the symbolic value of the violated female body in the production of identity in Rwanda (2013).

⁶⁶ It is important to keep in mind that shame isn't an inevitable result of sexual violence – see Engle, Karen and Annelies Lottmann. (2010). “The Force of Shame” In *Rethinking Rape Law: International and Comparative Perspectives*, edited by Clare McGlynn and Vanessa E. Munro, 76-91. New York: Routledge.

⁶⁷ See Human Rights Watch 1996 and Mibenge 2008, 155.

this widespread sexual violence; raping women to death (immediate or eventual) is the ultimate demonstration of the powerlessness of the victim.

Catharine MacKinnon rightfully points out that genocidal rape is both systematic and random, as is everyday rape against women as a group, as it is individual women whose bodies become symbolic of the larger group selected for destruction and domination. Law tends to have difficulty acknowledging the collective quality of such crimes, as will be discussed further in chapter two. Here I will summarize some of the main theories as to why rape is an enduring, widespread weapon of war,⁶⁸ whilst keeping in mind that such factors are context-specific; in fact in most cases, there is an intricate web of causal factors contributing to the perpetration of this gender-based crime.

Feminist theorists have largely discredited the idea that rape is simply a display of male frustration, or an outlet for men's 'natural' biological urges, which they are deprived of during conflict.⁶⁹ As Paul Kirby outlines (2012), an instrumentalist account views rape as a calculated (and 'cheap') tool, that instils terror in the population and facilitates certain gains, such as resources and material power – as the means to an economic end, as we see in the Democratic Republic of Congo's mineral-fuelled war.⁷⁰ Others have pointed to the collective function of rape, in that it allegedly facilitates group bonding, for example for perpetrators involved in gang rape, and breaks apart the social cohesion of

⁶⁸ I want to acknowledge Baaz and Stern's critique (2013) of the term 'rape as a weapon of war,' in that it has become a dominant narrative with the potential to circumscribe what can be known about the issue. Buss, 2009, also complicates this phrase. However, particularly in the second part of this chapter, I am engaging in a specific exploration of a case in which rape definitely was a weapon of the genocide.

⁶⁹ One example that counteracts the idea that sexual violence is widespread merely because the opportunity for it is available among the chaos of war is that this does not account for the variation in patterns, and the specific targeting of particular women during war, ethnic cleansing campaigns and/or genocide. As well, one would assume sexual violence rates would rise alongside other rates of opportunistic crimes, such as looting, which is not supported by research (Wood 2010).

⁷⁰ Georgina Holmes argues that the extreme sexual and gender-based violence perpetrated against women in eastern Congo can be better understood as genocide by attrition (2014).

the enemy community, affecting women who play important roles in family and economic life (Ní Aoláin, Haynes & Cahn 2011). Revenge may also be a motivating factor for targeting enemy civilians, although this does not necessarily explain its sexual manifestation. Forced prostitution, sexual slavery, and so-called ‘forced marriages’ add another dimension to the systematic nature of wartime sexual violence.

The gendered character of sexual violence in war is evidence that it is an extension of gender inequality in peacetime. Women are socially constructed as feminine, peaceful, and in need of protection, while men are expected to exhibit a heterosexual masculinity that includes dominance, aggression, power, and control.⁷¹ Militarization pushes this definition to its extreme, training men to be ‘hyper-masculine’ - extremely violent, and often to dehumanize the enemy.⁷² It is not surprising, then, that this violent form of hegemonic masculinity leads to the widespread rape of women,⁷³ particularly (but not only) when ordered or condoned by superiors. Women have long been considered the ‘bounty’ or ‘spoils’ of war, clearly tied to archaic views of females as property.⁷⁴ Rape and sexual violence are often used to assert dominance over the enemy - since women’s sexuality is presumed to be under the protection of men, an attack on women essentially

⁷¹ For a specific exploration of gender cosmology in Rwanda, see Burnet (2012, 42-50).

⁷² In interviews with perpetrators in the DR Congo, Baaz & Stern (2009) are told that there exists a distinction among the soldiers between ‘lust’ and ‘evil’ rapes, an attempt to distinguish common rape as a result of men’s need to release sexual tension from ‘evil’ rapes which are particularly brutal acts involving mutilations and sometimes murder. Both types of rape are driven by hegemonic masculinity and the dehumanization of women.

⁷³ I should note that I am not suggesting a clear binary of women as victims/men as perpetrators, as this tendency is problematic for many reasons. For example, it is well-documented that there were many female perpetrators of the Rwandan genocide, including of sexual violence. See, for example, the trial of Pauline Nyiramasuhuko.

⁷⁴ See Baines, 2003 for insight about the physical body and the private sphere as key sites of cementing national ideologies by the Hutu extremists in Rwanda, a ‘body politic’ that manifest in reproductive and sexual violence against women and graphic murder.

amounts to an attack on the men of their community⁷⁵ (Zurbriggen 2010; Rittner and Roth 2012). This framing sees a woman's honour as tied to her sexuality, and indeed, the community, thus it is not just a violation of her individual body. Feminists have criticized this particular framing as erasing women's agency in a patriarchal arrangement (Bergoffen 2003), where women's honour (virginity) is a symbol of the community/nation, but that does not negate the fact that this is potentially the intent of perpetrators. Widespread sexual violence can lead to stigma, shame, and the isolation of victims, tearing at the very fabric of a community, and has long-term traumatic effects. As Mibenge articulates, victims of sexual violence "continue to suffer the physical and mental consequences of the genocide. These in turn have increased economic hardship and socio-cultural stigmatization and disempowerment... Sexual violence against Tutsi women was conducted in the most violent manner possible and the sexual reproductive health of many survivors was greatly endangered" including resulting in many unwanted pregnancies and high rates of HIV infection (Mibenge 2008, 154-155). The culture of silence that endures around rape highlights the shame and stigma it carries (see Burnet 2012, Mibenge 2013). Pervasive impunity has long added to its commonplace occurrence. As Doris Buss (2007) reminds us, it is important to keep in mind that sexual violence in armed conflict is not a singular, uniform phenomenon; it takes different forms, intersected by other axes of oppression, and has different repercussions in each context and for each victim (see also Copelon 1993).

Historically, from Ancient Greece to knights and pilgrims in the Crusades and the rape of Sabine women in the founding of Rome, from Japanese 'comfort women' to

⁷⁵ Mibenge actually argues that this communal shame operates within the Tutsi group to inhibit the pursuit of justice, as rape survivors may fear exposing the inability of their men to protect them (2008, 157).

forced pregnancy in the Balkans, men raping women in war has been both ubiquitous and largely ignored (Brownmiller 1975; Bourke 2007). Little has been documented about the prevalence and scale of wartime sexual violence, until recently, as feminist advocates have exposed the deliberate nature of systematic rape as a strategy of war (Turshen 2001; Handrahan 2004) and brought the issue to the forefront of advocacy, scholarship, and legal debates. In the early 1990s, reports emerging from the former Yugoslavia of the mass rape of women served as a catalyst for international recognition of this issue.⁷⁶ Although proving widespread acts of sexual violence evidentially is decidedly challenging, especially since victims are often reluctant to come forward due to shame, stigma, and fear, experts estimate that over 250,000⁷⁷ women were victims of rape during the short period of the Rwandan genocide (de Brouwer & Chu, 2009; Gerecke 2010; Nowrojee 2005). As in everyday cases of sexual violence, minimization, denial, and other blaming and shaming strategies keep women from disclosing their experiences (Henry 2010, 1102). Almost all of the women who survived the Rwandan genocide were victims of sexual violence or were profoundly affected by it (de Brouwer & Chu 2009).

There is a wider discussion to be had about gender-based violence in conflict, but it is also important to note the difference between rape in conflict and genocidal rape.⁷⁸ In the mid-1990s, Beverly Allen coined the term ‘genocidal rape,’ citing the particular harm it causes and its parallels with biological warfare. In both war and genocide, the use of rape as a tactic instills terror, degrades and demoralizes the victim group, symbolically

⁷⁶ For a more detailed discussion of this evolution see Sellers, 2009.

⁷⁷ In a comprehensive study, Bijleveld et al. estimate there were just over 350,000 rape victims during the Rwandan genocide. See Bijleveld, Catrien, Morssinkhof, Aafke, and Alette Smeulers. (June 2009). “Counting the Countless: Rape Victimization during the Rwandan Genocide” *International Criminal Justice Review* 19, 2: 208-224. Also, for a detailed picture of this violence see Human Rights Watch, 1996.

⁷⁸ Claudia Card (2008) has articulated the paradox of genocidal rape committed by Serbian military forces in the early 1990s aimed at enforced pregnancy.

rewards the perpetrators and humiliates the enemy's men. In genocide, and as part of the Rwandan genocide indisputably, men are told, ordered, or encouraged, methodically, to commit sexual violence against (in this case, Tutsi) women. Females are raped deliberately - a violent instantiation of genocidal intent.⁷⁹ In genocide, rape is purposeful – to degrade and dehumanize the enemy's social group, thus individual women's membership in said group is why they are violated (see MacKinnon 2006, 222). The intersection of gender and ethnicity is integral to the practice.

Sexual Violence During the Rwandan Genocide

In Rwanda, although the causal factors will never be definitively determined, we can point to a number of intersecting forces that led to mass perpetration of sexual violence during the genocide. Patricia O. Daley's book *Gender and Genocide in Burundi* poses many parallels to the Rwandan experience. Countering Western media's often patronizing dismissal of violence in Africa as 'tribal warfare' and inevitable barbarism, Daley explicates a multifaceted set of factors that have contributed to outbreaks of violence in the Great Lakes region of Africa. In her sophisticated (feminist) analysis, Daley argues that masculinity and the patriarchal state are intimately linked to the dominance and oppression that set the conditions for genocide, both in Burundi (in 1972) and Rwanda, (as well as outbreaks of violence in the Democratic Republic of Congo, Uganda, and Tanzania). She suggests that there is continuity from the brutal history of colonialism, which installed hierarchical relations, leading to a violent manifestation of difference and to the present social configuration. The colonially imposed gender

⁷⁹ This is still contested, as advocates and scholars critique the fact that only Tutsi women are considered victims of sexual violence during the genocide (see Burnet, 2012). However, when Hutu women were victimized, it was often due to their affiliation with the Tutsi.

hierarchy, progressive dehumanization of the African people, oppressive institutional state power and militarized masculinity that soon followed set the stage for gender and sexual violence in the Burundian civil war, and, to an extreme, in the Democratic Republic of Congo and Rwanda. As Daley explores, “genocidal politics has been a regional phenomenon due to a common discriminatory, military and masculinist tradition embedded in the colonial and modernization experience and the post-colonial states’ promotion of violence as the route to political power” (Daley 2008, 135). A feminist analysis of the sexual violence that pervaded the genocide must be understood in this historical context.

In Rwanda, ethnic divisions traversed gender inequalities leading to genocidal rape, and we must analyze these factors in an intersectional manner. Genocidal targeting of one group does not necessitate rape, just as misogyny does not lead to targeting a particular ethnic group – these are intersecting forces that made Tutsi women key targets, as symbols of their community. Reproductive violence, especially the killing of pregnant women, was also widespread. “Tutsi women were raped on a widespread, systematic scale in part because as women and mothers they would bear future generations of Tutsis” (Mibenge 2013, 71). Chiseche Mibenge makes an important point, that “the narrative of ethnic genocide, by privileging ethnicity as the requisite condition of sexual victimization, denies [or suppresses] gender-based discrimination” (2013, 62). Although evidence attests to the fact that while Tutsi women were particularly targeted, Hutu women also experienced sexual violence, the ICTR has only investigated and prosecuted particular crimes that fall within the dominant narrative, that is, those involving Tutsi victims. While some of the transcripts reveal evidence of the rape of Hutu women, often due to their association with the Tutsi, such crimes were left out of post-genocide justice

mechanisms. It is clear that “the larger body of case law does not reflect the high levels” of sexual and gender-based violence committed during the genocide (Mibenge 2013, 66).

There is significant evidence that, in the lead up to the genocide, Hutu extremist propaganda, with its especially sinister depiction of Tutsi women, contributed to the widespread perpetration of rape and sexual violence. *Kangura* is the MRND (Mouvement Révolutionnaire National pour le Développement)⁸⁰ magazine most frequently discussed, although in the early 1990s there were many Hutu extremist magazines, newspapers, and radio broadcasts. In December 1990, *Kangura* published the *Hutu Ten Commandments*, some of which were markedly gendered. The first stated that all Tutsi women worked only for the interest of their ethnic group, and that any Hutu who marries, befriends, or employs a Tutsi woman shall be considered a traitor. The second and third ‘commandments’ addressed the fact that Hutu women are more suitable wives and mothers, and they should bring their husbands, brothers and sons ‘back to reason.’ Tutsi women were commonly portrayed as spies, seductresses, and infiltrators of the Rwandan state (Baines 2003; Mibenge 2008). As well, they were depicted as taking advantage of Hutu (and all) men with their beauty and sexuality. An infamous *Kangura* cartoon depicts Canadian General Romeo Dallaire, head of the United Nations Assistance Mission for Rwanda, with two scantily clad Tutsi women in sexualized poses. The representation of Tutsi women as hypersexualized prostitutes was repeated often in such propaganda. Georgina Holmes⁸¹ argues that in such depictions, there is a clear distinction made between the ‘pure and moral’ Hutu woman, envisioned as a full citizen, in opposition to

⁸⁰ The Hutu-dominated, Habyarimana regime that ruled Rwanda from 1975 until the genocide.

⁸¹ Interestingly, Homes (2014) central argument is that a multitude of actors – states with geopolitical interests in the region, African states involved in the conflict, the current government, militia groups, activists and NGOs – all employ media narratives strategically in order to influence public perception of the genocide, and that in fact the discourse is highly gendered.

the immoral Tutsi woman who is an enemy of the state (2014, 118). *Kangura* regularly targeted Prime Minister Agathe Uwilingiyimana (who was killed⁸² in the initial days of the genocide), including depicting her as a prostitute having an affair with a Hutu politician in order to further her career. A highly disturbing image of genocide and rape was published in the extremist-funded journal *Kamarampaka* in April 1993, in which two MRND women are captured, one with a stick through her chest, the other being raped by an RPF soldier, beside an MRND man tied to a tree and another impaled on the ground, with the caption ‘Blood and sex: the horrors of war attributed to the RPF’ (see Holmes 2014, 120). As Holmes argues, such propaganda militarized the Hutu population against the Tutsi enemy, and ingrained a particularly gendered ideology about the potential threat that Tutsi women posed. Baines demonstrates how “male internalisation of Tutsi beauty and unavailability fed a desire to possess and control Tutsi women” while simultaneously threatening the Hutu nation (2003, 489). We see parallel rhetoric in some of the testimony of women who survived rape, with Hutu perpetrators making statements about Tutsi women thinking they were too good for them, stating that in peacetime they would never ‘get’ a Tutsi woman, and that they wanted to ‘taste’ or ‘see how sweet’ Tutsi women are (Human Rights Watch 1996). In her critique of the ICTR’s Media Trial, Green reiterates that “the existence of such extensive hate propaganda targeting Tutsi women supports the argument that the sexual violence was not a mere side effect of the conflict, but rather an integral part of the genocide campaign” (2001, 734).

⁸² Mibenge argues that the killing and highly sexualized violation of her corpse demonstrates the use of sexual violence during the genocide as a tool to devalue women and force them out of the public space. Prime Minister Uwilingiyimana was a highly educated member of the Hutu elite who held a powerful position. Hers was one of the first murders as the genocide erupted, and her corpse was left on the street, her lower body exposed with a bottle protruding from her vagina (Mibenge 2008, 151).

Mibenge details how the construction of sexual violence in Rwanda should not be understood as the result of spontaneous and opportunistic acts, but rather is rooted into two highly gendered and interwoven factors: the use of sexual violence by extremists to reassert male dominance over Rwandan women generally, and an attempt to destroy all threats to the supposed Hutu racial purity and dominance (2008, 148). In the postcolonial era, institutionalized discrimination challenged women's advancement, and when gains were made in terms of equality it was often met with resistance. Mibenge echoes Holmes and others in arguing that the concept of female beauty and the powers of seduction were part of the racialization of the Tutsi as the enemy (2008, 152). Dehumanization is an integral step on the road to perpetrating genocidal violence. While the warring regime's policy may strategically include the use of gender-based violence, on a more micro-level, often perpetrators view victims as less than human, justifying their atrocities by 'othering' the victim group⁸³ (see Waller 2012). Genocidaires divide the enemy group from themselves, distancing from any sort of compassion or identification with their victims, characterizing them as a threat and often blaming the victims for the violence they experience. Mibenge cites how today there is a pronounced paradox, where the issue of genocidal rape is highly visible and publicly acknowledged in Rwanda, but only on a very general level, and this precludes discussions of specific cases of individual victims, the prosecution of perpetrators, and legal remedies for rape survivors (2008, 146). Burnet (2012) cites the shame that many victims of genocidal rape still face. The record of the international prosecution of rape following the Rwandan genocide is mixed, with key precedents set but also some significant shortfalls in terms of seeking justice for victims,

⁸³ For example, the reference to Tutsis as animals including 'cockroaches' (*inyenzi*) and snakes is common in the genocide literature.

particularly considering the widespread nature of sexual violence during the genocide. As Linda Bianchi articulates, “it is in the totality of the record of the cases tried at the ICTR where the pervasiveness of these crimes can be found that reflects their occurrence in the massacres of 1994” (2013, 125).

Rape under International Law

International prosecution for rape and sexual violence offenses has undergone substantial transformation in the contemporary era. Until the final decades of the twentieth century, rape was a hidden element of war. Rape has been characterised as personal and private, in large part because of its gender-specific nature, which has translated into it being frequently dismissed as a less serious crime, and it is only recently that international advocacy has brought attention to this common tactic of conflict and genocide. Although ‘rape and pillage’ has long been a slogan of warfare, it is only recently that its significance has been explored, and impunity has been contested legally. This has been a key site of feminist struggle, as the historical conceptualization of women as property, contemporary linkages between women and honour, and pervasive ‘rape myths’ have meant that conviction rates have remained disturbingly low. Despite evidence of sexual violence in multiple contexts during World War II, none of the subsequent courts (namely the International Military Tribunal in Nuremberg and the International Military Tribunal for the Far East in Tokyo)⁸⁴ charged anyone with rape as a war crime. Article 27 of the Fourth Geneva Convention explicitly protects women against

⁸⁴ The International Military Tribunal for the Far East acknowledged the rape of an estimated 20,000 women during the Nanking Massacre. However, it did not address the widespread use of ‘comfort women’ or sexual violence occurring anywhere other than Nanking. As well, the transcripts of the International Military Tribunal in Nuremberg contain mentions of rape and forced sterilization, but these incidents were not charged and prosecuted as such (see Brownmiller 1975; Askin 2003).

any attack on their honour, including rape. But it was not until more than half a century later that the International War Crimes Tribunal for the former Yugoslavia (ICTY) in The Hague set significant precedents on sexual violence prosecution. The *Prosecutor v. Furundzija* case was the first to consider war crimes charges stemming from rape, determining rape to be a crime of torture (which the tribunal argued had attained the status of a *jus cogens* norm). In a highly significant decision, on February 22, 2001, the ICTY found three Bosnian soldiers⁸⁵ guilty of crimes against humanity for the rape of Muslim women and girls. While the verdict harkened back, in part, to the gendered ideology of men as protectors of women, it simultaneously established the right to sexual integrity for victims, and acknowledged the impossibility of genuine consent in the coercive circumstances of war (for an in-depth discussion of the significance see Bergoffen 2012). The ICTY cases against Dusko Tadic and Tihomir Blasic also established rape as an element of widespread campaigns of terror. Although I will not explore them in detail here, there have been convictions for rape as a crime against humanity in several cases at the ICTY, and key precedents set, although there were also missed opportunities and charges dropped relating to sexual violence.⁸⁶

Ideals of transitional justice are premised on the importance of remembering and speaking about past violence, injustices, and crimes against humanity, with the underlying assumption that telling one's story is not only important for individual psychological recovery, but also for vindication, collective reconciliation, acknowledgement, and justice

⁸⁵ICTR Prosecutor v. Kunarac, Kovac, and Vukovic is commonly known as the 'Foča Case.' Located in the southeast of Sarajevo, the municipality of Foča was taken over by Serbian soldiers in April 1992 and villagers were put in brutal detention centres where armed soldiers had access to sexually assault and rape the women at will, 16 of whom testified at the ICTY case beginning in 2000.

⁸⁶ For further discussion about the ICTY case law, see Sajjad, Tazreena. "Rape on Trial: Promises of International Jurisprudence, Perils of Retributive Justice, and the Realities of Impunity" in Rittner and Roth, 2012 and see Piccolo, I. *The Crime of Rape in International Criminal Law* (2013).

(see Henry 2010). In reflecting on Holocaust testimony, Giorgio Agamben (1999) described the ‘impossibility of bearing witness,’ arguing that language – speech, words, expressions – cannot adequately convey the incomprehensible experience of such pain and suffering, thus, there is a gap between one’s experience of trauma and suffering, and the act of attempting to communicate or represent it.⁸⁷ Closely linked to this is the paradox explored by Holocaust survivor Primo Levi in which there is both this impossibility of communication but also the undesirability of keeping silent in the aftermath of terrible atrocities. This paradox is important for considering the ways in which victims of rape, and survivors of genocide often experience a loss of language to describe their suffering, or their stories are suppressed, but silence is counterproductive to recognition and justice-seeking (see Henry 2010, 1100 for further discussion).

As Henry suggests, ideally “bearing witness constitutes a form of truth-telling: a ritualistic public narrative that has the potential to curb the scourge of impunity, restore dignity to survivors, and contribute to the elusive possibility that such crimes will never happen again” (Henry 2010, 1098). But this privileging of disclosure over silence too can be problematic. While silence is often interpreted as disempowerment and victim’s voices privileged as evidence of agency, we must complicate this assertion and understand that in many situations, particularly dangerous ones, victims may be actively determining that silence is a necessary or empowering option for their own lives,⁸⁸ especially when it comes to the intimate nature of a crime such as rape. For other victims, fear that their story will not be heard or believed, and fear of reprisal may force them not to disclose

⁸⁷ For specific examples of testimony where victims express this loss of language see Henry, 2010.

⁸⁸ A similar argument was made by Cynthia Enloe (with Jane Parpart, Jeanne Roach-Baptiste & Ritu Verma) at a Conference Presentation entitled “Silence, Agency and Gender in an Increasingly Violent World” Panel Presentation, *Women’s Worlds Conference* July 2011, Ottawa, Canada.

what happened. Scholars and psychologists have questioned the merit of the common assumption that speaking about traumatic experiences can be therapeutic, and help alleviate the burden of silence for victims. Eric Stover critiques how “contemporary writings about the needs of survivors of mass atrocity are peppered with terms like ‘healing’, ‘closure,’ ‘forgiveness,’ and ‘reconciliation’ and phrases such as ‘coming to terms with the past.’ Indeed, a primary weakness of writings on justice in the aftermath of war and political violence is the paucity of empirical evidence to substantiate claims about how well criminal trials achieve the goals ascribed to them” (Stover 2005). As well, feminists have been apprehensive about the ways in which a focus on therapeutic solutions individualizes the issue, making transformation personal rather than advocating wider social and political change in the treatment of rape victims (Henry, 2010). As Bergoffen argues, “rape has been the ignored, the tolerated war crime. It has been the crime that is *invisible* (few if any victims bring 'credible' 'audible' charges), *innocent* ('boys will be boys,' the pressures of war, and all that), and *unavoidable* (something like collateral damage)” (Bergoffen 2006, 18). There is no singular answer as to whether disclosing one’s experience is empowering or not for victims of genocide and rape, but it is clear that suppressing such traumatic experiences can have negative consequences, including translating to persistent impunity for perpetrators and a lack of recognition and justice for victims of this horrific crime.

Established by the United Nations in November 1994, the International Criminal Tribunal for Rwanda was tasked with seeking accountability for perpetrators, compiling a record of the atrocities, promoting reconciliation and peace, and acting as a deterrent as

part of the ‘never again’ aspirations.⁸⁹ As in the domestic context, sexual violence has been a difficult crime to prosecute and secure successful convictions for internationally. As Nicola Henry (along with other feminist scholars) has articulated, the adversarial nature of the legal context can be re-traumatizing for victims; its narrow focus on prosecution fails to hear stories of wartime rape, and does not contribute to larger understandings of complexity, trauma, the causes and consequences of this violation. In her study of the Tribunal record, Beth Van Schaak offers the critique that:

the practice of the ICTR reveals that without a comprehensive commitment to prosecuting gender crimes, defendants will enjoy effective immunity for acts of gender violence, women will be systematically denied justice, the trial record will not provide a definitive history of the full reality of violence in the region in question, the expressive capacity of the law will be undermined, and the system of international criminal law will send a message that gender violence is not as serious or pervasive as other forms of assault and mayhem (2009, 405).

The next section will look specifically at the ICTR record on prosecuting sexual violence crimes – some of the positive steps in terms of jurisprudence, and some of the missteps and shortcomings of the tribunal. There has been definitive progress on recognition, advocacy, and jurisprudence around sexual violence crimes internationally, although limitations and problems remain. On June 19th, 2008, the United Nations unanimously adopted Resolution 1820 demanding the “immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians,” and asserting that “rape and other forms of sexual violence can constitute war crimes, crimes against humanity, or

⁸⁹ Critics of the ICTR have cited severe administrative difficulties and corruption in its early stages, alongside criticisms of its enormous expenditure, slow and drawn out timeline, limited impact on survivors’ themselves, as well as being largely viewed as ‘victors’ justice’ since it excludes RPF crimes entirely (See Longman; Peskin; and Reyntjens in Straus and Waldorf, 2011).

a constitutive act with respect to genocide.” It has since declared June 19th as the International Day for the Elimination of Sexual Violence in Conflict.⁹⁰ The Statute of the International Criminal Court includes gender-based violence as a crime against humanity (Article 7) and the crimes of sexual slavery, forced prostitution, forced pregnancy, and enforced sterilization are explicitly listed. With regard to intersectionality, the ICC Statute identifies gender identity alongside ethnic, as well as national, racial, cultural, and religious as identifiable groups that can form the basis of persecution as a crime against humanity (Rome Statute, Article 7[h]; see also Mibenge 2008, 161). There is no doubt that meaningful progress has been made, particularly through ICTR jurisprudence, in terms of the international prosecution of the sexual violence that is still so prevalent in conflicts today, but there is still a long way to go in seeking justice. Revisiting lessons learned from the ICTR through one particular case study, *Prosecutor v. Gacumbitsi*, reveals the enduring difficulty rape victims’ face in seeking justice,⁹¹ and what the dominant discourse that emerges from the trial judgment leaves out. The ‘legal truth’ established by the ruling of an international court is considered closed and definitive; Ultimately, the ensuing chapters question what close engagement with these official judicial records can add to our understanding of the Rwandan genocide and its victims, through a gendered lens.

⁹⁰ As of 2015, see: <http://www.un.org/apps/news/story.asp?NewsID=51202#.VZV6LusQ7zI>

⁹¹ For example, Nicola Henry, exposes ‘the gap between the rhetoric of justice and the reality for victims when they come to testify at international criminal proceedings’ (2010, 1104).

2.2

Reviewing the ICTR's Record on Rape Prosecution

“Sexual violence was a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live, and of life itself.” Prosecutor v. Akayesu Judgment [Para. 732]

There have been significant hindrances to the successful prosecution of sexual violence during the Rwandan genocide, in part because it is incredibly difficult to establish the criminal culpability of the highest-level orchestrators of the genocide who may not have directly committed rape or cannot be directly tied evidentially. Thus, while the Tribunal acknowledges widespread sexual violence, proving the responsibility of those in power has been a significant obstacle to justice. Before moving on to my exploration of the *Prosecutor v. Gacumbitsi* case and the testimony of Witness TAP, in this section I will concisely examine cases at the ICTR that involved sexual violence charges. As demonstrated through this review of the work of the ICTR, I echo other scholars in arguing that the court has established some significant legal precedents on genocidal and wartime rape, but the prosecution and judges have also missed key opportunities for recognizing the widespread sexual violence that was integral to the genocide, and for ensuring appropriate treatment of victim-witnesses.

Here I will examine the ICTR's record to date on prosecuting sexual violence,⁹² first looking at some positive developments and negative outcomes. The second part of the chapter focuses particularly on two lesser-known cases in comparative perspective:

⁹² In the ICTR Statute, rape is specifically defined as a crime against humanity (Article 3g). Instances of sexual violence have also been charged as a war crime (sections A and E of the Statute), as a crime of genocide under Article 2 (see Bianchi 140), and as outrages to personal dignity as violations of the Geneva Conventions (Article 4e).

Prosecutor v. Kajelijeli, a case involving the former mayor of Mukingo commune and a high-level politician in the interim government, convicted in 2003. He was found guilty of genocide, direct and public incitement to commit genocide, and extermination as a crime against humanity, but acquitted of conspiracy to commit genocide, inhumane acts, and - most significantly for my research - acquitted of rape as a crime against humanity, despite clear evidence of his role (including a dissenting opinion by one of the judges) overseeing the widespread rape of Tutsi women. Regrettably, the Office of the Prosecutor missed the deadline to appeal the acquittal. This case is an example of seriously gender-insensitive prosecution and a missed opportunity for a rape conviction at the ICTR. I will then contrast the Kajelijeli case with the later case of *Prosecutor v. Karemera and Ngirumpatse*. The recent trial judgment and affirmation on appeal (2014) in this case has been hailed as an example of the possibilities of gender-sensitive prosecution and judicial analysis. Karemera and Ngirumpatse were also high-level politicians, and their defense that they were not in charge of the actions of the *Interahamwe* and militia who committed widespread rape was denied, a significant judgment that may make it harder for military superiors⁹³ in the future to avoid criminal liability for genocidal sexual violence (Perez 2015). In both these cases, as in the trial against Gacumbitsi, the responsibility of individuals in positions of authority became the focal point around which the sexual violence charges pivoted. Before moving to a micro-level analysis of the Gacumbitsi case and its larger implications for international rape trials, here I will examine what the overall tribunal record demonstrates in terms of holding accountable those responsible for genocidal rape. As international law is still evolving in this regard, understanding the

⁹³ In the aftermath of WWII, the doctrine of 'superior' or 'command responsibility' was developed, in order to hold superiors accountable for the acts of their subordinates during times of conflict. For a more detailed explanation see Bishai 2013.

successes and shortcomings of the work of the ICTR in cases involving sexual violence is integral to improving these systems for prosecution in the future.

The first ever case at the ICTR, against Mayor Jean-Paul Akayesu (ICTR 96-4) did not include rape charges until a witness revealed evidence of her daughters' and other gang rapes, and women's organizations filed an *amicus curiae* brief, urging Judge Pillay to amend the indictment. The only female judge⁹⁴ of the nine at the ICTR at that time, she adjourned the proceedings to permit the prosecution to further investigate and amend the charges. Akayesu was accused of instigating and ordering the rape of Tutsi women in and around Taba commune. Hailed as a landmark decision, in 1998, this case marked the first ever conviction for rape as genocide, and made numerous important contributions to gender jurisprudence. The Akayesu judgment was the first to define rape internationally, using a 'conceptual' approach, rather than focusing on a mechanistic definition of what constitutes rape (i.e.: requiring penetration), defining it as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive" (*Akayesu* Trial Judgment para. 688).⁹⁵ The Chamber compared the act of rape to torture, arguing that it cannot be captured in a mechanical definition of objects and body parts (*Ibid.* para. 687). The judgment made clear that rape was an integral part of the genocide, and by virtue of Akayesu's failure to use his authority to prevent or stop the sexual violence in Taba Commune constituted "a clear signal of official tolerance" (Obote-Odora 2005, 150; see

⁹⁴ I would follow Suzanne Chenault's argument that the judge's expertise is highly influential in terms of gender jurisprudence, for example, Judge Navanethem Pillay was integral to bringing the rape charges against Akayesu, Judge Khalida Rachid Kahn presided over the conviction of Muhimana, and it was the sole female Judge, Arlette Ramaroson, who wrote the dissenting opinion regarding Kajelijeli's acquittal on rape charges.

⁹⁵ The Trial Chamber also found that sexual violence, a broader category which includes rape, can involve acts that do not involve penetration or even physical contact (see Haffajee 2006, 208), such as forced nudity.

also Askin 2003). Further, the case moved past debates over consent to establish that in the context of coercive circumstances, such as genocide and war, true consent was impossible (see Cole 2008). The Trial Chamber found that sexual crimes “constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such” (*Akayesu* Trial Judgment para. 731). Although this trial set an important precedent and is considered a milestone judgment on genocidal rape, the record of the ICTR following this conviction is mixed. In subsequent cases, the ICTR has required an elevated burden of proof on the prosecution of rape, finding individual criminal responsibility only when there is clear evidence of an accused personally raping a victim or being present and directly ordering others to commit sexual violence. Haffajee argues that these are high evidentiary burdens, when given the indisputably high prevalence of rapes that occurred during the genocide it is desirable to convict high-level officials and masterminds of the genocide, if they are indeed criminally responsible (2006, 212). Patricia Viseur Sellers, former legal advisor for gender-related crimes at the ICTY and ICTR has articulated that this lack of convictions counters the common-sense conclusion that “it is almost impossible for an accused to participate in criminal activity that concomitantly generates sexual violence, and not be cogent that the sexual violence was reasonably foreseeable” (Sellers 2009, 314).

According to my research, out of the 95 individuals indicted by the ICTR, 52 cases involved charges of rape and sexual violence. Of these, 43 went to trial, (9 were transferred to other jurisdictions). In the end, 25 of the accused were acquitted or overturned on appeal, while six had charges dropped in plea bargains or amended

indictments (and one died during the trial). Thus, in total there were only 11 completed convictions for rape either as a war crime, crime against humanity, or genocide, at the ICTR - a strikingly low conviction rate.⁹⁶ Here I will outline each of these cases succinctly.

Considered one of the architects of the genocide, Théoneste Bagosora (Case No. ICTR-96-7, known as the 'Military I' trial) was tried alongside three other perpetrators,⁹⁷ and convicted of rape as a crime against humanity. He was also found guilty of genocide, crimes against humanity for multiple murders, extermination, persecution, and other inhumane acts, and serious violations of the Geneva Conventions. He was sentenced to life imprisonment, which was reduced to 35 years on appeal. The Trial Chamber convicted Bagosora for killing Prime Minister Agathe Uwilingiyama, as well as top political opposition figures and the ten Belgian peacekeepers murdered on April 7th, 1994. The chamber made reference to other cases, including *Akayesu* and *Gacumbitsi*, to demonstrate that sexual violence was widespread, and held the military leader responsible for rapes committed by his subordinates. Mikaeli Muhimana (Case No. ICTR-95-1B) was accused of committing atrocities throughout Kibuye Prefecture, and found guilty of rape as a crime against humanity. According to the Trial Judgment, he was convicted of taking three Tutsi women to a cemetery where he and *Interahamwe* members raped them, and he gave the order to rip open the abdomen of two of the women, killing them. In another instance, around April 16th, 1994, Muhimana and others participated in a gang rape of

⁹⁶ For comparative purposes, as of October 2015, out of 93 individuals indicted by the ICTR, 61 have been sentenced (14 acquitted, 13 referred to other jurisdictions, two indictments were withdrawn and three died). Of course, within trials particular charges such as those relating to sexual violence were more likely to be dropped or acquitted than others. See: <http://www.unict.org/en/tribunal>

⁹⁷ Two other former officers in the Rwandan army, Anatole Nsengiyumva and Aloys Ntabakuze, were also found guilty of genocide, crimes against humanity, and war crimes for their roles in the genocide, in Gisenyi and around Kigali, respectively, while the fourth accused, Gratien Kabiligi, was acquitted of all charges.

nine Tutsi women, four of whom were subsequently murdered. In the town of Gishyita, Muhimana raped Tutsi women on three occasions, including publicly. He also admitted to mistakenly raping a Hutu woman whom he presumed to be Tutsi, for which he apologized. His attempts at public humiliation of Tutsi women allowed for corroboration of his guilt in these atrocious crimes, as there was no mistaking his responsibility and own participation – both abetting and committing – the gruesome rape and murder of multiple Tutsi women.⁹⁸ In April 2005, he was given the maximum sentence of life imprisonment, confirmed on appeal (for more detail see Chenault 2007). In an infamous case against the ICTR's only female accused, in 2011 former Minister for Family Welfare and the Advancement of Women, Pauline Nyiramasuhuko and was found guilty of seven charges including incitement to rape (Case No. ICTR-98-42, *Prosecutor v. Nyiramasuhuko et al.*) Along with five other defendants, known as the 'Butare Six,' they were convicted of collaborating in order to massacre the Tutsi population and some moderate Hutus in Butare prefecture. She was sentenced to the harshest punishment possible - life imprisonment, although the case is still currently under appeal. Despite hundreds of Rwandan women being convicted for their part in the genocide in national courts and *gacaca* proceedings, the case drew international attention with the media framing it as a novelty and contrary to expectations of femininity and women's primary role as victims (see Drumbl 2013). The Trial Chamber also convicted her son, Arsène Shalom Ntahobali, a former student and member of the *Interahamwe*, of genocide and crimes against

⁹⁸ The Judges found Muhimana guilty of rape as a crime against humanity for personally raping seven young women, and for aiding and abetting the rape of five other women committed by *Interahamwe* members. However, the trial chamber found him not guilty of the rapes of ten other women, because of lack of precision concerning dates and locations of the crimes. Also, although the trial adopted the broader Akayesu definition, Muhimana was not convicted of sexual violence for disemboweling a woman by cutting her open with a machete from her breasts to her vagina, as this was problematically not considered a physical invasion of a sexual nature (Chenault 2007, 236).

humanity for rape, extermination, and persecution, and war crimes. Multiple prosecution witnesses (including FAP, QBP, and TA) testified that Ntahobali raped them and numerous other women, including perpetrating gang rapes and holding girls in sexual slavery at his house.

The *Prosecutor v. Semanza* trial (ICTR-97-20) indicted the former Bourgmestre of Bicumbi Commune on 14 counts, convicting him of crimes including rape as a war crime and crime against humanity, for his April 1994 incitement of a crowd in Gikoro commune to rape Tutsi women before killing them. During his testimony, Semanza denied that rape existed in Rwanda. Although convicted in 2003, one drawback with this case is that the trial chamber utilized the restrictive legal definition of rape established in the ICTY *Kunarac* case, rejecting the more progressive Akayesu definition and requiring the Prosecution to prove the victim did not consent to rape, necessitating traumatizing questions about consent to the victims in the courtroom (see Obote-Odora 2005).

The ICTR's other convictions for rape as a crime against humanity include: *Prosecutor v. Hategekimana* (ICTR-00-55B), in which a lieutenant in the Rwandan Armed Forces (FAR) and commander of the Ngoma military camp was convicted in 2009 of genocide, murder, and rape and sentenced to life imprisonment;⁹⁹ and *Prosecutor v. Augustin Bizimungu*, as part of the Military II trial (ICTR 99-50), in which another member of the FAR who supervised the training of militia groups in the lead-up to the genocide. He was convicted of failing to stop the rape of women and girls (along with six counts of genocide, crimes against humanity, and violations of the Geneva Conventions), and sentenced to 30 years of imprisonment.

⁹⁹ Hategekimana was convicted under joint criminal enterprise charges for over 500 killings, and was found guilty for the rape of Nura Sezirhiga, committed by a soldier from the Ngoma camp, although many other rape allegations were dismissed (see Oosterveld 2011).

Despite overwhelming evidence, frequently cited even within trials, about the widespread nature of rape during the genocide, convictions have been few and far between (see Oosterveld 2005; Buss 2010; Bianchi 2013). Although written in 2008, Nowrojee's report offers powerful lessons learned by the ICTR for future mechanisms of international justice (such as the International Criminal Court), including not building international justice at the expense of victims' dignity and rights (Nowrojee 2008, 133). Many sexual violence crimes at the ICTR have been included as an afterthought, thus lacking comprehensive initial investigations. A lack of gender competency among the investigation staff lead to incorrect assumptions, such as that murder was the more important crime, and that, if rape occurred, it was a private act and not part of the genocidal tactics. This problem was particularly evident at the opening of the tribunal, when there was a lack of political will to prosecute such crimes,¹⁰⁰ particularly during the initial work of Prosecutor Richard Goldstone, who stated tellingly in an interview that, "African women don't want to talk about rape" (Nowrojee 2008, 115). Poor investigations and prosecuting with inadequate evidence led to many acquittals; the justice process has been painfully slow, and the courts have provided insufficient protection for witnesses who testify.

At each stage of prosecution there were obstacles, from flawed investigations and insensitive interviewing of witnesses, to inadequate indictments and lack of evidence, to insufficient protection for and follow-up with witnesses who testified.¹⁰¹ Doris Buss uses the *Prosecutor v. Muvunyi* case (ICTR-2000-55A) to demonstrate many of these

¹⁰⁰ It was under the tenure of Canadian Prosecutor Louise Arbour "that more tangible efforts were made to investigate and prosecute gender-based crimes" such as rape (Nowrojee 2008, 115).

¹⁰¹ See *Prosecution of Sexual Violence: Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions*. (2014). This publication includes lessons learned from the Office of the Prosecutor for the ICTR.

problems that plagued the tribunal, including poorly drafted indictments, flaws in gathering and reporting evidence, and the fact that the Office of the Prosecutor failed to prepare cases for trial in an effective way (2010, 66). She argues that the collective effect of these institutional problems has led to a pattern in which, step by step, we see the sexual violence charges eroded until few perpetrators are convicted, for example in the case against Alfred Musema (see Buss 2010, 67). The indictment in *Prosecutor v. Musema*, (Case No. ICTR-96-13A) former director of the Gisovu Tea Factory, was amended to include charges of committing acts of rape, and ordering and encouraging others to rape and kill Tutsi women. But at each stage, sexual violence-related charges were dismissed. In 2000, he was convicted of genocide and crimes against humanity (for extermination and rape) and sentenced to life imprisonment, but unfortunately the conviction of rape was overturned on appeal. As of 2008, five men who plead guilty to sexual violence crimes before the tribunal were able to have their sexual violence charges dropped in exchange for guilty pleas on other counts (Buss 2010, 63).

In her examination of the trial record, Binaifer Nowrojee expresses frustration about the Cyangugu case (*Prosecutor v. Bagambiki et al.*, ICTR-99-46-T), a trial against three former government officials who were accused of massacres and other crimes committed in this area in south-western Rwanda. She argues that in this case, not only did the prosecutor have strong evidence and failed to prosecute rape charges, in fact “the prosecutor and the judges took steps that blocked the rape victims of Cyangugu from ever seeing justice” (2005, 120). Despite rape survivors wanting to tell their stories, the rape amendment was withdrawn by the prosecutor without explanation, later an amicus curiae brief filed by a women’s organization was dismissed, and the judges barred any rape testimony during the proceedings. This is a clear miscarriage of justice for the victims.

Recently, in a regressive ruling, the Appeals Chamber of the ICTR reversed the verdict for Emmanuel Rukundo, an ordained priest who committed sexual assault against a young Tutsi woman. His conviction for genocide was overturned,¹⁰² as the Appeals Chamber classified the sexual assault as opportunistic and not part of the genocidal violence (see Oosterveld 2011). In another example that showed promise, the case of *Prosecutor v. Nizeyimana*, the indictment was amended to include the charge of rape as a crime against humanity, as he was accused of ordering soldiers to rape Tutsi women and instigating the rape of Tutsi women at Butare Hospital and Butare University. However, despite extensive evidence and testimony, he was found not guilty as the Tribunal found that the factual allegations did not sufficiently demonstrate his involvement. Many of these examples are procedural failures, where evidence points to the guilt of the accused for committing sexual violence, but a conviction is not secured. The recently published ICTR Prosecution of Sexual Violence Best Practices Manual echoes some of these important lessons, including guidelines for more sensitive handling of witnesses, more effective investigation techniques, and the importance of taking a ‘victim-centered approach.’

Although the *ad hoc* tribunals have established what are widely recognized as the preeminent legal standards for sexual assault crimes (Sellers 2009, 302), the question of the experiences of victim-witnesses remains an important one. Although few have followed up and spoken with witnesses who testified at the Tribunals about their experiences, there are clear problems the way sexual violence cases are handled, and

¹⁰² In response to this Appeal judgment, Joude Pocar wrote a dissenting opinion, stating that the Majority’s reasoning demonstrates that it does not fully appreciate the seriousness of sexual violence crimes, for it should not have been viewed as falling outside the sphere of crimes committed during mass atrocities such as this (see Bianchi 2013, 143).

limitations to their ability to provide therapeutic benefits to survivors. While witnesses may be looking to bear witness, reveal the truth of what happened, and prevent such crimes in the future, the power of disclosure has been hampered by insensitive justice mechanisms, and the adversarial nature of trials has not allowed women to tell their story (see Henry 2009). What clearly emerges from the trial record, as Henry articulates, is that “the experience of testifying to rape may be challenging for victims because of hostile cross-examination tactics, indifferent and insensitive judges, limited space to tell one’s story and light sentences, as well as overturned verdicts, acquittals, and impunity” (2009, 133). Perhaps the worst incident, in terms of the mistreatment and re-traumatization of victim-witnesses, occurred during the Butare trial (*Prosecutor v. Nyiramasuhuko et al.*) when witness TA, a victim of multiple rapes by multiple perpetrators, was questioned unnecessarily about whether she had seen the perpetrator’s penis and whether he was circumcised or not. It was insinuated by the Defense Counsel that she could not have been a victim of rape because she had not taken a bath for a long time and thus smelt badly (De Brouwer 2005, 273). The examination became well-known in particular because on October 31st, 2001, as witness TA was being cross-examined by the defence lawyer, she was describing in detail the lead-up to the rape, and the judges laughed.¹⁰³ Although the judges argued that they were not laughing at the witness, but rather the idiocy of the defense counsel, they were never reprimanded nor did they apologize (Nowrojee 2005). In an interview with Binaifer Nowrojee, the witness described the incident:

¹⁰³ In response, Judge Navenethem Pillay issued a statement explaining this incident from a judicial perspective. While this was a poor example of judicial behavior vis-à-vis a witness, it also demonstrates poor judicial control of defence counsel. The judges should have been controlling the defence questioning better, and the defence counsel should have been better trained in appropriate questioning. But of course, there was not enough regard for the traumatic experience of the victim. See <http://www.unict.org/en/news/statement-judge-pillay-president-tribunal>

My parents, my brother and my sister were killed. I'm all alone. My relatives were killed in a horrible fashion. But I survived—to answer the strange questions that were asked by the ICTR. If you say you were raped, that is something understandable. How many times do you need to say it? When the judges laughed, they laughed like they could not stop laughing. I was angry and nervous. When I returned, everyone knew I had testified. My fiancé refused to marry me once he knew I had been raped. He said, you went to Arusha and told everyone that you were raped. Today I would not accept to testify, to be traumatized for a second time. No one apologized to me. Only Gregory Townsend [the ICTR prosecuting lawyer] congratulated me after the testimony for my courage. When you return you get threatened. My house was attacked. My fiancé has left me. In any case, I'm already dead (Nowrojee 2005, 24).

This is an incredibly offensive occurrence, and while the judges should have controlled the inappropriate questioning by the defense counsel, ultimately it was the witness for whom the experience was most detrimental. Safeguards were often not in place for protecting the identity of witnesses. Following this, the Genocide Survivor's organizations IBUKA and AVEGA called for sanctions against the judges and for witnesses to boycott testifying.

The following two cases demonstrate comparatively the gap between (earlier) insensitive prosecution, procedural failure, and missed opportunities for justice at the ICTR, and a later example of a successful and precedent-setting conviction. Due largely to procedural issues, Mayor Kajelijeli was able to evade the charge of rape as a crime against humanity, while prominent politicians Karemera and Ndirumpatse were convicted for their responsibility for sexual violence crimes. Perhaps pointing to more effective prosecution and awareness in the latter stages of the Tribunal's work (with Akayesu as the exception), comparing these cases demonstrates the promise of the joint criminal

enterprise charge for future cases involving command responsibility¹⁰⁴ for sexual and gender-based violence crimes.

Missed Opportunity: Prosecutor v. Kajelijeli

Juvenal Kajelijeli was the Mayor of Mukingo commune, and considered to be one of the leaders of the *Interahamwe* in this area. He was accused of inciting hatred, planning to eliminate the Tutsi, transporting militia and distributing arms, and ordering and organizing attacks against Tutsi civilians from April to July 1994. He allegedly ordered and supervised multiple attacks in the Mikungo, Nkuli, and Kigombe regions, in northern Rwanda. After delays, including separating his trial from co-accused, in 2001 Kajelijeli plead not guilty, denying participating in the killings and testifying in his own defense that he actually tried to save Tutsi. In 2003, he was convicted of genocide, direct and public incitement to commit genocide, and extermination of crime against humanity, but acquitted of conspiracy to commit genocide, inhumane acts and rape as a crime against humanity, and sentenced to life imprisonment (see Kajelijeli Trial Judgment). On appeal, the sentence was reduced to 45 years.

The *Prosecutor v. Kajelijeli* trial includes multiple examples that echo the mistreatment of female victim-witnesses. For instance, during the trial a witness known as GDO testified to the rape of her 15-year-old daughter (who was disabled) by a gang of

¹⁰⁴ As Christine Bishai articulates, “persons in superior positions are generally afforded a heightened degree of respect and societal influence due to their role of authority... In an armed conflict setting, the superior—often a high-ranking military commander or political leader—is uniquely situated to explicitly support or condemn, or tacitly condone their soldiers’ or subordinates’ ostensibly criminal acts. Therefore, when a commander fails to punish his underlings, he ultimately endorses or acquiesces to their offenses, and affirms the offenses’ legitimacy” (2013, 104). Her central argument is that the overall record of the tribunals’ work demonstrates lenient sentencing with regard to command responsibility.

militia, and the killing of her husband and son, stating that Kajelijeli had ordered and presided over this violence (Kajelijeli Trial Judgment). Her low literacy level was repeatedly used against her, as the Defense continually questioned her written statements. She was sobbing throughout most of her testimony, complained that she was feeling unwell, and actually collapsed in the courtroom (Hirondelle 2001). Protection measures were apparently forgotten as she was taken out of the tribunal front entrance in a wheelchair, without any way of hiding her appearance.

In terms of the charge of rape as a crime against humanity, Kajelijeli was acquitted, as the theory of command responsibility was unconfirmed; The Trial Chamber failed to accept that Kajelijeli knew that *Interahamwe* under his control had committed or were going to commit rape. Although he was convicted of genocide, as he was found to have been with the *Interahamwe* as they killed Tutsi, and it was accepted that the rapes occurred at the same time as the killings, the judgment did not accept the testimony of two witnesses who implicated Kajelijeli in the rapes (Bianchi 2013, 135).

Significantly, in regards to Kajelijeli's acquittal on the charge of crimes against humanity for the rape of Tutsi women, Judge Arlette Ramaroson submitted a dissenting opinion. The Trial Chamber dismissed the charge of rape on the grounds that the Prosecution failed to show the Kajelijeli planned, incited to commit, aided and abetted or ordered the *Interahamwe* to rape, despite credible evidence of rape in the area by multiple witnesses. Judge Ramaroson writes that she respectfully disagrees with this finding, "as I am satisfied beyond a reasonable doubt that Kajelijeli is personally responsible for the rapes of Tutsi women committed between 7 and 10 April 1994," including the seven incidents of rape for which evidence was presented during the trial. She states that there is substantial, specific, and corroborative evidence to sustain the allegation that Kajelijeli

committed this crime (*Prosecutor v. Kajelijeli*, Dissenting Opinion), and that the inconsistencies were not due to a lack of credibility but to an incompetent investigation.

Binaifer Nowrojee writes that this was “the perfect case to appeal,” as the acquittal hinged on two judges (out of three) not accepting the credibility of witness GDO who had testified about the sexual violence. The split decision and strong dissenting opinion opened space for a re-examination of this charge. But, as appeals are required within 30 days of the judgment, the Prosecutor’s office missed the deadline. Nowrojee faults “the negligence of the Prosecutor’s Office in not ensuring that the deadline to appeal was observed in the Kajelijeli case [as] yet another example in a series of squandered and lost opportunities to provide justice for rape victims” (2005, 18).

Positive Steps: Prosecutor v. Karemera et. al.

In contrast, the judgment issued in *Prosecutor v. Karemera et al.* was an important milestone for the ICTR. Two powerful politicians in the former government, Karemera and Ngirumpatse, were charged with rape and extermination as crimes against humanity, among other charges for genocide crimes. The Trial Chamber found both individuals criminally responsible for large-scale rapes and sexual assaults throughout Rwanda. Both were convicted on the basis of superior responsibility for failing to prevent, or punish their subordinates for these crimes, under the ‘extended form’ of joint criminal enterprise liability¹⁰⁵ (see Haffajee 2006). Also of significance is the fact that the court ‘took judicial notice’ of the fact that genocide occurred in Rwanda in 1994 through earlier decisions,

¹⁰⁵ Essentially, JCE liability permits the tribunal to hold perpetrators accountable not only for the original crimes, but for crimes that were the natural and foreseeable consequences of the intended crimes. See <<http://www.intlawgrls.com/2012/05/prosecuting-sexual-violence-before.html>> for further discussion.

and that written testimony from victims was utilized extensively.

In February 2012, the ICTR Trial Chamber III found Édouard Karemera and Mattieu Ndirumutse,¹⁰⁶ two Government ministers in the former regime and leaders of the MRND party (National Republican Movement for Democracy and Development, the Ruling Party under President Habyarimana from 1975-1994), guilty of crimes against humanity for rape and extermination, as well as guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and serious violations of the Geneva Conventions. They were accused of orchestrating the plan to exterminate the Tutsis, distributing arms and lists of persons to be targeted, and organizing and inciting numerous massacres in Kigali, Gitarama, Kibuye, Butare, and more (Karemera et al. Trial Judgment). With 120 witnesses called during the proceedings, the trial saw dozens of victims testify to the widespread sexual violence against Tutsi women and girls in multiple prefectures throughout Rwanda. Gruesome details of sexual mutilation and rape as murder are listed for pages and pages in the decision. The judgment marks an important milestone, as the men were held criminally responsible for the rape by members of the *Interahamwe* and other militiamen on the basis of the doctrine of superior responsibility, for failing to prevent the crimes, under the extended form of joint criminal enterprise (JCE) liability, which permits the tribunal to hold perpetrators accountable for crimes ‘that were the natural and foreseeable consequences of the intended crimes.’ Haffajee argues that the JCE theory “holds great promise because it views crimes of rape in a larger context,” (2006, 202) as part of the genocidal plan, and may be useful to future

¹⁰⁶ This trial originally opened in 2003, and included two other suspects: MRND General, Joseph Nzirorera, who died in 2010, and former government Minister Andre Rwamakuba, who was granted a separate trial and acquitted. It was one of the most delayed trials at the ICTR, in part because of Ndirumutse’s health problems.

international criminal cases including at the International Criminal Court. Andrés Pérez argues that this ruling could make it considerably harder for civilian and military superiors to avoid criminal liability for mass sexual violence, as the contention of the accused that they were not in charge of the *Interahamwe* who committed such crimes was denied, with the judgment stating that this was a naturally foreseeable consequences of the genocidal campaign. In the Pre-Trial Brief, the Prosecutor alleged that:

Although the Prosecutor will not offer evidence that Karemera, Ndirumapatse [and Nzirorera] personally committed rape themselves, the overwhelming objective evidence of pervasive, widespread and systematic rapes committed by militiamen, taken alone, will reveal an astounding tolerance, acquiescence, complicity and inferred intent on the part of the accused, and will form a basis for holding them individually criminally responsible for the natural, and foreseeable, crimes committed by their co-perpetrators in the joint criminal enterprise to destroy the Tutsi (cited in Bianchi 2013, 136).

This was the first ruling in which the accused were found liable for rapes and sexual assaults under the extended joint criminal enterprise charge (Perez 2015), a strong precedent on how to prosecute leaders who may have not directly participated, but were influential in the carrying out of systematic sexual violence (see Bianchi 2013, 136).

Also significant in terms of feminist advocacy on sexual violence prosecution procedure is that during this trial the prosecution used Tribunal's *Rule 92bis* (which allows the proof of facts other than by oral evidence) in order to admit 19 written statements in lieu of oral testimony, including ICTR transcripts of previous testimony on sexual violence crimes. This avoided re-traumatizing witnesses who would otherwise have been required to testify and face cross-examination, and allowed for a significant amount of evidence to establish the widespread use of rape as a tactic of genocide.

Judicial notice provisions allowed for evidence not only of the genocide but also of the coercive background circumstances within which the sexual violence crimes took place in Rwanda, using adjudicated facts from previous trials. While the rules on written testimony have become more liberal, caution is still used when admitting it to establish individual criminal responsibility, to maintain the right of the accused to examine witnesses and not have a judgment based on untested witness testimony (see McDermott 2013). In many ways Karemera *et al.* is the exception at the ICTR, where written testimony was rarely admitted (particularly in contrast to its frequent use at the ICTY), and this successful prosecution using JCE theory is significant. The ICTR Best Practices Manual reveals that the eventual integration of investigators specially trained in sexual violence crimes helped prosecutions such as in the Karemera case (2014, 12), and it is clear that these practices could have added to both protecting victims and more effectively pursuing rape charges in earlier cases at the tribunal. A broad array of evidence, not just from rape victims but also from previous rulings, radio broadcasts and media (as was done in this case), and expert testimony should be used to establish sexual violence and better ensure the well-being of victim-witnesses. As Sellers articulates, it should not take the testimony of fifty women to illustrate a pattern of rape (2009, 324). Rather, one woman who has conducted a study or provided medical and psychological services to female survivors in the region should be competent. Unfortunately such expertise has often been denied or deemed insufficient at the ad hoc tribunals.

As will be elucidated in the following section focusing on the Gacumbitsi trial, all three of these men were important political leaders, and their responsibility as authorities was a key question in the trials. A multitude of evidence of sexual violence was revealed

during the proceedings, and key witnesses were largely treated poorly, bombarded with questions meant to discredit their stories, and visibly re-traumatized in the process. In the end, the judgments erase sexual violence entirely (Kajelijeli), sideline the accusation of rape perpetration for a conviction of incitement (Gacumbitsi), and, in an exceptional case, successfully convict leaders (Karemera and Ngirumpatse) for their role in the widespread sexual violence during the Rwandan genocide, and set an important precedent on avoiding unnecessary re-traumatization of witnesses. As the following chapter will reveal, by mining the record of a trial more closely it becomes clear that many of the proceedings did not respect the female victims who spoke out about sexual violation. When looking at the larger picture of the court's legacy, the question arises as to whether it was worth the trauma and stigma most female victims experienced to testify to rape at the Tribunal, when much of their story was subsequently erased anyway and so few faced justice. The recently published ICTR Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions (2014), compiled by the Office of the Prosecutor, includes some of these issues and key lessons learned during the process for future courts including the ICC.

As this chapter shows, procedures regarding the establishment of the responsibility of leaders and superiors have been the crux of the struggle to securing convictions for sexual violence. Despite extensive acknowledgement of the systematic perpetration of sexual violence as part of the genocide, many more suspects were acquitted than convicted. As Haffajee articulates, “these acquittals may prove very damaging to the women who were raped during the Rwandan genocide and to the prospective treatment of rape and sexual violence in international criminal jurisprudence.

Not only can they put on the record that rapes did not, in fact, occur, but they also may de-legitimize the theories under which the rape charges are brought, and the investigative techniques used in conjunction with prosecutions” (Haffajee 2006, 206). The ensuing chapter examines in-depth the transcripts of one case study, against the trial of the Mayor of Rusumo commune who played an integral part in the Nyarubuye massacre, to uncover the specific (enduring) problems of prosecuting sexual violence internationally.

2.3

Looking Beyond the Judgment: Witness TAP, Rape Revelations, and Lessons from *Prosecutor v. Gacumbitsi*

“It requires significant courage for a rape victim to come forward and to publicly speak about the sexual assault against her. The world over, rape victims have difficulty in speaking out because of the stigma attached to being a rape victim and the taboo of speaking publicly about sex. Often, women who allege rape are subjected to disbelief, public scrutiny of their sexual past, or shamed for admitting they have been raped” (Nowrojee 2005, 23).

Writing about the intersections of law, memory, and justice, Nicola Henry argues that the ICTY Foča¹⁰⁷ case makes an important contribution to the collective memory of wartime sexual violence. She writes, “the law shapes, selects, and institutionalizes the way the past is remembered through authoritatively declaring which crimes are deserving of international recognition and justice, and which crimes are to be relegated to the forgotten abyss of history” (Henry 2011, 2). It is not only crimes, but also which version of history and which record of atrocities will be preserved at stake, because justice relies on reconstructing narratives of the past, which has significant repercussions. The purpose of this chapter, which contributes further to the reconstruction of what is known about the Nyarubuye massacre, is not to document victims’ own experiences of wartime rape, nor to evaluate the justice system, but rather to focus in on a particular trial from which significant questions emerge about how sexual violence during the genocide is discursively constructed. How is women’s testimony heard or silenced? How is it understood and represented? And what does the judgment - the trial’s recorded legacy - tell us about rape at Nyarubuye? Trials do more than simply decide whether an accused is

¹⁰⁷ICTY vs. *Kunarac et. al.* is known as the ‘Foča Case.’ See footnote 84.

guilty; legal trials construct portions of history, often reinforcing hegemonic power relations that determine how the past is remembered; international law shapes narratives about genocide, crimes against humanity, and war crimes; and collective memory for future generations is highly impacted by transitional justice mechanisms in post-conflict societies. As Henry suggests, “this reminds us of the power of law – particularly international law – to influence collective memory and to authoritatively pronounce what and how history shall be remembered. The legacy of silence continues to pervade women’s experiences of wartime rape. This is due not only to the social stigma and shame of rape, but also to the inherent limitations of law to address such crimes” (Henry 2011, 130).

This chapter explores the testimony of one witness (TAP) in detail, which raises valuable questions and insights about the Gacumbitsi trial in particular, and the record of the ICTR in general. In the first section of my chapter, I demonstrate the insensitive and disempowering nature of the cross-examination of this witness, echoing critiques by numerous feminist scholars, and reveal the emotional trauma she experienced in testifying to rape. In the second part of this chapter, I analyze the judgment in this case and its significance, particularly what it leaves out. Using the ICTR *Gacumbitsi* trial as a case study, and focusing on one woman’s testimony, this chapter critically examines not only the problems that endure during rape trials, but also instances where the outcomes (that is, the judgment) may silence important stories of rape during the genocide. Uncovering this hidden story echoes the argument of other feminist scholars about the mistreatment of female witnesses in rape trials, while also pushing the analysis further to understand how judges and judgements can silence female victims as well.

The rape and sexual abuse of Tutsi women, (often ending in murder), was a significant component of the attacks by the *Interahamwe* militia, police force, and conspiring Hutu civilians during the Rwandan genocide (Human Rights Watch 1996). While rape was a widespread tactic used during the genocide, its concentration and extreme brutality in particular regions raises questions about the intent behind it, the pattern of violence, as well as its repercussions for women's psychological and physical health. At Nyarubuye, perpetrators carried out significant amounts of sexual violence, as evidenced by the mutilated female bodies recovered in the aftermath, both in the church and thrown into latrines. Studying particular sites of atrocity reveals that much of the horror committed against women's bodies¹⁰⁸ is left out of the final court verdicts; this echoes the lack of successful prosecution of sexual violence at the ICTR generally, in contrast to the repeated evidence of its widespread perpetration during trials (see Bianchi 2013; Buss 2010). Binaifer Nowrojee has articulated poignant critiques of the record of the ICTR when it comes to prosecuting rape, both in terms of a lack of inclusion of victims' voices and acknowledgement of their suffering, and the few successful guilty verdicts for sexual violence crimes despite the documentation of its widespread use as part of the genocide (see also Cole 2010). This chapter undertakes a detailed exploration of the testimony of witness TAP, examining how harsh cross-examination tactics led to her disempowerment, the clear indications during the proceedings of the emotional trauma she experienced in testifying to rape, and the importance of expressivism – that is, naming specific crimes committed in international legal judgments relating to sexual

¹⁰⁸ I acknowledge the importance of recognizing that men have also been victims of rape and sexual violence, in Rwanda as in many other conflicts, but since none of these cases were dealt with at the ICTR or *gacaca*, and the identified victims are overwhelmingly female, this is the focus of my dissertation. The rape of men, during war and otherwise, is an important and under-researched area of scholarship which I hope to pursue in post-doctoral work.

violence jurisprudence.

On June 17th, 2004, the ICTR Trial Chamber III¹⁰⁹ found Rusumo Mayor Sylvestre Gacumbitsi guilty of genocide and crimes against humanity for rape and extermination, acquitting him on charges of crimes against humanity for murder and complicity in genocide. He was sentenced to 30 years in prison, which was later increased to life in prison on appeal, at which time he was also found guilty of murder as a crime against humanity. The official indictment stated that Gacumbitsi told Tutsis they would be safe inside Nyarubuye church, and then led militias there, and that he drove around his district announcing by megaphone that Tutsi women should be raped and sexually degraded. Following the judgment, the Appeals Chamber was requested to address the definition of rape under international criminal law, citing the apparent contradiction between the most significant cases to date – including Akayesu at the ICTR and the Kunarac case at the ICTY. Some scholars have considered the significance of the Gacumbitsi case in terms of the definition of rape and debates over consent and coercion in international law¹¹⁰ (see Cole 2008; Schomburg and Peterson, 2007; O’Byrne 2011). This is an important contribution to international jurisprudence on the understanding of the issue of wartime rape, a case that has been scarcely examined¹¹¹ and has important repercussions.

¹⁰⁹ Before Judge Andréia Vaz, Presiding Judge Jai Ram Reddy and Judge Sergei Alekseevich Egorov.

¹¹⁰ The first case to consider the definition of rape under international law was the ICTR’s first, *Prosecutor v. Akayesu*, and took a conceptual approach, defining it (like torture) as ‘a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.’ In contrast, the Appeals Chamber in the ICTY *Prosecutor v. Kunarac* case re-introduced the discussion of consent. Essentially in the *Gacumbitsi* case, the definition combined the two, deciding that the question of non-consent is established by demonstrating coercive circumstances.

¹¹¹ Alison Cole’s article (2008) is one of the only academic articles to date that examines this case exclusively in detail.

*The Testimony of Witness TAP*¹¹²

Narrowing in on a specific instance or event is often quite revealing of larger issues at play, a microcosm of significant questions and responses that a meta-analysis may miss. As Doris Buss calls for, the ICTR records can be mined for rich information (Buss 2010, 72), specifically about the sexual violence that occurred during the Rwandan genocide and how it has been dealt with in the aftermath. During the proceedings of *Prosecutor v. Sylvestre Gacumbitsi*,¹¹³ one young woman's testimony is particularly revealing in terms of the prosecution of rape at the Tribunal, the treatment of victim-witnesses, and the gap between what the judgment records about what happened and what careful consideration of the trial record can reveal. On August 6th, 2003, witness TAP dramatically revealed in her testimony an allegation that Mayor Gacumbitsi did not just lead and incite rape (the crimes for which he was subsequently convicted), but also personally raped her both with his penis and with a police weapon. An argument ensued between the lawyers, during which the defence counsel requested that TAP's testimony be stricken from the record and TAP dismissed as a witness, arguing that this information was not disclosed 21 days before her appearance and thus was inadmissible. In response, the Prosecutor explained that, as disclosed in a letter received by the defence, Witness TAP had earlier revealed that she had evidence implicating Gacumbitsi in sexual violence, but her traumatic state didn't enable her to disclose the particulars. It was not until the night before that the witness had revealed her allegation of rape against Gacumbitsi, and his Defence team was notified of this both by telephone and letter. The

¹¹² A pseudonym to hide her identity, as was given to all witnesses. Parts of her testimony are also left blank on the transcript as they include sensitive details that could reveal her identity.

¹¹³ ICTR Case No. ICTR-2001-64-T

Prosecutor argued that the Tribunal's Rules of Procedure and Evidence provide for ongoing disclosure of any evidence which is relevant, and that the emphasis of the Tribunal is always on oral testimony of witnesses. Indeed, victims' testimony is vital to the proceedings of the ICTR, exceptionally so in cases of sexual violence.¹¹⁴ When one of the judges questioned the witness, TAP stated that this accusation was "a secret that I was keeping inside me... I waited for the opportunity to be in this courtroom to make these revelations" (*Prosecutor v. Gacumbitsi*, ICTR Transcript, 6 August 2003, p.21 lines 36,41-42). The judge decided that the Prosecutor seemed to have respected Tribunal Rule 67(D), disclosing as soon as possible the new allegation, and thus allowed Witness TAP's testimony to be heard, holding judgment on its admissibility until later. Careful consideration of the proceedings of this particular day reveals some of the contradictions of the ICTR's record on rape prosecution.

Prosecution Witness TAP, a young Tutsi woman (21 years of age at the time of the genocide) testified that, upon hearing noises coming from Nyarubuye church on April 7, 1994,¹¹⁵ a group of *Interahamwe* attacked her mother, driving a stick into her mother's vagina and out through her head. Hearing her screams, the girl knew her mother was dead. The attackers came toward her, stating that in the past Tutsi women and girls hated Hutu men and refused to marry them, but now they were going to abuse them freely, "getting to taste Tutsi women" (*Gacumbitsi* Transcript, 6 August 2003, p.41 line 16). Several attackers raped her, and drove a branch into her genitals, causing her to bleed profusely. The allegation that Mayor Gacumbitsi personally raped witness TAP was

¹¹⁴ As Koomen argues in her article titled 'Without these women, the tribunal cannot do anything' (2013) the ICTR relies heavily on Rwandan women to testify about gender-based violence in court.

¹¹⁵ This is before the actual attack on Nyarubuye church, likely as refugees were gathering there, although there was some discrepancy about dates during the trial.

unveiled publicly in the courtroom, a secret she had kept to herself and wanted to reveal in public. She stated that once she unveiled this secret, she ‘felt better’ (*Gacumbitsi* Transcript, 6 August 2003, p.32 line 37). Witness TAP described how she knew of Mayor Gacumbitsi before the genocide, not personally but generally, as he was a public figure and known to her father. But on this day, she described that he looked ‘like an animal.’ She attempted to wash herself in a pond down a small path following the first attack (and rape) by a group of assailants, at which time Witness TAP described seeing the Mayor get out of a police vehicle on the road close to where she was. He saw her, and he asked who her father was (*Gacumbitsi* Trial Transcript 6 August, 2003, p.15). She thought that perhaps he might help protect her. Instead, he forced her to follow him into a neighbouring house, that of *Conseiller* Karamage, at which time he took out a pistol and said he was not going to waste a bullet. She alleged that Gacumbitsi “told me that he was going to kill me only with his penis. He raped me with the policeman’s weapon, with a truncheon, then he raped me with his own penis and when he had finished he told me, ‘Go, and the others shall kill you’” (*Gacumbitsi* Transcript, 6 August 2003, p.52 line 13). She was bleeding profusely, and subsequently helped by a Hutu woman who kept her hidden and helped clean her wounds, until days later the *Inkotanyi* (RPF) rescued her. Although parts of the tribunal transcript are left blank, the proceedings on this day echo many of the criticisms raised by feminists concerned with inadequate rape prosecutions at the ICTR. For example, during the cross-examination, the defence counsel questioned the witness repeatedly, arguably to the point of harassment and re-traumatization, on the exact timeline of these events, trying to discredit her testimony. As the ICTR Best Practices Manual articulates, it is important to eliminate unnecessary cross-examination of sexual violence witnesses, treat them with respect and sensitivity, and put the needs of

traumatized victims first (2014 68), which did not happen in this case. The mistreatment of victims, particularly in cases involving sexual violence, in which they often experience re-traumatization or ‘secondary victimization’ in court is well-documented by scholars (McGlynn & Munro 2010, 8; Oosterveld 2011, 130, Henry 2011). Also, during the testimony of Witness TAP, the defence downplayed the nature of rape, and was scolded by the judge for repeatedly trying to alter the record with comments. And in the end, this accusation and narrative brought forth by the victim against Gacumbitsi is left out of the judgment, essentially lost in the historical record, as are too many stories of women victimized by genocidal rape.

Cross-Examination: Disempowering the Witness

A careful reading of the transcript of the cross-examination of witness TAP demonstrates the inherent power imbalance between female witnesses and male defence lawyers, which is glaringly apparent. In this case, as in many others, Gacumbitsi’s defence lawyer, Mr. Kouengoua attempted repeatedly to undermine the victim’s credibility through inappropriate questions and comments. In one instance he actually accused that “this trickery [by the victim] has lasted too long.” Mr. Kouengoua mockingly asked how many years of education the Witness had, implying that she was stupid and/or lying. Following her testimony about the rape, he stated, “I say that one of these two persons is lying, and as it’s not in the habit of the Prosecutor, I think we should look elsewhere in the room” (*Gacumbitsi* Transcript, 6 August 2003, p.30). At one point, later in the day, he directly asked her ‘is this the new version or is this what you’ve always said?’ (*Gacumbitsi* Transcript, 6 August 2003, p.39) before being forced to withdraw the question. In another instance, the Presiding Judge had to remind the defence

lawyer not to ask questions that could reveal the identity of the witness, a very dangerous practice and breach of trust that can have severe consequences for victims who testify.¹¹⁶ The transcript demonstrates his relentless questioning of a clearly traumatized witness about minute details, which she repeatedly pointed out were from almost a decade ago and thus difficult to remember, and he made deliberate attempts to confuse her or catch her in a contradiction of facts. Discrepancies are often used by the defence to undermine a witness' credibility (Koomen 2013, 259), but this defence lawyers' questioning went well beyond what was reasonably needed for him to make his arguments.

Although the presiding judge intervened at times, it was not enough to eliminate unnecessarily hostile questioning, as the defence lawyer repeatedly implied that she was lying or exaggerating her suffering. Frequently "legal commentators have criticized the manner in which judges have presided over cases involving gender-based violence. Rwanda's survivor groups have rebuked them for permitting the re-traumatization and humiliation of victims of sexual violence during 'inept' and 'insensitive' cross-examination by defence counsel" (Mibenge 2013, 67). As the ICTR Best Practices Manual states, while the defence has the right to cross-examine witnesses, care should be taken to ensure that it is not done in an unnecessarily harassing or repetitive manner, risks of re-traumatization should be minimized as much as possible, and judges should impose reasonable restrictions (2014, 82). The Presiding Judge repeatedly scolded Mr. Kouengoua, and the Prosecutor pointed out on more than one occasion that he was marking the proceedings with comments and inappropriately twisting the record. There were at least five times during the proceedings on this day (August 6th) alone when the judges reprimanded the defence lawyer for making submissions in an attempt to alter the

¹¹⁶ For examples of this common problem see Van Schaak (2009, 401).

record, and requested that he ask questions in a straightforward way. Although Witness TAP attempted to exercise some agency in disclosing this accusation publicly,¹¹⁷ keeping the secret inside of her to reveal in the courtroom, this is ultimately diminished by the harsh and insensitive cross-examination tactics.

Further, the defence lawyer repeatedly downplayed the traumatic nature of rape, as has also occurred in other international legal proceedings (Kelsall & Stepakoff 2007). Naming one particular accused rapist, defence attorney Kouengoua asked if he wounded Witness TAP. Not surprisingly, she responded that “all of these people who raped me, wounded me.” Subsequently, he asked her to “estimate all of the injuries that were inflicted upon you in the course of that long day” (*Gacumbitsi* Transcript, 6 August 2003, p.57) to which she replied, “if you had lived through the same experiences as I, you might know better and then I could describe them to you, you’d understand.” The implication that surviving multiple rapes did not lead to wounds or injuries is, of course, absurd. As many scholars and feminist activists have articulated, communicating the experience of sexual violence for survivors is quite difficult, even in a safe environment. Such examples reiterate the immense gap between survivors of sexual violence and those who have not had such experiences, let alone the difficulty in expressing such trauma in a courtroom in which adversaries try to discredit victims. Echoing other trials of this nature, “far from providing an opportunity for women’s realities to be validated, it is through adversarial proceedings that ‘[w]omen are disempowered, their voices silenced, patriarchal tales validated, rapes legalized’” (Taslitz 1999, cited in Mertus 2004, 112). As in most legal cases, her narrative is fragmented and frequently interrupted, both because of the cross-

¹¹⁷ As Burnet articulates, Rwanda women often attempt to exercise their agency by controlling when, how, and to whom to tell their stories, in order to restore some of the dignity stolen from them (2012, 86).

examination techniques and her struggle to convey such a traumatic event. The proceedings obstruct her ability to speak of her experience on her own terms, despite her aim to do so by publicly disclosing this revelation of her own volition.

As Nicola Henry argues in discussing the ‘impossibility of bearing witness,’ wartime sexual violence survivors are often put in a ‘double bind,’ where if the victim is too emotional or traumatized, she is presumed to not be a reliable witness, but if she is calm and in control, the assumption is that she could not have been violated (Henry 2010, 1111). Julie Mertus argues that many survivors of wartime rape who sought to testify before the ICTY believed giving testimony would help them heal, create a public record of the atrocities, and hold perpetrators accountable. However, most quickly became disillusioned with the adversarial process, and almost universally experienced the trials as dehumanizing and re-traumatizing experiences (Mertus 2004, 112). As Mertus points out, witnesses who seek counselling during the trial face the risk of defence attorneys discrediting them as being too traumatized to be credible. In a related example, during the cross-examination defence lawyer Kouengoua asked Witness TAP, “we were informed that you were unable to be in court yesterday because you were traumatised. Can you please explain to us the nature of that trauma you experienced?” to which she replied, “the words you are speaking to me may traumatise me” (*Gacumbitsi* Transcript, 6 August 2003, p.38).

Many other obstacles ingrained in the international legal system work against rape survivors. In particular, while protective measures have been implemented, in which judges are expected to shield victims from allegations regarding their own complicity

(Henry 2009, 127), victim-blaming tactics have not been eradicated.¹¹⁸ In this respect, the defence lawyer questioned Witness TAP repeatedly about how she ended up in the room where Gacumbitsi raped her. For example, she explained that she heard the Mayor say the killers needed to ‘clean up the filth,’ meaning kill all of the Tutsi. The defence lawyer (sarcastically) asked if, at that time, she was a Tutsi, which had previously been established. He continued, “[k]nowing that these were killers who were looking for Tutsis, how did you allow yourself to go into the house of a killer?” Despite stating that her father knew Gacumbitsi and some of the attackers, and that she thought he would take pity on her, the defence continued to imply that she was complicit in the rape. Again, Mr.Kouengoua asked how she got into that room (*Gacumbitsi* Transcript, 6 August 2003, p.55) and accusingly asked why she was “in the habit of going to [*Conseiller* Karamage’s] house [where the rape took place], for what purpose?” She explained that this was a house of someone she knew, that she was attempting to clean herself after an earlier rape by multiple men which left her bleeding profusely, and that, when she saw Gacumbitsi - an important figure whom she thought would help her - she had no real choice but to follow him. The repeated victim-blaming questions from the defence, and the lack of control by the presiding judge over this type of questioning, illustrate how rape myths continue to creep into international criminal trials despite the acknowledgement that they should be disallowed (see De Brouwer 2005, 272-274).

¹¹⁸ For example, Rule 96 of the ICTR’s Rules of Procedure and Evidence stipulates that prior sexual conduct of the victim shall not be admitted into evidence or as a defence; that consent shall not be allowed as a defence if the victim was subjected to or feared violence, duress, detention or psychological oppression or that another would be so subjected; and indicates that no corroboration is required for the testimonies of victims of sexual assault. The *Akayesu* and *Rutaganda* trial judgments state that this Rule simply accords this type of testimony the same presumption of reliability as the testimony of victims of other crimes.

The Emotional Trauma of Testifying to Rape

It is clear that revealing intimate details of sexual violation is tremendously difficult for rape survivors, particularly in front of strangers in a courtroom. Often cultural and social taboos to disclosure dictate what should not be said in public (see Henry 2010). It is significant that, in a couple of instances during Witness TAP's testimony, she was allowed to write down what happened to her on a piece of paper, which is then translated for the court with her permission. At one point she said, "it is very difficult for me to tell you this. I would like to ask that I be allowed to write the information down on a piece of paper" rather than speak it (*Gacumbitsi* Transcript, 6 August 2003, p.10). She was permitted to do so and the interpreter read: "he took the truncheon and put it into my vagina several times." She did the same again when testifying to another rape. She explained that she could not verbalize such instances because "things of that nature are not spoken of. Our parents never taught us to speak like that; it was a taboo" (*Gacumbitsi* Transcript, 6 August 2003, p.11). This procedure, which has been used by other international criminal courts,¹¹⁹ allows the evidence to be entered into the record while still remaining sensitive to cultural proscriptions on language. This allowance is noteworthy, demonstrating both the societal/cultural stigma and shame for rape victims, but also an attempt by the court to accommodate traumatized survivors. This type of procedure helps to lessen the hardships faced by victims testifying to their rape experiences, and has since been recognized as a best practice. However, such sensitivity is undone by judicial failure to control unnecessarily antagonistic cross-examination of sexual violence survivors, as outlined above.

¹¹⁹ A similar practice was undertaken at the Special Court for Sierra Leone.

Despite the fact that advocates have repeatedly stressed the re-traumatizing nature of rape trials, both domestically and internationally, it is all too common for victim-witnesses to experience mistreatment that exacerbates their trauma at the hands of the court. While legally the accused has the right to try to demonstrate that the prosecutor has not proven allegations beyond a reasonable doubt, the rights of the victims and the emotional trauma of testifying is supposed to be taken into consideration. In order to balance these two, the ICTR allowed for witness breaks to help alleviate some of the stress and trauma of testifying. But the proceedings clearly demonstrate the re-traumatization Witness TAP experienced during her testimony. Upon disclosing her accusation against Gacumbitsi, Witness TAP needed some tissues and to take a break to compose herself. It is clear that she was crying throughout the proceedings, including during harsh questioning about her original statement. Later in the day, she asked for a break ‘to pull herself together’ (*Gacumbitsi* Transcript, 6 August 2003, p.42), which was granted. As we see in this trial, anything witnesses say in examination and cross-examination at the tribunal is rigorously checked against their original statements, often taken long before the trial under precarious circumstances, and discrepancies undermine witnesses’ credibility (Koomen 2013, 259). Under such traumatic events as genocide and war, witnesses rarely keep track of the specific day and time in which events happen, yet tribunal investigators and interpreters must present events chronologically. Thus, “complex, painful, and sometimes confused stories about suffering and violence [are translated] into a language and format that emphasizes factual information” and are always heavily mediated (Koomen 2013, 260). While, understandably, witnesses often have difficulty remembering the chronological events which contain such trauma and suffering, this results in accusations by the defence of lying and unreliability. This was

acknowledged during the Akayesu trial, where the Trial Chamber expressed understanding of witnesses' discrepancies and difficulty in remembering specifics, particularly following a long time lapse and after experiencing traumatic events (Akayesu Trial Judgment para. 140-144). During the testimony of witness TAP, near the end of the day, the Prosecutor angrily stated that asking questions of the witness over and over without any breaks, in order to elicit inconsistencies in her previous statements, was not the proper way to impeach the witness: "She has been over and over this evidence. She has been in the stand for nearly three hours without a break... If Counsel believes there is an inconsistency, can he put it to her concisely? But at this point, Your Honours, I apply for, at least, a break for the witness because it is simply too long for a witness to be on the stand without having some sort of respite" (*Gacumbitsi* Transcript, 6 August 2003, p.60). This is another example of incompetence by the judge, failing to control the courtroom and allow the witness reasonable breaks. By about 5:00 p.m., the Presiding Judge requested that the defence cross-examination wrap up, as the prosecutor indicated that there was a representative of Witness and Victim Support Services present, "who has indicated to me that it is not appropriate for witnesses to continue under questioning for extended periods of time without a break, especially when we have a witness who has given evidence of the nature that she has given, and who had been under extensive cross-examination today" (*Gacumbitsi* Transcript, 6 August 2003, p.63). Thus, while the ICTR allowed for breaks to offset victim trauma related to testifying, the judges were not always proactive in ordering them, and the Defence used this failure to its advantage in undertaking lengthy hostile questioning periods.

Scholars such as Jonneke Koomen emphasize the integral role of witness testimony at the ICTR, particularly in cases of rape where there are often no witnesses

other than the accused and the victim. But as Koomen reminds us, witness testimonies must be understood “not just as legal texts but as products of the hierarchical social encounters that characterize the work of international justice” (254). On the following morning, August 7th, 2003, Witness TAP took the stand briefly for a re-examination of her testimony. In a moment quite revealing of this power imbalance as between the prosecution and the witness, she explains her previous disclosure of the rape:

On Sunday I met with a white woman and I had something to tell her, but I did not feel strong enough – it was something that was close to my heart, I tried to give her the information. I gave her some details, but I did not feel strong enough and did not give her all the information. On Tuesday she came back, and I tried to overcome myself to tell her that Gacumbitsi had raped me. And this is when, if I am not mistaken, that I gave the information to this white woman (*Gacumbitsi* Transcript, 7 August 2003, p.2).

Not only does this excerpt reveal the difficult nature of her disclosure, but also the racial disparity common between the international ICTR investigators and prosecution lawyers (often located in or coming from ICTR headquarters in Arusha, Tanzania) and the Rwandans who come to testify.¹²⁰ Koomen reminds us that collecting these stories is a fraught social encounter rife with power disparities based on class, race, gender, and ethnicity. Testimony cannot stand apart from the politics of translation and negotiation, while a courtroom itself is in many ways ‘a theatre of power’ (Cole in Koomen 2013, 263). The power differentials add another layer of difficulty for women who were victims of sexual violence during the genocide to seek some form of justice. Despite the work of a number of feminist advocates and scholars to emphasize the need to treat victim-

¹²⁰ See, for example, Peskin, Victor. (Sept. 2005). Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme. *Journal of International Criminal Justice* 3, 4: 950-961.

witnesses with sensitivity and compassion, they are still continuously viewed as mere instruments of the prosecution in the trial process. As instruments, rather than parties,¹²¹ to the process, victims are more easily discredited, re-traumatized, and silenced (Ketsall and Stepakoff 2013, 358). While the prosecution attempted to advocate for the wellbeing of Witness TAP during the trial, intervening during inappropriate questioning from the defence, the judges did not control the courtroom adequately and, unfortunately, the transcript reveals her mistreatment. However, one could also possibly read moments of agency in TAP's testimony, particularly when she articulated resistance to the Defense lawyer's harsh questioning or appeared defiant and/or challenged his denigration of her.¹²² The next section demonstrates that not only did defense counsel in the courtroom mistreat her, without adequate intervention by the judges, but her evidence was ultimately discounted.

Shaping the Judgment

Judges have inherent power to shape the public narrative attached to particular persons and crimes at any given time. This power comes from rulings on whether to include or exclude certain evidence from the final consideration of guilt or innocence, and was evident in the consideration of TAP's evidence in the Gacumbitsi case. On August 6, 2003, Witness TAP publicly disclosed a new allegation of rape allegedly committed by the accused himself. The Trial Chamber, composed of three judges, decided to hear Witness TAP's full testimony in the interests of justice, while reserving its decision to the

¹²¹ The drafters of the Rome Statute of the International Criminal Court tried to correct this instrumentality by giving victims rights as parties within the ICC's process: see article 68(3).

¹²² Thanks to Professor Annie Bunting for raising this perspective in discussions on the role and agency of witness TAP.

admissibility of the allegation for later. In final deliberations, on October 2nd 2003, the Chamber ruled that it would not take into account the allegation of rape made against Gacumbitsi by Witness TAP in her testimony. It decided in this manner because, apart from the Prosecution's failure to provide notice of this charge, the Indictment against Gacumbitsi did not contain any allegation of rape committed by the accused himself (*Gacumbitsi* Trial Judgment).¹²³ This indictment-centric approach has been detrimental to the consideration of rape evidence before the ICTR. As Doris Buss notes, in several cases the Trial Chamber heard from women who gave what the Tribunal characterizes as 'spontaneous' evidence of their own rapes. "This evidence, while often compelling, is generally dismissed because those particular rapes were not included in the indictment against the accused" (Buss 2010, 65). This creates a disparity between the rape evidence found in the transcripts and the number of actual convictions for rape. This discrepancy is not new: the transcripts of the post-World War II International Military Tribunal in Nuremberg contained numerous references to rape, but no charges or convictions (Askin 2003, 295).

The power of judicial narrative was also obvious in the Special Court for Sierra Leone trial of the leaders of the pro-government Civil Defence Forces militia. In a controversial ruling, Trial Chamber I determined in the pre-trial phase that counts of sexual violence were not to be included in the Indictment on the basis that the prosecution had been unduly delayed in bringing the request for amendment of charges, and that an amendment at that particular date would prejudice the accused (Oosterveld 2011). Later,

¹²³ However, the Chamber found that Witness TAP's account of events seemed to be plausible and credible as to the acts of sexual violence committed against her and her mother (*Gacumbitsi* Trial Judgment).

in a ruling that contravened the practice of the ICTY and ICTR and which included clearly regressive reasoning reflective of rape myths, the same Trial Chamber refused to allow evidence of sexual violence to prove other types of crimes (such as the war crime of cruel treatment). Both rulings meant that all evidence of sexual violence was rendered inadmissible. It also meant that victims of sexual violence were forced to overly circumscribe their evidence: although seven women took to the stand to testify about other acts of violence, they were “prohibited from speaking about the principal manner in which they were victimized” during the conflict (Kelsall & Stepakoff 2007, 356). It also meant that their stories were recorded in the final judgment in a manner that was not actually reflective of the full range of suffering they and their families experienced.¹²⁴ This legal procedural ruling disregards the full record of atrocities, omitting important evidence from the final verdict. It is critical to note that, in the *Gacumbitsi* Judgment, the rape of Witness TAP by Gacumbitsi himself is erased from the legal findings. This is a significant, although not anomalous, example of the mis-shaping of public stories at international criminal tribunals, and the silences that are built into the final judgments, which shape the legacy of the court.

Many authors stress the limited nature of legal ‘truth’, which does not capture the complexity of experiences nor a comprehensive picture of what happened, rather, the objective is a determination of the criminality of the accused (Nikolic-Ristanovic 2005, 278). As Chiseche Mibenge articulates, “the tribunal’s narrative on gender and violence is important because it is a crucial determinant of which aspects of women’s experience of

¹²⁴ The article by Kelsall and Stepakoff (2007) gives numerous examples, where victim-witnesses stated in post-trial interviews that they were not able to disclose the harms done to them, even though they wished to.

armed conflict are actually investigated, charged, and prosecuted. Ultimately, the narrative determines which victims of sexual violence have access to international criminal justice and what aspects of their testimony are deemed valuable” (Mibenge 2013, 62). As she observes, the ICTR’s larger body of case law does not reflect the high levels of gender-based violence committed in Rwanda during the genocide. In the *Gacumbitsi* case, the judgment’s erasure of Witness TAP’s accusation repeats the silencing effect of the rape itself, particularly when committed by someone with authority and power. In another example, Doris Buss argues that a significant problem with the *Gacumbitsi* judgment is an overemphasis on the ethnic conflict, in which anything outside of the Hutu vs. Tutsi narrative is discarded. She contends that, while sexual violence may be visible, gender inequality and other systemic variables that produced a situation in which women were targeted for mass rape remained invisible in such judgments (Buss 2007, 15).

Committing vs. Inciting and the Importance of Expressivism

In 1994, as the *ad hoc* tribunal for the former Yugoslavia was being established and the world was learning of the atrocities of the Rwandan genocide, Rhonda Copelon (1994) wrote a valuable article about the importance of ‘surfacing gender’ in crimes against humanity, punishing perpetrators of sexual violence under international law, and ending impunity for rape during war. In a similar vein, while the *ad hoc* tribunals have secured important precedents for prosecuting wartime rape, it is important to bring to the surface victim’s narratives that may have not resulted in convictions at these international tribunals; to avoid their disappearance from history and avert a focus on only exceptional

cases, rather than the almost ubiquitous¹²⁵ nature of sexual violence during genocide and war. As Debra Bergoffen articulates in her article on ‘women’s bodies as a legal writing pad,’ these tribunals are engaging the international community in a dialogue where the violence of rape testimonies transforms the language and meaning of crimes against humanity (2006, 17). The linguistic practices of this developing legal jurisprudence are significant - expressivists emphasize the importance of naming such crimes, because “if spectacles of violence go unnamed their power will not be checked” (*Ibid*, 35).

The question of incitement of rape and genocide was very significant in the trial against Gacumbitsi. The Tribunal considered charges relating to both his role as an authority figure instigating and overseeing rape, murder, and genocide, as well as his own role in actually committing such crimes. A key part of the evidence is his speeches, including one on April 17th 1994, in which he urged Hutu men to have sex with Tutsi girls, and kill those who refused “in an atrocious manner” (Gacumbitsi Trial Judgment, p.52 para. 201). While there were several rapes for which he was accused of being responsible, as they occurred around the time of his speech and/or the assailants referred to his incitement,¹²⁶ some resulted in convictions and others did not. The Tribunal found that the rapes of witness TAQ and seven other women and girls resulted from Gacumbitsi’s speech because they happened immediately after his statements urging an attack on Tutsi women. However, the Tribunal ruled that Gacumbitsi was not responsible for the rape of Witness TAS and three others, as there was not sufficient causal connection between his speech and the rape of these women, despite the fact that they

¹²⁵ There are some exceptions, see for example, Wood, Elisabeth Jean. (March 2009). “Armed Groups and Sexual Violence: When is Wartime Rape Rare?” *Politics and Society* 37, 1:131-162.

¹²⁶ Several raped women testified that their attackers specifically stated that the rapes were motivated by revenge for the women’s refusal to marry Hutu men, as Gacumbitsi himself specifically stated.

were “established as part of the widespread attack against Tutsi civilians in Rusumo” (Gacumbitsi Trial Judgment p.78 para. 329). Although Gacumbitsi was accused of inciting mass rape, in the judgment he is ultimately convicted of inciting only a few instances of rape, and the accusation that he himself committed rape is erased.¹²⁷ The philosophical question that remains is the gulf between incitement and committing, whether superior responsibility is worse than, equivalent to, or not as grave as committing such violence, including rape, oneself. And how should they be differently understood and punished is an ongoing debate, both in legal circles and in academic scholarship on the legacy of the court (see, for example, Bishai 2013).

The Trial Chamber convicted Gacumbitsi of eight counts of inciting rape, acquitting him on three additional counts after finding insufficient evidence to demonstrate that he had instigated the crimes. On Appeal, the acquittals were reaffirmed, as the Appeals Chamber cited a lack of credible testimony and evidence that Gacumbitsi’s words substantially contributed to the three other rapes (Gacumbitsi Appeals Judgment, 7 July 2006, p.54). The Appeals Chamber also found that the Prosecutor failed to offer specific facts demonstrating Gacumbitsi’s control over the perpetrators of the rapes in question,¹²⁸ thus failing to demonstrate superior responsibility for them. In terms of general attacks committed at Nyarubuye, the Trial Chamber found

¹²⁷ In an interesting parallel, during Gacumbitsi’s appeal on the charge of ‘committing genocide,’ the defence argued that the indictment did not include his participation in the killing of Murefu, rather it only alleged that Gacumbitsi was responsible for killing members of the Tutsi population; The Appeals Chamber found that Gacumbitsi could not have reasonably known that he was being charged with killing Murefu, Notably, however, the Appeals Chamber determined that even if the killing of Murefu was set aside, the Trial Chamber’s conclusion that Gacumbitsi committed genocide would still be valid. In contrast, in many cases cited in the previous chapter, individual rapes were disproven until the charges were dropped entirely, despite evidence of widespread rape. (see Leddy, *Human Rights Brief* for further discussion: <https://www.wcl.american.edu/hrbrief/14/1gacumbitsi.cfm>).

¹²⁸ As has been noted in other cases, this may be an example where a higher standard of evidence is expected in regard to sexual violence charges. See <http://iccwomen.org/images/Katanga-Judgement-Statement-corr.pdf>

Gacumbitsi instructed, ordered, or directed groups of assailants (including the communal policemen, *conseillers*, gendarmes, soldiers and the *Interahamwe*) to attack Tutsi civilians, which the Appeals Chamber reiterated, as the evidence proved his authority, and that his orders had a direct effect on the commission of those crimes (Gacumbitsi Appeals Judgment, 7 July 2006). Notably, the Appeals Chamber cited his instigation of particularly sadistic rapes when it overturned his thirty-year prison sentence and imposed life imprisonment instead (Gacumbitsi Appeals Judgment, p.75). Although successful here, the charge of incitement is notoriously difficult to prove under international law. The Appeals Chamber also overturned the dismissal of the charge of crime against humanity for the murder of his two female tenants, Beatrice and Marie, whom he evicted and were subsequently killed.¹²⁹ Perhaps an Appeal could have re-examined the rape accusation brought by Witness TAP, which is not mentioned at all in the Appeal Judgment.

While the finding of inciting rape is highly significant, there have been few successful convictions for rape as genocide and this surely would have been a crucial verdict had it been secured. In the end, convicting Gacumbitsi of not only inciting rape but actually committing it himself arguably would have been much more significant, not only for acknowledging the testimony of Witness TAP, but for the ICTR record and the ongoing development of international jurisprudence on sexual violence. Arguably in some ways this more removed degree of culpability of the perpetrator seems to lessen the gravity of the crime.

¹²⁹ In the Trial judgment, the Chamber was not persuaded by Prosecution evidence that Gacumbitsi was responsible for the murder of Marie and Beatrice, but the Appeal Judgment (with Judges Güney and Meron dissenting) found that Gacumbitsi aided and abetted the murder of his Tutsi tenants, by expelling them at the height of the violence with little regard for the danger to their lives, and entered a conviction for murder as a crime against humanity.

Analyzing the International Criminal Court (ICC) case *Prosecutor vs. Jean-Pierre Bemba Gombo*, Fiona O'Regan argues that in failing to retain cumulative charges (which included the crimes against humanity and war crimes of rape as torture and as an outrage upon personal dignity), the ICC Pre-Trial Chamber failed to acknowledge the importance of expressiveness in international criminal law.¹³⁰ In attempting to expedite the proceedings and avoid burdening the defence with multiple charges, this decision neglected the importance of acknowledging these crimes separately, particularly in a context in which gender-based violence laws are still works in progress. Expressive theorists¹³¹ argue that one of the crucial functions of the law is its ability to articulate and shape norms, and this function carries distinct weight in the international legal context. While the *ad hoc* tribunals accepted the cumulative charging approach, this decision at the ICC was that these charges were subsumed under other rape charges. As O'Regan articulates, here is a missed opportunity to send a powerful message relating to the heinous nature of these particular forms of gender-based violence, and to offer recognition to the distinct suffering the victims in question experienced (2012, 1326). By denying that rape can be an outrage upon a person's dignity, a means of torture and a crime in itself, the ICC demonstrated a narrow understanding of the suffering that rape produces, and in a way diminished its seriousness.

The crime of sexual violence during war has been historically under-recognized, and as of late, such as in the case of the ICTR, it has been recognized but only rarely has

¹³⁰ The failure to acknowledge cumulative charges also showed a disregard for the jurisprudence of the ICTY and ICTR, which found that each type of charge (i.e.: rape as a crime against humanity and rape as a war crime, and torture as a crime against humanity) was permissible because each contains an element not found in the other – and therefore they are distinct. While it is important to recognize rape as a form of torture, the collapsing of rape into torture – as done in Bemba – also hides the gender-specific prohibited acts inside seemingly gender-neutral crimes.

¹³¹ For example, see Sunstein, Cass R. On the Expressive Function of Law. *University of Pennsylvania Law Review* 144.

led to successful convictions. On Appeal, Gacumbitsi's sentence was increased to life imprisonment, thus had he been charged with committing rape himself, it is hard to argue a more harsh sentence would have been the result (although perhaps the original sentence would have been life imprisonment). Nonetheless, naming his personal perpetration of rape would have been a weighty action on the part of the court. A major problem I see with the judgment's silencing of witness TAP is that, if mainly for expressivist and symbolic purposes, considering the accusation that Gacumbitsi himself committed rape would have been significant not only for Witness TAP herself, but for international jurisprudence. It would show just how deeply embedded rape was in the genocide: not only were leaders such as Gacumbitsi encouraging others to commit rape, and condoning that rape, he was also committing it himself. While Witness TAP was found to be credible, her accusation that Gacumbitsi raped her was dismissed primarily because it was not part of the indictment. This shows a lack of adequate trust-building by the investigator, and that the tribunal was not flexible enough (as in Akayesu) to adapt to the evidence arising in the trial. We should not downplay the significance of the way the legal record is in fact skewed, as the judgment finds him guilty only of inciting rape. The official discourse only tells part of the story. As in many other cases mentioned, the full breadth of victim's suffering and a more accurate historical record is crucial if we are to make progress on the prosecution of sexual violence.

As Ní Aoláin, Haynes and Cahn suggest, *ad hoc* tribunals only capture a slice of the harms done to women during conflict, and "there has been little exploration of the extent to which the violence which has been grafted onto legal accountability norms actually maps onto women's subjective experiences" (2011, 154). Specifically, they argue that disproportionate attention to physical harms is detrimental not just for victim's wellbeing

and rights, but for increased accountability and long-term peace in post-conflict societies. These examples repeat what feminists already know from the domestic legal context: that for numerous deep-rooted structural reasons, there remain significant barriers to prosecuting sexual violence crimes, thus “fewer violations that disproportionately affect women appear before the courts, perpetrators are constantly *not* brought to justice, and the stigma of rape is perpetuated” (Ní Aoláin, Haynes and Cahn 2011, 162). In the conclusion to her overview of international criminal law and sexual violence, Alison Cole argues “perhaps the most pressing challenge relates to mode of liability issues which have been a consistent basis upon which rape charges have resulted in acquittals. It is essential not only that charges for rape are brought in the international arena, but that convictions are secured” (2010, 59). While the successful conviction of Gacumbitsi for rape as a crime against humanity for “causing women to be raped as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds” (Gacumbitsi Trial Judgment, 100) is highly significant, and an important step forward, many obstacles to and problems with successful rape prosecution remain. As the case explored in this chapter exemplifies, Buss poignantly argues that the actual outcome of trials feels in some respects like an add-on chapter to a much larger story (2010).

This chapter has highlighted the testimony of a woman who accused former Rusumo Mayor Gacumbitsi of not only inciting rape, but personally raping her. It explored the re-traumatization she experienced, particularly during callous cross-examination by the defence, and the continued failings of the ICTR to respect the testimony of female rape victims. Secondly, this chapter critically analyzed the legacy of

the Gacumbitsi trial, as part of a larger project to recover some of the hidden and silenced aspects of what happened at Nyarubuye.

Unpacking the transcript of the Gacumbitsi trial - specifically the testimony of Witness TAP and her revelation that the accused raped her, reveals important lessons about the enduring maltreatment of victim-witnesses during cross-examination, particularly those who testify to intimate violations such as rape. Importantly, it raises questions about what the outcome (judgment) of the trial reveals, and what it conceals. This trial is at the nexus of the debate over direct perpetration of sexual violence versus superior responsibility for its widespread perpetration, as Gacumbitsi was accused of both. While throughout the proceedings the ICTR has frequently acknowledged rape as a tactic of genocide, the conviction record does not match this, and in fact greatly diminishes its widespread use during the genocide.¹³² Part of my intent here was to reinscribe the testimony of this witness in the minds of scholars working on prosecuting sexual violence, both for the lessons we can take, and for the countless other victims whose stories are neglected and silenced.

We have to be careful that this version of official history, in which only a minority were found to have committed sexual violence during the Rwandan genocide (as so few were convicted), is not engraved on the record and the suffering of a considerable number of women (thousands, if not more) forgotten. The next chapter will examine a different type of official discourse – memorialization, with a critical eye to what bearing witness may leave out, and what history the memorial site does communicate for future generations of both Rwandans and international observers. First, I will outline (in brief)

¹³² In some ways, adding this criticism to that of many feminist scholars examining the work of the ICTR raises questions about the efficacy of international legal tribunals to seek justice for victims of sexual violence, an ongoing and important debate.

the other levels of justice mechanisms in post-genocide Rwanda, with particular attention to cases relevant to the Nyarubuye massacre.

Justice Mechanisms in Post-Genocide Rwanda

The transitional justice project in Rwanda operates on three main levels: internationally, through the work of the ICTR to bring to justice the highest level of perpetrators and orchestrators of the 1994 genocide; nationally, in standard courtroom justice; and locally, through the *gacaca* court system (as well as some third-party trials in foreign jurisdictions and military trials in Rwanda). Each of these spheres has played a significant role in seeking justice and creating a comprehensive record of the atrocities of the 1994 genocide.

Gacaca courts (Kinyarwanda for ‘justice on the grass’) were established in 2001 by the Rwandan government, intended to speed up the process of justice as tens of thousands of suspects were still awaiting trials in terrible prison conditions. Based loosely on a traditional form of communal law enforcement in Rwanda, through community participation at the over 12,000 *gacaca* courts covering most villages throughout the country, the government sought to establish truth, justice, and most of all reconciliation. Inspired by the South African Truth and Reconciliation Commission (TRC) their aim was to promote community healing by expediting the punishment of perpetrators, while being less expensive to the state and more driven by popular participation.¹³³ The *gacaca*¹³⁴ court system, although a response to the slow and expensive progress of the ICTR, was heavily criticized for not meeting international legal standards and processes, and debates continue about its overall impact on reconciliation in Rwanda (see Gahima, 2013; Waldorf, 2010). For example, while the *gacaca* system aims to resonate with local

¹³³ The official *gacaca* website can be found at: www.inkiko-gacaca.gov.rw

¹³⁴ Unfortunately, an analysis of the *gacaca* courts is not a part of my dissertation, as access to the *gacaca* files is now much more restricted in Rwanda, and particularly cases involving sexual violence are kept strictly confidential.

Rwandans, many see it as a coercive tool of the state. According to the 2012 *Human Rights Watch* Report on Rwanda, *gacaca* courts had almost completed their work by the end of 2011, after trying more than 1.2 million cases since 2005. This localized form of truth commission holds important lessons, although some have cited injustices, insecurity and re-traumatization¹³⁵ as a result of *gacaca*. The wider process of healing and reconciliation following the genocide is ongoing (see Simon, 2012, 265), but these community courts are an important part of bearing witness to the genocide.¹³⁶

Early in the process, Rwandan women's organizations successfully pressured the government to classify rape among the most serious crimes (Category 1) to be tried in national courts. However, in 2008 a controversial legal change transferred serious cases – including an estimated 6000–7000 rape cases – from the national courts to *gacaca*'s community courts (Brounéus 2008). In these grassroots community courts, “a pause to the gendered dimensions of such interactions in the context of intimate sexual relations should raise questions about how secure an environment this would be for a woman testifying to rape or other forms of sexual assault” (Ní Aoláin et al. 2001, 170). Karen Brounéus' important study provides us a rare glimpse into the experiences of 16 female survivors who testified at *gacaca* – and presents alarming results. She argues that the common assumption that truth-telling is cathartic or healing is based on little empirical evidence, and in fact her study reveals that traumatization, ill-health, isolation and insecurity dominate the lives of women who testify (Brounéus, 2008: 57). Most women

¹³⁵ See Brounéus, Karen. (Feb.2008). Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwanda *Gacaca* Courts. *Security Dialogue* 39, (1): 55-76

¹³⁶ For a more comprehensive examination of the work of the *gacaca* courts, and the division between responses to its success see Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (2010), a favorable look at *gacaca*'s accomplishments, in opposition to the 2011 Human Rights Watch Report “Justice Compromised: The Legacy of Rwanda's Community-Based *Gacaca* Courts.”

gave written testimony about sexual violence and verbal testimony of other experiences, signifying the shame and stigma attached to rape. While the *Gacaca* law was modified to allow *in camera* testimony privately before one judge, in order to protect the victim, unfortunately this means that it is less likely that these crimes are publicly acknowledged. As Burnett argues,

Even if it is the case that Rwandans accept that gender-based crimes were committed widely and systematically during the genocide and are able to openly discuss the tragic effects of these crimes on Rwandan society, the fact that they are likely to be adjudicated privately will not contribute as fully to the way in which the judicial treatment of gender-based crimes is remembered (2004, 777).

This highlights the ongoing dilemma between protecting victims from the social stigma and re-traumatization of public disclosure, and the need for acknowledgement and public records of these crimes to counter impunity. Reports and testimony, with measures in place to protect the identity of victims, should be collected and publicly available, to bear witness to these crimes.

Other Judicial Mechanisms

National trials are assumed to be more accessible to the population, and thus have more impact on broader goals like deterrence and reconciliation. But in many post-genocide and post-conflict contexts, including Rwanda, countries lack the judicial capacity and legal expertise needed, and accusations of unfair trials abound. In December 2003, a Rwandan court in Rukira Sector found 18 people guilty of genocide crimes, accused of being among the leaders of militia and civilians who took part in the Nyarubuye Church massacre. A leader of the group responsible for the killings, Gitera

Rwamuhizi, was sentenced to 25 years in prison, pleading guilty of killing 10 people (IRIN, 2003). About half of the accused confessed, and the rest were sentenced to terms ranging from 7 to 16 years. David Harrison, a journalist who worked with Fergal Keane, described the makeshift trial, in a school classroom, where the Rwandan prisoners dressed in pink were only guarded by two lightly armed men. Gitera recalled to him that day in April 1994, where they were told ‘today’s work is to go to Nyarubuye to kill Tutsis’ (269). Evariste Batare, another convicted killer, insisted that they had been told again and again that Tutsis were ‘enemies of the state’ that had to be killed. When he asked why these prisoners, facing long jail sentences, did not run away, the Prosecutor explained that there was nowhere to go. While national trials were an important part of justice-seeking mechanisms, a massive prison population, depleted judiciary, and lack of competent experts raised substantial challenges for the system. While in some ways national trials advanced respect for the rule of law and accountability in the country, the one-sided nature (largely viewed as victors’ justice for excluding RPF crimes entirely) has dampened the accomplishments of national trials (see Jones 2013) and national reconciliation. “The spectre of victor’s justice remains a dark cloud hanging over the trials in both the national courts as well as the *gacaca*” (Jones 2013, 100).

Universal jurisdiction, which essentially entails that a link of territory or nationality is not required between the state and the offender, remains contested in the fields of international law and transitional justice. While supporters argue that it is increasingly necessary in our globalized world in order to combat impunity, and not allow perpetrators of crimes against humanity to escape justice on foreign soil, detractors fear that it gives too much power to unaccountable foreign prosecutors and judges. Trials

against those who committed atrocities during the Rwandan genocide have been held in numerous foreign countries, including Canada, Sweden, the Netherlands, and Switzerland. As Max Rettig articulates, “While scholars have vigorously debated the merits of international tribunals, hybrid courts, and local justice, comparatively little attention has focused on transnational trials—when national courts, typically in Europe and North America, exercise jurisdiction over foreign persons for crimes allegedly committed in foreign countries” (2012, 365). He examines specifically the case of two Rwandan nuns¹³⁷ tried in Belgium for their role in the genocide, to assess the strengths and weakness of transnational trials. In particular, he argues that the challenges of conducting such a trial in a foreign land included the juror’s lack of understanding of Rwandan history and culture and the privileging of Belgian legal values, such as due process and relatively light sentences, in contrast to proceedings in Rwanda where the atrocities took place. As well, the reluctance of the Belgian government to grant a visa to a key witness and accuser all negatively impacted the effectiveness of this trial. Rettig also questions the trial’s contribution to reconciliation, as it was so far removed from the Rwandan population. He ultimately concludes that, “while transnational prosecutions aid in the fight against impunity and tend to provide robust due process protections, they are hampered by logistical challenges, they inherently privilege western legal values, and they have limited impact on the affected community” (371). Rwanda’s colonial past with Belgium further complicates these trials, as perhaps an element of guilt for exacerbating the Hutu-Tutsi division, and not intervening to stop the genocide, is involved.

¹³⁷ Sister Gertrude Mukangango and Sister Maria Kisito Mukabutera, of the Benedictine Order, were convicted of homicide in Sovu province, sentenced to 15 and 12 years respectively, of which they only served half.

In the second such trial in Brussels under the Act Concerning Grave Breaches of International Humanitarian Law, in 2002 wealthy businessmen Etienne Nzabonimana and Samuel Ndashyikirwa were arrested for their part in the Rwandan genocide. The two half-brothers were charged with helping extremist Hutu militia by providing them with weapons, vehicles and beer in the southeast region of Kibungo, including Nyarubuye church, during the April 1994 killing sprees where militia killed tens of thousands of civilians. In 2005, the six-week long jury trial dealt with allegations of attempted murders as war crimes (Hirondelle 2005), and the Prosecution's case included dozens of Rwandans as witnesses, including many female survivors. Both denied the accusations, including their involvement in the MRND and 'Club Kibungo,' which held meetings to plan and organize the killings. The men were convicted of all but one allegation, and sentenced to for 12 and 10 years imprisonment respectively. The Court accepted as mitigating circumstances the general psychosis in Rwanda in 1994 and the fact that both accused had saved the lives of some Tutsi (Reydams 2009, 860). This is another important part of the story of what happened at Nyarubuye.

The next chapter will examine the complexities of memorialization in post-genocide Rwanda, through my own research and observation. It analyzes representations, comparing the Nyarubuye memorial site to the other national sites in Rwanda and focusing on the 'official narrative' that proliferates and the politics of memorialization, with an eye to how sexual violence is understood and represented.

3.1

Remembering Nyarubuye

A smell, a soft breeze, a shadow dancing on a wall is often all I need. I remember the utter stillness of Nyarubuye and the way the dust smoked up around my shoes. The bodies in the school and church complex lay like sprawled puppets and the stench made me gag. Pink flowers lined the road and the tall eucalyptus trees swayed in a soft wind. I counted the dead and wrote in my notebook the color of their clothing. Some looked as if they had been running, others curled up to block blows still others seemed to me as if they were sleeping (Lorch 2014).

In this chapter, I will begin by describing my personal research visit to the Nyarubuye Memorial site, analyzing questions around genocide representation and commemoration. This chapter (3.1) grapples with some of the key questions in the study of memorialization, and difficult terrain of collective memory in post-genocide Rwanda. A particular focus on the evidence of sexual violence will guide a comparative discussion of Nyarubuye with other national memorial sites in Rwanda. In the next section (3.2), I will examine the politics of memorialization in Rwanda, investigating the hegemonic national narrative, the government regulation of collective memory, and the implications of this for the future. As a visitor and observer,¹³⁸ my goal was not to evaluate the merits of this memorial site, but rather to focus on the dominant narrative and representation, examined against the backdrop of theoretical work on memorialization. I argue that the oral nature of the sites allows for differing individual experiences, and highlights the fact that memorials are never fixed or static. Further, the acknowledgement of sexual violence at the national sites of memory in Rwanda brings to light important insights about

¹³⁸ I am highly aware of the fact that each individual will experience the memorial site differently depending on their prior knowledge, background, and a range of other attributes. I am very much an outsider at this site, and Rwandans would experience and relate to the site and commemoration practices very differently than myself, thus I am not attempting to draw general conclusions about the meanings of this memorial site or others.

gendered representation and its dilemmas. Memory of the genocide and the sexual violence that was a feature of it is simultaneously impacted by one's own position and circumscribed by the government's official narrative. As outlined in my introduction, Nyarubuye is an important site for thinking about rape – how it functioned in the genocide, how it was dealt with by the judicial process of the ICTR, and here, how it has been imprinted in national memory vis-à-vis the memorial sites.

In the past half-century there has been a proliferation of memorials across the world, prompting historians such as Pierre Nora to refer to the current era as the 'age of commemoration' (see Nora 2002). Memorials may serve multiple functions simultaneously, acting as a celebration of heroes, a place of sanctuary for mourning, an acknowledgement of victims, a conduit for reconciliation, a record of atrocities, and/or as a pedagogical instrument. Part of the dilemma of post-conflict (or post-genocide) justice and reconciliation lies in how to remember the past, and what to carry forward from it (see Cook 2004; Ibreck 2010), and there are many layers of remembrance, manifest from the individual and local to national levels. How much should a society focus on remembering traumatic events? Is it more beneficial at some point to forget in order to move forward and reconcile? How much is 'enough' acknowledgement and commemoration, and how can survivors move on from such trauma? How should governments and citizens represent such atrocities, in a way that honours the dead and teaches future generations about this history? These are complicated political and social questions, and memorialization is always a dynamic process. As Martha Minow articulates in *Between Vengeance and Forgiveness*, "devoting public spaces to memories of atrocities means devoting time and energy to decisions about what kinds of memories, images, and messages to embrace, critique, and resist" (Minow 1998, 138).

While it receives less attention than legal mechanisms and reconciliation efforts in the field of transitional justice, memorialization is often an essential part of the transition from violence and authoritarianism to peace and democracy, allowing a common history to foster social reconciliation and prevent future violence (see Minow 1998). Though commemorating war heroes and important men has been common throughout history, representing a traumatic event such as genocide is a complicated endeavor at the crossroads of victims' experience, official (and unofficial) history, evidence preservation, artistic expression, and the communication of lessons learned. As the preeminent scholar of Holocaust memorials James E. Young suggests, memorials are always deliberately constructed, and a product of the political context in which they arise. He argues that states use commemorative spaces to establish official memory and a shared, collective history, while visitors simultaneously imbue the spaces with meaning, exemplifying the dialogical nature of memorialization (1993, 15). While memorial sites may be commonly viewed as a static way of representing the past, in fact their creation is a complex process intertwined with identity shaping and nationhood. Memorials may appear to address the past, but they also have repercussions in the present and impact the future of groups and nations. As Minow argues, "living after genocide, mass atrocity, totalitarian terror makes remembering and forgetting not just about dealing with the past. The treatment of the past through remembering and forgetting crucially shapes the present and future for individuals and entire societies" (Minow 1998, 119). Echoing this contention, Viejo-Rose articulates how "memorials exist in a space between history and memory, affect and identity, between past, present and future" (Viejo-Rose 2011, 466). The questions facing post-conflict and post-genocide governments and citizens are not so much whether to

memorialize¹³⁹ - although in some cases, it is not immediate, or is mainly a private endeavor - but how, in what form,¹⁴⁰ and to what end. Some theorists have argued that memorials can actually undermine peacebuilding and reconciliation, aggravating old wounds and acting as a constant reminder of violence and tragedy (see Ibreck 2010, 337).¹⁴¹ For example, Bauman and Winter, two important theorists of memory, have emphatically stated that memorials and commemorations do not heal (see Viejo-Rose 2011). What, then, is the primary purpose of memorialization? Does it have positive impacts on societies that are recovering from violence and large-scale or collective trauma? Despite the ambiguity of its impacts, memorialization has become a common practice in many post-atrocity contexts. As Lisa M. Moore argues, memorials must be taken seriously as socio-political forces with tremendous symbolic power (2009, 48-49). Official memory is a top-down endeavour, where governments construct memorials and write or regulate authoritative histories, but in many post-conflict contexts individual citizens create private, local forms of memorialization as well – and sometimes these two forms can clash, if local memories contest official versions of the past.¹⁴² There is no one-size-fits-all approach to transitional justice and post-conflict reconstruction, and in Rwanda, memorialization involves a combination of many institutions and mechanisms, including grassroots efforts that have become increasingly institutionalized over time.

¹³⁹ There are some exceptions, such as El Salvador and Argentina, where governments did not include memorialization of atrocities until many years later.

¹⁴⁰ While memorials are often seen as objects such as cenotaphs, here I am focusing specifically on preserved ruins and museums, but memorials can also take the form of ceremonies, commemorative days (which are important in Rwanda), and artistic forms like music, films, theatre, poetry, etc.

¹⁴¹ Also, Oliver Nyirubugara's book *Complexities and Dangers of Remembering and Forgetting in Rwanda* (2013, Sidestone Press) is the first in a series on 'memory traps' in Rwanda, arguing that Rwandans have become hostages of their memories.

¹⁴² A good example of this is the Turkish governments' denial of the Armenian genocide, which citizens have long recalled privately and fought for acknowledgment of.

Alongside national memorial sites, which often display the remains of victims, many survivors' groups in Rwanda organize local commemorative ceremonies, and at the same time advocate survivors' rights to honour the dead through burial (see Ibreck, 2010). For example, Ibuka is a prominent organization with local branches throughout the country advocating for genocide survivors and coordinating memory work.¹⁴³ The balancing act between acknowledging this violent history without rekindling divisions is a difficult one. Michael Rothberg suggests that we see memory “as *multidirectional*, as subject to ongoing negotiation, cross-referencing, and borrowing: as productive and not private” (2009, 3).

As Nicola Henry suggests, “memory fever can be seen though the dramatic rise in memorialization in recent times. The contemporary interest or fascination with memory extends to individualized as well as collective, cultural or social forms of memory” (Henry 2011, 11). Henry posits three concurrent developments to explain the contemporary fascination with memory: globalization and advances in technology that have facilitated diverse forms of memorializing, the growing study of trauma and memory studies (particularly in psychology), and the recent emergence of the field of transitional justice (Henry 2011, 12). Alongside global integration, these developments occurred in a post-cold war context that saw the rise of modern human rights discourse and increasing multiculturalism. As well, the postmodern turn toward deconstructing hegemonic power and including marginalized voices has brought up much discussion about forgotten histories. These trends are tightly linked to the proliferation of Holocaust

¹⁴³ As Rachel Ibreck describes, survivor organizations began to emerge soon after the genocide, and range from *ad hoc* local ‘committees’ to national organizations. Ibuka, which means ‘remember’ in Kinyarwanda, is a non-profit association that has a leading role in organizing commemorations, and collaborates with other groups such as Avega, the genocide widow’s association, and AERG, the student survivors’ organization (see Ibreck 2010).

studies, particularly in North America and Europe. As individual memory¹⁴⁴ relies on larger cultural and social narratives, and vice versa, inevitably individual and social/collective memory is very much intertwined and cyclical. In 1992, French sociologist Maurice Halbwachs first developed the concept of ‘collective memory,’ to refer to the social construction of memory and the role of institutions in the transmission of memory; He argued that over time individual memory becomes generalized within a social framework (see Henry 2011, 15). Personal memory is therefore distinguished from *collected* memory - collections of stories, experiences, and emotions of a group of survivors, and from *collective* memory, shared and passed on within groups, with its own dynamic separate from individuals, contained in various forms from films and books to legal documents and commemorative sites.¹⁴⁵ In this newly emerging area of research, scholars have asked the important question of how countries and citizens write their histories and envision themselves in relation to a past that contains such violent and traumatic events (see Roth and Salas 2001; Young, 1994; Moore 2009). For example, the anthology *Disturbing Remains* includes essays that “explore the effects of social disaster on official and popular representations from the past,” asking, “how have such events been transformed into memory and history in various cultures?” (Roth and Salas 2001, back cover).

Gender issues and women’s specific experiences, including of sexual violence, are often overlooked in memorialization practices (see Henry, 2011; Jacobs 2010). However,

¹⁴⁴ The status of individual memory is highly contested, as it is seen as fragile, ambiguous, fluid, and unstable; Psychologists have acknowledged that memory can be repressed, altered, or corrupted by psychological trauma (see Felman and Laub, 1992).

¹⁴⁵ For further discussion see Olick, J.K. (1999). ‘Genre Memories and Memory Genres’ *American Sociology Review* cited in Henry, 2011.

five of the six¹⁴⁶ National Memorial Sites in Rwanda do acknowledge, as part of the official discourse, that rape was a weapon of the genocide. This acknowledgement demonstrates important progress, as historically, gender-based violence has often been overlooked in memorialization practices (see Jacobs 2010). Even so, debates over how to represent rape, whether bodies should remain on display, and the limitations of these sites' reliance primarily on artefacts and guides (rather than text) continue.

Last year marked the 20th anniversary of the Rwandan genocide. April 7th is the official day of commemoration (marked by the United Nations as the International Day of Reflection on the Genocide in Rwanda), and the week following Genocide Memorial Day is designated as an official week of mourning, when local communities organize commemorations¹⁴⁷ to mark the date of significant massacres (see, for example, Straziuso, 2014). The memorial sites in Rwanda, including five of the six National Sites,¹⁴⁸ appear for visitors as simple and authentic massacre sites, (with the Kigali Memorial Centre as the exception). Of the five built on massacre sites, only one (Murambi) includes photographic and text-based exhibits explaining the genocide. The others contain no photographs or text to provide explanation or context, although the government has articulated plans for such exhibits in the future. At each site, guides - all

¹⁴⁶ As will be explored further, sexual violence is mentioned at the Kigali Memorial Centre and Ntarama, and displayed in more prominent ways at Murambi, Nyamata and Nyarubuye, which is the focus of this research. Bisesero is a site devoted to Tutsi resistance during the genocide, and there was no mention of sexual violence during my visit.

¹⁴⁷ For a more detailed discussion of the politics of commemoration ceremonies see Brandsetter, 2010.

¹⁴⁸ In many ways, the Kigali Memorial Centre is the exception, as it was not built on a massacre site (although there are mass graves), and is a museum with multiple text-based exhibits, including photographs, multimedia displays, and so on - much more in the style of Holocaust Museums in Europe and the USA (see Brandsetter 2010, 12). Bisesero is also not a massacre site itself, but exists adjacent to one on a nearby hill.

survivors themselves - walk visitors through the memorials, delivering an historical narrative. Partially due to a lack of resources and partially because of the government's emphasis on preserving the evidence to counter genocide denial, unlike other pristine and preserved memorials in other countries where one is distanced from the horror in a museum, the sites in Rwanda are raw and visceral; They are constantly in flux, and as Tadjo states, are in many ways still 'under construction' (Tadjo, 2010). Bolin writes that the national genocide memorials:

are, for the most part, on the site of genocidal massacres, incorporate original buildings, display weapons of genocide, victims' clothing, mass graves, personal items, and, particularly, human remains. It is the materiality of these sites that is most distinctive: it tends to be blunt and unfiltered, for example displaying racks of clothing worn by victims or piles of bones sorted by type, the remains of those murdered on site (Bolin 2012, 200).

The national genocide memorials in Rwanda are overseen and mainly funded¹⁴⁹ by the National Commission for the Fight Against Genocide (CNLG). In Rwanda, as elsewhere, memorials are built at (or near) the actual site of the historical event, where tangible evidence adds to the perceived authenticity of the memorial. The conflict over whether church buildings should be preserved as memorials or returned to religious purposes is ongoing, and closely linked to debates around the complicity of the church in the Rwandan genocide (Longman and Rutagengwa 2006, 132). The sites are interpreted and presented a particular way, as all such sites are deliberately constructed, but unlike some Holocaust memorials,¹⁵⁰ for example, there is little ambiguous artistic influence or

¹⁴⁹ The Kigali Memorial Centre and Murambi also receive funding from the non-governmental organization (NGO) Aegis Trust.

¹⁵⁰ For example, Young looks in-depth at the significance of Nathan Rapoport's Warsaw Ghetto Monument and its symbolism, and the backlash against George Segal's *Holocaust* in San Francisco, as

abstruse creative presentation.¹⁵¹ At these sites, visitors are walked through what happened, where it happened, and presented with the evidence without physical structural barriers, a raw and personal experience, which I would suggest, could lead people to believe they are merely uncovering the ‘truth’ of these historical events.

In her comparative article about commemoration, Lisa M. Moore calls Rwanda ‘the land of a thousand memorials,’ (as Rwanda is often called the ‘land of a thousand hills’) referencing the proliferation of memorials to victims of the 1994 genocide that dot the landscape in Rwanda. She argues that these memorials are politically loaded and support the consolidation of power, as allegations of atrocities by the Rwandan Patriotic Front (RPF) defense forces are buried in silence (Moore 2009, 56; see also Straus & Waldorf, 2011; Longman and Rutagengwa, 2006; Des Forges 1999). Rachel Ibreck echoes the argument that memory in Rwanda is neither plural, nor openly contested, but points out that resistance to these dominant politics is to be expected. The hegemonic narrative condemns the international community’s inaction, legitimates the political power of the current government, and facilitates a reconciliation process in which ethnic divisions are a colonial imposition that is now outlawed (Moore 2009, 55). Moore argues that the primary motivations for memorialization generally include symbolic justice, reconciliation, nation building, and the prevention of future violence through education, and “while museums and memorials struggle to stabilize the past, memory remains unsettled, politically fraught, and perpetually haunted by forgetting” (Moore, 2009, 60). Meierhenrich and Lagace have emphasized the importance of studying memory ‘in the vernacular,’ criticizing the focus on national memorialization, which they argue has

many believe such traumatic experiences of violence demand as literal an expression as possible (1994, 9).

¹⁵¹ One exception would be perhaps the sculptures and gardens at the Kigali Memorial Centre.

eclipsed discussion of small-scale mnemonic practices in Rwanda (2013). This call for a micro focus on social memory can also entail detailed analyses of individual sites, which is productive for understanding official history and memorialization in this post-genocide context.

These complex questions around memory, particularly how collective memory is constructed (or imposed), what is left out and contested, and how sexual violence is represented, form the basis of my examination of the Nyarubuye Memorial site. As previously discussed, many Rwandans sought refuge in churches as the massacres began in 1994, because they had been sheltered from harm in the same churches during previous violent episodes (see Des Forges, 1999; Longman and Rutagengwa, 2006). This time these sacred spaces were turned into sites of horror. Once Tutsis were gathered in churches such as Nyarubuye, they became easier targets for the Hutu militia and *Interahamwe*. Today Nyarubuye has returned to its religious and educational roots, serving the community, despite its tragic past. Its memorial to the genocide is moving, disturbing, and a difficult experience for both international and Rwandan visitors.

Visiting Nyarubuye

From the long, bumpy, reddish dirt road driving up to Nyarubuye, you can see for miles. Although the land is flatter and dryer in this part of the country, the lush hills still create beautiful green landscapes and are often noted as a defining feature of Rwanda, particularly striking to visitors. The Nyarubuye Catholic Church complex is in the rural southeast of Rwanda, near the Tanzanian and Burundian borders, and it is not a site that tourists frequently visit due to its remote location. The brick sign announcing our arrival is intact, but with the words ‘Urwibutso Rwa Jenocide’ underneath, proclaiming that this

is a memorial to the 1994 genocide. The compound is large. As we hike up the road, there are large rectangular mass graves covered in purple flower crosses off to our left side - a memorial garden that is sometimes visited by dignitaries. Purple is the colour of memorialization in Rwanda,¹⁵² and there are mass graves at virtually every memorial site. I meet the guide, and my driver and translator chats with her in Kinyarwanda. At first the massive red-brick church overwhelms me emotionally because I have seen it represented many times in photographs. I recall the way it was depicted by journalists soon after the massacre, with bodies strewn around the entrance; The large white statue of Jesus above the doors is iconic, missing its left hand, which was shot off during the massacre (see figure 3, 148).

We solemnly enter the area now designated as a small memorial museum, the former convent.¹⁵³ It has basic white walls and windows, but still none of the promised text panels or photo exhibits to describe the events that occurred here in April 1994.¹⁵⁴ The site remains unfinished and under construction. For now, my understanding of how the events unfolded comes only from the guide. She shows me hollowed out tree trunks lying horizontally where killers allegedly kept the blood of Tutsi victims (much in the way Rwandans traditionally ferment banana juice to make beer), although I have not read such reports from other sources. Here, as at other sites, there is a collection of large wooden sticks used to rape women. This was a common form of assault on Tutsi women, and is the prominent symbol of widespread sexual violence at many of the memorial sites.

In addition to sticks and branches, perpetrators also raped women with other weapons as

¹⁵² The official color of memorialization was changed to grey in 2013, although many memorial sites continue to use purple.

¹⁵³ This was the Convent of Benebikira Sisters, a religious congregation founded in 1919 by the White Sisters of Africa, who are the largest order of nuns in Rwanda. Nineteen Benebikira Sisters were killed during the 1994 Rwandan genocide (Smith and Rittner, 2004, 201).

¹⁵⁴ This information, about the planned exhibits, was communicated to me from the guides..

well as their penises. Several guides at the different sites state that this artefact symbolizes the weapons that sexually assaulted hundreds of thousands of female Tutsi during the genocide (see figure 4). My driver points out the damaged statue of Mary, which I had read about previously, decapitated because of her 'Tutsi-like' facial features. Her arms and legs were also cut off, so only a terracotta coloured torso wearing a gown remains (see figure 5). This display harkens back to accounts of the very gendered forms of propaganda that were popular prior to the genocide. Like other memorial sites, rows of skulls are lined up in the memorial area in glass cases. The evidence from the violence is clearly visible, as many skulls are cracked and others contain bullet holes. Another row of tables displays hundreds upon hundreds of major bones, cleaned and sorted, from the deceased victims. I note to myself the order and organization of these sites, perhaps in a way a reaction to the chaos and loss represented here. Although many of the artefacts are out in the open, I feel hesitant to touch them. On one table, the simple weapons used to kill are displayed, including farm implements like hoes, rusty shovels, and garden tools. Other tables include the basic belongings people had brought with them to the church – mainly shoes and clothing, some books and kitchen utensils – revealing the hope they had to continue their lives after seeking refuge here. Just outside, the guide shows me a small slab of stone, worn smooth on one side with a lighter V-shape indent caused by killers repeatedly sharpening their machetes here during the massacre. She tells me that mainly guns and simple weapons, particularly hoes, were used here to kill victims, although reports also corroborate the use of a few grenades as well (Gacumbitsi Trial Judgment, 26). As we walk through the compound, the guide shows a makeshift brick stove, and alleges that the killers roasted and ate the hearts of Tutsi victims during this massacre. Both my guide and driver cannot understand how Hutu perpetrators committed

cannibalism, stating that this is the only site in which such madness occurred.

Cannibalism is a rumour that has emerged in other accounts of what happened at Nyarubuye, but I cannot confirm it as a proven fact through legal documents.¹⁵⁵ Outside in the courtyard, a particularly significant story emerges. My driver takes me to the latrines, where the bodies of 16 more women were discovered very recently –in April of 2012, around the time of commemoration ceremonies, 18 years after their murder. It is likely that the bodies of many of the women who were raped in the adjoining room were thrown into the latrines (see figure 6), and although some were recovered immediately after the massacre, it was only once the latrines needed to be restored for visitors, that presumably all of the bodies were recovered and eventually buried. This accidental evidence of sexual and gender-based violence demonstrates the ongoing process of recovery at these sites, as well as further evidence of its widespread and systematic nature as a tool of the genocide.



Figure 3: Nyarubuye Church



Figure 4: Hollowed-out tree trunks display sticks used to rape women during the massacre.

¹⁵⁵ See Gahiji, Innocent. (April 11th, 2012) “Nyarubuye: Genocide Perpetuators Awful Deeds Revealed” *News of Rwanda* Retrieved at: <http://www.newsfrwanda.com/featured1/5884/rwanda-nyarubuye-genocide-perpetuators-awful-deeds-revealed-kistkhi>



Figure 5: Statue of Mary decapitated and dismembered, viewed as representing Tutsi women.



Figure 6: One of the latrines in which the bodies of 16 women were recently found.

Although back in use for the community, the large church is continuously under construction. During my visit in October 2013, the pews were all removed as the floor was being repaired. On Sundays at that time, parishioners sat on the floor, so devoted to worship in their community. At the ‘Kwibuka 20’ Ceremony in the spring of 2014 (Kwibuka means ‘remember’ in Kinyarwanda), a small, symbolic flame travelled the country to mark the twenty years that have passed since the genocide. At Nyarubuye during this commemoration, survivor Theopiste Mukanohele (18 years old at the time of the genocide), who was inside the church when attackers threw in grenades, killing hundreds, recalled how most of her close family died there (Straziuso, 2014). Mike Nkuzumuwami, a survivor from the community, helps look after the church now. School groups visit, to teach the younger generation about this history. I recall vividly that, during my visit, a group of children gathered as we left Nyarubuye, looking on eagerly, perhaps hoping for gifts from the few tourists who do visit this remote site.

It is hard to imagine the horror that occurred at this beautiful and iconic church in early April 1994. In his opening to *We Wish To Inform You That Tomorrow We Will Be*

Killed with our Families (2001), Philip Gourevitch struggles with how to react to his visit to this church compound in 1995. “I had never been among the dead before. What to do? Look?” he asks (16). Gourevitch writes that he didn’t need to see the bodies - he already knew, and believed, what had happened, but even after seeing them, the brutality was still strangely unimaginable. “Those dead Rwandans will be with me forever, I expect. That was why I had felt compelled to come to Nyarubuye: to be stuck with them – not with their experiences, but with the experience of looking at them” (Gourevitch 2001, 16). Reflecting on Gourevitch’s descriptions, Daniel Listoe observes that what is striking about his encounter is:

the testimony that to see what lay before him required great work... The death was not only palpable but also living on, evolving with the entropic effects of earth and air. There was no need for epitaphs when he found the site holding the reverberating stillness of so much human destruction in all its awful actuality. Nyarubuye had become, in this way and with time, a delicate, dissolving reality, and, as such, a synecdoche of the genocide (Listoe 2009, 267).

In terms of its evidence of sexual violence, from the sticks to the recent discovery in the latrines, for me this site is also an illustration of the genocidal rape that may go unacknowledged in other memorialization processes, if not articulated for visitors by the guides. Gourevitch struggles to comprehend what is before his eyes, and, in all its horror, in fact sees it as beautiful. “The randomness of the fallen forms, the strange tranquillity of their rude exposure, the skull here, the arm bent in some uninterpretable gesture there – these things were beautiful, and their beauty only added to the affront of the place” (Gourevitch 2001, 19). I think many visitors (more recently) would echo his complex

emotional response – revulsion, alarm, sorrow, grief, shame, incomprehension, but yet, feeling like such emotions were nothing meaningful in contrast to the horror held here. For me, the rows of skulls and bones are difficult to comprehend as actual human beings, once living, breathing, individuals, now just artefacts among countless others. I remember feeling some fear and revulsion, while at the same time recognizing my privilege as an outsider, a visitor without intimate connection to these victims. Gourevitch is reluctant to embrace the idea of leaving bodies as they were, on display, ‘forever in their state of violation’, and questions whether perhaps people are wired to resist internalizing too much horror (2001, 67). These fragments of lives lost exist across the memorials in Rwanda, which are touted as crucial evidence of what happened that must be preserved. This has been a debate at other genocide memorial sites as well, for example in Cambodia and Eastern Europe, of whether bodies and bones should be on display, or given a proper burial (for example, see Eltringham and MacLean, 2014).

In contrast to Auschwitz, Sara Guyer writes, in Rwanda, the bones remain visible. Rwanda’s genocide memorials are raw and macabre, uncomfortable – a “spectacle of skulls and bones through which the genocide is commemorated” (2009, 158). Far from the sanitised spaces of mourning in Eastern Europe, or barren sites expunged of the violence that once overtook these spaces, memorializing the 1994 genocide in Rwanda has entailed leaving massacre sites mostly intact and displaying the victims, most disturbingly perhaps at Murambi.¹⁵⁶ In Guyer’s view, “these memorials can be understood as much a *cause* of Rwanda’s enduring trauma – the awkward correlation of an open tomb and the memory of violence – as an *effect*” (2009, 159). Defenders, including the current government, argue that unburied remains offer the clearest physical

¹⁵⁶ The bodies are preserved in lime – see below for more detail.

evidence of the genocide and its widespread nature, and counter attempts at genocide denial. Others argue that their gruesome visibility must be removed, and the victims should be buried out of respect (see Eltringham 2014, 208). Whether seeing bodies and bones piled up like that is re-traumatizing for victims is a question still highly debated. As Guyer articulates, despite this ‘hard evidence’ it is only through testimony, most often from guides, that the bones are turned from icons of death into markers of a specific historical event – it is the professional guides who largely “produce an experience of memory” (2009, 159-160). There is a contradiction in that the guides’ oral narrative directs visitors’ understanding of the sites according to official history, but the Nyarubuye memorial site still strikes me as left open to multiple understandings and contested histories, as it is devoid of any permanent textual explanations. While, during my visit, the guide narrated a general explanation of what happened here, as I have read (and attempted to compile) the history, I realize that, necessarily, much detail is left out. I wonder if, without the guides, visitors - particularly non-Rwandans - would fail to grasp the tragedy that befell Rwandans in this place of worship. But for Rwandans, their own experience (or the experience of their family) brings meaning to the site, perhaps revealing what is not being told (see Ibreck, 2010). It is important to remember that the memorial guides, once local survivors taking care of the evidence on their own volition (especially of smaller sites), are now paid government employees instructed to stick to a particular script. The CNLG controls the official memorialization narrative, and this power is significant, as I will discuss in the subsequent section. The narrative is highly controlled, particularly to ensure the exclusion of allegations of RPF atrocities as well as avoid discussions of Hutu victims of violence.

Theoretically one could visit the Nyarubuye church complex without seeing any

evidence of the genocide, as the bones and artefacts here are contained in one room in a nun's residence adjacent to the church. My driver confirms my suspicion that this is what happens on Sundays when the church is used for regular worship, and churchgoers from the community do not want to be reminded every week of this traumatic history. This obfuscation can be viewed as a reflection of debates over whether too much remembering is detrimental to moving forward. As with my experience of the other memorial sites in Rwanda, there is a surreal contradiction between the beautiful landscape and the violence and horror that was enacted here. In a passage that highly resonates with my own field notes, Susan Cook writes that, "the three dimensionality of a physical location, the sight of hastily dug pits and mass graves, and the smell and look of human remains make the locations where genocide has taken place haunting reminders that genocide is an artefact of human society, not a natural calamity" (2004, 296). Being present at these memorial sites has deepened my understanding of the genocidal violence, at the same time raising more questions about discourse, preservation, and reconciliation.

Sexual Violence at the National Memorial Sites

Despite the growing interest among scholars with both commemoration generally, and post-genocide Rwandan politics specifically, there is not yet a substantial body of literature analyzing the genocide memorials in Rwanda. In a discussion of memorialization and the complicity of the church in the genocide, Longman and Rutagengwa write that in nearly every province in Rwanda, at least one church building was set aside as a memorial in the aftermath of the genocide. In some cases, the bodies remained where they fell, but in many cases the bodies were eventually moved and carefully arranged. Those who tended to the memorials often chose to display corpses

illustrating specific aspects of the genocide, such as women with their legs spread open to demonstrate rape (Longman and Rutagengwa 2006, 141). Despite the unfiltered appearance of the memorial sites in Rwanda, all are mediated by specific discourses and guided by official narratives. The question of how to represent genocidal rape in a way that is respectful to the victims, acknowledges its widespread (gendered) nature, and contributes to the eradication of such violence in the future (alongside the ‘never again’ genocide prevention mantra) is a complicated one.

Of the six national genocide memorial sites, the most popular, the Kigali Genocide Memorial in Gisozi, is reminiscent of a more typical memorial museum one would see perhaps in Europe, and is the only national memorial not constructed on a massacre site. The building is surrounded by gardens, with a series of large mass graves, a wall of names of victims, and exhibits with information, photographs, and recordings inside. The exhibits include a room explaining the historical background, one documenting what happened in 1994, a room focusing on resistance, another with photographs of victims, and finally a comparative exhibit documenting other genocides. This is the most ‘museum-like’ of the memorial sites, and by far the most frequently visited, particularly by foreign visitors.

My research suggests that Murambi is one of the most commonly written-about memorial sites to date. For example, Senegalese author Boubacar Boris Diop has written a novel entitled *Murambi, the Book of Bones*, and, in 2007, the NGO African Rights published a 213-page report entitled *Murambi: ‘Go. If You Die, Perhaps I Will Live.’* The Murambi Genocide Memorial (including the museum) opened in 2011, although the memorial site has been there since 1995. It is located at the site of a technical school where the *Interahamwe*, gendarmes, and local perpetrators massacred an estimated

50,000 men, women and children¹⁵⁷ on April 21st, 1994. The site includes a permanent museum exhibit with information about the massacre, a mass grave with more than 40,000 bodies, and signs indicting the French government's complicity in the genocide.¹⁵⁸ Perhaps most notably, toward the back half of the memorial, 24 classrooms contain 848¹⁵⁹ bodies preserved in lime. Visiting the site produces an immediate sense of cognitive dissonance because Murambi is located in perhaps one of the most beautiful landscapes I have ever seen – atop a massive hill, surrounded by other lush green hills - one can see for miles in every direction. Pictures do not do justice to the incredible beauty of this space. This visit was particularly unforgettable for me, as my guide narrated his personal survival story (at Nyamata) during the tour. The classrooms full of preserved bodies emit a strong smell that one cannot escape, and room after room displays victims in the final throes of life, some visibly trying to defend themselves. As Hitchcott writes, “forever trapped in the horror of experiencing their own deaths, the skeletons of the victims appear to continuously re-enact the atrocities of April 1994” (Hitchcott 2014, 57). Some of the classrooms are arranged with particular victim groups, for example there are rooms dedicated to children. During my visit I took note of a few female corpses in particularly disturbing poses, some displaying evidence of rape, or attempting to shield their children in their arms (see figure 7). This graphic memorial raises questions about the ethics of

¹⁵⁷ Fearing for their lives, the victims had taken refuge in the classrooms of the school, where they remained for two weeks without food or water before being brutally massacred. The bodies were thrown into mass graves. See Hitchcott 2014; African Rights Report, 2007.

¹⁵⁸ There is a sign that reads ‘French soldiers were playing volley here’ – during what was meant to be a humanitarian mission entitled ‘Operation Turquoise,’ French soldiers were indifferent to the bodies strewn around this site after the massacre. See, for example, Bruce Charbonneau, (2008) *France and the New Imperialism: Security Policy in Sub-Saharan Africa*. Ashgate Publishing Limited

¹⁵⁹ Cited in interviews by Dr. Amanda Grzyb, 2012. According to Shannon Scully, during exhumations in 1995 one mass grave was found in which the bodies had barely begun to decompose, and survivors along with the government and National Museum stopped the decomposition by covering the bodies in limestone and putting them on display (Eltringham 2014, 207).

displaying bodies in such a vulnerable way, and whether this type of display honours the victims.¹⁶⁰ For me, it raises the question of whether these nameless victims without a story or individuality in some ways repeat the tactics of genocide and the logic of the perpetrators, wherein people are dehumanized, anonymous, and viewed only as members of a group targeted for destruction (see Eltringham 2014, 200; Guyer 2009, 163). Indeed the piles of white bodies seem almost unreal, artificial. (At the same time, perhaps this is merely an outsider's gaze). Murambi is a much larger site than Nyarubuye, and each displays the evidence of the genocide very differently. Murambi offers a more museum-like display now, with textual information inside, although the guides greatly add to visitors' understanding of events. Although Nyarubuye also displays physical artefacts of the massacre, the preserved bodies at Murambi evoke a sense of how incredibly large the number of victims really is, piled in room after room. While the sticks used for rape, and the story of recently recovered female victims in the latrines attests to the mass rape that occurred at Nyarubuye, the female bodies on display at Murambi, in poses indicating their violation are particularly haunting. Visitors are confronted with forensic evidence of the rape of women. However, I presume one could very easily miss this evidence if visitors fail to attend to this feature of the genocidal violence.

Although I will not illustrate my experience at all six of the national genocide memorials,¹⁶¹ there is another church with particular relevance for the discussion of how to represent the widespread sexual violence that occurred during the Rwandan genocide. Nyamata is a small Catholic church memorial site approximately an hour drive from

¹⁶⁰ In a related discussion of ethics, Stover and Shigekane explore the tension between the humanitarian needs of families and the evidentiary needs of international war crimes tribunals in the aftermath of war and genocide (2004).

¹⁶¹ Bisesero is the other national memorial site, which I have not mentioned here, as it focuses on Tutsi resistance during the genocide and does not include evidence of sexual violence.

Kigali - fairly frequently visited due to its proximity.¹⁶² Unlike Nyarubuye, it is no longer in use as a church, but rather exist solely as memorials to the genocide. Nyamata church, in the Bugesera district of the Eastern Province, includes two large crypts, which contain the bodies of most of the 10,000 victims.¹⁶³ As at most other sites, skulls and bones are on display (although far fewer in the church itself). The victims' clothes are piled on top of the church pews, the metal roof is dotted with bullet holes and the altar cloth is stained with blood. Most notably, within the church visitors are taken down into a white-tiled sunken vault, which holds a lone coffin covered in white cloth with a ceremonial purple cross (see figure 8). Sarah Guyer describes this as holding "the body of an unknown woman who was raped and murdered during the massacre" (2009, 164), but in fact she is not unknown. The victim was a young Tutsi woman, Annonciate Mukandori, who, the guide explained to me, was gang-raped in the church by members of the *Interahamwe* militia (more than twenty men). She was killed when one of the genocidaires stuck a spear into her vagina, through her body, and out the top of her head. As my driver David explained to me, prior to 1999, visitors could see her skeleton with the spear visible inside her, but because people who came were so traumatized by this sight, the memorial staff had to conceal her remains. My driver remains very disturbed by this memory. Alison Des Forges told Jennie Burnet that in fact the few surviving relatives of the victim begged to be allowed to bury her body (Burnet 2012, 107). Her story has been written about by three of the authors in the FestAfrica project, including in Veronique Tadjó's travel

¹⁶² Ntarama is also a former church and massacre site, now designated as a memorial, which is close to Kigali (about 10 km. away from Nyamata) thus frequently visited by genocide 'tourists' (see Sharpley and Stone 2009 for a discussion of the 'Dark Tourism' of visiting genocide memorials).

¹⁶³ Between April 14th and 19th, 1994, while victims sought sanctuary inside, members of the Interahamwe and Hutu militia forced open the door and entered the church with machetes, rifles, and grenades, killing an estimated 10,000 people in the area (see Hatzfeld, *The Strategy of Antelopes* (2009) for further discussion of Nyamata).

narrative, in Diop's novel, *Murambi: Book of Bones* and in Lamko's novel, *Butterfly in the Hills* (see Dauge-Roth, 2010, ch.10). She stands in for the thousands of women who were raped across the country during the genocide, although now this is only revealed through the guides' transmission of this story. For example, in Pat Caplan's brief report on visiting the memorial sites, at Nyamata she gathered only the words 'femme violée' (woman who was raped), from her guide (a local survivor) who was clearly shaken during the visit (Caplan 2007). This woman's corpse is the starkest example of displaying evidence of genocidal rape, and yet it is covered up from visitors, only revealed through the guides' account. Although true about the genocide in general, it is particularly striking to me that understanding the widespread use of sexual violence during the genocide is essentially only revealed through the guides' narration at these memorial sites, and even then, often only for a brief moment when looking at a particular artefact as evidence. Other than at the Kigali Memorial Centre, where sexual violence as a tactic of genocide is mentioned in more detail on one of the information boards, the evidence of rape is in the hands of the guides, and thus risks being suppressed or disappearing altogether. It is positive that these memorial sites include the evidence of sexual violence, but only in a limited manner, and this narrative is mainly reliant on the guides' transmission of it.



Figure 7: An example of one of the female corpses preserved at Murambi that indicates sexual violence



Figure 8: The tomb containing a female Tutsi victim raped to death at Nyamata.

In a manuscript in progress, Amanda Grzyb argues that perhaps one of the most notable aspects of Rwandan genocide memory is the “physical movement of human remains to, from, and around the memorial sites,” evoking a sense that “the sites are incomplete, the bodies restless, the memory work always unfinished” (Grzyb, 3, unpublished). Acts of exhumation, burial and reburial, reorganization, and exhibition are common at the each of the sites, again alerting us to their deliberate construction in particular ways. It is worth reiterating that in building memorials, decisions about what to preserve and how to display evidence and explanations largely determine what and how we remember. Grzyb also points out the dilemmas inherent in the fact that, likely due to the lack of government resources, across Rwanda genocide artefacts are deteriorating and have not been treated with any kind of preservatives.¹⁶⁴ An interesting example attempting to contest the fixity of memory is the Garden of Memory, near Kigali, Bruce Clark’s ongoing sculptural project.¹⁶⁵ Opened in 2000, Clark hopes to gather one million individually marked stones in memory of the people who were killed in the 1994 genocide, inviting visitors to lay stones themselves and participate actively in the process.

¹⁶⁴ For a further discussion of the politics of preservation see Cook, 2004.

¹⁶⁵ See <http://www.bruce-clarke.com/pages/le-jardin-de-la-memoire?locale=en_US>

It emphasizes the multiplicity of memories, as each visitor will remember the genocide differently, and demonstrates the ongoing and incomplete process of memorialization (Hitchcott 2014, 59). As much as memorials are an instantiation of collective memory, they are never static or uniformly experienced, as the scholarly literature on memorialization elucidates.

In *The Texture of Memory*, James E. Young explores the role and meaning of Holocaust memorials, including how their significance evolves and changes in different contexts and countries. He argues that while on one hand officials attempt to shape common memory and official history to serve political ends, once created memorials can take on a life of their own, reminding us of their essential constructedness. An important added layer of this discussion is the reception of the memorial by visitors, which further impacts its meanings and symbolic significance. While the government and curators create meaning in constructing memorials and displays in particular ways, each visitor also generates his or her own meaning through their individual experiences and understandings. For example, Bolin cites feelings of guilt Western visitors may experience for the oft-cited failure to intervene to stop the Rwandan genocide, and she explores how (foreign) visitors ‘perform morality,’ displaying proper emotions and etiquette at these sites (Bolin, 2012). Also, because virtually all women either experienced or were impacted by sexual violence during the genocide (Human Rights Watch 1996), it is likely that survivors do not miss this aspect of the genocidal tactics in remembering the violence. Since memorials risk taking the place of real memory work - that is, grappling with the past and its significance for the future, Young is adamant that we must make room for the many layers and dimensions of national memory, and ask to what ends we have remembered. He contends that, “through this attention to the activity

of memorialization, we might also remind ourselves that public memory is constructed, that understanding of events depends on memory's construction, and that there are worldly consequences in the kinds of historical understanding generated by monuments" and memorials (Young 1994, 15). While memorialization is touted as an inherent good, and often a necessity for reconciliation and progress, it is important to acknowledge its limitations and interrogate questions of power. As René Lemarchand asks, "what makes the 'duty to remember' so problematic as a path to reconciliation is that the phrase leaves out the crucial questions: What is to be remembered? How? By whom? And for what purpose?" (Lemarchand 2008, 73).

3.2

The Politics of Memory in Rwanda

“Memorials involve a choice between what will be remembered and what will be forgotten, and they can hide as much as they reveal” (Tadjo 2009, 387).¹⁶⁶

In the aftermath of the genocide, the RPF-led Rwandan government faced intense challenges while attempting to establish peace, rebuild the country and promote reconciliation among a divided population. When the RPF took power in 1994, it created the Government of National Unity and promised a transitional period of five years, but has remained in power ever since,¹⁶⁷ winning controversial elections in 2003, 2008 and 2010 (see Longman, 2011). Critics have questioned whether the government’s tactics have really been to promote national unity, or whether they serve to quell dissent and stifle opposition. The legislative policy of ‘divisionism’ officially outlaws speech or action that divides people or causes conflict or strife, but this vague definition has led to its manipulation to prevent any opposition to the current government. Debates on the state of post-genocide Rwandan politics are highly polarized. Since the genocide, there have been remarkable accomplishments, from political stability and improved social services to exceptional economic growth in Rwanda. The government has undertaken a series of political, economic, and social projects, framed in the language of international donors¹⁶⁸

¹⁶⁶ In 1998, 10 African writers visited Rwanda to write an imaginative response to the genocide and its aftermath, in a project entitled ‘Rwanda: Writing as a Duty to Remember’ organized by the directors of Fest’ Africa. Veronique Tadjo’s work is one such project.

¹⁶⁷ When Pasteur Bizimungu resigned, Paul Kagame (former Vice President and Minister of Defense) became President, in 2000, although he is often considered the ‘real power’ in Rwanda since the end of the genocide (see, for example, <http://www.bbc.com/news/world-africa-14093242>).

¹⁶⁸ For discussions of foreign aid and Rwanda see Zorbas, “Aid Dependence and Policy Independence: Explaining the Rwandan Paradox” & Hayman, “Funding Fraud? Donors and Democracy in Rwanda” in Straus & Waldorf, 2011.

(good governance, gender mainstreaming, poverty reduction, etc.) to create the ‘New Rwanda’ and implemented multifaceted policies to shape the collective memory of Rwandan history and unify the population (see Longman and Rutagengwa, 2004). However, the most vocal of its critics argue that the RPF ‘has practiced a deft authoritarianism’ (Straus and Waldorf 2011, 4) and a ‘dictatorship’ has been installed that “echoes that of [pre-genocide] single party rule” (Reyntjens 2004).¹⁶⁹ By elaborating on the hegemonic discourse at the memorial sites, this section reveals dominant government strategies to ensure the maintenance of the official discourse about the genocide as well as gesturing towards the marginalized voices it leaves out.

Applying Benedict Anderson’s concept of imagined communities, an interesting paradox arises in which, in post-genocide Rwanda, President Paul Kagame and the RPF are attempting to develop an ‘imagined community’ by eliminating the Hutu/Tutsi distinction, going beyond nationalism to create a singular, sovereign ‘Rwandan’ identity. However, the underlying divisions within the country continue to fracture this idealistic, imposed unity, revealing that in fact what actually unites Rwandans is the lingering effects of collective trauma. Within the ‘ghostly national imaginings’ (Anderson 1991, 9), what is often referred to as a landscape littered with cemeteries, much evidence points to the fact that genuine reconciliation cannot be imposed, and divisions remain below the surface. This elimination of any discussion about the Hutu/Tutsi distinction leaves open questions of how Rwandans can openly communicate about the past, properly mourn the genocide, and ensure that violence does not recur. As I will elucidate, Jennie E. Burnet argues that

¹⁶⁹ See Reyntjens’ scathing critique of the RPF’s leadership, tracing the elimination of dissent and civil society, undemocratic elections, and human rights abuses in the aftermath of the genocide (2004).

through this nationalized mourning the RPF regime promotes a particular version of national history and a narrative about the genocide that promotes the polarizing ethnicized discourse and symbolic pairing of victim and perpetrator. This dichotomous ethnic division erases Hutu victims of the genocide, as well as victims of RPF-perpetrated violence (whether Hutu or Tutsi), from the national imagination” (Burnet 2009, 95).

Meierhenrich sees Rwanda’s *lieux de mémoire* (using the term to highlight the intentional design of memorials, following Pierre Nora) as increasingly centralized and serving the purpose of legitimating authoritarian rule, more so than honouring the victims (2011, 292). In Rwanda, the memorial site guides and the government are hugely influential in terms of what is officially remembered (and forgotten) about the 1994 genocide and the country’s history. Here I have grouped government strategies for securing the hegemony of official discourse about the genocide into four themes: stifling political dissent, circumscribing national commemoration, eliminating a wider understanding, and rewriting history.

The first way in which the government tightly controls the genocide narrative is through policies on eliminating ‘divisionism’ and ‘genocide ideology.’ Under the RPF’s policy of national unity, talking about ethnicity is forbidden. The 2001 Law on Discrimination and Sectarianism classified ‘divisionism’ as a crime punishable with up to five years in prison (Burnet 2012, 129) and the 2003 constitution stated that all Rwandans should root out ‘genocidal ideology.’ The problem, as many scholars have pointed out, is that neither of these offenses is clearly defined, and the government has used these laws mainly to silence their critics. As Lars Waldorf argues, “no one would dispute the urgent need for strict laws to counter hate speech and incitement to genocide in a country still

recovering from genocide. Yet Rwanda's law on genocide ideology is so broadly drafted that it is easily manipulated for personal and political reasons" (Waldorf 2011, 59). Government concerns are not unfounded – as with the Holocaust and other genocides, there are those who deny that the Rwandan genocide occurred, maintain it was really a civil war or that equal numbers of Hutu and Tutsi killed and were killed (*Ibid*, 50), and this rhetoric needs to be stopped.¹⁷⁰ However, Waldorf argues that despite this stated purpose, the charge of 'genocide ideology' has become the dominant method for the RPF to stifle political dissent and silence civil society (2011). Even the BBC and Human Rights Watch have been under fire from the RPF facing accusations of genocide ideology.¹⁷¹ Timothy Longman argues that civil society in Rwanda today fails to stand as an independent voice, having been either suppressed or co-opted by the government, and cites examples of intimidation of the press and the repression of free speech (2011b). He maintains that defenders of the RPF downplay or deny the criticisms, or justify them as necessary for national unity given the history of violence resulting from genocidal ideology and propaganda. Many of Kagame's admirers, while admitting his authoritarian leanings, dismiss the possibility of democracy in the wake of the genocide, and prioritize the successful economic development in the country (Longman 2011, 41). While the successes of the regime should not be entirely dismissed, freedom of speech and the press are essential components of a healthy democracy and transition away from violence.

Since identity cards played an important role in distinguishing Tutsi targeted during the genocide, new national identity cards were issued removing ethnicity, however, this also allowed the RPF to identify and arrest suspected insurgents. Hutu

¹⁷⁰ Holmes conceptualizes the politics of revisionism in detail in her book as well (2013).

¹⁷¹ See Holmes, 2013, also for example: <http://www.hrw.org/news/2009/04/27/rwanda-restore-bbc-air>.

reported feeling singled out in the process, as they were questioned extensively and sometimes arrested or forced into military service (Burnet 2009, 87). Another method the current government in Rwanda uses to promote national unity is through solidarity camps known as *ingando* (see Burnet 2012, Purdeková, 2011; Thomson, 2011). Returning refugees, students admitted to state-run universities, convicted *genocidaires*, and local government officials are among the people required to attend *ingando*. Although such camps counter genocide ideology in important ways and aim to promote reconciliation, observers have criticized them for disseminating revisionist history and consolidating the power of the RPF. Burnet argues that for Rwandan youth, *ingando* became an important rite of passage, and helped to forge social ties regardless of their ethnic identity and previous experiences (2012, 164), but *ingando* has also been criticized as indoctrination for nation-building (see Purdeková 2011) and an alienating, oppressive experience that may create resentment and stronger dissent in the future (Thomson, 2011). Despite the rhetoric of democracy, human rights, and diversity, the government uses considerable political repression to retain an inner circle of power (Longman and Rutagengwa 2004, 167), made up chiefly of former Tutsi exiles.

The second way in which the government's official narrative shapes current practices, chiefly relevant to this chapter, is through controlling memorialization. Drawing on her ethnographic dissertation research in Rwanda, Jennie Burnet argues that the governments' post-genocide discursive construction of victim (Tutsi) and perpetrator (Hutu) has polarized survivors, circumscribed mourning, marginalized certain victims and ultimately re-inscribed divisions within the country (2009, 2012). Despite official state policy to outlaw ethnic divisions and unify Rwandans, commemoration has maintained this distinction, essentially viewing (all) Hutu as perpetrators and (all) Tutsi as victims.

Specifically, Hutu who did not participate in the genocide, and Rwandans from ethnically mixed families are essentially erased from the national imagination (Burnet 2009, 80). Elisabeth King argues that unacknowledged wounds can present an obstacle to peacebuilding, and her research in Rwanda highlights particular groups whose stories are unacknowledged in both memorialization and the teaching of history. As mentioned, there is no public space in Rwanda for Hutu memories of violence perpetrated by the RPF, but there is also very narrow space for Hutu rescuers, and for Tutsi who feared the RPF, and especially, Rwandans of mixed ethnic background are left out of public acknowledgement (King 2010). King argues that grievances surrounding unsettled historical memories are likely to intensify with time, and acknowledging a wider range of civilian memories need not mean moral equivalence, or absolve perpetrators of their responsibility for the genocide (2010, 303-304).

While in initial commemorative events, the mourning originally included Hutu victims, over time the term survivor became synonymous with Tutsi (Burnet 2009, 88). In many ways, the national sites are politically constructed memorials, establishing the government's power and influence. Burnet traces how in national ceremonies the tone changed beginning with a particular commemoration at Murambi in 1996, in which, following his testimony, a Tutsi genocide survivor began to accuse people in the crowd of participating in the killing. These accusations, singling out Hutu crowd members, have continued at other national commemoration ceremonies. In fact, Burnet calls the current hegemony in Rwanda 'an institutionalized form of ethnic violence' in itself (2009, 100), and argues that "in the national ceremonies, the emphasis on national mythico-histories, many of which conflict with individual Rwandans' heterogeneous experiences of violence during the civil war, genocide, and insurgency, precludes individual, familial, and

communal mourning” (Burnet 2009, 100). She argues that local and community-level ceremonies focus on the mourning of loved ones in religious rites, and thus better serve the populations’ needs of psychological healing and social reconciliation (2009, 100).¹⁷² In interviews, Longman and Rutagengwa found Rwandans deeply divided over the role that memorials play in reconciliation, with some arguing that these constant reminders keep the trauma fresh and keep people from moving on (2004, 174).

A third aspect of the government’s official discourse is a micro focus on only the ‘1994 genocide against the Tutsi,’ now the official description of what happened. The RPF’s military wing has been accused of killing a significant number of civilians in 1994 and 1995, including attacking Hutu in reprisal killings (see Des Forges 1999; Pottier 2002; Reyntjes 2004). In a telling example of this suppression, the late Alison Des Forges was banned from Rwanda in 2008 for her contention that the RPF should also be held to account for their crimes. René Lemarchand pointedly asks:

Tempting as it is to see in President Kagame’s government the embodiment of moral virtue for bringing the genocide to an end, the mourning of Tutsi lives must not be allowed to obscure the crimes against humanity committed by Kagame’s army. If, as claimed by the UN-commissioned Gersony Report, between 25,000 and 45,000 Hutu were massacred by the RPA in only three *communes* of Rwanda between the months of April and August 1994, how many were similarly killed in the whole of Rwanda during the same period? (Lemarchand 2008, 71).

¹⁷² For a detailed discussion of social reconciliation see Simon, David J. (2012) *The Challenge of Social Reconciliation in Rwanda: Identity, Justice and Transformation*. In Jones, Adam. *New Directions in Genocide Research* (New York, Routledge).

These alleged crimes committed by the RPF are entirely left out of the current government's revised history, legal remedies,¹⁷³ and memorialization discussions.

A regional picture further breaks apart this limitation on mourning to only Tutsi victims of the 1994 Rwandan genocide. Between 1996 and 1999 there were accusations that the RPF committed brutalities against the population fighting an insurgency in north-western Rwanda and in eastern Zaire (now Democratic Republic of Congo).¹⁷⁴ Kenneth Harrow argues that the atrocities and ongoing civil war in the eastern Democratic Republic of Congo cannot be separated from the decisions of the post-1994 Rwandan government to deal with the problem of the ex-FAR [Rwandan Defence Forces] and *Interahamwe* forces by attacking refugee camps in Zaire and unseating the Congolese leadership. He argues,

the more the commemoration of the genocide focuses our attention on the horrific events of 1994, and restricts the boundaries of time to that period, the more our attention is diverted from the events in the DRC and the involvement of the Rwandan government; and the more the spatial divisions and objectification of others will be served, providing the conditions of possibility for genocides and atrocities that would seem to have no end. We weep over the murdered Tutsis, and forget the millions of Congolese whose deaths would seem not to matter any more. The commemorations and memorials that continue to freeze the past will serve the projects of the foundations fantasies of those with the power to control the narratives; the others will be forgotten (Harrow 2005, 42).

¹⁷³ This has been a contentious debate, particularly between the current government and the ICTR, where attempts to include charges against the RPF were outright rejected.

¹⁷⁴ I will not elaborate on this complex conflict here, but it has been written about extensively by Prunier, Gerard (2008). *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. UK: Oxford University Press. See also Stearns & Borello "Bad Karma: Accountability for Rwandan Crimes in the Congo" in Straus & Waldorf, 2011.

Johan Pottier's book attempts to recontextualize the events in Rwanda and Zaire between 1994-96, critiquing the official narratives and ideologies of the international community regarding this region (2002). Further, the theme of international complicity in the genocide is central to the government's historical narrative, and critics have argued that the regime 'instrumentalizes' the genocide (Waldorf 2011), using it as a political weapon against anyone, domestic or internationally, who attempts to criticize the RPF government and its policies. International guilt has been used as 'genocide credit' (Reyntjens 2004), stifling criticism of the RPF government as the international community (for the most part) continues to support and fund Kagame's government.¹⁷⁵

A final way in which the government has circumscribed current discourse, as is often the case in post-conflict situations, is through rewriting history. Susanne Buckley-Zistel writes about the difficulty of teaching history in Rwanda, still a highly contested subject in the post-genocide context. Citing theorists Hobsbawm and Anderson, she argues that political power influences narratives about the past – what is remembered and what is forgotten – and this influences collective identity in the present. One key objective of narrating history is to unify a war-torn society, often by creating an inclusive national identity through a common past and future. The government of Rwanda draws on a very particular narrative of the past, one in which Hutu and Tutsi lived in harmony until the colonial powers arrived. This alleged pre-colonial peace and unity is the cornerstone of the governments' historical narrative, and a state to which the government wants to return; An outside party – the colonial powers – are blamed for ethnic hatred, absolving all Hutu and Tutsi from responsibility, and binding them together under the guise of

¹⁷⁵ For the most part, international donors continue to support Kagame and the RPF. For example, the UK has suspended and reinstated its support for Rwanda on different occasions, as debates continue over its undemocratic reforms.

victimhood (Buckley-Zistel 2011, 5; see also Freedman et al., 2011; Longman and Rutagengwa 2004). Buckley-Zistel argues that the banning of ethnicities and accusations of divisionism, under the pretext of unification, works to cover-up the predominance of Tutsi in social institutions today, and causes underlying resentment amongst the population. Despite the narrative of national unity and reconciliation, ethnic identity remains important to many Rwandans today, especially in reference to the past, and glossing over this past by inventing one hegemonic narrative will not be sufficient to avoid future conflict (Buckley-Zistel 2011, 11). Georgina Holmes argues that “rewriting history is integral to the ongoing mediatized war” and multiple revisionist agendas manipulated by various actors (2014, 266).

Reconciliation remains one of the most difficult goals, and highly contested discussions, in post-genocide contexts and particularly with respect to the Rwandan context, although I do not explore it in this dissertation as it is a much larger endeavour on its own. Phil Clark is often viewed as a supporter of RPF policies and President Kagame, and a powerful opposition force to critics. For example, his extensive studies of the *gacaca* community courts detail positive steps toward peace and reconciliation for the country, arguing that critics’ focus on justice is too narrow a criteria on which to measure the success of this innovative, local transitional justice mechanism (2010). In a recent article, Clark argues that critics have focused on ‘transactional’ reconciliation, including government and elite-imposed forms, whereas *gacaca* should be viewed as a form of negotiated reconciliation, which has, as he demonstrates through interviews, had some success toward unifying the population. He determines that most Rwandans expect reconciliation to be a long process, in contrast to the government’s official discourse which views *gacaca* as the means to (immediate) reconciliation. But Eugenia Zorbas

counters this, exploring the way ‘public transcripts’ contrast with ‘hidden transcripts’ revealed in her interviews, which demonstrate significant divergence between the governments’ view of the genocide and its aftermath, and that of ordinary Rwandans. She argues that “there is firm evidence to conclude that the RPF government has chosen to conflate, ignore, or subjugate, individual or community reconciliation processes in favour of focusing on a national reconciliation strategy that tells an ambitious and in many ways progressive story about Rwanda, Rwandans, and their new ruling elite” (2009, 143). These are some of the ways the governments’ official discourse has becoming increasingly hegemonic in post-genocide Rwanda.

As Nicola Henry and other feminist scholars argue, we must be attentive to gender as a factor in collective memory – there is no denying that national histories are generally made up of masculinist narratives about heroic soldiers and founding fathers. While as of late feminist scholars have taken up marginalized memories of the past, often gender is a neglected factor in both what is to be remembered and how it is to be remembered (Henry 2011, 21). Theorists such as Marianne Hirsch, Valerie Smith, and Janet Jacobs remind us that “bringing a feminist perspective to the study of memory helps to identify the relationships of power that inform the construction of collective memory in both national and community settings” (Jacobs 2010, xxxiii).

In her ethnographic research, Jennie Burnet found that many Rwandan women refused to participate in genocide commemoration ceremonies organized by survivor associations and the government. Some female survivors explained that their memories of violence, loss, and trauma were so deeply personal that they could not be shared. Also, the shame and stigma still associated with sexual violence often demarcates women’s

testimony, particularly in public. Others told Burnet that the master narratives that are dominant at those ceremonies did not fit their individual experiences (2012, 102). She looks specifically at three categories of women largely made invisible and marginalized by the current system of social classification in Rwanda: what she terms ‘raped maidens’ (unmarried young women raped during the genocide, who face rejection or stigmatization if their rapes are revealed); Tutsi wives of prisoners (Hutu men imprisoned on charges of genocide, thus the women are denied support from either kin group); and genocide widows (mainly Hutu widows of Tutsi men killed during the genocide, often facing ostracism and extreme poverty). Their experiences of violence have been virtually erased from the national imagination and processes of commemoration, and this has amplified the suffering of the women she interviewed. In one of the few books on this theme generally, Jacobs looks at memorialization through a gendered lens, illuminating the way in which motifs of gendered memory have been incorporated into Holocaust memorials (2010). She explores the overrepresentation of women, often as mothers, in atrocity images, and the ethnical dilemma of representing particularly gendered experiences without objectifying victims. While I do not see Tutsi women’s bodies having necessarily been objectified or eroticized in these memorials, studying the presence of gendered representations at memorial sites in Rwanda alerts us to the enduring difficulties of acknowledging mass rape and atrocity. It is significant that sexual violence is incorporated into the Rwandan genocide memorials in the ways earlier described, but also important to recognize the highly controlled narrative in which this takes place (where only specific victims are included), and that it is often brief, without much in-depth discussion of this widespread phenomenon or its causes. Thus, it remains to be seen

whether future generations will grasp the prevalence and consequences of sexual violence as part of this history.

The complexity of memorialization in post-genocide contexts should not be downplayed, and government attempts to root out genocidal ideology and denial, and push for reconciliation and unity through commemoration are logical and important. But what is badly needed in the case of post-genocide Rwanda is a middle ground - room to both acknowledge and commemorate the 1994 genocide and critique the RPF and contemporary politics within the country. Nation-building is a performative exercise, and doesn't often work as seamlessly as intended. While the government makes every attempt to control the discourse, there is resistance, and Rwanda "presents an interesting case study of the limits of a government's ability to shape the collective memory of a population" (Longman and Rutagengwa, 2006).¹⁷⁶ The prevalent perpetrator-victim binary can potentially lead to resentment, fuel divisions, and halt reconciliation efforts.¹⁷⁷ In terms of justice, "thinking or grappling with the past is what is conspicuously missing from Rwanda's official memory – in other words, a sustained effort to recognise the profound ambivalence of the notion of guilt" (Lemarchand 2008, 69). While it is clear that a particular version of history is being passed along to future generations, evidence suggests young Rwandans narratives' of the past are diverse, and that most recognize the

¹⁷⁶ As Young argues, "on the one hand, official agencies are in a position to shape memory explicitly as they see fit, memory that best serves a national interest. On the other hand, once created, memorials take on lives of their own, often stubbornly resistant to the state's original intention" (Young 1993, 3).

¹⁷⁷ Multiple scholars have cited the continuing (if suppressed) importance of ethnic divisions in Rwanda. Summarizing his research with Rwandans, Neil Etringham argues that ethnicity remains an overwhelming, if necessarily private, preoccupation for Rwandans, thus "we must ask whether the best use of the past's potentiality is to prohibit the mention of ethnicity or, as with my respondents, actively encourage a free reflection through which ethnicity will be nuanced and relativized" (2011, 275).

need to acknowledge everyone's experiences of suffering in order to move forward (Hilker 2011, 328). As Caplan argues, it is 'an anthropological truism' that memorials to the dead are for the living, and will therefore reflect their political context. "Like all historical narratives, they will be constructed from a particular standpoint, and, more importantly, 'read' in different ways by their varied audiences" (Caplan, 2007). A critical analysis, attentive to power, elucidates this struggle and divergence, as official narrative is asserted through government actions, commemoration, and media, but simultaneously contested by local practices and even silences (Hinton and O'Neill, 2009, 11). As Hirsch and Smith argue, "what we know about the past, and thus our understanding of the present, is shaped by the voices that speak to us out of history: relative degrees of power and powerlessness, privilege and disenfranchisement, determine the spaces where witnesses and testimony may be heard or ignored" (2002, 12).

In terms of writing history, as Burnet synthesizes, "the genocide in Rwanda included a multitude of experiences of a highly differentiated populace. No single version of events can encapsulate all of them" (2012, 93). While the memorial guides may largely determine what narrative visitors about the genocide receive, and the government may control collective memory, the survivors' themselves will always have much more to say about what happened. In contrast to other official discourses, such as legal testimony and judgment, the material evidence at genocide memorial sites in Rwanda testify to crimes committed in a different way. Janet Jacobs articulates how collective memories of mass violence re-shape the meaning of the sacred in the commemoration of atrocity, as in this instance, at sites of terror, the symbols and artefacts of mass murder (the profane) have become sacralised; "National sites of genocide commemoration thus function as sacred spaces that engender deep feelings of grief and sorrow where the unifying symbols are

those of death, torture, extermination, massacre, and rape. Thus, one might argue that what has been sacralised at these monuments to genocide are despair and human suffering” (164). This evidence is imbued with meaning through guides’ oral narratives, as well as the individual understandings and insights of visitors.

The memorial site at Nyarubuye gives us important physical evidence of what happened there in April 1994, but the history that is told must be understood as a particular perspective driven by the government’s increasingly centralized and hegemonic narrative.¹⁷⁸ In this section, I have examined the memorialization of the massacre at the Nyarubuye memorial site, drawing comparisons with the other national sites and, in particular, looking at dilemmas in the representation of genocidal sexual violence. This section makes an important contribution, because in showing how the dominant government discourse about the genocide is constructed by official narratives (and transmitted to visitors at the site), I uncover the gaps and silences in what is not permitted to be part of the discussion. Detailing how the official narrative has become and remains prominent, this section highlights’ memorialization’s essentially constructed nature. It also reminds us of the importance of looking beyond dominant representations, for what is eclipsed or suppressed. The fact that sexual violence is acknowledged, at multiple sites including Nyarubuye, is significant because in other contexts the issue of rape has been suppressed due to the stigma and shame it carries, while in Rwanda it is often openly discussed (Mibenge 2013, 23). In part, the story is manifest at Nyarubuye accidentally, as the recent discovery of women’s bodies in the latrines reminds us of the unfinished aspect

¹⁷⁸ Catherine Coquio (translated in Dauge-Roth 2010, 7) argues that Tutsi survivors were never fully in a position to decide how to remember their dead, and that the government was more concerned with the symbolic and political capital they could gain from memorial sites than the individual needs of survivors dealing with this traumatic past.

of memory practices. However, questions around how to represent sexual violence, in a way that recognizes the experience of victims while also ensuring respect for them, remain. Paralleling the way that genocidal rape is acknowledged by the courts but scarcely successfully prosecuted, and mentioned publicly but in a very general way (see Mibenge 2013, 24) today the national memorial sites in Rwanda recognize that sexual violence occurred without offering a more in-depth discussion or gendered analysis of what happened and why. As Hamber and Palmary point out in regard to reparations, their symbolic power is only fully realized if efforts for gender justice, the prevention of violence against women, and material changes in women's lives are simultaneously making progress (2009, 375). The ongoing and unfinished nature of the memorials provides an opportunity for a more detailed discussion of sexual violence at these sites,¹⁷⁹ which could potentially lead to wider conversations about misogyny, patriarchy, historical subjugation of women, gendered propaganda (that led to the targeting of Tutsi women), and violence against women more broadly. Rwanda has taken important first steps in regard to addressing violence against women and gender inequality,¹⁸⁰ but much is left to be done.

We must ensure that these artefacts and evidence do not eclipse recognition of the humanity of the victimized, overshadowed by a focus on numbers and data. A common banner at the memorial sites includes a quote from a genocide survivor that says “Iyo Uza Kwimenya Nanjye Ukamenya Ntuba Waranyishe” which (roughly) translates to “if you had known me, and known yourself, you would not have killed me.” This important

¹⁷⁹ I was told there is a planned exhibit that will focus on sexual violence to be built at Nyamata, although details and a timeline have yet to be established.

¹⁸⁰ Women have made important strides in post-genocide Rwanda, particularly in the political sphere. For example, the new Constitution of 2003 recognized the equality of women and reserved a minimum of one-third of the positions in all government decision-making bodies for women (see Burnet 2012, 13).

'never again' message emphasizing our common humanity exemplifies the importance of acknowledging the complex suffering of all victims, including those of sexual violence, and for that, Rwanda still has a long way to go.

Conclusions: History/Law/Memory, Other Discourses, and Future Directions for Research

Bert Ingelaere (2010) poses an interesting question about whether we can really understand the reality for those living in post-genocide societies, particularly in Rwanda where historical knowledge is rife with contradictory assertions and images and there is an evident discrepancy between the national image and lived reality (see also Pottier, 2002). He theorizes this dilemma as a need to move away from the center of knowledge production – that is, the rhetoric of prominent political leaders and official discourses - to account for the margins of Rwandan society because the current ‘rehearsed consensus’ is deceiving. Ingelaere cites starkly divergent opinions on the state of post-genocide Rwanda, particularly coming from Western scholars, arguing that the lack of consensus signals the difficulty of separating appearances from reality (2010, 42; see also, Straus & Waldorf 2011). His study cites specific examples¹⁸¹ where findings outside of (or contradictory to) the official government discourse have been discredited or suppressed, and argues that the governments’ ideological control of knowledge in the country means that discourse is tightly regulated by active and outright censorship and coercion, and also by subtle manipulations of perception. For example, while formal gender equality has featured prominently in the post-genocide political agenda, there is both

¹⁸¹ For example, a United Nations Development Program research study into progress in Rwanda on the Millennium Development Goals identified some serious shortcomings, including a rise in absolute poverty and the need for greater democratic reforms, and was rejected by the Rwandan cabinet, with the UNDP pressured to subsequently release a statement that the report contained unfounded and misleading information (Ingelaere 2010, 48). In another example, World Bank research that was deemed harmful to the Rwandan government and accused of including ‘genocide ideology’ was abandoned after six months, and all of the data destroyed (*ibid*, 50).

acknowledgement of and silence around rape and sexual violence (see Mibenge 2011). As this thesis demonstrates, examining one case study in detail reveals the way in which official discourses shape perceptions of the genocide and its aftermath, both locally and beyond Rwanda's borders. This is the case in many countries around the world, where the reality may be much more complex than the image portrayed to the global community, but it is particularly pronounced in post-genocide Rwanda. And there are also (sometimes small) acts of resistance, thus we cannot portray this power as deterministic and static. For example, Jennie Burnet listens to what she calls 'amplified silences' as a counter to the hegemony of this discursive regime (2012, 121). My conclusion will focus on the relationship between hegemonic and counter-hegemonic discourses, beginning with a discussion of several examples that reveal government suppression of information that is outside of its official narrative, as well as some popular representations of the Rwandan genocide. I will then move on to exploring the interrelations between the themes of history, justice and memory, and finally, summarize my contribution and some future directions for research.

Other Narratives

The unwavering construction of Tutsi as the sole victims of the genocide, and Hutus as the perpetrators of violence, leaves the stories of survivors who exist outside of this framework marginalized.¹⁸² Born in 1966 in the southeastern district now known as Kirehe, near the Rwandan-Tanzania border, Mathieu Fashingabo worked at the Rusumo

¹⁸² This is a highly controversial issue. While the government needs to regulate genocide deniers and those who posit a 'double genocide' revisionist history, it is clear that many Hutu also became victims (either of Hutu extremism or RPF violence) during the violence in 1994, whether it is considered part of or separate from the genocide itself.

commune as a personal assistant to Mayor Gacumbitsi. When the violence broke out and hundreds of Tutsi were fleeing to the border in early April 1994, he reportedly mobilized members of a local fishing group to help ferry Tutsi across the Akagera River to safety in Tanzania. It is estimated that he rescued more than 1,000 Tutsis during the genocide this way, at one point confronting the killers himself, ordering them to turn back from heading to the border to stop those fleeing. Speaking at the Kwibuka Remembrance Flame Ceremony in 2014, he stated, “as Rwandans, we should endeavour to promote peace and focus on what develops rather than what divides us” (Bucyensenge, 2014). Such differing choices and courses of action among individuals raise larger questions about what drives perpetrators of violence. Despite unification rhetoric, the underlying (simplistic) division of the country into Hutu victims and Tutsi perpetrators too often ignores or sidelines courageous stories like this one.¹⁸³ The current government’s decision to outlaw ethnic identities, in order to resist the divisions that fuelled the genocide, may in fact be building resentment, as ethnic identity remains of considerable importance when attempting to understand and reconcile this past experience (Buckley-Zistel 2009, 48, see also Straus & Waldorf 2011). As Buckley-Zistel concludes, “instead of inventing one narrative to unite the nation—via a national identity which is based on political rather than ethnic belonging—it might be more effective to grant political rights to all parts of the society and to, responsively and carefully, encourage a process of dialogue in which members of communities can articulate and share their respective experiences and views” (2009, 48).

A more troubling story that does not fit into the dominant discourse is that of Hutu

¹⁸³ Although there has been some space for acknowledging rescuers or ‘righteous Hutus’ in the country, such as in memorial displays in Kigali and Murambi, rescue narratives are not often a prominent part of what is written and remembered about the Rwandan genocide. Although internationally, perhaps the most famous story about Rwanda is the rescuer narrative in the film *Hotel Rwanda*, as will be examined, this story is highly contested.

victims, who are virtually erased from legal cases and post-genocide commemorations. For example, in my examination of the trial transcripts of *Prosecutor v. Gacumbitsi*, a Hutu woman (known as witness TAS) also testified to having been raped by *Interahamwe* militia, which is attributed to the fact that her husband was Tutsi. Although the courts acknowledged some such cases, they are ultimately erased by the judgments and overall narrative of the ICTR, which sees only Tutsi as the targets and sole victims of the genocide. As Doris Buss articulates,

The rape of Witness TAS in *Gacumbitsi* ... cannot easily be understood according to dominant narratives of the ethnic context of the overall conflict, within which rape is an attack by one group, Rwandan Hutu, for example, on the women of another group, Rwandan Tutsi. The Tribunal's reasoning in *Gacumbitsi* can be read as a convoluted attempt to reorient the rape of Witness TAS so that it *does* conform to the dominant narrative of genocidal rape by one group against another. The Tribunal does this by construing the rape as an attack against the woman's Tutsi husband, and not as a crime against her (Buss 2007, 15).

In another example demonstrating the competing narratives of ethnicity and gender in explanations of sexual violence, Buss critiques how the Tribunal's depiction of rape in Rusumo commune "becomes visible only within the narrow, ahistoric, and constrained framework of an ethnic conflict between two established entities: Hutu and Tutsi" (2007, 15); Thus anything outside of this framework is dismissed, and there is little space to consider the ways in which gender complicated and intersected ethnicity, determining the specific harms enacted during the genocide (*Ibid.*, 17). Essentially, the rape of Hutu women could only be prosecuted as a crime against humanity if it was shown to be part of the attack on the Tutsi population. While perhaps this is understandable as the ICTR is working under the Genocide Convention's definitions, it has led to a clear lack of justice

for violence in which Hutu women were the victims. In Burnet's ethnography she interviews groups of women accorded marginal status, such as Hutu genocide widows from ethnically-mixed marriages, who are excluded from survivor benefits and recognition, and many are currently living in precarious situations including extreme poverty (2012, 143).

Susan Thomson (2013) argues that the state is a disciplining presence in the lives of ordinary Rwandans, particularly for those without substantial political or economic power. Her ethnographic research reveals small resistances by peasants to official policy, as she argues that the impact of Rwanda's remarkable achievements (especially in the economic realm) have been felt by only a small minority. Jennie Burnet (2008) suggests that although the RPF has taken many steps to increase women's participation in post-genocide Rwanda at every level of government, and women's high percentage in parliament has been celebrated globally, a paradox remains where their influence and power has actually decreased in the increasingly authoritarian state. These issues and examples of counter-discourses demonstrate significant ways in which the hegemonic narrative about the genocide in Rwanda has damaging consequences, particularly for women whose stories do not fit within it. Many scholars have written about the way the government has circumscribed collective memory of the genocide, and the methods by which alternative narratives are suppressed and denied (see for example, Lemarchand 2008; Burnet 2009; Buckley-Zistel 2009; Waldorf 2011), thus very often only part of the picture is being communicated and reified in the historical record.

Popular Representations of Atrocity

As James Dawes investigates, there are intense ethical paradoxes in representing atrocity. He argues that the contradiction between ‘our impulse to heed trauma’s cry’ for representation and our instinct to protect it from invasive investigation, simplification, dissection, and voyeurism is a dilemma at the heart of human rights advocacy (Dawes 2007, 9) as well as transitional justice and post-genocide scholarship. Bearing witness can operate on multiple levels, from the victim who experienced violence and rape firsthand, to those who were witness to the horror, to audiences and academics studying such phenomena - secondary witnesses removed from the crimes both spatially and temporally. The last decade has seen the emergence of diverse literature on the Rwandan genocide, from survivor testimony to historical analyses, in fiction and film. Alexandre Dauge-Roth has written a book analyzing major films and writing on the genocide, and the chasm between remembering and forgetting (2010). Simone Gigliotti looks at three human rights memoirs that chronicle the Rwandan genocide, examining the positionality of the ‘writer as traumatized witness,’ and questioning at what point witnessing becomes sensational or voyeuristic (2007, 86). These and other ethical dilemmas arise in the discussion of what it means to bear witness, but while the often problematic nature of representation has been acknowledged, it is still useful to stress the importance of contemplating, analyzing and keeping such discussions at the forefront of transitional justice scholarship. Some of these examples follow the rhetoric of official discourse, while others give voice to more marginal and suppressed accounts. As Kopf articulates, any representation of trauma is to a certain degree ‘fictitious’ in its attempt to recreate a narrative beyond the collapse of language, but imagination and interpretation not only opens a way to approach history, but also mediates traumatic and narrative memory (2012, 72).

Alongside testimony, fiction and non-fiction writing is among the most popularly circulated forms of bearing witness to past atrocities, as we have seen a proliferation of novels, poetry, memoirs, and non-fiction writing after the Holocaust, for example. Perhaps the best-known work of fiction following the Rwandan genocide is *A Sunday at the Pool in Kigali*, written by French-Canadian journalist Gil Courtemanche,¹⁸⁴ which was later adapted into a film. In terms of non-fiction, as utilized in chapter one, Philip Gourevitch's *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories From Rwanda* is a very popular account and has been met with much popular acclaim, alongside criticism from scholars. As well, General Romeo Dallaire's account that indicts the international community's inaction, *Shake Hands with the Devil* (2003), is widely read and particularly well-known in Canada, and was later made into a film. Interestingly, in 1998, as part of the FestAfrica project¹⁸⁵ *Rwanda: Écrire par devoir de mémoire*, ten prominent African writers traveled to Kigali for a two-month residence to reflect on and write about the 1994 genocide. Nine texts were produced, including four novels, two travel narratives, a fictional interview, a testimony, and a collection of poetry. For example, Senegalese author Boubacar Boris Diop's acclaimed novel *Murambi, Book of Bones*, is one such work, exploring the difficulties of commemorating genocide through fiction (see Hitchcott 2014). Ivorian author Véronique Tadjo's travel narrative, entitled *L'Ombre d'Imana: voyages jusqu'au bout du Rwanda* explores the travel writer's gaze and the ambiguous status of tourists (see Hitchcott, 2009). Such works allow readers to grapple with some of the key dilemmas of ethical witnessing following genocide,

¹⁸⁴ Dawes, 2007 provides an excellent critique of this work (30-35).

¹⁸⁵ This project was initiated by the Chadian writer Nocky Djedanoum, director of the festival Fest'Africa in Lille/France, and the journalist Maïmouna Coulibaly, and supported by the philanthropic organization Fondation de France and the French Ministry of Cooperation (see Dauge-Roth, 90 for more information).

opening up important questions about commemoration and human nature, for which there are various answers. French journalist Jean Hatzfeld's trilogy recounts the lives of survivors and killers in a small community in southeast Rwanda,¹⁸⁶ and Neil Eltringham (2014) examines different forms of textualization focusing on Murambi, comparing a human rights report, a novel, and the transcripts of an ICTR trial to the memorial site. As Kopf articulates, "the aesthetic concern of writing, the imaginative quality of fiction and the ethic concern of telling the truth, of being true to the unimaginable realness of the genocide" should not be thought of as contradictions to writing projects, but rather, the imagination can be conceptualized as a potential way to interrogate important themes and questions related to genocidal violence (2012, 69). Although outright opposition to the government's narrative has been banned, in subtle ways writing can push back and offer different insights than official discourses. Written work facilitates a more individual engagement, in contrast to collective narratives that are vulnerable to being circumscribed in public commemorations.

In terms of cinematic representation, Terry George's *Hotel Rwanda* (2004) certainly captured the attention of Western audiences, but has also been highly contested. Although awarded numerous accolades in Canada and the US, in Rwanda the film is highly unpopular, and many Rwandans are sceptical that Paul Rusesabagina is any type of hero, although this negative image could also be fuelled by his criticism of current President Paul Kagame (and perhaps infused by jealousy considering the large sums of

¹⁸⁶ Jean Hatzfeld's trilogy includes *Machete Season: The Killers in Rwanda Speak* (2006), *Life Laid Bare: The Survivors in Rwanda Speak* (2007), and *The Antelope's Strategy: Living in Rwanda after the Genocide* (2010).

money he was awarded). Several other films and documentaries¹⁸⁷ have brought attention to the genocide, such as Fergal Keane's *Valentina's Nightmare: A Journey into the Rwandan Genocide* (1997), Greg Barker's *Ghosts of Rwanda* (2004), and *Sometimes in April* (2004), just to name a few. Filmmakers make deliberate decisions about what events to focus on, where to shoot the film, for which audience their production is intended, and what themes they wish to invoke and open commentary on. Often in the case of imagining a disturbing past, films about genocide communicate a selective reading of history, attempt to raise consciousness about particular issues, and may offer lessons for future generations. As this dissertation has engaged with, there is "inherent tension between inclusion and exclusion lying at the core of all mediations of the past" (Dauge-Roth 171). While each book or film comes from its own viewpoint, a multitude of voices is crucial for a more balanced understanding of this history, which unfortunately official discourse increasingly eclipses.

There are some particularly problematic forms of witnessing outside of Rwanda, which serve to eclipse the victims, deliberately distort the facts, or deny the genocide and downplay the systematic rape that accompanied it. One such example, *Intended Consequences*, is a popular exhibit by American Jonathan Torgovnik, which presents images of female victims of the Rwandan genocide with their children born of rape.¹⁸⁸ The still photos of women crying, looking into the distance with pain, despair, and shame on their faces are pieced together, while you hear their experiences of rape described (by an English narrator) in graphic detail. As Crawley and Simic have critiqued, this framing

¹⁸⁷ Perhaps the first documentary-length film on the killings in Rwanda, *Journey Into Darkness*, was aired on BBC on June 27th, 1994, and significantly focuses on Nyarubuye (see Harrison, 2005).

¹⁸⁸ Commonly referred to as 'enfants mauvais souvenirs' in Rwanda.

perpetuates a politics of victimhood, inviting pity for the victims rather than genuine empathy or engagement. Situated within the prevailing humanitarian iconography of a racialized victim without agency, this exploitative depiction is part of a larger history of hierarchical Western encounters with Africa, “which tend to view Africa and its women as mute, child-like, dependent, and requiring Western ‘rescue,’ care and guidance” (Crawley & Simic 2012, 91). Much of the focus is on the trauma experienced by Torgovnik in creating this exhibit (and book, and film), and it is clearly meant for an outside (Western) audience. Heike Härting¹⁸⁹ has also written about problematic representations of the genocide that erase Rwandans’ agency and make a spectacle of the dead African body. As Alexandre Dauge-Roth articulates,

reading the literature and watching the films that bear witness to genocide is an unpleasant and troubling encounter. It forces on us a proximity with death and cruelty, confronts us with the most radical consequences of hatred and racism, and asks us, ultimately, to face, here and now, what we would like to believe is something that happened ‘over there’ and that is over (2010, 3).

Genocide is, in effect, never fully comprehensible, with new forms of knowledge, perspectives, insights, and explanations to be discovered, while some will be lost forever with victims. Representations are interpretive, and often highly political. Here I have briefly explored examples of acts that bear witness to the Rwandan genocide, although there are a multitude of others.¹⁹⁰

In terms of representing sexual violence, one key book that compiles survivor

¹⁸⁹ See Härting, Heike. (2008). Global Humanitarianism, Race, and the Spectacle of the African corpse in Current Western Representations of the Rwandan Genocide. *Comparative Studies of South Asia, Africa, and the Middle East* 28, 1: 61-77.

¹⁹⁰ Examining forms of bearing witness to the Rwandan genocide could constitute a dissertation project unto itself, thus here I have just mentioned a few major ways this history is being recorded, as an addendum to my analysis of memorialization.

testimony is *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (2009). Beyond this, most of the bearing witness to genocidal rape is collected through legal testimony. In the past couple of decades, feminist scholars have drawn attention to the difficulty of testifying to sexual violence crimes, both domestically and internationally. Many victims fear that their stories will not be believed, fear reprisal from perpetrators, do not want to be stigmatized as a rape victim, or have internalized blame for their own violation. This presents a dilemma, as the testimony of rape victims is integral to ending impunity for perpetrators of sexual violence. Nicola Henry examines the ways in which the legal context fails to hear the actual stories of wartime rape and interpret rape as a complex experience, neglecting to tell the larger story of trauma and the causes and consequences of such massive human rights violations (2010, 1106). As the earlier chapter has explored, seeking justice for victims of wartime rape is an exceedingly difficult endeavour. Although there are some collections of testimonies from Rwandan victims of rape (see De Brouwer and Chu 2009), Mibenge (2013) has argued that many Rwandans tend to acknowledge rape as a weapon of the war in the general sense, but are private when it comes to specific details, experiences, and more complex discussions about the causes and consequences. The intimate nature of sexual violation adds another complex layer to possibilities for bearing witness to this crime. A multitude of histories and discourses in various forms, and from differing perspectives, is important to maintain the complexity of events such as genocide.

While this thesis examines three different spheres that construct knowledge on the Nyarubuye massacre –historical reconstruction, international justice, and memorial

representations, these discourses also interrelate in productive ways, which I will summarize briefly.

History & Justice

In the contemporary era, justice-seeking bodies often substantially inform histories of violence, as one of the perceived aims - or at least outcomes, of trials (and truth commissions) is the act of creating an historical record of atrocities. For example, Nuremberg is often cited as a significant historical event in large part for establishing 'the truth' of the Holocaust publicly. However, Neil Eltringham's interviews with legal practitioners at the ICTR revealed that in fact many, particularly judges, did not see this historiography as a primary purpose, but rather an inevitable result, of the trial proceedings. Distancing the Tribunal's purpose from that of truth commissions such as in South Africa and Sierra Leone, they argued that their primary focus was to determine guilt or innocence, and the historical record created was just an inevitable by-product. Some of the defense counsel expressed worry that focusing on an historical record - turning the courtroom into 'a theatre of history' - would distract from the legal purpose at hand, expanding the trial too much (Eltringham 2009). Even Hannah Arendt, in discussing the post-Holocaust Adolf Eichmann trial, argued that the purpose of the court is to render justice and nothing else. But regardless of intent, the outcome is that much of the history of the Rwandan genocide is known through the work of the ICTR, as well as the *gacaca* courts (at least within the country). Although this purpose may be less pronounced in other legal spheres, such as domestically, "war crimes courts have begun to acknowledge their own unique contribution to collective memories of war crimes, genocide, and crimes against humanity, and some courts have established legacy officers

with the aim of extending the didactic and historical reach of these courts” (Henry 2011,10).

In many ways, writing the history of Nyarubuye is influenced by the timeline and evidence of the guilt of Mayor Gacumbitsi established by the ICTR, and the transcripts give legitimacy to the writing of journalists and scholars about this history. In fact, in this thesis, history and law overlap significantly, as much of the tribunal record was utilized to reconstruct the historical chronology. Although in some small ways they diverge – in one example I encountered, rumours about cannibalism during the Nyarubuye massacre which were relayed to me during my visit to the memorial site remain unproven in the court - for the most part we can see the ICTR record as backing up what survivors, witnesses, journalists, and scholars have written and communicated in the aftermath of the massacre. Although the ‘legal truth’ is often viewed as partial and narrow, collectively the ICTR transcripts undeniably contribute to our understanding of the history of the 1994 Rwandan genocide.

Justice & Memory

Matthew Burnett views courts as ‘technologies of memory,’ in that the judicial process shapes the way in which atrocities are remembered (2005, 761). In discussing different forms of memory, Nicola Henry views law, justice, and memory as cyclical, citing examples where collective memories are shaped by sites of memory preservation and mnemonic objects, and this cycle is closely linked to war crimes courts. It is clear that “institutionalised mechanisms such as international courts... preserve and transmit memory, and may contribute to a certain narrative about past historical events” (2011, 18). In my dissertation, partly inspired by this work, I use official memory to “think

critically about the nature of institutional mechanisms [like legal trials] as sites of traumatic memory preservation” (Henry 2011, 19). The adjudication of crimes is a crucial mechanism informing local, national, and international discourses about genocide and mass atrocity, and highly influences the way the genocide is remembered (Burnett 2005).

Criminal trials may be part of a range of mechanisms and activities that allow the population to come to terms with a violent past, and facilitate collective mourning, particularly for victims, although this is perhaps less possible in the case of the ICTR which was not based in Rwanda. And of course, these trials constitute only selective memory, depending on who is being charged and for what crimes, and which are neglected and overlooked. As mentioned, often gender has been ignored as a factor in justice-seeking and memorialization processes. Collective memory, as the sum of stories and narratives told at particular points in time about past events, is highly selective as certain memories become more prominent and enter into the public consciousness. Henry demonstrates how, “an understanding of the relationship between law and memory helps to elucidate the way in which law shapes narratives about genocide, war crimes and crimes against humanity; how law shapes or produces history; and how law reproduces hegemonic relations of power that in turn shape how historical events are to be remembered” (2011, 27). As articulated through an examination of the Gacumbitsi trial, in many ways the poor prosecution record of the ICTR leaves significant gaps in collective memory of the Rwandan genocide in terms of recognizing the widespread nature of sexual violence.

Memory & History

In everyday usage, some may see memory and history as essentially the same

thing – individuals and groups remember past events. But, in different circumstances, they can mean drastically different things. Eva Hoffman gives the example of growing up in Eastern Europe after the Second World War, where “official history writing offered deliberate and ruthless lies, when it deleted horrific events and entire groups and nationalities from the historical record, people literally had to rely on private, local, subversive memory to preserve the truth version – the fundamental facts, even – of what happened” (Hoffman 2000, 2). Here “memory was the only guarantee of a truthful history,” (*Ibid.*) but in other cases, private memory is manipulated for official aims, and becomes highly political and distorted. Sociologist Martin Halbwachs defined collective memory as active repetition or re-enactment of the past, and Paul Connerton built on this, contending that collective memory can be reshaped by historical reconstruction or the manufacture of official history (see Burnett 2005, 760). While memoirs have become an important part of recording past (traumatic) events, history is often viewed as more authentic, corroborated, and objective. But both memory – individual and collective – and history, as written in books, are subjective and contested. As historians are now not the only ones to write history, it exists in many diverse forms, and memory has become a significant cultural preoccupation, the relationship between these two terms is complex. On the differences between the two, Pierra Nora writes that memory “remains in permanent evolution, open to the dialectic of remembering and forgetting,” “vulnerable to manipulation and appropriation” and “is blind to all but the group it binds,” whereas history “is the reconstruction, always problematic and incomplete, of what is no longer,” and “an intellectual production that calls for analysis and criticism” (Nora 1989, 7-8). Thus, for him, the *lieux de mémoire* are sites where memory crystallizes at a particular historical moment.

In this dissertation, history is reconstructed from available sources (including journalists, legal transcripts, and testimony), but memory is viewed more as a politically-influenced construction manifest in official memorialization processes. When looking at official discourses, we can see the ways in which the collected historical sources are constructed and used in particular ways (with parts left out) at the memorial site. Both leave an important legacy for the knowledge of future generations' regarding the Rwandan genocide.

This dissertation examined matters of truth, justice, and memory, within (and following) the Rwandan genocide, vis-à-vis one specific massacre at Nyarubuye Parish, April 15th-17th, 1994. After setting the context with a succinct summary of the genocide, the first chapter undertook a systematic review to chronologically reconstruct the Nyarubuye massacre from available academic, journalistic, and legal sources. Corroborated by the record of the International Criminal Tribunal, this section pieced together what happened through available survivor and perpetrator testimony and interviews in the immediate aftermath (particularly the work of BBC's Fergal Keane), focusing specifically on the significant number of Tutsi women who were victims of genocidal rape. Responding to the call for more micro-level studies of events of the genocide, this chapter compiled as comprehensive a picture as possible of this particular massacre in southeastern Rwanda. The second chapter begins with an exploration of sexual violence in war and explanations for its prevalence during the Rwandan genocide, including Hutu extremist propaganda, which ominously targeted Tutsi women's sexuality. The next section reviewed the record of the ICTR's prosecution of sexual violence, which has established significant precedents, but also faced major problems and

shortcomings on securing successful guilty verdicts to account for the widespread and systematic perpetration of rape. Unfortunately, the conviction record of the ICTR does not match the high prevalence of sexual violence, although it is evidenced to a significant degree in the larger record of the proceedings of the court (see Buss 2010). Chapter two, part three, examines the testimony of one witness during the *Prosecutor v. Gacumbitsi* trial in detail. Her revelation that the Mayor not only incited rape, but personally raped her, in some ways reveals the crux of the problems faced by the ICTR around assigning responsibility for the sexual violence which characterized the genocide. This example demonstrates ongoing problems with prosecuting rape internationally, including the harsh cross-examination tactics, disempowerment and re-traumatization of the witness, and ultimately, the fact that her allegation was left out of the final judgment, largely due to procedural rules. My attempt to bring to light the story of this particular victim is an example that can be extrapolated, as it is clear the stories of countless rape victims have been concealed and silenced, leaving an official record which misses much of the story. The section ends with a brief summary of the other levels of legal proceedings relevant to this case study. Chapter three looks at the politics of memorialization. This chapter explores my own experience as an observer at the national memorial sites in Rwanda, including Nyarubuye, with a particular focus on the dilemma of how to represent sexual violence crimes. There is still an active process of recovery in Rwanda, as more bodies of female victims were found in the latrines at Nyarubuye only a few years ago. Although sexual violence is acknowledged, more attention in official discourses could lead to wider discussions about root causes, including the history of misogyny and the intersections of gender and ethnicity that led to such high rates of sexual violence in the first place. The second part of the chapter explores the contested politics of memory in Rwanda, and the

RPF governments' control of the genocide narrative. As I conclude, the suffering of all victims is important to acknowledge if the country is to truly move forward and reconcile. Combining these three dominant spaces of inquiry – the history of the massacre, the criminal tribunal record, and the memorial site itself – and placing them in conversation with other another through a particular case study reveals the ways in which official accounts have circumscribed understanding of the events of 1994. The intertwined nature of these official discourses highlights key patterns in terms of what the overall genocidal narrative reveals and conceals, impacting the legacy of the Rwandan genocide both within the country and around the world. This is significant because detailed events of the genocide may still remain hidden, eclipsed or obscured by the official discourse and its repetitions. Further, by focusing specifically on the issue of sexual violence, this project makes important feminist contributions in the areas of genocide history, international legal scholarship, and memorialization studies. While this dissertation has provided in-depth details often missed by more macro-level research, it also points out gaps and silences that remain due to the increasingly circumscribed official narrative. More work must be done to uncover suppressed and hidden memories, and greater advocacy to allow space for these contested stories is a crucial component of a genuine process of reconciliation for the country. Although my project was limited in scope, focusing specifically on three forms of official discourse, it reveals important insights into what a close feminist analysis at the microlevel can reveal about larger themes, patterns, and lessons of genocide for the future of transitional justice work and scholarship.

In terms of future directions for research, three particular threads emerge as prominent places to advance this contribution in the future: the importance of focusing on

marginalized discourses, one of which is sexual violence against men, and the legal ramifications of the work of the ICTR. Civil society groups and non-governmental organizations also have an important role to play in advocacy in Rwanda, considering the increasingly repressive political landscape.

The Legacy of the ICTR

Despite its difficulties, the International Criminal Tribunal for Rwanda “has made major and lasting contributions to the jurisprudence of gender-related crimes” (Bianchi 2013, 139). Prosecutor Hassan B. Jallow argues that “the ICTR has, through its groundbreaking judgments, provided clarity and definition to the concept of genocide, acknowledged the importance of sexual violence as a form of destruction, prosecuted the media as a weapon of hatred, clarified the application of the Geneva Conventions to civilian perpetrators and shown that sovereign immunity has no place in the modern world” (Jallow, 2008, 270). The ICTR’s Akayesu judgment is consistently cited for its ground-breaking recognition that sexual violence can be prosecuted as part of a genocidal campaign, but the ICTR has also had many missteps and missed opportunities in terms of the prosecution of sexual violence. Lack of sensitive investigations including few female investigators with relevant experience, a lack of initial resources and political will to investigate sexual violence crimes, and poorly designed interviewing and protection techniques all had lasting negative repercussions for the work of the tribunal (see Oosterveld 2005). In terms of contributions to the work of the International Criminal Court, the ICTR had a positive impact on the ICC’s mandate (and Elements of Crime document), including sparking an important debate over what should constitute ‘rape,’ and an expansive definition of gender-based violence. As well, those negotiating the

Rome Statute recognized the importance of ensuring gender-sensitive investigations and prosecutions, including appointing individuals with relevant expertise. Another article in the Statute states that the court must take appropriate measures to protect the safety and wellbeing of victims and witnesses. Further, calls by Rwandan genocide survivors for reparations contributed to the creation of the ICC's Victims Trust Fund. Although the ICTR's experiences are reflected in some key ICC policies, "the test will be whether such codification of lessons learned has the intended result of ensuring gender-sensitive justice" (Oosterveld 2005, 133). There has been a proliferation of feminist scholarship and international awareness of the importance of countering long-standing impunity for wartime sexual and gender-based violence crimes. Incredibly, internationally, sexual violence has reached the status of a *jus cogens* norm, and is a priority of international criminal law moving forward. As Kelly Dawn Askin articulates,

The extraordinary progress made in the Tribunals on redressing gender-related crimes is largely the result of extremely hard work by scholars, activists, and practitioners inside and outside the Tribunals who have fought long, difficult battles to ensure that gender and sex crimes are properly investigated, indicted, and prosecuted. Sex crimes are undoubtedly some of the most difficult to investigate and prosecute (2003, 346).

Askin concludes, "it has taken over twenty-one centuries to acknowledge sex crimes as one of the most serious types of crimes committable, but it appears that this recognition has finally dawned" (2003, 349).

Following from this exploration of lessons learned, it is clear that sexual violence against men, during conflict and otherwise, is a highly neglected and suppressed area of research. While wartime sexual violence has gained traction in the international sphere

both in terms of activism and prosecution, the problem remains an urgent one in many countries and conflicts around the world. And sexual violence against men is further stigmatized due to cultural codes of masculinity and homophobic attitudes. In their collection *The Men Who Killed Me*, De Brouwer and Chu include the testimony of a man who was a victim of rape during the Rwandan genocide. Faustin Kayihura, 13 years old at the time, was raped multiple times by a Hutu woman, and states that if other men were raped, he believes they would not talk about it because it is considered very shameful. He describes his incredible story of survival, how out of his entire family only he and one of his brothers survived, and how he is still traumatized by the memory of the sexual violence. The fact that there is virtually no space for male survivors of sexual violence in most post-conflict mechanisms of justice and reconciliation is highly problematic. Men also suffer from sexual violence during war, for example in the ongoing conflict in the DR Congo, or frequently in detention centres.¹⁹¹ This is an important but starkly neglected area of research, which I hope to pursue in the future. While a concentrated focus on sexual violence is very important, an overall reduction of gender to women and gender-based violence to rape is problematic, and these larger areas are very much in need of sustained activist attention and scholarly analyses.

Finally, I want to echo the call for more attention to suppressed or hidden discourses that counter the increasingly narrow official discourse both on the genocide and the political situation in Rwanda today. Although it is becoming exceedingly difficult to conduct research in Rwanda today, and the consequences for speech or actions that are in opposition to the government's narrative can be dire, understanding and recording voices and opinions of those which counter official discourses are important for a more

¹⁹¹ See, for example: <http://world.time.com/2011/08/03/rape-as-a-weapon-of-war-men-suffer-too/>

complete picture of what happened during the genocide, as well as the state of the country today. As Eltringham articulates, if we are trying to understand the genocide, “we must explore the relationship between the multiple explanations of what happened and interrogate how – and why – different groups within Rwandan society talk about the genocide in different ways” (2004, 154). This dissertation has taken the first step by uncovering tensions and problems with official narratives through one particular massacre during the genocide, to understand how discourses are shaped by the powers that be in Rwanda, with a continuous focus on the sexual violence that was an integral part of the violence, and how it is understood, prosecuted, and represented. This reminds us of the power of history, law, and memorials to shape collective memory, pronounce what and how the past will be remembered, and inscribe what knowledge will be available for future generations.

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