

Understanding the Threat of Victor's Justice: The Case of Transitional Justice in Post-Genocide Rwanda

Abstract

The Rwandan genocide of 1994 remains a chilling reminder of the depths of cruelty and violence that humans can inflict upon one another. While Rwanda has since emerged as a symbol of successful post-conflict recovery, the scars of the genocide continue to fester beneath the surface. This paper delves into the concept of Victor's Justice in the context of the Rwandan genocide and the Transitional Justice efforts that followed, with a specific focus on the actions of the International Criminal Tribunal for Rwanda (ICTR) and the Rwandan Patriotic Front (RPF). Victor's Justice, a term fraught with ethical implications, emerges as a central theme in this analysis, highlighting how it manifested in the proceedings and outcomes of the ICTR. Employing a theoretical approach and drawing upon the work of experts in the field, this research rigorously examines the dynamics of Victor's Justice and its enduring impact on Rwandan society.

Initially, the paper establishes the foundational concepts of Victor's Justice and Transitional Justice, tracing their historical roots and relevance to the ICTR. Then, by providing the historical context for the Rwandan genocide, it elucidates the complex power dynamics leading up to the massacre and establishes the International Criminal Tribunal. Furthermore, it delves into the accusations of Victor's Justice, analyzing the actions of the RPF during 1994, its interference with the ICTR's operations, and the injustices witnessed in national courts. Finally, it explores the challenges of Transitional Justice and Social Reconciliation in Rwanda, including restrictions on freedom of expression, persecution of political opposition, and mechanisms of social control.

This paper synthesizes the findings and data accumulated throughout the study. It offers recommendations to address the social and ethnic divisions that persist in Rwanda, emphasizing accountability, political freedom, and the significance of historical narratives in fostering true reconciliation. This research contributes to a deeper understanding of the complex dynamics in post-genocidal societies and the implications of Victor's Justice for pursuing lasting peace and justice.

Transitional Justice in the Post-WWII International Community

The term *Victor's Justice* has entered the popular vocabulary relatively recently, being first mentioned in 1971 in *Victor's Justice: Tokyo War Crimes Trial* by Richard Minear¹. However, its concept has shaped history and legality since the beginning of conflicts and warfare. Roman historian Livy recalls in his work *Ab Urbe Condita*² the 390 BC Gaulish sack of Rome, when chieftain Brennus, after conquering the city, allegedly pronounced the now famous phrase *Vae Victis*: meaning “woe to the conquered,” the locution helps understand the mentality that reigned sovereign throughout history, where the defeated was powerless.

There are other examples from the past of winners showing little to no regard for their previous actions in war if they prevailed against their adversary. The most notorious examples in contemporary history are the International Military Tribunal in Nuremberg and the International Military Tribunal for the Far East in Tokyo, both established in the aftermath of World War II. The Trials are the first examples of International Criminal Law and an attempt to indict the guilty of war crimes, crimes against humanity, and crimes against peace, with the last two being prosecuted for the first time.³ The Tribunals were established to recreate moral, ethical, and legal justice for the victims. However, “*The great irony of the legal proceedings was the failure to recognize the actions during the war of the states casting judgment on the accused.*”⁴ Professor William Schabas describes the example of the Tribunals mentioned above. “*The IMT breached fundamental principles of justice because it only judged one side. War crimes and other atrocities perpetrated by the victors [...] remain unpunished.*”⁵

The United States, Great Britain, and the Soviet Union were all culpable of war crimes with, for instance, the area bombing of German cities, leading to the death of over 500,000 civilians;⁶ the Firebombing of Tokyo, which is still, to this day, the most destructive bombing raid in human history;⁷ or the horrors of the nuclear attacks on the Japanese cities of Hiroshima and Nagasaki. While the Allies’ Tribunals promised justice and fairness, they remained beyond reproach for their own transgressions, showing the asymmetry in Victor’s Justice. Therefore,

¹ Richard H. Minear, *Victor's Justice: Tokyo War Crimes Trial* (Princeton University Press, 1971).

² Tito Livio, *Ab Urbe Condita - Storia Di Roma Dalla Sua Fondazione* (Rizzoli, 2003).

³ William Schabas, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals* (Oxford: Oxford University Press, 2014), Chapter 3 - Victor’s Justice? Selecting Targets for Prosecution.

⁴ Jonathan Jackson, “Victors Write the Rules: Hypocrisies and Legacies of the Nuremberg Trials”, *Journal of Global Faultlines* 8, no. 2 (2021): 265 – 71.

⁵ William A. Schabas, “Victor’s Justice: Selecting ‘Situations’ at the International Criminal Court, 43 J. Marshall L. Rev. 535,” *UIC Law Review* Vol. 43, no. 3 (2010): Article 3.

⁶ Jonathan Jackson, “Victors Write the Rules: Hypocrisies and Legacies of the Nuremberg Trials”, *Journal of Global Faultlines* 8, no. 2 (2021): 265 – 71.

⁷ Tony Long, “March 9, 1945: Burning the Heart out of the Enemy,” *Wired*, March 9, 2011.

deciding to avoid punishment and accountability creates a system of double standards based on the military capacity of winning, setting a dangerous precedent in the very first days of International Law.

In the decades following the end of World War II and the establishment of the International Military Tribunals, the view on justice in global conflicts shifted, thanks to the emergence of an international community with solid legal roots. The international community acknowledged the issues that arose with the IMT and the IMTFE and rejected the idea of Victor's Justice, now recognized as a contentious issue, and deemed unfair and unjust: "*The global human rights movement that emerged in the aftermath of World War II has been built on the principle of the universality of human rights. A corollary of this principle is that all victims of human rights abuses deserve justice regardless of which side they belong to.*"⁸ The 1948 *Universal Declaration of Human Rights* is the most critical milestone in this new view of justice. It points to a new global order based on fairer, equal justice and the utmost importance of protecting human rights worldwide.⁹ The concepts are strengthened in the subsequent years by a number of Covenants and Conventions that enshrine the principles in law. Among these, the most relevant one for the case that will be analyzed is the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*. Despite its brevity and evident shortcomings, such as the lack of a sanctioning body and the limited provisions for the prevention of genocide, the political power of this Convention remains significant. Indeed, it was signed by an overwhelming number of countries in the years immediately after the horrors of the Holocaust, introducing the concept of genocide.¹⁰

The codification of crimes in International Law is a fundamental step in improving the international judicial system in order to avoid both accusations of Victor's Justice and the issue of retroactive justice, present in both the Nuremberg and Tokyo Trials. In the present day, the International Criminal Court represents the culmination of a path that spanned over half a century, beginning with the IMT and IMTFE, the Genocide Convention, the Geneva Conventions for humanitarian treatment in war, and culminating in the establishment of the two International Criminal Tribunals for Rwanda and Yugoslavia. The ICC is now the responsible body for trying individuals accused of genocide, war crimes, crimes of aggression, and crimes against humanity.

Though it remains an imperfect tool, the creation of the ICC represents an enormous step toward a fair global justice system. The ICC not only prosecutes international criminals but also

⁸ Victor Peskin, "Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," *Journal of Human Rights* 4, no. 2 (April 2005): 213–31.

⁹ United Nations, "Universal Declaration of Human Rights," OHCHR (United Nations, December 10, 1948).

¹⁰ United Nations, "Convention on the Prevention and Punishment of the Crime of Genocide" (United Nations, December 9, 1948).

encourages an innovative focus on the protection and welfare of the victims. Indeed, the second paragraph of the Preamble of the *Rome Statute* declares that the Member States are “*Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.*” Article 68 of the Statute is dedicated to the “*Protection of the victims and witnesses and their participation in proceedings.*” Article 43, paragraph 6, requires the establishment of a Victims and Witnesses Unit with specialized staff trained to deal with trauma.¹¹

Considering all these examples, it is possible to assess a pattern of protection for victims that is now center stage. The new concept of global justice encompasses a framework that extends beyond judicial proceedings. The recent examples of Rwanda, Bosnia-Herzegovina, and the Democratic Republic of Congo have shown, to the international community, situations of extreme violence undermining the social fabric and the rule of law. “*In the past two decades, finding means to help societies recover from the legacies of authoritarianism and violence has become a major focus of both diplomatic action and academic attention. The term “Transitional Justice” has come to encompass a wide range of policies and approaches applied in post-authoritarian and post-conflict societies.*”¹² Professor Timothy Longman, a leading expert on the Rwandan genocide and its aftermath, describes the concept of Transitional Justice, which focuses on accountability and reconciliation to facilitate social reconstruction.

The mechanisms of Transitional Justice are many, as the term itself is loosely defined, but they include both judicial and non-judicial methods. In addition to judicial trials, a powerful tool implemented is the *Truth and Reconciliation Commission*, such as the one created in South Africa in 1996 after the end of Apartheid. Measures to prevent the recurrence of new violations are also considered part of the Transitional Justice process, with constitutional, legal, and institutional reforms, history education, strengthening of civil society, and memorialization efforts.¹³ The following pages will analyze the Rwandan case, focusing on the accusations from the international community regarding the International Criminal Tribunal for Rwanda's engagement in Victor's Justice, the approach of the Rwandan Patriotic Front towards Transitional Justice, and the interconnection between Victor's Justice and Transitional Justice.

¹¹ International Criminal Court, “Rome Statute of the International Criminal Court,” July 17, 1998.

¹² Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press, 2017), p. 14.

¹³ Office of the High Commissioner for Human Rights, “OHCHR: Transitional Justice and Human Rights,” OHCHR, n.d.

The Establishment of an International Criminal Tribunal in a Shattered Country: the Case of Rwanda

One of the most horrifying examples of violence in recent history can be attributed to the Rwandan genocide, 100 days between the 7th of April and the 15th of July 1994, in which fellow Rwandan citizens slaughtered at least half a million Tutsis.¹⁴ To understand how this situation could have even happened, it is essential to highlight the power dynamics in the country during the colonial period and the subsequent decolonization.

Initially, the distinction between the Hutus, who comprised the majority of the population, or approximately 90% of the 9 million citizens, and the Tutsis was relatively fluid. The area was under Belgian trusteeship, and the colonial rulers favored the Tutsi minority, making the ethnicity the wealthiest elite in control of administration and bureaucracy. The Belgians were the first to highlight the differences in the ethnicities and exacerbate the tensions between the two groups, leading to multiple events of Hutu violence against the Tutsis even before the country gained independence in 1962. In 1973, Major General Habyarimana, leader of a military group, became the country's leader, a position he held until his death two decades later, winning three consecutive presidential terms as the sole candidate. Following the animosity against the Tutsis, many of this ethnic group were forced to escape Rwanda and live as refugees in neighboring countries, with Habyarimana's government actively impeding their return under the guise of overpopulation. In 1990, the Rwandan Patriotic Front, or RPF, a group of exiled Tutsis, attacked their home country from Uganda, requesting a more democratic government and the ouster of President Habyarimana. In the following three years, the situation in the country was highly precarious, with RPF members arrested and killed and violent attacks led by both sides of the conflict. The civil war momentarily stopped thanks to negotiations between the two parties, ensuing in the 1993 Arusha Peace Accords: Habyarimana, a moderate Hutu, had agreed to share power with the Tutsis for a more stable and democratic government; however, extremists disapproved of this decision. A striking aspect to highlight is the international community's complete inability to respond to the warnings issued by several human rights groups, which denounced the situation, alerting that the Accords were insufficient to maintain lasting peace in the country. On the 6th of April 1994, President Habyarimana and Burundi's Ntaryamira flew over Rwanda's capital, Kigali. Their plane was shot down, as neither the RPF nor the Hutu extremists have been definitively identified as the perpetrators, it remains unclear who was responsible.

¹⁴ Alison Des Forges and Et Al, *"Leave None to Tell the Story": Genocide in Rwanda* (New York, NY: Human Rights Watch; Paris, 2004), page 13.

Identifying those responsible for the attack holds little significance at this point; what matters is that this event marks the beginning of the systematic slaughter of hundreds of thousands of Tutsis. In the span of a few hours, the Rwandan Armed Forces (FAR) and the Hutu militia groups Interahamwe and Impuzamugambi took control of the country, killing Prime Minister Uwilingiyimana and 10 Belgian peacekeepers, starting the mass killings of Tutsis, moderate Hutus, and anyone who opposed the genocide.

Civilians are convinced to join the massacre, encouraged by the Government-controlled radio dehumanizing Tutsis and calling for their deaths, carried out with rudimentary weapons such as makeshift machetes and blunt objects.^{15 16 17} The Survivors Fund gives a compelling example to understand the effects of the genocide clearly: *"During this period, more than six men, women and children were murdered every minute of every hour of every day. This brutally efficient killing was maintained for over three months. The death rate in Rwanda accumulated at nearly three times the rate of the Jewish dead during the Holocaust. It was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki."*¹⁸ Unfortunately, the extent of the genocide goes much further than mass slaughter: thousands of women were raped, with an estimated 20 thousand children born out of sexual violence; countless people were wounded, mutilated, or infected with HIV and subsequently died in the following months and years because of the lack of medication. Moreover, 73% of survivors still have severe post-traumatic stress disorder due to the trauma of the experience in the genocide. One million Rwandans were internally displaced, and at least 1.2 million fled to neighboring countries.^{19 20} However, there is no data capable of describing the total and utter destruction of the country's social fabric, which was annihilated in only 100 days.

The genocide only stopped when the Rwandan Patriotic Front, led by Paul Kagame, defeated the Hutu Rwandan Armed Forces in Kigali on the 4th of July and, a few days later, completely took control of the country, conquering the northwest on the 18th of July 1994. It is also essential to recognize that, as stated in the Human Rights Watch report *Leave None to Tell*

¹⁵ Alison Des Forges and Et Al, *"Leave None to Tell the Story": Genocide in Rwanda* (New York, NY: Human Rights Watch; Paris, 2004), Chapter "History", p. 25 - 124.

¹⁶ John A. Ausink, "Watershed in Rwanda: The Evolution of President Clinton's Humanitarian Intervention Policy," *Institute for the Study of Diplomacy - Georgetown University*, Case 244 (1997).

¹⁷ History.com Editors, "Rwandan Genocide," History (A&E Television Networks, October 14, 2009).

¹⁸ Survivors Fund, "Statistics of the Rwandan Genocide," Survivors Fund, 2013.

¹⁹ Survivors Fund, "Statistics of the Rwandan Genocide," Survivors Fund, 2013.

²⁰ National Research Council - Roundtable on the Demography of Forced Migration, *Forced Migration and Mortality* (Washington DC, USA: National Academic Press, 2001), Chapter 2: The Evolution of Mortality Among Rwandan Refugees in Zaire Between 1994 and 1997.

the Story, “The genocide took place in the context of war and the RPF wanted to win the war, not just to save the Tutsi. [...] The RPF strategy, praised by other military experts, may have offered the best chance for military victory but did not present the best possible plan for rescuing Tutsi. The soldiers sent to Ruhengeri, where few Tutsi lived, had fewer opportunities to save lives than they would have had in regions with a larger Tutsi population.”²¹ The RPF has been the only political party in power in post-genocide Rwanda, with academics and experts criticizing it for authoritarian tendencies, such as arresting ex-President Pasteur Bizimungu for forming an opposition party.²² Furthermore, RPF leader Paul Kagame has held the post of President for the past 23 years, consistently winning an overwhelming majority of votes, sparking suspicions of electoral fraud.

Following the unprecedented events of the Rwandan genocide, the United Nations decided to investigate the occurrences and establish an *ad-hoc* court “for the sole purpose of prosecuting 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 neighboring States, between the 1st of January 1994 and the 31st of December 1994”.²³ The International Criminal Tribunal for Rwanda, or ICTR, was created with Resolution 955 of the 8th of November 1994 to deliver justice in a country ravaged by one of the bloodiest civil wars in contemporary history, a mission made particularly difficult by the fact that most lawyers, judges, and judicial staff were killed during the genocide.²⁴

There were many reasons for the establishment of the Court. First and foremost, it represented an attempt to reinforce human rights law in a context where a state, for 100 days, had entirely failed to protect its citizens and the newly established government was unable to investigate and prosecute the crimes. Additionally, restoring the rule of law and promoting reconciliation in the country by holding the responsible accountable was essential to prevent such atrocities from ever happening again.²⁵ One of the Tribunal's main goals was to address the flaws that previous International Courts, such as the Tokyo and Nuremberg tribunals, had

²¹ Alison Des Forges and Et Al, *“Leave None to Tell the Story”: Genocide in Rwanda* (New York, NY: Human Rights Watch; Paris, 2004), page 476.

²² Arthur Asimwe, “Rwanda’s Ex-President Freed from Prison,” *Reuters*, April 6, 2007, sec. World News.

²³ United Nations, “Security Council Resolution 955 (1994) on Establishment of an International Tribunal for Rwanda and Adoption of the Statute of the Tribunal,” Pub. L. No. S/RES/955 (1994) (1994), Art. 1.

²⁴ Human Rights Watch, “Rwanda: Justice after Genocide—20 Years On,” Human Rights Watch, March 28, 2014.

²⁵ Michael Humphrey, “International Intervention, Justice and National Reconciliation: The Role of the ICTY and ICTR in Bosnia and Rwanda,” *Journal of Human Rights* 2, no. 4 (December 2003): 495–505.

demonstrated, thereby delivering greater fairness in the treatment of defendants and the decision-making process regarding whom to prosecute.²⁶ The Tribunal was located in Arusha, Tanzania, to “ensure not only the reality but also the appearance of complete impartiality and objectivity in the prosecution of persons responsible for crimes committed by both sides to the conflict. Justice and fairness, therefore, require that trial proceedings be held in neutral territory.”²⁷ The ICTR has indicted 93 individuals, including high-ranking military and government personnel, members of the socio-economic elite, and religious, militia, and media leaders. Furthermore, the Tribunal is the first International Court to deliver verdicts on genocide and the first to include rape in the perpetration of genocide.²⁸

However, it is interesting to note that Rwanda was the only country to vote against the creation of the Tribunal, objecting to the location outside its borders and contesting the temporal jurisdiction, that is, the entire year of 1994.²⁹ Moreover, the RPF-led government has refused to cooperate with the ICTR and actively restricted both the Tribunal’s investigation into violations of international humanitarian law committed by the RPF members and the subsequent prosecutions against such individuals. The following pages will analyze the complex relationship between the Rwandan Patriotic Front and the International Criminal Tribunal, examining how it has impacted, and continues to impact, justice and reconciliation in Rwandan society.

The Lack of Justice, Impartiality, and Accountability in Post-Genocide Rwanda and the ICTR

Of the ninety-four people indicted by the International Criminal Tribunal for Rwanda, none were members of the RPF; additionally, few members were held accountable for their actions by local *gacaca* courts. At first glance, it may appear unlikely that the RPF, primarily composed of Tutsis and moderate Hutus, would engage in crimes of the scale of the genocide. Nonetheless, Human Rights Watch attributes to the RPF the responsibility of killing more than thirty thousand Hutu civilians in 1994.³⁰ Although these crimes do not amount to genocide, and equating them

²⁶ Victor Peskin, “Beyond Victor’s Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda,” *Journal of Human Rights* 4, no. 2 (April 2005): 213–31.

²⁷ United Nations Secretary-General, “Report of the Secretary-General pursuant to Paragraph 5 of Security Council Resolution 955 (1994).,” *DigitalLibrary.un.org* S/1995/134 (February 13, 1995): Art. 42 “Justice and Fairness”.

²⁸ UNICTR - International Residual Mechanism for Criminal Tribunals, “The ICTR in Brief | United Nations International Criminal Tribunal for Rwanda,” *Irmct.org*, 2013.

²⁹ Leslie Haskell and Lars Waldorf, “The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences,” *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

³⁰ Alison Des Forges and Et Al, “Leave None to Tell the Story”: *Genocide in Rwanda* (New York, NY: Human Rights Watch; Paris, 2004), p. 478.

with the genocide against the Tutsis would be a serious overstatement, they still represent a clear violation of international humanitarian law. In its Statute, the Tribunal promised to investigate not only all cases of genocide but also crimes against humanity and war crimes³¹, which members of the RPF are guilty of. In such a significant and exemplary court, it is essential that all victims of human rights violations and abuses are treated with the same respect and dignity, regardless of their affiliation.

The Rwandan Patriotic Front ended the genocide and took power in July 1994; however, there are multiple reported cases of massacres, political assassinations, and summary executions before and after this date. The significant issue lies predominantly in the crimes committed after the genocidal months, as they cannot be explained as self-defense or collateral damage of the conflict. In August and September 1994, a team from the UN High Commission for Refugees was granted access to RPF-controlled territories to document such crimes, and it was able to meet with diverse witnesses to investigate “*widespread and systematic disappearances, murders, and massacres where victims included women, children, and the elderly.*”³² Furthermore, a UN-appointed commission concluded that RPF soldiers had committed serious infringements of humanitarian law and should be prosecuted for these crimes. Human rights associations such as Human Rights Watch and Amnesty International also investigated the crimes.³³ The report published by HRW, *Leave None to Tell the Story*, is the primary source used in the following paragraphs to present the scale on which these violations were committed, especially after July 1994. Even if the events remained poorly documented due to the RPF's tight control over information during its initial months of governance, there is enough data to assess the culpability of the crimes committed by soldiers and high-ranking members of the RPF. In the words of Alison Des Forges, the report's principal author, a leading expert on Rwanda, and senior adviser to the Africa Division at HRW, “*These killings were widespread, systematic, and involved large numbers of participants and victims. They were too many and too much alike to have been unconnected crimes executed by individual soldiers or low-ranking officers. Given the disciplined nature of the RPF forces and the extent of communication up and down the hierarchy, commanders of this*

³¹ United Nations, “Security Council Resolution 955 (1994) on Establishment of an International Tribunal for Rwanda and Adoption of the Statute of the Tribunal,” Pub. L. No. S/RES/955 (1994) (1994), Art. 1 – Art. 3 – Art. 4.

³² Leslie Haskell and Lars Waldorf, “The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences,” *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

³³ Leslie Haskell and Lars Waldorf, “The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences,” *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

army must have known of and at least tolerated these practices. According to several informants, Kagame himself was told about the killings of civilians in Byumba and did not intervene to stop them".³⁴

Numerous civilians were killed or injured during the fighting for control of the capital, Kigali. Most of the time, the victims were killed in the RPF's pursuit of extremist Interahamwe members, with the Kagame-led group often not distinguishing civilians from militia. However, there are also documented cases of massacres of Hutu non-combatants carried out with no ulterior motive beyond revenge on the "enemy," particularly in areas where few Tutsis had been killed, a clear violation of international humanitarian law. A tactic used periodically was gathering Hutu civilians for pacification meetings, promising a truce or food and resources, and attacking them instead, regardless of age or gender. One of the most notorious massacres happened in Kabgayi on the 2nd of June 1994, where several of the highest-ranking Rwandan Catholic Church members were killed. The clergy was moved from the relative safety of Kabgayi, a zone under international protection, to a small, isolated village, Gakurazo, at the request of high-ranking members of the RPF. The group was gathered in a room, where RPF intelligence officers walked in and opened fire, shooting at the clergy until a whistle blew, leaving several of the victims' bodies torn to shreds by the number of bullets shot. The only survivor, a priest, was forced into lying about his version of the events, declaring that the murders were isolated events by separate, vindictive soldiers to avenge their families.³⁵

Furthermore, RPF soldiers assassinated anyone thought to be hostile to the RPF: members of the Rwandan government, the army, other political groups, intellectuals, their families, or any witnesses of the summary executions. Come Kajermundimwe, a physics teacher often opposed to Habyarimana, founded an association to foster unity between Hutu and Tutsi students. During the genocide, he sheltered over fifty individuals at his home and protected them from violence, without regard to their ethnicity. He disappeared at the hands of the RPF, targeted, as many other community learners, for his education level and ideas. RPF authorities repeatedly insisted that personal acts of vengeance were prohibited and that persons accused of genocide would be imprisoned and tried. However, the soldiers would often take matters into their own hands and execute Hutus. Human Rights Watch reports the story of a genocide survivor who

³⁴ Alison Des Forges and Et Al, *"Leave None to Tell the Story": Genocide in Rwanda* (New York, NY: Human Rights Watch; Paris, 2004), p. 500.

³⁵ Leslie Haskell and Lars Waldorf, "The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences," *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

declared that he witnessed “*RPF soldiers bringing bodies in trucks at night and throwing them in toilets at Mwogo, near where they had dug their trenches. They brought men already wounded with their arms tied behind their backs. [...] The soldiers were proud to show us that they were avenging us. We were ill at ease with this. We saw them dump bodies also in toilets of shops and houses at the little commercial center*”.³⁶

After ending the genocide and taking control of the country, the newly installed RPF government responded to accusations of crimes against humanity and war crimes by affirming that most of the episodes were carried out by individual soldiers driven by vengeance. Nevertheless, the evidence presented in the previous paragraph highlights that the patterns were too extensive to be attributed to lone perpetrators. Despite reports by UN agencies and human rights associations, the international community has not pressured Rwanda to prosecute the cases domestically and fairly, or cooperate with the ICTR.³⁷ As mentioned earlier, the RPF has criticized and, in certain instances, interfered with and sabotaged the work of the Court, thereby linking its memory forever with Victor's Justice.

It is reasonable to assume that the early years of the ICTR were challenging, with the issue of human rights violations committed by the RPF not being a primary focus. As Professor Victor Peskin assessed, “*The ICTR investigators who arrived in a war-torn Rwanda in 1995 were justifiably consumed with the dual tasks of investigating the genocide and building an international tribunal from scratch. These tasks were initially more overwhelming than they should have been because of the lack of adequate international community support and the UN's hiring of a court bureaucracy hobbled by incompetence and nepotism.*”³⁸ It is also important to underline that Richard Goldstone, the first chief prosecutor of the ICTR, was also in charge at the same time of its twin court, the International Criminal Tribunal for Yugoslavia. In his view, the genocide outweighed any other crime that the RPF committed, and he would rather spend the limited time and resources on it, as well as ensuring the complete collaboration of the RPF. Goldstone's successor, Louise Arbor, witnessed how the Rwandan government could hinder the workings of the Tribunal by withholding cooperation and impeding inspections when investigated for its own crimes. Arbor affirmed that the RPF had infiltrated her emails and decided to halt the investigations, as she feared for the investigators' lives.

Only under the third chief prosecutor, Carla Del Ponte, did the ICTR begin to recognize the extent to which the RPF would go to intimidate the Court into prosecuting only Hutus. Between 2000 and

³⁶ Alison Des Forges and Et Al, “*Leave None to Tell the Story: Genocide in Rwanda* (New York, NY: Human Rights Watch; Paris, 2004), p. 487.

³⁷ Victor Peskin, “Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda,” *Journal of Human Rights* 4, no. 2 (April 2005): 213–31.

2002, a team investigated thirteen RPF massacres, narrowed down to three cases: the southern province of Butare after the RPF took power in the country, the aforementioned Kagbayi massacre, and killings in the town of Giti, known to be one of the few places in Rwanda where the genocide did not occur. Del Ponte clearly manifested her willingness to investigate these occurrences further and possibly indict the perpetrators.³⁸ Although newly elected President Kagame had assured complete cooperation, his government would soon hamper the ICTR's efforts at justice. In April 2002, Del Ponte openly criticized Rwanda for its non-cooperation and planned the first prosecutions against RPF individuals. The statement backfired, warning the government of the Tribunal's intention and allowing them further interference. After this event, the government began to undermine the credibility of both Del Ponte and the ICTR, highlighting its tardiness in bringing the guilty of the genocide to justice and damaging the diplomatic reputation of the Court. Additionally, the most blatant case of opposition to the ICTR was the travel restriction the Rwandan government applied to limit genocide survivors from testifying at the Court's headquarters in Arusha, Tanzania. *"The government showed that it could effectively hold witnesses hostage and virtually bring the wheels of justice to a halt. The government's decision to bar witness travel was one of the most damaging acts of noncompliance in the history of both ad hoc tribunals. [...] The Tribunal's formal complaint against Rwanda at the UN and Kigali's strong rebuttal demonstrated the contentiousness of the victor's justice issue."*³⁹ The conflict between Del Ponte and the Rwandan government ended with Del Ponte's dismissal from the Rwandan Court after extensive lobbying by RPF delegations at the UN Security Council. Ultimately, there was insufficient time to prosecute RPF crimes, as the Security Council's 2005 deadline for new indictments blocked new cases from falling under the ICTR's jurisdiction.

In the case of post-genocide Rwanda, a Tribunal such as the ICTR was essentially. If accountability had been left to national courts, those guilty might have escaped prosecution due to an absence of justice, as most of the members of the legal system were killed, or due to the risk of Victor's Justice being applied.⁴⁰ However, as presented beforehand, the RPF government actively hindered the Court's management, making it impossible for its members to be held accountable for their crimes and violations of international humanitarian law.

³⁸ Leslie Haskell and Lars Waldorf, "The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences," *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

³⁹ Victor Peskin, "Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," *Journal of Human Rights* 4, no. 2 (April 2005): 213–31.

⁴⁰ Michael Humphrey, "International Intervention, Justice and National Reconciliation: The Role of the ICTY and ICTR in Bosnia and Rwanda," *Journal of Human Rights* 2, no. 4 (December 2003): 495–505.

Del Ponte's successor, Hassan Bubacar Jallow, decided in 2008 to transfer the investigation of the massacre of Kabgayi to national courts for domestic prosecution despite the apparent unwillingness of the government to prosecute its constituents justly and fairly. In the years following the genocide, the military courts had only charged thirty-two RPF soldiers, all of whom were low-ranking and accused of ordinary murder, accounting for only a hundred out of the thirty thousand killed. The indictments contradict the evidence suggesting that the RPF was committing systemic, vindictive murders against civilian Hutus, orchestrated by high-ranking officials. These murders thus qualify as crimes against humanity and war crimes. *"The clergy massacre was an obvious choice for Rwanda to prosecute. First, it was one of the most notorious RPF massacres because it involved the killing of several of the highest-ranking members of Rwanda's Catholic Church. Second, the incident was already well-known, and the RPF had accepted responsibility within days of it happening. Third, the small number of victims made the slaying look like an isolated and unique incident, rendering it more difficult to argue that the killings constituted a crime against humanity, which requires evidence of 'widespread and systematic attacks on civilians.'"*⁴¹ Ultimately, the trial disregarded crucial evidence, called only four prosecution witnesses, all of whom were favorable to the defendants, and shielded the commanders in charge from criminal responsibility.

The ICTR's failure to prosecute both sides of the conflict is particularly troubling: despite other relevant issues, its twin *ad hoc* court, the ICTY, and the Special Court for Sierra Leone were both able to accomplish this goal of avoiding accusations of Victor's Justice. In addition, in April 1995, the new national army massacred over two thousand refugees in Kibeho, and during Rwanda's invasion of the Democratic Republic of Congo, the soldiers killed fellow Rwandans who fled the country in 1994 in Congolese refugee camps. The International Criminal Tribunal's incapacity to uphold accountability might have emboldened the Rwandan government, fueling further violations of humanitarian law, as they know they would not be tried for their actions.⁴²

The RPF's Transitional Justice Program

It is safe to assume that the episodes of government-sponsored Hutu violence against Tutsis before 1994 significantly contributed to the genocide. As previously mentioned,

⁴¹ Leslie Haskell and Lars Waldorf, "The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences," *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

⁴² Leslie Haskell and Lars Waldorf, "The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences," *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

Habyarimana's government not only prevented Tutsis from lawfully returning to their country but also discriminated against their ethnicity and failed to account for its crimes, worsening the situation to the point where over half a million people were slaughtered in only three months. Unfortunately, the RPF, now governing the country, has committed the same mistakes made by the previous government. By hindering the work of the International Criminal Tribunal and avoiding any kind of accountability for their human rights violations, they created a dangerous precedent in a still fragile society, possibly leading to feelings of anger, disappointment, and neglect from victims and their families. The impunity of these violations of human rights law fostered a belief within the country that the RPF is above domestic and international law, hindering the efforts at national and social reconciliation following the genocide. Consolidating the RPF's political power over Rwanda's entire territory as the sole party, alongside the almost exclusive prosecution of Hutus in the ICTR and national courts has deepened societal division and created a fearful Hutu community.⁴³

The political space in the country remains restricted, with opposition leaders and members frequently incarcerated or prosecuted, often based on exaggerated accusations, such as attempts to overthrow the government, which often result in life sentences.⁴⁴ Hutu opponents have no means of joining the Rwandan political life, leading to even more ostracization and seriously impeding the development of democracy in Rwanda. One of the most famous and recent occurrences is the arrest of businessman Paul Rusesabagina, who saved over a thousand lives during the genocide. After leaving the country following the genocide, he settled in the United States, gained permanent residency, and founded the Party of Democracy in Rwanda, Ihumure, to oppose the ruling RPF. In August 2020, he was kidnapped during a private flight from Dubai, UAE, to Burundi, which landed instead in the Rwandan capital, Kigali, where he was immediately arrested on charges of terrorism.⁴⁵ Rusesabagina was released only after intense diplomacy by the United States, which feared the possibility of an unfair trial, as shown by the other proceedings against political opponents.⁴⁶ To this day, the Rwandan Patriotic Front party continues its effort against government opponents, with critics threatened, arrested, tried, and even tortured. Human Rights Watch reports enforced disappearances or suspicious deaths, all of which are rarely

⁴³ Michael Humphrey, "International Intervention, Justice and National Reconciliation: The Role of the ICTY and ICTR in Bosnia and Rwanda," *Journal of Human Rights* 2, no. 4 (December 2003): 495–505.

⁴⁴ Human Rights Watch, "Rwanda: Events of 2022," Human Rights Watch, January 12, 2023.

⁴⁵ Abdi Latif Dahir, "'Hotel Rwanda' Hero, in Jailhouse Interview, Says He Was Duped into Arrest," *The New York Times*, September 17, 2020, sec. World.

⁴⁶ Caroline Kimeu and Ignatius Ssuuna, "Hotel Rwanda's Paul Rusesabagina Released from Prison," *The Guardian*, March 25, 2023, sec. World news.

investigated in Rwanda. On the 30th of May 2022, a popular internet content creator, Aimable Karasira, was arrested for speaking about the loss of his family members at the hands of both Hutu extremists and the RPF: he is currently on trial for genocide denial and justification, and divisionism.⁴⁷

Not only has the Rwandan government significantly restricted political space, but it also passed several laws that tighten free speech in the country. Even though such laws were initially intended to punish hate speech and propaganda that led to the genocide, they also restricted the survivors' ability to talk about the events of 1994. Because of these laws, it is forbidden to talk about RPF crimes or depart from the official government-backed version of the genocide and the events leading up to it: offenders can be charged with indictments of genocide denial, genocide ideology, or divisionism.⁴⁸ For the vast majority of RPF victims and their families, this represents the impossibility of justice.

The RPF government's most striking accomplishment has been its success in shaping the international view of Rwanda as an exemplary country that has overcome the issue of ethnic conflict and now enjoys a state of perfect harmony. While there is no doubt that rebuilding a society that was utterly destroyed, where an entirely new generation was born out of violence, is a challenging task, Rwanda's leadership has still committed some mistakes by favoring the strengthening of RPF power instead of promoting the repair of the social fabric.

In the eyes of the international community, Rwandans are no longer Hutu or Tutsi; instead, they present themselves simply as Rwandans, with public discourses of ethnicity being prohibited. Rwanda has a new constitution, a parliament with a higher percentage of women than any other country in the world, and holds regular elections.⁴⁹ However, as this paper has analyzed, there are still many challenges related to justice and accountability in Rwanda, and making such an egregious mistake would be a mistake. As Professor Timothy Longman denotes in his book *Memory and Justice in Post-Genocide Rwanda*, the RPF government has “*undertaken an extraordinarily far-reaching program of social engineering, surely one of the most extensive by any modern state. Using commemorations and memorials, judicial processes, historical revision, re-education camps, curricular reform, popular mobilization, political restructuring, electoral activity, land reform, and many other programs, the government has sought not simply to reshape relations between the population and the state, or even between groups within the society, but to transform the ways in which individual Rwandans understand their own social identities.*”⁵⁰ The

⁴⁷ Human Rights Watch, “Rwanda: Events of 2022,” Human Rights Watch, January 12, 2023.

⁴⁸ Human Rights Watch, “Rwanda: Justice after Genocide—20 Years On,” Human Rights Watch, March 28, 2014.

⁴⁹ Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press, 2017), p. 12.

Rwandan government has been capable of minimizing the social and historical importance of ethnicity and portraying the RPF as the guilt-free savior. “*To accuse the RPF of human rights abuses, [...] was to equate the actions of the current government with the genocide, and thereby deny the genocide.*”⁵⁰ The ICTR, genocide trials, memorialization, historical revision, commemoration, and other programs have not contributed to improving the social situation and promoting peace. Instead, they helped consolidate the RPF’s restrictive rule.

On the question of ethnic identity, research presented by Longman in his book underlines the exacerbation of ethnic tensions due to the government’s transitional justice programs. While he notes that the programs provided important information about the events of the genocide and promoted rapprochement between survivors and perpetrators, the policies did not promote social reconstruction but increased the compliance of the population and the power the party holds over Rwandans. In the final chapter of *Memory and Justice in Post-Genocide Rwanda*, titled *We Pretend to Live Together*, the issues surrounding the silencing of the ethnic debate are highlighted. Citizens are prohibited from discussing ethnicity in any way, as the government pretends ethnic division no longer exists. Nonetheless, many of the interviewees by Longman express their fear of mentioning being Tutsi or Hutu, as the church and the government are teaching them to think of themselves as Rwandans only. The general silence on ethnicity does not cancel animosity or discrimination: many reported the still-existing conflicts in society, making it clear that cohabitation is just a guise. “*We pretend to live together. We live together, because the authorities teach us to live together. But there are hidden suspicions. [...] Some people say that if they criticize openly what’s not going well, they risk imprisonment. And the Hutu don’t feel free. To live, they must play along what’s required... But on the hills, you find that Hutu and Tutsi hate each other openly.*”⁵¹

The facts and the data presented in this paper indicate that Rwanda still has profound, unresolved social issues stemming from the genocide and the handling of transitional justice in the years after 1994. The impunity shielding the RPF from prosecution not only has fostered the idea that the party stands above the law but has also hindered progress towards reconciliation in a society still grappling with the effects of the civil war and subsequent genocide.

While there is no set formula for healing a nation, a community, and a legal system that has lived through such horrors, the actions of the government have covered up the ethnic divisions

⁵⁰ Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press, 2017), p. 21.

⁵¹ Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press, 2017), Chapter “We Pretend to Live Together”, and p. 323 - 324.

still present in the country, preferring to implement policies to strengthen their power and ensure public compliance. Today, Rwanda is a country experiencing significant development and economic growth, largely due to the stability provided by the RPF, the sole ruling party for the last thirty years, as well as the interventions of both the International Monetary Fund and the World Bank.⁵² However, wealth and development cannot mend spiritual and emotional wounds. In an interview with World Vision International, Pastor Antoine Rutayisire, a Tutsi survivor, explains why he thinks the events of the civil war were possible: *"The genocide was a culmination of four decades of bad politics and ethnic injustices. [...] Every ten years, I had something to remind me I'm living in a country where I'm hated and taken as a second-class citizen."*⁵³ The fear of the recrudescence of violence is tangible in Rwanda, especially among those who feel discriminated against and whose liberties have been taken away. The façade of democracy is not enough to solve the rift that unfortunately still exists in Rwandan society; true democracy requires the protection of freedom of speech, expression, and the press, respect for political minorities, and the free participation of opponents in political activity. Today, there are more opposing viewpoints and dissenting voices than when the RPF took power, and over time, these voices will only increase. The model of consensual democracy present in Rwanda can only work when the political minorities are taken into account and protected: for this to happen, *"Rwandans first need to assume responsibility for the darkest chapters of their history, while recalling their traditional culture of tolerance and mutual respect. The aim of a Rwandan model of democracy must be to truly strengthen reconciliation between citizens so that they can all feel included in the country's political space. That is essential so that Rwandans can trust that no one is above the law, irrespective of their political views. Only then will Rwandans be able to hold their leaders to account without fear of being prosecuted."*⁵⁴

To truly promote reconciliation, the RPF should set an example by upholding accountability by recognizing its mistakes during 1994 and the subsequent years, prosecuting guilty members through free and unbiased trials, and ensuring that the families of the victims can obtain justice and speak about the events without fear for their security. This would provide an opportunity to rectify the offenses and show a commitment to deliver fair and credible justice for

⁵² World Bank, "The World Bank in Rwanda," World Bank, 2021.

⁵³ Kari Costanza, "Rwanda: 20 Years Later | World Vision," World Vision, April 2014.

⁵⁴ Victoire Ingabire Umuhiza, "Rwanda's Consensual Democracy Needs a Reset," *Al Jazeera English*, September 15, 2022.

the genocide, where no side is seen as above the law.^{55 56} Furthermore, balance in prosecutions is also crucial for providing an accurate historical record of the causes and consequences of the conflict. There is a risk that the courts' prosecution and ruling might be seen as the official history, with no recognition of the winner's mistakes.⁵⁷ Knowing the entire history of the genocide, taking into account the crimes committed on both sides, is incredibly important for Rwandans to fully acknowledge the horrors and atrocities and avoid the cycle of division perpetuated by denial and ignorance. A reminder of the consequences of ethnic hatred and division would also prevent similar conflicts from ever happening in the future and rebuild trust and unity among Tutsi and Hutus: knowing the history allows for open dialogue and fosters empathy, tolerance, and commitment to peace.

Finally, the prosecution's ethnic framing, which defines national reconciliation as the pacification between ethnic communities, obstructs the development of a diverse political community and justice. The political objective of the International Criminal Tribunal for Rwanda should have been the reconciliation between antagonistic communities, but rather, it stigmatized one group as the victim and the other as the executioner, when the conflict was more complex.⁵⁸

Unfortunately, the International Criminal Tribunal for Rwanda was an example of Victor's Justice where Victor's Justice was not supposed to exist. Its failure to prosecute the Rwandan Patriotic Front's crimes has not helped reconciliation in a country that continues to feel the effects of the genocide nearly thirty years later. As the paper assessed, censorship is not the solution to solve the social tensions that are still present in Rwanda: the country is living in a situation of instability, fueled by injustice, lack of accountability, and the silencing of people's voices about their own experiences in the civil war and genocide. Alas, it is hard to envision a future in which this social equilibrium might be sustained. In the words of Professor Longman, "*Despite intensive time and energy and resources put into transitional justice programs intended to reshape popular understandings of the past, unify the population, and allow Rwanda to move forward into a brighter future, the population of Rwanda continues to wait impatiently for both justice and transition.*"⁵⁹

⁵⁵ Human Rights Watch, "Rwanda: Justice after Genocide—20 Years On," Human Rights Watch, March 28, 2014.

⁵⁶ Leslie Haskell and Lars Waldorf, "The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences," *Hastings International and Comparative Law Review* 34, no. 1 Winter 2011 (January 1, 2011): Article 2, Rev. 49.

⁵⁷ Victor Peskin, "Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," *Journal of Human Rights* 4, no. 2 (April 2005): 213–31.

⁵⁸ Michael Humphrey, "International Intervention, Justice and National Reconciliation: The Role of the ICTY and ICTR in Bosnia and Rwanda," *Journal of Human Rights* 2, no. 4 (December 2003): 495–505.

⁵⁹ Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press, 2017), p. 339.

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