

PART I
INTRODUCTION AND BACKGROUND
AFTER GENOCIDE

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Introduction

The impact of the 1994 Rwandan genocide continues to echo throughout Rwanda, the Great Lakes region of Africa and the world. Its reverberations are felt acutely in the lives of all Rwandans, for whom the genocide is still a daily reality. The effects of the genocide extend far beyond Rwanda, in refugee flows and the spillover of ethnic antagonisms into neighbouring countries, and in evolving international principles and policies of humanitarian intervention, conflict resolution and transitional justice. It is not only the sheer magnitude and speed of the genocide—an estimated 800,000 Tutsi and their perceived Hutu and Twa sympathisers murdered in only three months, many by their own neighbours, friends and family—that continue to hold our attention today, but also the complexity of its causes and effects.

The purpose of this book is to assess the impact of the genocide in Rwanda, Africa and beyond, and at the same time to analyse the nuances of the national and international, academic and political debates that have consequently developed. What is currently lacking in the growing literature on Rwanda and the genocide are holistic, multi-disciplinary analyses. Holistic approaches explore responses to the physical, psychological and psycho-social needs of individuals and groups during and after conflict, reflecting the intricacies of the situations they seek to address. Often standing in the way of holistic analyses, the legal paradigm has become dominant in the study of conflict and post-conflict societies, proffering procedural, academic and institutional “remedies” that too often fail to recognise other important perspectives. Legal processes have their place as responses to mass violence, but they reflect only one among many means of addressing atrocities. They may not constitute the initial response, may need to be delivered locally rather than internationally, and may eventually need to play a supporting role to more fundamental political and social processes.

This volume grew out of three conferences that we organised at the University of Oxford between May 2004 and May 2005. Through these events, we believed that a fitting way to commemorate the hundreds of thousands of innocent lives lost in 1994 was to explore with a broad range of engaged individuals the most appropriate ways to help rebuild Rwanda today. That is the ethos of this anthology, which comprises chapters delivered in draft form at the conferences and others especially commissioned for this collection. The wounds of 1994 are still fresh, but sufficient time has passed to analyse with some clarity the genocide and its aftermath.

In choosing contributors to the conferences and this volume, we gathered scholars and practitioners, Rwandans and non-Rwandans, from a variety of fields. We asked contributors to speak about conflict and post-conflict issues across four dimensions: individual, community, national and international. In addition to offering expert analysis of the genocide and its consequences, this volume provides a space for genocide survivors to tell their stories, which are too seldom heard in such gatherings. We also engage practitioners, to garner their reflections from work in the field. The immensity of the genocide and its aftermath requires this multi-faceted examination.

What became clear through the Oxford conferences is that important voices on Rwanda are rarely heard in the same forum, to the detriment of mutual understanding and effective collaboration. Scholars and practitioners seldom have the chance to exchange ideas and debate with one another directly. Relations between the Rwandan government, the United Nations International Criminal Tribunal for Rwanda (ICTR) and human rights NGOs, for example, have often been fraught, undermining the possibility of productive engagement among them. We have sought to bring many of these parties together in order to generate discussions and debates about the genocide and its consequences. We assemble these contributors not because we necessarily endorse all of their views, but because drawing them into the same space, and hearing them alongside one another, sparks debates in a constructive manner that otherwise might not occur.

This volume seeks to highlight key points of contention, not to find easy resolutions or syntheses (because these probably could not be reached without severe distortions of the views considered), but to provide the basis for the complex discussions the genocide demands. Although we cast our net wide, many of the invited academics and practitioners working on Rwanda-related issues, including some who presented papers at the Oxford events, were for various reasons unable to contribute to this book. Nevertheless, we believe this volume represents a comprehensive exploration of issues related to the Rwandan genocide and its aftermath.

Key concepts

As the title of this book suggests, three topics dominate discussions here: transitional justice, post-conflict reconstruction and reconciliation. Ruti Teitel offers a useful definition of transitional justice as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.”¹ We contend, however, that transitional justice should not be limited, and should not necessarily afford primacy, to judicial responses. John Hamre and Gordon Sullivan employ the World Bank’s definition of “post-conflict reconstruction”, which incorporates “the rebuilding of the socioeconomic framework of society” and the “reconstruction of the enabling conditions for a functioning peacetime society [to include] the framework of governance and rule of law.”² They add that “post-conflict reconstruction” should include “providing and enhancing not only social and economic well-being and governance and the rule of law but also other elements of justice and reconciliation and, very centrally, security.”³ Finally, we broadly interpret “reconciliation” as rebuilding fractured individual and communal relationships after conflict, with a view to encouraging cooperation among former antagonists. As John Paul Lederach argues, “to enter reconciliation processes is to enter the domain of the internal world, the inner understandings, fears and hopes, perceptions and interpretations of the relationship itself.”⁴

While transitional justice, post-conflict reconstruction and reconciliation are united by notions of rebuilding, there is much debate among the contributors over how best to define these terms and how they should apply to post-genocide Rwanda and other societies that have suffered similar tragedies. For example, while “transitional justice” has become the dominant phrase used to describe theoretical and operational responses to mass conflict—again, undoubtedly because of the dominance of legal perspectives in this realm—it is not clear why justice should be accorded primacy over other objectives, such as truth, peace, healing and reconciliation, nor whether the pursuit of justice will in fact facilitate meaningful society-wide transition from violence to order and stability.

The final chapter of this volume, by Clark, Kaufman and Kalypso Nicolaidis, investigates the appropriateness of the terms “transitional justice” and

1 R. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal*, 16 (Spring 2003), 69.

2 World Bank, *Post-Conflict Reconstruction: The Role of the World Bank* (Washington: World Bank, 1998), 14.

3 J. Hamre and G. Sullivan, “Toward Postconflict Reconstruction,” *The Washington Quarterly*, 25, 4 (Autumn 2002), 89.

4 J. Lederach, “Five Qualities of Practice in Support of Reconciliation Processes” in R. Helmick and R. Petersen (eds), *Forgiveness and Reconciliation: Religion, Public Policy, and Conflict Transformation* (Philadelphia: Templeton Foundation Press, 2001), 185.

“post-conflict reconstruction” to describe responses to conflict and post-conflict situations. The growth in academic discussions of transitional justice and post-conflict reconstruction is relatively recent, and the terms of reference are still fluid, as commentators mould contested concepts to suit specific circumstances. Recent anniversaries of the Rwandan genocide have provided critical opportunities to debate the direction of studies of transition and reconstruction. To this end, this book explores six key terms outlined in detail by Clark in Chapter 10—reconciliation, peace, justice, healing, forgiveness and truth. Many debates over these issues relate to contentious definitions of these concepts. For example, as the wide-ranging discussions in this volume show, debates over “justice”—what it is, what it should achieve, who should administer it—are often heated and not always resolved or resolvable. This volume is intended to help clarify the theory and practice of transitional justice, post-conflict reconstruction and reconciliation.

Key themes

The six terms just outlined are critical to exploring three major themes in this volume: the history and memory of the Rwandan genocide; post-genocide justice, reconstruction and reconciliation; and the relevance of the genocide beyond Rwanda. The intersections and entanglements of these themes are crucial to grasping key debates in present-day Rwanda and to formulating effective responses to the genocide and atrocities elsewhere: how history is constructed and the past is remembered inevitably shapes questions about who is culpable for crimes, how they should be punished, who warrants redress and how society as a whole should be reconstructed.

The politics of genocide history and memory

One motivation for this volume was our dissatisfaction with the content and tone of many commemorations of the tenth and subsequent anniversaries of the genocide. Two worrying trends were discernible: a neglect of basic truths about the genocide, and the proliferation of genocide denial and other forms of damaging revisionism. The benefit of recent films such as *Hotel Rwanda*, *Sometimes in April* and *Shooting Dogs*,⁵ which brought the genocide to a gen-

5 It should be noted that, while helping to widen popular understanding of the genocide, these films have also proven highly controversial. For example, some commentators have claimed that Paul Rusesabagina, the manager of the *Hotel des Mille Collines* in Kigali during the genocide and the “hero” of *Hotel Rwanda*, did not act as valiantly as portrayed in the movie, alleging—among other claims—that he charged Tutsi exorbitant sums for the rooms in which they hid from the *génocidaires*. See, for example, E. Musoni, “Rusesabagina Dodges Radio Talk Show”, *The New Times* (6 February 2006), http://www.newtimes.co.rw/index.php?option=com_content&task=view&id=3375&Itemid=61.

eral audience, has been undermined by inaccurate depictions of the genocide elsewhere. Many journalistic reports and academic commentaries on the tenth anniversary of the genocide focused disproportionately on secondary historical issues, such as who was responsible for shooting down President Juvénal Habyarimana's plane on 6 April 1994, the event that "triggered" the genocide. The long-term planning of the genocide which preceded the plane crash and the plight of Rwandan genocide survivors were often forgotten in the rush to report the controversy that erupted when, in March 2004, *Le Monde* printed excerpts of a report by the French investigating judge Jean-Louis Bruguière, alleging that the Rwandan Patriotic Front (RPF) had deliberately shot down the plane and allowed the subsequent murder of hundreds of thousands of Tutsi to justify the RPF's insurgency against the Hutu government. Bruguière's allegations received even greater media attention when, two days after *Le Monde's* story broke, UN headquarters in New York discovered what it believed (erroneously, as it turned out) was the flight recorder from Habyarimana's plane, which investigators had considered lost.

Bruguière's allegations are serious and warrant further investigation. However, in concentrating on the plane crash and the discovery of the flight recorder, many discussions of the tenth anniversary of the genocide missed the fundamental point: that the crash, while important in itself, not least because it involved the assassination of two heads of state, is more important because it precipitated a deliberate catastrophe with much more significant causes. One aim of this volume is to return the events of the genocide, its causes and aftermath, and especially the plight of victims and survivors, to the centre of the genocide narrative and analysis.

The murder spree against the Tutsi was no spontaneous flaring of ancient ethnic antagonisms. As Linda Melvern outlines in her chapter in this volume and in other works,⁶ and as one of our conference participants, Alison Des Forges, has documented extensively,⁷ the genocide was systematically orchestrated by the Hutu-led government. High-level meetings in the early 1990s

Other commentators, including the director of *Hotel Rwanda*, Terry George, have argued that the Rwandan government has initiated a "smear campaign" against Rusesabagina because of his criticism of the Kagame administration during speaking tours of the US and Europe. See T. George, "Smearing a Hero", *Washington Post* (10 May 2006) <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/09/AR2006050901242.html>.

6 See L. Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (New York: Zed Books, 2000); L. Melvern, *Conspiracy to Murder: The Rwanda Genocide and the International Community* (London, Verso Books, 2004). A fully revised and updated paperback edition of *Conspiracy to Murder* was published by Verso Books in April 2006.

7 A. Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999).

called for the training of youth militias, the stockpiling of weapons and “rehearsal” pogroms of Tutsi as preparation for the genocide.

There is a serious problem of causality in recent analyses of the alleged role of the RPF in the genocide. Even if it were proven that Kagame and the RPF were responsible for shooting down Habyarimana’s plane—and there is currently far from compelling evidence of this—the genocide would likely have happened anyway, such was the government’s degree of planning. Roméo Dallaire, head of the failed UN peacekeeping mission in Rwanda during the genocide, questions in his 2003 autobiography whether the RPF deliberately plotted the genocide to justify a counter-offensive that would allow it to take over the country: “I found myself thinking such dire thoughts as whether . . . the genocide had been orchestrated to clear the way for Rwanda’s return to the pre-1959 status quo in which Tutsi had called all the shots,” Dallaire says. “Had the Hutu extremists been bigger dupes than I? Ten years later, I still can’t put these troubling questions to rest.”⁸ Dallaire’s claim contradicts his own evidence, described painstakingly in his book, that the Hutu extremists had been plotting the genocide for years and had begun to prepare the Hutu population for the killing spree far in advance.

Second, equally troubling is the growing revisionism regarding the genocide. A range of voices, from Hutu ideologues to Western academics, has grown louder in recent years, claiming either that there was no genocide of Tutsi in 1994 or that there is little substantive difference between crimes against Tutsi and those perpetrated against Hutu by the RPF and Tutsi civilians. Genocide revisionism is not new, as displayed by the host of deniers of the Holocaust, which has prompted the passing of anti-denial legislation in many countries. In the Rwandan case, genocide deniers have a variety of motivations: scholars pursuing the latest academic fads that revel in “alternative narratives”, no matter how spurious or morally questionable; *génocidaires* seeking to deflect attention from their crimes; and critics of the current RPF government who try to connect alleged RPF atrocities in 1994 to unrelated concerns with its current policies.

Certainly crimes committed by the RPF and Tutsi civilians in 1994 should be investigated; as Lemarchand, Hintjens and Buckley-Zistel rightly argue in this volume, Hutu survivors of the 1994 violence are also entitled to redress for the crimes they have suffered. However, such crimes, while requiring robust legal and political responses, are not morally equivalent to genocide, what the ICTR has called the “crime of crimes.”⁹ It is unjustified to argue, for example,

8 R. Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Toronto: Random House Canada, 2003), 476.

9 *Prosecutor v. Kambanda* (Case No. ICTR-97-23-S), Judgement and Sentence (4 September 1998) Paragraph 16; *Prosecutor v. Serashugo* (Case Number ICTR-98-39-S), Sentence

as Rory Carroll did in *The Guardian* in January 2005, that the Hutu population's supposed "sense of grievance is likely to be compounded by a Hollywood film, *Hotel Rwanda*, depicting horrors perpetrated by Hutu militias."¹⁰ Although Hutu were also victims of crimes in 1994, why must a film like *Hotel Rwanda*, designed to portray the immense horror of the genocide, show both "sides"? While it is true that both "sides" committed crimes in 1994, it is being increasingly forgotten that only one "side" committed genocide.

Several authors in this volume respond explicitly to the problem of revisionism relating to the events of 1994. Tom Ndahiro, a genocide survivor, tackles what he claims is the most virulent and systematic programme of revisionism, that of the *Rassemblement Républicain pour la Démocratie au Rwanda* (RDR). Ndahiro argues that the RDR engages in "genocide-laundering" by denying that the genocide occurred and thus continues the oppression of Tutsi by seeking to purge the violent campaign against them from global memory. René Lemarchand argues that revisionism and denial by some Hutu ideologues have been greatly boosted by revisionist tendencies among certain Western academics.

Several contributors confront revisionism implicitly by focusing on the degree to which the genocide was planned by the Habyarimana government. Linda Melvern and Paul Williams explore the planning of the genocide and the international community's neglect, while Jean Baptiste Kayigamba, a Rwandan genocide survivor and journalist, in an extraordinary first-hand account, describes his harrowing experiences of living in Kigali in the months before and during the genocide. These chapters highlight just how bereft much of the recent commentary has been in ignoring the Hutu government's careful orchestration of the genocide.

These analyses constitute a starting-point for further exploration. What is also needed are increasingly detailed accounts of what happened in 1994 (in the vein of Des Forges' *Leave None to Tell the Story: Genocide in Rwanda*,¹¹ African Rights' *Rwanda: Death, Despair and Defiance*¹² and Scott Straus's *The Order of Genocide: Race, Power, and War in Rwanda*¹³), linking specific dates, times, names and places (especially those in rural areas in Rwanda that are often overlooked), and vigorous debates over their significance. It is also

(2 February 1999) Paragraph 15.

10 R. Carroll, "Genocide Tribunal 'Ignoring Tutsi Crimes'", *The Guardian* (13 January 2005) <http://www.guardian.co.uk/rwanda/story/0,14451,1389194,00.html>.

11 Des Forges, *Leave None to Tell the Story*, op. cit.

12 African Rights, *Rwanda: Death, Despair and Defiance* (New Expanded Edition, London: African Rights, August 1995).

13 S. Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithaca: Cornell University Press, 2006).

necessary to situate the genocide in the broader history of colonial and national political manipulation of Hutu-Tutsi antagonisms throughout the 20th century. The general narrative of the genocide is currently clear in the existing literature. It is now time to discuss details reaching down to the lives of individual and everyday Rwandans. Perhaps what is most insidious about much of the recent commentary is that it obscures—without convincing justification—the broad brushstrokes of the genocide, thus rendering the personal experiences, particularly those of the victims and survivors, near-invisible.

History and memory: outline of chapters. Chapters 1 to 9 of this volume cover the history and memory of the genocide. Melvern, arguing that “the past is prologue”, not only explores the nature of the Habyarimana government’s genocidal conspiracy and the ways in which previous pogroms of Tutsi paved the way for the violence of 1994 (a theme also explored in Kayigamba’s first-hand account of violence in the build-up to, and during, the genocide), but she also provides a useful way to frame issues of history and memory of the genocide: by understanding that the genocide is critical to Rwanda’s future. How we interpret atrocities shapes how we respond to them. Unifying all the chapters is the contention that history is invariably politicised and that Rwanda’s future hinges on the ability to navigate divergent interpretations of the past.

Kayigamba expresses anger at the *génocidaires* who killed members of his family and a sense of betrayal by the international community that refused to intervene to save innocent lives. He cautions against expecting the rapid renewal of Rwandan society. The past must be dealt with slowly, methodically, he argues, if Rwanda is to have a secure future. Kayigamba expresses scepticism over calls for forgiveness and reconciliation after the genocide and argues that, because decades of impunity in Rwanda convinced the *génocidaires* that they could commit atrocities without fear of being held accountable, those convicted of genocide must be punished to protect against future atrocities. Questions of forgiveness and reconciliation—secondary concerns, according to Kayigamba—must come much later.

Williams also contends that the international community should have done more to intervene in Rwanda and that, contrary to some analyses, international intervention could have significantly mitigated the violence. Williams claims that the genocide underlines serious weaknesses in international peacekeeping methods and questions whether these problems have been remedied. In particular, he highlights Britain’s role, as a permanent member of the UN Security Council, in failing to advocate intervention in Rwanda—a failure that cannot be explained by Britain’s lack of knowledge of what was unfolding in Rwanda, but only by a lack of political will on the part of John Major’s government.

Chapters 4 to 9 navigate these complex issues of genocide memory and commemoration. The paths taken by the authors often diverge substantially.

Lemarchand employs Paul Ricoeur's categories of thwarted memory, manipulated memory and enforced memory to explore how the genocide has so far been remembered and in particular how elites have been *forced* to remember it, among whom the most prominent are—with very different motives—academic revisionists (including Helmut Strizek and Christian Davenport) and the current Rwandan government. Lemarchand sees danger in the government's 2002 law banning the use of the labels "Hutu" and "Tutsi" in public discourse and its emphasis on national identity based on the cultural unity of all Rwandans.

Helen Hintjens disagrees with Lemarchand's analysis, claiming that a departure from the use of "Hutu" and "Tutsi" constitutes a welcome attempt to overcome divisive racial and ethnic stereotypes in Rwanda. What is needed instead, she argues, is to create spaces for more complex voices, including Rwandans of mixed Hutu-Tutsi descent, Tutsi who have returned to Rwanda since the genocide and Hutu who are neither genocide perpetrators nor survivors. While cautiously welcoming the government's refusal to allow public discussion using racial or ethnic categories, Hintjens is highly critical of other areas of official policy, especially what she argues is the government's tendency to "globalise" the genocide guilt of the Hutu population. She suggests that more complex categories of Rwandan identity need to be recognised, and that the present regime should not portray itself to the international community as the only bulwark against future violence in Rwanda.

Ndahiro, the second of three survivors writing in this volume, analyses the RDR's attempts to deny the genocide and, more recently, to claim that the RPF was responsible for committing genocide against Hutu in 1994. Ndahiro argues, on the basis of rare primary sources, including documents that he gathered from Hutu refugee camps in eastern Democratic Republic of Congo (DRC), that the RDR had intimate connections to the political and military leaders who orchestrated the genocide. He notes that, as the Hutu government did during the genocide, the RDR describes the genocide as a "civil war", and that the international media tend to misinterpret events in Rwanda and provide the RDR and other extremists with a platform for their propaganda.

Susanne Buckley-Zistel, Solomon Nsabiyera Gasana and John Steward wrestle with questions of how to connect historical interpretations of the genocide with the objectives of reconciliation, healing, forgiveness and economic development. All three authors claim that there is a danger in some Rwandans' (and especially some survivors') desire to forget the past and move on. Buckley-Zistel argues that many Rwandans practise what she calls "chosen amnesia", a coping mechanism that prefers silencing continuing antagonisms rather than directly confronting them. She argues that history and memory in Rwanda have always been a "top-down political project", whether through colonial or national elites' attempts to politically manipulate ethnic identities

and divisions or—here she echoes Lemarchand’s argument—through the current government’s desire to eclipse memories that do not promote its rhetoric of “national unity”. Buckley-Zistel argues that without confronting the causes of conflict in Rwanda, sustainable reconciliation is impossible.

Gasana and Steward highlight the importance of a concept that has only recently gained currency in discussions of responses to mass violence: healing. Gasana, a Munyamulenge (a Congolese Tutsi from South Kivu), in a powerful survivor’s account of violence in the Great Lakes, draws on his personal experiences to explore hatred and the elite manipulation of ethnic antagonisms in the region. Gasana and his family experienced Hutu violence in Zaire/DRC and Rwanda first hand, but only when he understood that Hutu were also the victims of oppression did he begin to experience healing of his “inner woundedness”. Healing has allowed him to contribute meaningfully to peace-building and development programmes in the Great Lakes region, and he argues that reconciliation is a prerequisite for peace and development. In contrast to his fellow survivor Kayigamba, Gasana argues that not only is reconciliation possible in Rwanda and the Great Lakes generally but peace and prosperity in the region depend on it.

Steward explores practical approaches to psycho-social healing after the genocide, which he argues is important for facilitating forgiveness and reconciliation. Healing strategies, he argues, must account for complex post-genocide identities, similar to those explored by Hintjens and Buckley-Zistel, and different experiences of the genocide. Healing often involves a crucial ritual element that Steward argues is deeply embedded in Rwandan society, providing cultural resources upon which the population can draw. Furthermore, notions of communal negotiation, which are found in practices such as *gacaca*, are important for building trust and solidarity among parties previously in conflict, reinforcing their sense of inter-connectedness, which Steward argues is necessary for individual healing.

Post-genocide legal and political developments

Most reports on the tenth anniversary commemorations of the genocide were bogged down in distractions or revisionism, and also ignored questions of where Rwanda should go from here and, in particular, issues regarding justice, reconciliation and the overall reconstruction of the post-genocide society. Where commentators did consider such questions, they often focused on issues of accountability for alleged RPF atrocities, ignoring the challenge of how to effectively respond to Hutu-initiated genocide crimes. Considering the limited means and time available to address the enormous and multifaceted challenges post-genocide Rwanda faces, difficult choices must be made. Political and legal

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pragmatism must shape moral responses to the crimes of 1994: in an impoverished country like Rwanda, whose national judiciary was decimated by the genocide, not every perpetrator can be prosecuted. Therefore, it is necessary to focus first on the most severe offences, while leaving open the possibility of dealing with lesser criminals later. Critics of Rwanda's *gacaca* system of community-based courts, for example, have often accused it of failing to address crimes against Hutu. These commentators have failed to show, however, how *gacaca*, established largely because of the practical limitations of the legal realm in responding to the genocide, can prosecute lesser perpetrators while adequately addressing genocide crimes. Finite resources dictate that *gacaca* cannot achieve both and therefore must focus on the most egregious cases at hand (which, the government claims, still number in the tens of thousands, after *gacaca* has recently identified many more suspects, apart from those originally identified in the direct aftermath of the genocide¹⁴).

Meanwhile, the ICTR has been criticised both for its stated intention to address alleged RPF crimes (diverting resources, some contend, from dealing with genocide cases, and destabilising already fragile relations with the Rwandan government) and for failing to address them. The former claim was instrumental in the dismissal of Carla Del Ponte as the ICTR Prosecutor, as her intention to prosecute RPF members who allegedly perpetrated atrocities soured relations with Kigali, which responded by blocking the travel of witnesses from Rwanda to the Tribunal's headquarters in Arusha. While the ICTR is right to claim that there is a need for careful investigations into alleged RPF atrocities, it is not even able to deal adequately with its existing caseload of genocide suspects. Consequently, in 2007 the ICTR stated that starting in 2008 it would consider transferring some of its backlog of cases to the Rwandan national courts. When the task of prosecuting *génocidaires* (through *gacaca*, the ICTR and the Rwandan national courts) is complete, and if there are sufficient resources—which is likely to require the assistance of the international community—there may be scope for addressing other crimes allegedly committed in 1994. While this strategy may be considered one-sided, the most serious crimes, namely genocide, must be addressed first. Ideally, all crimes would be confronted, but the reality of the situation requires the setting of priorities.

In focusing on issues *after genocide*, this volume contends with recent legal and political developments in Rwanda, which can be interpreted through the six key concepts described above. After coming to power following the genocide, the RPF faced the challenge of dealing with approximately 120,000 genocide suspects whom the government rounded up in the latter half of 1994 and trans-

14 P. Clark's interview, Domitilla Mukantaganzwa, Executive Secretary, *Gacaca* Commission, Kigali (6 June 2006).

ported to prisons around the country that have been overflowing ever since. The national judiciary had been destroyed. Between 1994 and 1996, two key developments shaped the post-genocide legal landscape. On 8 November 1994, the UN Security Council authorised the establishment of the ICTR to prosecute those most responsible for the genocide. Modelled on the UN International Criminal Tribunal for the Former Yugoslavia (ICTY), the ICTR was intended to help end impunity in Rwanda by prosecuting the leaders of the genocide, while leaving lower-level perpetrators to the Rwandan national courts.¹⁵

The ICTR has been heavily criticised for its immense cost (an estimated \$1 billion by the end of 2007) and for limited results (35 cases completed in 14 years of operation).¹⁶ Over the past several years, there have been allegations that *génocidaires* work at the ICTR. Over time, the suspected number of such individuals participating in cases has increased. At first, it was thought that six suspected *génocidaires*—including an individual operating under the name “Sammy Bahati Weza,” who was in reality Simeon Nshamihigo, a former deputy prosecutor of the Cyangugu prefecture of Rwanda accused of ordering and participating in the killing of Tutsi—were employed by the UN in Arusha.¹⁷ More recently, it was reported that as many as twice that number of suspects may be working there.¹⁸

That even one *génocidaire* has served at the ICTR is reason enough to be concerned, as this is literally a life-or-death matter. A perpetrator working at the ICTR could gain access to confidential information about witnesses or co-conspirators, or manipulate evidence. Even if no direct harm is caused, the possibility of their presence alone has caused great concern over the ICTR’s competence and security among survivors of the genocide, adding to the already strained relationship between the ICTR and the Rwandan government and survivors’ organisations, as discussed by Rwanda’s President Paul Kagame in the preface to this anthology and in the chapter by the Rwandan Prosecutor-General Martin Ngoga.

Such a situation must be addressed immediately, but it also offers lessons for the future of international criminal justice. Most importantly, UN-backed tribunals (such as the ICTR, the ICTY, the Special Court for Sierra Leone and

15 United Nations, UN Doc S/RES/955 (8 November 1994).

16 Hirondele News Agency, “ICTR’s Judges Mandate Extended by UN”, Arusha (15 June 2006) <http://www.hirondele.org/arusha.nsf/LookupUrlEnglish/1c6a1ddee99fa5a44325718e0028b543?OpenDocument&Click=>; United Nations, “ICTR Detainees – Status on 2 March 2008”, available at www.ictr.org.

17 V. Peskin, “Rwandan Ghosts,” *Legal Affairs* (September-October 2002), 21-25, http://www.legalaffairs.org/issues/September-October-2002/feature_peskin_sepoc2002.html.

18 United Nations Office for the Coordination of Humanitarian Affairs, “Rwanda: UN Tribunal Investigating 12 on its Payroll” (29 June 2006) http://www.irinnews.org/report.asp?ReportID=54296&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

the Extraordinary Chambers in the Courts of Cambodia), as well as non-UN war crimes courts and tribunals (such as the ICC and the Iraqi Special Tribunal), must conduct thorough background checks on all personnel, especially those working on sensitive matters. The UN must also eliminate corruption and nepotism in its hiring practices or risk weakening the entire enterprise of international criminal justice and, more important, endangering individual lives.

At the domestic level, in 1996, with the assistance of the UN, foreign governments and NGOs, the Rwandan government began an overhaul of the national judiciary, training new judges and lawyers and establishing new courts across the country. In the same year, the government passed the Organic Law, which divided genocide suspects into four categories depending on the severity of their crimes, and established a plea-bargaining scheme.¹⁹ The national courts were initially slow in hearing the cases of genocide suspects. However, over time, the courts became more efficient and were praised, albeit with reservations, by some international monitors for their speed and improved legal standards.²⁰

2001 marked a sea change in Rwandan law, with the passing of legislation creating the *gacaca* jurisdictions. The *Gacaca* Law, based on the Organic Law, was modified in 2004 and 2006 and is set for further revision in 2001, 2004, 2006, 2007 and 2008 to help streamline the process. Three years of pilot phases led to the inauguration in June 2004 of *gacaca* courts in approximately 9,000 jurisdictions across the country. In March 2005, many of these jurisdictions began judging and sentencing approximately 35,000 genocide suspects—less than a third of those imprisoned since 1994—who had been provisionally released, beginning in January 2003, in several waves, first into civic education camps known as *ingando* or “solidarity camps”, and then into their home communities, where they awaited appearance before *gacaca*.

The post-genocide period in Rwanda has also been characterised by political upheaval. After gaining control of the country in July 1994, the RPF quickly set about solidifying power in Rwanda. As Filip Reyntjens observes, the RPF “introduced a strong executive presidency, imposed the dominance of the RPF in the government, and redrew the composition of parliament.”²¹ Between 1995 and 2000, several prominent Hutu leaders, including Prime Minister Faustin Twagiramungu and President Pasteur Bizimungu, resigned from

19 Republic of Rwanda, “Loi Organique No. 8196 du 30/8/96 sur l’Organisation des Pour-suites des Infractions Constitutives du Crime de Genocide ou de Crimes contre l’Humanité, Commises à Partir de 1er Octobre 1990”, *Official Gazette of the Republic of Rwanda* (1 September 1996), Articles 2-9.

20 See, for example, Amnesty International, “Rwanda: The Troubled Course of Justice”, AI Index AFR 47/10/00 (April 2000), 3-6.

21 F. Reyntjens, “Rwanda, Ten Years On: From Genocide to Dictatorship”, *African Affairs*, 103 (2004), 178.

the government, citing their inability to work with the RPF. Twagiramungu fled into exile in Belgium, returning to contest the 2003 presidential elections, which he claimed were rigged, after Kagame won 95 per cent of the vote to his 3.7 per cent. Bizimungu was arrested in 2001 for attempting to create a new political party, which the government claimed was intent on spreading genocidal ideology. In February 2006, Bizimungu lost an appeal—during what many observers criticised as a sham hearing²²—to overturn his 15-year prison sentence, handed down in 2004. President Kagame eventually pardoned Bizimungu and ordered his release in April 2007.

At the end of the official post-genocide transitional period in 2003, the government held a constitutional referendum and prepared the country for the first presidential and parliamentary elections since the genocide. In the lead-up to the elections, the government banned the *Mouvement Démocratique Républicain* (MDR), the largest Hutu opposition party and effectively the only significant Hutu voice in the Rwandan parliament, on the grounds of “divisionism” or what the government claimed were attempts to spread genocidal ideology.²³ The same allegations were levelled against the *Ligue Rwandaise pour la Promotion de la Défense des Droits de l’Homme* (LIPRODHOR), Rwanda’s largest human rights organisation, which the government dissolved in January 2005.²⁴

Legal and political developments: outline of chapters. Chapters 10 to 16 in this volume focus on post-genocide justice and reconciliation. Following Clark’s conceptual chapter mentioned above, Schabas provides a vital introduction to these themes. “Everybody talks about battling impunity,” he writes, “but few societies have done this with greater determination or more stubborn resistance to compromise than Rwanda.” Schabas argues that, by incorporating the ICTR, Rwandan national courts and *gacaca* to prosecute genocide suspects, the Rwandan case represents a multi-faceted approach to transitional justice that covers a range of options available to conflict and post-conflict societies around the world. He argues that all systematic responses to crimes must contend with a multitude of needs and interests among affected populations and that, for this reason, Rwanda still struggles to find the most appropriate mechanisms for dealing with genocide crimes. What is clear, however, according to Scha-

22 See, for example, Human Rights Watch, “Rwanda: Historic Ruling Expected for Former President and Seven Others”, HRW Background Briefing, Kigali: HRW (16 January 2006) <http://hrw.org/english/docs/2006/01/16/rwanda12429.htm>.

23 For a thorough discussion of the plans in 2003 to ban MDR, see Human Rights Watch, “Preparing for Elections: Tightening Control in the Name of Unity”, HRW Briefing Paper, Kigali: HRW, May 2003.

24 Amnesty International, “Rwanda: Human Rights Organisation Forced to Close Down”, AI Index AFR 47/001/2005 (10 January 2005).

bas, is that harsh, retributive justice is not the best way forward and that other approaches—especially those that promote reconciliation—display greater potential for sustainable rebuilding of Rwandan society.

Kaufman focuses on one of the institutions explored by Schabas, the ICTR, and draws on interviews and recently declassified documents to present a new and comprehensive narrative of the history of the establishment of the Tribunal. While Williams' case study focuses on one member of the UN Security Council, namely Britain, Kaufman concentrates on another, the United States. The chapter focuses on what Kaufman argues was the primary role of the US in driving the form and structure of the Tribunal, although the chapter also discusses the critical part played by other states, such as France, New Zealand, Russia, Spain, the UK and Rwanda itself. Kaufman concludes that, despite the objections of Rwanda, the US led the establishment of the ICTR after abandoning its initial preference for a different design. Kaufman highlights the power politics involved in this decision-making process before outlining a number of puzzles that future research on the etiology of this Tribunal should address.

Hassan Bubacar Jallow, Prosecutor of the ICTR, outlines the contribution of the ICTR to Rwandan society and to international criminal law. Contrary to many of the critical perspectives on the ICTR, such as Kagame's and Ngoga's in this volume, Jallow argues that the ICTR's punishment of the orchestrators of the genocide contributes to deterrence of crimes and reconciliation. The trial process at the ICTR, he argues, facilitates individual and collective "catharsis". Jallow highlights the major legal developments of the ICTR, including the definition of the crime of genocide, the recognition of sexual violence and media incitement as tools of genocide, and the rejection of automatic immunity for heads of state.

Maria Warren and Alison Cole explore a range of practical issues regarding the collection and management of evidence at the ICTR. They consider the role of the Information and Evidence Section of the ICTR (of which, until recently, Warren was chief) in creating a historical record of the genocide. There is an immense need, they argue, for information-sharing among the ICTR and other stakeholders, such as civil society groups. In describing lessons learnt at the ICTR, Warren and Cole argue that the ICTR establishes a basis from which other international justice institutions, including the ICC, can effectively collect, manage and deploy information.

Ngoga, the current Rwandan Prosecutor-General and formerly the Rwandan government's special envoy to the ICTR, analyses domestic and international judicial responses to the problem of impunity in Rwanda. Ngoga argues that successive Rwandan governments before the genocide used domestic law to protect those responsible for orchestrating and committing mass crimes, creating the legal and political environment in which the 1994 genocide was pos-

sible. The chapter analyses domestic judicial attempts to eradicate the culture of impunity by prosecuting genocide suspects through the Organic Law, which governs the operation of the Rwandan national courts and lays the foundation for the *Gacaca* Law, and through recent legislation addressing the problems of ethnic “divisionism” and genocide denial. Ngoga argues that, despite major challenges, these domestic legal approaches display the potential to help foster reconciliation. In contrast, he argues, the ICTR has generally failed to meet its stated objectives—especially addressing impunity and contributing to national reconciliation—because of problems with the Statute establishing the Tribunal and the ICTR’s inadequate judicial performance.

Finally, Clark focuses on the *gacaca* jurisdictions and argues that most commentators so far, especially Western human rights critics, have mischaracterised *gacaca* as a form of mob justice that sacrifices individual rights, especially those of suspects, for the sake of cheap, rapid prosecutions. Basing his analysis on more than 300 interviews with key stakeholders in the *gacaca* process and first-hand observations of hearings, Clark argues that *gacaca*’s legal critics ignore its deliberate pursuit of more fundamental objectives, especially reconciliation, by promoting genuine engagement among previous antagonists within and outside of hearings. Clark argues that *gacaca* represents an innovative approach to transitional justice that—perhaps more clearly than any post-conflict institution in the world—shows how it is possible to punish perpetrators of serious crimes in ways that promote reconciliation.

Lessons from the genocide for Rwanda and beyond

The Rwandan genocide raised questions with global consequences. One of the most tragic elements of the genocide was the readiness of the international community to play a subordinate role in the story. The failure of international actors to intervene to halt the genocide continues to haunt politicians and diplomats, looming whenever questions arise over how the world should respond to atrocities, such as those subsequently perpetrated in the DRC, Sudan and northern Uganda.

The genocide in Rwanda presented an opportunity to undertake what would have been one of the most legitimate cases of humanitarian intervention in history. The slaughter was massive and rapid. The victims were outnumbered and defenceless. Intervention would likely have been successful in mitigating the scope of the genocide, and that success would have made later humanitarian interventions politically more palatable. Instead, the world balked, still smarting from the failed intervention just months earlier in Somalia and unwilling to commit even minimal resources. The ignorance about the genocide was mostly wilful, as governments and other institutions ignored reports by the media, UN

peacekeepers on the ground and Tutsi who escaped, all of which detailed the scale and nature of the unfolding atrocities.

Since the genocide, as Jennifer Welsh argues in this volume, the international community has attempted to redefine notions of sovereignty and establish criteria for humanitarian intervention. Maybe these steps will eventually help mitigate atrocities. For now, though, there appears little reason for optimism, especially considering the current situation in Darfur, about which there is still disagreement (among UN Security Council member states and experts) over whether to call the atrocities genocide. The international community is again reluctant to commit troops with a robust mandate. Darfur illustrates that those with the power to help rarely agree on the nature of atrocities and how best to respond to them.

Power politics fundamentally shapes decision-making. China blocks consensus on Darfur because of its investment in oil in Sudan. Powerful states will want to avoid establishing precedents that could legitimate external intervention in conflicts within their own territories, as in Russia's concerns over Chechnya and China's over Taiwan and Tibet. Powerful states also want to avoid committing the necessary resources if their militaries are already engaged in other conflicts. This is perhaps one of the worst and underreported consequences of the US occupation of Iraq: its vast deployment there means that the US military may be too stretched to commit to alleviating humanitarian disasters elsewhere. No matter what consensus about international principles such as the "responsibility to protect" may be reached in theory, in practice, when atrocities occur, whether the international community intervenes is determined on a case-by-case basis. Far from raising hopes, the Rwandan genocide, and subsequent conflicts in Darfur, the DRC and northern Uganda, underline the political reality that states intervene too late to halt mass crimes, if they intervene at all.

Rwanda and beyond: outline of chapters. Chapters 17 to 19 explore the political and legal significance of the genocide beyond Rwanda. Welsh explores normative developments in international relations and the evolution of the principle of the "responsibility to protect". International shame over the failure to intervene in Rwanda in 1994 and a desire to see "no more Rwandas" have driven a move away from an emphasis on blanket non-intervention in other states' affairs to the responsibility of those states to protect their citizens from aggression, such that a derogation of this responsibility may constitute sufficient grounds for external intervention. As the international community's slow and inadequate response to atrocities in Darfur shows, however, it is not clear that memories of Rwanda have resulted in clear, coherent and decisive policies that employ the "responsibility to protect" principle.

Morten Bergsmo and Philippa Webb argue that the pursuit of justice and peace after the genocide, particularly through the ICTR, has shaped international criminal justice, as seen in the creation and operation of the ICC. They claim that this development may seem paradoxical or ironic, given the international community's "confused and inadequate" responses during and after the genocide. Crucially, Bergsmo and Webb contend that the ICC builds upon conceptions of justice expressed in the ICTR's Statute, particularly that punishing perpetrators of mass crimes deters future criminals. The ICTR has also provided institutional and legal lessons for the ICC and inspired the creation of the ICC's *Legal Tools Project*. The first two cases before the ICC concern northern Uganda and the DRC, both neighbours of Rwanda. A third case before the ICC concerns Darfur, for which Rwanda, with its leaders motivated to help end atrocities, has provided African Union peacekeepers. Two Rwandan peacekeepers were killed in Darfur in August 2006 and four more in 2008 trying to protect civilians from the same fate that befell the Tutsi in 1994. The aftermath of the Rwandan genocide not only helped create the ICC but also decisively affects its early work.

Zaum considers a specific example of the impact of the genocide beyond Africa by exploring emerging norms of transitional justice and post-conflict reconstruction in Kosovo. He argues that the relationship between transitional justice and domestic order is more complex than has often been suggested. He questions, for example, the claims made by authors such as Kayigamba, Jallow, Ngoga, Bergsmo and Webb that punishing perpetrators can effectively facilitate broader social goals, such as ending impunity. Highlighting the lack of lessons learnt from the Rwandan example, Zaum argues that the Kosovo case illustrates that justice mechanisms only contribute partially to state-building after mass conflict and must be embedded within a carefully-designed system of legal, political and social institutions. He thus returns us to some of the fundamental questions of this volume: What is the role of law in rebuilding societies fractured by violence? And how can we respond holistically to the multitude of needs of conflict and post-conflict situations?

Finally, in Chapter 20, Clark, Kaufman and Nicolaïdis tease out tensions among the six key transitional justice themes—reconciliation, peace, justice, healing, forgiveness and truth—explored in the chapters of this volume. We argue that societies must often pursue several of these objectives simultaneously but that this endeavour can prove highly problematic, as the aims are not automatically or necessarily complementary. Greater recognition of the tensions among these themes, we argue, will not only bring about clearer theoretical discussions of transitional justice, post-conflict reconstruction and reconciliation, but also encourage more appropriate, practical responses to post-conflict societies.

AFTER GENOCIDE

This book is intended to help scholars and practitioners working on conflict and post-conflict issues to formulate clearer, more nuanced responses to the questions they confront and to aid a more general audience in understanding some of the subtleties of the Rwandan genocide and its personal, communal, national and international impact. The comprehensiveness of the debates in this volume constitutes an attempt to respond holistically to the complex challenges of rebuilding lives after genocide. In doing so, this book commemorates the lives lost during those three horrific months in 1994.