RWANDA'S LONG ROAD TO JUSTICE

BY JOHN RYAN

IN THE NEARLY 20 YEARS SINCE THE RWANDAN GENOCIDE, DOMESTIC AND INTERNATIONAL JUSTICE EFFORTS HAVE STRUGGLED TO BALANCE THE DEMANDS FOR REMEMBRANCE, CRIMINAL ACCOUNTABILITY AND MOVING ON.

LEFT: CONCRETE COVERS THE MASS GRAVES OF APPROXIMATELY 250,000 RWANDANS AT THE KIGALI GENOCIDE MEMORIAL CENTER.

PHOTO BY: JOHN RYAN

I. REMEMBRANCE

THE SKY IS OVERCAST, WITH A CHANCE OF RAIN, as the celebration begins on Easter Sunday outside the church located about a quarter mile off the main road in Nyamata, a small town due south of the capital of Rwanda, Kigali, by a 50-minute bus ride. Drummers bang relentlessly as churchgoers exit under the scaffolding attached to the building and mingle outside. A nun smiles when asked for the location of the genocide memorial, pointing down the dirt road to a red brick building behind white metal gates.

There, a slight woman waits at the entrance of the former Catholic Church to give a tour to the only two visitors. She speaks in Kinyarwanda, with a few English words thrown in. Thousands of Rwandans came here in April 1994 to seek refuge from the genocide, but they were all killed when government and militia forces broke in – one of many scenes of mass slaughter and rape over a 100-day period in which the Hutu-dominated government and its followers sought to stamp out the Tutsi population, as well as those perceived to be moderates or sympathizers among the Hutus. The goal was to bring a permanent conclusion to the civil war against the Rwandan Patriot Front, or RPF, the mostly-Tutsi rebel group led by Paul Kagame, Rwanda's current president, whose forces ended the genocide by early July and assumed some control over what was left of the devastated country.

Clothes of the victims are stacked on the pews, and bullet and grenade holes mark the surrounding walls. The guide points to the altar, where the weapons of the genocide lay; she makes a gentle slashing movement with her arm as she points out the machete. Outside, behind the church, a path leads to a set of stairs that descend into a catacomb with a narrow passageway running between thousands of bones and skulls, as well as dozens of coffins, stacked on wooden shelves. Many of the coffins measure just a few feet or so long. The guide makes the slashing movement again, this time with the explanation: "Babies, babies."

A 15-minute ride by a moped taxi leads to a more rural area, Ntarama, with another church memorial where about 5,000 Rwandans had also sought protection from the genocide. Here, clothing hangs from the walls and rafters, while bones and personal items from the victims can be found at the ends of the building. A short distance uphill is a smaller structure. Inside, the guide, a somber woman who speaks in English, points to dark blood stains on the wall. She says that the children were killed here by being thrown and smashed against the wall.

The slaughter of children illustrates the horrors of the genocide and its enduring effect on the nation. This idea receives special treatment at the nation's largest genocide memorial, the Kigali Genocide Memorial Center, an impressive site with a museum and research center as well as gardens and mass graves of more than 250,000 victims. (The government estimates the ultimate death toll from the genocide at more than one million; academic works and advocacy reports more commonly estimate between 800,000 and 1 million.) The museum's "Children's Hall" presents pictures of murdered children with descriptions of their life goals and personality traits along with the manner of their death: "hacked by a machete," "burnt alive," "a grenade thrown in the shower," "shot in the head," "stabbed in eyes and head," "tortured to death," "smashed against a wall."

Karengera Ildephonse, who works at Rwanda's National Commission for the Fight Against Genocide, said the graphic nature of the memorials was important to refute those who deny or minimize the genocide.

"That is complete proof – the coffins of the children, the bones and clothes – of what happened," Ildephonse, who is the commission's Director of Memory and Prevention of Genocide, explained in an interview. "It's not just talk, it is physical proof."

He added that the process of memorializing is important for educational purposes, particularly for young Rwandans. Ildephonse gave an interview at the commission's offices in Kigali on April 8, the day after Rwanda commemorated the 19th anniversary of the genocide as part of its annual week of mourning, which includes commemoration events in Kigali and in villages around the country. April 7, 1994, is remembered as the first full day of the genocide. On April 6 of that year, Rwanda's longtime Hutu president, Juvénal Habyarimana, was killed when his plane was shot down over Kigali, ending a tenuous peace between his government and the RPF; government forces and the Hutu militia known as the interahamwe started implementing the genocide within hours.

This year, Jean de Dieu Mucyo, the commission's executive secretary, had criticized young people for their lack of interest in genocide memorial activities. In his televised speech to the nation on April 7, Kagame called for schools to teach the nation's difficult history so that the youngest survivors and those born after the events better understood the genocide's causes. That day, Kagame attended a memorial service at the Kigali Genocide Memorial and later participated in the "Walk to Remember," an event organized by the commission and youth groups. The walk began at Rwanda's National Parliament after all attendees had passed through an airport-like security screening and ended at Amahoro Stadium, the site of the nighttime memorial service. Most of the participants in the walk were Rwandans who appeared to be under the age of 30, with a scattering of Westerners who stood out by wearing sandals and shorts.

"This country belongs to them," Ildephonse said of the Rwandan youth. "The country's unity has to come from them. We encourage them to learn, to know why genocide

happened, to prevent it from happening again, to fight the ideology of genocide."

Memorials may seem a relatively uncontroversial way to acknowledge and redress past human rights abuses compared to judicial or quasi-judicial means such as prosecutions, truth commissions, reparation programs or reforms of public institutions – all of which have come to be grouped together as the common set of "transitional justice" mechanisms that post-conflict societies consider adopting. But they can be fraught with their own sets of complexities.

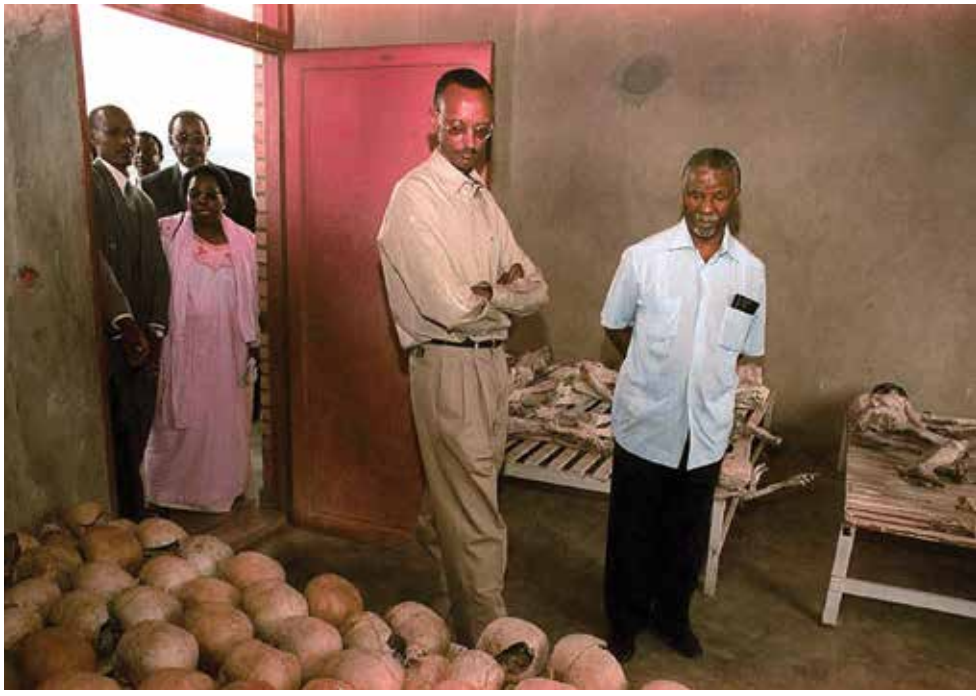
Both Rwandans and foreign workers in the country say that the memorial week brings an added weight and tension to the country, and it is not uncommon to hear people say that they prefer to travel during this time. Regardless of the time of year, outsiders are advised not to bring up the genocide or to ask about ethnic affiliations in conversations with Rwandans, which can sometimes complicate what would otherwise be normal questions about a person's family life and history. (The U.S. government lists the present ethnic breakdown as 84 percent Hutu, 15 percent Tutsi and 1 percent Twa in a densely packed population of about 12 million.)

The goal of Kagame's Rwanda is to leave ethnic divisions in the past and embrace the concept that "We are all Rwandans," but ethnicity is wrapped up in the memorializing. The genocide memorial campaign is officially referred to as "The Genocide Against the Tutsi," which to some observers contributes to an environment that does not fairly account for Hutu suffering. Ildephonse said, however, that the commemoration's title is merely meant to be factual.

"Some Hutus did not kill and helped and protected Tutsis, and in fact some Tutsi assisted in the genocide, but the Hutus were not targeted as Hutus, but as sympathizers of the Tutsi," he said.

The government has acknowledged that innocent Hutus were killed during the civil war, which began in 1990 when RPF forces attacked Habyarimana's regime, and in reprisal killings by RPF forces during and after the genocide. However, the government is strongly opposed to any language or description of events that appears to equate Hutu and Tutsi crimes within a civil war context, or that could be at all interpreted as supporting the contention that "a double genocide" occurred — which the government views as a dangerous component of the denialism within the broader threat of genocidal ideology.

Beginning with its new constitution in 2003 and in legislation since, Rwanda has outlawed ethnic "divisionism," minimizing or negating the genocide and, in a 2008 law, the propounding of a broadly defined "genocidal ideology." The focus on genocidal ideology is not surprising, nor are attempts to regulate hate speech. In the years leading up to the genocide, newspapers and radio stations successfully distributed "Hutu Power" propaganda – such as the Hutu Ten Commandments, which dictated that Hutu associations with Tutsis were traitorous – that helped convince Rwandans to kill their neighbors and made the extent of the 1994 genocide possible.



In 2000, Rwanda President Paul Kagame (left) and South Africa President Thabo Mbeki visited the genocide memorial in Murambi.

PHOTO BY: MARCO LONGARI/AFP/GETTY IMAGES/NEWSCOM

But critics contend that the Kagame regime has used provisions against genocidal ideology to quell legitimate free speech and political opposition in ways that violate international rights standards. Hundreds have been prosecuted under the laws, creating an environment not conducive to discussing RPF crimes or in general criticizing the Kagame government, including any perceived favoritism of Tutsis in Rwanda's post-genocide rebuilding. The Parliament has reportedly passed a revised version of the 2008 genocide ideology law to clarify the elements of the crime and the requirement of intent; it also reduces prison sentences. As of this writing, the law was awaiting Kagame's signature.

Among the best-known genocide ideology cases involved Victoire Ingabire, an opposition leader who attempted to oppose Kagame in the 2010 presidential election. She was arrested after a speech at the Kigali Genocide Memorial in

which she called for official remembrances of Hutu victims and punishments for their killers; she was also charged with providing support to a Hutu militia group operating in the region. Rwanda's High Court found her guilty of genocide denial and conspiracy charges, and it handed her an eight-year prison sentence that she is now appealing before the Supreme Court. (Rather famously, authorities also arrested Ingabire's controversial American attorney, Peter Erlinder, though Rwanda freed him for medical reasons and he is now at the William Mitchell College of Law in St. Paul, Minn.) Kagame ended up winning that election with 93 percent of the vote; his second and last term under the constitution ends in 2017.

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The opposing sides of the Kagame debate have been well established for some time: He is described favorably as a strong leader presiding over an unlikely success story, and unfavorably as an authoritarian leader of a repressive surveillance state. The U.S. State Department's Human Rights Report for Rwanda is replete with reports of arrests or harassment of political figures, journalists and human rights activists who have been critical of the regime, and murders and attempted murders of political opponents have gone unsolved. Kagame's government has long had a contentious relationship with major international human rights groups, which have authored a range of critical reports and contended that would-be domestic activists have been scared into silence or into moving abroad.

Human Rights Watch, a regular critic of the Kagame regime, claimed in a recent report that the Rwandan League for the Promotion and Defense of Human Rights – referred to in the report as the last independent human rights group in the country – had been taken over by government supporters through a questionable board election. The report said the event was part of a larger pattern of efforts to silence civil society organizations through intimidation and infiltration. Critics like to point out that, while the government has cited a culture of blind allegiance to leadership as a cause of widespread Hutu participation in the genocide, it is unfairly resistant to criticism of its own policies.

Kagame nevertheless continues to receive praise around the world for his stewardship of Rwanda's rebuilding and economic growth, even if relationships with allies like the United States have soured somewhat over the conflict in the Democratic Republic of the Congo, or DRC. In addition to its concern over genocidal ideology at home, Rwanda has long pursued Hutu extremists who fled the country during the RPF's victorious campaign in 1994 and continued to wage attacks from the outside. In 2012, the U.S. cut military aid on the belief that the Rwandan military was violating an arms embargo by providing direct support to the M23 rebel group, a mostly-Tutsi army in the eastern part of the country that opposes the DRC government and the Democratic Forces for the Liberation of Rwanda, or FDLR, the Hutu militia in the area that has many former Rwandan *genocidaires*. Sanctions will also apply for the coming year now that the U.S. State Department has put Rwanda on the list of nations that recruit or support the recruitment of child soldiers, a tactic employed by the M23. Rwandan officials have repeatedly denied providing support to the rebels.

This year, the theme of genocide memorial activities – seen on signs hanging throughout Kigali's remarkably clean and orderly streets – was "Striving for Self-Reliance." Ildephonse said the idea was to encourage survivors to remember the past but also to "live positively," to have a goal in life and not always wait for help "that might not be there." He added with a smile that it was an apt theme for the nation as a whole, as current events had suggested that Rwanda will not always be able to "rely on outside aid." Even as Rwanda remains dependent on this aid, the government often takes a defiant tone towards critics from nations that failed to live up to their obligations under the Genocide Convention to intervene in the bloodshed of 1994. The cowardice and inaction that left Rwandans to die and the RPF to deal with the consequences is a fixture of the memorializing.

While the memorial events occupy a dominant space each April, they are not the primary means by which Rwanda

and the international community have attempted to account for and document the genocide; that instead has belonged to a set of prosecutorial processes. In 1994, with Rwanda in ruins, the United Nations Security Council established the International Criminal Tribunal for Rwanda, or ICTR, based in Arusha, Tanzania, to prosecute the most senior leaders responsible for the genocide. As Rwanda rebuilt its legal system, the domestic courts also began prosecuting genocide suspects – eventually thousands of them – who did not rise to the leadership level of those pursued by the ICTR. Facing an immense backlog of genocide cases, Rwanda then established a third system based loosely on the traditional dispute resolution process known as gacaca, which involves village-based trials conducted without the participation of lawyers or formally trained judges.

Ingabire's comments highlight one of the controversies associated with all three tiers of genocide justice: None of them have prosecuted RPF crimes against Hutus. The Rwandan government has preferred to prosecute these crimes in the military courts, a process that critics contend has failed to account for the full extent of the army's crimes.

Though it was the last system launched, with pilot phases beginning in 2002, the gacaca system became the dominant player in the post-genocide justice scheme, particularly as it relates to the lives of everyday Rwandans. These local trials discussing the crimes of the genocide became a part of the weekly life of virtually all Rwandans as survivors and perpetrators sought to rebuild their lives, often side by side. Regardless of the many criticisms levied at it, the gacaca system – which concluded last year with an astounding two million genocide-related cases processed, according to the government's numbers – has earned its place as the most far-reaching accountability effort ever implemented for mass atrocities.

II. LOCAL JUSTICE

RWANDA FACED TOUGH CHOICES WHEN IT CAME to dealing with crimes related to the genocide. The justice system was essentially nonexistent given the destruction of the public infrastructure and the number of legal professionals who fled the country or were killed. In taking control of the country, the RPF imprisoned more than 120,000 suspects in a prison system designed for about a quarter of that. That number was expected to rise given that the genocide was carried out by masses of ordinary citizens who supplemented the work of government forces and the interahamwe militia. Most villages would have survivors (in some places, very few) and perpetrators who had not yet been arrested. Many of those imprisoned were never prosecuted, as brutal prison conditions led to about 11,000 detainees dying while awaiting trial, according to a 2002 Amnesty International report.

Rwanda received international assistance to begin rebuilding its court system and adding to its depleted roster of legal professionals. The national courts began hearing genocide cases in specialized chambers in 1996, often grouping together many defendants into a single case. According to the government's numbers, the courts had prosecuted more than 8,300 suspects by the end of 2002 for genocide and other crimes against humanity – a significant number given the limitations of the justice system but not one that made a serious dent in the pending caseload. (International observers praised efforts to process the cases of detainees but also expressed concern about the fairness and overall quality of the trials.) The ICTR, with a focus on senior-level suspects, has completed cases against 75 individuals so far; it had only issued judgments against a half-dozen or so suspects in its first four years.

As has been recounted in many works, Pasteur Bizimungu, a Hutu member of the RPF who became president after the genocide, held weekly meetings between May 1998 and April 1999 to discuss issues related to Rwanda's rebuilding efforts, including what to do with alleged *genocidaires* and the possibility of appropriating gacaca to process their cases. (Kagame was vice president at the time.) Though it varied in form in different periods and regions throughout Rwanda's long history, traditional gacaca is most commonly described as community meetings or informal trials presided over by village elders who resolved simple matters like property, family and inter-family disputes with an eye towards maintaining harmony. Gacaca, which in Kinyarwanda makes reference to the word grass, was not used for complex criminal cases.

One of the attendees of the 1998-1999 meetings was Augustin Nkusi, a judge who would go on to serve as the Director of the Legal Unit of the National Service of Gacaca Courts, a position he held until 2006. He is now a prosecutor with Rwanda's National Public Prosecuting Authority, or NPPA, and he gave interviews at his Kigali office over a few evenings in early April.

By the late 1990s, much positive coverage had accompanied South Africa's decision to document apartheid-era crimes through a Truth and Reconciliation Commission, which gave amnesty to participants who provided a full accounting of their crimes. However, Nkusi said that Rwandan authorities did not seriously consider a truth commission or other qualified-amnesty approach out of a belief that punitive measures were needed to eradicate "the culture of impunity" that had contributed to the events of 1994. No punishment had met prior massacres of Tutsi, beginning in 1959, in the first wave of Hutu-Tutsi violence that preceded Rwanda's 1962 independence and occurred intermittently after. (Belgium, which had controlled Rwanda since the end of World War I, exacerbated tensions between the groups by issuing ethnic identity cards and implementing policies favoring Tutsi, before shifting gears towards

the end of its reign and supporting a Hutu-dominated government and society.) In fact, Nkusi said the concern was that traditional gacaca would be offensive to survivors as too lenient.

Phil Clark, a political scientist at the School of Oriental and African Studies, University of London, describes in his book on gacaca – subtitled "Justice Without Lawyers" – the serious divisions between policymakers in the late 1990s over how to best process the cases. Tharcisse Karugarama, who until recently served as Rwanda's Justice Minister, told Clark that his early proposal for a gacaca-like system resulted in "so much condemnation" that he "nearly went into exile."

Over the next few years, however, authorities settled on a modified gacaca system – one that was more punitive than the traditional model – as an acceptable solution that could work through the backlog of cases, mete out punishment to combat impunity and establish the truth about the crimes in a way that might promote reconciliation. Nkusi said it made sense for community members to play a key role in sorting through the crimes of the genocide. Given the intimacy of the violence on a village-by-village basis, local residents would be in the best position to give damning or exculpatory evidence about their neighbors. It would also prove that Rwandans could handle their own problems, even in remarkably difficult circumstances.

These sentiments are expressed in the preamble of the first Gacaca Law of 2001, which Parliament amended several times after initial pilot phases. Initially, each "cell," the lowest administrative level in Rwanda, elected 19 judges for a total of about 250,000 gacaca judges nationwide. (The judges were called "inyangamugayo," the Kinyarwanda word for respected elder, though they could be men and women as young as 21 if held in high esteem in their communities.) That number shrank to nine judges per bench by 2005 as gacaca began its national implementation across approximately 12,000 cells and "sectors" – higher administrative levels that processed the more serious cases – and courts of appeal. The required number of judges-per-bench was reduced again to seven as officials sought to process cases more quickly. The pre-trial phase of information gathering and suspect identification took place in each cell, a process that dramatically increased the total number of suspects.

Rwandan law has three categories of genocide suspects according to the severity of their alleged offenses. Category one includes planners and inciters of the genocide, civic leaders who encouraged the genocide and perpetrators of sexual violence; category two includes murderers and those who committed serious assaults; and category three covers property offenses. Officials initially intended gacaca courts to process only cases from categories two and three, leaving the more serious category-one crimes with the regular domestic courts and the ICTR. However, the backlog of cases remained so severe that an amendment to the gacaca law in 2008 transferred many category-one cases to the gacaca courts, except for those of the highest-level accused planners.

By then, Rwanda had also undergone a series of judicial reforms and restructurings designed to modernize the justice system, but gacaca remained a separate system that handled its own appeals.

Gacaca judges did not have formal legal backgrounds but received a limited amount of training after election by their communities. The role of the president of each court was to guide the discussion among community members, officially referred to as the "general assembly," which consisted of all residents over the age of 18. At trial, defendants could call witnesses on their behalf but did not have the assistance of defense attorneys. All assembly members were encouraged to give testimony about the crimes in question; in fact, gacaca law provided for the punishment of individuals

Villagers listen to judges at gacaca proceedings photographed in Zivu.

PHOTO BY: RICCARDO GANGALE/AFRICA 24 MEDIA/NEWSCOM

who withheld information. Trials could proceed quickly or unfold over multiple weekly hearings; the panel of judges then discussed the evidence and gave their judgments. (Gacaca proceedings can be seen in filmmaker Anne Aghion's acclaimed documentary film "My Neighbor My Killer.")

The gacaca system's sentencing structure allowed judges to impose life sentences for the most serious offenses. By pleading guilty, however, defendants could receive significantly shorter sentences, half of which could be spent doing community service. Nkusi said that the more lenient sentencing scheme, which led to a vast number of guilty pleas, facilitated the revelation of truth about the crimes and reduced the burden on the prison system.

A few years ago, Nkusi took a leave of absence from the NPAA to pursue a master's of laws in criminal justice at the University of Cape Town, in South Africa. He is now hoping to publish a book based on his 2011 thesis, which sought to determine whether gacaca constituted "retributive" or "restorative" justice. In the field of transitional justice, retributive justice generally refers to mechanisms that prioritize punishment and deterrence while restorative approaches focus more on victim healing and reconciliation. By measuring gacaca's characteristics against these contemporary justice concepts, Nkusi concluded that the system was more retributive than restorative, by a 57 to 43 percent margin.

Nkusi said that the restorative elements were largely successful. Testimony by confessors allowed survivors to learn how their family members were killed, to locate the remains for proper burials and develop a sense of closure. As for reconciliation, he rejected the notion that weekly meetings to discuss genocide crimes would increase tensions in communities where survivors and perpetrators lived together. He said that the genocide was already followed by years of suspicion in which survivors assumed that all Hutus in their neighborhood were killers.

"Gacaca courts were able to distinguish between who is guilty and who is not," he said. "You could not reconcile with this type of suspicion."

The government considers the gacaca system, which formally closed in the summer of 2012, a major success. And initially, outside of Rwanda, much excitement accompanied the idea of local populations and survivors taking control over justice processes in a way that was culturally relevant; transitional justice advocates are often weary of one-size-fits-all approaches to accountability that can interpreted as overly formal or "Western" in nature. Over time, however, a number of competing viewpoints have emerged in academic works, advocacy reports and journalistic accounts that have examined gacaca, many of which draw on interviews with participants.

An obvious concern from a human rights perspective was the lack of traditional due process rights for suspects, who had limited time to prepare their cases and did not have the benefit of a lawyer. (In its final report on gacaca, the government said that defendants were not technically barred from hiring lawyers and listed some of the rare cases in which suspects had counsel.) Critics contend that potential defense witnesses remained silent out of a concern their statements would be interpreted as denying or minimizing the genocide, or would subject them to condemnation within the community and even false reprisal accusations. The use of lay judges could also be problematic, given their lack of experience in sorting through competing evidence in cases, and reports emerged of survivors making false claims either to settle personal scores or gain property.

A number of academics see an even more sinister element in gacaca that is inseparable from the system's exclusion of crimes committed by RPF forces – a type of one-sided or "victor's" justice that prevents reconciliation and undermines the government's stated commitment to accountability. These critics see a significant degree of coercion and intimidation by the government during gacaca, undermining a truly open and free exchange of testimony. One such critic, Timothy Longman, a professor of political science at Boston University, views gacaca not as a system of grass-roots popular justice but as a top-down, heavy-handed means by which the government implies "collective guilt on all Hutu." The government's calculation of nearly 2 million cases processed – even if the majority of the cases involved the less-serious property crimes in category three – might contribute to an impression of collective guilt, though by sheer volume the system also had hundreds of thousands of acquittals and successful appeals. (Some outside researchers doubt that the total number of cases was quite as high as the government's final tabulation of 1,958,634.)

Survivors had their own concerns, perhaps chief among them the retraumatization associated with public discussions of horrific crimes (though judges could hear some evidence in private, such as for rape cases). There were also complaints that testimony provided by defendants was often incomplete, even by those who claimed to fully confess, and that apologies were not sincere. Survivor witnesses, often Tutsis in the minority living near those who killed their family members, also faced intimidation, harassment and even death. The Rwandan government reported an increase in murders of genocide survivors and witnesses in the first few years after the national implementation of gacaca; the establishment of a victim and witness support unit in 2006, and new security measures, seemed to help. However, observers continued to note instances of intimidation by powerful Hutus, with reports that some wealthier suspects were able to bribe either judges or potential witnesses into silence.

Survivors and some human rights advocates also saw problems with the perceived leniency of the system, which became more so over time to keep gacaca from adding to prison overcrowding. From gacaca's earliest days, it often

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made sense for detainees to confess to certain crimes – whether or not they committed them – to gain freedom from horrible prison conditions, which led to false confessions. As documented in Clark's "Justice Without Lawyers" book, tens of thousands of the earliest detainees were freed and sent to civic reeducation camps known as ingando before being sent back to their communities for gacaca to weigh their confessions. Most suspects who had been incarcerated were not sent back to prison if found guilty by a gacaca court. After amendments to the system in 2007, even convicts who had not previously served time would be given community service combined with a suspended sentence; the community service was done first and, if performed satisfactorily, the prison portion would be commuted.

These critical viewpoints, when viewed collectively, cast doubt on gacaca's contribution to the goals of truth, justice and reconciliation. The Rwandan government was quick to perceive bias in some of the research, particularly the 2011 Human Rights Watch report, "Justice Compromised," claiming that it focused on cases and problems that were not representative of the system as a whole. As a practical matter, of course, Rwanda had few good options once the government decided on a course of criminal accountability for all crimes committed as part of the genocide. The country would never have enough qualified judges, prosecutors and defense lawyers to process the cases, a fact that critics also acknowledged. In discussing gacaca research, government employees tend to refer to Clark's work, which has taken a more favorable, if still mixed, view of gacaca.

Clark traveled to many villages throughout Rwanda from 2003 to 2012, often sleeping in the homes of gacaca participants or in a tent nearby. In a recent interview, he said that the most severe criticisms of gacaca tend to be rooted in the human-rights, legalistic perspective that emphasizes formal judicial procedures, including an adherence to international due process standards. He does not believe this is the best approach to assessing a "hybrid" system like gacaca, which blends modern and traditional elements and has a range of "pragmatic" and "profound" objectives for society. He is far from alone in saying that gacaca generally succeeded in the pragmatic goal of processing genocide cases and decreasing the prison population.

He also believes that gacaca trials did a "pretty good job" of establishing the truth of genocide crimes. Clark, too, saw some coercion in the government's efforts to ensure widespread participation, but in his observations the general assemblies often operated as an effective "check and balance" during the hearings.

"Many of the actors doing the speaking as well as those listening observed the crimes first hand," Clark explained. "If someone stood up and said something that was categorically untrue, more often than not the general assembly would pounce on that."

On the whole, Clark felt that communities were successful at locating bodies and uncovering other details about the crimes in a manner that likely would not have happened in formal justice systems. To him this reveals the "revolutionary" potential of a system like gacaca for documenting mass crimes when compared to more adversarial legal proceedings, where a defendant and his lawyer will attempt to narrow liability.

However, another longtime and prominent gacaca researcher, Bert Ingelaere, places a greater emphasis on gacaca's own adversarial characteristics as it processed the more serious, non-property-related offenses.

"Most of the people on trial denied the allegations, and then it became a more typical prosecution, where it was 'me against you,' and 'my word against your word,'" Ingelaere, an anthropologist at the University of Antwerp, in Belgium, said in an interview.

He believes these confrontational dynamics limited gacaca's success in the production of truth and the promotion of reconciliation. The system operated more like traditional gacaca in the property cases, where the perpetrator and victim could agree on a form of restitution. This was a more natural fit for gacaca, and Ingelaere said that it might have been better to leave the more serious cases outside of the system. He added that one potential lesson for the field

of transitional justice is to be cautious of hybrid systems burdened with multiple and at times contradictory goals; a set of complementary institutions might work better.

Both Ingelaere and Clark observed variability in how the gacaca system operated over the years across Rwanda's many villages, though Clark sees this as a more defining characteristic. In his view, even a centralized regime could not fully monitor, much less control, the vast number of hearings taking place each week, particularly in areas far from Kigali. In the later stages of gacaca, Clark observed hearings in which RPF crimes were discussed. Though the judges did not record what was said or launch investigations into the crimes, Clark found it remarkable that certain insulated communities had "carved out the space" to at least talk about these issues.

This variability, however, also applies to the system's contribution to peace and reconciliation. Clark said that the success of gacaca proceedings often depended on the judges' ability to manage the challenging discussions, as well as the amount of divisiveness and tension that existed in the community before gacaca arrived. Clark observed communities where gacaca seemed to offer a possible "avenue for reconciliation" and others where it "magnified tensions" and "made things worse," undermining reconciliation in often traumatic and sometimes even violent hearings.

Among all the competing viewpoints, Clark said that survivors and perpetrators tend to share one sentiment about gacaca – relief that it's finally over.

Recent transitional justice scholarship has tended to emphasize the limitations of justice mechanisms when it comes to reconciliation, a process that is dependent on so many factors and can often take a generation or two. Interestingly, Kagame himself has acknowledged the population's widespread dislike of gacaca as well as the likelihood that any contribution to reconciliation will be seen more in the long term. In a 2009 New Yorker article that served as a follow-up of sorts to his book about the genocide, "We Wish to Inform You That Tomorrow We Will be Killed with Our Families," Philip Gourevitch reported that survivors he spoke with did not have favorable views of participating in gacaca. Kagame responded that that was how it should be, that both victims and perpetrators should not be happy with gacaca – an admittedly painful process that is "something to build on."

The leadership of Rwanda is inflexible on the matter of RPF crimes, however, insisting they should not be grouped with genocide cases but instead handled by military courts responsible for prosecuting soldier misconduct and war crimes. In his thesis, Nkusi dismissed the criticism of gacaca as one-sided, noting that military courts had started prosecuting RPF soldiers well before the gacaca even began. This is not disputed by critics, who instead contend that the dozens of arrests and prosecutions of RPF soldiers have not sufficiently accounted for the number of Hutu civilians killed during and after the genocide, estimated by human rights workers to be in the tens of thousands.

After a second interview at Nkusi's NPPA offices, he provided me with a copy of his thesis. We then went to his home, where Nkusi introduced his wife and children over juice and television, and he talked fondly about his past trips to the U.S. to give presentations on Rwanda's transitional justice efforts.

On our way, Nkusi had the driver stop at a nearby field that is the former site of the presidential palace of Juvénal Habyarimana, where his plane crashed on April 6, 1994, killing him along with the president of Burundi, an ally, and several others. Wreckage from the plane remains in the field and was somewhat visible from our car; Nkusi suggested coming back during the day to get a better look.

Controversy has lingered over whether the assassination was orchestrated by the RPF or by Hutu extremists who feared Habyarimana would adhere to the 1993 Arusha Accords, which had established a peace between the Habyarimana regime and Kagame's forces. The assassination is commonly viewed as a catalyst for the main genocidal campaign of killing and raping, but not its cause, as the genocide was well-planned in advance; its execution began with alarming efficiency by government and militia leaders, and then regular citizens, soon after the plane crash. In the aftermath of the genocide, the U.N. Security Council decided that a specialized international tribunal would provide the best venue to prosecute the masterminds of the campaign.

III. THE INTERNATIONAL TRIBUNAL **AND RWANDA**

ON FEB. 11 OF THIS YEAR, HUNDREDS OF RWANDANS protested outside the building of the International Criminal Tribunal for Rwanda, the ICTR, in Kigali. Though it has operated in Arusha, Tanzania, since 1995, the tribunal also has an office in the Remera section of the capital, not far from Amahoro National Stadium, where the city would hold its 19th annual genocide memorial in a few months' time.

The protest, organized by Ibuka, an umbrella organization for genocide survivor groups, came in response to the Feb. 4 acquittals of two cabinet members of the interim government, formed after the Habyarimana assassination, which carried out the genocide and ruled Rwanda until RPF forces took control of the country in July 1994. One defendant, Justin Mugenzi, was the trade minister for the government, and the other, Prosper Mugiraneza, was the minister for civil service. In 2011, a three-judge ICTR trial chamber had convicted Mugenzi and Mugiraneza of conspiracy to commit genocide and public incitement of genocide, and sentenced each to 30 years in prison.

Ibuka's president, Jean Pierre Dusingizemungu, reportedly called the decision by the five-judge appeals chamber to reverse the lower court and acquit Mugenzi and Mugiraneza "a nail in the coffin of the victims of the genocide." The head of the NPAA, prosecutor general Martin Ngoga, who oversees genocide cases in Rwanda's High Court, also publicly questioned the ruling, which he said would call into question the legacy of the ICTR by exonerating leaders of the genocidal regime.

Debates over the ICTR's achievements and shortcomings have never been in short supply, and they are sure to continue now that the tribunal's case work is mostly done. As a structural matter, the U.N. Security Council created the Mechanism for International Criminal Tribunals, or MICT, with a more streamlined staff that has started carrying out the remaining functions of both the ICTR and the International Criminal Tribunal for the Former Yugoslavia, the ICTY, at The Hague. (The Security Council established the ICTY in 1993 to prosecute crimes from the wars that followed the dissolution of Yugoslavia.) The ICTY and the ICTR have always shared the same appeals chamber, which is based in The Hague, and they shared the same chief prosecutor until 2003. That position was also based in The Hague, leading some Rwandans to feel that the ICTR received short shrift.

The MICT is part of the tribunals' "completion strategy," and its work will overlap with the two tribunals as they wind down their operations. At the urging of the Security Council, both the ICTY and the ICTR have set timetables for finishing their work and taken steps to refer more cases to the domestic justice systems. Even high-level suspects already indicted by the tribunals can be passed on to national courts, though tribunal judges have to sign off on transfers. The ICTR did not begin transferring indicted cases to Rwanda until last year, when prosecutors finally convinced the judges – who had rejected earlier transfer attempts – that defendants could receive a fair trial in the domestic system.

The ICTR has referred the cases of eight defendants to Rwanda; two of them are in custody in Kigali, while six remain fugitives. The ICTR branch of MICT will retain jurisdiction over three additional "top-priority" fugitives alleged to have played high leadership roles in the genocide; they will stand trial in Arusha if caught. Earlier, in 2007, the ICTR referred two cases to France involving indictees who had found their way there. Several jurisdictions around the world, most in Europe, have prosecuted transplanted Rwandan genocide suspects not indicted by the ICTR.

Of the 75 individuals prosecuted by the ICTR, 47 have been convicted, 12 acquitted and 16 have appeals pending. Six of the 12 acquitted were cabinet members of the former government, a source of great frustration in Rwanda. Still, ICTR spokesperson Roland Amoussouga, who also holds the title of senior legal advisor and the chief of the tribunal's external relations and strategic planning, defended the outcome of the Mugenzi and Mugiraneza case.

"Acquittal is a normal part of the process, part of the due process a defendant receives," Amoussouga said in a recent interview. "This is not a kangaroo court that can just rely on the court of public opinion to convict people."

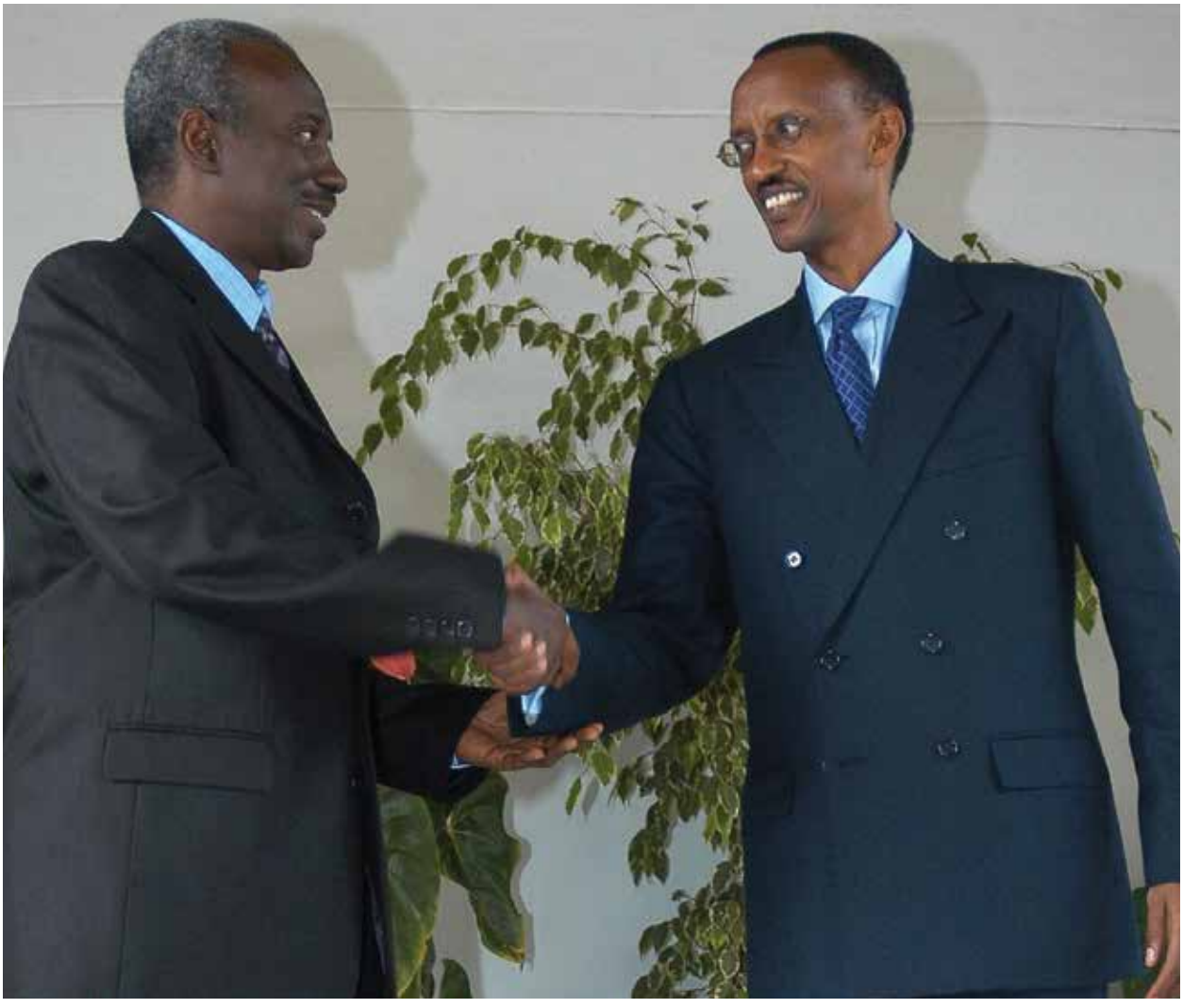
He said he understood "the feelings and emotions of the laymen and the victims" but not the comments of Rwandan officials, whom he suggested may not have read the decision before speaking out.

"They should not be engaged in public shouting matches against the credibility of our judges," he said.

In this case, the appeals chamber found that the trial court erred in using the available circumstantial evidence to conclude that Mugenzi and Mugiraneza had the required mens rea, or mental state, to support a conviction for conspiracy to commit genocide. The incitement allegations against the defendants stemmed from their presence at an April 19 speech by Théodore Sindikubwabo, the interim president, at a ceremony in Butare, intended to promote the killing of Tutsis. The appeals chamber found that the evidence did not prove that Mugenzi and Mugiraneza knew of the content of the speech before attending, which for the judges created doubt about the defendants' own genocidal intent. (Like many suspects, Sindikubwabo fled to Zaire, now DRC, during the RPF advance; he died there without being charged by the ICTR.)

Amoussouga said that the same appeals system has confirmed 95 percent of trial chamber decisions with guilty verdicts. Indeed, among the achievements most commonly ascribed to the ICTR is the establishment of an impressive, if incomplete, legal and historical record of the genocide, often through groundbreaking cases. The head of the interim government, Jean Kambanda, received a life sentence – the maximum under the ICTR statute – in 1998 after pleading guilty to genocide charges, the first-ever genocide conviction of a head of state. Also in 1998, the ICTR handed down the first-ever genocide judgment by an international court in the case against Jean-Paul Akayesu, the "bourgmestre" or mayor of Taba, who also received a life sentence. In addition to being the first case to interpret the 1948 Genocide Convention, the Akayesu case defined the crime of rape in international law and held that it could be a crime of genocide.

Over the tribunal's history, prosecutors have succeeded in targeting various levels of the genocidal campaign. Several cases have been thematically grouped by categories of defendants, with a focus either on the military, the civilian members of the former government or the media. In one 2003 case, the court convicted Jean-Bosco Barayagwiza and Ferdinand Nahimana for their role in the incitement broadcasts by the infamous Radio Télévision Libre des Mille



Collines, or RTLM, and Hassan Ngeze for his publication of the anti-Tutsi Kangura newspaper. The tribunal has also convicted priests for their roles in massacres.

As the first courts of their kind since the post-World War II Nuremberg and Tokyo tribunals, the ICTR and ICTY are often credited with building on and refining their predecessors' achievements in jurisprudence related to elements of the international crimes, individual criminal responsibility and command responsibility for offenses committed by subordinates. Supporters of the tribunals, and even critics, see them as pioneering institutions that contributed to the establishment of the International Criminal Court, located at The Hague. Unlike the tribunals, which are ad hoc institutions created by the Security Council, the ICC is a permanent court established by a treaty and run by its member states.

Though Rwandan officials have regularly called into question the quality of international justice, they have also acknowledged its benefits. The convictions of dozens of genocide suspects by an international court outside of Rwanda's borders, and outside the control of the government, is a powerful counter to denialism or any suggestions that the commonly accepted narrative of genocide is RPF propaganda.

Nevertheless, dissatisfaction with the Mugenzi and Mugiraneza acquittals have contributed to scrutiny within Rwanda of the appeals chamber's presiding judge, Theodor Meron, an American who is the president of the ICTY and who was also appointed to head the MICT structure. Meron was the presiding judge in a 2009 appellate decision that reversed the ICTR's conviction of Protais Zigiranyirazo, a businessman convicted of organizing a massacre of Tutsis. He also was on the appellate panel that, in 2011, reduced the sentences of three convicted *genocidaires*, including former defense ministry chief of staff

ICTR chief prosecutor Hassan Jallow (left) meets with President Paul Kagame in 2003. Jallow has had a smoother relationship with Rwandan officials than his predecessor.

PHOTO BY: RICKY GARE/EPA/NEWSCOM

Théoneste Bagosora, who is considered a leading mastermind of the genocide.

The recent ICTR acquittals received little attention in the U.S., or much elsewhere outside of Rwanda, unlike the recent acquittals of high-level ICTY defendants from Serbia and Croatia – for which Meron has received intense criticism. Because the tribunals share the same appeals chamber, Rwandan officials have also watched these ICTY events with interest.

Critics contend that the Meron-led court has raised the bar on the standard needed to convict command-level defendants as part of a "joint criminal enterprise" and for the acts of their subordinates. In freeing a Serb general earlier this year, the appeals chamber found that he did not specifically direct the crimes of his subordinates; previously, less explicit aiding and abetting theories had sufficed for conviction. The lesser standard is important for prosecutors given that commanders are often unlikely to explicitly order criminal acts. The heightened standard contributed to an ICTY trial chamber decision in May of this year that acquitted two senior Serb security officials.

On June 6, Frederik Harhoff, a Danish judge at the ICTY, wrote an angry letter to dozens of friends and associates that criticized Meron's role in allegedly pressuring judges to acquit defendants, and he suggested that Meron was reacting to pressure from American and Israeli officials to protect military leaders from the reach of international justice. The controversy erupted publicly with the leak of the letter to the media. The New York Times reported that a "mini-rebellion" was brewing within The Hague against Meron, a Poland-born Holocaust survivor who emigrated to the U.S. from Israel in 1978, though ICTY judges this fall reelected him to another two-year term as tribunal president.

In Kigali, the letter fueled resentment over the recent ICTR acquittals, and the National Commission for the Fight Against Genocide demanded that Meron step down. Amoussouga said he had no specific comment on the controversy. He said generally that tribunal judges "are fully independent, have the highest integrity and professionalism, and are not biased at all, guided only by the evidence before them."

Tension has accompanied the ICTR-Rwanda relationship from the outset. In the aftermath of the genocide, with its infrastructure destroyed, Rwanda asked the Security Council to establish an international tribunal as the council had the year before for the former Yugoslavia. Rwanda – at the time a temporary member of the Security Council – ended up being the only nation to vote against the November 1994 resolution establishing the ICTR. Rwandan officials were upset at the likelihood the tribunal would be established outside its borders (the decision to locate it in Arusha was made in 1995), as well as the fact that the tribunal would not impose the death penalty – a measure of justice Rwanda felt survivors deserved. Officials were also concerned about the court's jurisdiction covering genocide and "other serious violations of international humanitarian law" for the entirety of 1994, which meant that non-genocidal reprisal crimes by RPF forces were, at least legally, fair game. (Rwanda also wanted the jurisdiction to extend back to the start of the civil war in 1990.)

The Security Council also endowed the ICTR, as it had the ICTY, with "primacy," meaning it could take any case it wanted within its mandate, which became a problem almost immediately. In 1996, both the ICTR and Rwanda wanted control over Bagosora – the accused master-

The second suspect transferred to Rwanda's High Court by the ICTR, Bernard Munyagishari, arrived in Kigali on July 24, 2013.

PHOTO BY: STEPHANIE AGLIETTI/AFP/GETTY IMAGES/NEWSCOM

mind from the defense ministry – who had been arrested in Cameroon. South African jurist Ricard Goldstone, the first chief prosecutor of both the ICTY and the ICTR, insisted on Bagosora's transfer to Arusha. But he relented that same year after Rwanda threatened noncooperation with the tribunal in the case of a suspect arrested in India, Froduald Karamira, an ethnic Tutsi who became a leading Hutu extremist political figure.

The respective fates of Bagosora and Karamira highlight the differences between the two systems. The trial of Bagosora and his co-defendants at the ICTR did not start until 2002; it lasted until 2007 over hundreds of trial days. The trial chamber issued its guilty verdicts in December 2008, and the appeals process lasted another three years, with the chamber eventually reducing Bagosora's sentence from life to 35 years at the end of 2011. In contrast, a Rwandan court convicted and sentenced Karamira after a three-day trial in 1997; he was executed as part of a larger public execution of convicted *genocidaires* the next year.

The length of ICTR proceedings (like the ICTY's) is at least partially explained by the complexity and novelty of the cases, the need for translation in documents and court proceedings, witness travel and protection, and a commitment to the due-process rights of defendants. In addition, the tribunals do not have enforcement powers, such as a police force, and instead must rely on the Security Council mandate that all nations cooperate by arresting and transferring suspects and other evidence. This has been a challenge for both tribunals as they have sought help from often-reluctant nations.

However, even supporters have criticized the ICTR's bureaucratic inefficiencies and expense (it has cost more than $1.5 billion) as well as its high-profile blunders. The tribunal discovered in 2001 that some of the defense investigators at the ICTR were actually Hutu genocide suspects; two of them ended up facing charges at the tribunal. Another embarrassment came in a 2001 case, when trial judges laughed during a difficult cross-examination of a Tutsi rape victim. Though the judges' behavior was explained as an exasperated reaction to the defense attorney's aggressiveness, survivor groups, including Ibuka, protested and announced they would suspend the cooperation of their members as witnesses.

With its distant location, the ICTR has also struggled to explain its relevance to Rwandans. In 2000, with funding from the European Commission, the tribunal started an outreach campaign. However laudable in their own right, these outreach efforts, like those of the ICTY in the nations of the former Yugoslavia, have never been funded sufficiently to make a dramatic domestic impact. The ICTR set up an information center in Kigali that has case data, a library of international law books and computer terminals for research; press conferences and other events also have been held there. (In my April visit, ten or so college students were using the center.) The tribunal later established smaller information centers near courthouses in other provinces. To the anger of Rwandan officials, however, the vast archives of the ICTR's work will be kept at the Arusha branch of MICT, a decision made not by tribunal staff but by the Security Council.

As a general rule, of course, Rwanda wanted cases against high-level Hutus to succeed, and both the domestic and international systems have shared an interest in cooperation over the past two decades. But this cooperative relationship has been strained at times, a topic explored in many works, including Victor Peskin's book, "International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation." Rwanda had tremendous leverage with the evidence and survivor witnesses under its control at home; cases would stumble without domestic cooperation. In Peskin's telling, Goldstone's capitulation on Karamira's transfer to Rwanda emboldened officials to use threats of noncooperation in the future. In 1999, Rwanda hampered investigations in the country after the appeals chamber decided to acquit Barayagwiza, the hate propagandist from the RTLM, in response to prosecutors missing the deadline for the first pretrial hearing. Carla Del Ponte, who became the chief prosecutor in 1999, succeeded in persuading the appeals chamber to reconsider its ruling, and Barayagwiza was eventually tried and convicted.

In June 2002, the government blocked Tutsi survivor witnesses from traveling to Arusha to testify in pending cases, ostensibly to implement new procedures related to the travel of witnesses. As explained in Peskin's detailed account, however, the move was also widely seen as a reaction to Del Ponte's ongoing investigations of RPF forces. In her own memoirs, titled "Madame Prosecutor," Del Ponte contends that the Rwandan government was willing to compromise cases against high-level Hutus in order to thwart the RPF probe. (Witness travel resumed after Del Ponte took her complaint to the Security Council.)

In her account, Del Ponte says that Kagame was initially receptive to her plans to bring a limited number of cases for RPF crimes, including an initial focus on the massacre of Catholic clergy and other civilians in June 1994. Eventually, however, Kagame changed his tone and became firm in his position that military prosecutors would handle RPF crimes. In one heated meeting, Del Ponte writes, Kagame told her that she was "destroying Rwanda" and that cases against the RPF would lead people to "believe there were two genocides." She also believed that the extent of RPF crimes might point to the culpability of senior officers, including Kagame.

The U.N. and Western powers that supported the court, perhaps most notably the U.S. and Great Britain, could have pressured Rwanda to cooperate with RPF investigations,

as it had with nations of the former Yugoslavia concerning their own nationals. As many observers have pointed out, however, guilt over the failure to stop the genocide and the disastrous handling of refugee camps in its aftermath – which allowed Hutu extremists to regroup and rearm in the camps and continue attacks – muted would-be critics and gave the RPF something of a free pass when it came to international criminal accountability. Kagame and the RPF had also earned many admirers for defeating the genocidal forces and taking steps to rebuild the nation, all against great odds.

Del Ponte herself received pressure from Western officials, including from the U.S. State Department, who wanted her to relinquish RPF cases to domestic prosecutors but with the right to resume her own if Rwanda's efforts were "not genuine." Del Ponte remained insistent on pursuing the cases, and it likely cost her her job – or at least half of it. Rwanda and other governments lobbied for her removal, with the ultimate result being the creation of separate chief prosecutors for the ICTY and the ICTR; Del Ponte was reappointed to the ICTY, though she says she offered to move to Arusha for the ICTR. The 2003 Security Council resolution that formalized aspects of the tribunals' completion strategy also established the separate prosecutorial posts. Del Ponte considered it a victory that the same resolution called on all states, including Rwanda, to cooperate on all ICTR matters, including investigations of RPF forces. But cases against the RPF never materialized at the ICTR.

Hassan Jallow, a lawyer and judge from Gambia, took over as the ICTR's chief prosecutor in 2003 and has enjoyed a smoother relationship with his domestic counterparts. He continued to investigate RPF crimes but chose instead to refer the investigations to domestic prosecutors. Rwanda's military court ended up prosecuting the case of the murdered clergymen, which concluded with two convictions and two acquittals in 2008. In a 2009 letter to Human Rights Watch, which had criticized the case, Jallow said the trial was "properly conducted" and that he saw "no reason to exercise the primacy of the ICTR." He also denied that threats of noncooperation had blocked RPF investigations. He noted that, in 2007, the government had given him the details of 42 RPF soldiers prosecuted domestically.

The main concern of critics is that the tribunal will be seen as an instrument of "victor's justice" and thus fail to build more convincingly on the achievements of the Nuremberg and Tokyo tribunals, which were set up and run by Allied powers and only prosecuted Axis war crimes. Even those who understand Rwanda's refusal to vigorously prosecute RPF crimes domestically tend to struggle at finding an acceptable explanation for an international institution designed to be impartial. Del Ponte said that the failure to live up to the tribunal's mandate to prosecute all sides of the conflict – as the ICTY was doing, and by now has done – would undermine reconciliation in Rwanda and the legitimacy of the court.

The position of Jallow, her successor, is that the ICTR's cooperation with Rwanda on domestic RPF cases counters the "victor's justice" argument, particularly since the genocide is "the main crime base" of the tribunal's mandate. In his letter to Human Rights Watch, Jallow said that domestic prosecutions could "have a potentially greater impact on national reconciliation."

In some ways, his position is strengthened not only by the demands of the completion strategy but also by trends in international criminal law that have placed a greater emphasis on the role of domestic institutions. Instead of having primacy, the ICC is a "court of last resort" intended to take cases only if nations that would otherwise have jurisdiction are unwilling or unable to prosecute. The belief is that it is often better for victims and the promotion of rule-of-law principles and other judicial capacity building if nations handle their own cases in the aftermath of conflict.

Amoussouga declined to weigh in substantively on whether the lack of RPF cases would weaken the legacy of the tribunal, preferring to "leave that to the historians."

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>
> **— ROLAND AMOUSSOUGA,** ICTR SPOKESPERSON

But he said that the tribunal has taken steps to ensure a positive legacy in Rwanda. Over the years, the ICTR has provided training and assistance to Rwandan judges, prosecutors and other lawyers, as well as to lay people involved in witness protection, all of which has increased the level of confidence the international community has in the domestic system's ability to handle genocide cases. In addition to building the capacity of the legal system and its professionals, Rwanda's desire for case transfers enticed it to implement judicial reforms, including the abolishment of the death penalty for genocide and all other cases.

Amoussouga considers these reforms among the ICTR's most important achievements. And they now assume a great importance. With the ICTR winding down and with gacaca over, Rwanda's High Court has taken center stage in the prosecution of genocide suspects.

In 2007, Rwanda passed a Transfer Law to meet the requirements of ICTR's "Rule 11 bis," which allows for the transfer of cases if the trial chamber is satisfied that the defendants will receive a fair trial in the new jurisdiction and that the death penalty will not be applied. Though the Transfer Law spelled out new witness-protection measures and fair-trial principles, ICTR trial and appeals chambers rejected Jallow's first five transfer requests out of a belief that suspects still could not get a fair trial in Rwanda. A key issue was the anticipated inability of defense teams to secure the participation of witnesses, who feared reprisal violence and also the possibility that they could face charges for genocide negation or ideology, or prosecutions in the gacaca courts. In response, Rwanda made additional reforms, including the creation of a new witness protection unit within the judiciary and expanded procedures for non-residents to testify from outside of Rwanda. Amendments also clarified the immunity granted to witnesses testifying at trial and guaranteed that detention conditions would meet international standards – including a ban on solitary confinement.

In 2011, a trial chamber approved the transfer to Rwanda's High Court of Jean-Bosco Uwinkindi, a Pentecostal pastor facing genocide charges for a number of atrocities committed around the area of his church in Kayenzi; the appeals chamber upheld the decision last year. Uwinkindi's team persisted that he would not get a fair trial in Rwanda, but judges were satisfied with the steps Rwanda has taken to improve the environment for genocide defendants. So, apparently, were other jurisdictions, such as Canada and Norway, which extradited genocide suspects to Rwanda after the *Uwinkindi* appeals decision. (The U.S. already had decided to deport genocide suspects after prosecuting them for immigration violations and did so in 2011 with a Rwandan native arrested in the Chicago area.) A London court is scheduled to hold a hearing in March to determine if five detained genocide suspects will be extradited to Rwanda. France has provoked resentment in Rwanda by keeping genocide suspects in its own courts, and also for the slow movement of the two ICTR cases – still pending – that the tribunal transferred there in 2007.

While many observers remain skeptical, ICTR prosecutors can reassert control of transferred tribunal cases if they are not satisfied with the performance of the domestic system. Monitors from the tribunal have attended all proceedings in Uwinkindi's case, which so far have chiefly addressed defense requests for additional funds from the government – which is paying for the defense – for preparatory investigative work. (Proceedings were set to resume at the time of this writing.) In July, the ICTR transferred to Rwanda its last pretrial detainee, Bernard Munyagishari, a political leader accused of training the interahamwe militia, among other criminal acts. The six remaining cases approved for transfer by the ICTR are those involving fugitives, with cases of another three fugitives remaining under the jurisdiction of the ICTR branch of MICT.

The hunt for fugitives is a joint effort by MICT, the Rwandan prosecutor's Genocide Fugitives Tracking Unit and INTERPOL. The War Crimes Rewards Program, under the U.S. State Department, provides awards of up to $5 million for information leading to the capture of ICTR fugitives and other war crimes suspects. (The last two high-level ICTY indictees were captured in 2011.) An INTERPOL press release from April reported that 240 Rwandan genocide suspects are wanted for arrest or additional investigation. The NPPA has assisted with some cases in foreign courts by holding proceedings in Kigali for Rwandan witnesses and relaying testimony through videoconferencing. However, the agency has made clear its expectation that, post-*Uwinkindi*, future cases should be transferred to Rwanda. Uwinkindi's trial should shed light on how many genocide cases domestic prosecutors and the High Court can handle at one time.

By one analysis, a lack of enforcement powers and the reliance on state cooperation have constituted the most obvious hindrance to the functioning of international tribunals, and one that has also plagued the fledgling ICC. Rwanda's concern over the continuing threat of genocidal ideology is based in part on the vast number of genocide suspects still free around the world. Yet the arrest and transfer of high-level *genocidaires* may also be one of the ICTR's most clear-cut achievements. According to the ICTR, 27 different national jurisdictions, with help from INTERPOL, have played a role in the apprehension of 83 tribunal fugitives. However haphazard and protracted the effort, it is one that would not have existed without the tribunal at its center, particularly in the early years after the genocide. This is one area upon which ICTR proponents and Rwandan officials tend to agree.

"These people would have gotten away with murder, with genocide, if the ICTR did not exist," Amoussouga said. ■