

Review

Political opportunism, impunity and the perpetuation of Victor's Justice: A case of the Rwandan Genocide

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The genocide in Rwanda remains one of the most tragic and horrendous events witnessed in Africa, and an important case study in the exploits of transitional justice. An approximated number of one million people were subjected to systematic rape, murder and torture with several thousands of people being displaced in the process of ethnic conflict in Rwanda-evidencing genocide, war crimes and crimes against humanity. Rwanda provides yet another example of the need for justice in post-conflict states, and the need to protect human rights and the restoration of the dignity of human beings. However, a post-conflict situation has to contend with how this justice is dispensed, by whom, towards whom and to what end. This paper argues that partial justice was served (and continues to be) in Rwanda concomitant with victor's justice and the political opportunism of the emergent Rwandan Patriotic Front (RPF) government.

Key words: Political opportunism, genocide, impunity, transitional justice, human rights.

INTRODUCTION

In discussions and accounts of transitional justice, we can dispense justice and still not serve it at all. With what may seem an attraction to gruesome morbidity, we are always drawn to discuss cases where humanity has failed with the objectivity of intellectual curiosity, relegating empathy to its rightful place as a function to explain contending variables in our quest to understand phenomena. This paper will discuss the dynamics of the Rwandan genocide within the framework of transitional justice vis-à-vis impunity and political opportunism. Methodologically, the paper borrows heavily from various and key Rwandan genocide scholars. To give context and provide the premise for the overall objective of the paper, the author will discuss the divisive relations between the Tutsi and Hutu groups and attempt to offer an elucidation of the details of the Civil War in Rwanda and further make an examination of the events that

culminated into the genocide in 1994. While this has been extensively done by the many works that have been done on the Rwandan genocide, it remains pertinent for the reader that might be coming across work on the genocide for the first time through this article. The paper will move to discuss the cataclysmic ramifications of the genocide with an emphasis on the part played by the Rwandan Patriotic Front in the process of the conflict. Lastly, an analysis of the post-genocide period will be made. Of particular importance will be the investigations of the UN which in turn led to the establishment of the International Criminal Tribunal for Rwanda (ICTR), the various studies and accounts that have been published on the transitional justice outcomes, and some reports on contemporary examples of arrests of those that are accused of being perpetrators of genocide. These are very important premises for the thesis of this paper.

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Conclusively, this discussion terminates by exposing the unequivocal partial justice dispensed by the Gacaca courts system and ICTR, and examines the effect on the trustworthiness of transitional justice processes.

THESIS

Therefore, this paper argues that: the culpability of Rwandan Patriotic Front (RPF) members for crimes during the genocide was not taken into account due to political expediency and non-committal on the part of those charged with the responsibility to prosecute. The successes of the Gacaca courts and the ICTR are tainted because the convictions emergent from these mechanisms reveals that only the crimes of Hutu perpetrators were widely prosecuted, and continue to reflect the “trend” in contemporary times, as opposed to those committed by the Tutsis of the RPF. Therefore, this paper is anchored on the argument that in totality, there is a case for continued impunity and partial justice in the trials of the Rwandan genocide making the outcomes of the pursuit of justice in Rwanda, a victor’s justice influenced by political opportunism.

The system of justice at an international level is a symbol of global cooperation, protection of human rights and the basis for a legal position on genocide and all crimes grossly violating the said human rights.¹ The literature that was reviewed in this undertaking discusses the Rwandan genocide by situating the dynamics of transitional justice and the historical trajectory of the Rwandan genocide. This review informed the major premise of the proceeding narrative that will seek to make the case for the continued interplay between political opportunism, impunity and victors’ justice in the Rwandan genocide.

Creating international courts plays a huge role in global governance by adding a very crucial dimension to the said global governance—a mechanism that makes universal jurisdiction actionable. States are subject to warranted external intervention, and also the trial of individuals that are culpable of violations of human rights. In the truest fashion that upholds *jus cogens*, atrocities exacted by persons on others that violate human rights indiscriminately cannot be shielded by the ostensible resort to claims of the inviolability of state sovereignty. Hellsten (2012:5) argued that,

in this criminal justice sense, Transitional Justice (TJ) can currently be seen to undermine the doctrine of state

sovereignty that had largely guided international relations since the 1648 Treaty of Westphalia. While not every state has signed, ratified and/or domesticated all the treaties and agreements related to international law and transitional justice, the international community (of those who have done so) can still take action against these ‘outlaw’ states and against individual members of their regimes when international human rights standards are violated or crimes against humanity are committed.

These international institutions of justice, and the conventions that establish them, at least at face value, appear to provide the mechanisms of an assured end to impunity. However, global justice as it has been postulated, remains far from being attained. International justice has scored some successes, but has yet to bring full comprehension of the crimes of genocide. The mechanisms of international justice have a tendency to make impositions of western conceptions of people’s rights, retribution, civil society, justice in post-conflict environments, and the rule of law (Hinton, 2010). An examination or rather appraisal of impunity should take into consideration the national, local, and international approaches to the manner in which justice is dispensed and the attendant consequences to transitional justice of the said impunity.

The genocide of Rwanda is a significant area of focus because of the employment of several justice models in responding to the crisis (Jallow, 2009). The year 1994 saw the establishment of the ICTR by the UN Security Council via resolution 955. The court was formed with the hope that it would work in tandem with the Rwandan state courts, but the aversion to the attempts by the UNSC to make it so greatly affected the work of the ICTR. Despite the objections to the formation of the tribunal, the convictions made by the tribunal were important for the Rwandese, and that this served to help regain their humanity. The ICTR established significant examples that contributed to the redefinition of genocide and augmented the capacity of the international justice mechanisms (Ibid).

THE RWANDAN GENOCIDE: A BRIEF TRAJECTORY

A veritable comprehension of the occurrences during the Rwandan genocide requires a grasp of the history shared by the Tutsis and Hutus. the region referred to as Rwanda today was occupied by a population that was overtime become divided along social status-forming identities premised on ownership of cattle (herdsmen), peasantry (agriculturalists), service in the army, and labour relations between the “haves” and “have nots”, the former referent to the “Tutsi” and latter to the “Hutu”. For example, service in the army was divided along Tutsi and Hutu identities where the Tutsis were the combatants and the Hutus non-combatants who merely provided menial services to the combatants. This left the Hutus relegated

¹The author acknowledges the fact that crimes occasioned on persons such as murder (in ‘normal’ crime situations such as homicide) are violations of human rights but this assertion is made with explicit reference to the context of the subject matter.

to the lower echelons of society mainly with peasant status, while the Tutsis created kingdoms that were presided over by Tutsi monarchs. This “identity dichotomy” had economic, political and social effects (Childress, 2015). Des Forges (1999: 32) states that,

as the Rwandan state grew in strength and sophistication, the governing elite became more clearly defined and its members, like powerful people in most societies, began to think of themselves as superior to ordinary people. The word “Tutsi,” which apparently first described the status of an individual—a person rich in cattle—became the term that referred to the elite group as a whole and the word “Hutu”—meaning originally a subordinate or follower of a more powerful person—came to refer to the mass of the ordinary people. The identification of Tutsi pastoralists as power-holders and of Hutu cultivators as subjects was becoming general when Europeans first arrived in Rwanda at the turn of the century.

After World War 1, Belgium through the Treaty of Versailles took control of Rwanda. The stratified social structure of “dominant” Tutsis and “subservient” Hutus continued. From the 1930s through to the 40s, sentiments of restlessness began to develop in the Hutu majority population and an undulating Hutu nationalism emerged (Madsen, 1999). Part of the blame for the divisive nature of Tutsi-Hutu relations has been placed on Belgium. Belgian colonisers are said to have given privileged consideration to the Tutsis— they received better education and became steeped in western ideals and values (Anyidoho, 1997). This is exemplified by, for example, the Hamitic Hypothesis. This hypothesis championed by John Hanning Speke, posits that all things of value in Africa were brought to the continent by the Hamites who were a variation of the Caucasian race, and that Tutsis represented that variation, coming from the general population of Ethiopia, unlike the Hutus who were indigenous to “black Africa,” and by that classification, were inferior (Childress, 2015). However, the ethnification of Rwandan society during colonialism was not solely premised on primordial reasoning. Hain (2011:6) offers that,

Though Speke’s theory was founded on primordial conceptions of ethnicity, the colonizers had economic, social and political incentives to divide the groups as well. Invariably, the Belgian’s coalition with the Tutsi was also based on their position in society as the elite and dominant political authority in Rwanda. By favouring the Tutsis and discriminating against the Hutu’s, the Belgian’s further strengthened the divide and animosity between the two ethnic groups and ultimately empowered their own control of the state.

The Hutu Social Movement, a political party which espoused equal treatment of Hutus who had been long suppressed, was formed by Kayibanda in 1957. In almost

retaliatory fashion, the Tutsis created the Rwandan National Union (UNAR). The Party of the Movement of the Hutu Emancipation (PARMEHUTU) was then formed by Kayibanda in 1959. The naming of the party was deliberate and meant to communicate its exclusionary nature as a party premised on advancing Hutu interests. This unequivocally showed Tutsi leaders that the welfare of Tutsis was at risk (Childress, 2015). The political volatility in Rwanda was palpable such that later in 1959, violent clashes referred to as the “Muyaga Massacres” between Hutu and Tutsi factions occurred.

Elections were held in 1960 in which the PARMEHUTU emerged with the most government seats. Elected Hutu members of government with the collusion of Belgian representatives announced that they had created the “Sovereign Democratic Republic of Rwanda in 1961”. This immediately terminated the centuries-old Tutsi monarchy. King Kigeli who was the Tutsi monarch at the time of the creation of the republic of Rwanda was deposed and Kayibanda became president. With full cognisance of the fact that the Hutu-Tutsi schism traced back centuries, this altering of the political situation in Rwanda incontrovertibly laid the premise for the cataclysmic violence that was to occur in Rwanda. Tutsi people’s trepidation was founded on the concerns over a retributive Hutu regime. This triggered Tutsi refugee-migration into Uganda. Kayibanda, fearing a retaliatory assassination inspired by exiled Tutsis became reclusive (Madsen, 1999).

The upending of the Tutsi monarchy was the gateway to what became the preoccupation of the emergent Hutu government: the complete Tutsi marginalization so that all chances of the restoration of the Tutsi monarchy were eliminated (Childress, 2015). Juvenal Habyarimana led a coup which made him president of Rwanda in 1973, with his sole interest rested on maintaining a Hutu hold on government with very minimal Tutsi involvement. In attempts to redress the historical deprivation of the Hutu population, Habyarimana introduced a quota system for education and other government benefits on the basis of Rwanda’s ethnic demographics (Kuperman, 2003). However, several Tutsis retaliated by forming guerrilla groups which aimed to regain power. These guerrilla groups known to the Hutus as Inyenzi (cockroaches) because of their characteristic night attacks, operated from Burundi, Tanzania, Uganda and Democratic Republic of Congo- former Zaire. By such attacks, the Tutsis hoped to regain some measure of control or power.

The Hutus responded by engaging in mass retaliatory killings of innocent Tutsis culminating into a mass migration of Tutsis to nearby countries. In the middle of the 1960s, a greater portion of Tutsi people were in exile living outside of Rwandan territory, with most of them migrating or fleeing to Uganda. It was approximated by the United Nations High Commissioner for Refugees (UNHCR) that there were 150,000 exiles outside Rwanda’s borders, but also acknowledged the potential for the actual number to be twice that of the estimate due to

the possibility that not all exiles were fully registered. The Rwandan exiles made swift assimilation and settlement in the refugee camps where they were gathered, with the majority of them taking up menial jobs that enabled them to survive and meet their basic needs. On the back of UNHCR aid, the children of Rwandan refugees were able to make social progress that was not only better than their parents', but that was also much better than that of the local Ugandan people. The education of refugee Rwandan children was paid for by UNHCR while the children of indigenous Ugandans, due to lack of money to pay for school, dropped out (Kamukama, 1997). These opportunities that accrued to Tutsi refugees were used to get away from life in refugee settlements and acquiring well-paying jobs. The apparent "success" of Rwandan refugees in Uganda began the spread of xenophobic sentiments among the Ugandans. Resentment and envy gripped native Ugandans who felt that they had been overtaken in virtually every aspect of life by Rwandans. There was a general fear that Milton Obote, the Ugandan president, would move to exclude from the political process, citizens and Refugees that were of Rwandan origin. These trepidations were partially stalled by the overthrow of Obote through a coup by Idi Amin in 1971. However, in 1980, Obote returned his presidency after the 1979 overthrow of Idi Amin's regime. These developments were soon followed by a guerrilla war in neighbouring Uganda waged on the ruling regime that had a major influence on the events that were to occur in Rwanda (Ibid).

Paul Kagame and Fred Rwigyema were two key Rwandan protagonists in the Ugandan National Resistance Army (NRA) guerrilla movement that overthrew Obote. They, together with several other Tutsis in exile in Uganda, went on to create the Rwandan Patriotic Front in 1979 (Rusesabagina, 2006). After the NRA usurped power in Uganda in 1986, the RPF's existence and operations became overt and "legitimized" much to the trepidation of the Rwandan government in Kigali. Through the 1980s, the RPF's growth in Uganda was exponential (Madsen, 1999).

In 1988, a cultural show initiative that showcased the lives of Rwandan refugees in Uganda set the stage for international dialogue on the possibility of Rwandan refugees returning home. This initiative was coincidental because it was started at a time when discussions on most fronts about the possible and desire to return home of Rwandan refugees were taking root. This led to the formation in 1988, a Commission of Ugandan and Rwandan ministries was established to engage in discussions on possible means to tackle the refugee problem. A decision was made by the Rwandan and Ugandan governments reach out to the UNHCR for assistance in conducting a survey in refugee camps that would establish whether Rwandan refugees desired to return home or stay in Uganda. The suggested survey was never carried out (Kamukama, 1997).

A growing rift between NRA and RPF soldiers inspired

military action. In 1990, RPF fighters instigated an attack on Rwanda from Uganda. The guerrilla force was mainly made of Tutsis who were the children of refugees that had left the country in the wake of the 1959 revolution. Over the years, as the erstwhile discussion has documented, sentiments of hatred and ethnic tensions between Tutsi and Hutu groups had been exacerbating and this translated into the said invasion of Rwanda in October 1990. At this point, the Civil War of Rwanda had erupted (Anyidoho, 1997). According to Jesse (2017:146),

Beginning in October 1990, the Rwandan Patriotic Front (RPF)-a political party composed primarily of militarized Tutsi refugees who had fled previous periods of ethnic violence-invaded Rwanda from Uganda, triggering a civil war. The invasion was intended to force the government, then led by Hutu President Juvénal Habyarimana, to accept a power-sharing agreement and recognize the right to return of Tutsi refugees of previous periods of violence. However, the invasion radicalized many of Rwanda's Hutu elites, whom in their efforts to undermine popular support for the RPF implemented a media campaign of anti-RPF and anti-Tutsi rhetoric and began training Hutu youth to defend their nation against the so-called foreign invaders-giving rise to the infamous 'Hutu Power movement'.

THE MASSACRES: A CONTEXTUAL ACCOUNT

The frequency of war crimes and genocide in Rwanda was portended by the commencement of the Civil War. More than 1,200 Bagogwe people, a group related to the Tutsi found in North-western Rwanda were massacred by Armed Forces of Rwanda while Hutus slaughtered Tutsis all through the northern and southern regions of Rwanda (Madsen, 1999). The complicity of the RPF in the repeated violation of International Law was replete in their actions during the Civil War. Thousands of civilians were the targets of brutal attacks. In one instance RPF soldiers attacked a prison at Ruhengeri and freed many prisoners whom they enrolled as fighters. The RPF also looted homes and asked the evicted victims to assist with carrying the looted goods. These civilians were murdered afterwards. Politically motivated assassinations also occurred. The RPF is alleged to have taken issue with political rivals that were vociferous and consistently critical of their violent actions. Outspoken Hutu politicians and businessmen were targeted in RPF assassinations. Accusations of mass murders in the Byumba and Ruhengeri provinces were levelled at RPF in 1993. It was estimated that the RPF killed 40,000 people in the said provinces. Internationally, concerns over the Rwandan situation were expressed, with an international commission issuing an opprobrium of the ethnic massacres that were being effected by both parties to the conflict. The passivity of influential world leaders in abstaining from timely intervention in Rwanda and

seeking a solution was unfortunate (Rusesabagina, 2006).

Even in the face of copious amounts of evidence of genocidal propaganda and extremist hate, US diplomats in Kigali opted to avoid addressing the “controversial” subject matter and opted to talk about familiar human rights issues such as the harassment of journalists due to the harsh censorship policies of the government (Cohen, 2007). This was indicative of the largely held international attitude of insouciance towards the Rwandan conflict that played a huge role in fanning the fires that were to engulf the nation in a genocide that accounted for the deaths of virtually a million innocent Rwandans.

After several failed cease-fire attempts, the Rwandan Patriotic Front and the Rwandan government of Juvenal Habyarimana, signed an agreement of peace on August 4 1993 in Tanzania at Arusha. This agreement, dubbed the Arusha Accords, advocated an all-encompassing transitional government that entailed the inclusion of the RPF. This idea did not sit well with many Hutus. The vehement opposition to, and suspicion of RPF inclusion in the new transitional government by the Hutus, delayed the implementation of the Arusha agreements. Despite this, president Habyarimana was insistent on enacting the agreements in 1994 (Kamukama, 1997).

There was still a sense that something ominous was on the verge of occurring in Rwanda despite the Arusha Accords. The brief and shaky peace that was established was obliterated when the plane carrying the Burundi President Cyprien Ntaryamira and the Rwandan President Juvenal Habyarimana, was gunned down on its way to Rwanda; killing all passengers on board. This assassination was ostensibly used by the Hutus to commence killings of Tutsis (Norwegian Helsinki Committee, 2002). The killings were well orchestrated and the Hutu militia executed their plans with methodical precision. The killings can be categorized in three forms; the Hutu assassinations of Tutsis and moderate Hutus; the targeting of moderate political officials by Hutus; and the murders that were taking place as a ramification of the civil war situation (Cohen, 2007).

These murders were essentially a resumption and continuation of the civil war. Genocidal killings were planned and arranged by the collaborative efforts of the government, the Interahamwe militia, sectoral leaders and cells, and the Rwandan Armed Forces (FAR), with the objective of exterminating Tutsis and those Hutus opposed to the government. The media, church leaders and some intellectuals rendered assistance to the Hutu government (Iliopoulos, 2009).

As the Rwandan genocidal situation fell into entropy, the United Nations and the international community remained unhelpful and even perfunctory. Hutus, at the risk of losing their own, were ordered to take the lives of their neighbours. Mille Collines Free Radio and Television (RTLM) station promulgated propaganda against the Tutsis to the masses. Spanning several years, Hutus had

been consistently exposed to Tutsi and RPF bashing and this contributed to inculcating, in the minds of Hutus, anti-Tutsi sentiments. The assassination of President Habyarimana invoked a retaliatory spirit in many Hutus across Rwanda which was characterised by house-to-house searches by Hutus, looking for Tutsis to kill. Most Tutsis fell victim as the chances to escape these raids were essentially non-existent (Keane, 1995).

DISCUSSION: BUILDING THE CASE FOR CONTINUED POLITICAL OPPORTUNISM AND VICTOR'S JUSTICE

The co-ordinated massacre of Tutsis is a well-documented, investigated and highlighted. In fact, it forms the core of the narrative of the Rwandan Genocide. It has been met with indignation, contempt and condemnation on a global scale through the media and prosecutions after the genocide. In fact, in explaining political opportunism in the case of the Rwandan genocide, the much-highlighted culpability of Hutus in terms of the scale of their atrocities are closely linked to the political ends hoped to be achieved by the Hutu leadership.

The discussion of political opportunism on the part of the emergent Tutsi (RPF) leadership is not addressed in most literature attempting to explain political opportunism in ethnic conflicts. As erstwhile intimated, this oversight or perhaps deliberate emphasis on a typically one-sided investigation of the atrocities during the Rwandan genocide, may be largely due to the unavoidable scale of Hutu killings and their alleged role as the instigators of the infamous genocidal crimes- inspired by the “ethnification” of the conflict for the purposes of maintaining power. Figueredo Jr. and Weingast (1999:263) state that,

Leaders who face a high risk of losing power often pursue a strategy we call “gambling for resurrection,” an attempt to maintain power by inducing massive change in the environment which has only a small chance of succeeding. For leaders who have failed in the normal course of politics, gambling for resurrection offers the hope of forestalling loss of power. This strategy may have costs, but these costs are borne by the citizenry, not by the leader. And, if the strategy works, the leader remains in power. Genocide undermined support for a new RPF regime.

In further attempting to explicate how genocide was employed as a tool of political opportunism by the Hutu leadership, Figueredo Jr. and Weingast (1999:266) further stated that,

Genocide made it unlikely that a new RPF regime could survive. Implicit in this claim is an explanation of why moderates participated in the violence. Suppose that

Hutus had not initiated genocide. A new RPF regime would have had two natural groups to appeal to for political support sufficient to sustain power. The first was the domestic Tutsis... In addition to their ethnic brethren, the RPF might be able to garner the support of moderate Hutus. Sufficient support would allow the new regime a basis to establish ethnic peace. . . Genocide undermined support for a new RPF regime in three fundamental ways. First, it eliminated the most natural support group of the new regime, the domestic Tutsis. Second, it eliminated a small fraction of the second support group, the moderate Hutus, and forced the rest into cooperating with genocide. Third, it made it impossible for the new regime to commit to not undertaking reprisals. This in turn had two effects. First, it would prevent most Hutus from supporting the regime. Second, by forcing moderate Hutus to participate in the genocide of Tutsis, it made it virtually impossible for the RPF regime to differentiate moderate Hutus from other Hutus. Moderate Hutus would not be safe from reprisals and thus would not support and RPF regime...Extremist Hutus initiated genocide because they were losing power. The genocide's diabolic political purpose was to undermine the stability of the new RPF regime. This would allow the extremist Hutus a chance to regroup and, later, to challenge the RPF.

However, as alluded to previously, the part played by the RPF in the process of the genocide received very minimal attention, more so on the part of those mandated with prosecutorial authority due to what we may perhaps term the "innocence of the victim". At the start of the genocide, commanders of the RPF viewed the anarchy and discord as the opportune time to usurp control of the Rwandan capital, Kigali. Over many years, the RPF fought to resuscitate, in some form, the control that Tutsis once had in Rwanda. The genocide provided an opportune moment to regain some control (Cohen, 2007). Chakravarty (2009:32-33) puts this in perspective by stating that,

The RPF strategy was to define itself as an inclusive nationalist party working toward the overthrow of the one-party dictatorship in Rwanda. The party had a well worked out political ideology well before the violence began unlike other rebel groups who worked out a political agenda in the course of the fighting. It attracted prominent Hutu dissidents of the regime in Rwanda who went into exile to join the party. RPF soldiers, cadres and top officials were disciplined, highly committed to the core goals of the party. RPF elites justified the invasion of Rwanda on October 1990 arguing that the Tutsi refugees who wanted to return had been obstructed in their attempts to negotiate the issue of repatriation with the government of Rwanda; they also suggested that theirs was a struggle for the 'liberation' of every Rwandan from the dictatorial regime in power. RPF discourse suggests that of all events that defined the party, the 'socialrevolution' occupies the most prominent place.

Their analysis of the causes of genocide draws on their interpretation of the effects of the 'social revolution' in 1959. Many top party leaders were young adults at the time. It turned out to be the beginning of a long history that would normalize institutionalized racism, anti-Tutsi propaganda and periodic massacres. In the RPF worldview, this was the starting point of the process that unfolded slowly but surely, preparing Hutu psychologically for the final denouement that was April 1994. Party elites sometimes allude to 1959 as the beginning of the genocide.

It does not take much labour or emotional industry to render sympathetic feelings towards the Tutsis for the egregious crimes they suffered at the hands of Hutus. Moreover, extensive examination of the detailed planning that Hutus made to carry out the genocidal killings, does not make it a hard task to sympathize with Tutsis. However, it is also not controvertible that being victimised through becoming the target of planned genocide does not warrant or bestow upon the said victim, the right to engage in retributive acts concomitant with gross violations of human rights or rather "reverse genocide".

This is perhaps a simplified way of looking at a complex issue, especially if we are to use the erstwhile model of Figueredo and Weingast which elaborated that the Hutus' ambitions to maintain power through genocide made it impossible for the RPF not to retaliate. It only makes for logical conclusions that when attacked or provoked, especially with genocidal intent, fear and the instinct to survive combine to form a retaliatory outlook as a means to protect oneself. However, the political and ethnic dimensions of the Rwandan conflict, and the systematic way in which the RPF conducted their "retaliation" expose their actions as having gone beyond the province of "survival instincts" and into deliberate, systematic retributive murders of Hutus; and because such crimes have been defined and categorised as constituting gross violations of human rights, with emphasis on scale and method, the RPF members responsible for these acts cannot use targeted victimisation as an alibi in justifying their actions. The human rights argument does not support such a thesis. The transitional justice apparatus, and specifically international law by virtue of norms of jus cogens, makes a compelling argument for the prosecution of RPF members because they committed crimes identified as grossly infringing the human rights of Hutu victims.

The United States Agency for International Development (USAID) while examining the Rwandan refugee conditions made a discovery evidencing calculated killings carried out by the RPF. The widespread understanding of the aggressive action of the RPF was that it was exacted on those that were to blame for the genocidal acts that were carried out on Tutsis but, a UN report on the actions of the RPF asserted that most of acts reported show that Hutus were attacked based on their ethnicity, as evidenced by several attacks on

Congolese Hutus who were not refugees. The report gives evidence of the systematic employment, in South Kivu, of barricades by the RPF, which helped them to identify Hutus by the village they came from or by their name, thus enabling the RPF to kill them.

The report further states that these claims citing a tendency by the RPF to target Hutus solely based on their ethnicity is substantiated by the evidenced pronouncements that were made by the RPF during their so-called “awareness” speeches where it was stated that any Hutus present in Zaire (DRC)² were there to carry out genocide because the “actual” migrants had made their return home. Such pronouncements were considered as having the potential to incite the population into killing or aid in doing so, Rwandan Hutus (Iliopoulos, 2009).

Mass murders were also carried out by the RPF in the Buyoga and Byumba communities. 20,000 innocent civilians were reportedly murdered by the RPF, in the wake of Hutu attacks. In another example of culpable “retributive genocide”, the RPF killed 10,000 shelter-seeking Hutus at Kiziguro parish. It was at this site that Hutus had recently assassinated 1,000 innocent Tutsis. At a place called Kabuye, the RPF, in an egregious display of malice conspired to create a plan to kill Hutu youths. The RPF recruited youths in varying teams into their army, who were later murdered. Those youths that were recruited after one team was murdered were fallaciously told that their predecessors had been promoted and to the battlefield to perform combat duty. An estimated 3000 youths lost their lives during this plot. Nothing short of cold-blooded murder, this scheme demonstrates yet another example of the responsibility for possible genocide and war crimes on the part of the RPF. Targeted killing campaigns were continued by the RPF. In one instance, catholic clergymen alongside 3 girls were executed on the command of an RPF superior. Witnesses to these murders were tracked down in door to door searches and killed. The RPF exacted these murderous acts with the objective of destroying the Catholic church in Rwanda (Rusesabagina, 2006).

In another incident, a businessman was murdered alongside his family. His extended family was separated into Hutus and Tutsis in which case his Hutu relatives were massacred. In the process of these systematic killings, the RPF ultimately gained control over Rwanda on July 17, 1994. Reports vary on the total number of Hutus that were slain by the RPF during the genocide. It is estimated that between 25, 000 and 40,000 Hutus fell victim to the vindictive actions of the RPF. Other reports peg the killings at 60,000 Hutu civilians (Waldorf, 2011).

As is the case in any post-conflict situation, Rwanda after the genocide was in disarray. Economic and political dislocation gripped the nation, with there being virtually no social structure and infrastructure. Most of the political leaders and public office holders had been murdered. In

the wake of the massive death count, an approximated 2 million Hutus had fled the country after the RPF gained power and control. This exacerbated an already complicated post-genocide situation because it became extremely difficult to find people to work and contribute to the rebuilding of the nation. Before the transition to a new government made up of both Tutsis and Hutus, the United Nations Security Council tasked an expert commission to examine if genocide had taken place in Rwanda or not (Nowrojee, 1996). The commission provided irrefutable evidence that systematic killings concomitant with genocide had occurred, and demanded the creation of an international tribunal to seek post-genocide justice in Rwanda (Norwegian Helsinki Committee, 2002). The ICTR was established by the Security Council in November 1994 with the foremost thought being that it would foster stability and peace in Rwanda through the public addressing of genocidal crimes and the prosecution of the most complicit perpetrators (Cruvellier, 2010).

The emergent Rwandan government that is, the post-genocide “inclusive” government, which was Tutsi-dominated put forward the request for the formation of a tribunal. Paradoxically, the new Rwandan government later voted against the creation of the ICTR for fear of the prosecution of RPF soldiers for war crimes. The Rwandan government was also opposed to the idea of giving the tribunal supremacy over Rwandan courts, and also locating it outside of Rwanda. Forsythe (2009:121) opined that,

even if the UN rendered help in establishing a functional court system in Rwanda, states that housed Rwandan refugees would most likely have very little trust in the newly created government to extradite leaders from the former regime. Neither would the triumphant RPF leadership be trusted to ensure that RPF soldiers are made to account, in national tribunals, for their retributive killings during the genocide. However, instead of substituting peace for impunity, the establishment of the ICTR went ahead with the objective of effecting justice through prosecution and punishment of those that were complicit in the violation of international law.

The tribunal boldly claimed to work for the establishment of justice by fighting impunity. However, an investigation of the prosecutions that were carried out by the tribunal reveal that this claim is askew from the truth. It is undeniable that primarily, several Hutus that perpetrated genocide were successfully prosecuted. Nevertheless, the ICTR fell short in the addressing and prosecution of crimes that were perpetrated by the RPF. The blame however, does not fall squarely on the ICTR as the emergent Tutsi regime was not co-operative and made the work of the tribunal difficult. The efforts of the tribunal to carry out investigations and subsequently try indictments of Tutsi retaliatory murders in 1994 and their involvement in the assassination of Juvenal Habyarimana,

² Herein, the author has proceeded to include in brackets the current official name of former Zaire—Democratic Republic of Congo (DRC).

were subject to the frustrations from the Rwandan government.

Despite ICTR investigators collecting evidence supporting the erstwhile mentioned allegations, indictments against any Tutsi were never concluded by the tribunal (Ibid). The positive results achieved by the ICTR are overshadowed by the lack of success in prosecuting complicit RPF members. The tribunal appears to have served victor's justice as it has still not prosecuted any RPF members. Human Rights Watch (2014) state that,

Perhaps the most significant failure of the ICTR has been its unwillingness to prosecute crimes committed by the RPF in 1994, many of which constituted war crimes and crimes against humanity. Although the ICTR had a clear mandate to prosecute these crimes, (its jurisdiction covers genocide, war crimes and crimes against humanity), not a single RPF case has been brought before the ICTR for prosecution, creating a sentiment among some Rwandans and international legal observers that it provided only victor's justice. Pressure from the Rwandan government, combined with a reluctance to offend the government and jeopardize its cooperation with the ICTR, resulted in the ICTR focusing exclusively on genocide-related crimes.

The only attempt at prosecution of RPF members occurred when the ICTR gave allowance to Rwanda to conduct a domestic trial of a case that it had previously investigated. The conditions were that if the trial was deemed ineffective or unfair, the ICTR prosecutor would were then tried for the killing of thirteen clergymen in 1994. In the proceedings that followed, two low-ranking RPF soldiers pleaded guilty while their superiors were handed acquittals. The ICTR was satisfied with the outcome of the trial and closed their own investigation (Waldorf, 2011). This remains the only domestic case in which the RPF have been tried. The case was dismissed by Human Rights Watch as being heavily politically manipulated. It lasted for only a few days and receiving very negligible attention internationally with the most conspicuous confirmation of this being that the ICTR dispatched an eyewitness for only a single day during the hearings, concluding debates and the proceeding decision (Human Rights Watch, 2014).

Despite the Rwandan government claiming that justice had prevailed by citing these domestic trials as confirmation, and the satisfaction shown by the ICTR prosecutor; 2 acquittals and 2 pleas of guilt does not serve justice when juxtaposed with the severity of the actual crime, most especially when considered within the wider context of 45,000 victims of possible genocidal violence and war crimes. Essentially and comparatively, the atrocious actions undertaken by the Hutus in the genocide were not disparate from those of the RPF. The RPF crimes also fit the criteria of co-ordinated planning and methodical execution. To give context to the

erstwhile, Chakravarty (2015:71) gives the following accounts,

About 25,000–40,000 Hutu had died at the hands of the RPF between April–August 1994; it was likely (but not certain) that this number included combatants as well as civilians (HRW 1999: 18). The death toll at Kibeho camp (for the internally displaced) in April 1995 range from 2,000-7,000 people (Sibomana:106). There was another major massacre at Kanama camp in September 1995. Between October 1997 and January 1998, almost 10,000 Hutu were killed on Rwandan soil (Reyntjens 2004: 195). Estimated casualties totaled approximately 200,000 refugees during this period (Reyntjens 1999: 121, compiling figures from reports by Human Rights Watch, Médecins Sans Frontières, etc.). The figures cited here do not include the tens of thousands of Hutu who died at the hands of rebel groups operating in the Congo under the sponsorship of the RPF government. In the early days of the Congolese Civil War, the RPF had argued the need to protect the Congolese Tutsi from violence and to pursue Rwandan Hutu militants across the border. This moral justification was sullied, even questioned, when RPF elites were accused of using proxy forces to maintain their military-commercial interests in the mineral-rich eastern Congo. The UN Mapping Exercise noted that the atrocities recorded (if verified beyond reasonable doubt).³

The massacres carried out by the RPF were widespread, and systematically done. They involved huge numbers both in terms of victims and perpetrators. The killings were too large and similar in fashion to be considered disjointed crimes. Given the manner of discipline among RPF forces and the hierarchical nature of communication, it is undeniable that the superior officers were aware of the killings and tolerated them (Des Forges, 1999).

Soldiers of the RPF that were put on trial in military courts did not receive any indictments of crimes against humanity or war crimes. On the insistence of President Paul Kagame, who is known to have been ardently opposed to the ICTR, the “few” RPF soldiers who perpetrated violent crimes were found out, put on trial and subsequently received punishment. He argued that for those opposed to the way in which Rwanda dispensed of justice, they should come together and improve the judicial system as opposed to being its adversaries (Clark and Kaufman, 2009).

However, reports with strong credibility demonstrated that Mr Kagame was privy to the war crimes perpetrated by the RPF soldiers and did nothing to stop them them (Waldorf, 2011). Swaths of detailed information on the RPF killings has not been employed to facilitate justice for the victims of genocide. In what may be seen as fear of interference from the government of Rwanda and suffering a similar destiny as his erstwhile counterpart

³Footnotes 1, 2,3 and 4.

Carla Del Ponte, removed by forceful means as the chief Prosecutor on behalf of the UN after seeking to prosecute RPF members; the ICTR prosecutor Hassan Bubacar Jallow confirmed being in possession of evidence of the RPF crimes, but remained reluctant to commence prosecution of the said crimes (Edwards, 2003).

Arguably, the RPF as the emergent “victor”, enjoys immunity, with transitional justice focused on the prosecution and conviction of crimes perpetrated by Hutus. The RPF, as victors, have dictated history and in the process, have continued to dictate how justice is dispensed. Despite there being a sufficient number of grievances against the RPF, as has been sufficiently documented and thus demonstrated herein, credence is given to the claims that the local courts are controlled by the government and are thereby rendered incapable of prosecuting complicit officials of the RPF. The ramifications of not punishing the crimes committed by the RPF against innocent civilians could have severe effects in the future as the narrative and account of post-genocide justice remains largely controlled by the RPF government. Even more so, the peace that is extant in Rwanda should not be premised on ignoring the RPF crimes.

The ICTR did not put to trial even one of the RPF members involved in grievous crimes during the genocide. This unequivocal omission exposes the fact that the tribunal served partial justice and this puts a huge dent in the court’s work. The failure by the international community to put to trial RPF members that committed grievous crimes gives credence to the fact that there remains by and large, impunity in Rwanda, many years after the genocide. In the continued dispensation of justice in trying perpetrators of genocide, examples abound to substantiate charges of victors’ justice. Reuters (2016) article that appeared in the New York Times read in part that,

a pastor accused of leading and coordinating attacks on minority Tutsis during Rwanda’s 1994 genocide has been sentenced to life imprisonment, Rwanda’s high court saidThe pastor, Jean Uwinkindi, who once led a church on the outskirts of the capital, Kigali, was convicted of crimes of genocide and crimes against humanity committed during the slaughter.

Furthermore, the BBC (2016) reported that,

Rwanda genocide suspect Ladislas Ntaganzwa, has been flown to Rwanda from Democratic Republic of Congo for trial. Arrested in eastern DR Congo in December, Mr Ntaganzwa is accused in a UN indictment of genocide, crimes against humanity and violating the Geneva Conventions. He is alleged to have helped form a Hutu militia to ‘exterminate’ Tutsis while mayor of the town of Nyakizu.

On May 17 2020, Felicien Kabuga was arrested in

France following an arrest warrant that was issued in 1997 by the ICTR, for his participation in the Rwandan genocide. He was the proprietor of Radio Mille Collines which was at the forefront of promulgating hate speech towards Tutsis. The famous command “to kill the cockroaches” was broadcast from the radio station. Kabuga is also said to have been responsible for the importation and distribution of the thousands of machetes that were instrumentalized in the conduct of the genocide (Carlson, 2020).

Al Jazeera (2020) reported that, “Rwanda has issued an international arrest warrant for former Rwandan spy chief, Aloys Ntiwiragabo, who is under investigation in France over his role in the African country’s 1994 genocide.” Paul Rusesabagina, a critic of the RPF government was arrested on August 31, 2020. Bearak reported that,

Paul Rusesabagina, whose heroism during the 1994 genocide in his native Rwanda was portrayed by Don Cheadle in the Hollywood film “Hotel Rwanda,” was arrested Monday and charged with terrorism, arson, kidnapping and murder, according to the state-run Rwanda Investigation Bureau... According to the Investigation Bureau’s announcement, Rusesabagina “is suspected to be the founder, leader, sponsor and member of violent, armed, extremist terror outfits,” including splinter groups of those who committed the genocide more than a quarter-century ago and allegedly operate out of neighboring Burundi and Congo.

The preceding examples show that prosecutions, allegations and subsequent arrests have continued to only involve “Hutu” suspects. This “trend” creates a credible reason to argue that real justice was not dispensed by the ICTR nor by the post-genocide Rwanda is a Victor’s Justice in perpetuation. This forces one to consider that perhaps RPF culprits would only be held to account or brought to justice in the event that a regime change that puts Hutus in political control once again, happens; corroborating the vicious nature of victor’s justice, and exposing one of its greatest dangers. Further to this, the neglect by the international community of various reports, studies and scholarly works that evidence RPF murders as concomitant with war crimes, crimes against humanity and possibly genocide leave a glaring hole in efforts to corroborate international justice and the promotion of human rights.

It may not be far from the truth that the 2015 referendum in Rwanda which facilitated Kagame’s bid for a third term, which must be considered within the framework of political opportunism, was inspired by the need to maintain the status quo and by extension prevent the backlash and trial of RPF crimes during the genocide if a Hutu become president. These are conjectural speculations but they speak to a well-founded logic supported by what has been witnessed in the pursuit of

transitional justice in Rwanda⁴. The political opportunity provided by political power has provided the RPF leadership with the ability to avoid prosecution, manipulate the local justice system, and frustrate efforts of the international justice apparatus—as witnessed with the ICTR. Waldorf (2011:1277) exemplified this when he concluded that,

Rwanda had made clear it was never going to cooperate with an RPF prosecution by handing over suspects or evidence to the Tribunal. It had also shown it could shut down the Tribunal's genocide trials by stopping the flow of witnesses and not face any meaningful international censure. At that point, the ICTR prosecutor should have publicly stated that without Security Council pressure to force Rwandan cooperation, the Tribunal would produce victor's justice.

Even though genocidal crimes are codified into law, much more progress still remains to be made in order to make sure that the law is applied accordingly, to both the government and opposing parties. The pursuit of justice in Rwanda was largely touted as a restorative effort, and this coupled with the large number of cases dealing with the genocide; the Gacaca or traditional communal law courts were employed to deal with a large number of cases that the ICTR nor the national courts could try. However, even the Gacaca system was premised on retribution both in practice and structure (Ibid).

The construct under this system of justice was also rife with victor's justice. Without straining the imagination, it is only logical to assume that progress would be difficult to make and justice attained if those alleged to have committed crimes harbour sentiments of feeling that they are being tried on ethnic lines i.e. that Hutus feel they are being to put on trial by Tutsis (Tiemessen, 2004). To this effect, Carlson (2020) observes that, designed to substitute liberal, rule of law values in place of ethnic, nationalist, authoritarian or murderous rule. In the case of the International Criminal Tribunal for Rwanda, 'reconciliation' was embedded in the UN Resolution setting it up. But Rwandan President Paul Kagame has rejected this model of transitional justice. Instead, a firm and Hutus, the perpetrators of the genocide. This erases many facts, such as moderate Hutu victimisation or Tutsi-organised crimes. Attempts to address facts outside of those officially sanctioned are decisively suppressed by the state. This has included imprisonment and assassination. One of the International Criminal Tribunal for Rwanda's biggest failures was arguably its inability to challenge Kagame's ethnically divisive narrative.

⁴It should not be construed here that the author suggests that Kagame's pursuit of a third term was solely to prevent prosecution of RPF crimes during the genocide in the event that he loses power and a Hutu became president, but that this could be another strong reason for his desire to remain president. A continued stay in power means the RPF have a great amount of control on the justice system as has been evidenced in the trials of genocide in Rwanda.

Though the Gacaca provided better efficiency than the centralized court systems, many are the challenges they faced, such as the inability to provide sufficient protection of witnesses and compensation of victims of false detentions. A particular example is the detention of approximately 120,000 Hutus by the RPF when the genocide came to an end (Clark and Kaufman, 2009). This corroborates the argument for victor's justice. The forbidding of the court, by the Rwandan government, to prosecute RPF soldiers for exacting war crimes on Hutus allowed the Gacaca system to place most Hutus in a position of collective guilt. The erstwhile is confirmed by the revelations of The Human Rights Watch (2014) which asserted that, under the original 2001 Gacaca law, Gacaca courts had jurisdiction over war crimes as well as genocide and crimes against humanity, so they could conceivably have handled cases of RPF crimes from 1994. However, the reference to war crimes was removed from the law in 2004 and the government let it be known publicly and unambiguously that Gacaca would not cover RPF crimes.

In what can be seen as political opportunism, the RPF asides from availing themselves immunity by using their position of power⁵ and control, have been aided by the constricted nature of legal terminology and the subjectivity that legal proceedings in a case like this are characteristic of. A large number of victims of war crimes, crimes against humanity and possible genocide deserving of justice have not been served by the ICTR or local judicial systems. It is demonstrated by the Rwandan case, that international tribunals have limited jurisdiction, and corollary susceptible to contributing to facilitating victors' justice. In order to end the impunity of culprits, the extension of the capacity of transitional justice to cover the needs of victims on either side of the conflict is needed. This requires a multifaceted governance approach that shows a responsibility to give justice to all citizens regardless of their status or precisely to the discussion, ethnic classification; as the Rwandan genocide presents.

International Tribunals and other transitional justice mechanisms must be given sweeping mandates or rather compulsory jurisdiction that would enable them to override the caprice of opportunistic and uncooperative governments. Perhaps in such matters, it is worthy to take a leaf from the European Human Rights System which allows for the European Court of Human Rights to redress unjust rulings in domestic judicial jurisdictions of members of the Council of Europe. Transitional justice

⁵ To exemplify this, consider the statement by Amnesty International which reads: Individuals and organizations inside Rwanda who dare to speak out about human rights violations by government forces are subjected to persistent intimidation, threats of arrests and other forms of harassment, and are publicly branded as genocidaires or defenders of the interahamwe. Members of human rights organizations, journalists and judicial officials have especially been targeted. . . . Those who . . . continue to speak out . . . live in a state of constant fear for their lives. Amnesty International (1996) "Rwanda: Alarming Resurgence of Killings" (London: International Secretariat).

has an undeniably significant role to play in post-conflict reconstruction of states and in underscoring the importance of international justice as a concern for the entire international community. Therefore, jurisprudence dealing with genocide should not cause the re-victimisation of communities through bureaucratic and legal methods that afford individuals culpable of war crimes, crimes against humanity and genocide to go without punishment.

The evidenced victor's justice and impunity of RPF members in the Rwandan genocide does not only highlight the failure of justice in the real sense, but accentuates the worrisome prospect of a reoccurrence due to the one-sided nature of the prosecution of perpetrators of crimes during the genocide, which has become characteristic of the Rwandan post-genocide transitional justice process.

Impunity may create sentiments of invincibility and may even encourage more violence. One-sided punishment and condemnation of one party to a crime and the neglect or even feigned ignorance of the culpability of the other, which is equally culpable of the same or crimes falling within the broader categories of violations, creates a premise for resentment and the possible regeneration of hostilities between the parties to a conflict. Here, it is worth noting that the passing of time since the occurrence of a titanic and egregious event like the Rwandan genocide must not be imagined to be an automatic and assured "healing of wounds."

It is not a far-fetched thought and should not be mistakenly glossed over by the stability and economic development being witnessed in Rwanda. Neither should the erstwhile claims be taken as pessimistic and sceptical of the progress made in post-genocide Rwanda. However, progress, when thought of concomitantly with the contextual underpinnings of the discussion at hand seems to be an obfuscated, and even erroneous proclamation to make, because justice has not been served equitably in the Rwandan case. As Orentlicher (1991:2543) states,

The harmful effects of impunity are compounded when prosecutions are foreclosed by an amnesty law enacted by, or to appease the military or other autonomous sectors. For the essential precondition for the effectiveness of law is that it shall display an independence from gross manipulation and shall seem to be just. It cannot seem to be so without upholding its own criteria of equity.

Further to this, Caplan (2018:184) argues that, for most scholars of the genocide, the major themes of Rwandan history after 1990 have been obvious: the Hutu extremist conspiracy to exterminate all Tutsi; the failure of the so-called international community to intervene to mitigate the calamity; followed at last by the RPF victory and the miraculous transformation of the country into a well-

functioning (if very poor) modern state; the subsequent deplorable African World War in which tiny Rwanda played a prodigious role, the failure of the RPF government to tolerate dissent and to embrace democratic practice. Surely silence among genocide scholars, certainly those who have had anything to say about the orthodox Rwandan narrative of the country's history, is unthinkable. Of course ethically, given what so many of us have largely ignored or at least downplayed until now, silence is intolerable.

The lack of justice in the Rwandan Case vis-à-vis RPF culpability and the refusal to address the allegations of impunity of Tutsis, leaves the RPF susceptible to the fact that their antagonists may exaggerate the nature and scale of their crimes (Zorbas, 2005). The apparent lack of "comprehensive" justice leaves the ICTR open to a damaging legacy of failure. It is discussions such as this one, reiterating the highlighted and incontrovertible argument that justice was partially served in Rwanda, that can overshadow the positive work done by the ICTR. However, if the qualification is to be made that indeed transitional justice is objective and helpful in the process of state reconstruction, it should be highlighted that the ICTR did not address the crimes committed by the RPF during the Rwandan genocide and, this substantiates strongly, the argument made herein, that the Rwandan genocide is an example of victor's justice and not true justice.

The international community has recognised the war crimes in DRC by the RPF and also cited Paul Kagame, but formal punitive action has not been taken (McGreal, 2012). The fact that the prosecutor of the Rwanda Tribunal unlike the Sierra Leone Special Court and Yugoslav tribunal for example, did not indict all those involved from either side of the conflict is blatantly unfortunate. Mr Jallow, the prosecutor in the Rwanda tribunal, who purposely refused to prosecute the RPF, did not bring charges charges of war crimes (Human Rights Watch, 2010).

With a mandate requiring government cooperation and the power to try all cases that qualified, the fact that the ICTR did nothing to prosecute RPF culprits and that Paul Kagame's government refused to cooperate, not only qualifies the argument made in this paper that the genocide provided a political opportunity for the RPF (much like their counterparts in the Hutu regime) to gain power and by that token have since used the political advantage to effect victor's justice, and facilitate their own impunity; but also substantiates that this fact leaves a dent in the legacy of the ICTR and Kagame's leadership—which has blatantly abused the principle of complementarity. Furthermore, it leaves one with the feeling that transitional justice is a highly politicised affair that is subject to the dictates of realpolitik. Chakravarty (2009:4) argues that,

It is through the production of confessions that trials have

generated a tacit contract between citizens and ruling elites in which the former concede to ruling elites the “right to rule” (by refusing to hold it accountable) in return for guarantees against the possibility of indiscriminate punishment. I call this refusal to hold ruling elites accountable a ‘consent-effect’. Instead of a genuinely democratic contract in which government is based on the consent of people who can choose to withdraw that consent or exercise their rights to challenge its actions, the trials in Rwanda have enabled a contractual relationship in which ruling elites may punish citizens and the latter consent to be ruled in order to evade or minimize (the threat of) punishment. This is a tacit and delicate contract but I want to argue... that it is self-sustaining and stable given the wider repressive environment within which the trials take place, the absence of exogenous shocks (for example, international pressure, defeat in war, economic collapse) or the lack of internal shifts in the balance of power at the elite level. The bedrock assumption of the trials policy, ‘genocide ideology’, has been used as a basis for new and repressive legislation. Ruling elites have used the ‘striking power’ of the law to discipline opposition elites, purge them from public life when necessary and stifle dissent in general. In addition, the co-optation of local Hutu into state structures at grassroots level allows RPF elites to depend on a class of local ‘allies’ to politically regulate and stably govern the vast hinterland.

The foregoing magnifies the argument that the RPF, being in a position of power, have instrumentalized the opportunity to manipulate the justice system as a means to maintain control and power over the masses. This simply translates into the reality that the ruling RPF regime has used the genocide ideology and their political power to dictate how justice is dispensed and towards whom. This grip on power and the absence of a concerted international effort to push for true justice in Rwanda by trying everyone culpable of crimes has made the prosecutions of crimes in Rwanda a victor’s justice. The opportunity provided by political power has been used to structure the law in such a fashion that RPF crime perpetrators during the genocide are shielded from punishment and at the same time, the Hutus, who fear the ability of the RPF elites to mete out severe punishment are coerced into accepting the RPF leadership and forfeiting the pursuit of justice for lesser or no punishment. Chakravarty (2015:72) further highlights this by stating that,

It became clear early on that there were no political alternatives to the RPF. It determined how the country would reckon with genocide-while its own crimes against Hutus remained mostly unaddressed. Justice began to seem more and more like the “burden of the vanquished”. For the RPF to comply with demands for a full scrutiny of its crimes would have jeopardized its role as moral custodian by forcing the party to engage as a political, not

inherently moral actor in its dealings with political opponents and civil society agents. Instead, party elites were able to smear political opponents and denounce critics with allegations of complicity in genocide, or for subscribing to an ideology of genocide. They used this moral authority to certify or decertify other political actors. This moral high ground was such a vital resource that a senior member of the party insisted that ‘The RPF has always been a principled, not political, actor’.

Therefore, the case for victor’s justice as a product of the political opportunism of the emergent RPF government is (in)arguably established. It is worth mentioning here that this paper did not necessarily seek to break new ground but emphasize the fact that the continued prosecution of only Hutu perpetrators, as the only culprits in the genocide, even in the face of a large body of indisputable evidence, deals a heavy blow to the evolution of transitional justice mechanisms and also helps to highlight the fact that perpetuating one-sided narratives hampers the said evolution.

This weakens the possible corroboration of post-genocide healing and comprehensive transitional justice. This creates fault lines that are susceptible to “ethnic fallout” in the event of ethnic-based regime change, which is an inevitable reality in Rwanda due to the demographics of ethnic distribution in the country which is overwhelmingly Hutu. The ethnocratic nature of Rwanda attests to this claim.

The erstwhile claim is made in light of the authoritarian nature of the Rwandan political dispensation. An opening of the democratic space in Rwanda characterized by fair electoral competition is heavily likely to produce a Hutu regime which may seek retribution for a skewed transitional justice process in Rwanda, but also due to a revived ethnic animosity driven by feelings of injustice. It is argued here that if justice in post-genocide Rwanda was balanced, true national healing may have occurred and may have greatly reduced the potential for the dichotomous (Hutu vs Tutsi and vice versa) view of the justice process in post-genocide Rwanda. Therefore, continued partial justice in post-genocide Rwanda sets a precedence that is detrimental to overall endeavours to restore human dignity and strengthen International Humanitarian and Criminal Law and the International Human Rights regime especially, as concerns mass violent conflict, and genocide specifically.

This paper therefore, has sought to act as a reminder, in the context of the overall argument posited, that our consideration of the Rwandan genocide as a settled matter, to infer that the transitional justice served there was effective and balanced, is a stark misnomer; and has throughout the subsequent years continued in a one-sided manner that continually serves the political interests of the controlling regime in Rwanda and thereby continues to be a victor’s justice.

In fact, the *jus post bellum* (justice after war) principle

as concerns dealing with war crimes in post-conflict scenarios, argues that, as concerns the aggressor in a war, that is in *jus ad bellum* (the reasons for going to war) terms and principles, war crimes trials are conducted only on the aggressor. However, in *jus in bello* (justice in war) terms or principles, trials must be conducted on both the aggressor and the attacked as parties to the war/violent conflict. Therefore, there is a clear indication here that, all parties to a war must be subject to the dictates of the law of war, and that in the post-conflict scenario as concerns transitional justice, all perpetrators of war crimes and other crimes such as crimes against humanity and genocide in this case, must be tried regardless of which side they fell during war. It therefore, becomes clearer, that the continued trial and persecution of only Hutu suspects/perpetrators in the post-genocide justice in Rwanda, is a perpetuation of Victor's Justice and ethnification of post-conflict justice that sits anathema to the principles that guide warfare, and by implication, a failure of international justice.

CONCLUSION

To conclude, this paper was anchored on the argument that the post-genocide trials in Rwanda reflected a victor's justice that continues to be perpetuated today. The paper which relied heavily on studies and publications by scholars and experts on the Rwandan genocide argues that the continued narrative that portrays the genocide as a Hutu massacre of Tutsis is not only erroneous but is more importantly, instrumentalized by the emergent RPF regime by way of political power to perpetuate a victor's justice, evidencing political opportunism.

A quantitative juxtaposition of the Hutu and RPF crimes arguably reveals that the latter's are dwarfed by the former's. However, this does not provide sufficient grounds to justify the refusal to prosecute the crimes of the RPF. Of course the number of people killed form part of the criteria in qualifying crimes of this nature (genocide, war crimes and crimes against humanity), nevertheless justice should not succumb to or be contingent on the quantitative comparative scales of atrocities committed by parties to the conflict, but should be evidential; and evidence has shown that RPF soldiers conducted systematic and widespread killings of Hutus tantamount to crimes against humanity, war crimes and even possible genocide.

For us to situate the discussion of the Rwandan genocide as reflective of "true" (transitional) justice, each party to the conflict must be made to account for their wrongdoings. Full accountability, that is, prosecutorial procedure being enacted on culpable Hutu and Tutsi perpetrators alike; is what serves true justice and provides the space for veritable peace and reconciliation, and at the same time potentially assuaging sentiments of rancour, and quelling thoughts of retribution which is a

function of cyclical ethnic animosity. This has the potential to hamper true nation building. It should be noted that the continued relentless prosecution of Hutu culprits in the Rwandan genocide by the ICTR is commendable in efforts to restore humanity and make transitional justice credible. However, this success is dealt a heavy blow by the bad and dangerous precedent set by the tribunal for not punishing the crimes of the RPF. The tribunal has specifically punished Hutu perpetrators of genocide, but have in the wider context failed to achieve impartial justice—the true goal of any justice system. It can be argued therefore, that the RPF government demonstrably used the genocide as an opportunity to gain political control, just as their ethnic rivals, the Hutus, employed genocide as the strategic means and attempts to maintain power, and subsequently, has been using this power to thwart true justice by continually citing only Hutu perpetrators for prosecution and also persecuting critics of the incumbent RPF regime who cite them for egregious crimes during the genocide.

CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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