

POST-GENOCIDE “JUSTICE” IN RWANDA: NOT TO PUNISH, RECONCILE

Kuzmin E. E.

INTRODUCTION

The deeper the delve into the nuances of the case of the Rwandan genocide¹, the starker the generic observation that the common “departure point” for the overwhelming majority of reflections² thereof, one way or the other, emanates from the efforts to “pinpoint the root causes” for such an aspiration. Indeed, quite often the attention to the relevant subject matter is prompted by a special “... occasion ...”³ [*of some kind as it seems*]; in other words, a certain exceptional milestone, which, for instance, is rather typically associated either with the establishment⁴ or the official closure⁵ of the UN International Criminal Tribunal for Rwanda⁶. It is worth noting that a surge of scholarly interest is also frequently generated by the commemorative dates⁷, such as the “tenth”⁸ or “twentieth”⁹ anniversaries of the 1994 genocide in Rwanda¹⁰. In many respects, all other occurrences appear to be mostly substantiated

¹ Budeli M., Vambe B. The Rwandan Genocide: A Legal Analysis. *African Identities*. 2010. Vol. 8, Iss. 4. P. 412. DOI: 10.1080/14725843.2010.513255.

² Lu I. C. Curtain Call at Closing: The Multi-Dimensional Legacy of the International Criminal Tribunal for Rwanda. *University of Pennsylvania Journal of International Law*. 2013. Vol. 34, Iss. 4. P. 863.

³ Bergamaschi I., Dezalay S., Kühn F. P., Lemay-Hébert N. Introduction: Rwanda 20 Years after the Genocide: Reflecting on Intervention and Reconciliation. *Journal of Intervention and Statebuilding*. 2014. Vol. 8, Iss. 4. P. 273. DOI: 10.1080/17502977.2014.96445.

⁴ Uvin P. Difficult Choices in the New Post-Conflict Agenda: The International Community in Rwanda after the Genocide. *Third World Quarterly*. 2001. Vol. 22, Iss. 2. P. 181. DOI: 10.1080/01436590120043291.

⁵ Crawford E. The ICTR and Its Contribution to the Revivification of International Criminal Law. *Journal of International Peacekeeping*. 2020. Vol. 22, Iss. 1-4. P. 245. DOI: 10.1163/18754112-0220104015.

⁶ Schimmel N. The Moral Case for Restorative Justice as a Corollary of the Responsibility to Protect: A Rwandan Case Study of the Insufficiency of Impact of Retributive Justice on the Rights and Well-Being of Genocide Survivors. *Journal of Human Rights*. 2012. Vol. 11, Iss. 2. P. 161. DOI: 10.1080/14754835.2012.674454.

⁷ Labuda P. I. The International Criminal Tribunal for Rwanda and Post-Genocide Justice 25 Years On. *European Journal of International Law*. 2020. Vol. 31, Iss. 3. P. 1114. DOI: 10.1093/ejil/chaa066.

⁸ Byrne R. Promises of Peace and Reconciliation: Previewing the Legacy of the International Criminal Tribunal for Rwanda. *European Review*. 2006. Vol. 14, Iss. 4. P. 492. DOI: 10.1017/s1062798706000500.

⁹ Bergamaschi I., Dezalay S., Kühn F. P., Lemay-Hébert N. Introduction: Rwanda 20 Years after the Genocide: Reflecting on Intervention and Reconciliation. *Journal of Intervention and Statebuilding*. 2014. Vol. 8, Iss. 4. P. 273. DOI: 10.1080/17502977.2014.96445.

¹⁰ Clark P. When the Killers Go Home: Local Justice in Rwanda. *Dissent*. 2005. Vol. 52, No. 3. P. 14. DOI: 10.1353/dss.2005.0052.

by the existing traditional focus on the analyses of the Tribunal's work¹¹ and its outcomes¹². Amidst shortcomings and mistakes¹³, along with the conviction that "... significant results are yet to be achieved ..." ¹⁴ and "... laudable contributions ..." ¹⁵ of the Rwanda Tribunal¹⁶, another logical premise for exploring the issue is quite naturally emerging: "... the legacy of the ICTR ..." ¹⁷. To be more precise, its critical examination¹⁸, and more and more frequently no less scathing re-examination¹⁹, re-evaluation²⁰ and rethinking²¹. Although the reasons for this are numerous²², most of them revolve around the idea of learning from past experiences²³ – sometimes in a more restrained²⁴ and detached²⁵ manner, occasionally with a touch of pathos or grandiloquence – "... a key lesson for future generations ..." ²⁶, "... lessons for

¹¹ Lu I. C. Curtain Call at Closing: The Multi-Dimensional Legacy of the International Criminal Tribunal for Rwanda. *University of Pennsylvania Journal of International Law*. 2013. Vol. 34, Iss. 4. P. 863.

¹² Saul M. Local Ownership of the International Criminal Tribunal for Rwanda: Restorative and Retributive Effects. *International Criminal Law Review*. 2012. Vol. 12, Iss. 3. P. 427. DOI: 10.1163/157181212x648879.

¹³ Scharf M. P. Responding to Rwanda: Accountability Mechanisms in the Aftermath of Genocide. *Journal of International Affairs*. 1999. Vol. 52, No. 2. P. 638.

¹⁴ Kubai A. N. Between Justice and Reconciliation: The Survivors of Rwanda. *African Security Review*. 2007. Vol. 16, Iss. 1. P. 65. DOI: 10.1080/10246029.2007.9627634.

¹⁵ Lu I. C. Curtain Call at Closing: The Multi-Dimensional Legacy of the International Criminal Tribunal for Rwanda. *University of Pennsylvania Journal of International Law*. 2013. Vol. 34, Iss. 4. P. 863.

¹⁶ Shraga D., Zacklin R. The International Criminal Tribunal for Rwanda. *European Journal of International Law*. 1996. Vol. 7, Iss. 4. P. 515. DOI: 10.1093/ejil/7.4.501.

¹⁷ Byrne R. Promises of Peace and Reconciliation: Previewing the Legacy of the International Criminal Tribunal for Rwanda. *European Review*. 2006. Vol. 14, Iss. 4. P. 487. DOI: 10.1017/s1062798706000500.

¹⁸ Reydam L. The ICTR Ten Years On: Back to the Nuremberg Paradigm? *Journal of International Criminal Justice*. 2005. Vol. 3, Iss. 4. P. 978. DOI: 10.1093/jicj/mqi067.

¹⁹ Hage E. A Re-Examination of Humanitarian Intervention in Light of the Rwanda Genocide. *Political Science Undergraduate Review*. 2016. Vol. 1, Iss. 2. P. 107. DOI: 10.29173/psur26.

²⁰ Vambe M. T., Zegeye A. The Rwandan Genocide: A Critical Re-Evaluation. *African Identities*. 2010. Vol. 8, Iss. 4. P. 305. DOI: 10.1080/14725843.2010.526485.

²¹ Zorbas E. Reconciliation in Post-Genocide Rwanda. *African Journal of Legal Studies*. 2004. Vol. 1, Iss. 1. P. 52. DOI: 10.1163/221097312x13397499735904.

²² Reydam L. The ICTR Ten Years On: Back to the Nuremberg Paradigm? *Journal of International Criminal Justice*. 2005. Vol. 3, Iss. 4. P. 978. DOI: 10.1093/jicj/mqi067.

²³ Krug H. N. Genocide in Rwanda: Lessons Learned and Future Challenges to the UN Human Rights System. *Nordic Journal of International Law*. 1998. Vol. 67, Iss. 2. P. 165. DOI: 10.1163/15718109820295543.

²⁴ Clark J. Learning from the Past: Three Lessons from the Rwandan Genocide. *African Studies*. 2009. Vol. 68, Iss. 1. P. 1. DOI: 10.1080/00020180902827340.

²⁵ Bostian I. L. Cultural Relativism in International War Crimes Prosecutions: The International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 2005. Vol. 12, Iss. 1. P. 32.

²⁶ Nsanzuwera F.-X. The ICTR Contribution to National Reconciliation. *Journal of International Criminal Justice*. 2005. Vol. 3, Iss. 4. P. 948. DOI: 10.1093/jicj/mqi066.

humanity ...”²⁷ and the like. Admittedly, against the backdrop of such a fiery rhetoric regarding the “... imperative that lessons be learned from these dark pages of our recent history ...”²⁸, this particular piece of research is framed as less humble and pretentious, and merely represents a tentative attempt to encourage those concerned to approach the corresponding problem from a slightly different perspective²⁹ – via the prism of “punishment”³⁰.

1. In the face of the Rwandan genocide and its aftermath: shaping the context of dealing with international crimes

From the very first steps of endeavours to comprehend the “question of justice” in Rwanda³¹, it becomes quite feasible to state that, from one publication³² to the another³³, the predominant objective appears to be striving to portray the factual (and the so-called “particular”³⁴) circumstances. More often than not, it ultimately comes down mainly to a rather “quantitative estimation” of the duration³⁵ and number of lives lost³⁶, alongside the most “abstract appraisal”, so to speak, of the nature of “what is happening”³⁷. Thus, for instance, M. A. Drumbl points out that “... in the months of April to July 1994, an estimated 800,000 Rwandans – roughly 10 percent of the total population – were murdered by their fellow citizens ...”³⁸. In turn, S. Thomson also refers to the “timeframe” and the “number of victims”, noting that “... in just 100 days, Hutu militias led the murder of at least 500,000 ethnic Tutsi

²⁷ Hintjens H. M. Explaining the 1994 Genocide in Rwanda. *The Journal of Modern African Studies*. 1999. Vol. 37, Iss. 2. P. 282. DOI: 10.1017/s0022278x99003018.

²⁸ Krug H. N. Genocide in Rwanda: Lessons Learned and Future Challenges to the UN Human Rights System. *Nordic Journal of International Law*. 1998. Vol. 67, Iss. 2. P. 165. DOI: 10.1163/15718109820295543.

²⁹ Haile-Mariam Y. The Quest for Justice and Reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court. *Hastings International and Comparative Law Review*. 1999. Vol. 22, No. 4. P. 736.

³⁰ Kamatali J. M. The Challenge of Linking International Criminal Justice and National Reconciliation: The Case of the ICTR. *Leiden Journal of International Law*. 2003. Vol. 16, Iss. 1. P. 127. DOI: 10.1017/S0922156503001067.

³¹ Kubai A. N. Between Justice and Reconciliation: The Survivors of Rwanda. *African Security Review*. 2007. Vol. 16, Iss. 1. P. 64. DOI: 10.1080/10246029.2007.9627634.

³² Drumbl M. A. Sclerosis: Retributive Justice and the Rwandan Genocide. *Punishment & Society*. 2000. Vol. 2, Iss. 3. P. 287. DOI: 10.1177/14624740022228015.

³³ Thomson S. The Long Shadow of Genocide in Rwanda. *Current History*. 2017. Vol. 116, Iss. 790. P. 183. DOI: 10.1525/curh.2017.116.790.183.

³⁴ Reydam L. The ICTR Ten Years On: Back to the Nuremberg Paradigm? *Journal of International Criminal Justice*. 2005. Vol. 3, Iss. 4. P. 979. DOI: 10.1093/jicj/mqi067.

³⁵ Wilson T. Y. N. Procedural Developments at the International Criminal Tribunal for Rwanda (ICTR). *The Law & Practice of International Courts and Tribunals*. 2011. Vol. 10, Iss. 2. P. 351. DOI: 10.1163/157180311x582161.

³⁶ Drumbl M. A. Restorative Justice and Collective Responsibility: Lessons for and from the Rwandan Genocide. *Contemporary Justice Review*. 2002. Vol. 5, Iss. 1. P. 5. DOI: 10.1080/10282580210831.

³⁷ Drumbl M. A. Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda. *New York University Law Review*. 2000. Vol. 75, No. 5. P. 1222.

³⁸ Drumbl M. A. Sclerosis: Retributive Justice and the Rwandan Genocide. *Punishment & Society*. 2000. Vol. 2, Iss. 3. P. 287. DOI: 10.1177/14624740022228015.

...³⁹. Could it be said that this is purely a matter of “statistic”⁴⁰? However, the more thoroughly the growing body of academic writings⁴¹ is being examined, the clearer it is that it was precisely “... merely a statistic ...”⁴² which, for a considerable period of time, was the key factor underlying the prevailing attitude towards the issue as it appears at least at first glance.

And what about the “semantic load” then in such a scenario? As H. M. Hintjens accurately emphasizes “... the Rwanda genocide of 1994 is now established fact ...”⁴³. But has it always been this way? Unfortunately, no. And this is not just about the “... significant task of putting [it] squarely on the international agenda ...”⁴⁴, or how it was perceived as such by the “... international community ...”⁴⁵ at the time. It is also about the doctrinal developments. Specifically, it has been disheartening to observe how, years on, despite all the obviousness of “what is unfolding”⁴⁶ and the abundance of compelling evidences⁴⁷ of the genocide against the Tutsi⁴⁸, even up until the very end, there is a particular reluctance⁴⁹ to be vocal about these events, and a deliberate “... refusal to invoke the G-word ...”⁵⁰. Without

³⁹ Thomson S. The Long Shadow of Genocide in Rwanda. *Current History*. 2017. Vol. 116, Iss. 790. P. 183. DOI: 10.1525/curh.2017.116.790.183.

⁴⁰ Patterson P. Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law. *Tulane Journal of International and Comparative Law*. 2010. Vol. 19, No. 1. P. 369.

⁴¹ Salas L. Reconstruction of Public Security and Justice in Post Conflict Societies: The Rwandan experience. *International Journal of Comparative and Applied Criminal Justice*. 2002. Vol. 26, Iss. 2. P. 165. DOI: 10.1080/01924036.2002.9678687 ; Maogoto J. N. The International Criminal Tribunal for Rwanda: A Paper Umbrella in the Rain? Initial Pitfalls and Brighter Prospects. *Nordic Journal of International Law*. 2004. Vol. 73, Iss. 2. P. 220. DOI: 10.1163/1571810042321177.

⁴² Patterson P. Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law. *Tulane Journal of International and Comparative Law*. 2010. Vol. 19, No. 1. P. 394.

⁴³ Hintjens H. M. Explaining the 1994 Genocide in Rwanda. *The Journal of Modern African Studies*. 1999. Vol. 37, Iss. 2. P. 282. DOI: 10.1017/s0022278x99003018.

⁴⁴ Magnarella P. J. Judicial Responses to Genocide: The International Criminal Tribunal for Rwanda and the Rwandan Genocide Courts. *African Studies Quarterly*. 1997. Vol. 1, Iss. 1. P. 28.

⁴⁵ Uvin P. Difficult Choices in the New Post-Conflict Agenda: The International Community in Rwanda after the Genocide. *Third World Quarterly*. 2001. Vol. 22, Iss. 2. P. 177. DOI: 10.1080/01436590120043291.

⁴⁶ Alexander A. New Histories and New Laws: Crimes against humanity at the International Criminal Tribunal for Rwanda. *Leiden Journal of International Law*. 2019. Vol. 32, Iss. 4. P. 817. DOI: 10.1017/S092215651900044X.

⁴⁷ Shrager D., Zacklin R. The International Criminal Tribunal for Rwanda. *European Journal of International Law*. 1996. Vol. 7, Iss. 4. P. 502. DOI: 10.1093/ejil/7.4.501.

⁴⁸ Straus S. The Limits of a Genocide Lens: Violence Against Rwandans in the 1990s. *Journal of Genocide Research*. 2019. Vol. 21, Iss. 4. P. 504. DOI: 10.1080/14623528.2019.1623527.

⁴⁹ Ibid., P. 505.

⁵⁰ Stanton G. H. Could the Rwandan Genocide have been Prevented? *Journal of Genocide Research*. 2004. Vol. 6, Iss. 2. P. 218. DOI: 10.1080/1462352042000225958.

digressing into, what is now “... may seem [pretty] intuitive or self-evident ...”⁵¹, or the motives behind such a behavior, for the purposes of this theorisation, it is enough to mention only how entirely apathetic the commentators were in their frame of mind towards the realities on the ground in Rwanda⁵².

Without rushing to make a legal assessment, vast numbers of experts have been sufficiently cautious in their judgments, limiting themselves to such fairly neutral expressions as “Rwandan situation”⁵³ or the “situation in Rwanda”⁵⁴. From time to time, the attributes that followed them came to light as well – “such a situation”⁵⁵, an “incredible situation”⁵⁶, and so forth. Oftentimes, it is “... the country and people in crisis ...”⁵⁷, as well as “... the crisis and its aftermath [which] have been experienced by Rwandans ...”⁵⁸ or simply the “Rwandan crisis”⁵⁹. Not infrequently, they refer to some certain type of events, – a “horrific event”⁶⁰, a “well-organized and coordinated event”⁶¹, “mass killing orgies event”⁶², the “traumatic event”⁶³ and other. Over time,

⁵¹ Sloane R. D. Sentencing for the ‘Crime of Crimes’: The Evolving ‘Common Law’ of Sentencing of the International Criminal Tribunal for Rwanda. *Journal of International Criminal Justice*. 2007. Vol. 5, Iss. 3. P. 717. DOI: 10.1093/jicj/mqm024.

⁵² Stanton G. H. Could the Rwandan Genocide have been Prevented? *Journal of Genocide Research*. 2004. Vol. 6, Iss. 2. P. 224. DOI: 10.1080/1462352042000225958.

⁵³ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Distorting Mirror ; Casting Doubt on Its Actor-Oriented Approach in Addressing the Rwandan Genocide. *African Journal on Conflict Resolution*. 2003. Vol. 3, No. 1. P. 76 ; Gordon M. Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 1995. Vol. 1, Iss. 1. P. 220.

⁵⁴ Scharf M. P. Responding to Rwanda: Accountability Mechanisms in the Aftermath of Genocide. *Journal of International Affairs*. 1999. Vol. 52, No. 2. P. 621, 635 ; Magnarella P. J. Judicial Responses to Genocide: The International Criminal Tribunal for Rwanda and the Rwandan Genocide Courts. *African Studies Quarterly*. 1997. Vol. 1, Iss. 1. P. 24.

⁵⁵ Sarkin J. The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide. *Journal of African Law*. 2001. Vol. 45, Iss. 2. P. 144, 146. DOI: 10.1017/S0221855301001675.

⁵⁶ Lahiri K. Rwanda’s ‘Gacaca’ Courts: A Possible Model for Local Justice in International Crime? *International Criminal Law Review*. 2009. Vol. 9, Iss. 2. P. 324. DOI: 10.1163/157181209X418544.

⁵⁷ Hage E. A Re-Examination of Humanitarian Intervention in Light of the Rwanda Genocide. *Political Science Undergraduate Review*. 2016. Vol. 1, Iss. 2. P. 109. DOI: 10.29173/psur26.

⁵⁸ Bergamaschi I., Dezalay S., Kühn F. P., Lemay-Hébert N. Introduction: Rwanda 20 Years after the Genocide: Reflecting on Intervention and Reconciliation. *Journal of Intervention and Statebuilding*. 2014. Vol. 8, Iss. 4. P. 273. DOI: 10.1080/17502977.2014.96445.

⁵⁹ Donat-Cattin D. Introduction to the International Criminal Tribunal for Rwanda (ICTR). *Human Rights Law in Africa Online*. 1998. Vol. 3, Iss. 1. P. 83. DOI: 10.1163/221160698x00078 ; Zorbas E. Reconciliation in Post-Genocide Rwanda. *African Journal of Legal Studies*. 2004. Vol. 1, Iss. 1. P. 29. DOI: 10.1163/221097312x13397499735904.

⁶⁰ Uvin P. Difficult Choices in the New Post-Conflict Agenda: The International Community in Rwanda after the Genocide. *Third World Quarterly*. 2001. Vol. 22, Iss. 2. P. 177. DOI: 10.1080/01436590120043291.

⁶¹ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Paper Umbrella in the Rain? Initial Pitfalls and Brighter Prospects. *Nordic Journal of International Law*. 2004. Vol. 73, Iss. 2. P. 189. DOI: 10.1163/1571810042321177.

⁶² Ibid.

⁶³ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 5. DOI: 10.1007/s12142-001-1030-6.

such a diversity has only expanded and manifested itself in such wordings as “postgenocidal situation”⁶⁴ or “post-genocide situation”⁶⁵, “certain post-conflict situation”⁶⁶, “humanitarian crises”⁶⁷, and also “genocidal crises”⁶⁸ on par with “situation of mass violence”⁶⁹ and the “Rwandan atrocities”⁷⁰.

In spite of the phrasings keep being relatively vague, the last two points, in particular, bear a lot more resemblance to tangible factum that could be the subject to legal scrutiny. Possibly, yet the extent of these remains to be clarified. In fact, this is further articulated in more details, though in places the tone is still somewhat of a value-judgemental nature. In many ways it largely refers to allusions of sheer⁷¹ and extreme⁷² brutality, coupled with the description of an “... incident of mass atrocity ...”⁷³ as a sort of symbiosis of the “horror of the crimes”⁷⁴ and the “horrors that were committed”⁷⁵. And it is precisely by assessing facts such as these through the lens of international criminal law that the “quest for justice” begins⁷⁶.

⁶⁴ Drumbl M. A. Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda. *New York University Law Review*. 2000. Vol. 75, No. 5. P. 1318.

⁶⁵ Kubai A. N. Between Justice and Reconciliation: The Survivors of Rwanda. *African Security Review*. 2007. Vol. 16, Iss. 1. P. 56. DOI: 10.1080/10246029.2007.9627634.

⁶⁶ *Ibid.* P. 57.

⁶⁷ Krug H. N. Genocide in Rwanda: Lessons Learned and Future Challenges to the UN Human Rights System. *Nordic Journal of International Law*. 1998. Vol. 67, Iss. 2. P. 212. DOI: 10.1163/15718109820295543.

⁶⁸ Drumbl M. A. Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda. *New York University Law Review*. 2000. Vol. 75, No. 5. P. 1326.

⁶⁹ Drumbl M. A. Sclerosis: Retributive Justice and the Rwandan Genocide. *Punishment & Society*. 2000. Vol. 2, Iss. 3. P. 287. DOI: 10.1177/14624740022228015.

⁷⁰ Zorbas E. Reconciliation in Post-Genocide Rwanda. *African Journal of Legal Studies*. 2004. Vol. 1, Iss. 1. P. 29. DOI: 10.1163/221097312x13397499735904.

⁷¹ Thomson S. The Long Shadow of Genocide in Rwanda. *Current History*. 2017. Vol. 116, Iss. 790. P. 183. DOI: 10.1525/curh.2017.116.790.183.

⁷² Haskell L., Waldorf L. The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences. *Hastings International and Comparative Law Review*. 2011. Vol. 34, No. 1. P. 49.

⁷³ Drumbl M. A. Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda. *New York University Law Review*. 2000. Vol. 75, No. 5. P. 1221.

⁷⁴ Haskell L., Waldorf L. The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences. *Hastings International and Comparative Law Review*. 2011. Vol. 34, No. 1. P. 85.

⁷⁵ Barria L. A., Roper S. D. How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR. *The International Journal of Human Rights*. 2005. Vol. 9, No. 3. P. 363.

⁷⁶ Haile-Mariam Y. The Quest for Justice and Reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court. *Hastings International and Comparative Law Review*. 1999. Vol. 22, No. 4. P. 667 ; Schliesser C. Whose Justice? Which Democracy? Justice, Reconciliation and Democracy in Post-Genocide Rwanda – Challenges to Public Theology. *International Journal of Public Theology*. 2018. Vol. 12, No. 1. P. 24. DOI: 10.1163/15697320-12341521.

2. Global community's "international response": The International Criminal Tribunal for Rwanda

As if the forced inevitability of calling a spade a spade unhurriedly gives rise to hesitant appeals to the terms more akin to the those used in "ordinary criminal law" parlance, namely the perpetration of the most horrendous crimes⁷⁷ or the "... brutal murder of millions of Rwandans ..."⁷⁸, including systematic and brutal slaughter of their own countrymen⁷⁹ and incredibly brutal killing, rape, and pillaging of thousands of their neighbors⁸⁰, which are gradually finding their way into the public discourse among observers.

However, it did not remain so for long. The dominant reason for this arguably lied in the massive scale⁸¹ of the carnage⁸² and the large-scale exterminations committed during that period⁸³, which eventually has led to the depiction of the violence as "... one of the most brutally efficient and horrific massacres in history ..."⁸⁴. To such an extent that references⁸⁵, analogies⁸⁶ and parallels⁸⁷ between the "... most unambiguous ..."⁸⁸ and "... clearest ..."⁸⁹ case of genocide and the Nazi Holocaust against the Jews⁹⁰ have become increasingly more explicit and recurring.

⁷⁷ Beresford S. Unshackling the Paper Tiger – The Sentencing Practices of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. *International Criminal Law Review*. 2001. Vol. 1, Iss. 1–2. P. 90. DOI: 10.1163/15718120121002531.

⁷⁸ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Paper Umbrella in the Rain? Initial Pitfalls and Brighter Prospects. *Nordic Journal of International Law*. 2004. Vol. 73, Iss. 2. P. 220. DOI: 10.1163/1571810042321177.

⁷⁹ Lahiri K. Rwanda's 'Gacaca' Courts: A Possible Model for Local Justice in International Crime? *International Criminal Law Review*. 2009. Vol. 9, Iss. 2. P. 321. DOI: 10.1163/157181209X418544.

⁸⁰ Salas L. Reconstruction of Public Security and Justice in Post Conflict Societies: The Rwandan experience. *International Journal of Comparative and Applied Criminal Justice*. 2002. Vol. 26, Iss. 2. P. 192. DOI: 10.1080/01924036.2002.9678687.

⁸¹ Meernik J. Proving and Punishing Genocide at the International Criminal Tribunal for Rwanda. *International Criminal Law Review*. 2004. Vol. 4, Iss. 1. P. 80. DOI: 10.1163/157181204773085948.

⁸² Shrager D., Zacklin R. The International Criminal Tribunal for Rwanda. *European Journal of International Law*. 1996. Vol. 7, Iss. 4. P. 502. DOI: 10.1093/ejil/7.4.501.

⁸³ Donat-Cattin D. Introduction to the International Criminal Tribunal for Rwanda (ICTR). *Human Rights Law in Africa Online*. 1998. Vol. 3, Iss. 1. P. 83. DOI: 10.1163/221160698x00078.

⁸⁴ Lu I. C. Curtain Call at Closing: The Multi-Dimensional Legacy of the International Criminal Tribunal for Rwanda. *University of Pennsylvania Journal of International Law*. 2013. Vol. 34, Iss. 4. P. 859.

⁸⁵ Staub E. Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation. *Political Psychology*. 2000. Vol. 21, Iss. 2. P. 377. DOI: 10.1111/0162-895x.00193.

⁸⁶ Hintjens H. M. Explaining the 1994 Genocide in Rwanda. *The Journal of Modern African Studies*. 1999. Vol. 37, Iss. 2. P. 282. DOI: 10.1017/s0022278x99003018.

⁸⁷ Ibid.

⁸⁸ Sloane R. D. Sentencing for the 'Crime of Crimes': The Evolving 'Common Law' of Sentencing of the International Criminal Tribunal for Rwanda. *Journal of International Criminal Justice*. 2007. Vol. 5, Iss. 3. P. 714. DOI: 10.1093/jicj/mqm024.

⁸⁹ Stanton G. H. Could the Rwandan Genocide have been Prevented? *Journal of Genocide Research*. 2004. Vol. 6, Iss. 2. P. 211. DOI: 10.1080/1462352042000225958.

⁹⁰ Hintjens H. M. Explaining the 1994 Genocide in Rwanda. *The Journal of Modern African Studies*. 1999. Vol. 37, Iss. 2. P. 241. DOI: 10.1017/s0022278x99003018.

Such considerations, among other factors, in turn served to transform the issue of the "... country's violence ..." ⁹¹ into the global community's ⁹² concern ⁹³, requiring an immediate international reaction ⁹⁴. At the same time, from the very first moment, the expectations of the Rwandan people ⁹⁵ of an appropriate ⁹⁶ international community's response ⁹⁷, which they believed ⁹⁸ would be the "... assistance to bring those responsible for the genocide to justice ..." ⁹⁹ in "... hope that the people will see the blame and punishment for the atrocities, which it is hoped will help to heal a society ..." ¹⁰⁰ in the wake of the Rwandan tragedy ¹⁰¹ were far enough away from being fulfilled. On the contrary, the impression that the "... response of the international community to the Rwandan crisis has been slow and inadequate ..." ¹⁰² began to take hold.

⁹¹ Straus S. The Limits of a Genocide Lens: Violence Against Rwandans in the 1990s. *Journal of Genocide Research*. 2019. Vol. 21, Iss. 4. P. 504. DOI: 10.1080/14623528.2019.1623527.

⁹² Hage E. A Re-Examination of Humanitarian Intervention in Light of the Rwanda Genocide. *Political Science Undergraduate Review*. 2016. Vol. 1, Iss. 2. P. 107. DOI: 10.29173/psur26.

⁹³ Gordon M. Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 1995. Vol. 1, Iss. 1. P. 235.

⁹⁴ Bergamaschi I., Dezalay S., Kühn F. P., Lemay-Hébert N. Introduction: Rwanda 20 Years after the Genocide: Reflecting on Intervention and Reconciliation. *Journal of Intervention and Statebuilding*. 2014. Vol. 8, Iss. 4. P. 274. DOI: 10.1080/17502977.2014.96445.

⁹⁵ Peter C. M. The International Criminal Tribunal for Rwanda: Bringing the Killers to Book. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. P. 699. DOI: 10.1017/s0020860400077780.

⁹⁶ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 7. DOI: 10.1007/s12142-001-1030-6.

⁹⁷ Bostian I. L. Cultural Relativism in International War Crimes Prosecutions: The International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 2005. Vol. 12, Iss. 1. P. 18.

⁹⁸ Akhavan P. The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment. *The American Journal of International Law*. 1996. Vol. 90, Iss. 3. P. 504. DOI: 10.2307/2204076.

⁹⁹ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Paper Umbrella in the Rain? Initial Pitfalls and Brighter Prospects. *Nordic Journal of International Law*. 2004. Vol. 73, Iss. 2. P. 189. DOI: 10.1163/1571810042321177.

¹⁰⁰ Saul M. Local Ownership of the International Criminal Tribunal for Rwanda: Restorative and Retributive Effects. *International Criminal Law Review*. 2012. Vol. 12, Iss. 3. P. 447. DOI: 10.1163/157181212x648879.

¹⁰¹ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Paper Umbrella in the Rain? Initial Pitfalls and Brighter Prospects. *Nordic Journal of International Law*. 2004. Vol. 73, Iss. 2. P. 189. DOI: 10.1163/1571810042321177.

¹⁰² Donat-Cattin D. Introduction to the International Criminal Tribunal for Rwanda (ICTR). *Human Rights Law in Africa Online*. 1998. Vol. 3, Iss. 1. P. 83. DOI: 10.1163/221160698x000078.

Without engaging into a profound contemplation of what exactly should constitute a “response to genocide”¹⁰³ – a multi-national¹⁰⁴, global¹⁰⁵, Rwanda’s¹⁰⁶, Rwandan government’s¹⁰⁷, uniform¹⁰⁸, rapid¹⁰⁹, proportional¹¹⁰, legal¹¹¹, moral¹¹², morally appropriate¹¹³, universalist¹¹⁴, cultural relativist¹¹⁵, institutional¹¹⁶, judicial¹¹⁷, transitional justice¹¹⁸, policy¹¹⁹, blended¹²⁰, or “[at least], any[?]”¹²¹ – it is

¹⁰³ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 7. DOI: 10.1007/s12142-001-1030-6.

¹⁰⁴ Hage E. A Re-Examination of Humanitarian Intervention in Light of the Rwanda Genocide. *Political Science Undergraduate Review*. 2016. Vol. 1, Iss. 2. P. 107. DOI: 10.29173/psur26.

¹⁰⁵ Ibid.

¹⁰⁶ Brehm H. N., Uggen C., Gasanabo J.-D. Genocide, Justice, and Rwanda’s Gacaca Courts. *Journal of Contemporary Criminal Justice*. 2014. Vol. 30, Iss. 3. P. 335. DOI: 10.1177/1043986214536660.

¹⁰⁷ Nowotny J. The Limits of Post-Genocide Justice in Rwanda: Assessing Gacaca from the Perspective of Survivors. *Contemporary Justice Review*. 2020. Vol. 23, Iss. 4. P. 401. DOI: 10.1080/10282580.2020.1719365.

¹⁰⁸ Drumbl M. A. Restorative Justice and Collective Responsibility: Lessons for and from the Rwandan Genocide. *Contemporary Justice Review*. 2002. Vol. 5, Iss. 1. P. 5. DOI: 10.1080/10282580210831.

¹⁰⁹ Krug H. N. Genocide in Rwanda: Lessons Learned and Future Challenges to the UN Human Rights System. *Nordic Journal of International Law*. 1998. Vol. 67, Iss. 2. P. 165. DOI: 10.1163/15718109820295543.

¹¹⁰ Ohlin J. D. Applying the Death Penalty to Crimes of Genocide. *American Journal of International Law*. 2005. Vol. 99, Iss. 4. P. 765. DOI: 10.2307/3396668.

¹¹¹ Drumbl M. A. Sclerosis: Retributive Justice and the Rwandan Genocide. *Punishment & Society*. 2000. Vol. 2, Iss. 3. P. 287. DOI: 10.1177/1462474002228015.

¹¹² Lu I. C. Curtain Call at Closing: The Multi-Dimensional Legacy of the International Criminal Tribunal for Rwanda. *University of Pennsylvania Journal of International Law*. 2013. Vol. 34, Iss. 4. P. 897.

¹¹³ Beresford S. Unshackling the Paper Tiger – The Sentencing Practices of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. *International Criminal Law Review*. 2001. Vol. 1, Iss. 1-2. P. 40. DOI: 10.1163/15718120121002531.

¹¹⁴ Bostian I. L. Cultural Relativism in International War Crimes Prosecutions: The International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 2005. Vol. 12, Iss. 1. P. 20.

¹¹⁵ Ibid. P. 22.

¹¹⁶ Crawford E. The ICTR and Its Contribution to the Revivification of International Criminal Law. *Journal of International Peacekeeping*. 2020. Vol. 22, Iss. 1-4. P. 233. DOI: 10.1163/18754112-0220104015.

¹¹⁷ Hola B., Nyseth Brehm H. Punishing Genocide: A Comparative Empirical Analysis of Sentencing Laws and Practices at the International Criminal Tribunal for Rwanda (ICTR), Rwandan Domestic Courts, and Gacaca Courts. *Genocide Studies and Prevention*. 2016. Vol. 10, Iss. 3. P. 77. DOI: 10.5038/1911-9933.10.3.1428.

¹¹⁸ Brehm H. N., Uggen C., Gasanabo J.-D. Genocide, Justice, and Rwanda’s Gacaca Courts. *Journal of Contemporary Criminal Justice*. 2014. Vol. 30, Iss. 3. P. 334. DOI: 10.1177/1043986214536660.

¹¹⁹ Drumbl M. A. Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda. *New York University Law Review*. 2000. Vol. 75, No. 5. P. 1221.

¹²⁰ Ibid. P. 1226.

¹²¹ Stanton G. H. Could the Rwandan Genocide have been Prevented? *Journal of Genocide Research*. 2004. Vol. 6, Iss. 2. P. 216. DOI: 10.1080/1462352042000225958.

worth noting solely the realia: international judicial intervention¹²² that "... has taken the form of the establishment of an international legal tribunal ...".¹²³

D. Wembou justifiably emphasizes that "... the creation of the International Criminal Tribunal for Rwanda marks a refusal to accept impunity ...".¹²⁴ Remarkably, such assertions are being widely expressed with periodic regularity and a variety of guises. And so, from one expert opinion¹²⁵ to the other¹²⁶, the message is being conveyed that the reign¹²⁷ of impunity¹²⁸ for violations of international criminal law¹²⁹ must be put to an end¹³⁰ by punishing those guilty of genocide-related crimes¹³¹. What is more, it is also concerned with the necessity of preventing impunity¹³² and deterring potential offenders¹³³.

However, despite these good intentions¹³⁴ – which are soon to be characterised as ambitious¹³⁵ – significant difficulties begin to emerge right from the inception

¹²² Moghalu K. C. Image and Reality of War Crimes Justice: External Perceptions of the International Criminal Tribunal for Rwanda. *The Fletcher Forum of World Affairs*. 2002. Vol. 26, No. 2. pp. 21-22.

¹²³ Bostian I. L. Cultural Relativism in International War Crimes Prosecutions: The International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 2005. Vol. 12, Iss. 1. P. 9.

¹²⁴ Wembou D. The International Criminal Tribunal for Rwanda: Its Role in the African Context. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. P. 693. DOI: 10.1017/S0020860400077779.

¹²⁵ Aptel C. The International Criminal Tribunal for Rwanda. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. P. 683. DOI: 10.1017/S0020860400077767.

¹²⁶ Haskell L., Waldorf L. The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences. *Hastings International and Comparative Law Review*. 2011. Vol. 34, No. 1. P. 76.

¹²⁷ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 3. DOI: 10.1007/s12142-001-1030-6.

¹²⁸ Haile-Mariam Y. The Quest for Justice and Reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court. *Hastings International and Comparative Law Review*. 1999. Vol. 22, No. 4. P. 738.

¹²⁹ Patterson P. Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law. *Tulane Journal of International and Comparative Law*. 2010. Vol. 19, No. 1. P. 369.

¹³⁰ Kamatali J. M. The Challenge of Linking International Criminal Justice and National Reconciliation: The Case of the ICTR. *Leiden Journal of International Law*. 2003. Vol. 16, Iss. 1. P. 127. DOI: 10.1017/S0922156503001067.

¹³¹ Salas L. Reconstruction of Public Security and Justice in Post Conflict Societies: The Rwandan experience. *International Journal of Comparative and Applied Criminal Justice*. 2002. Vol. 26, Iss. 2. P. 184. DOI: 10.1080/01924036.2002.9678687.

¹³² Ryngaert C. State Cooperation with the International Criminal Tribunal for Rwanda. *International Criminal Law Review*. 2013. Vol. 13, Iss. 1. P. 144. DOI: 10.1163/15718123-01301003.

¹³³ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Paper Umbrella in the Rain? Initial Pitfalls and Brighter Prospects. *Nordic Journal of International Law*. 2004. Vol. 73, Iss. 2. P. 190. DOI: 10.1163/1571810042321177.

¹³⁴ Uvin P. Difficult Choices in the New Post-Conflict Agenda: The International Community in Rwanda after the Genocide. *Third World Quarterly*. 2001. Vol. 22, Iss. 2. P. 184. DOI: 10.1080/01436590120043291.

¹³⁵ Byrne R. Promises of Peace and Reconciliation: Previewing the Legacy of the International Criminal Tribunal for Rwanda. *European Review*. 2006. Vol. 14, Iss. 4. P. 486. DOI: 10.1017/s1062798706000500.

of the ICTR in late 1994¹³⁶. This is not even about the genocide that could have been prevented or stopped by the international community¹³⁷, nor is it a matter of the lack of military intervention¹³⁸. Rather, it is more of a question of how it all turned out in the situation of “... formal request of the government of Rwanda ...”¹³⁹ for an international tribunal¹⁴⁰ and “... Rwanda voted against the resolution ...”¹⁴¹. Just as before, without getting deep into the details of explanations¹⁴² behind these findings, which, in our view, certainly merits their own further inquiry, it suffices to indicate how rapidly the Rwandan government’s dissatisfaction¹⁴³ and the population’s disillusionment¹⁴⁴ became apparent.

3. Rwanda’s “domestic response”: The national courts and “gacaca”

Thus, with the bitter aftertaste of a political failure¹⁴⁵, the outcome was, amongst other things¹⁴⁶, the advent of the Tribunal, which, instead of seizing an “... unprecedented opportunity to bring to justice the perpetrators of international crimes ...”¹⁴⁷, began to focus on other (apparently more pressing and crucial) issues such as,

¹³⁶ Haskell L., Waldorf L. The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences. *Hastings International and Comparative Law Review*. 2011. Vol. 34, No. 1. P. 54.

¹³⁷ Cissé C. The End of a Culture of Impunity in Rwanda? Prosecution of Genocide and War Crimes before Rwandan Courts and the International Criminal Tribunal for Rwanda. *Yearbook of International Humanitarian Law*. 1998. Vol. 1. P. 162. DOI: 10.1017/S1389135900000088.

¹³⁸ Ohlin J. D. Applying the Death Penalty to Crimes of Genocide. *American Journal of International Law*. 2005. Vol. 99, Iss. 4. P. 747. DOI: 10.2307/3396668.

¹³⁹ Cissé C. The End of a Culture of Impunity in Rwanda? Prosecution of Genocide and War Crimes before Rwandan Courts and the International Criminal Tribunal for Rwanda. *Yearbook of International Humanitarian Law*. 1998. Vol. 1. P. 163. DOI: 10.1017/S1389135900000088.

¹⁴⁰ Gordon M. Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 1995. Vol. 1, Iss. 1. P. 235.

¹⁴¹ Shrags D., Zacklin R. The International Criminal Tribunal for Rwanda. *European Journal of International Law*. 1996. Vol. 7, Iss. 4. P. 504. DOI: 10.1093/ejil/7.4.501.

¹⁴² Dubois O. Rwanda’s National Criminal Courts and the International Tribunal. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. pp. 718–719. DOI: 10.1017/S0020860400077809.

¹⁴³ Aptel C. The International Criminal Tribunal for Rwanda. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. P. 677. DOI: 10.1017/S0020860400077767.

¹⁴⁴ Peter C. M. The International Criminal Tribunal for Rwanda: Bringing the Killers to Book. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. P. 699. DOI: 10.1017/S0020860400077780.

¹⁴⁵ Stanton G. H. Could the Rwandan Genocide have been Prevented? *Journal of Genocide Research*. 2004. Vol. 6, Iss. 2. P. 227. DOI: 10.1080/1462352042000225958.

¹⁴⁶ Bergamaschi I., Dezalay S., Kühn F. P., Lemay-Hébert N. Introduction: Rwanda 20 Years after the Genocide: Reflecting on Intervention and Reconciliation. *Journal of Intervention and Statebuilding*. 2014. Vol. 8, Iss. 4. P. 274. DOI: 10.1080/17502977.2014.96445; Krug H. N. Genocide in Rwanda: Lessons Learned and Future Challenges to the UN Human Rights System. *Nordic Journal of International Law*. 1998. Vol. 67, Iss. 2. P. 212. DOI: 10.1163/15718109820295543.

¹⁴⁷ Shrags D., Zacklin R. The International Criminal Tribunal for Rwanda. *European Journal of International Law*. 1996. Vol. 7, Iss. 4. pp. 501–502. DOI: 10.1093/ejil/7.4.501.

but not limited to, meeting international standards of justice¹⁴⁸ to the fullest¹⁴⁹, complete¹⁵⁰ compliance with international human rights standards¹⁵¹ and unswerving adherence to internationally accepted standards of due process¹⁵².

In this regard, the spotlight was directed towards the ICTR's legitimacy¹⁵³, legality of the death penalty¹⁵⁴, rule of law¹⁵⁵, fairness of the judicial process¹⁵⁶, which must be based on the principles of justice¹⁵⁷ and impartiality¹⁵⁸, as well as the inadmissibility of rendering victor's justice¹⁵⁹ and elaboration¹⁶⁰, protection¹⁶¹ and respect¹⁶² of the full spectrum of human rights¹⁶³ of the accused¹⁶⁴.

It hardly needs mentioning that all this took place in the milieu of a dramatic shift in priorities, away from the first and foremost goals of "deterrence, justice, and

¹⁴⁸ Shenk M. D., Rhoads C. A., Howe A. L. International Criminal Tribunal for the Former Yugoslavia and for Rwanda. *The International Lawyer*. 1999. Vol. 33, No. 2. P. 554.

¹⁴⁹ Uvin P., Mironko C. Western and Local Approaches to Justice in Rwanda. *Global Governance: A Review of Multilateralism and International Organizations*. 2003. Vol. 9, Iss. 2. P. 228. DOI: 10.1163/19426720-00902009.

¹⁵⁰ Ibid.

¹⁵¹ Ryngaert C. State Cooperation with the International Criminal Tribunal for Rwanda. *International Criminal Law Review*. 2013. Vol. 13, Iss. 1. P. 145. DOI: 10.1163/15718123-01301003.

¹⁵² Salas L. Reconstruction of Public Security and Justice in Post Conflict Societies: The Rwandan experience. *International Journal of Comparative and Applied Criminal Justice*. 2002. Vol. 26, Iss. 2. P. 193. DOI: 10.1080/01924036.2002.9678687.

¹⁵³ Haskell L., Waldorf L. The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences. *Hastings International and Comparative Law Review*. 2011. Vol. 34, No. 1. P. 76.

¹⁵⁴ Ohlin J. D. Applying the Death Penalty to Crimes of Genocide. *American Journal of International Law*. 2005. Vol. 99, Iss. 4. P. 747. DOI: 10.2307/3396668.

¹⁵⁵ Cissé C. The End of a Culture of Impunity in Rwanda? Prosecution of Genocide and War Crimes before Rwandan Courts and the International Criminal Tribunal for Rwanda. *Yearbook of International Humanitarian Law*. 1998. Vol. 1. P. 188. DOI: 10.1017/S1389135900000088.

¹⁵⁶ Beresford S. Unshackling the Paper Tiger – The Sentencing Practices of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. *International Criminal Law Review*. 2001. Vol. 1, Iss. 1-2. P. 43. DOI: 10.1163/15718120121002531.

¹⁵⁷ Ibid. P. 89.

¹⁵⁸ Haskell L., Waldorf L. The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences. *Hastings International and Comparative Law Review*. 2011. Vol. 34, No. 1. P. 76.

¹⁵⁹ Ibid. P. 75.

¹⁶⁰ Mugwanya G. W. Recent Trends in International Criminal Law: Perspectives from the U. N. International Criminal Tribunal for Rwanda. *Northwestern Journal of International Human Rights*. 2008. Vol. 6, Iss. 3. P. 455.

¹⁶¹ Beresford S. Unshackling the Paper Tiger – The Sentencing Practices of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. *International Criminal Law Review*. 2001. Vol. 1, Iss. 1-2. P. 89. DOI: 10.1163/15718120121002531.

¹⁶² Ibid. P. 43.

¹⁶³ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Distorting Mirror ; Casting Doubt on Its Actor-Oriented Approach in Addressing the Rwandan Genocide. *African Journal on Conflict Resolution*. 2003. Vol. 3, No. 1. P. 92.

¹⁶⁴ Mugwanya G. W. Recent Trends in International Criminal Law: Perspectives from the U. N. International Criminal Tribunal for Rwanda. *Northwestern Journal of International Human Rights*. 2008. Vol. 6, Iss. 3. P. 455.

peace” and towards the last of these – a peace settlement¹⁶⁵, in the face of the overcrowded, unsanitary¹⁶⁶, filthy¹⁶⁷, antiquated, putrid¹⁶⁸ and “inhumane”¹⁶⁹ Rwandan prisons, as well as the existing demands for accountability and the acknowledgement of wrongs committed¹⁷⁰.

So, apart from the genocidal “big fish”¹⁷¹ (the so-called “major criminals”¹⁷², the “high-ranking”¹⁷³, “primary”¹⁷⁴ or “main”¹⁷⁵ perpetrators), whose catching (apprehending)¹⁷⁶ and convicting¹⁷⁷ were the Tribunal’s prerogative¹⁷⁸, a logical question arose: what should be done about the tens of thousands of people (also often referred to as the “lesser criminals”¹⁷⁹) participated in the genocide¹⁸⁰?

¹⁶⁵ Gordon M. Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda. *ILSA Journal of International & Comparative Law*. 1995. Vol. 1, Iss. 1. P. 232.

¹⁶⁶ Scharf M. P. Responding to Rwanda: Accountability Mechanisms in the Aftermath of Genocide. *Journal of International Affairs*. 1999. Vol. 52, No. 2. P. 635.

¹⁶⁷ Apuuli K. P. Procedural Due Process and the Prosecution of Genocide Suspects in Rwanda. *Journal of Genocide Research*. 2009. Vol. 11, Iss. 1. P. 24. DOI: 10.1080/14623520802703582.

¹⁶⁸ Magnarella P. J. Judicial Responses to Genocide: The International Criminal Tribunal for Rwanda and the Rwandan Genocide Courts. *African Studies Quarterly*. 1997. Vol. 1, Iss. 1. P. 25.

¹⁶⁹ Donat-Cattin D. Introduction to the International Criminal Tribunal for Rwanda (ICTR). *Human Rights Law in Africa Online*. 1998. Vol. 3, Iss. 1. P. 86. DOI: 10.1163/221160698x00078.

¹⁷⁰ De Ycaza C. Performative Functions of Genocide Trials in Rwanda: Reconciliation through Restorative Justice? *African Journal on Conflict Resolution*. 2011. Vol. 10, No. 3. P. 10. DOI: 10.4314/ajcr.v10i3.63317.

¹⁷¹ Patterson P. Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law. *Tulane Journal of International and Comparative Law*. 2010. Vol. 19, No. 1. P. 394.

¹⁷² Shraga D., Zacklin R. The International Criminal Tribunal for Rwanda. *European Journal of International Law*. 1996. Vol. 7, Iss. 4. P. 518. DOI: 10.1093/ejil/7.4.501.

¹⁷³ Moghalu K. C. Image and Reality of War Crimes Justice: External Perceptions of the International Criminal Tribunal for Rwanda. *The Fletcher Forum of World Affairs*. 2002. Vol. 26, No. 2. P. 43.

¹⁷⁴ Pruitt W. R. Aggravating and Mitigating Sentencing Factors at the ICTR – An Exploratory Analysis. *International Criminal Law Review*. 2014. Vol. 14, Iss. 1. P. 154. DOI: 10.1163/15718123-01402008.

¹⁷⁵ Cissé C. The End of a Culture of Impunity in Rwanda? Prosecution of Genocide and War Crimes before Rwandan Courts and the International Criminal Tribunal for Rwanda. *Yearbook of International Humanitarian Law*. 1998. Vol. 1. P. 164. DOI: 10.1017/S1389135900000088.

¹⁷⁶ Moghalu K. C. Image and Reality of War Crimes Justice: External Perceptions of the International Criminal Tribunal for Rwanda. *The Fletcher Forum of World Affairs*. 2002. Vol. 26, No. 2. P. 28.

¹⁷⁷ Patterson P. Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law. *Tulane Journal of International and Comparative Law*. 2010. Vol. 19, No. 1. P. 394.

¹⁷⁸ Byrne R. Promises of Peace and Reconciliation: Previewing the Legacy of the International Criminal Tribunal for Rwanda. *European Review*. 2006. Vol. 14, Iss. 4. P. 487. DOI: 10.1017/s1062798706000500.

¹⁷⁹ Dubois O. Rwanda’s National Criminal Courts and the International Tribunal. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. P. 720. DOI: 10.1017/S0020860400077809.

¹⁸⁰ Apuuli K. P. Procedural Due Process and the Prosecution of Genocide Suspects in Rwanda. *Journal of Genocide Research*. 2009. Vol. 11, Iss. 1. P. 24. DOI: 10.1080/14623520802703582.

One might think that the obvious answer would be “to punish them”. Or at the very least “to put them on trial”. But it is not quite that simple.

The fragile state inherited by the new government of Rwanda, with its already very limited political power¹⁸¹, inevitably becomes the ground for incredibly pithy and realistic statements regarding the future fate of those culprits¹⁸². From all sides, astonishingly true statements are being made that “... just as the prison infrastructure was inadequate to handle the sheer number of genocide participants, the existing judicial system was ill-suited to manage the newly incarcerated suspects or the many other suspected genocidaires who were not in prison ...”¹⁸³. Without a doubt, voices are being raised to point out that the Rwandan judicial system is a just as fragile institution, one that is simply “... not ... capable of handling all the cases of people detained ...”¹⁸⁴. Numerous claims are being made that the “... formal judicial system in Rwanda would require more than a century to judge the hundred thousand plus prisoners in custody ...”¹⁸⁵. All this leads to the belief that “... it is not practical to deal with this situation using traditional orthodox style prosecutions ...”¹⁸⁶, which, to put it simply, means: it is impossible to punish everyone.

Paradoxically, rather than intensifying the financial and other support¹⁸⁷ for the rebuilding of Rwanda’s domestic judicial system¹⁸⁸, there is a growing impression that certain other highly intriguing developments are beginning to take shape within the realm of legal discourse.

¹⁸¹ Sarkin J. The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide. *Journal of African Law*. 2001. Vol. 45, Iss. 2. P. 143. DOI: 10.1017/S0221855301001675.

¹⁸² Wilson T. Y. N. Procedural Developments at the International Criminal Tribunal for Rwanda (ICTR). *The Law & Practice of International Courts and Tribunals*. 2011. Vol. 10, Iss. 2. P. 379. DOI: 10.1163/157180311x582161.

¹⁸³ Brehm H. N., Uggen C., Gasanabo J.-D. Genocide, Justice, and Rwanda’s Gacaca Courts. *Journal of Contemporary Criminal Justice*. 2014. Vol. 30, Iss. 3. P. 335. DOI: 10.1177/1043986214536660.

¹⁸⁴ Cissé C. The End of a Culture of Impunity in Rwanda? Prosecution of Genocide and War Crimes before Rwandan Courts and the International Criminal Tribunal for Rwanda. *Yearbook of International Humanitarian Law*. 1998. Vol. 1. P. 185. DOI: 10.1017/S1389135900000088.

¹⁸⁵ Zorbas E. Reconciliation in Post-Genocide Rwanda. *African Journal of Legal Studies*. 2004. Vol. 1, Iss. 1. P. 36. DOI: 10.1163/221097312x13397499735904 ; Wilson T. Y. N. Procedural Developments at the International Criminal Tribunal for Rwanda (ICTR). *The Law & Practice of International Courts and Tribunals*. 2011. Vol. 10, Iss. 2. P. 376. DOI: 10.1163/157180311x582161.

¹⁸⁶ Apuuli K. P. Procedural Due Process and the Prosecution of Genocide Suspects in Rwanda. *Journal of Genocide Research*. 2009. Vol. 11, Iss. 1. P. 24. DOI: 10.1080/14623520802703582.

¹⁸⁷ Cissé C. The End of a Culture of Impunity in Rwanda? Prosecution of Genocide and War Crimes before Rwandan Courts and the International Criminal Tribunal for Rwanda. *Yearbook of International Humanitarian Law*. 1998. Vol. 1. P. 188. DOI: 10.1017/S1389135900000088.

¹⁸⁸ Magnarella P. J. Judicial Responses to Genocide: The International Criminal Tribunal for Rwanda and the Rwandan Genocide Courts. *African Studies Quarterly*. 1997. Vol. 1, Iss. 1. P. 25.

It all starts with the unobtrusive cultivation of the idea of whether punishment is the "... only appropriate response to genocide ..."189. Deeply pondering the issues of moral appropriateness190, fairness191, proportionality192 and other pragmatics of punishment193, a seemingly innocuous question arises: might it be worth considering other options? Since the reconciliation is a much more complicated process194, perhaps it would be reasonable focusing on forgiveness195, healing196, "discovering truth"197, clemency198 and pardon199 instead?

And it was exactly under this pressure and circumstances that all there was left as a Rwanda's response200 was the "justice on the grass"201, – the emergence of "Gacaca" system as the Transitional National Assembly adopted the Organic Law establishing Gacaca courts202.

¹⁸⁹ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 7. DOI: 10.1007/s12142-001-1030-6.

¹⁹⁰ Beresford S. Unshackling the Paper Tiger – The Sentencing Practices of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. *International Criminal Law Review*. 2001. Vol. 1, Iss. 1-2. P. 40. DOI: 10.1163/15718120121002531.

¹⁹¹ Ibid. P. 41.

¹⁹² Szoke-Burke S. Avoiding Belittlement of Human Suffering: A Retributivist Critique of ICTR Sentencing Practices. *Journal of International Criminal Justice*. 2012. Vol. 10, Iss. 3. P. 570. DOI: 10.1093/jicj/mqs029.

¹⁹³ Akhavan P. The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment. *The American Journal of International Law*. 1996. Vol. 90, Iss. 3. P. 508. DOI: 10.2307/2204076.

¹⁹⁴ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Paper Umbrella in the Rain? Initial Pitfalls and Brighter Prospects. *Nordic Journal of International Law*. 2004. Vol. 73, Iss. 2. P. 187. DOI: 10.1163/1571810042321177.

¹⁹⁵ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 5. DOI: 10.1007/s12142-001-1030-6.

¹⁹⁶ Staub E. Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation. *Political Psychology*. 2000. Vol. 21, Iss. 2. P. 377. DOI: 10.1111/0162-895x.00193.

¹⁹⁷ Meernik J. Proving and Punishing Genocide at the International Criminal Tribunal for Rwanda. *International Criminal Law Review*. 2004. Vol. 4, Iss. 1. P. 65. DOI: 10.1163/157181204773085948.

¹⁹⁸ Kamatali J. M. The Challenge of Linking International Criminal Justice and National Reconciliation: The Case of the ICTR. *Leiden Journal of International Law*. 2003. Vol. 16, Iss. 1. P. 129. DOI: 10.1017/S0922156503001067.

¹⁹⁹ Fierens J. Gacaca Courts: Between Fantasy and Reality. *Journal of International Criminal Justice*. 2005. Vol. 3, Iss. 4. P. 916. DOI: 10.1093/jicj/mqi069.

²⁰⁰ Brehm H. N., Uggen C., Gasanabo J.-D. Genocide, Justice, and Rwanda's Gacaca Courts. *Journal of Contemporary Criminal Justice*. 2014. Vol. 30, Iss. 3. P. 335. DOI: 10.1177/1043986214536660.

²⁰¹ Kohen A., Zanchelli M., Drake L. Personal and Political Reconciliation in Post-Genocide Rwanda. *Social Justice Research*. 2011. Vol. 24, Iss. 1. P. 91. DOI: 10.1007/s11211-011-0126-7.

²⁰² Lahiri K. Rwanda's 'Gacaca' Courts: A Possible Model for Local Justice in International Crime? *International Criminal Law Review*. 2009. Vol. 9, Iss. 2. P. 325. DOI: 10.1163/157181209X418544.

CONCLUSIONS

It is unthinkable today to stand by and watch as the “interests of victims”²⁰³ are being used as a pretext to justify the “unwillingness or inability” to bring the “... principal architects and orchestrators of the genocide ...” to justice²⁰⁴.

Equally distressing is the fact that this reluctance to impose punishment²⁰⁵ is presented as a wish²⁰⁶ or the need²⁰⁷ of the survivors.

The desire for punishment is dismissed as “... nothing more than a utopian dream ...”²⁰⁸, whilst the search for alternatives to punishment based on a pragmatic realism²⁰⁹ is seen as a panacea for achieving all the goals that punishment could never hope to attain.

How international criminal justice bodies are transformed into a “place of refuge” for those who bear the greatest responsibility for what has been done. A “venue” in which, in the pursuit of endless proportionality²¹⁰ and the fight against vengeance²¹¹, inexplicably disproportionate²¹² and too lenient²¹³ sentences are handed down, in which it is not people’s actions²¹⁴ but their very personalities²¹⁵ that are condemned.

This cannot be.

²⁰³ Schimmel N. The Moral Case for Restorative Justice as a Corollary of the Responsibility to Protect: A Rwandan Case Study of the Insufficiency of Impact of Retributive Justice on the Rights and Well-Being of Genocide Survivors. *Journal of Human Rights*. 2012. Vol. 11, Iss. 2. P. 181. DOI: 10.1080/14754835.2012.674454.

²⁰⁴ Sloane R. D. Sentencing for the ‘Crime of Crimes’: The Evolving ‘Common Law’ of Sentencing of the International Criminal Tribunal for Rwanda. *Journal of International Criminal Justice*. 2007. Vol. 5, Iss. 3. P. 733. DOI: 10.1093/jicj/mqm024.

²⁰⁵ Kavuro C. Penal Rehabilitation in the Jurisprudence of the International Criminal Tribunal of Rwanda: Pardon and Commutation of Sentence. *South African Journal of Criminal Justice*. 2013. Vol. 26, No. 2. P. 164.

²⁰⁶ Drumbl M. A. Sclerosis: Retributive Justice and the Rwandan Genocide. *Punishment & Society*. 2000. Vol. 2, Iss. 3. P. 293. DOI: 10.1177/14624740022228015.

²⁰⁷ Drumbl M. A. Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda. *New York University Law Review*. 2000. Vol. 75, No. 5. P. 1319.

²⁰⁸ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 4. DOI: 10.1007/s12142-001-1030-6.

²⁰⁹ Ibid.

²¹⁰ Ohlin J. D. Applying the Death Penalty to Crimes of Genocide. *American Journal of International Law*. 2005. Vol. 99, Iss. 4. P. 769. DOI: 10.2307/3396668.

²¹¹ Maogoto J. N. The International Criminal Tribunal for Rwanda: A Distorting Mirror ; Casting Doubt on Its Actor-Oriented Approach in Addressing the Rwandan Genocide. *African Journal on Conflict Resolution*. 2003. Vol. 3, No. 1. P. 74.

²¹² Szoke-Burke S. Avoiding Belittlement of Human Suffering: A Retributivist Critique of ICTR Sentencing Practices. *Journal of International Criminal Justice*. 2012. Vol. 10, Iss. 3. P. 575. DOI: 10.1093/jicj/mqs029.

²¹³ Ibid. P. 563.

²¹⁴ Pruitt W. R. Aggravating and Mitigating Sentencing Factors at the ICTR – An Exploratory Analysis. *International Criminal Law Review*. 2014. Vol. 14, Iss. 1. P. 174. DOI: 10.1163/15718123-01402008.

²¹⁵ Beresford S. Unshackling the Paper Tiger – The Sentencing Practices of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. *International Criminal Law Review*. 2001. Vol. 1, Iss. 1-2. P. 90. DOI: 10.1163/15718120121002531.

International criminal justice is not a hospice or a charity; it is not a house of tolerance, or anything of the sort.

The punishment of international criminals is not a huge gamble²¹⁶, nor a trade²¹⁷ or a bargaining chip²¹⁸, neither the series of messy political²¹⁹ compromises²²⁰; the prosecutors and judges of international criminal trials are not conciliators²²¹, facilitators²²² or the mediators²²³.

The more time passes, the more firmly the opinion is reinforced that the "... Rwandan genocide survivors were betrayed before and during the genocide by a passive and complicit United Nations and international community ..." ²²⁴, and in many ways, through the promotion of such narratives, everyone who found themselves in such unthinkable situations continues to be betrayed to this day. And if the opposite is insisted upon, let them speak of the "adequate response" to a "... mother whose ... son has been killed by police, ordered to shoot at a crowd of children, when she ... [has] ... been dragged out of ... [her] ... home, interrogated, and raped in a wave of "ethnic cleansing" ... " ²²⁵.

SUMMARY

The thematic of the genocide in Rwanda, as a striking example of one of the worst atrocities in history, has been the focus of considerable attention from experts in various areas of knowledge. International criminal law is no exception, with special interest arising, in particular, regarding the legal consequences for those who orchestrated the campaign of violence and those who directly participated in it.

²¹⁶ Clark P. When the Killers Go Home: Local Justice in Rwanda. *Dissent*. 2005. Vol. 52, No. 3. P. 21. DOI: 10.1353/dss.2005.0052.

²¹⁷ Graybill L. To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission. *Human Rights Review*. 2001. Vol. 2, Iss. 4. P. 12. DOI: 10.1007/s12142-001-1030-6.

²¹⁸ Ryngaert C. State Cooperation with the International Criminal Tribunal for Rwanda. *International Criminal Law Review*. 2013. Vol. 13, Iss. 1. P. 125. DOI: 10.1163/15718123-01301003.

²¹⁹ Wilson T. Y. N. Procedural Developments at the International Criminal Tribunal for Rwanda (ICTR). *The Law & Practice of International Courts and Tribunals*. 2011. Vol. 10, Iss. 2. P. 379. DOI: 10.1163/157180311x582161.

²²⁰ Zorbas E. Reconciliation in Post-Genocide Rwanda. *African Journal of Legal Studies*. 2004. Vol. 1, Iss. 1. P. 30. DOI: 10.1163/221097312x13397499735904.

²²¹ Drumbl M. A. Post-Genocide Justice in Rwanda. *Journal of International Peacekeeping*. 2020. Vol. 22, Iss. 1-4. P. 262. DOI: 10.1163/18754112-0220104016.

²²² Wembou D. The International Criminal Tribunal for Rwanda: Its Role in the African Context. *International Review of the Red Cross*. 1997. Vol. 37, Iss. 321. P. 693. DOI: 10.1017/S0020860400077779.

²²³ Dougherty K. C. Our Goal Is Not to Punish but to Reconcile: Mediation in Postgenocide Rwanda. *American Anthropologist*. 2014. Vol. 116, Iss. 4. P. 781. DOI: 10.1111/aman.12144.

²²⁴ Schimmel N. The Moral Case for Restorative Justice as a Corollary of the Responsibility to Protect: A Rwandan Case Study of the Insufficiency of Impact of Retributive Justice on the Rights and Well-Being of Genocide Survivors. *Journal of Human Rights*. 2012. Vol. 11, Iss. 2. P. 181. DOI: 10.1080/14754835.2012.674454.

²²⁵ Wilson T. Y. N. Procedural Developments at the International Criminal Tribunal for Rwanda (ICTR). *The Law & Practice of International Courts and Tribunals*. 2011. Vol. 10, Iss. 2. P. 379. DOI: 10.1163/157180311x582161.

Despite the seemingly obvious answer at first glance that, as part of the vigorous fight against impunity for international crimes, this should be the punishment, however, as the study has revealed, increasing attention has been paid to what lies “beyond” and “beneath” it; or, as is commonly put, to “alternatives” – amnesty, reconciliation, forgiveness – but certainly not punishment. “Holding them to account” is the most one can hope for. In our view, all the harsh rhetoric surrounding the punishment stems from a distorted interpretation of the Tribunal’s mission and the understanding that it is precisely the punishment of perpetrators, being the primary objective, that will lead to reconciliation. It is exactly the punishment, after all, following the violation of a once-made “never again” pledge, is what should have guaranteed the prevention of such acts in the future. It is punishment, and nothing else, that is the tool capable of breaking the cycle of violence; it is punishment, and only punishment, that requires a concerted effort.

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Information about the author:

Kuzmin Eduard Eduardovich,

Advocate, Candidate of Science of Law, Associate Professor,
Associate Professor at the Department of Criminal Law
National University “Odesa Law Academy”
2, Akademichna St., Odesa, 65009, Ukraine