2 *Justice and Coercion in Rwanda*

On a recent trip to Rwanda, I was stalled in a line at customs and border control in Kigali International Airport. I watched as the suitcase of the tourist in front of me was searched. The French woman started to get heated when personal items from her toiletry bag were emptied onto the counter. "Drogues?" I asked the security guard standing next to me. "Non, sachets," he replied. Plastic bags. In 2008, Rwanda became one of the first counties in East Africa to ban single-use plastic bags. Within days of the ban, these bags were removed from market stalls and confiscated at the border. The ban was nearly absolute, upending the livelihoods of farmers and traders who relied on small plastic bags to sell their wares. As one commercial baker remarked, "bread wrapped in paper goes bad faster than bread wrapped in plastic, besides customers choose with their eyes."[1] So while the security guard and I shared a *schadenfreude* smile at the tourist's obvious discomfort in losing her convenient travel bag, I was left to reflect on the heavy-handed way with which social policies in Rwanda are enacted.

Contemporary Rwanda is a place of extremes. It is known for both the devastating violence the country experienced during the genocide and its phoenix-like recovery to a seemingly stable and prosperous society. Yet, as with the plastic bag ban, this stability has come with substantial trade-offs to civil liberties and respect for human life. Since the genocide ended, the current ruling party, the Rwandan Patriotic Front (RPF), has been unyielding in its consolidation of political power. For everyday Rwandans, this consolidation manifests itself in wide-sweeping government policies, such as the forced relocation of farmers from traditional homesteads into planned villages (*imudugudu*),[2] the

[1] www.nytimes.com/2017/10/28/world/africa/rwanda-plastic-bags-banned.html (accessed October 12, 2023).

[2] The National Habitation Policy enacted on December 13, 1996 forcibly relocated tens of thousands of Rwandans into villagization structures built by the RPF government and designed to address the housing crisis of returned Tutsi refugees

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abrupt change of the national language from French to English (Pearson 2014), and smaller behavioral mandates such as a ban on public smoking, prohibitions on sharing straws, and the requirement to wear helmets on motorcycle taxis. These policies leave little room for consultation or dissent and often shift long-held cultural or economic practices to tremendous effect. Regarding the *imudugudu* villagization and crop program, a farmer from Musanze (Ruhengeri)[3] explained to me, "They told us to replace everything with maize, but usually at this time we should have bean leaves to cook. This has made us hungry."[4] Far-reaching policies are made possible by the RPF government's high level of political and social control.

The same extreme, uncompromising efforts with which the government has addressed public health and environmental challenges are on display in the government's pursuit of accountability following the 1994 genocide. Addressing a "history of impunity" entrenched in crimes of the recent genocide was one of the first declared priorities of the new regime. "There can be no reconciliation without justice," pronounced the Rwandan government's national website.[5] Nearly a decade after the genocide, the call for maximal accountability led the RPF to establish the *gacaca* courts – local quasi-judicial bodies constituted in villages throughout the country and modeled on a traditional form of dispute resolution in Rwanda. Gacaca generated immense international attention for the innovative and local way in which it proposed to mete out justice. Scholarly work on transitional justice has often upheld gacaca as a model for "traditional" forms of accountability, extolling the courts as a form to emulate; but the truth is more complex.[6]

Despite the international community's early enthusiasm for gacaca, I met countless people around the country who felt marginalized by gacaca's exclusive focus on genocide crimes. One farmer from the north of the country with whom I spoke was a victim of war crimes

and displaced genocide survivors as well as centralize Rwandan citizens into more governable units (HRW "Uprooting the Rural Poor in Rwanda" 2001).

[3] In 2004 and then again in 2006, the Rwandan government renamed and redrew geographical boundaries, ostensibly to address legacies of the genocide associated with particular locations. I refer to the contemporary names but, where relevant, reference their designations at the time the event occurred.

[4] Interview (MU-6), Musanze, Rwanda, November 2009, notes on file with author.

[5] Rwandan Government Website. www.rwanda1.com/government/justice.htm.

[6] See Chakravarty (2006) for a discussion of the divisions within the human rights community.

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during the civil war. He acknowledged that there was no place in contemporary discussions of justice to tell his story. "I consider what happened to me to be the violence of the conflict, but it is not related to the genocide. Gacaca is only trying genocide cases. There is no place for people like me to tell my story," the farmer said. "Who do I have to accuse? Except if I accuse the government! Ha!"[7] While gacaca was aggressive in its pursuit of justice for victims of the genocide, accusations of crimes committed by the RPF government have been met with silence.

The structure of gacaca has a lot to tell us about the ways that transitional justice can be adapted as a tool for advancing state impunity. The Rwandan government, under the leadership of President Paul Kagame and the RPF, pursued an uncompromising policy of social control to reestablish order following the genocide. Transitional justice in Rwanda is based on an exclusionary understanding of violence during the conflict with no tolerance for demands for state accountability. This outcome was made possible because of the level of control the RPF exercises over Rwandan society and political institutions. My theory of strategic adaptation suggests that governments with high governing capabilities and limited domestic constraints are able to engage normative pressure for accountability through a strategy of coercion, in which claims for government accountability are denied by creating a new institution the government is able to monitor and control. Gacaca offers a window into a strategy of coercion in action.

In this chapter I explore the Rwandan government's response to international pressure for accountability. To advance government impunity, the government adopts a strategy of coercion, wherein a new transitional justice institution is implemented but subsequently monitored and controlled to advance state impunity and consolidate RPF control. The chapter begins with an overview of armed conflict in Rwanda with particular attention to the complexities of the violence experienced by individuals during the civil war, genocide, and at the hands of the RPF. I then discuss the government's strategic adaptation of transitional justice to identify and evaluate the coercive strategy in which claims for government accountability are monitored and controlled. I explore the strategy of coercion in practice through an in-

[7] Interview (RU-6), Rulindo, Rwanda, November 2009, notes on file with author.

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depth analysis of gacaca, which has aggressively pursued crimes of genocide while ignoring RPF abuses. Next, I present alternative explanations for impunity in Rwanda. To explore the coercion strategy beyond the case of Rwanda, I examine transitional justice in Burundi, another case in which a high capacity of institutional control leads to strategic adaptation through coercion.

A Brief History of the Genocide in Rwanda

> In Rwanda ... history is a highly political stake of the present and the future rather than a way of analyzing and understanding the past.
>
> (Reyntjens 2010)

With the publication of bestselling books like Philip Gourevitch's *We Regret to Inform You That Tomorrow We Will Be Killed with our Families* and the Academy Award–nominated film *Hotel Rwanda*, stories of the 1994 genocide in Rwanda have captured the imaginations of the world. Yet, these stories reduce "the butchery of the genocide to the tale of bad guys and good guys, innocent victims and avatars of hate" (Lemarchand 2009: 89). The carnage of the genocide is without a doubt one of the central episodes of violence of the twentieth century and a blight on the consciousness of humanity. But like most blights of this kind, the story of the violence is much more complex than the good-versus-evil reduction permits.

On April 6, 1994, Juvénal Habyarimana, president of the transitional government and Rwanda's president for the past twenty years, was killed in a plane crash over Kanombe International Airport (now Kigali International Airport). While culpability is highly contested, that the airplane was hit by two surface-to-air missiles suggests that it was deliberately targeted by heavily armed individuals or military troops.[8] The death of Habyarimana became the inciting event for the 1994 genocide (Adler et al. 2008). The first acts of violence following the president's death primarily targeted the political opposition in Kigali (both Hutu and Tutsi). These killings were conducted in large

[8] Evidence from the Rwanda government suggests that Hutu extremists shot down the plane, possibly the Rwanda army (Republic of Rwanda 2009). The RPF itself was implicated in the shooting by French Judge Jean-Louis Bruguière's 2006 report from a judicial inquiry into the crash. For a critique of both these reports, see Reyntjens (2010).

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part by the Rwandan army and the presidential guard, loyal to Colonel Théoneste Bagosora, the chief of staff (*directeur du cabinet*) at the Ministry of Defense. Early political killings were followed by attacks on Tutsi civilians throughout the country as radio reports and local authorities blamed Tutsi for collaborating with the RPF's advance and the death of the president (Mamdani 2002). In addition to members of the military, acts of violence were carried out by militarized gangs and small local militias known as *Interahamwe* (Fujii 2009; Luft 2015).

How did the death of one president lead to a genocide? From the way in which the genocide was executed, it has been argued that months, and possibly years, of planning went into arming, motivating, and organizing the participants (Human Rights Watch 1999; see Straus 2006 for a critique). The genocide took place within the context of a civil war that began in October 1990, with an invasion of Rwanda from its border with Uganda. A rebel force calling itself the Rwanda Patriotic Front (RPF) launched the attack with the political goal of winning the right of return for Tutsi refugees who had been expelled from Rwanda during early pogroms in the decade following independence from Belgium (Prunier 1997). The RPF was established in Uganda by a group of experienced military men and women, many of whom had fought in the Ugandan Bush War that brought Yoweri Museveni, the current president of Uganda, to power (Kuperman 2004; Mamdani 2002; Prunier 1997).

The violence of the invasion extended beyond the battlefield. There were massacres of civilians by each side of the conflict (Kuperman 2004); RPF offenses provoked retaliatory killings against Tutsi civilians, while the RPF themselves committed civilian massacres often labeled as "collateral damage" (Smith 2012). The Habyarimana government used the civil war as a pretext for imprisoning thousands of potential RPF supporters, effectively profiling and targeting Tutsi throughout the country (Uvin 1999). Despite a United Nations–brokered peace agreement, tensions mounted through 1993 as Hutu hardliners in the transition government were unwilling to support a negotiated peace (Kuperman 2004). This tension came to a head with the downing of President Habyarimana's plane.

From the early weeks of April 1994, the genocide spread. Violence was rampant and included one-on-one killings using machetes, farm instruments, and blunt objects. In addition to personalized killings, there were more systematic attempts at extermination such as the

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deliberate military targeting of civilian areas including churches and schools (African Rights 1995; Human Rights Watch 1999; Loyle & Davenport 2020). Over the course of 100 days, approximately 800,000 people were killed.[9] The civil war and genocide ended in July 1994 when the RPF, led by then-General Paul Kagame, took control of the capital city. This was a decisive military victory that scattered the Rwandan Armed Forces and sent the remains of the Habyarimana government into exile.

When the genocide began in April, a United Nations mission (UNAMIR), under the command of Canadian Lieutenant-General Roméo Dallaire, had 2,548 peacekeepers stationed in Kigali and throughout the country. Dallaire made repeated pleas to UN leadership to send reinforcements or to expand the mandate of the UNAMIR mission so that UN soldiers could intervene to stop the violence or save civilians. These reinforcements never arrived. Rather, on April 21, concerned about the security of the peacekeeping force after the death of 10 Belgian peacekeepers, the Security Council reduced UNAMIR's strength to 270 peacekeepers. In the meantime, in the United States, Britain, and throughout Europe, officials debated their legal obligations under international law and equivocated on calling the violence genocide (Power 2013). Despite the tireless work of human rights advocates, the international community was not roused to action.

Civilian Abuses by the Rwandan Patriotic Front

This history of the genocide was known to me when I first arrived in Rwanda in 2004. I was working with a UK-based NGO, Aegis Trust, coordinating the Documentation Center for the National Genocide Memorial in Kigali, the capital city of Rwanda. Through my work on memorialization, I was too familiar with the destruction of the

[9] Both the total number of people killed and the ethnic composition of that number are highly debated (Armstrong et al. 2020; Straus 2019). Early estimates of deaths emerged from Human Rights Watch and African Rights of around 500,000 people, though later these groups admitted that this was a conservative number. At one point, IBUKA, the Rwandan survivor organization, placed the number around 1.2 million. The quoted figure of 800,000 people represents a median consensus in the literature. Early sources believed this number to be made up almost entirely of Tutsi victims, but recent work has suggested that a large part of this figure, over 50 percent, could have been Hutu deaths (see Davenport & Stam 2009). Due to the nature of the violence, these data are inconclusive.

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genocide, the lives lost, and the futures ruined. Yet, I began my work in Rwanda as many foreign scholars did at the time – with a deep sense of optimism for the national experiment. Rwanda's pledge of anti-corruption, universal education, health care, and sustainable development offered a model for other African nations and post-conflict countries across the globe. But over time and across many trips to the country, my optimism began to wane. While my own work was focused exclusively on understanding and preventing genocide, I encountered other forms of suffering that did not fit discretely into my efforts to understand and memorialize that period of violence. I met Rwandans who had lost family members during the civil war but did not want to speak about their experiences. I talked with others who, rather than champion government reforms, showed concern for the pace and character of social change. I noted Rwandan friends and colleagues who had been enthusiastic supporters of the new regime leaving politics and public life to take positions with foreign NGOs or work outside the country. I began to question the narrative of peace in Rwanda when on weekend trips to Lake Kivu I sat at hotel bars with Rwandan soldiers on leave from field operations in the Democratic Republic of Congo (DR Congo). Many of my international colleagues were also losing their zeal for the country as more and more reports emerged about human rights violations, assassinations, and disappearances of civil society members and opposition politicians (Wrong 2021).

Much of the scholarly focus on violence in Rwanda has remained on the genocide, but this focus obscures the many other experiences with violence of people living in Rwanda today. The emphasis on the violence of the genocide conceals the civilian abuses committed by the RPF during the civil war and during its post-conflict consolidation of power. In Rwanda today, survivors of the genocide are not the only individuals to have stories of violence, and civilian abuses are not solely the actions of the pre-genocide Rwandan government. It is these alternative and often unspoken stories that became so troubling to me during my work in the country.

During the Civil War

While countless people in Rwanda lived through the violence of genocide, they also lived through the violence of the civil war, in which many civilians were killed or injured as collateral damage in standoffs between Habyarimana's army and the RPF. The intentional targeting

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of civilians was common on both sides of the conflict with reprisal killings against both Hutu and Tutsi. The RPF was complicit in this violence (Davenport & Stam 2009; Straus 2019). While July 1994 marked the end of the genocide and defeat of the Rwandan Armed Forces, the RPF victory did not immediately usher in a period of domestic peace. International media and human rights organizations have documented RPF reprisal killings after the RPF's takeover of Kigali (Human Rights Watch 1999). In June 1994, Médecins Sans Frontières reported "fear among the Hutu population," disappearances, and cases where the RPF separated displaced Hutus from others in the refugee camps and beat them to death (Médecins Sans Frontières, 2013: 14). Many of these killings appear to be linked to RPF soldiers and displaced Tutsi returning to their homes to find loved ones killed and perpetrators still living in their villages, sometimes in the homes of those who were murdered. Some of these killings were motivated by land disputes while other were purely retribution. The level of direct RPF involvement in these reprisal killings is disputed, but human rights advocates have consistently substantiated these claims of abuse (African Rights 1995; Gersony 1994; Human Rights Watch 1999; UN Commission on Human Rights 1996).

In October 1994, for example, Robert Gersony, a consultant working for the UN High Commission for Refugees, filed a report with the United Nations detailing "systematic and sustained killing and persecution of their civilian Hutu populations by the RPA [Rwandan Patriotic Army]." While the RPF government denied involvement in the violence, a team member working on the report said, "What we found was a well-organized military-style operation, with military command and control, and these were military-campaign-style mass murders" (qt. in Thomson 2018, 86). While the Gersony report was ultimately suppressed by the UN, it drew international attention to the RPF's extreme campaign of violent pacification in the postwar period. Prominent East-African historians Filip Reyntjens (1996) and Allison Des Forges (Human Rights Watch 1999) both contend that it is likely that the RPF and its supporters killed tens of thousands of Hutu civilians. Largely because the RPF has not been forthcoming in its involvement in the violence, the number of people killed and the geographic concentration of those killings remains poorly documented (Straus 2019: 511).

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Post–Civil War Violence during the Abacengezi Period

In 1994 we all know that Tutsi were killed. But in 1997, Hutus also died.[10]

RPF violence against civilians continued long after the civil war and genocide ended. After the military defeat of the Rwandan Armed Forces in 1994, soldiers and *Interahamwe* fled to neighboring DR Congo. They formed an insurgent group, the Rwandan Liberation Army (ALiR), which launched a cross-border offensive in the northwest of the country to challenge RPF rule (Stearns 2012; Stearns, Verweijen, & Baaz 2013). The Rwandan government met this threat directly. The newly named Rwandan Patriotic Army (the national army under RPF control) responded with a domestic counterinsurgency campaign that included disappearances, extra-systemic killings, forced relocation of populations, and other forms of repression against the civilian population alleged to be supporting the rebels. Straus (2019) estimates that hundreds of thousands of people were killed during this period by both the government and the insurgents.

Conducting research in Ruhengeri (now renamed Musanze), I spoke with many people who had been victims of state abuse at this time, often accused by the government of harboring anti-government insurgents, or *abacengezi*. Like the story of Geraldine in the Introduction, the people I interviewed were at the center of a terror campaign by the RPF designed to root out opposition and rebel sympathizers. One trader I interviewed told the story of government soldiers accusing him of being a rebel collaborator. "The soldiers beat my mother and other neighbors. Imagine taking an old mother and hitting her with the back of a gun and kicking her with boots! She got sick and died shortly after that." Later the trader and his wife were taken to an army camp. "The soldiers took us to their camp where they beat my wife. She was seven months pregnant and lost the baby. She is still having health problems because of that beating."[11]

The violence committed by the RPF, both during the conflict and in the immediate postwar period, strongly implicates the current government in the violations of the past. While perpetrators of the genocide have clearly committed barbaric acts of abuse, the other forms of violence experienced in Rwanda also call for reckoning and justice.

[10] Interview (RU-4), Rulindo, Rwanda, November 2009, notes on file with author.
[11] Interview (RU-4), Rulindo, Rwanda, November 2009, notes on file with author.

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As one person I spoke to in Karongi, Western Rwanda, said, "Justice should follow all the cases of violence. Afterall, don't all human beings have red blood?"[12] However, the constellation of powers at play in Rwanda in the last two decades has driven a strategy of coercion that has marginalized those claims for justice not directly related to Tutsi victimization during the genocide and effectively aided the government in escaping justice.

An RPF Victory and Calls for Justice

When the RPF took power following the genocide, it worked to quickly consolidate its rule. The RPF faced many pressing challenges; reestablishing security, bolstering severely limited resources, and establishing legitimacy for the new government were all central to the RPF's political agenda. In its quest to establish control, the RPF was quick to enact its brand of coercive justice. In the months following the genocide, the government initiated a sweeping legal plan of arrests and prosecutions for suspected genocide perpetrators living in the country (USIP 1995).[13] There would be no impunity; all those involved in the genocide would be found and held to account. As Jean de Dieu Mucyo, former Minister of Justice, asserted, "Justice was the priority. You can't sit there and look at someone who killed your husband or your children and keep moving forward."[14] While widespread revenge would have made the country ungovernable (Palmer 2015: 45), punishment for genocide crimes was brought through retributive justice. What followed was a series of arrests, executions, and long prison terms that drew international attention and threatened the credibility of the RPF both at home and abroad.

In early 1995, less than a year after the genocide had ended, more than 6,500 suspected genocide perpetrators were being held in Rwandan prisons. In the years that followed, Human Rights Watch reported that the government was arresting more than 1,500 people per week (Human Rights Watch 1995). By 2005, the number of alleged perpetrators in Rwandan prisons was estimated at close to

[12] Interview (KA-2), Karongi, Rwanda, November 2009, notes on file with author.
[13] Rwanda Organic Law 40/2000. www.refworld.org/pdfid/452e37e84.pdf (accessed October 29, 2023).
[14] Interview, Jean de Dieu Mucyo, Kigali, Rwanda, November 8, 2013, notes on file with author.

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72,000 people (USIP 1995).[15] The accused were held in deplorable conditions in prisons meant to hold a fraction of their capacity. Criminal accusations were often weakly documented, and some prisoners went years without a hearing for their charges.

The large number of arrests was due, in part, to the way that the government choose to conceptualize crimes of genocide. Genocide perpetrators were not just those who had organized, killed, or aided in killing members of the Tutsi ethnic group but also those who had profited from ethnic violence through looting or property destruction. This "maximal prosecution" conceptualization radically inflated the number of individuals deemed complicit in genocide crimes, and hence the number of people to be punished (Burnet 2010). Trials for genocide crimes began in the final weeks of December 1996 in a Special Chamber of the Rwandan Supreme Court.[16] By early 2000, UN Special Representative Michel Moussalli reported that 2,406 people had been tried through the special courts (Schabas 2009). Yet, the pace of trials could not keep up with the growing prison population driven by the maximal prosecution conceptualization.

The RPF's brand of justice was violent. On April 24, 1998, the Rwanda government publicly executed twenty-two people convicted of being high-level organizers of the genocide. These executions were staged throughout the country. In Kigali, the execution of four prominent organizers of the genocide took place in front of a crowd of tens of thousands of people. With these executions the RPF sent a clear message of power and control. Anastase Gasana, the foreign minister at the time, was quoted as saying the executions served "an education and pedagogical purpose" (McKinley 1998). The public executions led to international outrage and brought condemnation from human rights organizations, the Pope, the European Union, and the United States.

While the punishment storyline played out domestically, a different plot unfolded on the international scene. On September 28, 1994, in a letter to the President of the UN Security Council, the Permanent

[15] The exact number of prisoners is difficult to verify. Amnesty International places the figure at more than 100,000 people by May 1997. See also http://news.bbc.co.uk/2/hi/africa/4726969.stm (accessed December 30, 2010) and Prunier (2008).

[16] While some early military trials addressed civilian abuses by the RPF, these trials were not central to the government's accountability strategy.

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Representative of Rwanda to the United Nations called for an international criminal tribunal to respond to the security concerns raised by the remaining ex-government fighters and genocidaires on the Rwandan border (UN Doc S/1994/1115). This call eventually led to the creation of the International Criminal Tribunal for Rwanda (ICTR) intended to handle the "prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994" (UN Resolution 995, 1994).

The creation of the ICTR was controversial. While the international community and permanent members of the Security Council were in seeming alignment over the ICTR's creation, Rwanda held the rotating position on the Council and represented the one dissenting vote. Originally supportive of the proposal,[17] the Rwandan government's objections included the prohibition of capital punishment, limitation of temporal jurisdiction to 1994, lack of an independent prosecutor and appeals chamber (these were shared with the International Criminal Tribunal for the Former Yugoslavia), and the decision to locate the tribunal in Arusha, Tanzania (Schabas 2009). Further tensions arose when the ICTR began investigations into alleged RPF crimes (Peskin 2008). Despite objections from the Rwandan government, the ICTR issued its first indictments on December 12, 1995. By its closing in December 2015, the ICTR had indicted ninety-three people with sixty-two sentenced and fourteen acquitted.[18]

Tensions between the international community and the Rwandan government continued to mount as global calls expanded to bring genocide perpetrators to account. National courts and the prison system were overwhelmed by the government's decision to pursue a maximalist conception of accountability for all genocide crimes. Meanwhile the RPF's brand of violent accountability was drawing international attention. Ultimately these pressures for accountability would lead to the creation of the gacaca courts, which would serve as

[17] "We are the ones who asked for the ICTR. But we never voted for it [at the UN] because we wanted it to be done here in Rwanda. We wanted the judgments and discussions to be done in Rwanda, to be heard by people." Interview with Hon. Tito Rutaremara, Kigali, Rwanda, November 7, 2013, notes on file with author.

[18] The remaining accused were either refered to the national jurisdiction for trial, remain at large, or died before trial; http://unictr.unmict.org/en/tribunal (accessed March 31, 2018).

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the RPF's central transitional justice tool. Gacaca would be closely monitored and controlled by the RPF to advance government impunity and consolidate RPF power.

The Threat of Accountability for the RPF

Accountability was an early priority for the new government seeking to gain legitimacy and secure political control. An end to impunity for ethnic violence was seen as an essential prerequisite to achieving the goals of domestic security and economic recovery, but this did not include justice for RPF wrongdoings.[19] Despite the range of violence experienced in Rwanda, from the beginning the RPF made clear that transitional justice would be limited to those crimes committed against Tutsi and those violations that occurred before RPF rule. The RPF was under pressure to adopt transitional justice despite the very real risks of accountability for the new government. International advocates of transitional justice called for accountability to broadly reckon with the abuses and animosities of the past, but the RPF chose instead to maintain a sharp focus on consolidating its own political power, an end served by an exclusive focus on accountability for genocide violence. Disregarding calls from the international community for a more inclusive reckoning of past abuses, the RPF was unwavering in its commitment to prioritize justice for the atrocities of the genocide alone. This section outlines the international pressure for transitional justice and the risk to RPF rule of complying with the international norm of accountability.

The Global Norm of Accountability Reaches Rwanda

Pressure for accountability came from both outside and within the RPF government. As introduced earlier, punitive accountability was one of the central tools of political consolidation of the RPF government, but it was also a strategy driven by the internal preference of the government's own cadre. Immediately upon taking power, the RPF government was dominated by Tutsi who had lost family members during the genocide and sought retribution. The government was clear that

[19] Interview with Bernadette Kanzayire, Kigali, Rwanda, November 8, 2013, notes on file with author.

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amnesty would not be an acceptable solution,[20] despite the international community's apparent willingness to accept amnesty as a reconciliation strategy.

The international community was highly involved in early discussions around accountability for genocide violence. For example, in November 1995, an international response conference was held where participants discussed strategies to bring perpetrators of genocide to justice and how to organize an efficient judicial system in post-genocide Rwanda. The conference was attended by international lawyers, scholars, human rights advisors, and Rwandan government and civil society members. Over the course of two days a working group on accountability met to recommend strategies for addressing the unprecedent scale of violence (Republic of Rwanda 1995).

Domestic and international pressure for accountability originally converged in the creation of the International Criminal Tribunal for Rwanda. The international community viewed the Tribunal as an important institution for establishing a historical record, punishing genocide perpetrators, and preventing future waves of ethnic violence. After its original objections, however, the RPF's relationship with the ICTR remained contentious. Tensions mounted when it became clear that the RPF would not have direct influence over the proceedings. Indications by the chief prosecutor, Carla Del Ponte, that the ICTR would pursue investigations into alleged RPF atrocities during and immediately following the conflict led to strong condemnation from the RPF. At times the RFP went as far as to interfere in ongoing ICTR investigations and block witnesses from traveling to Arusha (Peskin 2008). In May 2019, a member of the ICTR defense counsel, Peter Erlinder, was arrested in Kigali and detained for three weeks. At the time of his arrest, Erlinder was in Rwanda acting on behalf of Victoire Ingabire, a candidate challenging Kagame in the presidential election; his arrest had serious implications for the Rwandan government's violation of defense council immunity.

Despite its occasional flaunting of international legal norms, the RPF government is susceptible to international pressure. Foreign donors and international NGOs had great potential to influence the transitional justice policy of Rwanda's resource strapped government.

[20] Interview with Prof. Paul Rutayisire, Kigali, Rwanda, November 13, 2013, notes on file with author.

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Almost immediately after the conflict ended, international actors flocked to the country to assist in post-conflict reconstruction efforts. In January 1995, donors pledged US$634 million in bilateral and multilateral aid in Rwanda (Reyntjens 2013: 5). By the end of that year, donor money had flooded the country; net official development assistance as a percentage of gross national income was 94.9 percent. The World Bank, the United Kingdom, and the Netherlands were early major donors, and a few years later, Austria, Denmark, and Norway increased their aid to Rwanda (Human Rights Watch 2000). At that time the RPF was facing true resource constraints, and while the government was pursuing parallel efforts to finance its new regime (illegal resource extraction in DR Congo,[21] for example), the need for international aid was undeniable. Even now – more than two decades later – the World Bank estimates that more than 70 percent of Rwanda's central government expenses come from foreign aid. Yet despite documented human rights abuses, foreign aid pledges have not been tied to improvements in human rights or accountability for past crimes (Reyntjens 2013). As the RPF entrenched its regime, Rwanda began to take on the role of a "donor darling," in which the international community lent its support to what it perceived to be a competent technocratic government (Desrosiers & Swedlund 2019).

The "darling" status of the RPF government has been further bolstered by President Kagame's star appeal as an African leader who talks tough about corruption and follows through with his policy promises. World leaders such as Tony Blair and Bill Clinton, and international personalities such as Bono and Bill Gates, put their weight behind the RPF regime. Blair once called Kagame a "visionary leader," while Clinton referred to him as "one of the greatest leaders of our time" (Smith 2012).

The positive reputation of the RPF government within the international community is underpinned by a persistent guilt felt by international actors and reinforced by the RPF. The strong and pervasive message from the RPF is that the international community let Rwanda down in 1994; the RPF is responsible for saving the country, and therefore the RPF has a moral superiority when making post-conflict

[21] Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of DR Congo (S/2003/1027), https://reliefweb.int/report/democratic-republic-congo/final-report-panel-experts-illegal-exploitation-natural-resources (accessed October 20, 2023).

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policy decisions, giving the government what Reyntjens (2011) calls a "genocide credit." The RPF further accused the international community of complicity in the root causes of the genocide, specifically the ethnic divisionism brough on through Belgian colonialism. While the RPF is highly reliant on the financial and reputational support of the international community, the reputation of President Kagame, along with the genocide credit, has served to grant the government leeway on its norm response. Yet, while there was both international and internal pressure to adopt accountability norms, the RPF had much to lose.

The Domestic Risks of RPF Accountability

Given the high level of complicity of RPF cadres in the violence of the past, the legitimacy of the new regime rested on its ability to ensure impunity. Despite demands from the international community for accountability for past wrongdoings, the RPF had much to lose from being held accountable for its alleged crimes. The early rule of the RPF was about taking full military and political control of the country and was accomplished almost exclusively through violence (Thomson 2018). As Timothy Longman writes, "the RPF used widespread violence to establish its initial authority, perpetrating massacres, summary executions, and numerous arbitrary arrests in its first years in power" (Longman 2017: 31). The RPF justified its strong-armed tactics of control by the group's moral superiority as the force that successfully ended the genocide. "For the RPF to comply with demands for a full scrutiny of its crimes," Rwanda scholar Anuradha Chakravarty notes, "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" Chakravarty (2015: 72).The RPF was concerned that a national reckoning with the violence of the past would undermine its legitimacy and subsequently its hold on power.

The domestic legitimacy concerns of the RPF were justified. When the RPF took power, there was extreme confusion and fear among Rwandans. In the last months of the Habyarimana regime, Rwandans were flooded with stories and images of Tutsi revenge violence including radio broadcasts imagining castrations and cannibalism (De Forges 2007; Kellow & Steeves 1998). Propaganda from the Habyarimana government had warned that an RPF victory meant the massacre of

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Hutu civilians. Hutu throughout Rwanda feared the retribution violence of a Tutsi-dominated regime and turned to recent Hutu massacres in neighboring Burundi for evidence of that fate.[22] Pro-Hutu political parties spread these messages of hate, and the fearmongering left lasting consequences for the new RPF regime.

The legitimacy crisis of the RPF was both a product of decades of ethnic division in Rwanda and a crisis of the RPF's own making. While the anti-Tutsi messages of the past cultivated an environment of fear and extreme distrust of the new government, the RPF's actions during and immediately following the civil war and genocide contributed directly to the government's instability. Upon taking power, the Tutsi-dominated RPF set about ruling over a population that was more than 85 percent non-Tutsi. Most of the prominent leaders of the RPF had been raised outside Rwanda, many spoke English rather than Rwanda's governing language of French, and leaders had an outdated understanding of the culture and customs in the country. RPF repression further delegitimized the new government in the eyes of the Hutu population. Hutu fears seeded by the previous government were bolstered by civilian abuses during the war, revenge killings by the RPF throughout the country, systematic executions of accused genocide organizers and perpetrators, and refugee massacres (Longman 2017). Any attempts to expose RPF violence had the potential to further exaggerate these social fears and undermine the stability of RPF rule.

Furthermore, conversations around accountability for violence during the genocide emerged amid ongoing human rights violations committed by the RPF during confrontations on the Rwandan border. As the RPF worked to consolidate its power within Rwanda, it was fighting an ongoing war in the Democratic Republic of Congo (DR Congo). Opposition loyal to the former regime and positioned on the border in DR Congo was vying to regain military control of the country. The RPF justified its strong-armed tactics and violent counter-insurgency strategies as an attempt to prevent the resurgence of a genocidal government. Any attempts to question or reckon with the RPF's tactics could serve to undermine the RPF's tenuous hold on power.

[22] In 1993, ethnic violence broke out in Burundi between the Tutsi and Hutu ethnic groups following the assassination of Hutu president Melchior Ndadaye. The assassination led to widespread massacres of Hutu and Tutsi. Hutu were targeted primarily by the Tutsi-dominated military.

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Strategic Adaptation under RPF Control

The RPF engaged its transitional justice strategy in the face of the international push toward accountability and the very real legitimacy and security risks of complying with the international norm. I have argued that a government's norm adaptation strategy is influenced by the overall capacity of a government to control its norm response. The political and military capabilities of the RPF allowed the government to control post-conflict institutions with limited domestic constraints, including transitional justice. These conditions facilitated a strategy of coercion where repression has been used to monitor and control the government's norm response limiting RPF accountability. This section details the political conditions that facilitated the RPF's strategy of coercion focused on the government's high level of governing capabilities and the limited constraints of domestic institutions.

The RPF has always had strong governing capabilities. The RPF transitioned from rebel group to ruling political party as a hierarchical and highly disciplined organization. This is not surprising given the group's roots. The Rwandan Defense Force is one of the most disciplined military forces in sub-Saharan Africa (Odom 2006). RPF cohesion was bred from years of isolation in exile throughout East Africa, the military training of RPF elites in Uganda's armed forces, and the group's recent experience as a guerilla fighting force during the civil war in Rwanda (Reyntjens 2013). Once in power, the RPF sustains its coercive control of the Rwandan population through a continuation of violence and repression: jailing and assassinating political opposition, weakening the human rights community through monitoring and intimidation, and silencing journalists (Thomson 2013). The RPF also enacted a series of fines and punishments for rural peasants unwilling to comply with the party's social policies (Ingelaere 2011). While there has been opposition to RPF rule, challengers have been unable to undermine the government's power.

High governing capabilities have allowed the RPF to consolidate its control over domestic institutions. The RPF has brought the full weight of state institutions to bear on monitoring and punishing dissent, further strengthening its capacity for control. Law and legal institutions have been central to this approach (Palmer 2015). A prominent example is legislation surrounding the spread of hate speech and genocidal ideology. Attempts to challenge the RPF's control are often

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labeled as disseminating *genocidal ideology*, a crime under the RPF regime. For example, politically organizing ethnic Hutu or speaking out against the policies of the Tutsi-dominated RPF are activities alleged to spread ideology that could lead to the renewal of genocide violence. The attempted criminalization of regime challengers has been particularly apparent regarding allegations of *divisionism* or the deliberate propagation of genocide denial or ideology to heighten divisions within the Rwandan population. Divisionism was outlawed in September 2003 by National Law N°33 bis/2003[23] that sentences

> *to an imprisonment of ten to twenty years, any person who will have publicly shown, by his or her work, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimized it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence. (Ngoga 2009, 328)*

Rather than minimize hate speech in Rwanda, divisionism laws have been used to silence opposition. As the RPF has consolidated control, it has become the arbiter of what is and is not divisive language to the country. An example of the charge of genocide divisionism for challenging RPF control is the case of Agnes Uwimana Nkusi, a reporter for the Rwandan newspaper *Umurabyo*, who was arrested and charged for publishing a discussion of the ethnic and colonial roots of the genocide. Her article reported that after the death of President Habyarimana, people "ended up killing each other" (Jansen 2014). This comment was interpreted by the High Court of Rwanda as claiming that killings took place on both sides of the ethnic divide during the conflict, accusing the RPF of wrongdoings, and therefore minimizing the violence of the genocide against the Tutsi. Uwimana Nkusi was sentenced to ten years in prison for genocide minimization and an additional seven years for endangering national security, divisionism, and defaming President Kagame (Jansen 2014).

The threat of prosecution for divisionism has reduced press freedoms and restricted speech and political assembly across Rwanda. For example, the Media Law of 2002 imposed criminal sanctions for the

[23] The law was revised in 2008 as Law No. 18/2008 Relating to the Punishment of the Crime of Genocide Ideology. While this version of the law more clearly defines "genocidal ideology," it increases punishments for messages spread through documents, speeches, and pictures, effectively increasing penalties on the media and politicians (Jansen 2014).

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propagation of genocidal ideology and divisionism, which caused a great deal of self-censorship within the press community. The term *genocidal ideology* has come to include most political challenges to the current administration, including those groups and individuals that attempt to mobilize ethnic-based political parties. In several well-known cases, political opponents of the RPF have been accused of spreading genocidal ideology. During the 2010 presidential election, candidate Victoire Ingabire (a Hutu) was charged with inciting violence and is now serving fifteen years in prison on charges of terrorism and threatening national security. The application of this law is occurring on a large scale. Between 2007 and 2008, 1,304 cases involving genocidal ideology were tried in Rwandan courts (Human Rights Watch 2008). While there is no way to accurately determine the true nature of the alleged crimes, these accusations highlight the high degree of control the RPF exercises over the law and legal institutions.

The governing capabilities of the RPF have been bolstered further by the lack of meaningful domestic constraints. Domestic civil society has historically been too weak to constrain the RPF's power. During the early 1990s, opposition political parties and a vibrant civil society operated in Rwanda, but the civil war, genocide, and the RPF's victory essentially eliminated rival actors (Reyntjens 2013). Many of the civil society organizations active before the genocide were delegitimized because of their role in the violence. Religious communities, particularly the Catholic Church, held a prominent role in Rwandan society before the genocide.[24] While the Church tried on several occasions to reassert its prior influence at the end of the civil war, its complicity in the genocide rendered it a largely toothless actor (see Rittner et al. 2004). Political parties also were either delegitimized for their direct participation in violence or deemed ineffective for their inability to mount an effective resistance to more hardline policies from pro-Hutu political parties. The RPF moved in to fill this void.

Domestic human rights NGOs that challenge the RPF are often met with the same repression and coercion reserved for political opponents. Prominent members of the genocide survivor community, such as Jean Bosco Rutagengwa, the founder of a victim organization for Tutsi genocide survivors (IBUKA), would later find themselves under

[24] Interview with Philbert Kagabo, Kigali, Rwanda, November 7, 2013, notes on file with author.

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scrutiny by the RPF government and often in exile (Reyntjens 2013). In March 2000, coinciding with regulations on other civil society organizations, the RPF forced a purge of the IBUKA leadership because of the organization's growing opposition to the politicization of memorialization efforts and public challenges to the *umuganda* (mandatory community service) program. RPF supporter Antoine Mugesera was then elected as IBUKA's new president (Thomson 2018). The repression of dissent from the survivor community culminated in the assassination of Assiel Kabera. Kabera was an ardent and outspoken advocate for genocide survivors whose campaigns often ran afoul of the RPF government's attempt to control transitional justice. In March 2000, Kabera was gunned down outside his home by three men in military uniforms.[25] Even this supposedly privileged class of Tutsi genocide survivors was not able to challenge the ultimate political goals of the RPF.

The RPF's strong governing capabilities and limited domestic constraints create a condition in which the government has a high level of control over its norm response. Given these conditions, we would expect to see a government responding to the risks of international norm compliance through a strategy of coercion. As international pressure coalesced in its demands for accountability for the violence of the genocide, the RPF government created a new institution that could advance accountability for genocide crimes while securing impunity for the state.

Escaping Justice through Coercion: The Gacaca Courts

> The RPF, with its iron grip on power and policy formation, would not have allowed the implementation of the gacaca courts if there was reasonable doubt that the courts might become a political liability.
>
> (Chakravarty 2015: 35)

Transitional justice in Rwanda today is a product of the coercive control through which the RPF advances its response to calls for accountability. The high governing capabilities and limited domestic constraints of the Rwandan government have allowed the RPF to

[25] www.hrw.org/reports/2000/rwanda/Rwan004-07.htm (accessed October 12, 2023).

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shield itself from accountability, adopting and adapting its norm response through repression – an exemplar of a strategy of coercion. Strategic adaptation through coercion in Rwanda has primarily manifested in the gacaca courts. Gacaca was the government's response to international pressures for accountability that threatened to undermine the security of the RPF government and its claim to rule.

Immediately following the genocide, the RPF advanced a plan for accountability focused on trials through the national courts. National trials, however, could not keep pace with the RPF's massive wave of arrests; the backlog in Rwandan prisons drew international condemnation as early as 1997. At that time, human rights activist André Sibomana referred to Rwandan prisons as "inhumane death-traps in which death sentences are being executed without trial" (Sibomana 1997: 108). The overcrowded prisons can be attributed, in part, to the expansive way in which the RPF government defined crimes of genocide. The focus on property crimes and accessory actions – a maximalist version of criminality – vastly inflated the total number of people charged with genocide crimes. At the same time, international pressure for accountability through the International Criminal Tribunal for Rwanda threatened RPF impunity. The RPF needed to respond to international pressure for accountability while preserving the legitimacy and security of the new government. With these goals in mind the government engaged a new domestic mechanism for transitional justice – *inkiko gacaca*.

Building Gacaca

Gacaca was structured, from the beginning, to further the RPF's goal of accountability for crimes of genocide while ensuring impunity for RPF wrongdoings. This was made possible through the high level of social control the RPF held over the country. In responding to pressure to comply with the accountability norm, the RPF sought a process that could appease international demands, address the large number of perpetrators of violence, and remain under government control. What resulted was a sweeping local process of accountability that involved the participation of every member of Rwandan society. From 2001 to 2014, gacaca processed more than 1.9 million cases in approximately 11,000 courts throughout the country (Kanyesigye 2011; Nyseth Brehm et al. 2014).

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The first formal reference to the idea of using gacaca to address crimes of genocide came in December 1995 as part of an International Response Conference with donors and members of the Rwandan government (Republic of Rwanda 1995). The government of Rwanda, with financial support from USAID and the government of Ireland, held a conference in Kigali tasked with receiving international input into issues including the management of political, economic, and social consequences of the genocide and civil war. One working group was responsible for discussing options for addressing accountability for genocide crimes. This group raised the possibility of using a traditional dispute resolution mechanism, gacaca. The application of gacaca was further debated at the Urugwiro Reflection Meetings – weekly private assemblies of eminent persons in Rwandan politics and civil society held at President Pasteur Bizimungu's residence from May 1998 to March 1999 (Karekezi, Nshimiyimana, & Mutamba 2004). It was during one of these meetings that political momentum began to coalesce behind the idea of gacaca. On January 16, 2001, the Transitional National Assembly of Rwanda adopted Organic Law No. 40/2000,[26] which called for the establishment of "gacaca jurisdictions" loosely based on the traditional precolonial justice structure in Rwanda (Schabas 2005).[27]

Gacaca (*inkiko gacaca* in Kinyarwanda, translated to mean "justice on the grass") was designed as an extensive series of local courts to try exclusively genocide crimes such as assault, property destruction, and assisting killers in locating targeted individuals. Gacaca proceedings involved a public "trial" or debate concerning the alleged crimes committed by an individual. Hearings were presided over by a panel of judges (*inyangamugayo*) elected based on their reputation and standing in the local community. These judges received limited training

[26] The text of the law reads as follows: "Considering the necessity, in order to achieve reconciliation and justice in Rwanda, to eradicate for good the culture of impunity and to adopt provisions enabling to ensure prosecutions and trials of perpetrators and accomplices without only aiming for simple punishment, but also for the reconstitution of the Rwandan society made decaying by bad leaders who prompted the population to exterminate one part of that society . . . [and] that it is important to provide for penalties allowing convicted prisoners to amend themselves and to favour their reintegration into the Rwandan society without hindrance to the people's normal life."

[27] For an overview of the international community's role in the construction of gacaca, see Oomen (2005).

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from the government on gacaca procedures and were tasked with weighing the evidence gathered against an individual and passing judgment accordingly.

As structured, the newly created gacaca courts offered three primary benefits for the RPF government. First, the maximalist focus of gacaca prosecutions allowed the RPF to realize its goal of bringing accountability to *all* genocide perpetrators when it became increasingly clear that the national courts would not have the capacity to try all those accused of low-level crimes. To ensure accountability for low-level crimes the Rwandan legislature revised the legal code to include three prosecution categories. The first prosecution category (Category 1) included suspects alleged to have taken a leadership role in the planning, organization, and supervision of genocide. Category 2 crimes included murder, torture, and physical attacks committed with or without the intention to kill. Category 3 crimes were the broadest category and included individuals who committed ethnically motivated property offenses (Chakravarty 2015). Proving actual genocidal intent or ethnic targeting through the gacaca courts was extremely difficult for Category 3 crimes. While some of these crimes were undoubtedly motivated by genocidal ideology, people may have participated in looting and more superficial acts of violence out of narrow self-interest due to the social and political breakdown at the time (Adler et al. 2007; Davenport & Stam 2009; Kalyvas 2006). Despite the legal complexities of prosecuting intent, the RFP did not deviate from its goal to punish all those involved in its version of genocide violence (Karbo & Mutisi 2008; Morrill 2004). At the closing of gacaca, 67 percent of the cases (1,320,554 total) tried through the courts were classified as lower-level crimes (Nyseth Brehm et al. 2014).

Second, the RPF was interested in establishing post-conflict institutions that were uniquely Rwandan and amenable to RPF design and control. Following the government's initial power struggles with the International Criminal Tribunal for Rwanda, the RPF became focused on establishing a domestically controlled transitional justice process. While the government's dialogue on the topic has shifted over time, in the late 1990s the root causes of the genocide were attributed to ethnic divisions in Rwandan society created and amplified under colonialism. The assertion is that in Rwandan society ethnic groups peacefully coexisted before German and Belgian colonial rule. The logic follows that any attempt to right societal division

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would be best served by a Rwandan solution independent of international influence (Des Forges & Longman 2004). As President Kagame stated in a 2007 genocide Commemoration speech, "It is inconceivable that foreigners should judge Rwandans" (quoted in Ingelaere 2009). The narrative of Rwanda as a strong, self-reliant nation allowed for the creation of a domestic transitional justice agenda that the RPF was able to influence and ultimately control. The domestic nature of gacaca further reduced the opportunity for international critique.

Third, gacaca provided the RPF an opportunity to institutionalize its power at the village level and monitor public support. Longman (2017: 32) notes that use of gacaca was "influenced by the leadership's suspicion of the Rwandan population" and the requirement for a greater system of monitoring. Chakravarty (2015) has extensively documented the ways in which gacaca was used as a tool for providing patronage to the majority Hutu population, extending resources, and enhancing legitimacy for those willing to comply with the government. By having a gacaca court in every village in the country, the RPF government positioned functionaries where they could monitor local affairs and extend the government's political reach (Thomson 2011). Gacaca encouraged public confessions of crimes and truth telling in exchange for reduced punishments and community service allowing the government to directly monitor court proceedings. Given the importance of community participation for providing the courts' evidence, gacaca became a mandatory process where community members were required to attend proceedings under threat of fine or punishment. The community element of gacaca allegedly allowed for individual acknowledgment and reconciliation between perpetrators and victims, differentiating it from the International Criminal Tribunal of Rwanda and national courts that were more concerned with establishing a legal record and removing perpetrators from the community. However, the public nature of disclosures also created a visible and compulsory forum for RPF monitoring.

Given its structure, the scope of the gacaca effort was substantial. After an initial investigation phase, more than one million people were identified as alleged genocide participants. This included the accused still in prisons throughout the country as well as new accusations against returned refugees and members of local communities. By its completion, gacaca had tried approximately one out of every five

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adults in Rwanda.[28] While the violence of the genocide is well documented and adjudicated, other experiences of violence have been systematically overlooked due to the structure of transitional justice in Rwanda and the force with which the RPF silenced claims for government accountability (Pottier 2002). To respond to pressure to comply with international norms, the RPF government created a new institution, under its control. The RPF structured gacaca to focus exclusively on crimes of genocide and enforced that focus through repression. Despite the robust nature of transitional justice in Rwanda, RPF perpetrators have rarely been held to account.

Enforcing Gacaca

Gacaca is a new transitional justice institution that is tightly monitored and controlled by the Rwandan government. Given the domestic political conditions in Rwanda, the government has complied with international norms for accountability through a strategy of coercion. Mirroring the RPF's militarized policy of aggressive social control, the government engaged transitional justice through restrictions on alternative accountability claims, widespread monitoring of the Rwandan population, and violence against those who dissent. A strategy of coercion has allowed the government to weaken domestic challenges while compelling acquiescence from the international community leading to near impunity for RPF wrongdoings.

Rwandans are unable to challenge the RPF's transitional justice policy in the public sphere. Among ordinary citizens, fear of RPF repression tempered any large-scale attempt to challenge the government's impunity or to mobilize around counterclaims. Widespread monitoring of the population has led to a culture of mistrust. Monitoring is sustained through a vast and informal spy and surveillance network run both in Rwanda and abroad (Thomson 2018). This surveillance network has allowed the RPF to be highly effective at monitoring and censoring dissent. Furthermore, surveillance has bred a culture of extreme caution and self-censorship within the Rwandan population as well as those who report on and research the country.

[28] Straus (2006) estimates the perpetrator rate to be approximately 20% of the Rwandan population in 1994.

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Given a culture of mistrust, political or civil society opposition to RPF impunity has not been able to find a collective voice or a following. Restrictions on civil society activity in Rwanda limited the ability of NGOs and the press to oversee gacaca or to advocate for government accountability through gacaca. The well-documented climate of fear and intimidation that threatened other sectors of Rwandan society applied to those groups seeking to advance justice and accountability. Fear and intimidation had the effect of silencing opposition to gacaca, leading to what Susan Thomson (2011a) has called "strategic compliance" with the government's transitional justice policy. Despite documented concerns about the government's transitional justice plan, "no domestic actor [had] the political clout to negotiate with the RPF or push back against it" (Chakravarty 2015: 81). The weakness of civil society allowed for virtually no domestic challenge to the RPF's transitional justice policy or the tactics used to enforce it.

The monitoring of challenges to RPF impunity has extended to academic research. In one particularly vitriolic tweet, President Kagame referred to the "apologists or those who supported the genocide who disguise as [human rights advocates], journalist, academics, etc."[29] As but one example, the RPF has been unwilling to engage academic research or debates that question the regime-approved calculation for the total numbers of Tutsi deaths during the genocide. Research projects such as Genodynamics,[30] run by American academics Christian Davenport and Alan Stam, have attempted to estimate the total number of people killed during the genocide throughout the country. The Genodynamics team argues that many civilian deaths during the civil war were likely Hutu casualties. This finding was met with sharp reprisal from the Rwandan government who accused these scholars of denying the genocide. After presenting these findings at a conference in Kigali, Davenport was deported from the country (Davenport & Stam 2009). Other research projects have met similar fates. While completing her PhD dissertation on peasant experiences under RPF rule, which included discussions of potential RPF wrongdoings, Canadian academic Susan Thomson (2011a) had her passport confiscated and was forced to attend a government reeducation or

[29] Twitter post, April 10, 2011. Author's Tweet Archive. Available upon request.
[30] https://genodynamics.weebly.com (accessed April 30, 2020).

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solidarity camp (*ingando*) where she was "reeducated" with an RPF-approved version of Rwandan history.

Domestic resistance and counterclaims toward gacaca are possible only in private forums. While it often appears that Rwandans comply with government policies, Thomson (2013) identifies areas of subtle resistance that signal an individual agency and the strategic nature of compliance. Lee Ann Fujii (2010) documented the many versions of rumors, inventions, denials, evasions, and silences that are found among research participants in Rwanda. In my fieldwork I often spoke with respondents who were willing to challenge the one-sided nature of gacaca in private, but I found that people often lacked a collective understanding of grievances that could lead to more unified accountability claims or collective action (Loyle 2011). As the East African historian Filip Reyntjens (2010: 33) writes, "In all likelihood, in the privacy of their homes, in discrete conversations, and in the body language that accompanies their silence, the powerless construct *their* truth, which many well be more radical than the RPF believes." Resistance to government impunity has been possible only in what James Scott (1990) would call hidden transcripts. Still, this form of resistance has done little to threaten the RPF's hold on power.

The level of control the RPF exercised over gacaca did not go unnoticed. Initially, the international community raised concerns about the structure of gacaca. Early criticisms focused on the tensions between gacaca and international criminal law and standards of human rights best practices, including the failure of gacaca courts to follow international legal conventions of due process, not providing legal counsel for defendants, the lack of an unbiased jury, and the use of lay judges (see Clark 2010 for a review of these critiques). As gacaca continued, scholars and policymakers turned their attention to the ways in which gacaca was being used by the RPF to consolidate political control throughout the country (Thomson & Nagy 2011). Rather than a tool for justice and reconciliation, observers interpreted gacaca as a strategic initiative of the RPF government to extend political power (Chakravarty 2015; Loyle 2018). Many have accused the government of using the accusation of crimes of genocide to prosecute political dissidents and other challengers to the regime, thus marginalizing the Hutu population (Amnesty International 2007). Freedom House's (2007) country report on Rwanda argues that the refusal to prosecute RPF war crimes from 1990 through 1995 or violence in the

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DR Congo from 1996 through 2000 made the gacaca process no more than victor's justice.

While members of the international community raised concerns about gacaca, the RPF was able to pursue its strategy of coercion unhindered. The technocratic efficiency of the Rwandan government along with the rhetorical support lent to donor-favored policies such as anti-corruption and gender equality maintained Rwanda in a donor-darling status despite mounting evidence of the repressive nature of gacaca and human rights violations by the regime. Domestic policy successes, coupled with a "genocide credit," resulted in a lack of international will to challenge transitional justice in Rwanda. The Rwandan government was efficiently pursing accountability and there was little international appetite for challenging RPF impunity. The result became what Straus and Waldorf (2011: 5) call "top-down, donor-supported, transformative authoritarianism."

Many of the Rwandans I spoke with were acutely aware that the RPF's version of accountability was not meant to include their own experiences, and people resented the lack of opportunity to receive justice for their harms. This was particularly true of respondents who experienced violence during the civil war. While people who experience violence during the insurgency period were more willing to view their experiences as unique from the genocide itself, people who lost loved ones and property during the civil war were more likely to accuse the government of favoring Tutsi victims of the genocide. Gacaca was seen as dictating the terms of who was able to receive justice and whose stories would be silenced. One trader from Rulindo whose father was killed in crossfire during the civil war said, "If your abuses don't pass through gacaca it means you should just keep quiet and forget it. There will be no justice or compensation for you."[31]

Respondents who experienced violence during the *Abacengezi* rebellion in Rwanda and at the hands of the RPF generally had a more severe take on government impunity. There was a clear understanding of the unwillingness of the government to address abuses by the RPF and to punish those perceived to have challenged the government. A woman I interviewed from Karongi sneered at my question about the possibility of her seeking redress. "The violence of 1997!" she

[31] Interview (RU-5), Rulindo, Rwanda, November 2009, notes on file with author.

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cackled "No one is giving it value. They say it is because we didn't obey the government."[32]

In my conversations, I found that exclusion from gacaca often resulted in a passive acceptance of an individual's situation, despondence, or greater mistrust of government, which lead to a lower level of engagement in politics and society. I found Rwandans were often unwilling or unable to express public dissent against government policies, accepting these policies as a current condition of their lives. One farmer from Rulindo, a Hutu power stronghold during the genocide that experienced high levels of violence during the insurgency, expressed this futility. When I asked him about finding a place to tell his story he said, "If a person listens to me, I can tell my story. But imagine trying to say something when no one is listening to you? What is the point? It is useless."[33]

Another respondent from a neighboring village was targeted by the government for allegedly aiding rebels. He maintained his innocence but stopped short of asking for acknowledgment for the harms he experienced. Instead, he practiced his own form of social amnesia. "Why should I think about it?" he asked me. "I will put it out of my head. Nothing will be done for what happened to me."[34] Many of the peasant farmers and traders I spoke with expressed a similar acceptance of the current politics in Rwanda. They felt unable to influence the political process and feared that challenging the government's transitional justice policy would only bring more violence. "The solution," the farmer from Rulindo said, "is to forget what I lived through, little by little."[35] These sentiments raise concerns for the ability of transitional justice to advance the aims of the accountability norm. People I spoke with who were excluded from transitional justice were less engaged with the gacaca process, but also less likely to be engaged in local politics or to express support for democratic institutions (Loyle 2011). Far from failing to uphold the goals of justice and peace, Rwanda's coercive strategy of impunity appeared to be directly undermining those goals.

[32] Interview (KA-3), Karongi, Rwanda, November 2009, notes on file with author.
[33] Interview (RU-8), Rulindo, Rwanda, November 2009, notes on file with author.
[34] Interview (MU-6), Musanze, Rwanda, November 2009, notes on file with author.
[35] Interview (RU-8), Rulindo, Rwanda, November 2009, notes on file with author.

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Alternative Explanations

In this chapter I made the argument that the lack of accountability for government wrongdoings in Rwanda can be understood as a process of strategic adaptation in which the RPF government adopted transitional justice to appease international norms of accountability and advance its own aims of escaping justice. Alternative explanations for state impunity in the age of accountability would suggest that RPF impunity is the result of the norm of accountability not proliferating domestically in Rwanda or a lack of institutional resources to pursue state crimes. There is little evidence to support either of these claims.

One alternative explanation for state impunity is that there was little resonance of the accountability norm in Rwandan society. With weak resonance of the norm, it is unlikely that state accountability would be pursued. This argument does not hold up to the available evidence. While there was strong international pressure for accountability in Rwanda, there was equally strong pressure for accountability from domestic audiences. In the early days of the RPF transition, legal advocacy groups, survivor organizations, and members of the RPF's own party were campaigning to stop the historic cycle of impunity linked to decades of violence. As early as June 1994, the RPF was aware of the sheer scope and magnitude of participation in the genocide. While the RPF was fighting for control of Kigali, RPF leadership created a human rights investigation team that followed behind the RPF advance and documented the encountered abuses. Led by RPF member Tito Rutaremara, the team conducted its investigations in areas "liberated" by the RPF and reported back to the RPF command about the wrongdoings taking place throughout the country. Before the conflict had even ended, the RPF had information about the high levels of human rights abuses being committed.[36] Concerns for documenting human rights violations trumped the allocation of fighting resources even at the height of the war. Early calls for justice persisted once the RPF took power. These calls for accountability motivated the original negotiations with the United Nations that called for the creation of the International Criminal Tribunal of Rwanda.

[36] Interview with Prof. Paul Rutayisire, Kigali, Rwanda, November 13, 2013, and Interview with Hon. Tito Rutaremara, Kigali, Rwanda, November 7, 2013, notes on file with author.

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Early calls for accountability continued once gacaca was adopted. Domestic opposition to gacaca emerged from the Rwandan legal community advocating for a more rigorous transitional justice process to adhere to international law. Domestic lawyers pushed for trials through the national judiciary and supported a consensus around criminal prosecutions emerging from the international legal community. The Rwandan legal community raised several objections to gacaca including concerns about the use of lay judges and allowing "illiterate peasants" to be responsible for meting out justice.[37] The lobby for prosecutions through the national courts was weakened with the creation of the ICTR and then deemed impractical by the number of accused perpetrators being arrested. Furthermore, the Rwandan judiciary itself was weakly organized, lacking a functioning Bar Association, and as such was unable to mount a convincing argument about its capabilities to prosecute the bulk of genocide crimes. This engagement, however, suggests the domestic resonance of an accountability norm that under different political conditions would have resulted in an effective push for RPF accountability.

An alternative explanation for state impunity is that the Rwandan government lacked the capacity to fully prosecute perpetrators of wrongdoings, including its own cadre. This rationale would suggest that the Rwandan government was unable to hold itself to account because it lacked the resource to do so. Given this explanation, we would expect to see limited accountability for all crimes, including state allegations. Again, this argument does not hold up to the available evidence. Immediately following the war, the judicial system in the country was decimated. Under former President Habyarimana there was no functioning Bar Association, and of the 708 magistrates operating in Rwanda at the time, only 45 held university law degrees.[38] Historically, the legal system was tightly linked with the government and merely an extension of executive power, which continued to undermine confidence in the national courts even after power had shifted. While the RPF lacked resources and capacity in its judiciary, it did not lack governance capacity. Numerous social programs were enacted with efficiency. In addition, the strong backing from the

[37] Interview with Hon. Tito Rutaremara, Kigali, Rwanda, November 7, 2013, notes on file with author.
[38] Final report from Urugwiro Reflection Meeting 1998. On file with author.

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international legal community opened a number of channels for legal support including capacity-building projects and budget support. Furthermore, the robustness of the gacaca program itself suggests that if the RPF had been driven to investigate the wrongdoings of its own cadre, it would have had the resources and capacity to accomplish the task.

Transitional Justice and Coercion in Burundi

To explore patterns of strategic adaptation beyond the case of Rwanda, I turn to the case of neighboring Burundi. Following the election of the CNDD-FDD at the end of the decade-long civil war, the government adopted a national Truth and Reconciliation Commission (TRC) to address harms committed between independence in 1962 and the implementation of the Arusha Peace Agreement. The government's high capacity for control of its norm response facilitated a strategy of coercion where a new transitional justice institution was created that was under tight government control. Despite the robust nature of the TRC in Burundi, the process did not effectively advance accountability for the CNDD-FDD government. The case of Burundi is offered as an additional exploration of the theory of strategic adaptation in a post-conflict state with high governing capabilities and minimal domestic constraints.

After decades of ethnic tension following independence, a civil war broke out in Burundi in 1994 between the ruling Tutsi elite and majority Hutu ethnic group, represented by two rebel groups, the CNDD (National Council for the Defence of Democracy) and the Palipehutu-FNL (Party for the Liberation of the Hutu People – Forces for National Liberation). Tens of thousands of people died during the conflict while equal numbers of refugees fled the country. Both rebel groups and the government committed human rights abuses against civilians during the civil war; there was blood on all their hands. Peace talks ended the conflict in 2000 when the principal parties signed the Arusha Peace Accord. Following the Accord, the CNDD-FDD, a faction of the original CNDD rebel group, came to power and has governed the country since. Relevant here, the Arusha Peace Accord called for three primary transitional justice mechanisms: the establishment of a truth and reconciliation commission, a special tribunal, and a public consultation to inform decisions on potential

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additional forms of transitional justice. Implementation of transitional justice was originally stalled. After repeated delays, public consultations began in 2009, and a truth and reconciliation commission was formed in 2014 (International Center for Transitional Justice, n.d.; Nduwimana, 2014).

Compared to Rwanda, international pressure in Burundi for carrying out transitional justice was minimal. At the end of the civil war the priority of the international community, most notably of the African Union and United Nations mission in Burundi, was putting a stop to the violence and securing peace in the country. International actors did not see transitional justice as urgent (Vandeginste 2012). While the government is highly reliant on international development assistance and military assistance from the United Nations, the international community did not leverage its influence toward accountability. Domestically, the CNDD-FDD government had a tenuous hold on power. Sporadic episodes of violence continued during the first years of the CNDD-FDD government, until a 2008 peace agreement was negotiated with the last remaining rebel group, Palipehutu-FNL (Uppsala Conflict Data Program, n.d.). Given this tenuous hold on power, accountability for CNDD-FDD wrongdoing was a high-risk proposition with few rewards.

Like the RPF in Rwanda, the CNDD-FDD's capacity to control its norm response was high. International military involvement in Burundi, from the African Union, resulted in a political system built around control and order where violence and coercion remained central to the CNDD-FDD's rule (Curtis 2013). Especially after the 2010 elections, which the opposition boycotted citing accusations of fraud and intimidation, the ruling CNDD-FDD established secure control over state institutions (Taylor 2013). Furthermore, the strength of civil society in Burundi has remained weak. While the government strengthened its coercive capabilities, there have been minimal domestic constraints on the government. According to the World Bank's government effectiveness index, Burundi has a poor quality of public and civil service with little independence from political pressures (World Bank n.d.). The weakness and lack of independence of government services point to the government's political control over domestic institutions.

Government control over domestic institutions extends to transitional justice. The TRC is tightly controlled by the CNDD-FDD

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government. This control is evident in the creation of the process as well as its functioning. The CNDD-FDD government had majority control over the National Assembly when the law that established the TRC was written (Taylor 2013), structuring a process that advanced government impunity. The TRC's mandate was to address gross human rights violations committed between the time of independence and the signing of the final implementation protocol of the peace agreement with Palipehutu-FNL, which allowed for a broad engagement with historical wrongdoings. This broad mandate served to dilute the focus on accountability for conflict-related wrongdoings, including the government's own. The majority of commission members appointed to the TRC had close ties with either the CNDD-FDD itself or with the government's satellite parties and civil society affiliates, including the commission president and secretary-general (Rugiririza 2019). Once the TRC was underway, the process highlighted the abuses of the former Tutsi-led government without equal examination of rebel violence against Tutsi during the civil war and the government's own wrongdoings. For example, the TRC focused its efforts on historic massacres that took place in 1972, 1988, and 1993, exhuming mass graves, and working to identify victims. These events primarily capture Tutsi-government violence against the Hutu ethnic group. More contemporary violence, however, has not been equally examined (Rugiririza 2019).

Despite wrongdoings committed on both sides of the conflict, transitional justice in Burundi has pursued a version of accountability that has been successful at advancing impunity for the current government. This has been accomplished through a strategy of coercion in which a new transitional justice institution is monitored and controlled. Given the domestic costs of holding its own coalition to account, the CNDD-FDD government has controlled the truth commission to ensure the appearance of norm compliance without threatening the government's hold on power.

Conclusion

Life in Rwanda today is defined by the high level of social control the Rwandan government holds over the population. It is also lived in the shadow of the genocide. Even thirty years later, Rwandan politics are demarcated by that period of disruption and loss. The RPF maintains

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its control in this same shadow, raising the specter of genocide to justify the policies needed to ensure its rule. Central to the RPF's control has been a narrative of culpability and punishment that focuses on the perpetrators of the genocide while strategically avoiding reference to the many wrongdoings of the RPF. Rather than addressing past injustices head on, the RPF has put the full weight of the Rwandan state behind shielding its cadres from blame. The RPF's strategy of coercion is made possible through the high level of social control the government exercises over the Rwandan population and state institutions.

The RPF has made transitional justice central to achieving its goal of consolidating power. Rather than serving as a tool for increasing democracy and human rights in the country, gacaca, as it was structured, has benefited the RPF. The exclusive focus on genocide crimes, as defined by the RPF, solidified a narrative around the violence of the genocide that enhanced RPF legitimacy and essentially granted members of the RPF immunity through institutional control – a strategy of coercion. Gacaca, as a strategic tool of the RPF, was made possible precisely because of the level of control the RPF already exercised over the population. The high governance capabilities of the RPF, combined with the lack of domestic constraints, made possible a process that masked the RPF government's deeper commitment to political control behind a performance designed to satisfy international demands for justice. Yet repression is a costly strategy that raises the issue of how long the RPF will be able to maintain its strong grip on power. Rwandans worry that the unchecked power of the RPF will bring more violence. As one interviewee offered, "Usually peace with no justice is only a temporary peace. If a person has committed a crime and he is not punished, he will do it again."[39]

[39] Interview (RU-7), Rulindo, Rwanda, November 2009, notes on file with author.

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