Authority to Tell

ICTR Contributions to Collective Memory of Sexual Violence in the Rwandan Genocide

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Abstract

After conflict and mass atrocity, stories of the past take center stage. Whose voices are heard, whose sufferings forgotten? Increasingly, battles over history are fought in court, where victims seek recognition for past injustice. But how are narratives of the past, or what Maurice Halbwachs coined *collective memory* shaped, in a world where legal bodies increasingly exert a power ‘to tell’? What role can international legal bodies play as storytellers? In 1994, after one of the most solemn examples of mass atrocity since Holocaust, the International Criminal Tribunal for Rwanda opened a groundbreaking space for victims of sexual violence to tell their stories. How it contributed to make these heard is the focus of this thesis, which tackles the specific struggle of women in the struggle of memory against forgetting. Through empirically assessing ICTR’s rape prosecution as well as on-ground Rwandan *lieux de mémoire*, the project adds to existing literature on war and memory in several ways: First, it investigates a still fairly unexplored gendered aspect of memory, asking what the ICTR offers remembrance of wartime rape. Second, it unravels information on actors and events behind the Tribunal’s memory construction, exploring historical impetuses affecting its outcomes. Lastly, it considers ICTR contributions from the perspective of Rwandan national memory. Applying an historian’s advantage of comprehensiveness, the thesis approaches its enquiry with interdisciplinary backing, triangulating primary sources – written, oral and iconographic – with interviews and secondary literature. Its findings reveal essential aspects of law’s storytelling potential. ICTR delivered lasting jurisprudence on sexual violence, as well as making space for unforeseen accounts of its occurrence. Yet, its findings also show how international legal memory construction is intrinsically bound by the political context in which it operates, and how stories told, inherently outcomes of a legal method, convey highly selective and fragmented narratives of the past. Finally, this thesis finds that ICTR contributions have little bearing in the Rwandan memory landscape, where they compete against a post-conflict state fixated on its own historical narrative. Not only a potent reminder of Halbwachs’ notion that the past is constructed through the needs of the present, this thesis illustrates how international courts, albeit endowed with a unique authority to tell, has a hard time safeguarding the breakthrough of individual victim groups’ narratives in aftermaths of war.
Acknowledgements

I would be lying if I said writing these final words is not accompanied by a solid sensation of liberation. Still, looking back at the last two semesters of preparing and writing my thesis, I find more reasons to feel content than dismayed, having gotten the privilege to pursue my interests academically. That, I owe to the support of a number of contributors.

Without the financial backing of Fritt Ord’s Student Scholarship, I would not have been able to travel to Rwanda and Tanzania. I thus thank both the Fritt Ord foundation and Norwegian Centre for Human Rights for believing my project was worthwhile. Thanks also go to the MICT Archives staff, especially Romain Ledauphin, who provided me with an office space in a previous ICTR courtroom translator's booth. To that glass-window view I owe many fruitful reflections. Always approachable, my supervisor Hanne H. Vik has been an invaluable source of support, providing both individual and group supervision helping this project progress. I am grateful she decided to take me in, as well as for domesticating my interdisciplinary background. I thank Matthis for coffees and walks, and the rest of my friends for reminding me about the world outside Blindern. As much of this work was put to pages at the ‘Holmlia office’, I also thank my parents. Sverre: thank you for your patience and encouragement, and for enduring my recurring inclination to leave for distant destinations. Final thanks go to those who helped with concluding readings – all remaining errors are of course my own.

Seldom have I had to absorb as much dread as when working on this project. Now however, recollections of skulls, bones and rape testimonies are outshone by memories of encounters I made during my study trip, and to that I owe the Rwandan people. This project is inspired by those who have dared to tell their stories of wartime rape and who continue doing so. With current conflicts affecting women in places like Syria, Iraq, CAR and South-Sudan, my hope is they will not be forgotten.

Oslo, 20 May 2016.
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AVEGA</td>
<td>Association of Genocide Widows (Association des Veuves du Génocide Agahozo)</td>
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<tr>
<td>IBUKA</td>
<td>Umbrella organization for Rwandan genocide survivors (translates as ‘remember’)</td>
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<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda (International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, Between January 1, 1994 and December 31, 1994)</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>KGM</td>
<td>Kigali Genocide Memorial</td>
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<tr>
<td>MICT</td>
<td>Mechanism for International Criminal Tribunals</td>
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<tr>
<td>NURC</td>
<td>National Unity and Reconciliation Commission</td>
</tr>
<tr>
<td>OTP</td>
<td>Office of the Prosecutor</td>
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<tr>
<td>RPA</td>
<td>Rwandan Patriotic Army (RPF’s military wing)</td>
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<tr>
<td>RPF</td>
<td>Rwandan Patriotic Front</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<tr>
<td>UNAMIR</td>
<td>United Nations Assistance Mission for Rwanda</td>
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Chapter 1: Introduction

Death is the sanction of everything that the storyteller has to tell. He has borrowed his authority from death.

Walter Benjamin

[T]he struggle of man against power is the struggle of memory against forgetting.

Milan Kundera

Death, wrote philosopher Walter Benjamin, lends storytellers all their authority. After conflict and mass atrocity, stories of the past – narratives of history and memory – take center stage. Whose voices are heard, whose experience told, and whose sufferings forgotten? Battles over and interpretations of the past are potent identity constructors and state builders. But how are narratives of the past, or what sociologist Maurice Halbwachs coined as ‘collective memories’ shaped, in a world where international bodies increasingly exert power over national affairs?

In November 1994, after the Rwandan genocide had resulted in almost one million casualties in one of the most brutal instances of political violence since World War II, the UN established an international tribunal to punish those responsible. Making space for victims’ experiences of suffering, the International Criminal Tribunal for Rwanda (ICTR) was in effect endowed with the authority to tell stories of genocide. Those stories and the shaping of individual memory into collective narratives through court is the focus of this thesis. What social, political and institutional factors govern international, legal memory construction? What bearing can international legal contributions have in local post-conflict memory landscapes?

“The link between power and storytelling is hard-wired at the level of language, for the words “author” and “authority” have a common etymology”, writes law scholar

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3 Saying that international bodies increasingly exert power over national affairs, I do not claim that nation-states are rendered irrelevant. Rather, as Held and McGrew writes: states’ “relative significance, as determinants of, or constraints on, social action and the exercise of power, is declining” in comparison with the past. The recorded number of IGOs/INGOs increased from 36/176 to 7350/51509 between 1909 and 2001. Although many states still violate its standards, international law is an important component in this process. David Held and Anthony McGrew, Globalization/Anti-Globalization: Beyond the Great Divide (Cambridge: Polity, 2007). 4, 22-23. See also Judith Goldstein et al., “Introduction: Legalization and World Politics” International Organization, 54, no.3 (2000).
Mark Osiel. Power struggles over the past are fought everywhere competing stories meet, and increasingly, such battles over collective memory are waged in the realm of law. Here, victims of past injustices fight for victim status and reparation. The law as such becomes a tool in struggles for recognition, and a means to have “narratives heard and officially recognized.”

One such victim group has often been left out of the narrative, however: victims of wartime sexual violence. Women’s experiences in conflict have been, famously quoted by feminist writer Susan Brownmiller; subdued to “regrettable victims – incidental, unavoidable casualties (...) lumped together with children, homes, personal belongings, a church, a dike, a water buffalo or next year’s crop.”

Focusing on the particular gendered aspect of past atrocity, this thesis explores – to paraphrase author Milan Kundera in my epigraph – the struggle of women against power as the ‘struggle of memory against forgetting’.

ICTR and Sexual Violence in the Rwanda Genocide

In the course of one hundred days in 1994, the tiny African nation of Rwanda blasted onto the international stage as years of strife reached genocidal proportions. The international community was neither able nor willing to prevent the annihilation of almost one million Tutsis and moderate Hutus, killed by the hands of soldiers, guerrillas and civilians acting on the Hutu regime’s genocide propaganda and orders. The term ‘too little too late’ will remain the never-ending echo of the international efforts and the disaster that the United Nations’ peacekeeping force, the UNAMIR, epitomized.

Post-factum however, the UN insisted on playing part in the justice process of the war-torn country, establishing what was then a novel invention under international law: An ad-hoc International Criminal Tribunal; the ICTR.

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Manipulation of history by the Hutu regime had been integral to enabling its genocidal campaign.\textsuperscript{10} Thus, former ICTR legal assistant Daniel Koosed holds that despite not being mentioned in its Statutes,\textsuperscript{11} the ICTR considered “the creation of a historical record of the Rwandan genocide to be an essential part of its mandate.”\textsuperscript{12} Did it contribute, and if so, in what way? Whether or not international trials can answer to complex justice goals under the banner of transitional justice has produced heated debates over the last decades.\textsuperscript{13} Intertwined in this question but less explored, is how courts contribute to write history, and what narratives they generate.

Operating between 1994-2015, the ICTR gained criticism from scholars and observers for being slow, inefficient and withdrawn from the Rwandan people.\textsuperscript{14} But the Tribunal also received praise for pioneer work within the broader development of international criminal law, with one of its most upheld accomplishments relating to the prosecution of wartime rape.\textsuperscript{15} During the genocide, women were subjected to sexual violence on a massive scale.\textsuperscript{16} The exact numbers will never be known, but reports by the UN Special Rapporteur and Human Rights Watch demonstrated that sexual violence was widespread, and an integral part of the genocidal campaign, perpetrated by Hutu militias (Interahamwe), armed forces and civilians.


“individually raped, gang-raped, raped with objects such as sharpened sticks or gun barrels, held in sexual slavery (…) or sexually mutilated,” and many were killed immediately after being raped. One estimate holds that as many as 90 percent of Tutsi women and girls who survived the genocide were sexually molested in some manner. A recent quantitative study by criminologist Catrien Bijleveld estimates a conservative number of female rape victims to be 350,000.

The ICTR provided unforeseen accounts of this violence, with “detailed, graphic, horrific, and public accounts of the allegations against those being tried.” The Akayesu Trial in particular was a watershed in international law. Not only was it the first international trial to convict a defendant for genocide; the verdict against the burgemeistre of Taba commune produced several major steps forward for the prosecution of rape as a war crime. It recognized sexual violence as independent crimes under the category of crimes against humanity, and promulgated the first international definition of sexual violence. It also established that leaders directed rapes to reach their larger political goal: the destruction of the Tutsi as a group. One thing is nevertheless to make a mark in the realm of international criminal justice – another is to leave a trace in a nation’s post-conflict memory. Is there any indication that ICTR’s accounts of past sexual violence promulgated a comparable visibility of gendered genocidal experiences in the Rwandan memory landscape?

This project seeks first to elucidate aspects of the ICTR process that can be said to contribute to remembrance of past sexual violence atrocity. Second, it wants to inform on the active memorialization process by the post-genocide state of Rwanda, and study whether the attention given by the UN body to women’s experiences, is present or absent in Rwanda’s memorialization. Through exploring these issues of the present’s dealing with the past, the analysis pursues to draw revelatory inferences on

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20 The focus here is women, but some men were also victims of sexual violence during the genocide. See Sandesh Sivakumaran, "Prosecuting Sexual Violence against Men and Boys,” in Sexual Violence as an International Crime: Interdisciplinary Approaches, eds. Anne-Marie de Brouwer et al.: 87.
21 See Chapter 3.
international law’s capacity as a storyteller.

Previous Literature

This thesis draws on insights from a range of disciplines. Three lines of previous work inform the study in particular: 1) Literature on the Rwandan genocide and post-conflict Rwanda; 2) Theoretical perspectives from history and other disciplines concerned with concepts of memory, and; 3) Academic literature on rape as a war crime, specifically from the field of international law.

The main body of scholarly work on Rwanda is comprised by historiography of the genocide itself, its causes and dynamics. Constituting one of the 20th century’s most solemn examples of political violence, such a focus is no surprise. Essential works of historians include Alison des Forges’ *Leave none to tell the story*, Gérard Prunier’s *The Rwandan Crisis*, and Mahmood Mamdani’s *When victims become killers.* Now however, an increasing number of scholars turn to present-day Rwanda. Through the lens of academics such as sociologist Maurice Halbwachs and historian Pierre Nora, they seize the question of how Rwanda’s dark past is remembered today rather than the past itself. Scholars such as conflict researcher Susanne Buckley-Zistel and anthropologist Nigel Eltringham, study Rwanda’s collective memory and narratives of genocide. The following chapter will go more into detail on my use of the concept collective memory. Here however, I address its general underpinnings.

The notion of collective memory derives from the idea that people acquire memories not only from their own experiences, but through social processes as well. In his 1925 assessment, Halbwachs wrote:

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“I do not need to seek out where the memories are, where they are kept, in my brain, or in some corner of my mind to which only I would have access, because they are recalled to me from outside, and because the groups to which I belong continuously offer me the means to reconstruct them.”

Coining the concept ‘collective memory’, he highlighted how individual memory is connected to larger stories about ourselves, where group membership provides materials for memory, prodding individuals to recall particular events. According to Halbwachs, memories of the past are inherently bound by the needs of the present. Nora later distinguished between academic history and folkloric memory. Collective memory is reinforced and retrieved together, in what he calls lieux des mémoire – sites of memory. While history disenchant the past, these sites of memory sanctify it. Notwithstanding their tangible origins, collective memories are thus narratives, which can be de- and reconstructed. This construction involves selection and silences, resembling Anderson’s concept of imagined communities. But the narratives are also substantive and concrete, transmitted through non-abstract actions and physical objects, Nora emphasized. Living memory is attached to places, things or institutions, working as symbolic markers. Looking for empirical confirmation of collective memory then, would be to put the magnifying glass on ceremonies, monuments, national holidays, museums, school textbooks, street-names or mass media. But how a given collective memory is constructed is another question. Is it constructed through democratic popular processes or top-down forced upon groups by the state? What role can or will international institutions play as memory constructors, that is – as agents of memory?

If collective memories interact with and are created in the ‘social’, it will also frequently be affected by international law. However, historian Rosanne Kennedy points out that scholars have only recently begun to analyze law as a collective

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28 Nora, “Between Memory and History.”
memory constructor. Mark Osiel is a prominent example of a scholar who has written extensively on interactions between mass atrocity, memory and the law. Others have used the emergence of victim-witnesses as a starting point for discussing law’s role as a memory agent. In mainstream international law scholarship, social theories have still rarely been employed. Collective memory is yet a fairly new concept in the legal and human rights discourse.

Two recent UN reports illustrate the emerging focus on memory as an issue not to be detached from human rights concerns. The 2014 “Report on memorialization processes,” elucidates memory battles’ central position in post-conflict societies, especially after civil wars, as well as states’ responsibility to take memorialization seriously. Its preceding 2013 report emphases the contentious nature of history and narratives as tools of suppression. Both provide strong arguments for scholars and practitioners not to ignore memory in post-conflict processes.

Rwanda to many embodies one of the most interesting cases of post-conflict memorial entrepreneurship, and scholars have already contributed to a fairly large body of knowledge on the state as a memory agent. Yet, important insights remain unexplored. While studies of ‘sites of memory’ in Rwanda tend to focus on the state’s fixed genocide narratives, placing sexual violence in the spotlight adds another dimension; a gendered one.

This gendered dimension has been introduced with great vigor in social sciences, where a ‘rape as a weapon in war’-discourse has vouched much attention. Works include Elizabeth Wood, Cynthia Enloe and Inger Skjelsbæk.

34 I.e. Scott Strauss and Lars Waldorf, eds. Remaking Rwanda.
Anthropological works such as that of Sally Engle Merry study the relationship between international rights and local norms of gender violence. Legal scholars have followed suit. Anne-Marie de Brouwer and Kelly Askin are notable contributors to scholarly publications on sexual violence as an international crime.

My analysis of ICTR contributions to collective memory invokes such existing literature, as well as perspectives on the social constructive aspects of international law. Although many write about these topics independently, I have only found one broad study bringing together fields of gender, memory, and the role of international trials. This is a book written by social scientist Nicola Henry, called War and Rape: Law, Memory and Justice. Her focus however, is the international discourse, not the memory of the post-conflict state involved.

The project thus seeks to add to the literature in several ways. First, it explores a novel factor in the process of memorialization; international courts’ role as contributors to memory. Second, it seeks to unravel information on actors and events behind such a process, exploring historical impetuses affecting those contributions. Finally, it considers ICTR’s contributions from the perspective of national memory.

Research Questions

This idiographic case study relies only partially on a traditional historical method. With its broad theoretical perspective and non-chronological outline, it is more than anything an interdisciplinary reading from the viewpoint of a contemporary historian.

40 There have been many academic disputes about what such a method entails. Most historians do not seek to be scientific, if such an endeavor is defined by separating independent and dependent variables and drawing causal inferences. Edward Hallett Carr writes; “I was suitably impressed to learn that appearances notwithstanding, the wale is not a fish. Nowadays, these questions of classification move me less; and it does not worry me unduly when I am assured that history is not a science.” In John Lewis Gaddis, The Landscape of History: How Historians Map the Past (Oxford: Oxford University Press, 2002). 37.
Its overall aim is to disentangle: 

What have been the ICTR’s contributions to collective memory of sexual violence in the Rwandan genocide?

The question’s underlying implications are explored specifically through ensuing enquiries, asking:

- What narratives does the ICTR provide of past sexual violence and what characterizes the Tribunal’s distinct articulations of such crimes? How can we explain its contributions?
- Are the ICTR narratives of sexual violence present or absent in Rwanda’s local ‘lieux de mémoire’? How can we explain this?

Through its enquiries, my thesis also seek to shed light on the ambitions of the ICTR as a storyteller, and the potential of legal bodies conveying narratives of the past.

Sources and Methodology

To answer my questions, I welcome the invitation to historians by professor Knut Kjeldstadli in applying a method that seeks to include ‘the whole toolbox’ – relying on a range of empirical data, triangulating primary sources, interviews and secondary literature. My primary sources were mostly gathered during a five-weeks stay in the Great Lakes in January-February 2016. In Rwanda, I studied genocide memorials, in Tanzania I visited UN’s Arusha office, which formerly accommodated the ICTR and now houses the Mechanism of the International Criminal Tribunals (MICT) and its Archives. I assess choices of sources, their representativeness and validity according to my research questions in the following.

Although a central subject in disciplines working with peace and conflict, few Norwegian scholars work specifically with Rwanda. The University of Oslo closed its Africa program in 2011, and the HL-Center has no current researchers working on Rwanda’s genocide. PRIO (Peace Research institute of Oslo) hosts only one ongoing

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42 The MICT Archives and Records Section in Arusha is digitalizing ICTR’s archives. The physical archives are under reconstruction gathering both ad-hoc Tribunal’s documents in a new compound. Although many trial documents are available online, some redacted transcripts and other filings are still not published. As such, spending one week in Arusha with access to the ICTR data system TRIM, as well as assistance from the library staff there was of good help.
Rwanda project. My initial source searching thus came about wading in somewhat solitary waters, although I consulted international and Norwegian researchers with experience from Rwandan fieldwork. The opening work relied on these discussions and secondary literature, finally initiating a dialogue with the MICT Archives.

To answer my first enquiry on ICTR contributions, my source focus is legal documents; judgments and transcripts from trials. Although having done a broad reading of judgments with convictions for sexual violence crimes, my analysis folds around illustrative examples: Of milestone verdicts, demonstrative accounts in judgments, and witness testimony. Norwegian historical methodology usually distinguishes between two ways in which a source is used – as “levning” or “beretning”. Although not as expressed in Anglo-American traditions, the distinction can be denoted as between remnants and narrative sources. Historian Ottar Dahl separates normative and cognitive sources, the former saying something about the author, the latter about factual accounts. While all sources can be used as remnants, saying something about their origins, only cognitive sources can tell us about factual events. Analyzing ICTR contributions, I thus assess these sources as remnants of the Tribunal’s version of the past, not as accounts of the past as such, asking; what do they tell us about ICTR’s portrayal of sexual violence? I use statistics from ICTR’s two decade long experience of prosecuting sexual violence as a navigator to find representative documents. I delineate the conviction rate as a measure of the overall contribution (how does it represent the scope and volume of sexual violence in Rwanda) before turning to the specific narratives of rape in judgment texts and trial proceedings (what characterizes their narratives of sexual violence). In a final evaluation of the Tribunal as a conscious storyteller, I also assess other tangible contributions, such as the preservation of Archives.

44 Importantly Sigrun Marie Moss, PhD in psychology, NTNU and Erin Mosely, doctoral candidate in History and African Studies, Harvard University. I also discussed potential prospects with Morten Bols and Randi Sollbjørg (NUPI).
45 Accessible through the MICT Archives. All transcripts are not yet filed online, some due to redacting processes, a few due to issues of sensitivity.
In answering what can explain ICTR contributions, I go behind judgment outcomes, adding a broader range of sources. I use transcripts as sources of the legal process, examining how collective memory contributions were shaped by the legal method.

Turning to the underlying historical process, I consult UN documents, resolutions and reports, interviews, and secondary literature. In contrast to the former use of sources as remnants, I view these as accounting for past events themselves – the ICTR process between 1994-2015.

The most time-consuming of this work has been getting in touch with interviewees. Key ICTR actors are in many ways the closest one gets to primary sources, as security issues and the sensitive nature of the Tribunal’s records, particularly those of the parties, render much information sealed from access. Non-judicial records as well as third party confidential information is restricted, large amounts of documents will be reviewed for opening within 50 or 20 years respectively. After a broad approach (many are international lawyers scattered around the globe), I succeeded in interviewing seven previous ICTR actors – by Skype, e-mail and in person. Nevertheless, my sources here are not comprehensive in terms of writing the ICTR history. I point to relevant impetuses affecting the sexual violence record, many discussed in previous literature, the explanatory model being multifaceted rather than providing single-outcome answers. Both contextual and legal factors found however provide important explicatory influences to my issue of interest, ICTR contributions to sexual violence memory.

Assessing my second broad enquiry, I turn to the Rwandan memory landscape, analyzing two expressions of national ‘lieux de mémoire’. These are 1) Rwanda’s six official genocide memorial sites, governed under the auspices of the Commission for the Fight Against Genocide (CNLG), and 2) the national remembrance website Kwibuka.

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49 Discussion on oral sources follows in subsequent section. See overview of interviewees in Sources.
50 Kjeldstadli, Fortida er ikke hva den en gang var: 256.
Although the six memorials can be seen as individual sites of memory, I evaluate them as one type of lieu de mémoire, sharing origins, functions, and overall presentation, as well as being chosen by the government as the official memorials. Two memorials are however part-funded by the British Aegis Trust, with implications discussed where relevant.52

This empirical assessment of Rwandan memorialization relies on observation and field-notes, of memorial displays and guides’ accounts. The sources are studied as remnants of the state’s portrayal of its genocidal past. The memorials and the website are also to some extent assessed ichonographically, as imagery and non-linguistic representations are taken into account.53 For the memorials, these include physical displays (corpses, bones, artifacts and structures), whilst in Kwibuka I refer to the webpage’s use of photography. What narratives are presented about the genocide? Do they include accounts of sexual violence? Specific sources are discussed more thoroughly in relevant sections. Where do they get us and what can’t they tell?

Limitations

The scope of a 30-credit master cannot undertake the aspirations of a PhD nor can it viably answer all possible questions arising from an ambitious outset. Both the interdisciplinary nature of my thesis as well as the many intervening issues overlapping its themes require a careful discussion on limitations. Two main points are made in terms of what I aim to accomplish and not with this project. The first relates to sources, the other to methods.

My research questions are confined by an essential lack of Rwandan sources. Although research on the genocide abound, access is increasingly hampered by Rwanda’s academic controls, including walls of bureaucracy and restraints on topics.54 I initially sought to add interviews with rape victims and ordinary Rwandans for a broader assessment of local memory. After months of bureaucratic bulwarks however, I ended my efforts to acquire a research permit when being requested to pay

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52 See Website. Accessed 04.05.2016. URL: [www.aegistrust.org](http://www.aegistrust.org)
54 Strauss and Waldorf’s anthology expresses among other human rights concerns the concern of academic freedom in Rwanda. See Kenneth Roth, “Alison des Forges: Remembering a Human Rights Hero” in *Remaking Rwanda*, eds. Strauss and Waldorf: xxv.
a supervisor I had not asked for. Albeit a subjective experience, it resonates with the general image of restrictions on academic freedoms in the country.\textsuperscript{55} My Rwandan primary sources are consequently restricted to official sites of memory. Furthermore, I do not claim they reflect a single ‘national’ memory of genocide. Such a claim is anyhow illusive, given the fact that it would entail having to analyze all possible sites of memory influencing the population.\textsuperscript{56} As historian Jay Winter notes, collective memory should not imply the existence of “one national ‘theatre of memory’, which we all inhabit.”\textsuperscript{57} There are always multiple collective memories at work in any given context. Moreover, with the massive dispersion of violence in 1994, the country is full of non-official memorials, hundreds, “perhaps thousands, of spatial structures devoted to the commemoration of those murdered in the genocide.”\textsuperscript{58} Consequently, my aim is to analyze the official depiction of memory – as represented by the regime. The sites of memory chosen nevertheless form part of a local memory landscape, being both expressions of and constitutive elements shaping national memories.

Regarding my interviews, source criticism is also needed. The elusiveness of oral sources is well known, concerns relating both to fading memory and hindsight understandings.\textsuperscript{59} My use of interviews bears this in mind, also taking into account biases. One would for instance expect that those still within the UN system lean towards being positive on the Tribunal’s behalf as well as downplaying contentious issues. I thus strive to corroborate their information with other sources.

Cautiousness is further made regarding secondary literature. Scholarship both on Rwanda and ICTR is polarized. Where some accounts of the regime praise its economic progress and peaceful transition, others bear a strong critical inclination to the government. Literature on ICTR’s sexual violence record often carries feminist criticism. My study is of course not unaffected by such preceding work, owing much to findings born by others. Aware of preconceptions however, I hope to overcome the

\begin{footnotesize}
\begin{footnote}{My contacts warned about Rwandan fieldwork difficulties. However, they had been able to conduct several studies there. As PhD candidates though, they had both more resources and time to spend.}
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\begin{footnote}{These include everything from media, commemorations, memorial sites, personal, family and group recollections, official legislation, documents, local authorities, foreign influences and the list goes on.}
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\begin{footnote}{Jay Winter, \textit{Remembering War: The Great War Between Memory and History in The Twentieth Century} (London: Yale University Press, 2006): 185.}
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\begin{footnote}{Kjeldstadli, \textit{Fortida er ikke hva den en gang var}: 195-196.}
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\end{footnotesize}
most intense biases. By taking into account a broad range of available sources, this thesis strives to surpass simple one-factor explanations, appreciating the historian’s advantage of comprehensiveness.

A second constraint concerns methods, as memory inhabits theoretical debates and pitfalls. According to Bill Schwarz and Susannah Radstone, scholars with particular interest in memory studies, these are still characterized by an “unfinished epistemological organization.”\(^6^0\) Thus, limitations are set. Chapter 2 demarcates this thesis’ understanding of collective memory. In particular, I do not imply with my sources being able to uncover a causal path between ICTR contributions and Rwandan lieux de mémoire. That does not mean one cannot point to interesting associations. Should the ICTR or its narratives of rape be mentioned systematically in the memorials, this is a good indication the ICTR has made a mark. Is it on the other hand not present at all, neither with its narratives of sexual violence nor as a post-conflict actor, this indicates a lack of impact. Using a methodology that compares two expressions of Rwandan ‘sites of memory’, I extend the validity of such findings.\(^6^1\)

What else falls outside the capacity of my thesis? Limitations are drawn both at the historical origins and repercussions of ICTR’s sexual violence prosecution. Although important and interesting, this thesis’ scope does not allow for a thorough background on foundations in international criminal justice before the 1990’s, such as those of the Nuremberg and Tokyo Tribunals. The critical history of the international feminist movement up until our time of interest also falls outside its capacity, as does ICTR’s legacy in terms of influencing the International Criminal Court. I neither have space to contrast the ICTR with other transitional justice mechanisms such as truth commissions or the Rwandan system of gacaca.\(^6^2\)

A last potential limitation relates to me being a student of conflict history approaching an intrinsically legal field. In their article “Historikeres fortellinger om

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\(^{61}\) In political science this method would be a variation of Most Similar Systems Design. John Gerring, Case Study Research: Principles and Practices (Cambridge: Cambridge University Press). 90.

\(^{62}\) Gacaca is the name of the national community-based justice process in Rwanda between 2001-2012. The gacaca courts were tradition-based grass-root genocide trials conducted in local communities.
juss,” human rights scholar Anine Kierulf and sociology professor Rune Slagstad critique what they call “historians’ distance to juridical realities.” Illustrated with *Siste ord, om Høyesterett i norsk historie 1815–1965*, they argue this challenges historical understandings of courts. Although striving to engage with essentially legal bases, I cannot guarantee that my study – being only intermittently educated in international law – does not fall short of the same *distance* if read with a jurist’s lens. Here, my interest is however that of the historian. Quoting Norwegian historian Erling Sandmo: “Legal history shapes justice. Other histories may be decisive in other contexts. We should seek them out and study them, as historians of the present: They are history in practice.” Rather than as abstract set of rules resting on themselves, my project seeks to view ICTR’s memory contributions as representations and wills by and of concrete individuals in concrete situations – involved in a social process as agents of memory.

**Structure**

The thesis tackles its research questions in the following manner: *Chapter 2* is a theory and background chapter, elaborating this study’s understanding of collective memory. It also makes the case for international courts as particularly authorized storytellers, and presents Rwanda and sexual violence as critical research objects.

*Chapters 3 and 4* are empirical. The first delineate ICTR contributions to sexual violence memory, and traces the historical process that shaped them, drawing on events, actors and contextual factors. It also assesses the contributions’ distinct legal origins. The focus shifts to Rwanda in *Chapter 4*, where I study Rwandan sites of memory. These are first assessed against the background of Rwandan memory politics, before I analyze their presence (and absence) of ICTR contributions.

In *Chapter 5*, I elaborate on the Tribunal as a conscious storyteller of the past, and reflect on law’s aims and general potential wielding its ‘authority to tell’.

*Chapter 6* recapitulates my empirical findings and their implications, and points to further research.

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Chapter 2: Theory and Background

“Prior to the Eichmann Trial”, writes Shoshana Felman – “what we call the Holocaust did not exist as a collective story.” The literature professor claims that the 1961 trial has become pivotal to our common understanding of the genocide against the Jews; That our present-day notion of the mass killing of 6 million people, our memory of the facts, would not be the same had it not been for a post-event trial that ‘set the record straight’. Taking such claims of narration seriously, places a heavy burden on legal institutions handling large-scale atrocity. This background chapter takes a closer look at the modern academic interest in social construction of memory, and puts forth my understanding of collective memory as a useful concept. Finally, it makes the case for sexual violence and Rwanda as particularly interesting research subjects.

The ‘Memory Boom’

There has been an intensified attraction and interest in the phenomena of memory over the past two decades. But what does the concept collective memory really entail? In invoking the concept there is a need to first assess its origins and place in contemporary academic scholarship.

Andreas Huyssen, literature professor at Colombia University, claimed as early as 1995 that we suffer from ‘memory fever’ in modern culture. In contrast to what Friedrich Nietzsche named the ‘historical fever’ of his generation – he argues that the modern-day world has a widespread will to remember. There is a need, he says, for “anchoring space in a world of puzzling and often threatening heterogeneity, non-synchronicity and information overload.” The sway of memory has stimulated disciplines from social science to the humanities. Notwithstanding its enmeshment in the broad academic cultural or linguistic turn, memory studies is now a field of its own, with several journals devoted to it. Globalization, trauma studies and studies of

66 See Henry, War and rape: 10 and Finney “The Ubiquitous Presence of the Past”: 446
68 Huyssen, Twilight Memories: 7.
69 See Memory Studies by Sage Publication, and History and Memory by Indiana University Press.
transitional justice are common explanations for this academic interest. Historian Jay Winter, writing especially on war-victims and remembrance of war, has coined the phenomenon a ‘memory boom’, saying that just as we “use words like love and hate without ever knowing their full or shared significance, so are we bound to go on using the term ‘memory’, the historical signature of our generation.”

Notwithstanding its popularity, the concept of memory has many opponents. As fragile and fragmented as individual memory itself, collective memory cannot be empirically measured or validated, and the study of memory raises a number of methodological challenges. What is it, where is it, and how does it matter? One typical criticism is that it is sometimes used so broadly that it could constitute both culture and identity, or that it can only be used metaphorically, having “the advantage of being a vivid and illustrative description, but as an explanatory tool it is useless and even misleading.” Not begging approval from scholars more prone to realist assumptions or quantitative proof, proponents argue that one should not dismiss the concept for its challenges.

International historian Patrick Finney points to certain research areas where traditional methods become difficult. His chief example is that of inter- and transnational processes. The argument, well known for those experienced defending the ‘culturalist turn’, is that invoking collective memory does not entail denying interests, but to examine how interests are historically and ideologically constructed.

Understanding international memory agents, he says; “is clearly a significant part of the fabric of contemporary international politics with which future international historians will have to reckon.” Despite the questions raised, my thesis thus supports that collective memory is useful for thinking through ICTR narratives about the past.

**Narratives of the Past in the Present**

My understanding of collective memory bears Winter’s assertion that “[It] makes no sense to juxtapose history and memory as adversial and separate concepts.” He sees

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72 In Henry, *War and Rape*: 17.
73 Radstone and Schwarz, eds., *Memory: Histories, Theories, Debates*.
74 Finney, “The Ubiquitous Presence of the Past?”. 452.
75 Ibid. 463.
memory as discourses that exist alongside and in dialogue with historical accounts, and suggests *historical remembrance* as an analytical category enabling us to understand better the relationship between the two, defining the space between history and memory as a ‘field force’ where we give meaning to the past. Although I shall stick to the term collective memory when assessing ICTR’s contributions, it is discourses of historical remembrance that I am looking for – simply said; *narratives* of experiences of past sexual violence.

Rather than arguing that ICTR contributions has entered a collective memory now pertaining to a particular group, this thesis looks at narratives provided by its process, and defines collective memory as: *narratives of the past that takes place in the present.* ICTR contributions are seen as narratives conveyed by the Tribunal to the large pool of accounts available to communities seeking to remember the genocide. Studying its contributions to the collective memory of sexual violence thus implies looking for narratives of past sexual violence as presented by the ICTR.

I examine narratives in; 1) the Tribunal’s overall conviction rate and milestone verdicts (how do these narrate sexual violence during the genocide); 2) judgment texts (how do judgments articulate individual experiences of sexual violence) and 3) trial transcripts (what testimonies are constructed into narratives by trial).

In literature discussing collective memory, the word history is sometimes used interchangeably to denote any ‘narrative’ of the past. For example, Richard Ashby Wilson studies courts as ‘writers of history’. Although leaning on the acknowledgment that the past is accounted for also outside academia, this thesis terms ‘history’ as the systematic *academic* documentation of the past, and collective memory contributions as other memory agents’ narratives of past events.

**International Courts: Storytellers with Authority**

“Tout peut devenir lieu de mémoire, tout événement grand ou petit, tout objet matériel ou symbolique, mais à condition d’être l’objet d’une projection de sens.”

- Pierre Nora

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77 Henry has a similar definition, although merely using the concept as a heuristic device: 17.

78 Wilson, *Writing History in International Criminal Trials*.

According to Nora, everything can become a site of memory as long it conveys meaning about the past. Thus, while collective memory is the *what*, lieux de mémoire become the *where* in this project. As an agent of memory, courts have particular prerogatives creating such lieux de mémoire. Law’s normative expressions become a means of acquiring legitimacy for particular narratives, where court decisions “impose a normative judgment on the past, appearing to bring moral clarity to the disoriented world,” helps to establish ‘facts’ in an authoritative way, thus acting “as a means by which a difficult past is rationalized and mastered,” writes law scholar Stiina Loytomaki.\(^80\) Trials as such formalize and legitimize narratives of the past in distinct ways. As memory agents then, legal actors are consequently unique. In contrast to an historian, a nation-state or a filmmaker, law is authorized to pass lasting judgment on history itself.

Assessing the ICTR thus opens important queries regarding legal storytelling. Law is on the one hand authorized to cement stories about the past for posterity. Yet law’s process is also a space for contesting perspectives.\(^81\) What sort of stories do its sites of memory convey? How are their narratives brought about? What consequences does legal storytelling have for victim groups seeking recognition? My thesis’ assessment of ICTR narratives and their origins seeks to shed light on such aspects, posing essential questions on the role of international courts as authorized storytellers.

### Why Sexual Violence, Why Rwanda?

The historiography of war and conflict as well as the history of international justice has traditionally often omitted women’s experiences. As Henry notes in her study of war and rape, “the history of warfare is a history of masculinity.”\(^82\) Comparably, gender has also been overlooked in the field of memory studies, and there is a *gender gap* in key studies on collective memory.\(^83\) However, as victims increasingly take stage in ‘theaters of memory’ such as trials, women become central: “If initially the

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\(^80\) Loytomaki, “Law and Memory”. 3, 18.
\(^81\) Ibid. 19.
\(^82\) Henry, *War and Rape*: 20. See also UN Doc. A/HRC/25/59, 9. August 2013, para. 31 on marginalization of women in in history books. The field of women’s history has improved this tendency, although radical approaches such as making history ‘her story’ never altered the general course of war history. See Kjeldstadli, *Fortida er ikke hva den en gang var*: 97.
memory boom focused on serving or fallen men, it no longer does,” Jay Winter writes.⁸⁴ Thus, when ICTR set out to prosecute sexual violence in the 1990s, it created a legal space for women’s accounts quite revolutionary in the history of international justice.⁸⁵ In Michel Foucault’s words, it created a space for ‘counter-memories’ of war.⁸⁶ Through looking specifically at this part of the Rwandan past as conveyed by the ICTR, I thus add to the discussion the challenge of preserving, constructing and transmitting the memory of a traditionally ignored group; women. I seek not only to assess the way the ICTR as an international legal body conveys the past, but if and how it aids particular conflict experiences of women to break through to the present.

Now, why Rwanda? Choosing the case of Rwanda provides an opportunity of studying the relationship between memory and state-building previously highlighted in works on nationalism and Anderson’s famous imagined communities.⁸⁷ How powerful are internationally constructed collective memories in the face of a post-conflict memory landscape intensely conscious of the past?

Although Winter warns against a perspective where collective memory collapses into “a set of stories formed by or about the state,”⁸⁸ memory in Rwanda is intrinsically linked to state-building. As distortion of history largely enabled the genocide, plotting Hutu against Tutsi, the post-1994 RPF (Rwandan Patriotic Front) regime has not risked taking memory for granted. Rather, President Paul Kagame’s politics are enmeshed with concerns of history and memory. Although the literature differs in evaluating the regime’s motivations – this is no doubt a polarized field of study⁸⁹ – current scholars writing about post-conflict Rwanda place memory at the core of state affairs. In Remaking Rwanda, political scientist Scott Strauss and human rights scholar Lars Waldorf has gathered interdisciplinary scholarship in a critical assertion of the regime. One of its core arguments deals with the way the government has socially engineered a state around the past, ‘instrumentalizing’ memory.

⁸⁴ Winter, Remembering War: 6.
⁸⁵ Ibid and Skjelsbæk, The Political Psychology of War Rape.
⁸⁹ Listen i.e. to Monocle’s Foreign Desk podcast “Rwanda’s Paul Kagame”, Ep. 86, 29. August 2015, URL: https://monocle.com/radio/shows/the-foreign-desk/86/. Highlights how commentators are extremely polarized in terms of regarding RPF’s politics as essentially autocratic/manipulative or working for a reconciled Rwanda.
Whenever the RPF feels a need to “reassert its legitimacy, justify a particular policy, or defend itself against criticism, it raises the specter of genocide,” they write. Waldo particularly points to the regime’s campaign against so-called ‘genocide denial’. In 2003, it passed a new constitution, which criminalized such vaguely defined “negationism”, followed up with several laws against expressing ‘genocide ideology.’ The message sent through these policies, is not only a legitimate fear of hate-speech or revisionism, but that the government has defined the margins of history and memory as such. Entangled in the same line of policies, is also a Rwandan ‘ethnic amnesia’, the state’s constitutional eradication of “ethnic, regional and other divisions.” Law scholar Stef Vandeginste calls the ethnic abolition a state ideology, under which ethnicity is reduced to a divisive colonial construct. Both through president Kagame’s assertion “[W]e are all Rwandans” and the National Unity and Reconciliation Commission (NURC), the narrative of Rwandans as historically unified has become a political belief system, he holds. Memory politics also affect education. Berkeley scholar Harvey M. Weinstein and others conclude that they inhibit democratic history teaching: “The danger remains that the party power, if unopposed, will create a history that structures a civic identity in its own image,” they write. Although youth gather in so-called ‘solidarity camps’ and remembrance.

90 Strauss and Waldorf, *Remaking Rwanda.*
93 Andrea Dooley, “‘We Are All Rwandans’: Repatriation, National Identity, and the Plight of Rwanda’s Transferred Children”, *Journal of Human Rights* 12, no.3 (2013).
programs, victims are mourned, but school history teaching is not implemented. The government has also embarked a vigorous memorialization policy, increasingly controlling memorials after the 2007 establishment of the CNLG. International relations scholar Jens Meierhenrich holds that the effects of politicized memorials are one of the most remarkable but poorly researched developments in post-genocide Rwanda. What do these policies mean for ICTR’s potential influence? Can externally constructed narratives compete in this memory landscape?

Notwithstanding its specific characteristics, Rwanda has important similarities with other post-conflict states on features such as social and psychological devastation, international aid and state-building. Strauss and Waldorf thus view the country as a critical case, saying analyses of post-conflict Rwanda “has bearing on understanding post-conflict reconstruction more generally.” Considering the centrality of memory in post-conflict contexts, Rwanda is thus a highly illustrative case that can have bearing also on other cases where international legal bodies are involved.

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99 Meierhenrich, “Topographies of Remembering and Forgetting”.

Chapter 3: ICTR’s Memory Contributions

In an address to the Security Council in December 2015, ICTR President Vagn Joensen gave his final Tribunal statement before the UN: “As I stand before you today (...) it is hard not to reflect on the legacy of the Tribunal and what it will leave behind for posterity.” At the core of this legacy, he placed sexual violence:

“[t]he Tribunal has issued many novel judgments that have significantly impacted the evolution of international law, including the first conviction for rape and sexual violence as a form of genocide (...) [b]y strengthening the jurisprudence on sexual violence crimes (...), the ICTR has issued judgments that serve as powerful deterrents to those committing similar crimes in the future.”

Achievements in prosecuting sexual violence have become a prime element of the established legacy of the court as a whole. These legal developments are denoted “revolutionary in history”, the decisions “groundbreaking”, and the ICTR record a “testament to the sexual violence that pervaded Rwanda in 1994.” However, the process has also received criticism for paying too little attention to sexual violence crimes overall. This chapter asks what the Tribunal offers collective memory of sexual violence: What narratives does the ICTR provide of past sexual violence and what characterizes its articulations of rape? How can we explain its contributions?

An examination of legal institutions’ contributions to collective memory can be made along several dimensions. According to Nicola Henry, one can study representations and articulations of atrocity and how legal institutions “interpret, transmit, distort or

undermine individual memories.” Essentially, what we are interested in is how the Tribunal collects and filters evidence and establishes its version of the past. How does it aid us in remembering, and how does it help us forget? I divide my empirical assessment of ICTR’s contributions into three subsequent parts.

First, I provide a brief overview of the ICTR’s general history of prosecuting sexual violence. Second, I assess its contributions to collective memory, exploring narratives of wartime rape arising from its work. This part looks both at the overall conviction rate, milestone verdicts, as well as particular articulations of sexual violence experiences in judgment texts and trial proceedings. The third part of the chapter traces the contributions to historical, social and political origins of the institution, as well as the distinct legal bases of its work.

A ‘Mixed’ Record of Sexual Violence Prosecution

In July 1994, as Rwanda experienced its last trembles of genocide, a South-African judge named Richard J. Goldstone was appointed by the UNSC to serve as the first Chief Prosecutor at the Yugoslavia Tribunal (ICTY). Arriving at The Hague in August, he still had three months left until its sister-court ICTR – of which he would also become Chief Prosecutor – even existed. In The Hague however, crucial first steps to initiate what he has later called “a distinct shift in mindset” at the Tribunals regarding rape as an international crime, had already been tread. Several such steps constituting what one could call a ‘gender momentum’ stipulated the early foundations of ICTR’s sexual violence prosecution.

By 1994, the international community had become well aware of the immensity of gender crimes in the war in the former Yugoslavia, and both the Secretary General and the Security Council were giving specific attention to gender-related matters. In early resolutions leading to the ICTY establishment, we find the first condemnations

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105 Henry, War and Rape: 100-101.
106 Wilson, Writing History in International Criminal Trials: 16.
ever by the UNSC of rape in war.\textsuperscript{109} A Secretary General’s report went on to advise that in light of this knowledge, consideration should be given to appoint qualified women in the Office of the Prosecutor (OTP).\textsuperscript{110} Early UN reactions toward sexual violence were thus key elements in the provisions establishing the Tribunals, their mandates showing an unprecedented awareness to gender crimes. In contrast to previous international tribunals, their Statutes specifically enumerated rape as a war crime and crime against humanity.\textsuperscript{111} Also, the Rules of Procedure included the first international prosecutorial rule (Rule 96) to govern rape evidence, directing that corroboration of rape victims’ testimony is not a requisite, and that consent is not valid defense.\textsuperscript{112} The Tribunals’ former gender advisor Patricia Sellers stated in a 2009 speech that:

\begin{quote}
“Prior to the passage of national domestic rape shield laws analogous to Rule 96, rape survivors had to rely upon rape kits. They had to make sure that their skirt hems came down to their knees. A victim almost had to make sure that a police complaint was registered within 10.9 seconds of the ejaculation.”\textsuperscript{113}
\end{quote}

Consequently, observers were hopeful in terms of the Tribunals’ capability to prosecute gender crimes. Women’s and human rights organizations worldwide alerted the Prosecutor to the concern of “thousands of women in dozens of countries.” According to Goldstone himself, he was “inundated with letters and petitions” imploping the OTP to give adequate attention to sexual violence:

\begin{quote}
“The letters had been individually written - they were not simply standard form letters or
\end{quote}


\textsuperscript{111} Rape is included in the Statutes both as a Crime Against Humanity (Art. 3) and as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II (Art. 4). See ICTR founding resolution and first Statute, UN doc. S/RES/955 8. November 1994. The Military Tribunals of Nuremberg and Tokyo conducted trials that included references to rape in context of war crimes. However, rape was not recognized as an independent crime. Rather, acts of rape were viewed by the belligerents as spoils of war. See Henry, War and Rape: Chapter 3.


petitions. Many people, and particularly women, had taken the trouble to put in their own words, sometimes in broken English, their concern about rape either being ignored once again or not receiving adequate attention from the Tribunal.”

As a consequence, he appointed the mentioned American lawyer Patricia Sellers as OTP’s Legal Advisor for gender crimes. Later receiving praise as an essential actor pushing for a gender agenda in both Tribunals in the late 1990s, Sellers herself points to the effect of those pushing from the outside, particularly in the case of the ICTR, saying: “[T]he support of the international feminist movement in terms of looking at the Rwandan genocide cannot be understated.” Goldstone issued his first indictment focusing exclusively on sexual assault in 1996. That however, was in the ICTY process. In Arusha, the initial OTP work did not seemingly take advantage of the ‘gender momentum’. In its initial indictment of 1997, the now famous Akayesu case did not include sexual violence charges.

Former ICTR Appeals Counsel Linda Bianchi claims the “ICTR history is somewhat storied” in relation to its sexual violence prosecution. The most prominent feature of this ‘story’ in international law scholarship relates to the Akayesu Trial. Although court documents only grant glimpses of what happened, insiders’ accounts and reports have added to the knowledge of its course of events.

Initially, although Akayesu was not charged with sexual violence crimes, a few witnesses changed the course of the trial. Witness J, a Tutsi woman, spontaneously mentioned during her testimony how three Interahamwe raped her.

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114 Goldstone, “Prosecuting rape as a warcrime”. 277.
115 Goldstone states: “the diligence of Patricia Sellers and others in the Office of the Prosecutor, contributed to the significant progress that the Tribunals have made in their recognition and prosecution of gender crimes,” ibid: 277. See also intro. to Sellers, “Gender Strategy is Not Luxury”.
116 Interview with Patricia Sellers, Brussels/Oslo 10. February 2016. Points in particular to Binaifer Nowrojee’s “Shattered lives”; Rakyia Omaar and Alex De Waal, Rwanda: death, despair and defiance. (London: African Rights, 1995), and Rwandan survivor groups such as AVEGA.
120 A movie about Akayesu is even to be screened this year; according to the filmmakers – with unheard stories from involved actors. See The Guardian, “The Uncondemned: the heartbreaking story behind the first conviction of rape as a war crime,” 9. October 2015. URL: http://www.theguardian.com/film/2015/oct/09/rwanda-genocide-documentary-uncondemned-filmmaker-death
daughter, and Witness H testified to having being raped in a sorghum field. Both referred to Akayesu's tacit support for the commission of the crimes.\textsuperscript{121} The only female judge on the bench, Navanethem Pillay, subsequently allowed the Prosecution to go back and amend the indictment in line with their testimony. These actions, combined with an amicus brief from the Coalition for Women's Human Rights in Conflict Situations – resulted in a postponement of the trial.\textsuperscript{122} According to former OTP Legal Advisor Thembile Segoete, the Prosecution, not having investigated rape crimes, was “surprised and shocked” by the unprompted testimonies.\textsuperscript{123} Failing to charge sexual violence, the Prosecution had revealed shortcomings. However, evidence was subsequently gathered, and in 1998 Akayesu was convicted for a range of sexual violence crimes, placing rape in the limelight of ICTR’s process. Observers note however, that without the witnesses’ own initiative to speak up, “the existence of sexual violence in Taba Commune may never have made it into the formal record.”\textsuperscript{124}

In the period that followed however, critique rather than hope rose as a result of the ICTR process. Although scholars and human rights observers concurred that the Akayesu Judgment was a first step in breaking down the international legal community’s ambivalence toward sexual violence as an international crime, keeping up with the promise of the verdict was not an easy task.\textsuperscript{125} By the end of 2005, over a decade after ICTR’s foundation, only four accused had been convicted for charges of some kind of sexual violence crime at the Tribunal.\textsuperscript{126} The external criticism that this provoked paralleled a general critique of the slow pace of the ICTR’s conduct at the time, but was nevertheless distinct. Some scholars and human rights activists now viewed the Akayesu advance “as a glass half-empty rather than half-full.”\textsuperscript{127} Binaifer

\begin{footnotes}
\item[121] Akayesu Trial Judgment 1.4.1 “Procedural Baclground”. See also Henry, \textit{War and Rape}: 93.
\item[122] Goldstone, “Prosecuting rape as a warcrime”. 282.
\item[123] Interview with Thembile M. Segoete, former Legal Advisor to the Deputy Prosecutor, Arusha 26. January 2016. See also Goldstone and Henry.
\item[125] Reactions in Odora, “Rape and Sexual Violence in International Law”. 137 and Gardam and Jarvis, \textit{Women, Armed Conflict and International Law}: 214.
\item[127] Odora, “Rape and Sexual Violence in international Law”. 138.
\end{footnotes}
Nowrojee gained particular attention in this respect. She had been the author of the seminal Human Rights Watch report *Shattered Lives*, that along with the Special Rapporteur’s Report first put sexual violence in Rwanda on the international agenda.\(^{128}\) In 2005, having followed the ICTR both as observer and expert witness, she released a crushing article about its ongoing process. From the perspective of rape survivors, she denounced what she called “squandered opportunities”:

“[t]he United Nations has managed to transpose some of the same crushing limitations and biases that rape victims encounter in their national jurisdictions to the international legal system it administers (…) are these international judgments really for the survivors of war and genocide, or are they for some more lofty, albeit important, cause of “international justice”?\(^{129}\)

She assessed concerns regarding investigation methods as well as the conviction rate. Not only did the report increase public awareness of the process, it also pressured the OTP. Today, the at the time recently appointed Chief Prosecutor Hassan Jallow comments: “We needed to do something. Civil society actors, like Binaifer Nowrojee, were quite critical of us. And I think that they had good reason to be.”\(^{130}\)

In 2007, he set up a committee to review the OTP’s sexual violence record, resulting in a 2014 “Best Practices Manual”.\(^{131}\) After Nowrojee’s 2005 report however, it took three more years before ICTR’s next successful sexual violence conviction,\(^{132}\) and as all indictments were completed by 2005, any new push for action could not change the course of miscarriage substantially.

By the time the ICTR closed down, two decades of trials had resulted in only *twelve* sexual violence convictions upheld on appeal.\(^{133}\) Among those convictions however, were pioneering verdicts. What does this ‘mixed record’ of prosecution offer collective memory of sexual violence?


\(^{129}\) Binaifer Nowrojee, “Your Justice is Too Slow”: Will the ICTR Fail Rwanda's Rape Victims?” (UN RISD, 2005). 26.

\(^{130}\) Interview with Hassan B. Jallow, Arusha, 27. January 2016.


Collective Memory Contributions

30. January 2014, the ICTR Office of the Prosecutor (OTP) released its “Best Practices Manual”, evaluating their overall work on sexual violence crimes. The 82 page long report optimistically commences:

“[T]hese prosecutions have significantly contributed to the development of international criminal and humanitarian law through landmark decisions where rape and other forms of sexual violence were defined and recognized as acts of genocide, crimes against humanity, and war crimes.”134

Mirroring the foregoing section’s overview however, it concludes that after two decades of trials the OTP has at best provided a ‘mixed record’.135 What narratives arose from the process? The overall conviction rate and notable milestone verdicts are assessed first.

Conviction Rate and Milestone Verdicts

Out of a total of 93 indicted, 52 accused were charged with some kind of sexual violence crime, out of which 43 finally proceeded to trial in Arusha.136 However, out of these, only twelve accusations ended in conviction for sexual violence crimes.137 Neither the number of indictments or convictions reflects the reported occurrence of sexual violence. The OTP only managed to gather sufficient evidence to indict in half of the cases, and the final conviction rate is under 28 percent. This number is far from impressive given the massive documentation of sexual violence during the genocide. As admitted by Jallow;

“The report on the genocide by the Special Rapporteur had indicated that a quarter million women had been subjected to sexual violence. Now if you related that figure to the number of successful convictions, it seemed like a very, almost miniscule number” .138

135 Ibid, para. 12.
136 The remaining nine include seven who were referred to trial in Rwanda and France, of which four were fugitives. Two other fugitive cases are transferred to the MICT.
137 “Best Practices Manual,” para 11. In 2014, several of these had appeals pending. 23 accused were acquitted, including one with pending appeal in 2014. Of the remaining, one accused died, and in six cases, rape charges were dropped after pleas or indictment amendments.

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If we regard the number of convictions as an overall narrative of past atrocity, a birdseye image of sexual violence during the Rwandan genocide, it serves a poor reminder of the gender violence that occurred. The story told through this parameter is that sexual violence happened, but not that it was as integral to the genocide as reports showed. However, the conviction rate, albeit important, is a meager measure when wanting to delineate the collective memory contributions provided by the Tribunal. As interesting is what is found within the judgments passed.

A court’s “final historical montage”, writes anthropologist Nigel Eltringham, is its judgment.\(^\text{139}\) What do ICTR judgments tell us about wartime rape during the genocide? I shall first assess the most important jurisprudential verdicts the Tribunal’s process promulgated. What narratives do they convey of wartime rape?

As signposted from the start of this thesis, the spearhead of the ICTR is the 1998 Akayesu Trial Judgment. The case against Jean-Paul Akayesu was groundbreaking in several ways. For one, it provided the first international definition of sexual violence; encompassing Rule 96 that make consent irrelevant as defense in such acts committed in the nexus of genocide\(^\text{140}\):

“a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.”\(^\text{141}\)

Confirmed on appeal in 2001, it was the first genocide conviction since the adoption of the Genocide Convention in 1948, and the first asserting that rape could constitute genocide. It states: “Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.”\(^\text{142}\)

Another landmark is the 2012 Karemera Judgment. In this high-level case, two accused, an interim government minister and party leader, were held accountable for rapes perpetrated throughout Rwanda during the genocide, albeit not personally

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\(^\text{139}\) Nigel Eltringham, “‘We are not a truth commission”: fragmented narratives and the historical record at the International Criminal Tribunal for Rwanda” Journal of Genocide Research 11, no.1 (2009): 66.


\(^\text{141}\) Akayesu Trial Judgment, para 598.

\(^\text{142}\) Ibid, para. 731.
being involved in rapes. The chamber convicted them as members of an extended form of joint criminal enterprise (JCE) for rapes committed which “were the natural and foreseeable consequence of the common plan to destroy the Tutsis.” Charging superiors for rape through this mechanism was an innovation in international criminal law.  

Additional cases have also received attention from legal scholars, such as the Gacumbitsi case, in ending a controversy over the legal issue of consent.

Second to Akayesu however, there is only one rape trial that has received a comparable amount of public interest. The fact that it was the last judgment to be passed by the Tribunal – its appeal verdicts delivered in December 2015 after a longue durée of 17 years of trial – might have influenced that interest. But the Nyiramasuhuko et. al. case also gained attention from the general public because it was the first to charge and convict a female perpetrator for genocide and sexual violence. The trial judgment holds that family affairs and women’s development minister Pauline Nyiramasuhuko ordered Interahamwe “to rape Tutsis at the Butare préfecture office, and bears responsibility as a superior for their rapes. The Chamber therefore finds her guilty of rape as a crime against humanity.” It also found her guilty of rape as “outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.” Nyiramasuhuko’s case drew “particular interest because she is the only woman the tribunal has tried”, wrote the New York Times.

Now, what can be delineated as collective memory contributions arising from all these milestone verdicts?

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On the one hand they provide important steps in terms of developing international jurisprudence on rape, confirming sexual violence both as a war crime, a crime against humanity and an element of genocide. Furthermore, they not only tell a story of sexual violence occurrence, but that top-leaders, even a female, used rape strategically as a tool of war, instructing soldiers and guerrillas to target women specifically. Moreover, they provide a more general story placing sexual violence at the core of the Rwandan genocidal past. Henry holds that the verdicts also contributed to a “reconceptualization of wartime violence beyond the legal realm.” She asserts that the Akayesu decision has shaped the collective memory of wartime rape having contributed to an “entire political discourse surrounding the ever controversial subject matter of genocide, and of genocidal rape.”

Not able to substantiate that it has shaped a given collective memory outside the legal realm, I hold that the judgments’ narratives serve as contributions to collective memory, narrating sexual violence as a distinct element of war and genocide, stating that rape victims are not just – to quote Brownmiller – regrettable victims of war.

The following goes behind the conviction rate and milestone verdicts and assesses the nature of particular accounts. What characterizes narratives within judgment texts – ICTR’s individual articulations of rape and sexual violence?

**Narratives in Judgment Texts**

The judgment, the legal outcome, is our guide to legal *truth*, where judges account for factual findings proved through trial. Although the scope of this thesis does not allow for an exhaustive elaboration on all sexual violence judgments, I draw on characteristics that illustrate what, paraphrasing Henry, could be called ICTR’s ‘filtered legal version’ of the past. What space does it give individual rape accounts?

In cases where sexual violence was prosecuted, narration of the circumstances takes up large parts of the judgment text. A noteworthy feature of the Tribunal is that it was quite lenient compared to national courts when it came to giving space for narration; “allowing for greater leeway for the parties to introduce historical and background evidence.”

Former ICTR President Erik Møse corroborates with the view that Trial

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149 Henry, *War and Rape*: 96.
150 Wilson, *Writing History in International Criminal Trials*: 14.
Chambers of the Tribunal adopted a liberal approach to the admission of evidence. Instead of ruling on the inadmissibility of disputed evidence the material was allowed into the record, it being understood that its weight would be decided in connection with the writing of the judgment. Some trial judgments contain sections which are clearly of historical interest: “If you read the Military I judgment about the minute to minute meetings after Habyarimana’s plane was shot down – it is almost like reading a criminal novel,” he comments.  

Rape accounts in judgments range from testimonies by rape victims, evidence rendered from gender experts, historians, and from witnesses. As such, in the Akayesu Trial Judgment, a 191-page document, the word ‘rape’ is articulated over 250 times. In the Nyiramasuhuko Trial Judgment, constituting over 1500 pages, it occurs 579 times. Despite the presence of sexual violence references however, as legal texts, the narratives are distinct.

Commonly, many rape references are sober and emotionless, far from similar to a ‘criminal novel’. In the Nyiramasuhuko Appeal Judgment we read:

“The Trial Chamber found that Witness TA was raped by Ntahobali and about eight other Interahamwe during the Mid-May Attack, “violently raped” by Ntahobali during the First Attack of the Last Half of May Attacks, raped by about seven Interahamwe during the Second Attack of the Last Half of May Attacks, and raped by about seven Interahamwe during one of the First Half of June Attacks”.

Recurring modes of accounts in judgments refer to testimony in third person, as in this example from Akayesu:

“She was raped twice by one man. Then another man came to where she was lying and he also raped her. A third man then raped her, she said, at which point she described herself as feeling near dead. (...) Witness JJ related to the Chamber the experience of finding her sister before she died, having been raped and cut with a machete”.

These are of course illustrative glimpses of a vast collection of judgment texts dealing with sexual violence. Although mostly soberly articulated, some judgments’ rape

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151 Interview with Erik Møse, Oslo, 11. December 2015. In this extensive trial, which lasted for 408 days, 242 witnesses testified, and 1600 exhibits were presented. The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Trial Judgment 18. December 2008.

152 Akayesu Trial Judgment.


155 Akayesu Trial Judgment, para. 421.
accounts are also more elaborate. In the Military I Trial Judgment, we find a particularly expressive example. Here, Théoneste Bagosora, by some considered ‘the mastermind of the genocide’, was sentenced to life imprisonment. Amongst his conviction counts were sexual violence crimes as genocide and crimes against humanity. In the Judgment, one account stands out with its poignancy. Major Brent Beardsley of UNAMIR, one of few internationals still in Kigali during the first days of the genocide, is cited directly:

“Pregnant women had their stomachs slashed open, fetuses on the floor. (…) I remember looking down, a woman obviously had tried to protect her baby. Somebody had rolled her off the baby. The baby was still alive and trying to feed on her breasts. She'd been -- her clothes had been ripped off. The killing that was done was not done, in their opinion, to kill the people immediately; it had been done to kill them slowly. Women's breasts, women vaginas had been cut with machetes; men's scrotum areas cut with machetes. Men had been hamstrung behind their Achilles’ tendons so that they couldn't walk, but they would have to watch what was happening to their families. There was rape that had taken place in addition to the killings, and the murder.”

If you look up the concluding chapter of this judgment, Bagosora’s guilt of rape as a crime against humanity reads: “[g]uilty of rape as a crime against humanity (Count 7) for the rapes committed between 7 and 9 April 1994 at Kigali area roadblocks, at the Saint Josephite Centre and Gikondo Parish under Article 6 (3).” Hence, although often in inexpressive legal language, judgments’ full scope also provides weighty narratives emancipating the sedateness of history of rape in Rwanda.

In addition to having provided various judgments confirming sexual violence as distinct international crime and as an integral part of the genocide then, ICTR’s judgment texts present tangible narratives of individual sexual violence experiences. Although judgments are often dry, unemotional and sterile as narratives, ICTR judgments also provide detailed accounts of suffering – assisting remembrance of past

157 Bagosora et. al. Trial Judgment, para. 976.
158 Ibid, para. 2203.
Chapter 3: ICTR’s Memory Contributions

atrocities. ICTR accounts of rape, humiliation, sexual slavery, torture and mutilation are as such presented to whoever seeks them. The accounts contribute to a collective narrative of suffering, of women in war generally, and of Tutsi women in Rwanda more specifically. Still, as judges’ task is to evaluate evidence according to existing legal framework, the bulk of a judgment lays forth the Tribunal’s jurisdiction, goes through proceedings, and weighs charges against consisting law. It is not centered on forceful testimony. Evidently, complexity in individual experiences is lost in a judgment text. The next section turns to sexual violence narratives in trial, exploring how individual memory of witnesses is shaped in and by the courtroom.

Narratives from Court Proceedings

During its 5800 days of proceedings, the ICTR beheld testimony of more than 3,000 witnesses who recounted some of the most traumatic experiences imaginable. In Akayesu alone, five witnesses testified to having seen, or being victims of rape in the compound where Jean-Paul Akayesu exercised authority. In cases with several accused, even more victims travelled from Rwanda to take the ICTR stand, some more than a decade after the atrocities occurred. What sort of narratives arises from ICTR’s trial transcripts?

Witness OO testified in Akayesu’s trial on 27. October 1997. She was 15 years when raped by Interahamwe soldiers. This is a passage of the Prosecutor’s questioning:

Q. Now, Witness OO, I realize that this may be difficult to speak about, but could you please tell us, in detail, what happened at this time?
A. Yes.

Q. What happened?
A. After he pushed me to the ground he pressed on me, he pulled down his clothes and he also pulled down my clothes and he put his sex into mine. I started to cry and he said, if you continue to shout or cry there might be some others who will come on you and that will be to finish with you. (…)

Q. Okay, I have to ask you a difficult question. When you say he put his sex into mine, does that mean that he penetrated your vagina with his penis?
A. Yes.

159 Henry, *War and Rape*: 95.
Q. After this event finished how were you feeling, emotionally?
A. Normally when you shout it is because you are in pain.\textsuperscript{161}

Again, a strong testimony of past sexual violence. However, the narrative is distinctively shaped by the confines of trial. As the prosecution’s objective is to get its witness to articulate the legal crime, this takes center stage. The law defines what the court needs to hear, not the past as experienced by the victim. Evident to the victim, you feel pain when being raped in a banana field, but she has to state the exact words as required by the court.

Even though the defense’s task is different – to cross-examine the witness for the cause of disproving the accused’s responsibility – its impact on rape narratives is similar. In the case of OO, a large part of the defense’s cross-examination was spent on questioning her credibility:

Q. Do you know Mr. Akayesu well?
A. I wasn’t able to recognize him today because I saw him only once, and I did not often go to the bureau communal. When I saw him again, it was at the meeting. I did not pay much attention to him. I only heard what was said at the meeting.

Q. You saw Akayesu once or several times?
A. I saw him twice.

Q. After having seen Akayesu twice, you cannot recognize him in the room today?
A. I did not recognize him because it is a long time ago and I was still small, I was still young. I had so many problems, I did not have time to look at someone closely.

Q. You didn't have time to look at someone well, but you had time to hear what the person said?
A. I was so anxious that I was not able to look at him detailly. I did not know I was going to survive, that I was going to be alive today.

Q. How many of your relatives were with you at the bureau communal?
A. I do not know the number. There were very many.

Q. About how many?
A. I cannot make an estimate. All I know is that it was a big Family.\textsuperscript{162}

These pieces of transcript convey arid accounts of complex atrocity. The Defense’s and the Prosecution’s examinations both have a similar effect on the account told, as the victim’s individual experience is subordinated to the confines of law. What

\textsuperscript{161} “Akayesu – Redacted Transcript”, 27. October 1997, ICTR-96-4, ICTR, TRA000023/1, Mechanism Archives and Records Section (MARS).

\textsuperscript{162} Ibid.
the examples also show is how law, in its pursuit of judgment, can act without regard for the victim’s wellbeing.\textsuperscript{163} Examples of intensely thorough cross-examination are found in most transcripts containing rape testimony.\textsuperscript{164} Because many accused at the ICTR had numerous defense lawyers, the amount of questioning could reach excessive levels. In the \textit{Nyiramasuhuko et al} trial, a single rape victim was asked 1,194 questions by defense counsel.\textsuperscript{165} Witness TA was in 2001 cross-examined for hours on issues ranging from her clothing, if she remembered if the accused was circumcised, how “bright the moonlight” was, and whether she had access to bathing facilities (as she claimed to having been raped several times, the suggestion was she smelled too bad for this to have occurred).\textsuperscript{166} During the questioning, laughter was allegedly heard from the bench.\textsuperscript{167}

Why are these last points relevant here? Because they tell a broader story than do the final judgments and their texts, revealing important elements of the process leading up to legal outcome. The trial process “does not permit witnesses to tell their own coherent narrative; it chops their stories into digestible parts, selects a handful of parts, and sorts and refines them to create a new narrative – the legal narrative.”\textsuperscript{168} Within its particular narrative space: “legal testimony may contribute to the marginalization of victims and witnesses, as well as the subversion of sexual violence as collective memory”, Henry holds.\textsuperscript{169} As contributions to collective memory then, narratives brought about through the ICTR process are also testimony to how individual experiences are sidelined to fit a legal space of storytelling.

To recapitulate, ICTR’s contributions to collective memory of sexual violence are to some extent equivocal. On one hand, milestone verdicts and accounts in various

\begin{itemize}
\item Nowrojee, “Your justice is too slow”. 23.
\item “As lawyer Mwayumbe ineptly and insensitively questioned the witness at length about the rape, the judges burst out laughing twice at the lawyer while witness TA described in detail the lead-up to the rape”, in Nowrojee “Your Justice is too Slow”. 24. This is not recorded in the written transcripts. Victims speaking up in Nowrojee’s report expressed “outrage at the fact that they had to endure days of repeated, detailed questioning about the intimate details of the rapes they endured.”
\item Eltringham, “We are not a Truth Commission””. 60.
\item Henry, \textit{War and Rape}: 99.
\end{itemize}
judgments place wartime rape at the core of the genocidal campaign. As narratives, they portray sexual violence as a widespread and systematic part of the Hutu regime’s intent to destroy the Tutsi. They also state the particular gendered natures of war, and how conflict affects women and girls in distinct ways. As narratives, they provide strong testimony to sexual violence as a distinct part of Rwanda’s violent past. However, the overall conviction rate provides a poor reflection of the sexual violence pervading in 1994, and both in judgment texts and the trial process a complex past is moderated into a distinct legal narrative, subsiding past individual experiences.

The following seeks to trace the origins of these ICTR contributions. What can explain them? Which historical impetuses affected the conviction rate? How did the legal method influence the narratives told?

**Tracing the Contributions**

Law and anthropology professor Richard Ashby Wilson points out that although we have a solid grasp of the jurisprudential dimensions of international courts, we know “close to nothing” about them as “complex social institutions made up of actors with a variety of goals and assumptions.”\(^{170}\) The following seeks to add to this knowledge gap. Albeit elapsed in monolithic rational choice models of political science, international institutions make up complex societies of their own. From its initial UNSC founding resolution until its last appeal judgment in 2015, the Tribunal’s attention to rape crimes fluctuated. This diverse organization is not one ‘thing’, but involved thousands of legal practitioners in dozens of cases, relating to a myriad of different and changing external pressures, UN resolutions, as well as varying resources. Through treating the ICTR not as an abstract entity, but as a complex social process, we also discover how tracing collective memory contributions – more than just being a fuzzy, academic endeavor – uncover important tangible historical influences.

As the Prosecutor’s office was responsible for investigating and preparing indictments, they bore the brunt of responsibility for what entered trial and not. With the OTP is where I start.

‘Yellow Tape Around the Entire Country’

Despite a gender momentum in the mid 1990s, the early work of the OTP did not include charging sexual violence at the ICTR. While Goldstone’s staff was preparing such charges in Europe, the situation in Rwanda was different. There was no evidence of sexual violence, says former Legal Advisor Segoete, because; “the investigators did not look for it right from the beginning.”\textsuperscript{171} Was there a reluctance to do so or were there other reasons for this blind spot?

First of all, the initial 1994 report on the Rwandan genocide by the UN Commission of Experts did not mention rape.\textsuperscript{172} For the handful of investigators on-ground, the scale of violence to track down was more than enough to handle, with nearly a million people killed and three million internally displaced. Patricia Sellers explains that there was not necessarily a resistance to push for investigating sexual violence. Rather, it was not part of the initial strategy because investigators and prosecutors were only focusing on the killings, as the UN Commission of Expert Inquiry did not include rapes.\textsuperscript{173} Two years on however, the OTP was well aware of its occurrence. The Special Rapporteur provided its substantive report in 1996, and that same year other human rights group like Africa Rights and Human Rights Watch had revealed the existence and extent of sexual violence.\textsuperscript{174} Nevertheless, investigative efforts were still not put into rape crimes.

One challenge was a lack of both human and physical resources: As of August 1996, fewer than a dozen investigative staff members were on board in Kigali.\textsuperscript{175} Rwanda had no criminal judicial personnel or functioning infrastructure in place, with judicial police officers either dead or in flight. These challenges rendered investigations particularly difficult. Former Chief of Prosecutions Richard Karegyesa calls wading into this situation on ground “a nightmare.”\textsuperscript{176} Whilst investigators were used to domestic crime scenes with yellow tape and forensics, mass crimes in Rwanda were “committed by potentially hundreds of thousands of suspects, throughout the

\textsuperscript{171} Interview with Thembile Segoete, Arusha 26. January 2016.
\textsuperscript{173} Interview with Patricia Sellers. Oslo/Brussels 10. February 2016.
\textsuperscript{176} Interview with Richard Karegyesa, Arusha 29. January 2016.
country over a 100 day period, about a year prior to the actual investigations, rendering forensic inquiry particularly complex and unconventional. Here, he says; “the yellow tape was around the entire country.”

Legal advisor Alex-Obote Odora who entered the Kigali office in 2000, concurs that the OTP had been overwhelmed by genocide, crimes against humanity and war crimes, resulting in less attention to investigating and prosecuting gender crimes.

From early on then, the poor conviction rate was affected by both a substantial lack of documentation, but also a fundamental lack of investigative resources in place to tackle Rwanda’s massive crime scene.

**Staff Inexperience and Leadership Priorities**

That the situation was chaotic and difficult does not mean that disregard to sexual violence investigation could not have been dodged. After the Akayesu case, the Prosecution had no choice but to make efforts to gather sexual violence evidence, acknowledging that it abounded in Rwanda. OTP’s own challenges however also abounded. One investigative problem was language, and the absence of Kinyarwanda speakers. Another was a lack of understanding of Rwanda’s culture. Odora notes:

> “The majority of field officers, namely investigators and legal advisors, were foreign ‘white men’. These men travelled to the hills and villages of Rwanda to interview primarily women because they were the victims of, or witnesses to rape and sexual violence. They were shocked and embarrassed at the questions relating to sex, rape and sexual violence being put to them by strange men. These women ordinarily did not even discuss these matters with their own husbands.”

Sexual violence carries strong stigmas in Rwanda, with powerful taboos against speaking up. Early investigators often received no training on interview methodology for rape victims. The OTP thus started investigating on the wrong footing, and a problem of cultural insensitivity is repeated in many assessments of its

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177 Interview with Karegyesa.
178 E-mail interview with Alex Obote-Odora, 8. December 2015.
179 Ibid.
180 See Bianchi, “The Prosecution of Rape and Sexual Violence”. 132.
Goldstone recalls, from his time as joint Chief Prosecutor (until September 1996), being “amazed” by gender biases in his teams – “[T]heir culture was not such as to make them concerned about gender-related crime,” he writes. This went both in relation to witnesses as well as understanding the legal elements of sexual violence crimes. There was also an internal lack of will. Sellers refers to conflicts over gender issues within the OTP as a result of particularly resistant male colleagues. That does not imply that the key challenge was reluctant men. Rape witnesses themselves stated that the skill and professionalism of staff mattered more than his or her sex.

On the progressive side, measures to improve investigative work were initiated. Goldstone set up a system where Sellers was to integrate a gender sensitive approach, and the OTP produced guidelines on gender strategies. According to Sellers, gender integration of investigation teams impacted the analysis of sexual assault evidence, “particularly as it pertained to troop movements, military hierarchy, or to questions of effective control of commanders versus the “frolic and detour” of individual soldiers.” Similar efforts continued under Chief Prosecutor Louise Arbour (1996-1999): Working groups were held to train staff in March and October of 1997, and a Sexual Assaults team was put up to enhance the gender agenda. However, the work did not bear much fruit on the conviction rate.

In a 1997 report, the General Secretary concluded that there were serious deficiencies in the operation of the Tribunal. Particularly, it stated that the OTP had administrative, leadership and operational problems in its Kigali Office. The concerns were repeated in a 1999 Expert Group Report. One factor influencing the prosecution’s sexual violence priorities was who was in charge.

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182 I.e. Bianchi, “The Prosecution of Rape and Sexual Violence”, Gardam and Jarvis, Women, Armed Conflict and International Law and Henry, War and Rape. In my interview, Segoete concurs: “If you find a female victim in a rural village somewhere in Rwanda and you send a male investigator whom she has never seen all her life, you don’t expect her on that first visit to talk freely about things she went through”.

183 Goldstone, “Prosecuting rape as a warcrime”. 280.

184 Sellers, “Gender strategy is not luxury”. 11.


186 Sellers, “Gender strategy is not luxury”. 10.


In 1999, the OTP received a new Chief Prosecutor, former Swiss Attorney General Carla del Ponte. Notwithstanding her post-hoc outspoken role as a critic of the UN body as a whole, one of her actions most directly relevant for the Tribunal’s sexual violence record was the disbandment of the Sexual Assaults Team in 2000. According to some observers this was but one example of her neglect of sexual violence crimes. Nowrojee pointed to lack of political will at the OTP to “comprehensively investigate or reflect the widespread sexual violence in the indictments, (...) particularly during the tenure of prosecutor Carla Del Ponte.” According to her 2005 report, the most “lasting damage to gender justice” was done with del Ponte in charge. The proportion of new indictments including sexual violence charges dropped from 100 percent between 1999-2000 to 35 percent in 2001-02. By del Ponte’s final year, no new indictment contained rape charges. Evidence collected under Arbour’s leadership was even disregarded in subsequent work, and del Ponte withdrew an OTP request to add available rape evidence in the Cyangugu case. Agreeing with the bench that an amendment would delay the trial, she according to Nowrojee prioritized “scheduling over justice.” However, to del Ponte’s defense, she did reinstate the Sexual Assaults team at the end of her term.

Other managerial factors hampering sexual violence convictions could also be mentioned. An overview gathered in law scholar Luc Reydams et. al.’s *International Prosecutors* summarize general OTP challenges. What they call an internal “power struggle” between the Registry and the Office of the Prosecutor – the former retaining control over the latter’s funds, as well as its discretion over who OTP hired – was a key challenge. Del Ponte holds that inexperience (or in her words ‘incompetence’) among her staff resulted from of this system. There was also lack of coordination between prosecutions and investigations teams.

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190 See Global Policy Forum “Del Ponte says UN caved to Rwandan pressure” 17. September 2003. URL: [https://www.globalpolicy.org/component/content/article/163/29047.html](https://www.globalpolicy.org/component/content/article/163/29047.html)
191 Nowrojee, “Your Justice is too slow”. 8.
193 Nowrojee, “Your Justice is too slow”. 10.
195 Ibid, 253. See also UN Doc A/54/634, paras. 248-52.
196 In Reydams et. al. *International Prosecutors*: 253. See also Carla Del Ponte, *Madame Prosecutor: Confrontations with Humanity’s Worst Criminals and the Culture of Impunity* (New York: Other Press, 2008).
197 Reydams et. al., *International Prosecutors*: 255-56. See also OTP, “Best Practice Manual” para
A general challenge in all OTP work before 2003 however, was the fact that the Chief Prosecutors (Goldstone, Arbour and Del Ponte) held dual responsibilities for the ICTY and the ICTR. The Arusha and Kigali office was a distant travel away from the Chief Prosecutor’s main seat in The Hague. The 1999 Expert Group Report had concluded that “on balance, there seems to be no compelling reason for a change,” however, in September 2003, the UNSC decided otherwise, and appointed Hassan B. Jallow as the first Chief Prosecutor to serve solely at the ICTR. A trial backlog was by now a main concern, and the hope was that Jallow, arriving under the background of a newly adopted Completion Strategy, could speed up the process. Observers such as Nowrojee hoped the change would affect the poor sexual violence record. According to Jallow himself, he did decide to prioritize sexual violence in terms of selecting cases within the pressing timeframe. A new Investigative Sexual Assaults team had already been formed before his arrival, with three female investigators. Nevertheless, results were lacking also after 2003, and the absence of a consistent approach to prosecute gender-related crimes continued.

**Plea Bargains and Politics**

What Nowrooje demanded in 2005 was by and large that gender crimes were given priority. Now, what other priorities competed against a strong sexual violence agenda? Although the OTP was mandated to prosecute sexual violence, its task was first and foremost to prosecute:

“persons responsible for serious violations of international humanitarian law committed in the

153: “it may not always be possible for prosecution counsel to be present during all stages of the investigation or for investigators to be present at all stages of the trial (…) given the ad hoc nature of the Tribunal’s mandate, staff attrition was a recurrent problem at all levels.”

198 UN Doc A/54/634, para. 26.


201 Nowrojee, “Your Justice is too slow”. 11.


Considering the highly popularized nature of the brutalities, it set out to charge top-level people, high-ranking officials of government, military and the media. Getting hold of high-level war criminals hiding abroad became a primary task. As such, *plea-bargains* in cases concerning lower administrative officials, became a way to get information about fugitives. The downside of this priority however, was its effect on sexual violence convictions. A range of cases where rape charges were part of indictments while not part of the judgment involved such deals.206 Former OTP lawyer Segoe states that no accused wanted to plead guilty to any form of sexual offence; “people would rather plead guilty to having killed thirty people, than to plead guilty of having sexually assaulted one woman.”207 The OTP’s answer to this was to drop rape charges in the course of plea deals when charges of murder were retained.208 Apart from being a telling observation of the taboo that resides rape in Rwandan culture, it also shows how the OTP readily ‘let it go’ – in effect undermining gender crimes to get plea deals aboard. What it additionally highlights are the political controls of the ICTR mandate.

A chief objective, considering the reported slow, costly and inefficient process, was increasingly to finish it off. In 2003, the UNSC therefore adopted the mentioned Completion Strategy, setting precise deadlines for ICTR’s conduct. From that point on, Prosecutor Jallow’s principle concern was to ‘get the trials going’. There were many detainees whose cases had not started at all, who were awaiting trial, or whose cases had started but “were not progressing to the satisfaction of the member states.”209 The strategy demanded that ICTR’s casework, including appeals, were to be completed by 2010, final indictments drafted in 2005.210 Although its last appeal judgment was delayed to 2015, completion was meeting exceeding impatience in the mid 2000s. The question then, is whether continued unprioritized sexual

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210 UN Doc. S/Res/1503 28. August 2003, see also Doc S/Res/1534 26. March 2004. The resolutions also stated that investigations should be completed by 2004. This target was met by the Prosecutor, submitting all remaining indictments in 2005.
violence resulted from the deadlines. Jallow and the OTP leadership did announce they would renew attention to the issue of sexual violence.\textsuperscript{211} Putting up a review committee in 2007, resulting in the 2014 “Best Practices Manual” is a confession to this effort. Nevertheless, as all indictments now had to be completed in 2005, it had the effect that they could not change the course of miscarriage substantially.

The Role of the Judges

The previous has by and large circled around prosecutorial challenges. However, evaluating the conviction rate also brings about the question of the Chambers. Were they ready to punish sexual violence crimes? Although there are few causal links to be drawn here, a lack of female ICTR judges is a relevant concern. Notably, until 1999, Navanathem Pillay was the only sitting permanent female judge. Criminologist Victoria Collins writes that the problem related both to lack of nomination and election of judges to the ad-hoc tribunals.\textsuperscript{212} The gender balance of the Chambers however fluctuated. With the introduction of ad-litem judges in 2003, to be suggested by the ICTR President before the General Assembly, Erik Møse (President 2003-2007) ensured election of more female judges. With numbers from ICTR’s initiation until 2010, law scholar Nienke Grossman summarizes women to have constituted 36 percent of ad-litem judges and 18 percent of permanent judges.\textsuperscript{213}

A low number of international female judges makes empirical studies of their effects feeble. Still, some empirical as well as anecdotal evidence suggests a gender effect, especially on gender crimes.\textsuperscript{214} Indeed, it was the only female judge Pillay who told the prosecution to take notice of the spontaneous Akayesu testimonies in 1997.

Relations With Rwanda

A final factor I want to address relates to the ever-contentious relations between the Tribunal and Rwanda. As the process depended on cooperation from the Rwandan

\begin{footnotes}
\item[211] Nowrojee, “Your Justice is too slow”. 11.
\item[214] Grossmann, “Sex on the Bench”. 656.
\end{footnotes}
government, RPF opposition to the Tribunal from the very start was a persistent challenge, Rwanda being the only state to vote against the UN Resolution that brought ICTR into existence. Its UNSC statement on the date of ICTR’s founding resolution included criticism of its jurisdiction timespan, structure and mandate. Their strongest condemnation related to the choice to place the Tribunal outside Rwandan territory.215 How could the relationship influence its sexual violence prosecution?

Rwandan witnesses were key to get trials going, but hard to get hold of. This had significant consequences on the ability to prosecute sexual violence, largely contingent on witness testimony. One thing was witnesses’ own reluctance to leave for the Tribunal. As one noted, (most Rwandans are peasants) “[t]he rain does not wait for you when you go to Arusha.”216 The Tribunal thus arranged witness support in Kigali and in Arusha, an assistance program initiated in 2000 included legal and psychological assistance for rape victims.217 However, the access to witnesses also depended on cooperation with the regime. When the assistance program disbanded in 2001, allegedly because the UN saw it as outside ICTR’s mandate, opposition grew among victim organizations.218 Climax reached in 2002, with Kigali rallies and the victim organizations IBUKA and AVEGA’s suspension of collaboration.219 These tensions however coincided with an even larger debacle between ICTR and the Rwandan regime. With mandate to prosecute all atrocities of 1994, Carla Del Ponte was determined to investigate not only Hutu, but also Tutsi perpetrators of the civil war, and announced opening investigative files on members of the former RPF army.220 In 2002, the Rwandan government responded with a strong announcement to the UNSC:

“The Government of Rwanda does not believe that abuses committed by the RPA should be equated to the crimes committed by the perpetrators of genocide. The RPA stopped the genocide in Rwanda. It restored peace to the country (…) It would appear that the proposed

215 Møse, “Main Achievements of the ICTR”. 939.
216 Odora, “Rape and sexual violence in international law”. 145. See also Bijleveld, et. al., ”Counting the Countless,” 215. They state that women reported speaking out about their victimization was not worth the trouble and the risk.
217 Møse, “Main Achievements of the ICTR”. 937.
220 Rombouts Victim Organisations and the Politics of Reparation: 155; and Del Ponte, Confrontations with Humanity’s Worst Criminals: 179.
indictments of the RPA are merely intended to appease advocates of a so-called “ethnically balanced justice” and proponents of revisionism”. 221 Consequently, Rwanda declined all applications for issuance of witnesses’ travel documents. 222 According to Del Ponte, “halting the genocide trials was the Rwandan government’s objective.” 223 For months then, no witnesses arrived in Arusha.

After this conflictual peak, interactions however recovered. 224 But without Rwanda’s collaboration, investigations and trials would be impossible. As such, after Jallow took seat in 2003, RPF crimes were left behind. Jallow himself argues that the UNSC Completion Strategy had ‘dictated’ a prosecutorial strategy concentrating “on those bearing the greatest responsibility for the genocide, the leaders of the genocide.” 225 According to professor of global studies Victor Peskin however, Jallow showed unwillingness to prosecute the RPF, as what the resolution said was to concentrate on those most responsible for crimes within its jurisdiction. 226 The events nevertheless illustrate how politics hampered OTP’s operations. Koosed has termed this a paradox of impartiality – a “matrix of political compromises, without which the ICTR would not be able to operate.” 227 Thus, although the RPF had no interest in seeing sexual violence crimes committed by the Hutu regime being sidelined as such, its power over the flow of witnesses indirectly affected ICTR’s proceedings.

The fact that ICTR was a UN invention should not be surpassed if we seek to understand its contributions. As a legal body, an international court such as the ICTR is distinct. If the mentioned challenges of prosecuting rape was to be gathered in a room full of coinciding historical factors, one unstated elephant would plod its

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222 Mose, “Main Achievements of the ICTR”. 939.

223 Del Ponte, Confrontations with Humanity’s Worst Criminals. 224. Nowrojee wrote: “tension is in part manipulated and encouraged by the Rwandan government, which seeks to withhold genocide witnesses whenever the ICTR considers bringing charges against its Rwandan Patriotic Front (RPF) officials”. In “Your Justice is too slow”. 22.

224 Mose, “Main Achievements of the ICTR”. 940.


226 Victor Peskin, “Victor’s Justice Revisited: Rwandan Patriotic Front Crimes and the Prosecutorial Endgame at the ICTR” in Remaking Rwanda, eds. Strauss and Waldorf. 179. Within jurisdiction were all crimes, not restrictively genocidal crimes committed in 1994.

corners; Politics. The process depended on member states’ willingness, as much as it had been their unwillingness to act in the face of the preceding genocide. It was the UNSC who nominated judges voted on by the General Assembly, and even if the Prosecution was mandated to be independent, the Council on nomination from the Secretary General appointed its Chief Prosecutor. For legal scholars Judith Gardam and Michelle Jarvis, this political nature of the court is a key reason for its failures regarding sexual violence, holding that international neglect remains the underlying cause of its failure to address gender crimes. Although my empirical assessment cannot support a claim that it was discriminatory motivations that caused its ‘mixed’ record on sexual violence issues – selection and political priorities played their part.

Although motives to push a sexual violence agenda appears both in the mandate as well as in OTP strategies and individual efforts, hindrances related to an initial lack of documentation, were followed by both missing investigative resources, inexperience and OTP management, all resulting in lack of priority given to sexual violence. UN pressures to complete the process as well as a contentious relationship with Rwanda also indirectly affected its prosecutorial abilities.

Having assessed these historical origins of the ICTR contribution, I now turn to the roots of its actual storytelling. How can the legal method and the courtroom itself help explain ICTR’s particular articulations of past sexual violence?

The Legal Method

In delineating the ICTR contributions to collective memory of sexual violence, I established that although the conviction rate in itself is a poor representation of sexual

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228 Although no characterization apt to describe modern legal trials, Molière’s misanthropic 17th century warning seems somewhat more applicable for the ad-hoc Tribunal’s:

Philinte: Then who will plead your case before the court?
Alceste: Reason and right and justice will plead for me.
Philinte: Oh, Lord. What judges do you plan to see?
Alceste: Why, non. The justice of my cause is clear.
Philinte: Of course, man: but there’s politics to fear.


230 Gardam and Jarvis Women, Armed Conflict and International Law: 229.

231 Recalling a slogan of the women’s movement, the personal is (or at least becomes) political. Term popularized by activist Carol Hanich’s 1969 essay “The Personal is Political”. Reprinted in Barbara A. Crow (ed.), Radical feminism: A documentary reader (New York: NYU Press. 2000).
violence in Rwanda in 1994, narratives of sexual violence through the legacy of the Tribunal, where judgments and transcripts provide numerous articulations of the particular impact that the genocide had on women. Leaving behind efforts bringing these into court in the first place, we shall take into account how law itself affected the narratives. How do legal foundations affect the way the past is portrayed?

For those who write them, says Eltringham, ICTR judgments are the cipher “through which the record should be read” (italics original).\(^{232}\) Being both a methodological and normative statement on behalf of his interviewee, the statement implies that judgments not only convey legal truth, they are what ultimately should be consulted by readers interested in the court’s dealings with the past. But while judgments indicate conclusiveness, they are not exhaustive. As all text, they are the result of inclusion and exclusion, born by selection. A legal judgment presents facts as found proven in trial through the legal method of corroborating evidence. The judgment texts only account for rape narratives seen relevant by the Chamber to the particular case at hand; This witness summoned to prove that person guilty of those acts. False testimony or disproved evidence will be discarded. Also, witness testimony on wartime rape not found to prove an accused’s guilt will be left out of the narrative, if not mentioned as inadequate. However, what is left out or included is also a result of other parameters. Among all evidence found convincing in trial, particular articulations have had to be selected by judges as pertinent to add to the final text. Although witness testimonies are always referred to, how and in what lengths they are included depends on their perceived pertinence. Former ICTR President Erik Møse who was presiding Judge in the Military I Trial remarks:

> “I am often asked what I remember the most from my time at the ICTR. Many events could be mentioned. One of them is a portion of Major Beardsley’s testimony in Military I, where he described his observations of the large number of bodies of women who had been raped. That account was particularly telling.”

That extensive parts of Beardsley’s account were added to the judgment, suggests the bench as a whole shared Møse’s assessment of its pertinence.\(^{234}\) Certainly, the judicial

\(^{232}\) Eltringham, “‘We are not a Truth Commission’. 69. Refers to interview with a Chambers officer.
\(^{233}\) Interview with Erik Møse, Oslo, 11. December 2015.
\(^{234}\) Bagosora et al., Trial Judgment, para 976.
method entails being able to select such accounts on the basis of legal considerations. The point is that judgments, leading readers to the Tribunal’s ‘truth’, only tell segments of the past it conveys. Importantly, they also only tell segments of the legal process comporting them: A judgment formally discards the “revelatory journey” of trial. During trial, as shown through examples from transcripts, individual memory, experience of past atrocity, is compressed, filtered and fitted into the legal space. Eltringham furthermore notes that testimony given in trial consists not only of the replies, but also of their questions, where defense and prosecution counsels already know what answers they come in court to get. As such, narratives provided at court are to a large extent constructed testimony, born by the parties’ task to prove cases, not merely yielded by the past itself.

The characteristics of legal storytellers are reflected on further in Chapter 5. Here, it suffices to conclude that ICTR’s collective memory contributions, its narratives of past sexual violence, are inherently results of the legal process as such, being selective, fragmented and narrow in its filtering of the past. Through this ‘filtering’ of trauma and individual memory into legal proof, personal accounts are thus distinctively shaped through trial and in court – constricted into legal narratives.

**Concluding remarks**

This chapter has presented an assessment of ICTR’s contributions to collective memory. Narratives of past sexual violence are conveyed through; its overall conviction rate, in milestone verdicts, in judgment texts and trial transcripts. The conviction rate itself is a poor reflection of sexual violence that occurrence in 1994. It does not provide the present with means to remember the full scope of this particular past. However, landmark verdicts provide strong testimony to sexual violence as an integral part of the genocide, as well as placing the impact on women at the core of the description of the Rwandan crisis. These jurisprudential developments solidly linger in current international legal mechanisms. As Catherine Mackinnon argues, the fact that the ICC even exists with its prohibitions on sexual violence “is due in no small part to the impetus provided by the ad-hoc tribunals (...) [A]nd Akayu’s legs

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235 Eltringham, “‘We are not a truth commission’”. 69.

236 Ibid. 66.
are only beginning to walk all over the world.”

Having brought about these judgments, the ICTR also contributed to a larger societal discourse arising of rape as a tool of war, establishing a shift in paradigm of how these crimes are perceived in the international community. Mackinnon writes that “[E]ach time a rape law is created or applied or a rape case is tried, communities rethink what rape is.” Which communities she refers to is however unclear. For now, we conclude that landmark verdicts and articulations of sexual violence provided tangible inputs to the collective memory of the international legal community, as well as contributing, albeit with uncertain independent impact, to a political discourse, informing collective memory of sexual violence in war and in Rwanda in particular – with strong reminders of war’s effect on women, emphasizing the gendered face of conflict.

“[W]hile the object of commemoration is usually to be found in the past, the issue which motivates its selection and shaping is always to be found among the concerns of the present,” sociologist Barry Schwartz repeats, paraphrasing Halbwachs. As shown, the concerns of the present at the Tribunal fluctuated, according to where one places the lamppost. However, ICTR’s contributions cannot be separated from its nature as a complex social institution. Both the will and ability of individual actors, as well as struggles within the Tribunal and between it, the UN and Rwanda itself affected its storytelling. Furthermore, the particular accounts told are intrinsically bound by the method of the courtroom, constructed into a distinctly legal narrative.

In the coming chapter, we turn to Rwanda. In what way are these narratives, ICTR’s contributions to collective memory, present in the local Rwandan memory landscape? What can best explain their presence – or non-presence – in Rwanda’s national ‘sites of memory’?

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238 Bianchi, “The Prosecution of Rape and Sexual Violence”, 124. See also Skjelsbæk, The Political Psychology of War Rape. At a presentation given at HL-Senteret 25.09.2015. Skjelsbæk stressed how ICTR milestones contributed to a change in political discourse, saying that; “sexual violence in war went from being considered a personal suffering to an international security issue.” In “Perpetrators of SV violence before the International Criminal Tribunal for the Former Yugoslavia,” International conference on Srebrenica: Lessons and Legacies of the Bosnian War.
Politics of memory have become a key element in the reconstruction of a ‘new’ Rwanda. What sort of local memory landscape faces the stories that have come out of the international tribunal? Does it have ‘space for rape’?

This chapter sets out to analyze two nationally produced ‘lieux de mémoire’ at work in contemporary Rwanda. It draws on official memory sites to illustrate the means by which the Rwandan government narrates its past, and considers the ‘space’ – within this particular narrative – for stories of sexual violence. Can we see signs of the ICTR process, or its narratives of women’s particular experiences of war?

The Official Historical Narrative

Luridly violent pasts leave deep scars among the parties to conflict. Especially when violence is perpetrated in the intimate realm of a community and reach genocidal proportions such as in Rwanda, coming to terms with the past becomes a major challenge for future co-habitation. Chapter 2 mentioned concrete examples of how the Rwandan regime answers administratively to the challenge of its conflictual past. Here, I shall initially outline the ‘historical truth’ these policies promote. What does the ‘official historical narrative’ consist of?

The official narrative, or what social anthropologist Nigel Eltringham terms the “RPF healing truth”, is on the one hand recognized by an overshadowing downplay of past ethnic divisions. The standard state recount maintains that ethnic divides were created, or distorted by the colonists, first by the Germans, then the Belgians. It holds that it was foreigners that brought conflict to Rwanda, interrupting long-lasting pre-

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241 See Scott Strauss and Lars Waldorf, eds., Remaking Rwanda; Phil Clark and Zachary D. Kaufman, eds., After Genocide (London: Hurst Company, 2008); Buckley-Zistel, “Remembering to Forget” and “Nation, Narration, Unification?”

242 The term is taken from a monograph by Sabine Marschall, which discusses public memorialization in South Africa. See Landscape of Memory: Commemorative Monuments, Memorials and Public Statuary in Post-Apartheid South Africa, (Leiden: Brill, 2010).

243 On ‘sites of memory’, see Chapter 1-2.
Conflict researcher Susanne Buckley-Zistel elaborates: “Ethnicities did not exist, conflicts did not occur, and all people considered themselves to be Rwandan or ‘the King’s People’.” Following the strategy of indirect rule, the foreigners chose the Tutsi as the ruling race, legitimized both through physical features and the so-called ‘Hamitic Hypothesis’. According to the official narrative, Hutu and Tutsi were subdued by colonialism’s tale that they were enemies. The social revolution in 1959 (now more often termed the “Hutu revolution”), the divisionism under the 1st and 2nd Republics, as well as the intensely racialized lead-up to the genocide, are seen as consequences of this foreign manipulation of history: a ‘divide and conquer’-strategy. According to the official narrative, it was only when the RPF Tutsi insurgents invaded the country in 1990 from Uganda (starting a four-year long civil war) – that the seed of national unity was sowed for the first time since pre-colonial times. From its very formation, RPF had sought democracy and peace for all Rwandans. Still in power, they now rule the liberated, united Rwanda the country was always meant to be, the narrative holds.

Alas, there are many factual truths to this narrative. Historians agree that the colonialists fundamentally magnified and intensified divisions between Hutu and Tutsi, paving way for radical Hutu extremism and genocide in 1994. But many fiercely disagree with the description’s lack of nuances. There is especially debate attached to the question of pre-colonial ethnic strife. Several prominent historians argue that ethnic categories already existed in pre-colonial times, even being used then to divide the population. Regarding the genocide, the opposition is also notable. The lack of historical nuances to the role of the RPF as a party to the conflict preceding 1994’s genocide is a particular concern. Blind spots within the official historical narrative for the former guerrilla’s own atrocities as party to a long civil war

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246 The theory argued that Tutsi originated from the Horn or Northern Africa, while the Hutu belonged to the Bantu people. Together with the Twa, these were then considered ‘indigenous’ to Rwanda, while the Tutsi were thought to be immigrants, arriving at a later point of time. The Hamitic Hypothesis is now thought to be a theory without factual basis, an effect of the Europeans’ racial obsession. See lengthy discussion in Mamdani, When Victims Become Killers.
247 See Eltringham, “The Past is Elsewhere” and Buckley-Zistel, “Nation, Narration, Unification?”.
has resulted in more cynical understandings of the official account: Rather than meeting ends of reconciliation, the official representation of the past more than anything serve the demands of the political present, scholars argue, as the narrative legitimizes RPF rule.\textsuperscript{250}

Also pointed out, the official narrative entails an integral paradox. Ethnicity is on the one hand silenced and eradicated as a historical fact for the purpose of national unity. On the other, in the regime’s ‘obsession’ with the past and the discourse of genocide, nothing is more boosted than a divide between Hutu and Tutsi. This is particularly illustrated by today’s official terminology of the genocide: the genocide \textit{against the Tutsi}. The official historical narrative thus makes for a narrowly defined account. In the words of philosopher Jonathan Glover, it renders the genocide ‘banal’.\textsuperscript{251} Whilst restraining ethnic strife, it draws significant ethnic lines between victims and perpetrators, legitimate and illegitimate sufferings.

So: is this the story conveyed at Rwanda’s official memory sites? How does it affect the bearing of sexual violence narratives brought into the spotlight at the international Tribunal?

\textbf{Empirical Assessment of two ‘sites of memory’}

Two cases of lieux de mémoire are described in the following. I assess national memorials as one ‘site of memory’, and the online website \textit{Kwibuka} as another.

The six official memorials, all visited during my travel to Rwanda, are: the Kigali Genocide Memorial (KGM); the two churches of Nyamata and Ntarama; Bisesero hill, Murambi Technical School, and Nyarubuye church. These six comprise the official national memorials governed under the auspices of the Commission for the Fight Against Genocide (CNLG).\textsuperscript{252} Although KGM and Murambi somewhat stand out, being partly funded by the British Aegis Trust, they share overall features with the four remaining sites. However, distinctions are highlighted where relevant.

\textsuperscript{250} Buckley-Zistel has also shown how the narrative externalizes guilt, making cohabitation possible (‘chosen amnesia’). At the same time, it voids the RPF from their partaking in atrocities, having a role as ‘liberators’ as well as victims. See “Nation, Narration, Unification?”. She also claims it does little for reconciliation and shows how ethnicity still plays a big part in individuals’ lives. Eltringham holds that the official narrative is as divisive as before, replacing old ethnic labels of ‘Hutu and Tutsi’, with ‘génocidaire and victim’. In \textit{Accounting for Horror}.


\textsuperscript{252} See CNLG website. For photographic documentation of variations of official and non-official memorial sites, see Meierhenrich’s photographic data collection “Through a Glass Darkly.”
This chapter’s first section gives a firsthand empirical description of the physical memorial sites, before turning to the online remembrance site Kwibuka. A subsequent empirical analysis contrasts the somewhat high prevalence of sexual violence references in the former – what I term the backward-looking memorials – with an omission of the issue in the latter – the forward-looking website. I argue that where we see sexual violence crimes featured as part of the history of genocide, the representations rather serve a role of strengthening the official historical narrative, than being a result of the state’s determined will to emphasize rape as a distinct type of war crime. I thus conclude that considering the ICTR as an essential contributor to collective memory within Rwanda is flawed.

National Memorial Sites – Looking Backward

Within the ‘official historical narrative’, there is as said an inherent tension between two lines of arguments. On one hand, there is a forward-looking reconciliation narrative, seeking to erase ethnicity. On the other, you have a backward-looking genocide narrative, which emphasizes differences.253 The two are however two sides of the same coin – both serving the needs of the political present. The genocide memorial sites, to which we now turn, look more than anything backward. And, would many claim, disturbingly so.

A common trait of the six memorial sites is that they are the authentic locations where some of the most brutal and effective massacres were conducted in 1994. More than anything they are crime scenes, tangible relics of atrocity, where visitors essentially steps into the past – in all its violent direness. The sites are typically situated rurally, with distance to the nearest town (a few, such as Nyarubuye and Bisesero, are only reachable by motorcycle taxi or private vehicle). Three of the national memorials are former, catholic churches (Nyamata, Ntarama and Nyarubuye) where large numbers of Tutsi came to seek refuge from killings. The Murambi compound is a former technical school, which also served as refuge. Bisesero, sometimes referred to as ‘Hill of resistance’, is placed on a hilltop in an area where Tutsi refugees resisted attacks for several months – before eventually being eliminated by armed Hutu forces and

253 Eltringham, “The Past is Elsewhere”.

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Interahamwe attacks. The KGM, situated in the capital, stands out. Since killings in Kigali were highly dispersed, happening everywhere from in the streets to roadblocks, inside houses, offices and in hospitals, the location is not a killing site itself, but was put up in remembrance to all victims of the capital. In contrast to the bulk of the memorials, both KGM and Murambi – partly externally funded and constructed – have written displays of precursors and consequences of the genocide, KGM even offering audio-guides with additional information. It does however not have local guides responsible of accompanying visitors. All six memorials nevertheless include two common main elements: a museum-like section with displays of bodily remnants and artifacts, and a concrete construction containing mass-graves. What is the overall story that these sites of memory tell?

The sites ‘speak’ in two main ways: Through the on-site physical structures, and through the narratives of the guides. The physical structures place the horror of genocide at the center of attention. Stripped, literally speaking, to the bone, the displays on-site focus around remnants of the dead. All of the sites present skulls and bones in large amounts laid out on tables, in cases and on shelves. At the Bisesero memorial, nine buildings filled with desks showing human skulls and bones, represent the victims of the nine prefectures of Kibuye affected by genocide. Nyamata and Ntarama – in an Auschwitz-like manner – display clothes, shoes, cutlery and other personal belongings of its victims. The most striking, some would hold upsettingly macabre physical memorial display, is found at Murambi. Here, 24 classrooms in the former school display heaps of white, chalklike lime-preserved corpses. More than 20 years on, lying on tables in twisted positions, some still have hair on their heads. The past then, acquires one’s full attention, forcing the spectator to look back.

254 An initial Kigali memorial was set up in 1999, but the larger center first opened in 2004.
255 The numbers of bodies buried are difficult to estimate. The on-site guides provided me with these answers: Kigali: 250 000 victims from around the capital buried since 2001; Nyamata: 10 000 killed at the church compound, 40 000 buried in the mass-graves; Ntarama: 5000 killed at the church compound; Murambi: 40-50 000 killed at the school compound, around 15 000 buried in the mass-graves; Bisesero: 50 000 killed in the area, around the same number buried here; Nyarubuye: around 51 000 killed and buried in and around the church compound. Historian Alison des Forges, confirming these places to be sites of large massacres, however points out that official tolls of massacres are difficult to reconcile with the number of bodies exhumed (she wrote this in 1999). Numbers might be lower, but will nevertheless be hard to state definitely. See des Forges, Leave none to tell: 320.
256 For interesting study on globalized trends of genocide memorialization see Noah Shenker, “Through the Lens of the Shoah”: The Holocaust as a Paradigm for Documenting Genocide Testimonies,” History & Memory 28, no.1 (2016).
The accounts given by guides on-site to a large extent corroborates the backward-looking, rudimentary presentation of the physical display. I will discuss the role of the guides in detail later, but for our purpose here, I shall take note of some key elements of their presentation. First of all, their accounts were information sparse. The role of the guides was to point to objects, such as a skull, or a torture tool, and explain what had happened with it. For instance, the guide at Nyamata would illustratively point at a dark spot on the wall in a church room where children met for Sunday school, explaining that what I saw was blood. She also vividly demonstrated how children were held up by the feet, having their heads smashed against stone church benches. In Nyarubuye, the guide gave detailed descriptions of torture equipment such as a meat grinder and farming tools, and in Bisesero, he lifted up skulls to show how one could detect their owner’s cause of death.

Alongside these detailed descriptions of violence, some guides also offered a brief historical background. In Bisesero and Nyarubuye, these were restricted to the specific story of the particular on-site massacre. They explained when, where and how the massacre at hand was conducted and against whom. In Nyamata and Ntarama, my guides started the ‘tour’ giving a somewhat broader background story, though schematically presented – as from a script. The focus in their historical overviews was that the colonialists introduced divisions between the population groups, and that genocide started already in the fifties with the first Tutsi massacres. They all ended with the liberation and unification of ‘the Rwandan people’ by the RPF. The Murambi and the Kigali memorials display a more thorough historical background, including elaborate textual displays in separate museum rooms. However, they too by and large indorse the official ‘master’ narrative.\(^{257}\)

Generally then, the six national memorial sites convey the official genocide narrative promoted by the regime, though with a firm \textit{backward}-looking focus on the tangible horrors of 1994. How are sexual violence crimes treated in this \textit{lieu de mémoire}? Are there any references at all to the international justice process?

When it comes to the latter, only two memorial sites mention the international community; the two where the mentioned Aegis Trust has been involved in funding and setting up a larger museum exhibition. At Murambi, in a museum hallway with a

\(^{257}\) Albeit including more information, both tell the same grand history, terming the genocide “genocide against the Tutsis”, downplaying the civil war and presenting pre-colonial times as harmonious.
textual display under the heading ‘International Response’, the lack of action by the UN and the many warnings given to the international organization before 1994 are treated in a paragraph focusing on the substantiated failure to prevent genocide. The justice process at the ICTR however, is only featured at the KGM. Here, under the heading ‘Justice and Peace’, it nevertheless constitutes a much smaller part of the story than does the national focus on ‘gacaca and peacebuilding’. Furthermore, its corresponding audio guide clip does not mention the Tribunal.

Notwithstanding this neglect of the role of the international justice process, displays of sexual violence are featured to a notable extent. As a matter of fact, four of the six memorial sites make explicit references to sexual violence crimes. The comprehensive Kigali memorial treats sexual violence in two sections of the museum’s textual display. Under the heading ‘Women and Children’, we read: “Women and children were a direct target of the genocidaires for murder, rape and mitigation (...) Tutsi women were systematically raped and sexually mutilated as a weapon of genocide.”\(^\text{258}\)

Under a section on the genocide’s consequences, the heading ‘Devastation’ reads: “Tens of thousands of people had been tortured, mutilated and raped (...) There were thousands of widows. Many had been the victims of rape and sexual abuse or had seen their own children murdered.”\(^\text{259}\)

Sexual violence is also part of the narrative in three other memorials. Nyamata is perhaps the most notable. In a room underneath the church floor constructed specifically for the memorial, a glass showcase presents the recurrent shelves of skulls and bones of victims so common to these memorials. At the bottom of the display however, we find a large coffin covered in a cloth bearing a cross. The guide spontaneously described this to be a memorial over sexual violence; “Inside is a woman killed after being raped and having gotten introduced a stick into her sex – all the way up to here”, he explained, pointing at his head. When killed, the woman according to his account had a child on her back. The guide then explained that this happened all around the country during the genocide. Similar stories of sexual violence are also told through tangible objects in Ntarama and Nyarubuye, specifically through exhibiting long sticks used for sexual abuse and killing of

\(^{258}\) Kigali Genocide Memorial, Kigali. Text display in main museum room: “Genocide. Apocalypse – Women and Children”
\(^{259}\) Ibid, “Devastation”.

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women. In Ntarama, pointing at the same kinds of sticks leaning against a brick wall, the guide told me; “They symbolize that women got the sticks put into their vagina.” Knowing I had already visited the Nyamata site, she made a reference to the coffin displayed there, concluding; “This happened many places.”

From this brief assessment of the six national memorial sites, we can establish on the one hand; that overall, they are in line with the official narrative of the genocide. The story they convey is generally a constricted one, focusing on massacres of the 1994 genocide, and on visual physical displays in all their tangible morbidity. Even if Kigali and Murambi incorporate a broader historical background, they are in line with the official account. The center of attention is placed on the dead at the hands of the killers, the Hutu – carrying a backward-looking message with warnings of never to forget. Within this constricted narrative, the international justice process is practically absent. Sexual violence crimes however, are vividly present.

Why we might see this ‘space for rape’, will be the focus of the coming analysis. First, however, we shall juxtapose this first empirical example with a different specimen of Rwandan lieu de mémoire, the online Kwibuka memorial website. This site of memory incorporates a forward-looking version of the official narrative. What is different and what is the same? What space for rape is given in this variety of the narrative, and how do we explain the dissimilarities?

**Kwibuka – Looking Forward**

Kwibuka means ‘remember’ in the local language Kinyarwanda, and the website Kwibuka20 was initially put in place for the 20th anniversary of the genocide in 2014. The following year, it was recycled as Kwibuka21, and it still functions as an information site for this year’s 2016 events, even though the bulk of its content stems from the initial launch. Like the Kigali and Murambi memorial sites, the website is a governmentally overseen creation, albeit with support and funding from outside collaborators. The full content of the webpage includes a blog, twitter feeds, event

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260 Kwibuka website. URL: [http://www.kwibuka.rw](http://www.kwibuka.rw)

261 Much of the material, for example dealing with events, has not been updated at the time of writing. In several sections you can tell they have only changed a sentence to make it relevant for 2016.

262 Alongside the CNLG and the Ministry of Sports and Culture, these are the stated Kwibuka partners: The *Aegis trust*, The *University of Southern California Shoah Foundation*, “Generation for Change” and “The Taskforce to Remember Survivors 20″.
overviews, and links to the Aegis Fund’s online “Genocide archive” (a digital collection of items relating to the genocide as well as gacaca testimonies). My empirical assessment will focus on the non-temporal content; text and images chosen explicitly for the purpose of the webpage’s aim to educate readers, national and international, about the genocide.

“The Kwibuka flame symbolizes the remembrance as well as the resilience and courage of Rwandans over the past 20 years”, the opening text on Kwibuka’s frontpage reads (bold in original). In passionate language, it introduces us to the core of the website’s outlook: This one sentence embodies not only the purpose of a lieu the mémoire – to commemorate – but highlights a future-oriented narrative of the ‘new Rwanda’, of strong, united Rwandans. Its corresponding symbolism tells a story of togetherness: Followed by brightly colored photographs, of youth with the new national flag, the bright light of the ‘Kwibuka flame’, and hands clutched together, the page stands in stark contrast to the memorials’ gloomy skulls. The following assesses its content using examples from the central sections of the webpage, namely: About: What is Kwibuka?; Learn; Then and Now; and Rwanda Today.

The first section states the objective of the memorial webpage. It describes Kwibuka as a national and international series of events, focusing on remembering “one of human history’s darkest times,” and appeals to the world “to come together to support the survivors of the genocide, and to ensure that such an atrocity can never happen again – in Rwanda or elsewhere.” Although pointing back to the genocide, its focus is the future, characterizing Kwibuka as “a time to learn about Rwanda’s story of reconciliation and nation building.” Unity and reconciliation takes center stage. Ethnic differences are only indirectly addressed, with the specification “the genocide against the Tutsi.” The following paragraph expressively conveys the narrative of a hopeful post-genocide nation:

“Rwanda is looking forward to the next twenty years. We have a vision of hope, dignity and prosperity for our country. The people of Rwanda are working together for the brighter future they deserve. Come together with them to learn about, and commemorate, the Genocide...”

264 Kwibuka Website, frontpage.
against the Tutsi.” 266

It subsequently explains Kwibuka’s three components; ‘Remember, Unite, Renew’:

“To remember: Honouring the memory of those who died. Offering support to those who survived.
To unite: Rwanda shows that reconciliation through shared human values is possible. We ask the world to do the same.
To renew: As we build Rwanda anew, we are humbled to share our experiences and learn from others. Let’s create a better world together.” 267

Flanked by photographs of President Kagame lighting the Kwibuka Flame and smaller images of smiling children and flower-covered caskets, the display is very different from that projected at the stripped-down and disconsolate memorial sites.

This tendency continues in concurrent sections. Clicking into the segment Learn, we are invited to understand more – in the website’s own language: “To honour the memory of those who died in the Genocide against the Tutsi, and comfort those who survived, we must learn about what happened.” 268 The page leads us to several external links, including the mentioned Aegis Trust testimonies and a blog. Its main content however, is in the tabs ‘Four key facts’ and ‘What is Genocide’. The former embodies what the authors consider to be the most important history of the genocide, comprised in a one-page account. It tells us that “[T]he genocide was a carefully planned attempt to wipe out Tutsis in Rwanda. Between 7 April and 4 July 1994, more than one million Rwandans were killed.” 269 This first fact is followed by Fact Two: the failure of the UN and the international community to act; Three: the conspicuous role of the French in helping those responsible flee during the last days of the genocide; and Four: that many Hutus opposing the regime were also killed. This last ‘fact’ is perhaps the most surprising inclusion in an otherwise customary line of account, as moderate Hutus albeit killed in high numbers by the Hutu regime are often sidelined in the official narrative. The tab ‘What is Genocide’ follows. It goes

266 Ibid.
267 Ibid.
268 Kwibuka Website: “Learn” URL: http://www.kwibuka.rw/learn
The narrative follows the official choice of settling on the high estimate of victims. Many historians conclude on maximum 800 000. See Des Forges Leave none to tell., Prunier The Rwanda Crisis.
through the origins of the concept of genocide as termed by Raphael Lemkin, placing Rwanda in a broader historical context together with Holocaust:

“Less than fifty years later, the Genocide against the Tutsi in Rwanda reminded the world that genocide is still a risk. Preventing it remains a challenge. Studying the risk factors, warning signs and triggers of past genocides is key to understanding how to prevent future ones.”

The nuance, contextualization and inclusion of Hutu victims in the examples above somehow differ from a simple black and white account of good and evil. However, the overall projection of the website is determinedly repeating the official narrative, as illustrated through the sections ‘Then and Now’ and ‘Rwanda today’.  

In the same affluent and symbolic language as the first-cited frontpage quote, the account in ‘Then and Now’ portrays a post-genocide Rwanda that has moved beyond and above its past. They have come as far as having created a ‘now’ not even visually recognizable with the ‘then’. Comparing old and new photography, the webpage somewhat banally seeks to demonstrate in pictures how Rwanda has remade itself:

“After the Genocide against the Tutsi was stopped by the Rwandan Patriotic Front, Rwanda embarked on a journey of renewal that continues today. These pictures show the country’s transformation since 1994 and the ongoing work to build a future where together we prosper.”

The section compares not only colonially imposed identity cards with current ones, but contrasts images from ‘then’, and ‘now’, of girls’ education, forced and free elections, as well as juxtaposing pictures of the same town road – then filled with tanks and soldiers – now boasting of modern infrastructure. A text provided by the section “Rwanda today – a story of reconciliation and nation building”, follows the same narrative path. Promoting the recognized impressive developments Rwanda has achieved in terms of economic progress, it serves a platter of well-prepared immodest examples of a united, harmonious state. Running through not only growth,

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270 Kwibuka Website, “Learn – What is Genocide?” URL: http://www.kwibuka.rw/what-is-genocide
272 Ibid.
273 Its post-conflict economic reconstruction has been impressive in many respects. See An Ansoms “Rwanda’s Post-Genocide Economic Reconstruction: The Mismatch between Elite Ambitions and Rural Realities”, in Remaking Rwanda, eds. Scott Straus and Lars Waldorf.
poverty reduction rates, land reform and women’s high participation in parliament – bordered by photographs of high-rises in Kigali and, again, smiling children – it finishes up stating: “After the worst brutality of which humankind is capable, Rwanda has been brought back to life by the strength, courage and hard work of its people”. As such, even if Kwibuka conveys a broader story than the one told at the information-sparse physical memorial sites, its accounts also track the trail of the official narrative. However, in contrast to the memorials, Kwibuka is not gloomy in its remembrance of the past, rather, it looks forcefully forward, illustrating the opposite side of the paradox within the official narrative. In its reconciliatory gaze, the focus turns from past to future.

What consequence does this have for this thesis’ particular interest in sexual violence narratives? One might have thought the webpage would reference the ICTR at least off-hand, given its post-conflict attention. The ICTR is however not treated in the website at all, except within external articles linked to the site in its Blog section. When it comes to sexual violence crimes, a similar pattern follows. A blog search for ‘Sexual Violence’ provides two results, two externally added posts. ‘Rape’ gets seven hits. However, these are all references to UN speeches, copy pasted official statements from commemoration events and so on. The webpage’s non-temporal content does not provide its own material on sexual violence crimes. As a site of memory then, the webpage does not treat sexual violence as an essential part of the story it narrates about the genocide.

How can one understand the expressive references to sexual violence crimes in the memorial sites on the one hand and their absence in the online source Kwibuka on the other? And what about the overall neglect of the ICTR?

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274 Kwibuka Website, “Rwanda today”.
275 I do not include mentions in the rolling twitterfeed nor testimonies in the “Genocide archives” that are not part of Kwibuka’s own contribution. Blog-posts comprise a variety of externally copy pasted news articles, speeches and essays replicated or copied from outside sources.
276 The blog section is comprised by a myriad of external textual sources. Its content is comprised of links that lead to added articles, speeches etc. I used the search function to find references to rape and sexual violence to see whether there was a prevalence of those or not, and in what context. However, the hits are all on speeches, official events etc. For example, the two sexual violence mentions are made; a written version of the UNGA President’s address at the launch of the 20th commemoration in New York 27. February 2014: URL: http://www.kwibuka.rw/remarks-president-68th-session-ungeneral-assembly-kwibuka20-launch-new-york and a Huffington post published article by UK Foreign Minister William Hague from February 7th 2014 called “20 years on from the Genocide we must do more to prevent conflict”: URL: http://www.kwibuka.rw/uk-foreign-secretary-william-hague-rwanda-20-years-genocide-must-prevent-conflict.
Analysis: Remembering Rape?

Memory is invariably and inevitably selective. “A way of seeing, is a way of not seeing, a way of remembering is a way of forgetting too” writes sociologists Vered Vinitzky-Seroussi and Chana Teeger.\(^{277}\) In any recollection, in narratives of the past, some things are highlighted, and some ignored. The following analysis first explores the presence of sexual violence crimes in Rwanda’s official memorials.

Sexual Violence Presence

Assessing the ICTR process previously, I described that an important precursor of its milestone verdicts related to a ‘gender momentum’ in the 1990’s, with both motivations on behalf of the UN, internal ICTR actors as well as external pressure to unveil formerly neglected gendered stories of conflict.\(^{278}\) The particularly expressive rape-victim tomb at Nyamata opens for drawing a similar inference on behalf of the national memorial sites; that there is an underlying motive to make voices of rape victims heard. So do the many sticks visibly exhibited elsewhere, and some of the guides’ elaborations. But if there was a systematically conscious incentive behind these gendered representations in Rwanda, it seems odd that two of the sites do not mention rape, and moreover that the Kwibuka webpage by and large neglects it as a genocidal element. One explanation for the former could be that sexual violence was less present at those massacre sites. However, the occurrence of such crimes was so prevalent during the genocide that it is implausible that it did not happen in either Bisesero or at Murambi, where thousands of people were targeted.\(^{279}\) Leaving aside the on-site physical evidence however, it could also be a matter of arbitrariness whether the guides I met at my visits included or excluded it in narrative. As many of the memorials rarely have visitors, few of the guides carry an abundance of practice.\(^{280}\) Moreover, as Jean-Damascene Gasanabo, CNLG director general of the National Research & Documentation Centre on Genocide notes; “Sometimes, the


\(^{278}\) See Chapter 3.


\(^{280}\) At some of the least accessible sites such as Bisesero, Visitors’ books showed that less than a dozen people had visited since the beginning of December 2015, two months before my arrival.
guides make mistakes (...) they need to be trained in terms of English, but also in terms of knowing the history.”

Compared with the comprehensive Kigali Genocide Memorial, which readily receives hundreds of visitors daily, the bulk of national memorial sites are rather undeveloped. They do not have the prerogative of being supported by an funder, and one should thus be wary of putting too much into the particularities of the individual guides’ choice of words. Furthermore, that rape artifacts such as torture tools and sticks are put up in some places and not others could also be a case of chance, given the sites’ rudimentary nature. Nevertheless, though not systematic or convincingly conscious, the presence of sexual violence narratives do imply a ‘space for rape’ in general terms. However, we cannot disregard the silence around sexual violence at the Kwibuka webpage. Why here when not there? What remains for us to explain the ‘space for rape’ so expressive at many of the memorials?

The answer might lie in the nature of the official narrative itself. In an article written for the travel section of the New York Times, reporter Andrew Blum describes his experience from visiting the Nyamata church underground crypts with the following: “The odor exempted us from the need for imagination. It relieved us of the need for understanding.”

Philip Gourevitch, another observer at the Nyarubuye memorial, writes in a similar vein:

“[L]ooking at the buildings and the bodies, and hearing the silence of the place, with the grand Italianate basilica standing there deserted, and beds of exquisite, decadent, death-fertilized flowers blooming over their corpses, it was still strangely unimaginable. I mean one still had to imagine it.”

Why involve these quotations by arbitrarily chosen visitors? – Because they tell us something critical about the function of the memorial sites as a lieu de mémoire. With their scant information supply and shockingly visual exhibits, they appeal to emotion, rather than reason. Their motives are less about understanding and contextualizing, than about affecting. Jens Meierhenrich states quite pessimistically that:

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281 Jean-Damascene Gasanabo, interview. Kigali, 18. January 2016. The director informed me that the CNLG has embarked on an ongoing collaboration with the University of Pennsylvania involving guide training, probably being put into effect in June 2016.


283 Philip Gourevitch, We Wish to Inform you That Tomorrow We will be Killed with Our Families: Stories from Rwanda. (New York: Farrar, Straus and Giroux, 1998) cited in ibid, 288-289.
“Rwanda’s national memorials keep observers at bay. It is indeed difficult to formulate critical questions about the legitimacy of the post-genocidal regime when one is face to face – both literally and figuratively – with the legacies of the genocidal regime that preceded it. By remembering the past in a very particular, macabre manner, these memorials facilitate a forgetting of the present.”

Although studies such as that of IR scholar Rachel Ibreck point out that the memorials were originally products of grass root survivor contributions, Meierhenrich asserts that as of 2007, the state’s centralization of commemoration has had a strong effect on Rwanda’s memorialization. He claims that its selective remembering emphasizes violence, death and destruction, more often than not for the “purpose of legitimating authoritarian rule rather than honoring the genocide dead” – ultimately playing a role in what he calls the regime’s “strategy of suffering.” Bearing in mind my firsthand impression of the sites as somewhat sporadic and unconscious when it comes to choice of narrative elements, I disagree with Meierhenrich’s strict depiction: To describe them as a highly organized tool of repression is to give the rudimentary constructions too much credit. My analysis is however well on board with saying they form part of a larger system of governmental control over memory. His argument offers relevant reflections to the question of ‘space for rape’. Sexual violence references present at the national memorials all have one thing in common; they are powerful attributes to an already dreadful story. Even if the KGM textual displays allows for some contextualization, for example terming rape as ‘weapon of genocide’, sexual violence inclusion in the overall narrative more than anything strengthens the hold of the horrible acts of the genocidaires. Following this line of explanation also opens a window for understanding the absence of sexual violence in the complementary Kwibuka webpage. The two serve different functions as lieux de mémoire, but both are ponds in the politically guided memory landscape.

Sexual Violence Absence

One of the major characteristics of commemorative activities is that memory, like narrative, is “constructed around blind spots and silences,” writes Vinitzky-Seroussi

284 Ibid.
286 Cf. establishment of the National Commission for the Fight Against Genocide (CNLG).
and Teeger. Turning to the question of sexual violence absence in the Kwibuka webpage, I now close in on this matter of selection and silence so fundamental to collective memory construction. Why is sexual violence left out of its narrative?

In Chapter 3, one factor found relating to the difficulty of prosecuting sexual violence crimes was challenges of cultural stigma. This was shown both through victims’ reluctance to speak up, as well as perpetrators’ unwillingness to take on responsibility for sexual violence acts. As such, it could seem an easy task to explain the absence of the issue in local lieux de mémoire. Just observing the Kwibuka webpage could have made us deduce that it is left out of the presentation due to its sensitive nature. However, as we have seen, the prevalence of sexual violence narratives in the national memorial sites obscures this simple understanding. Cultural taboos did not exclude sexual violence from being displayed here. What type of absence are we then looking at?

There is a difference, write Vinitzky-Seroussi and Teeger, between overt and covert silencing. One relates to blatantly denying, another to merely sideling. The latter does not need to be a result of a conscious choice of ‘leaving out’. Rather, an element could just not be rememberable enough to fit the constricted scaffold of a given narrative. For example, in Rwanda, to deny RPF atrocities in the civil war is necessarily different from not wanting it to be part of the grand official account of genocide, as this was distinct from the ongoing internal armed conflict. Following this line of thought, there is little reason to believe that absence of sexual violence is a result of overt suppression. However, as all lieux de mémoire “tend to minimize and silence some stories and memories while promoting others,” viewing it as covert makes more sense. We know that the official narrative has no reason to deny sexual violence as a fact. This is forcefully illustrated by the presence of references to such crimes at the memorials. Rather, when the website has not found it relevant to its promoted story, we should regard it as a result of the function of this particular lieu de mémoire. Although it conveys information on the scope of killing and its genocidal origins, emphasizing atrocities is not the chief object of the webpage. Its narrative surrounds around what came after 1994 – Rwanda’s rise from the ashes of genocide.

288 Vinitzky-Seroussi and Teeger, “Unpacking the Unspoken”. 1107.
In contrast to the *backward*-looking, memorial sites, Kwibuka centers on the future and a presently unified Rwanda.

Although seemingly enigmatic then, the former are about not forgetting, while the latter somehow needs to forget. As such, the most sensible answer to the question of sexual violence absence in Kwibuka is not that it results from overt silencing, but that it is a consequence of selection. Its horrible connotations do not fit, and are not necessary, within or for a narrative focused on looking forward.

**ICTR Contributions?**

Underlying this empirical analysis is an attempt to explore the contribution of the international justice process to the national collective memory. Conclusions here rely on limited data and can only be assumptive, as well as restricted to this analyzed part of the Rwandan collective memory landscape – official lieux de mémoire. As shown however, neither the national memorial sites nor the Kwibuka website award significance to the Tribunal. Only one of the memorial sites, the comprehensive Kigali Genocide Memorial in the capital, makes explicit reference to the ICTR. On the Kwibuka website, the Arusha process is only mentioned offhand in externally compiled blog posts.

As such, as carriers of the national collective memory, neither of the two lieux de mémoire provide their audiences with a reason to ‘remember’ the Tribunal. However, even if none of them makes reference to the ICTR’s sexual violence process, four memorials incorporate accounts of wartime rape. It is problematic however, to let those examples alone substantiate an impact by the larger discourse of rape as an international crime that the Tribunal played part in bringing about. Their overall disregard of the ICTR rather implies it has had little impact. Consequently, it is tempting to say that the international justice process has not made a mark in the collective memory of their local audience. However, as these examples of lieux de mémoire are all expressions of the official narrative, we can only draw the inference that it is the *regime’s* version of memory that has not absorbed the contribution of the ICTR. In the face of competing narratives and the official RPF ‘healing truth’, sexual violence accounts thus in one way or the other lose the ‘struggle of memory against forgetting’.
Concluding Remarks

This empirical assessment of Rwandan lieux de mémoire demonstrates on the one hand that there is ‘space for rape’ in present-day Rwanda’s memory landscape, with the presence of explicit sexual violence accounts in national memorial sites especially noteworthy. However, the fact that the issue is not tackled systematically across the memorials, as well as not being part of the narrative conveyed at the Kwibuka webpage, weakens the notion of an underlying motivation on behalf of the regime to tell these stories as particular gendered stories of wartime rape. Sexual violence accounts are in this sense just another artifact of cruelty, not forcefully highlighted as an independent and particular kind of war crime. Both due to this finding, as well as the overall absence of the international process as such, my empirical assessment does not support a strong ICTR influence. The space given to sexual violence in narratives arising from Tribunal – as a distinct, gendered facet of genocide – is not matched.

Rather, both presence and absence of rape narratives in Rwandan sites of memory is subordinated to the official historical narrative. – Rape is included where the function is to make a strong reminder about past suffering, and correspondingly not included where the horrible past stands in the way of the RPF’s reconciliation-oriented outlook. The empirical comparison thus constitutes a forceful reminder of Halbwach’s notion of collective memory – seeing the past as a social construction ‘shaped by the concerns of the present’.
Chapter 5: A Legal Storyteller

“Whatever the law is after, it’s not the whole story”
– Clifford Geertz\(^\text{290}\)

The finding that the Tribunal is hardly present in the Rwandan official memory landscape, neither as an institution nor with its narratives relating to women’s distinct genocidal past, demands reflection. In this chapter, I start where Chapter 4 left off. Going beyond the courtroom, has the Tribunal sought to make its stories matter in Rwanda? Was there a will on behalf of the UN body to transmit and make available the memories of the past gathered in trial to the outside world? I assess this question first from the perspective of individual legal actors, followed with examples of tangible initiatives by the Tribunal to convey its work to outside audiences. Finally I turn to the more theoretical question triggered by Clifford Geertz’ quote – of ‘what the law is after’. What sort of storyteller is a court like the ICTR?

Perceptions of ‘Storytelling’ in Court

In the introductory chapter, I cited Daniel Koosed, who insists that actors at the ICTR considered the creation of a historical record of the Rwandan genocide to be an essential part of its mandate. Although collecting and conveying a ‘historical’ record appears nowhere in the Tribunal's Statute, he holds that this view “is evident from the Tribunal's jurisprudential focus on this history as well as a unanimity of views on this subject among the judges I personally spoke with.”\(^\text{291}\) Is this a valid conclusion? My respondents as well as the findings of researchers such as Nigel Eltringham and Richard Ashby Wilson confound Koosed’s clear-cut interpretation.

Not explicated in the mandate or the Statute, a motive to preserve accounts of the past can only be found within practices of the ICTR’s different entities or in individual intentions. Eltringham’s study finds that actors’ perceptions of preserving ‘history’ in court varied. They were inconsistent both within Prosecution and Defense camps, and among judges. Articulated intent also differed among individual respondents, either being in court or in leisurely conversation with the researcher. One

defense counsel after having proclaimed in trial his idealist demand before the judges to include more evidence for ‘historical’ purposes, told Eltringham over lunch that; “I am not an archivist. I only submit documents that help me.”

Wilson’s study found consensus among attorneys regarding submission of more historical evidence in international courts compared to national courts. One explanation was both the magnitude and complexity of cases in international criminal trials. However, he found assorted responds to the role of history in trial as such. My interviewees all stressed history’s subsidiarity to their main object. Jallow states:

“When I go to court, I don’t go to court because I want to write the record of what happened. It is because I want to establish the guilt of those particular accused persons. It means I have a selection. My case, my allegations, the selected issues I am going to deal with. Not trying to paint the broad picture.”

Also saying that “we use the judicial method to establish facts of history,” he does however not dismiss the Tribunal’s contribution to provide well-founded accounts of the past. Judge Møse has a similar reflection:

“The ICTR was not a fact-finding or reconciliation commission, nor was its task to do historical research. It was a court. But to argue that the Tribunal did not contribute to writing the history of the 1994 events would be to ignore the realities at hand. This does not mean that the ICTR could provide a complete picture of what happened.”

Thus, although not agreeing with Koosed’s assertion of an aim to write the history of the genocide, ICTR actors acknowledge that they nevertheless contributed. Former ICTR spokesperson Roland Amoussouga reiterates: “we are proud to say that we also took great part in the process of accumulation of the historical record and the preservation of that record.” However, individual actors also stress their particular method as jurists in bringing such a record about, emphasizing that lawyers invoke a legal method in pursuit of justice; their pursuit not being that of the historian. In Patricia Sellers’ words; “lawyers and historians use a very different lens.” Thus,

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292 Eltringham, “‘We are not a Truth Commission’”. 57.
293 Wilson, Writing History in International Trials: 62.
295 Ibid.
296 Interview with Møse, Oslo 11. December 2015.
297 Interview with Roland Amoussouga, Oslo/Montreal, 10. February 2016.
298 Interview with Sellers, Oslo/Brussels, 10. February 2016.
from the perspective of individual actors, the accumulation of the record was not a purpose, even if an inevitable result of working with individual trial cases. Rather than a motive of the court, what the UN body calls the ‘historical record’ is a profitable side effect of its primary legal process.\textsuperscript{299}

Another place to look for indications that there was a ‘will’ on behalf of the UN body to act as storyteller of the past, lies within tangible Tribunal initiatives to communicate its work to a broader audience. Two such initiatives are in particular noteworthy when wanting to elucidate the ICTR narratives’ potential impact on Rwandan memory.

The ICTR Outreach Program

Everything the Tribunal dealt with in some way relates to Rwanda, due to the mere fact that it was the leaders of its genocide it set out to prosecute. Nevertheless, the geographical challenge of distance, along with the noted disagreements with the RPF regime, was an inborn deterrent in impacting the Rwandan population – and to our concern – transmitting ICTR narratives of genocide. From the get-go however, the Tribunal did embark on various efforts to “reach out” to Rwandans under the umbrella of a so-called Outreach Program. This initiative is the foremost example that the Tribunal sought to communicate its conduct and the stories its process conveyed. Already in ICTR’s 1999 Annual Report to the UNSC, we read:

“Awareness of the work of the Tribunal in Rwanda has also increased. An outreach programme to the Rwandan people, the first of its kind under the current system of international justice, was established during the reporting period. This included the establishment of a Radio Rwanda bureau at the seat of the Tribunal at Arusha in early 1998 (...). These broadcasts appear to have had an impact on public awareness of the Tribunal in Rwanda.”\textsuperscript{300}

However not verifying its ‘impact’, outreach initiatives continued over the years. Its spearhead element was inaugurated in 2000, with the establishment of a permanent


Information and Documentation Centre in Kigali. The center, in Kinyarwanda named *Umusanzu mu bwiyunge* – meaning “contribution to reconciliation,” hosted a public information area, a library, and a Victims’ Assistance Program. Under the banner of outreach, its objective was, in Peskin’s words; “to win the hearts and minds of a sceptical populace in two ways: (i) ‘local information dissemination’ and (ii) ‘communication and training’.” The program was later expanded to include other information centers scattered around the country. According to ICTR itself, the Rwandan population showed a large interest in *Umuzansu*, reportedly receiving over 100 visitors a day. Peskin however says its effectiveness may be exaggerated, that number being much higher than what he observed as well as according to other reports.

During the lifespan of the Tribunal, the outreach initiatives lacked both funding and resources, and its legacy in terms of ‘winning the population’s hearts and minds’ is uncertain. Still, discussing intentions to impact the Rwandan people, they show a motive on behalf of the UN body – an intention to have the ICTR matter in Rwanda. Amoussouga, former ICTR Spokesperson and a strong outreach promoter, states that without it;

“…one would be operating in the darkness. ICTR Outreach program was therefore like a big floodlight that had been showcasing the work of the International Criminal Tribunal for Rwanda, particularly when the court is located far away from Rwanda where the crimes were committed.”

Turning to sexual violence narratives, we need to ask an additional question; was there a specific intent among the Tribunal’s actors to transmit narratives of this part of the genocide in particular? According to Amoussouga, sexual violence crimes was part of the general story told in education workshops and outreach work in Rwanda:

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303 ICTR Annual reports repeat references to this number.


305 Ibid, 952.


307 Interview with Amoussouga, Oslo/Montreal, 10. February 2016.
“We always referred to the Akayesu case as one of the key landmark cases that defined one of the most critical aspects of the well-acclaimed achievements of the ICTR. Indeed, ICTR had built around that pioneering decision, a strong body of gender based jurisprudence, which forms part of the true legacy of our Tribunal.”308

For example, the libraries at the information centers included casework, judgments as well as secondary literature about the genocide in which readers could read about this part of the genocide too. However, there is no systematic promotion of the Akayesu judgment or sexual violence crimes in general outreach accounts of the genocide. For instance, the condensed outreach genocide history cartoon book called “100 days: In the land of the thousand hills,” does not feature sexual violence.309

Whether the ICTR managed to “reach out” to the Rwandan ‘hearts and minds’ with stories of sexual violence thus remains indeterminate. Peskin notes:

“[w]hether societies come to value tribunals as an equitable and effective way to confront their violent pasts may ultimately depend more on the approval of a nation’s leaders than in anything an outreach program alone may say or do. It is thus important to stay informed about the political realities that limit what is possible for an outreach program to accomplish.”310

This stipulation parallels my findings in the local sites of memory, where the national political agenda largely outshone any potential international influence – rendering individual accounts of sexual violence largely subdued by the official historical narrative. Even if there were resolves at the ICTR to transmit its narratives of the past, the nation-state’s will to authorize its storytelling seemingly proved stronger.

**OTP’s Genocide Story Project**

Whilst the Outreach Program was an ICTR administrative initiative, organized by its External relations unit, other entities at the Tribunal also made efforts to promote its memory contributions. A second noteworthy project directly relating to the ICTR’s role as a storyteller is the OTP’s “Genocide Story Project.” Former legal advisor

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308 Ibid.
Thembile Segoete says the project originated as a will on behalf of the OTP staff to promote the stories of genocide collected through its work: “Prosecutors felt so strongly that at least we have to leave something documented somehow for people actually to see how the genocide developed and how it was done.”\(^{311}\) In gathering and systemizing evidence brought about through trials it into a coherent narrative, the resulting product, to be published sometime in 2016, will provide an account of the genocidal campaign based on adjudicated facts affirmed on appeal.\(^ {312}\) According to the authors, it will be geared to serve two primary audiences; “the international justice community for whom the Rwandan Genocide provides specific interest in helping identify possible precursors to genocide,” and “the people of Rwanda who collectively were severely affected by the atrocities committed during the Genocide.” Appealing in particular to the latter of these audiences, it “will be written in an easy-to-understand narrative style, with the story told both chronologically and thematically.”\(^ {313}\)

The project illustrates an acknowledgement on behalf of the OTP that it indeed has contributed to conveying narratives of the past, as well as an intent to reach out to the Rwandan populace with the Tribunal’s narrative, a narrative it denotes as ‘history’: “The genocide story project is produced for the purpose of recording history.” However, Segoete also acknowledges its particularity as an narrative of the past, as it is solely based on confirmed facts in court: “you will not find necessarily a historic record of it, because judgments are fragmented,” she notes.\(^ {314}\) Within the publication however, accounts of sexual violence will also find their place. “That is one of the aims of publishing that part of the history and the history of the whole genocide, that things are not silenced,” says Segoete. As such, the project represents an initiative by which the Tribunal sought to promote the stories of sexual violence to the international community and Rwandans alike.

Now, the final initiative bearing witness that the ICTR has acted as a conscious storyteller, at least post-hoc, is its efforts to preserve and make available its comprehensive record through its Archives.

\(^{311}\) Interview with Segoete, Arusha, 26. January 2016.
\(^{313}\) Ibid.
\(^{314}\) Interview with Segoete.
The ICTR Archives

As the ad-hoc Tribunals complete their mandates, thousands of linear meters of physical records and petabytes of digital records are left to the custody of the UN under the auspices of the MICT (Mechanism for International Criminal Tribunals). Preserved in Arusha and in large parts accessible online, the ICTR archives without a doubt present an important source of knowledge for everyone interested in the Rwandan genocide. As its webpage writes, the Archives;

“…document the memory of their operations and accomplishments, and also contain a wealth of information on the history of Rwanda (…) constituting one of the most complete collections of eyewitness testimonies of some of the greatest violations of international humanitarian law to have occurred since World War II.”

Within its collection of documents and edifices, one will also find a record of the vast sexual violence that occurred in Rwanda, with submitted evidence, audio clips, images and transcripts of testimonies. The archive is thus a ‘lieu de mémoire’ on its own, in which one can go to ‘remember’ sexual violence atrocities. The preservation of the Archives in a brand new compound in Arusha as well as the ongoing submission of filings available online, represents another will to make stories of the genocide as brought about through court known. However, as a collection of genocide sources, the ICTR archives are distinct. They represent a specific specimen of site of memory, with particular connotations relating to being namely Archives.

Archives have often been viewed as neutral collections of information. “Traditional belief states that archives as institutions are guardians of truth; archives as records contain the pristine evidence of past acts and historical fact,” write archivists Joan Schwartz and Terry Cook. They argue that academia has been slow to recognize the nature of archives as social institutions and their relationship to notions of “memory and truth.” What is preserved, what is left out, what is lost and who controls it? Recent scholarship acknowledges that archives too wield power, having the authority to privilege and marginalize accounts of the past. Important examples include research on the nexus between state sovereignty and archival access.

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315 MICT Archives and Records Section website.
317 Ibid, 8, 13.
Chapter 5: A Legal Storyteller

after decolonization. The Rwandan regime’s struggle to domesticate the ICTR archives is strong testimony to this archives-power relationship. While the state wants power of what it rightfully claims concerns Rwanda’s past, the UN on its side fears sensitive documents might be misused or made unavailable for scrutiny if not in international custody.

Victims, relatives, students, filmmakers, authors, historians and other academics will find a vast pool of documentation of Rwanda’s past in the ICTR archives, both in trial documents and myriads of collected evidence and remnants from the genocide. However, what they will find should not be confused with a comprehensive national archive. What they will find is documents and evidence brought about in a process with a different aim than the archivist – legal actors proving individual cases.

**Concluding Remarks: What is the Law after?**

After its about 20 years of trials, the ICTR has provided a vast pool of documentation about the genocide, and evidence of wartime rape make out a significant part of that pool. As Sellers says: “It is not the complete history of the genocide, it is the legal view of the pertinent facts of the genocide. The fact that sexual violence is in the legal cases speaks volumes about the historical facts contained within the genocide.”

Both the Outreach Program, legacy initiatives such as the OTP Genocide Story Project, as well as the Archives are testimony to the fact that there has been a will on behalf of individuals and entities within the ICTR to convey its memory contributions, also those relating to sexual violence. However, it does not answer our question of what the law is after.

Shoshana Felman argues that courts dealing with traumatic pasts only unconsciously operate as historians. The examples above show however that the ICTR was not unconscious of its role as a storyteller. It has both preserved and taken

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319 They are UN property. A UN concern is that evidence on RPF atrocities will be destroyed if in the regime’s control. Rwanda however wants custody. See Rwandan newspaper The New Times, “Experts on why Rwanda should take custody over the archives,” 10. February 2015. URL: [http://www.newtimes.co.rw/section/article/2015-02-10/185831/](http://www.newtimes.co.rw/section/article/2015-02-10/185831/) [Last visited 01.05.2016].

320 Interview with Sellers, Oslo/Brussels, 10. February 2016.

measures to convey narratives of the past brought about through its process. We also saw that the Tribunal’s legal actors acknowledged that this does not make them historians as such, and that the ICTR record is far from a complete history of the Rwandan genocide. “The Tribunal is just one source, albeit an important one, of many other sources relevant for writing a comprehensive history of Rwanda,” as former legal advisor Odora notes;

“A criminal trial, through the use of substantive and procedural law, limits other facts that may be historically relevant, but inadmissible for the purpose of trials. To that extent, records of trial is complimentary”322

Although the Tribunal has provided the aftermath with accounts of the past, it was never, as Clifford Geertz says, aiming at providing ‘the whole story’. Law, writes Mark Osiel, has an inherent difficulty in ‘getting its history right’.323 Here however, it is not as much getting the story wrong, but its specifically selective process, that renders its ‘history’ challenging. As shown in previous chapters, much of past atrocity is left out: Judgments are selective, the trial process is selective, and investigations are indeed selective too – the main goal being to charge and accuse according to a distinct mandate. Law, by nature, “is solely directed toward judgment,” as Henry writes.324 Only a small fragment of the actual story is and can be told in legal sites of memory, where “what cannot be articulated in legal language is, however played out on the legal stage.”325 However, this is but a descriptive point to be made. The law does what it sets out to do: to punish those responsible. It should thus not be blamed for not being after ‘the whole story’.

On the other hand, what distinguishes the Tribunal as a storyteller, is its actors’ unique roles as memory agents. Compared to other lieux de mémoire, tangible or abstract, where stories about the past are conveyed, law has a coercive capability to ‘get the final say’. In contrast to other narratives of the past, law claims finality.

Courts are as such distinct, establishing facts in an authoritative manner, legitimizing its truth claims in a very different way than for example the historian:

322 E-mail Interview with Odora.
323 Osiel, “Ever Again”. 549. See also Wilson, Writing History in International Criminal Trials. Wilson’s study of trials as ‘history writers’ presents several examples where background historical facts in judgments are sometimes wrong or contradictory.
324 Henry, War and Rape: 111.
The lawyer, the judge and the historian “are all artisans of memory, imposing ‘temporal causal sequencing [that] makes sense of action,’” writes Eltringham: “but it is trials that are singled out as coercive.” While the work of historians consists of creating distance, putting things into perspective, as well as being open for future revisions, the factual findings of the law provide end-points to a story. The verdict of a court is definite and authoritative, and so are its memory contributions.

As sites of memory, ICTR’s tangible contributions represent important sources of knowledge for those seeking to know the past. Working as memory agents, both individual actors and entities within the UN body also sought to make its promulgated stories heard, illustrating not only that they were conscious of their contributions, but that they wanted to make them matter to a larger audience.

On the other hand, viewing ICTR contributions – not to mention its archives – as a neutral collection of remnants and accounts of the past, begets caution. Its archival content is governed by law’s selective constraints, its judgments essentially normative. It is authorized to call judgment, not only in individual cases, but also on history itself. Thus, the court’s storytelling should not be mistaken for accounting for the past as it was. As its main task is to prove guilty and innocent, telling ‘the whole story’ was never what the court was after.

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326 Eltringham, “‘We are not a truth commission’”. 60.
Chapter 6: Conclusions and Further Research

This thesis opened with an epigraph, citing Milan Kundera’s “the struggle of man against power is the struggle of memory against forgetting.” Throughout its chapters, we have encountered many struggles concerning the particular memory of women’s sufferings of sexual violence. Picking up the initially posed research questions, the following recapitulates my findings, their implications and makes suggestions for further research.

Findings and Implications

The broad question posed by this thesis was: What have been ICTR’s contributions to collective memory of sexual violence in the Rwandan genocide? Having defined such contributions as narratives of the past that takes place in the present, subsequent research questions sought to delineate and explain ICTR narratives of sexual violence, as well as their bearing in the Rwandan memory landscape. The thesis has as such sought to evaluate the Tribunal as a storyteller by the parameters of what it tells about past sexual violence, how it tells its stories, and to whom.

First of all, ICTR’s narratives are found in different places. I unearthed them both in: the overall conviction rate of sexual violence crimes; in milestone verdicts; and in articulations of individual sexual violence experiences in judgment texts and trial transcripts. Furthermore, living on as a permanent legacy of the Tribunal’s process, the ICTR Archives as a whole can be regarded a site of memory of its own, containing all these categories of narration.

The narratives unraveled are equivocal, independently conveying ambiguous messages of sexual violence experiences. For example, the conviction rate alone serves a meager reminder of past events. That the prosecution only accomplished twelve successful convictions is a scant reflection of sexual violence reported to have pervaded Rwanda in 1994, unaccompanied acting as a poor measure to recollect sexual violence atrocity during the genocide. However, within convictions, other narratives appear. Through several verdicts, the ICTR provides powerful means to
remember sexual violence as a key element of the Rwandan genocide. The Akayesu Judgment as well as other noteworthy verdicts, place sexual violence at the core of the genocide, establishing rape as a part of the strategy targeting the Tutsi as a whole, highlighting women as specific targets in conflict. The verdicts confirm that sexual violence was orchestrated top-down, not just a cause of the frolic of soldiers’ exploits. Providing lasting legacies in international jurisprudence, these form part of a reconceptualization of wartime rape internationally. Furthermore, going behind the verdicts as such, judgments’ articulations of rape testimony also incorporate powerful and memorable narratives of individual sexual violence experience.

Together, these narratives provide strong means to remember past atrocity. Although not substantiating that the ICTR has shaped a collective memory outside its legal realm, I argued that its contributions also – narrating sexual violence as a distinct element of conflict where rape victims are not just regrettable war victims – serve as contributions to the larger pool of collective memories available for remembrance. As the archives are preserved and trial documents digitalized, those interested in knowing about Rwanda’s genocidal past, including its effect on women, can learn much from ICTR’s vast record. Taking in the full range of comprehensive factual accounts made available through its archives, one comes to recognize, as did Karl Jaspers writing to Hannah Arendt during the Eichmann Trial, that “[t]he hearing of witnesses to history and collecting the documents on such a scale and with such thoroughness would not be possible for any researcher.”327

The record as a whole thus provides significant contributions to sexual violence memory, not only to the international juridical realm, but also to others ready to consult them through the ICTR archives. However, my study has also shown how the Tribunal’s contributions inherently result from its nature as an international legal process. Though knowledge of ‘history’, they are distinctly born by both its complex process as well as a legal method of fact-finding, neither presenting neutral nor comprehensive accounts of the past, but inherently bound by the needs of the ICTR’s process, both its institutional and political context.

Through tracing the historical process of sexual violence prosecution between 1994 and 2015, my empirical assessment uncovered several impetuses, both directly

and indirectly affecting the record. On one hand, UN attention to sexual violence provided the ICTR with means to prosecute rape crimes, external human rights actors pushed for a sexual violence agenda, and individual actors within the OTP sought to make sexual violence crimes an ICTR priority. However, initial investigatory efforts were not put into collecting rape evidence, both due to missing documentation, as well as a significant lack of human resources on ground in Rwanda. Inexperience and a lack of cultural understanding made gathering evidence of rape crimes a persistent challenge. Managerial priorities also shifted, with rape charges declining especially under the leadership of Carla Del Ponte. Other hindrances related to ineffective workings of the Tribunal as a whole, and perhaps also a low ratio of female judges. UN pressure to get trials going and complete the costly process became an increasingly important factor by the mid 2000s. Plea-deals to get hold of high-level fugitives resulted in dropped sexual violence charges, and as indictments had to be completed by 2005, initiatives to prioritize sexual violence crimes could not improve the record substantially. The needs of the present in ICTR’s case were additionally and inherently those of law itself. Trial transcripts illustrate how the courtroom and the legal method constructs testimony into collective accounts, undermining individual experiences on behalf of the law. Articulations of wartime rape provided by the ICTR are indelibly linked to its nature as a legal process, bound by the legal method’s aim to prove or disprove guilt of the accused at hand.

Localizing, characterizing and explaining ICTR contributions was however only one side of this project. I also wanted to explore their bearing in the local memory landscape. Although strong reminders of wartime rape, my analysis of Rwandan sites of memory showed that ICTR contributions have not made a strong mark in Rwanda, at least not from the perspective of official memorialization. Both expressions of Rwandan official memory reflect the regime’s consistent memory politics, where the ‘official historical narrative’ rules. Thus, neither lieux de mémoire provide significant means to remember the ICTR either as a post-conflict actor or with its particular narratives of sexual violence. In the memorial sites, sexual violence accounts enhance the horrors of genocide, representing yet another facet of genocidaires’ brutality. In the Kwibuka website, rape stories seem redundant, as the broad story conveyed is focused on looking forward.
This case’s findings beget several important implications for legal bodies as storytellers of the past. From the perspective of victim groups, it shows how complex international justice processes can have a hard time guaranteeing recognition for past injustice of individual groups. Although having the means to prosecute sexual violence and make heard the particular experiences of women, the Tribunal, with its myriad of intertwined responsibilities and competing interests, did not safeguard a consideration of the full scope of rape atrocity during the genocide. Its failure to prosecute Tutsi atrocity in the civil war is probably an even stronger example of international tribunals’ challenges in this respect – as storytellers, balancing between politics and impartiality – their outcomes risk being perceived as victors’ justice.  

Moreover, the ICTR serves a good illustration of the power relations between the national and the international, the latter in our case bound by the willingness of the former, particularly in its relationship with Rwanda. Turning to the influence of ICTR contributions in Rwanda’s memory landscape, this case also powerfully exemplifies how strong nation-states exert particular power as memory agents. Although ICTR made efforts both to make itself and its narratives matter in Rwanda, its effects seem minuscule, the main storytelling authority nationally being that of the regime.

As such, answering the question of what have been the ICTR’s contributions to collective memory of sexual violence, we remain with an ambiguous overall answer. On the one hand, it provided a poor conviction rate, on the other, a strong legacy in international jurisprudence, but bearing little impact on local Rwandan memory. These findings combined are however all strong reminders of Halbwachs’ notion that memory of the past is shaped by the needs of the present. In the Rwandan context, the needs of the present are that of the RPF regime to legitimize its power. For the ICTR, even if opening the floor for sexual violence narratives, its many other concerns, both as a complex social institution as well as adapting to various pressures at distinctive points in time, diminished its sexual violence agenda.

Although the ICTR was conscious of its role as a storyteller then, it could not guarantee a bearing of its sexual violence accounts. Compared with the Rwandan state, the ICTR was less of an unitary memory agent with means to authoritatively dictate this particular past’s remembrance. In contrast to nation-states operating as

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memory agents, especially those with authoritarian features, international actors as such exert far less power both over its own process and its impact, being dependent on other actors both to function and to bear influence.

Nevertheless, international legal actors as the ICTR do exert distinct storytelling powers, in that they are endowed with international authority to tell, as well as resources to collect and present enormous amounts of documentation of the past. As a site of memory, both their process and outcomes are unique. However, this thesis notice of law’s distinct ways of telling its stories of the past demands for critical reflection on how to regard its contributions. Readers of the ICTR archives should be aware of its biases, as it relies on distinct selection, aimed not at gathering historical evidence, but to pass judgment. This, and not the stories themselves, is the primary aim of the court. That does not mean that law fails as a storyteller. It should not be judged by the parameter of historical endeavors. Although it bears that authority, and has that side effect, its main task is not to be a storyteller.

This thesis’ assessment of ICTR’s collective memory contributions is thus a potent reminder of both the promise and the impossibility of international courts in the aftermath of mass atrocity. Given their overall aim to pass judgment, as well as their complex political balancing, it might be beyond the scope of international courts to serve complex post-conflict goals such as preserving memory of individual groups in their ‘struggle against forgetting’. However, other memory agents, such as historians, can take advantage of what the ICTR has promulgated, and bring about new analytical accounts of the past. Even if law declares finality, its contributions can thus continue to play a part in struggles against forgetting.

Further research

Although having assessed a broad range of sources, my findings have limitations. For one, as I have only studied parts of Rwanda’s local memory landscape, conclusions on ICTR’s influence should be regarded as preliminary. A broader assessment of the full range of Rwandan sites of memory, their organization and agents, is needed to fully comprehend the relationship between ICTR and Rwandan memory. Importantly, changing the focus from the regime’s top-down memory politics to local, bottom-up memorialization might have provided different results. Furthermore, having relied on
accessible records, resolutions, reports, interviews and secondary sources, this thesis offers only a glimpse into the ICTR process. With openings of internal documents, more historical knowledge will be available for a better understanding of the motivations, strategies and interests between parties and individuals at the ICTR.

“[T]he beauty of memory is that it is imprecise enough to be appropriated by unexpected hands, to connect apparently unrelated topics, to explain anew old problems,” writes historian Alon Confino. This thesis, in its use of the concept of collective memory to understand international legal contributions to post-conflict contexts, should be viewed as a modest effort to do exactly that. Although Pierre Nora’s works are well recognized, research on the origins, workings and impact of different ‘lieux de mémoire’ is still largely undeveloped. How and in what way do international bodies similar to the ICTR enhance and subdue memories of the past? How do they interact with other memory agents and what hindrances do their narratives meet in the face of contesting representations? What discourses remain within international juridical circles and which actually reach out to local contexts?

A systematic focused enquiry of the ICTR’s archival endeavors, which I have only briefly assessed, should be an exiting research object for historians and social scientists alike. Quarrels between Rwanda and the UN over these might be parallel to those found in studies on archives in post-colonial contexts, but also show important differences, particularly regarding the UN as a partly supranational body. Recent studies on international organizations’ archives might provide interesting insights here. Although previous works have studied the role of courts after mass atrocity, the fact that international tribunals are a relative new variable on the global arena provides many opportunities to future insights on the role of international bodies shaping perceptions of the past.

Regarding post-conflict Rwanda, many queries also remain uncharted. As Meierhenrich notices, the regime’s memorialization politics are largely unmapped terrain. One concrete aspect not tackled by this study, is the role of external memory agents, such as that of the Aegis Trust, involved in on-ground cooperation with the state. On a larger scale, only a few scholars and practitioners have grasped the role of

memorialization in the creation and maintenance of international peace and security.\textsuperscript{331}

When it comes to filling a gender gap in memory studies, the role of legal actors is but one place to put the magnifying glass. In what ways are gendered pasts conveyed through popular culture, in museums and memorials in different contexts, and what explains their prevalence or absence there? Overall, memory studies have produced much knowledge about the nation-state as a memory agent, but we know less about other constructive processes. Understanding different kinds of memory agents, and how they do and can exert their ‘authority to tell’, opens for important insights for scholars and practitioners alike.

**Recipes for Reminder**

Writing in 360 B.C.E, Plato was well aware of the power of narratives over the past. On writing, Socrates told Phaedrus:

“If men learn this, it will implant forgetfulness in their souls: they will cease to exercise memory because they rely on that which is written, calling things to remembrance no longer from within themselves, but by means of external marks; what you have discovered is a recipe not for memory, but for reminder.”\textsuperscript{332}

Fundamentally, all text, all narratives of the past, involve selection, inclusions and exclusions of parts of the past itself, as no text can but seek to encompass the essence of what has happened. As narrative, this thesis too is a result of selection – from its initial choice of topic, to its sources, and eventually the words you are now reading. No author is thus innocent from the sin of forgetfulness. In acknowledging that narratives are ‘recipes for reminder’, understanding their impacts as well as their origins becomes quintessential, not least for historians, as Jay Winter writes:

“The crucial point is not that there is a lot of memory to work about, but how sensitive we are to the ways in which it can be exploited or ruined. Far more treacherous is a world in which

\textsuperscript{331} Meierhenrich, “Topographies of Remembering and Forgetting”. 284.
“theaters of memory” are treated as if they are outside of scholarship, or somebody else’s business. If we historians do not enter these theaters, someone else will.”

In assessing the ICTR’s role as a storyteller, this thesis has sought to enter the theater of memory within international law. With increasing legalization of the international arena, especially with the International Criminal Court, more authority will be endowed the hands of law in terms of telling stories of past atrocity. Although my findings on ICTR’s local leverage by and large show that the nation-state still comports great authority over such narratives, understanding the origins and nature of other memory agents’ contributions – what their ‘recipes for reminder’ entail – will rather become more than less important in the future.

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