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## **Remembering Justice in Rwanda: Locating Gender in the Judicial Construction of Memory**

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Matthew J. Burnett<sup>1</sup>

The struggle of man against power is the struggle of memory against forgetting.

Milan Kundera, *The Book of Laughter and Forgetting*<sup>2</sup>

Hated and feared, objects to be despised, yet also of awe, the reified essence of evil in the very being of their bodies, these figures of the Jew, the black, the Indian, and woman herself, are clearly objects of cultural construction, the leaden keel of evil and of mystery stabilizing the ship and course that is Western history. . . . What sort of understanding—what sort of speech, writing, and construction of meaning by any mode—can deal with and subvert that?

Michel Taussig, “Culture of Terror—Space of Death”<sup>3</sup>

### I. THE CHALLENGE OF REMEMBERING JUSTICE IN RWANDA

In January of 2003, approximately 120,000 Rwandans arrested for crimes arising from the 1994 genocide languished in Rwanda’s eighteen jails.<sup>4</sup> They represent a living memorial to the orgy of ethnic violence that left as many as 800,000 Rwandese Tutsi and sympathetic Hutu dead.<sup>5</sup> Over 120,000 bodies imprinted with guilt—in stark contrast, one imagines, to the post-genocidal landscape littered with hundreds of thousands of bodies. It is within these prisons that memory is confined, or else suffocated,<sup>6</sup> so that it can be officially translated by an increasingly complex system of courts in

order to produce, challenge, and legitimize accounts of a genocide that scarred both a nation and the international order.

Given the horrifically totalizing effect of the genocide, *Leave None to Tell the Story: Genocide in Rwanda*, the title of Alison Des Forges's impressive account, seems particularly apt.<sup>7</sup> Within the one hundred days following the downing of President Habyarimana's plane on April 6, 1994,<sup>8</sup> approximately three-quarters of the Tutsi population was exterminated.<sup>9</sup> Accounts of the resulting genocide are both complicated and contested, citing causes ranging from ancient ethnic hostility to Western colonialism and present-day geopolitics. Regardless of the genocide's root causes, however, one fact remains:

[T]he killers who executed the genocide were not demons nor automatons responding to ineluctable forces. They were people who chose to do evil. Tens of thousands, swayed by fear, hatred, or hope of profit, made the choice quickly and easily. They were the first to kill, rape, rob and destroy.<sup>10</sup>

The perpetrators of the Rwandan genocide were human, as were their victims. They are, with the rest of us, bound by a common humanity. Memory and history, whether harmonious or hostile, are the human record of this bond. The story of the Rwandan genocide must be both told and remembered, and the way in which it is told and remembered must also be considered part of this story.

The following article considers what it means to remember mass atrocity by investigating both the character and normative force of the judicial responses to it. Specifically, I wish to develop an account of courts as technologies of memory—official institutions that produce, challenge, and legitimize memory—within the context of a specific human atrocity. I will concentrate my analysis on investigating how judicial responses to the Rwandan genocide have constructed the stories of women, the women's role in the process, and the acts of rape and sexual violence perpetrated against them. This is, of course, only one of the many lenses that can be

used to understand this process, but it is one that resonates throughout both the genocide and the judicial responses to it.

Before going into detail about the system of courts having jurisdiction over crimes committed during the genocide, which is developed in Parts II, III, and IV, I will address three background concepts that I believe are crucial to this analysis. First, I will briefly consider the operation of memory in response to mass atrocity. Second, I will consider how courts, as technologies of memory, act as institutions that produce, challenge, and legitimize memory. Finally, I will attempt to set the stage for the subsequent analysis of the role of memory in the judicial responses to the Rwandan genocide by narrowing the analysis to gender, rape, and sexual violence.

#### A. *Collective Memory and Mass Atrocity*

Forgetting extermination is part of extermination, because it is also the extermination of memory, of history, of the social, etc. This forgetting is as essential as the event, in any case unlocatable by us, inaccessible to us in its truth. This forgetting is still too dangerous, it must be effaced by an artificial memory (today, everywhere, it is artificial memories that efface the memory of man, that efface man in his own memory).

Jean Baudrillard, *Simulacra and Simulation*<sup>11</sup>

Unlike the system of amnesty for truth pursued in South Africa, for example, each judicial response to the Rwandan genocide appears to be founded on an ethic of retribution.<sup>12</sup> Interestingly, the etymological root of *amnesty*, from the Latin *amnēstia* and the Greek *amnēstiā*, is “amnesia” or “to forget.”<sup>13</sup> This is precisely the challenge that Jean Baudrillard anticipates when he argues that forgetting extermination is part of extermination, because it also entails the extermination of memory, history, and the social.

Contemporary investigations into the role of memory in societies can be traced to the work of Maurice Halbwachs, a student of Durkheim,<sup>14</sup> who carefully distinguishes between history and collective memory. Halbwachs argues that history relates to the documentation of change or the manufacture of a historical record, whereas collective memory is concerned with the active repetition or reenactment of the past.<sup>15</sup> More recently, Paul Connerton has distinguished “social memory from a more specific practice that is best termed the activity of historical reconstruction.”<sup>16</sup> According to Connerton, historical reconstruction is the practice of organizing knowledge of human activities through human “traces”; the assemblage of these traces is the inferential task of the historian.<sup>17</sup> For Connerton, this practice can and does shape collective memory, for example, “when a state apparatus is used in a systematic way to deprive its citizens of their memory.”<sup>18</sup>

The work of both Halbwachs and Connerton provide special insight into the present investigation. On Halbwachs’s account, collective memory is concerned with the active repetition or reenactment of the past. Courts provide a useful setting for the reenactment of the past because they afford both a public forum and procedural safeguards that offer both sides to a dispute the opportunity to present their version of the facts. Connerton further argues that collective memory can be reshaped by historical reconstruction, or what might be referred to as the manufacture of “official history,” for example, when a state apparatus such as a court or tribunal is used in a systematic way to deprive its citizens of their memory. Courts, as critical apparatus of the state, are not immune from the reshaping (and indeed deprivation) of memory, especially given the fact that they must settle on one version of the facts in order to formulate an opinion. That is, a court’s judgment necessarily endorses or legitimizes a particular version of the facts, which can thereby affect the way in which these facts are collectively remembered.

In the wake of mass atrocity, fears of procedural corruption and factual distortion are necessarily amplified. As such, judicial responses to mass

atrocities deserve greater scrutiny, particularly with respect to how the judicial process shapes the way in which an atrocity is remembered. It is this set of concerns that gives rise to the characterization of judicial responses to mass atrocity as technologies of memory, where what must be examined is how a specific social institution, such as a court or other judicial response to mass atrocity, generates and embodies memory in the context of a specific social framework (i.e., a local community, a state, or even the wider international community).

*B. Courts as Technologies of Memory*

In a lecture entitled “Technologies of the Self,” Michel Foucault developed a system of organizing different “technologies” operating in society; they include technologies of production, technologies of sign systems, technologies of power, and technologies of the self.<sup>19</sup> Building on this framework, Marita Sturken refers to the media as a “technology of memory” because it both embodies and generates cultural memory.<sup>20</sup> For the purposes of this analysis, I wish to consider the various courts responding to the 1994 genocide in Rwanda in a similar fashion. That is, to approach courts as technologies that not only embody and generate cultural memory but that also have the power to challenge or legitimize it. It is problematic to assume that there is any hard and fast distinction between history and collective memory because there is always a range of individual and collective memories that act to challenge official history.

It is this tension that the courts adjudicating crimes arising out of the Rwandan genocide face. For example, one of the important sociojuridical techniques of courts is their role as pedagogical instruments.<sup>21</sup> In postgenocide Rwanda, the adjudication of crimes is a potential means by which to inform local, national, and international discourses about mass atrocity and its devastating effects, as well as change the way in which the genocide is remembered. In order to efface forgetting, it is crucial that memory be effected. In some instances this may legitimize individual or

collective memory, and in other instances it may challenge it. Regardless, it is important to understand that the outcome is powerfully dependant on the way in which courts consciously or unconsciously adjudicate memory.

*C. Gendered Memory: The Adjudication of Rape and Sexual Violence*

I have chosen the adjudication of charges of rape and sexual violence as the basis for this investigation for two reasons. First, the use of rape and sexual violence in ethnic conflict has recently become a matter of serious concern for international human rights, criminal, and humanitarian law. A meaningful basis for addressing gender-based crimes must be integrated into this overlapping and often confused discourse. Catharine MacKinnon specifically addresses this concern when she asks, in her 1993 Oxford Amnesty lecture, whether the “word ‘woman,’ like the word ‘Jew,’ will finally come to stand, among its meanings, for a reality of abuse that cannot be forgotten, a triumph of survival against all that wanted you dead, a principle of what cannot be done to a human being.”<sup>22</sup> In the alternative, Richard Rorty asks whether being nonmale is in fact a way of being nonhuman.<sup>23</sup> In order to understand how to prevent violence against women, we must concern ourselves with how this reality of abuse figures into both the adjudication of rape and sexual violence and the way in which we collectively address and remember this reality.

My second concern is that Rwanda’s genocide has been both consciously and unconsciously constructed as a “gendercide.” On this view, it was primarily Tutsi men who were the target of killings throughout the genocide.<sup>24</sup> For example, one commentator recounts that early in the genocide “killers in Gikongoro told a woman that she was safe because ‘sex has no ethnic group.’”<sup>25</sup> From mid-May onward, however, there were indications that the resolution to kill women was made at the national level and began to be increasingly realized locally.<sup>26</sup> The rationale for this choice may be linked to the reproductive threat posed by Tutsi women, who were believed to ostensibly produce Tutsi children, regardless of the ethnic

identity of their partner. In Rwanda, as in all societies, sex and ethnicity are interconnected. Thus, to characterize gendered accounts of genocide merely in terms of the number of men or women killed, at the expense of a thorough account of the acts of rape and sexual violence perpetrated, seems to confirm MacKinnon's suspicion that the word "woman" may well stand for a reality of abuse that has been forgotten. This reality becomes increasingly bleak when considered against the thousands of Rwandan women who continue to die slowly from HIV/AIDS, infected as a result of rape during the genocide.<sup>27</sup> Understanding the ways in which courts adjudicate rape and sexual violence, as well as its effect on how these abuses are remembered, may well provide insight into how judicial responses to mass atrocity can either make or unmake the word "woman" stand for a way of being that is worth remembering.

## II. THE ICTR AND *AKAYESU*: RAPE AND SEXUAL VIOLENCE UNDER INTERNATIONAL LAW

The safety of the People, requireth further, from him, or them that have the Sovereign Power, that Justice be equally administered to all degrees of People; that is, that as well the rich, and mighty, as poor and obscure persons, may be righted of the injuries done them; so as the great, may have no greater hope of impunity, when they doe violence, dishonour, or any Injury to the meaner sort, than when one of these, does the like to one of them: For in this consisteth Equity; to which, as being a Precept of the Law of Nature, a Sovereign is as much subject, as any of the meanest of his People.

Thomas Hobbes, *Leviathan*<sup>28</sup>

In 1994, the United Nations (UN) Security Council, acting on its powers under Chapter VII of the UN Charter, established the International Criminal Tribunal for Rwanda (ICTR) to prosecute "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 neighbouring States, between 1 January 1994 and 31 December 1994.”<sup>29</sup> Located in Arusha, Tanzania, the Tribunal’s jurisdiction covers both genocide and crimes against humanity, as well as violations of Common Article 3 and Additional Protocol II of the Geneva Conventions.<sup>30</sup>

*A. The Akayesu Case*

Among the individuals convicted by the ICTR is Jean-Paul Akayesu, a former mayor of Taba commune. In the *Akayesu* opinion, the ICTR held for the first time that sexual violence and rape are crimes against humanity and instruments of genocide.<sup>31</sup> Interestingly, the original indictment against Akayesu contained no charges of rape or sexual violence.<sup>32</sup> It was only during testimony that “allegations of sexual violence first came to the attention of the ICTR Chamber through the testimony of Witness J, a Tutsi woman, who stated that her six-year-old daughter had been raped by three Interahamwe when they came to kill her father.”<sup>33</sup> Further investigation into sexual violence perpetrated in Taba produced overwhelming testimony, including accounts of gang rape, sexual slavery, penetration by foreign objects, and public humiliation.<sup>34</sup> Some of the women testifying lost count of the number of times they were raped, others contemplated death as a more humane alternative.<sup>35</sup> The amended indictment, which included the charges of rape and sexual violence, was largely motivated by Judge Pillay, a South African woman and former president of the ICTR, who stated that

[w]e have to try a case before us where this person [Akayesu] has not been specifically charged with rape. . . . We’re hearing the evidence, but the defense counsel has not cross-examined the witnesses who gave testimony of sexual violence, because it is not in the indictment. I’m extremely dismayed that we’re hearing evidence of rape and sexual violence against women and children, yet it is not in the indictments because the witnesses were never asked about it.<sup>36</sup>

Taken together, the harrowing accounts of rape and sexual violence perpetrated in Taba commune provided the ICTR, as an internationally sanctioned judicial body, the opportunity to develop a normative jurisprudential framework for treating rape and sexual violence as crimes against humanity and instruments of genocide.

Indeed, the *Akayesu* case has been called “the most important decision rendered thus far in the history of women’s jurisprudence.”<sup>37</sup> As crimes against humanity, the court distinguished between acts of rape and acts of sexual violence. Rape was held to be “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive,” and sexual violence was held to be “any act of a sexual nature which is committed on a person under circumstances which are coercive.”<sup>38</sup> The court also expressly included “threats, intimidation, extortion and other forms of duress which prey on fear or desperation” as constituting rape or sexual violence.<sup>39</sup> The court then identified a range of possible forms of coercion, from the presence of military officers to the giving of direct orders.<sup>40</sup> Finally, the court held that in order to qualify as a crime against humanity both rape and sexual violence must be committed widely or systematically against a civilian population, based on the grounds of nationality, ethnicity, political belief, race, or religion.<sup>41</sup>

There are a number of observations about this framework worth noting. First, the court makes clear efforts to distinguish between rape and sexual violence, even though the first is seemingly wholly contained within the latter. One important reason for this distinction may be that by making it, the court pushes the normative jurisprudential framework to consider acts that may not be rape, but that are inhumane nonetheless. This is the case even where the court’s discussion is limited to rape, of which it says “there is no commonly accepted definition . . . in international law.”<sup>42</sup> From this observation, the court concedes that “rape has been defined in certain national jurisdictions as non-consensual intercourse,” but adds that the definition may also include the insertion of non-sexual objects into a

victim”<sup>43</sup> (the example given is a witness’s account of a dying woman being penetrated by a piece of wood).<sup>44</sup> Here the court responded to the actual acts perpetrated in Taba and then constructed a jurisprudential narrative that was capable of encompassing them. Indeed, the court even acknowledged that it was developing a broad conceptual framework, rather than attempting to reduce these acts to “a mechanical description of objects and body parts.”<sup>45</sup>

Second, the court’s broad conception of sexual violence includes acts that do not involve physical contact. For example, a number of witnesses testified to being forced to undress publicly,<sup>46</sup> and one woman testified that Akayesu ordered that she be undressed and forced to do gymnastics in a courtyard.<sup>47</sup> Thus, acts of sexual humiliation, even without physical contact, count as sexual violence.

In this sense, the *Akayesu* opinion is a good illustration of how principles of international human rights, criminal, and humanitarian law are developed in the context of a specific reality, even if they are applicable universally. *Akayesu* is also a good example of the creation of an expanded jurisprudential narrative that specifically addresses the confluence of ethnic and sexual violence. What begins as a specific account of brutal criminal behavior becomes a story about how rape and sexual violence are instrumentally relevant to the judicial construction of universal norms—here, the customary international law norms of genocide and crimes against humanity. This narrative clearly serves future victims of genocidal rape and sexual violence. But who exactly benefits from the narrative is not the most important focus. From the perspective of deterrence, the message must be that rape and sexual violence count as crimes against humanity and as instruments of genocide, regardless of any specific cultural or political context.

However, in analyzing the ICTR as a technology of memory, we must also press the hard questions in an attempt to make sense, if possible, of the broader narrative that it elicits. One problem, for example, is that in its

capacity as a technology of memory, the ICTR can only offer an account of the thinnest principles of justice and therefore may be incapable of providing thick narrative descriptions of the genocide.<sup>48</sup> Acting on its UN mandate, the best that the restricted Tribunal may be able to offer is an instrumental account of how, in this particular case, sexual and ethnic violence are intimately interconnected and, as such, how rape and sexual violence ought to be viewed as crimes against humanity and instruments of genocide. This approach does little, however, to reconcile the cultural attitudes about women in Rwanda that helped to legitimize the acts of rape and sexual violence perpetrated against them.

Another example of a problem raised in this context is whether there is, or should be, any meaningful distinction between sexual *torture* and sexual *violence*, or better, whether the normative juridical narrative produced by the ICTR allows for such a distinction. A worthwhile case to investigate on this point is *Prosecutor v. Kambanda*, which considers the guilty plea of Jean Kambanda, former prime minister of the Interim Government of Rwanda.<sup>49</sup> In *Kambanda*, the ICTR asserted that “Category One perpetrators include those who, ‘committed acts of sexual violence.’”<sup>50</sup> As it turns out, this is not true of the Rwandan Organic Law. Instead, Rwandan law distinguishes between sexual torture and sexual violence. When torture is committed in the course of another crime, it is punishable by death; however, when sexual violence is committed in the course of another crime, it is not. Thus, “[s]ince Category One defendants are subject to the death penalty, the Organic Law would enact a retroactive increase in penalties if it read ‘sexual violence’ rather than ‘sexual torture.’”<sup>51</sup>

The point here is to highlight a problem that arises out of the ICTR’s totalizing narrative that could, as demonstrated in the example above, mean the difference between life and death. As long as the thinnest principles of justice are applied, there is an inevitable problem of translating these normative principles within specific cases. Although the ICTR cannot sentence an individual to death, the question is still whether we choose to

sacrifice the normative jurisprudence, or to sacrifice justice to the individual (by interpreting the law in such a way that an individual is subject to a retroactive increase in penalty). To be effective, the ICTR must provide some guidelines and definitions in order to adjudicate sexual violence against women. But in doing so, the ICTR necessarily limits and legitimizes a framework that translates particular crimes into a normative expression of international law.

### *B. The Laughing Judges*

The preceding cases from the ICTR included, and indeed hinged upon, victims sharing intensely personal testimony. In this context, concerns about victim support are necessarily amplified, and as a result, courtroom conduct has come under increased scrutiny. Perhaps the most widely reported example of this problem is the case of the “laughing judges,” which involves an incident where, during witness testimony about her rape by one of the accused, the judges suddenly began laughing.<sup>52</sup> Although witnesses indicate that the judges were not laughing at the victim, or even about her testimony, concerns were raised as to whether victims would be discouraged from testifying because of the incident.<sup>53</sup>

The case of the laughing judges challenges the universal character of the ICTR’s judgments because it highlights the fact that such judgments are made by adjudicators who carry their own cultural baggage and who must necessarily adjudicate from a specific context. This is part and parcel of their decisions and impacts the way in which courts produce, challenge, and legitimize how these crimes are remembered. However, this characterization should not be perceived as constructing an evaluative framework by which we can endorse or condemn the ICTR judges involved. Instead, the case of the laughing judges provides a litmus test for the limits of normative jurisprudence.

A consequence for the characterization of the ICTR as a technology of memory is how this incident and others similar to it affect the way in which

the adjudication of rape and sexual violence perpetrated during the Rwandan genocide is remembered. For example, the victim testifying in this instance was presumably traumatized by such an outbreak, regardless of the reasons behind the judges' laughter. Further, some have argued that victims who had heard about the laughing judges were dissuaded from testifying.<sup>54</sup> The Rwandan government has also used this incident as a basis for criticizing the effectiveness of the ICTR. The case of the laughing judges thus challenges the normative force of the ICTR's treatment of rape and sexual violence, and as such necessarily challenges the way in which these crimes are remembered.

### III. RWANDA'S NATIONAL COURTS: MEMORY AT THE INTERSECTION OF COLONIALISM, GENDER, AND JUSTICE

In discussing Rwanda's national courts as technologies of memory, it is important to consider that Rwanda's Organic Law, like any domestic law, must function within the context of Rwandan culture. Thus, the narrative produced with respect to gender-based crimes is contextualized by the role of women in Rwandan culture, and any discussion of Rwandan culture must also address the legacy of colonialism. I will begin with an analysis of the colonial legacy of Rwanda, then discuss gender roles in Rwanda both before and during the genocide, and finally I will briefly describe the structure of the national genocide courts, as well as the tensions implicit in these interrelationships.

#### *A. The Colonial Legacy of Rwanda*

The first colonial power to assume control in Rwanda was Germany, which controlled the country from 1894 and 1916.<sup>55</sup> During World War I, the Belgians took control of Rwanda until its independence in 1962.<sup>56</sup> The Belgian colonial rulers, like so many other colonial powers, implemented a strategy that purposefully exacerbated ethnic division in order to manufacture a ruling class that could be more easily controlled by the

colonial power. Prior to colonial rule, the Tutsi minority controlled the Rwandan aristocracy; however, there is seemingly little evidence of ethnic hostility. In order to pursue an efficient means of control, and consistent with emerging theories in the biology of race of that time, the Belgians used the Tutsi's more "European" physical characteristics as the basis for maintaining their racial, and thus moral and intellectual, superiority.<sup>57</sup> This division was further exacerbated by a system of identity cards, similar to the pass system used during apartheid in South Africa, which designated all Rwandan citizens as Hutu, Tutsi, or Twa (a small ethnic minority in Rwanda, comprising only 1 to 2 percent of the population).<sup>58</sup> This identity card system continued until the 1994 genocide, when it was often exploited by Hutus to determine the ethnicity of Tutsi attempting to flee the country.

After World War II, however, it was the Tutsi aristocracy that led the way to independence. The Tutsi leadership caused the Belgians to shift their colonial policy and embrace Hutus,<sup>59</sup> which resulted in the killing of thousands of Tutsi and a mass exodus of Tutsi into neighboring states. Under President Habyarimana, who took power in 1973,<sup>60</sup> many Tutsi who remained in Rwanda lost their wealth and power. Exiled Tutsi, primarily in Uganda, formed the Rwandan Patriotic Front (RPF) in order to overthrow the Hutu-controlled government in Rwanda.<sup>61</sup> The RPF occupied the northeast of Rwanda in 1990 and continued attacks until 1993, when Habyarimana agreed to a power-sharing arrangement.<sup>62</sup> This agreement also established a UN peacekeeping force (UNAMIR) in the Rwandan capital of Kigali.<sup>63</sup> Tensions around this power-sharing agreement appear to have paved the way to the beginnings of a plan in 1992 for a solution to the so-called "Tutsi problem," the April 6th downing of Habyarimana's plane, and the resulting genocide.

### *B. Colonialism and the Construction of Gender in Rwanda*

The colonial influence in Rwanda is far more complex than can be adequately discussed here, and indeed no account of the colonial legacy of

Rwanda goes so far as to wholly explain the genocide.<sup>64</sup> Instead, the focus here is the intersection of gender and colonialism in Rwanda as a basis for understanding how gender is constructed by the Rwandan national genocide courts. In “Body Politics and the Rwandan Crisis,” Erin Baines takes up this issue as she explores the impact of colonialism and the construction of gender in Rwanda.

Baines argues that “the colonial period inscribed the body as a site of political identity and belonging to historical nations.”<sup>65</sup> Specifically, Baines explores how the myth of the “Hutu nation,” an ideology developed during the struggle for independence from Belgium, was instrumental in constructing gender roles within the context of nationhood. Women’s bodies, she argues, are realized and organized in terms of reproductive capacity and identification with motherhood. A “woman’s fertility in Rwanda is culturally intertwined with her bodily fluids—her ability to bleed (menstruation), to secrete vaginal fluid, and to produce milk.”<sup>66</sup> Employing the work of C. Taylor, a medical anthropologist who argues that Rwandan women often draw analogies between bodily illness, such as the inability to lactate, to other social domains such as their husbands and in-laws,<sup>67</sup> Baines highlights the narrative linkages from body, to household, to community, and finally to nation. These linkages provide a coherent narrative that identifies the role of women as not only biological reproducers but as reproducers of the Rwandan nation, and specifically the Hutu nation. It is this latter construction of Hutu nationalism, a product of colonialism, that presents a challenge to radical Hutu elements within Rwandan society. At the same time, the cultural associations between Hutu and Tutsi have never been so isolated. Hutu and Tutsi were friends, lovers, and spouses, and both are burdened by the devastating economic and ecological conditions affecting Rwanda.

*C. Rwanda's National Genocide Courts*

It is within this context that the colonial legacy of Rwanda and the construction of gender intersect with the jurisdiction of the Rwandan national courts. In mid-July of 1994, the new Rwandan government stated its intention to prosecute crimes perpetrated during the genocide. However, it did not have either the civil capacity (judges, lawyers, investigators, etc.) or the legislation to properly handle crimes against humanity or genocide.<sup>68</sup> This latter constraint was resolved when, in 1996, the government adopted the Organic Law on the Organization of Prosecutions for Offences Constituting the Crimes of Genocide or Crimes against Humanity Committed since October 1990 (hereinafter Organic Law).<sup>69</sup> The Organic Law created a special chamber for trying cases of genocide and organized four “categories” of offenses: Category One, leaders and planners of genocide and notorious murderers using excessive malice; Category Two, perpetrators or accomplices in homicide; Category Three, accomplices in crimes without intent to kill; and Category Four, offenses against property. Even so, the administration of the Organic Law remained problematic. For example, one commentator argued that

[t]he lack of defense counsel, well trained judges, and other protections has lead to violations of international standards of due process and Rwandan law during the trials. . . . Some of the first trials involving multiple defendants, were openly biased against the defendants, and lasted only a few hours.<sup>70</sup>

A case in point is the public execution of twenty-two individuals convicted of crimes of genocide in April of 1998, many of whom had not received a fair trial.<sup>71</sup> More recent reports, however, “indicate that the conduct of trials has improved and that the trials now meet international standards.”<sup>72</sup> Currently, the primary concern is the many individuals imprisoned in squalid conditions while awaiting trial, some of whom are women.<sup>73</sup>

Although prosecutors prepared thousands of cases for trial by 1996, few included charges of rape and sexual violence against women.<sup>74</sup> Moreover,

those women who attempted to file claims faced a range of barriers, including a lack of systematic investigations into rape and a lack of knowledge that rape and sexual violence were prosecutable crimes.<sup>75</sup> Adding to this problem was the lack of female judicial investigators and judges, as well as the fact that many Rwandan women did not report rape because they thought it was immaterial, had little faith in the justice system, and/or feared retaliation.<sup>76</sup>

While the genocide legislation enacted in 1996 does include “acts of sexual torture” as a Category One crime,<sup>77</sup> rape was not included as a Category One crime until the passing of the Organic Law of January 26, 2001.<sup>78</sup> From 1997 to June 2002, the courts tried 7,211 individuals for genocide, with 1,386 acquittals and 689 sentenced to death (the last execution occurred in 1998).<sup>79</sup> It is not clear how many of these cases involved charges of sexual torture, but given the inadequate attention paid to reports of rape and sexual violence during the initial investigations, it is likely to be few.

Thus, one lesson to learn from the inadequate processing of gender-based crimes by the Rwandan national courts is that the social, historical, and political context in which the Rwandan judiciary works may produce, challenge, and legitimize the way in which Rwandans remember these crimes, even in the absence of effective justice. That is, the effect of doing little or nothing at all tells a story in itself and powerfully challenges Rwandans’ memory of the events. Such treatment points to a hierarchy of values imbedded in Rwandan society, and this hierarchy may see the prosecution of rape and sexual violence as a lesser concern than the goal of constructing and deploying a postgenocidal sense of nationalism and nationhood. There is little doubt, for example, that the mass public execution of twenty-two Hutus was intended to demonstrate to Rwandan citizens that justice was being done, even if the evidence suggests that the execution itself was unjust.

The range of jurisprudential narratives available to the nation seems to shift depending on which orientation the government chooses to promote as the basis for nationbuilding. This process reflects the specific social, historical, and political realities that are produced, challenged, and legitimized by both internal and external actors. For example, concerns about effective defense counsel and the death penalty may elicit a national narrative that is believed to trump individual rights. However, to conclude that the ineffective prosecution of rape and sexual violence is merely a result of a conscious political motive misses the mark entirely. Rather, it is the confluence of history, collective memory (both ethnic and national), and political will that challenges the Rwandan judiciary to either act or fail to act. Based on the colonial legacy of Rwanda, the parallel construction of gender and nationhood, and a history of ethnic tensions, the choice was not to aggressively prosecute these crimes. However, this reality may shift as *gacaca* courts, discussed in the next section, and are more extensively relied upon to address these crimes.

#### IV. GACACA COURTS: THE POTENTIAL FOR GENDERED JUSTICE?

I don't think that it will achieve much of anything. I think of my family, which was large, with many children. . . . Everyone was killed. Try to understand, there are only three children and my mother who remain alive. Do you think that we will have the strength to come forward in *gacaca*?

Rape Survivor B.R., "Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda," *Human Rights Watch*<sup>80</sup>

In Kinyarwanda, the most widely spoken language in Rwanda, *gacaca* means "grass" or "lawn."<sup>81</sup> *Gacaca* is a traditional system of justice deeply rooted in Rwandan culture, whereby elders gather together to resolve community conflicts. More recently, a modified version of *gacaca* has been established to adjudicate crimes arising out of the 1994 Rwandan genocide.

The current incarnation was initially established by the Organic Law of January 26, 2001, Setting Up “Gacaca Jurisdictions” and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed between October 1, 1990, and December 31, 1994, as an innovative approach to deal with a backlog in the courts and the enormous number of individuals detained on allegations of committing crimes during the genocide.<sup>82</sup> Specifically, the law expanded Category One crimes (as defined in the 1996 Genocide Law) to include the crime of rape; established 11,000 gacaca courts at different administrative levels in Rwanda; and required that Category One crimes (including rape and sexual torture) be transferred to Rwanda’s national courts for adjudication.<sup>83</sup> A new law,<sup>84</sup> adopted in June of 2004, significantly modified the gacaca system. It eliminated gacaca courts at the district and provincial administrative levels, reduced the number of judges from nineteen to nine at each court, narrowed Category Four crimes, expanded Category One, Two, and Three crimes, and established further safeguards for victims of rape.<sup>85</sup> The following section reflects upon two aspects of gacaca. First, I will consider whether gacaca has the potential to contribute more fully to the process of remembering justice in Rwanda. Second, I will address the challenges presented by gacaca for remembering justice through the adjudication of gender-based crimes.

*A. Remembering Justice Through Gacaca*

In June of 2002, pilot gacaca proceedings began in eighty cell-level courts over twelve sectors, one in each of the twelve established pilot districts.<sup>86</sup> Gacaca was expanded to 118 sectors in 106 districts in November of 2002, and in June 2004 pretrial proceedings were set to begin in all 9,201 courts at the cell level.<sup>87</sup> However, as of September 2004, no new trials had begun.<sup>88</sup> Given the sheer number of courts, and the fact that they parallel the governmental administrative structure in Rwanda, there is good reason to believe that more Rwandans than ever will be exposed to the

adjudication of crimes arising from the 1994 genocide. Unlike the ICTR and Rwanda's national courts, which afford only limited exposure to the adjudication of these crimes, gacaca allows Rwandans the opportunity to actively take part in the administration of justice. Moreover, because gacaca courts will hear all cases that were not passed to the national courts by March 15, 2001, they will adjudicate a large number of cases and serve as a prehearing chamber for Category One crimes.<sup>89</sup> As such, gacaca has the potential to fundamentally impact the way in which the adjudication of crimes arising from the 1994 genocide is remembered.

While the basis for establishing the modern-day gacaca is tied to the need to efficiently process the over 100,000 individuals charged with crimes committed during the genocide, its potential therapeutic affect cannot be ignored. The ICTR, located outside of Rwanda, and Rwanda's national courts, which have been plagued with problems ranging from insufficient staffing to the inconsistent application of Rwandan Law, cannot likewise claim success in helping Rwandans feel that justice has been done. By placing the adjudicative mechanism within the communities most affected by the devastating effects of the genocide and making the proceedings public, it is probable that a greater level of legitimacy will be achieved. However, within the context of gender-based crimes, the result is likely to be different. As will be addressed in the following section, both social and legal limitations exist for the adjudication of the crimes of rape and sexual violence through gacaca.

#### *B. The Limits of Gacaca for Remembering Gender-Based Crimes*

As stated above, all Category One crimes (including rape and sexual violence) must be transferred from the gacaca jurisdiction to Rwanda's national courts. However, gacaca will still process the initial proceedings for all Category One crimes that were not transferred to Rwanda's national courts before March 15, 2001.<sup>90</sup> Further, victims will have to renew their claims in gacaca courts—a difficult proposition for victims of rape and

sexual violence.<sup>91</sup> Indeed, because of the risk of humiliation, alienation, ridicule, and even revenge that is inherent in the reporting of gender-based crimes, the June 2004 Gacaca Law established a number of safeguards to protect victims of rape and sexual violence that did not previously exist. Under the 2001 law, victims of rape and sexual violence were required to testify orally or in writing before the one hundred-member (or more) general assembly; in the case of written testimony, the law required the chief judge to read it aloud to the general assembly.<sup>92</sup> The only other option for victims of rape and sexual violence under the 2001 law was to testify in camera before both the accused and a panel of nineteen judges.<sup>93</sup> Under the 2004 Gacaca Law, this process has been modified to allow in camera testimony privately before one judge.<sup>94</sup>

Because victims of rape and sexual violence face a clear risk of social stigma by reporting and providing testimony in the context of gender-based crimes, the protections afforded by both the 2001 and 2004 laws are necessary. However, the very public nature of gacaca, which contributes more fully to remembering justice in Rwanda, is compromised. While protecting the privacy and dignity of victims of rape and sexual violence likely trump concerns about how these crimes will be remembered, this result is unfortunate. Even if it is the case that Rwandans accept that gender-based crimes were committed widely and systematically during the genocide and are able to openly discuss the tragic effects of these crimes on Rwandan society, the fact that they are likely to be adjudicated privately will not contribute as fully to the way in which the judicial treatment of gender-based crimes is remembered. This is a result that we must except as a matter of decency to the victims, but it does not mean that steps cannot be taken to record these crimes. At minimum, dictated reports and testimony could be collected so that these accounts are not lost to the very procedures implemented to protect victims of rape and sexual violence. It may be that they can then be translated into a more public medium (e.g., a memorial) in

order to contribute more fully to the way in which these crimes are collectively remembered.

#### V. CONCLUSION: WHY REMEMBER?

Permutations between thresholds of horror and thresholds of the socially acceptable are: imaginable but impossible; unimaginable but possible; imaginable and possible; unimaginable and impossible. When all four are in operation, it is the thresholds themselves that require revision not because they have gone beyond their own conceivable limits, but because the limits have been introjected into the system's core. In the case of violence and horror, it is clear that a revision of their "exterior nature" to the boundaries of society is in order for their "unimaginable possibility" is nothing but the masking of the quiet routine of the system.

André Lepecki, "Stress," in *Remembering the Body*<sup>95</sup>

This article began by exploring the role of memory in societies after mass atrocity, and how judicial responses to mass atrocity inform the way we remember human violence. It then explored the adjudication of rape and sexual violence committed during the Rwandan genocide, with emphasis on the three courts that have jurisdiction over crimes arising from the Rwandan genocide: the International Criminal Tribunal for Rwanda, the Rwandan national courts, and the local gacaca courts. Throughout, I have attempted to explain, explore, and challenge the adjudication memory in the context of gender-based crimes in the context the 1994 Rwandan genocide. As with most investigations, more questions have been raised than answers provided. But it is often the case that questions motivate reflection, whereas answers may retard it. We must understand the questions, including the hard ones, in order to make sense of the range of possible answers. For example, how should the international community respond to violence on a scale of 800,000 deaths in approximately 100 days? What

does justice demand? Does it not demand that we acknowledge the massive rape and sexual violence perpetrated against women? Does it demand more death? Does it require the truth? Must this truth be officially legitimized? Does it demand that we remember? Or does justice relieve us of this obligation?

Lepecki argues that the very unimaginable possibility of violence has the potential to simply mask the quiet routine of the system.<sup>96</sup> A system in which the word “woman,” to borrow from MacKinnon, stands for a reality of abuse that is often forgotten. But this forgetting, as Baudrillard argues, is still too dangerous, and it must be effaced by an artificial memory. We may take issue with the idea of effacing forgetting with artificial memory, but it seems as though this is the very challenge that we are faced with. Do we let memories of human violence and mass atrocity fade into the archives of history, unchallenged, or do we actively engage memory, and count the judicial responses to mass violence and mass atrocity as part of this process? It is important to note that artificial memory in this context does not necessarily mean false memory, but rather memory which is freed up in such a way that it does not merely mask the quiet routine of the system, of progress, and of yet another “never again.” That is, to remember violence and mass atrocity so that it can be recognized as something distinct, as well as something that has the potential to efface forgetting. The role of courts in this process is crucial because they can powerfully influence the way in which we remember mass atrocity. Although justice must be done, we must not forget that the way in which courts produce, challenge, and legitimize memory is part of justice, and as such we must pay more careful attention to the ways in which judicial responses to mass atrocity influence how, what, and why we remember.

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<sup>1</sup> Matthew J. Burnett received his B.A. *cum laude*, Phi Beta Kappa, from the University of Washington in 1999 and his J.D. *cum laude* from Seattle University School of Law in 2005. I wish to dedicate this article in memory of Dr. James Clowes—a gifted professor, devoted mentor, and loving friend. I wish also to thank my family for their unremitting

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<sup>2</sup> MILAN KUNDERA, *THE BOOK OF LAUGHTER AND FORGETTING* 4 (1996).

<sup>3</sup> Michael Taussig, *Culture of Terror—Space of Death: Roger Casement's Putumayo Report and the Explanation of Terror*, in *INTERPRETIVE SOCIAL SCIENCE: A SECOND LOOK* 241, 245 (Paul Rabinow & William M. Sullivan eds., 1987).

<sup>4</sup> Jean Ruremesha, *Rights: Rwanda Seeks to close overpopulated prisons by year-end*, INTER-PRESS SERVICE, available at <http://www.afrika.no/Detailed/3398.html> (last visited Apr. 16, 2005) (By January 2003, Rwanda's eighteen central prisons had 120,000 inmates—five times the capacity for which they were built.). On January 1, 2003, President Paul Kagame issued a decree granting the provisional release of a projected 49,376 detainees, but these releases were significantly reduced “following the interpretation and implementation of the presidential decree by the Ministry of Justice.” *25,000 Rwandan Genocide Suspects Released*, AFROL NEWS, Apr. 29, 2003, at [http://www.afrol.com/html/News2003/rwa006\\_genocide2.htm](http://www.afrol.com/html/News2003/rwa006_genocide2.htm).

<sup>5</sup> SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE*, at xx (2002).

<sup>6</sup> Ruremesha, *supra* note 4 (reporting that a number of individuals charged with crimes of genocide have suffocated to death in Rwanda's prisons).

<sup>7</sup> ALISON DES FORGES, *LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA* (1999).

<sup>8</sup> POWER, *supra* note 5, at 184. The plane was a gift from the French government. *Id.*

<sup>9</sup> Des Forges, *supra* note 7, at 15.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> JEAN BAUDRILLARD, *SIMULACRA AND SIMULATION* 49 (Sheila Faria Glaser trans., 1994).

<sup>12</sup> For discussion of how a system of amnesty might be integrated with the gacaca courts, see Erin Daly, *Between Punitive and Reconstructive Justice: the Gacaca Courts in Rwanda*, 34 N.Y.U. J. INT'L L. & POL. 355 (2002).

<sup>13</sup> See THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 60 (4th ed. 2000).

<sup>14</sup> Emile Durkheim (1858–1917) is generally recognized as the father of professional sociology and is known best for his development of a sociological approach that is both holistic and functionalist.

<sup>15</sup> See MAURICE HALBWACHS, *ON COLLECTIVE MEMORY* (Lewis A. Coser ed., trans., 1992).

<sup>16</sup> PAUL CONNERTON, *HOW SOCIETIES REMEMBER* 13 (1989).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 14.

<sup>19</sup> Michel Foucault, *Technologies of the Self*, in MICHEL FOUCAULT, *ETHICS: SUBJECTIVITY AND TRUTH* 225 (Paul Rabinow ed., 1997).

<sup>20</sup> See MARITA STURKEN, *TANGLED MEMORIES: THE VIETNAM WAR, THE AIDS EPIDEMIC AND THE POLITICS OF REMEMBERING* (1997).

<sup>21</sup> For an in-depth discussion of the social role of legal responses to mass atrocity, including a discussion of the pedagogical role juridical responses to mass atrocity, see MARK OSIEL, *MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW* (1997).

<sup>22</sup> Catharine A. MacKinnon, *Crimes of War, Crimes of Peace*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES* 83, 109 (1993).

<sup>23</sup> Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES* 111, 114 (1993) (Rorty argues that there are three ways of being non-male: being born without a penis, having one's penis cut off, or being penetrated by a penis.).

<sup>24</sup> See Ronit Lentin, *Introduction: (En)gendering Genocides*, in *GENDER & CATASTROPHE* 12 (1997).

<sup>25</sup> DES FORGES, *supra* note 7, at 296.

<sup>26</sup> *Id.*

<sup>27</sup> Amnesty International, *Women of Rwanda: Marked for Death*, Apr. 7, 2004, <http://web.amnesty.org/web/web.nsf/print/ABDB951D8E7E0180256E510059EF0> (last visited Mar. 22, 2005).

<sup>28</sup> THOMAS HOBBS, *LEVIATHAN* pt. 2, ch. 30 (Oxford University Press 1962) (1909).

<sup>29</sup> U.N. SCOR, U.N. Doc. S/RES/955 (1994). See also U.N. SCOR, U.N. Doc. S/RES/977 (1995); U.N. SCOR, U.N. Doc. S/RES/978 (1995); U.N. SCOR, U.N. Doc. S/RES/1165 (1998); U.N. SCOR, U.N. Doc. S/RES/1166 (1998); U.N. SCOR, U.N. Doc. S/RES/1329 (2000); U.N. SCOR, U.N. Doc. S/RES/1411 (2002); U.N. SCOR, U.N. Doc. S/RES/1431 (2002).

<sup>30</sup> For an excellent discussion of each of these terms, see Diane F. Orentlicher, *Genocide*, in *CRIMES OF WAR: WHAT THE PUBLIC SHOULD KNOW* 153 (1999).

<sup>31</sup> Prosecutor v. Akayesu, No. ICTR-96-4-T (Oct. 2, 1998), available at <http://www.ictcr.org/default.htm>. For a general overview of this case, see Brenda Sue Thornton, *The International Criminal Tribunal for Rwanda: A Report from the Field*, 52 J. LEGAL AFF. 2, 641–643 (1999).

<sup>32</sup> See *id.*

<sup>33</sup> *Id.* at ¶ 416.

<sup>34</sup> *Id.* ¶¶ 418–438.

<sup>35</sup> See, e.g., *id.* at ¶¶ 420, 435.

<sup>36</sup> Jan Goodwin, *Rwanda: Justice Denied*, ON THE ISSUES (Fall 1997), available at <http://www.ontheissuesmagazine.com/f97rwanda.html> (last visited Apr. 2, 2005).

<sup>37</sup> Kelly Dawn Askin, *Women's Issues in International Criminal Law: Recent Developments and the Potential Contribution of the ICC*, in *INTERNATIONAL CRIMES, PEACE, AND HUMAN RIGHTS: THE ROLE OF THE INTERNATIONAL CRIMINAL COURT* 47, 52 (Dinah Shelton ed., 2000).

<sup>38</sup> *Akayesu*, No. ICTR-96-4-T at ¶ 598.

<sup>39</sup> *Id.* at ¶ 688.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at ¶ 686.

<sup>43</sup> *Id.* at ¶ 596.

<sup>44</sup> *Id.* at ¶ 429.

<sup>45</sup> *Id.* at ¶ 687.

<sup>46</sup> *See, e.g., id.* at ¶¶ 421, 429.

<sup>47</sup> *Id.* at ¶ 429.

<sup>48</sup> *See* MICHAEL WALZER, THICK AND THIN: MORAL ARGUMENT AT HOME AND ABROAD (1994).

<sup>49</sup> *See* Prosecutor v. Kabanda, ICTR-97-23-S (Sept. 4, 1998), available at <http://www.ictr.org/default.htm>.

<sup>50</sup> *See* Madeline H. Morris, *Rwandan Justice and the International Criminal Court*, 5 ILSA J. INT'L & COMP. L. 351, 353 (calling attention to the distinction between “violence” and “torture” in Rwandan Organic Law and the ICTR’s misapplication of Rwandan law in *Kabanda*).

<sup>51</sup> *Id.*

<sup>52</sup> Rwanda/Genocide Commemoration/Burundi: The Perennial “Bumpy” Relationship Between Kigali and Arusha, FONDATION HIRONDELLE, Apr. 1, 2004, at <http://www.hirondelle.org/hirondelle.nsf/0/2ff1b682927fb6a6c1256e69004c224b?OpenDocument>.

<sup>53</sup> *Id.*

<sup>54</sup> *UN Judges Laugh at Rape Victim*, MONITOR, Dec. 3, 2001, <http://www.globalpolicy.org/intljustice/tribunals/2001/0512rwa.htm>.

<sup>55</sup> GÉRARD PRUNIER, THE RWANDA CRISIS: HISTORY OF A GENOCIDE 23–25 (1995).

<sup>56</sup> *Id.* at 25.

<sup>57</sup> POWER, *supra* note 5, at 36–38.

<sup>58</sup> *Id.* at 37.

<sup>59</sup> *Id.* at 38.

<sup>60</sup> *Id.* at 41.

<sup>61</sup> *Id.* at 1, 48–51.

<sup>62</sup> *Id.* at 123.

<sup>63</sup> *Id.* at 131–132.

<sup>64</sup> *See* Peter Uvin, *Reading the Rwandan Genocide*, 3 INT'L STUD. REV. 3 (Fall 2001) (arguing that three distinct paradigms have been used by scholars to explain the Rwandan genocide: elite manipulation, ecological resource scarcity, and the socio-psychological features of the perpetrators).

<sup>65</sup> Erin K. Baines, *Body Politics and the Rwandan Crisis*, 24 THIRD WORLD Q. 479, 481 (2003).

<sup>66</sup> *Id.* at 482.

<sup>67</sup> *See, e.g.,* CHRISTOPHER C. TAYLOR, SACRIFICE AS TERROR: THE RWANDAN GENOCIDE OF 1994 (1999).

<sup>68</sup> *See* Human Rights Watch, *World Report 2003: Africa: Rwanda*, <http://hrw.org/reports/1995/WR95/AFRICA-08.htm> (last visited Mar. 20, 2005).

<sup>69</sup> Rwanda Organic Law 8/96, On the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed since October 1, 1990, art. 19, *Official Gazette of the Republic of Rwanda* (Aug. 30, 1996), available at

[http://web.amnesty.org/library/pdf/AFR470121997ENGLISH/\\$File/AFR4701297.pdf](http://web.amnesty.org/library/pdf/AFR470121997ENGLISH/$File/AFR4701297.pdf) (last visited Apr. 13, 2005).

<sup>70</sup> Christina M. Carroll, *An Assessment of the Role and Effectiveness of the International Criminal Tribunal for Rwanda and the Rwandan National Justice System in Dealing with the Mass Atrocities of 1994*, 18 B.U. INT'L L. J. 163, 188–189 (2000).

<sup>71</sup> Human Rights Watch, *Justice and Responsibility* (1999), <http://www.hrw.org/reports/1999/rwanda/Geno15-8-05.htm> (last modified 03/20/2005).

<sup>72</sup> Carroll, *supra* note 70, at 189.

<sup>73</sup> Nicole Itano, *3,000 Rwandan Women Await Trials for Genocide*, WOMEN'S ENEWS, December 20, 2002, <http://www.womensenews.org/article.cfm?aid=1152> (last visited Mar. 21, 2005).

<sup>74</sup> Human Rights Watch, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (1996), <http://hrw.org/reports/1996/Rwanda.htm> (last visited Mar. 20, 2005).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Rwanda Organic Law 8/96, *supra* note 69, at art. 2.

<sup>78</sup> Discussed *infra*. Rwanda Organic Law 40/2000, Setting Up Gacaca Jurisdictions and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994, *Official Gazette of the Republic of Rwanda* (Jan. 26, 2001), available at <http://www.kituoachakatiba.co.ug/ORGANIC%20LAW%20N0%2040.htm> (last visited Apr. 13, 2005).

<sup>79</sup> See Human Rights Watch, *World Report 2003: Africa: Rwanda*, *supra* note 68.

<sup>80</sup> Human Rights Watch, *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda*, Sept. 2004, at 21, available at <http://hrw.org/reports/2004/rwanda0904/index.htm> (last visited Apr. 10, 2005).

<sup>81</sup> Amnesty International, *Gacaca: A Question of Justice*, Dec. 2002, at 26, available at [http://news.amnesty.org/aidoc/aidoc\\_pdf.nsf/Index/AFR470072002ENGLISH/\\$File/AFR4700702.pdf](http://news.amnesty.org/aidoc/aidoc_pdf.nsf/Index/AFR470072002ENGLISH/$File/AFR4700702.pdf) (last visited Apr. 3, 2004).

<sup>82</sup> See Human Rights Watch, *Struggling to Survive*, *supra* note 80, at 15.

<sup>83</sup> *See id.*

<sup>84</sup> Rwanda Organic Law 16/2004, Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994 *Official Gazette of the Republic of Rwanda* (June 19, 2004).

<sup>85</sup> See Human Rights Watch, *Struggling to Survive*, *supra* note 80, at 17–18.

<sup>86</sup> *Id.* at 15.

<sup>87</sup> *Id.* at 16.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 15.

<sup>90</sup> *Id.* at 20.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 21.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> André Lepecki & Bruce Mau, *STRESS*, in REMEMBERING THE BODY 215 (Gabriele Brandstetter & Hortensia Völkers eds., 2000).

<sup>96</sup> *See id.*