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**“SHE MAKES ME ASHAMED TO BE A WOMAN”: THE GENOCIDE CONVICTION OF PAULINE NYIRAMASUHUKO, 2011**

*Mark A. Drumbl*

**INTRODUCTION**

In 1994, 500,000 to 800,000 Rwandans were massacred in genocidal pogroms.¹ At least 250,000 women were raped.² Orchestrated by an ex-

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tremist Hutu government, the genocide intended the extirpation of the country’s ethnic Tutsi minority population.

The genocide began in the month of April. Its trigger event was the downing (on April 6, 1994) of an airplane carrying Rwandan President Juvénal Habyarimana, among others, outside the country’s capital of Kigali. Habyarimana’s death enabled a more radical political faction to assume control. The genocide ended in July of that year, when the military arm of an extraterritorially based Tutsi political party, the Rwandese Patriotic Front (RPF), ousted the genocidal regime and installed itself as the new government. The RPF remains in power today.

In the nearly twenty years since 1994, the international community and the Rwandan government have pushed to hold individual perpetrators accountable for the genocide. Judicialization has occurred at multiple levels. Over ninety persons—those deemed most responsible—have been indicted by the International Criminal Tribunal for Rwanda (ICTR), an ad hoc institution established by the U.N. Security Council in November 1994. Approximately ten thousand individuals have been prosecuted in specialized chambers of national courts in Rwanda. According to the Rwandan government, nearly two million people have faced neo-traditional gacaca proceedings conducted by elected lay judges throughout the country.

Sperling, Mother of Atrocities: Pauline Nyiramasuhuko’s Role in the Rwandan Genocide, 33 FORDHAM URB. L.J. 637, 644-45 (2006) ("Victims of rape were often sexually mutilated including the pouring of boiling water or acid into women's vaginas; mutilating their vaginas with machetes, spears, and sharp banana leaves; cutting off women's breasts; and cutting open pregnant women's wombs and killing the fetus before killing the mother." (footnotes omitted)).
country.\textsuperscript{10} 
\textit{Gacaca} proceedings concluded in 2012.\textsuperscript{11} A handful of Rwandan defendants have been prosecuted by foreign national courts, including through assertions of universal jurisdiction.\textsuperscript{12}

On June 24, 2011, ICTR Trial Chamber II convicted Pauline Nyiramasuhuko, formerly Rwanda’s Minister of Family and Women’s Development, of conspiracy to commit genocide and of genocide; of the crimes against humanity of extermination, rape, and persecution; and of the war crimes of violence to life and outrages upon personal dignity.\textsuperscript{13} She was sentenced to the harshest punishment possible, namely, life imprisonment.\textsuperscript{14} At the time of her conviction, she was sixty-five years old.\textsuperscript{15}

Although much of the literature on gender and conflict focuses, appropriately, on women as victims of violence, women also act as agents of violence, including mass atrocity, during conflict situations. The Nyiramasuhuko case offers an opportunity to more carefully examine this textured, and largely underappreciated, aspect of the metastasis of atrocity. This is the central preoccupation of this Article.

The proceedings that implicated Nyiramasuhuko were among the most complex ever undertaken by the ICTR. She was prosecuted jointly with five other defendants, including her son, Arshne Shalom Ntahobali (who was also given a life sentence).\textsuperscript{16} All the defendants were from Butare, a \textit{préfecture} in southern Rwanda.\textsuperscript{17} The defendants became colloquially known as the “Butare Group” or the “Butare Six.”\textsuperscript{18} The other four members were Sylvain Nsabimana and Alphonse Nteziyayo, both former (and successive) \textit{préfets} of Butare, and Joseph Kanyabashi and Elie Ndayambaje, two former local \textit{bourgmestres} (mayors).\textsuperscript{19} All were charged with acting in concert to massacre the Tutsi population and moderate Hutus in Butare.\textsuperscript{20} All six were found guilty, albeit the specific charges and convictions varied inter se.\textsuperscript{21} The other four defendants received

\begin{itemize}
\item \textsuperscript{10} Edwin Musoni, \textit{The Legacy of Gacaca}, \textit{New Times} (Apr. 10, 2012), http://www.newtimes.co.rw/news/index.php?i=14958&a=52323. This number is contested, however. See E-mail from Phil Clark, SOAS, University of London, to Mark A. Drumbl (June 21, 2012) (on file with author). In any event, officially, over 1.2 million of the nearly two million in total were prosecuted only for property offenses. See Musoni, \textit{supra}.
\item \textsuperscript{11} Gerd Hankel, Book Review, 23 \textit{EUR. J. INT’L L.} 1192, 1192 (2012) (reviewing \textit{Paul Christoph Bornkamm, Rwanda’s Gacaca Courts: Between Retribution and Reparation} (2012)).
\item \textsuperscript{12} See, e.g., Luc Reydams, \textit{Belgium’s First Application of Universal Jurisdiction: The Butare Four Case}, 1 J. INT’L CRIM. JUST. 428 (2003).
\item \textsuperscript{13} Prosecutor v. Nyiramasuhuko (\textit{Nyiramasuhuko Judgement}), Case No. ICTR-98-42-T, Judgement and Sentence, ¶ 6186 (June 24, 2011).
\item \textsuperscript{14} Id. ¶ 6271.
\item \textsuperscript{15} Id. ¶ 8.
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id. ¶ 1.
\item \textsuperscript{18} Miller, \textit{supra} note 3, at 366.
\item \textsuperscript{19} \textit{Nyiramasuhuko Judgement}, Case No. ICTR-98-42-T, ¶¶ 8–72.
\item \textsuperscript{20} Id. ¶ 1.
\item \textsuperscript{21} Id. ¶ 6186.
\end{itemize}
sentences of twenty-five years, thirty years, thirty-five years, and life imprisonment, respectively.\footnote{22}

Nyiramasuhuko is the ICTR’s only female accused.\footnote{23} She is, moreover, the only woman tried and convicted by an international criminal tribunal for genocide and the only woman tried and convicted by an international criminal tribunal for rape as a crime against humanity.\footnote{24} The only other woman convicted by an international criminal tribunal (in that case, the International Criminal Tribunal for the Former Yugoslavia) is Biljana Plavšiæ.\footnote{25} A leading Bosnian Serb politician with de facto control and authority over members of the Bosnian Serb armed forces, Plavšiæ pleaded guilty in 2002 to one count of persecutions on political, racial, and religious grounds as crimes against humanity.\footnote{26} She was sentenced in 2003 to eleven years’ imprisonment,\footnote{27} which she served in Sweden.\footnote{28} Plavšiæ was released in 2009, pursuant to early release guidelines, after completing two-thirds of her term.\footnote{29}

The outsize attention showered upon Prosecutor v. Nyiramasuhuko is animated neither by its jurisprudential novelty nor by its progressive de-

\footnote{22} Id. \S 6271.
\footnote{25} Marlise Simons, Bosnian Ex-leader Sentenced to 11 Years for Her War Role, N.Y. TIMES, Feb. 28, 2003, at A4. On April 30, 2012, Rasema Handanovicæ, a Bosnian Muslim woman and naturalized U.S. citizen, was convicted (after a plea bargain) by a Bosnian court for killing six Bosnian Croats in April 1993. Maja Zuvela, Bosnian War Crimes Court Jails First Woman, REUTERS, Apr. 30, 2012, available at http://www.reuters.com/article/2012/04/30/us-bosnia-warcrimes-idUSBRE83T0KK20120430. Handanovicæ was the first woman convicted by Bosnian courts for crimes committed during the 1992-1995 armed conflict in Bosnia and, according to media reports, only the second woman (other than Plavšiæ) to be convicted for atrocity crimes perpetrated during that conflict. Id. Handanovicæ was a victim of wartime rape before committing the crimes for which she was convicted. Id. She was sentenced to 5.5 years’ imprisonment. Id. In late 2012, the International Criminal Court unsealed an arrest warrant for Simone Gbagbo, wife of former Côte d’Ivoire President and International Criminal Court detainee Laurent Gbagbo, alleging her to be an indirect co-perpetrator of crimes against humanity. Prosecutor v. Simone Gbagbo, Case No. ICC-02/11-01/12, Warrant of Arrest, ¶ 2, 9 (Feb. 29, 2012), http://www.icc-cpi.int/iccdocs/doc/doc1344439.pdf. The Extraordinary Chambers in the Courts of Cambodia prosecuted another woman, Ieng Thirith, but these proceedings were discontinued owing to her dementia. Paul Armstrong, ‘First Lady’ of Khmer Rouge Ruled Unfit for Genocide Trial, CNN (Sept. 13, 2012), http://articles.cnn.com/2012-09-13/asia/world_asia_cambodia-khmer-rouge-ieng-thirth.\footnote{26} Prosecutor v. Plavšiæ, Case No. IT-00-39 & 40/1-ES, Decision on the Application for Pardon or Commutation of Sentence, ¶ 5 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 14, 2009), http://www.icty.org/x/cases/plavsic/presdec/en/090914.pdf. Plavšiæ had initially been charged with genocide, but these charges later were dropped as part of a plea bargain she concluded with the ICTY Prosecutor. Id. \footnote{27} Id. ¶ 6. For a discussion of the role that gender apparently played in Plavšiæ’s sentencing, see LAURA SJOBERG & CARON E. GENTRY, MOTHERS, MONSTERS, WHORES: WOMEN’S VIOLENCE IN GLOBAL POLITICS 154, 156 (2007).\footnote{28} Plavšiæ, Case No. IT-00-39 & 40/1-ES, ¶ 6. \footnote{29} Id. ¶ 14.
velopment of the law. This attention, rather, is fueled by the fact that the case concerns a purportedly novel kind of subject—a so-called “new kind of criminal,” according to a 2002 cover story in the *New York Times Magazine*—to wit, the female atrocity perpetrator. Much of this media buzz belies the fact that other Rwandan women—thousands, in fact—have been convicted for genocide or crimes against humanity.31 These convictions have arisen, overwhelmingly, from legal proceedings in Rwandan national courts and in *gacaca* proceedings held throughout Rwanda.32 This carnivalesque media novelty also belies the fact that other women served powerful leadership roles in the genocide—such as Agnès Ntamabyaliro, the Minister of Justice in the genocidal regime, who is currently imprisoned in Rwanda.33 Nyiramasuhuko may reflect a new kind of international convict, but she is far from a new kind of perpetrator, whether in Rwanda or wherever episodes of mass atrocity erupt.

Motherhood also suffuses broadcasted perceptions of Nyiramasuhuko. She is not just a woman who ordered rape, after all, but she is a mother—and grandmother—who ordered women to be raped in front of their own children. And among the rapists was her son, and codefendant, Shalom. The relationship between “mother and son génocidaires” has attracted greater media fascination than the relationship between another parent-child duo convicted for genocide at the ICTR, namely, Elizaphan Ntakirutimana (father) and Gérard Ntakirutimana (son), who were sentenced to ten and twenty-five years’ imprisonment respectively in 2003 and whose sentences were affirmed on appeal in 2004.

Part I of this Article sets out Nyiramasuhuko’s background. Part II carefully examines the trial judgment, including the bases for conviction and the specific factual allegations. The judgment itself, at 1500 pages in

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32. *Id.* In 1998, when I worked in the Kigali prison, I represented some women detainees who were housed in a separate unit (at times with their children).
34. Elizabeth Barad, *Mother and Son Genocidaires*, *ARUSHA TIMES* (Sept. 24–30, 2011), http://www.arushatimes.co.tz/2011/36/Tribunal_1.html (“I was able to speak to Nyiramasuhuko alone which no other journalist or lawyer, other than her own, has been able to do. She was incarcerated at the Detention Center of the [International Criminal Tribunal for Rwanda (ICTR)]... She complained that she was lonely, being the only woman there. ‘It’s very difficult for me. I don’t have my own doctor. I do get to see Shalom, but only once a week,’ she said. It was reported that Nyiramasuhuko’s main concern was for Shalom.”).
length, is gender neutral in terms of its depiction of Nyiramasuhuko. She is presented as a perpetrator indifferently from her male co-perpetrators.

Part III explores, in contrast, how public portrayals of Nyiramasuhuko exude problematic essentialisms, stereotypes, and imagery of women and mothers. These caricatures emerge at two distinct levels. First, they are invoked by the media to sensationalize and spectacularize the trial itself—in short, to titillate. Second, they are instrumentally invoked to favor strategic operational outcomes. For example, those stakeholders who condemn Nyiramasuhuko’s conduct turn to her status as woman and mother to accentuate her personal culpability and individual deviance (that is, she is a worse perpetrator, a greater disappointment, and a more shocking offender because she is a woman, mother, and grandmother). Those who defend her conduct, including Nyiramasuhuko herself, pretextually invoke tropes rooted in imagery of womanhood and motherhood to emphasize the impossibility of her culpability (that is, she can’t be a perpetrator, in particular of rape, because she is a woman, mother, and grandmother). In this end, this Part critically discusses these disabling gender-based stereotypes that trail the proceedings.

Part IV identifies several valuable insights that Nyiramasuhuko’s trial and conviction offer for the development and effectiveness of international law’s interventions in post-conflict spaces. These proceedings, therefore, can be read didactically. The adulation heaped on her case belies a shadow side, to wit, that the veneration of international justice can lead to neglect of national justice. The proceedings against Nyiramasuhuko also demonstrate the need to rethink the role of femininities and masculinities in the propagation of atrocity. Recognizing women as agents of violence, as bystanders to violence, as resisters of violence, and as victims of violence informs a more nuanced understanding of atrocity and, thereby, solidifies preventative and deterrent efforts. In this vein, this Article advocates for a more nuanced, grounded, and sublime approach to victims and victimizers, at times the two being one, in mass atrocity. The proceedings against Nyiramasuhuko also reveal the limits to criminalization in the process of transitional justice more generally, and important components thereof such as emboldening the status of women in post-conflict societies. The Article then concludes by connecting Nyiramasuhuko’s trial to the social, economic, and political challenges faced by women in Rwanda today.

I. PAULINE NYIRAMASUHUKO: BACKGROUND, ASCENT, DESCENT

Nyiramasuhuko was born “in humble circumstances” in 1946 in Rugara cellule, Ndora secteur and commune, Butare préfecture.37 She com-

37. Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, Judgement and Sentence, ¶ 8 (June 24, 2011) (regarding date, time and location). Her father was a subsistence farmer. Sperling, supra note 2, at 647. Nyiramasuhuko is frequently referred to by her given name, Pauline, both inside and outside of Rwanda. The judgment itself refers to her by her surname Nyiramasuhuko; the male co-accused also are referred to by their surnames. Nyiramasuhuko Judgement, Case No. ICTR-98-42-T. This is the approach I take in this Article. It has been
completed her studies in 1964. A social worker, she was employed in various capacities (including as a trainer) in a number of locations throughout Rwanda until 1973.

In 1968, she married Maurice Ntahobali. During the genocide, Ntahobali was Rector of the National University in Butare. Formerly, he had served as President of the Rwandan National Assembly and as Minister of Higher Education. Maurice Ntahobali moved to Antwerp, Belgium, following the genocide. He testified as a defense witness at his wife’s trial. A BBC report published at the time of her conviction characterized Nyiramasuhuko as exercising the upper hand in the marriage: she “was the complete opposite of the man she married,” who, in turn, was described as “quiet and humble.”

Nyiramasuhuko worked with the Ministry of Health from 1973 to 1981, until her husband was appointed as a Minister in Kigali. In 1986, she returned to Butare, enrolled in university, and in two years obtained a law degree.

Nyiramasuhuko has four children—Denise, Shalom, Clarisse, and Brigitte—and several grandchildren. Denise, Shalom, and Clarisse were present in Rwanda during the genocide. Brigitte, who was in Europe at that time pursuing her education, has never returned to Rwanda.

Suggested that the popular tendency to refer to Nyiramasuhuko by her given name reflects gender-based differential treatment since male accused are referred to by their full names. See, e.g., Sjoberg & Gentry, supra note 27, at 163.

39. Id. ¶ 10.
40. Id.
41. Id. ¶ 753.
43. Josephine Hazeley, Profile: Female Rwandan Killer Pauline Nyiramasuhuko, BBC News (June 24, 2011, 3:58 PM), http://www.bbc.co.uk/news/world-africa-13907693; see also Landesman, supra note 30, at 87 (“>‘Maurice was like the woman; he didn’t say anything,’ said Jean-Baptist [sic] Sebukangaga, a professor of art at National University who has known Pauline since her childhood. ‘Pauline directed everything. She got Maurice his job as rector at the university.’ A friend and neighbor told me that she once saw Pauline screaming at Maurice for not being more committed to the politics of the MRND . . .’”).
45. Id. ¶ 11.
46. Sjoberg & Gentry, supra note 27, at 165–66.
47. Clarisse and Denise testified at the trial as defense witnesses; Shalom also testified in his own defense. As an aside, Denise’s husband, presumably Nyiramasuhuko’s son-in-law, worked as an investigator for the Nyiramasuhuko defense team from August 1999 to the beginning of 2005. Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶ 2503. Céline Nyiramente, Nyiramasuhuko’s sister, also testified in her defense. At one point the Trial Chamber noted that because “many of the Nyiramasuhuko and Ntahobali Defence witnesses are related to or have close ties with Nyiramasuhuko and Ntahobali . . . appropriate caution must be exercised when evaluating the Defence evidence.” Id. ¶ 3101. Notwithstanding this caveat, at times the Trial Chamber found this evidence to be credible. See, e.g., id.
48. Id. ¶ 3054.
Nyiramasuhuko gave birth to Shalom (hereinafter referred to as Ntahobali) while in Israel on an exchange in 1970. During the genocide, Ntahobali was a university student and part-time hotel manager. In Butare, he exercised control over a local group of the Interahamwe, the national youth militia. The Interahamwe operated in tandem with the Rwandan armed forces and were notorious for their extreme cruelty in committing acts of genocide and crimes against humanity. At the time of the genocide, Ntahobali had a baby and his wife was pregnant.

Nyiramasuhuko advanced within the most influential Hutu political party, the Mouvement révolutionnaire national pour la démocratie et le développement (MRND). Nicknamed “Butare’s favorite daughter,” she became a prominent political figure. Drawing from a close high school friendship with Agathe Kanziga, who would later become the wife of President Juvenal Habyarimana and serve an influential role in extremist Hutu politics, Nyiramasuhuko gradually wove her way into the highest echelons of power. She served as Minister of Family and Women’s Development in Prime Minister Jean Kambanda’s genocidal government (also known as the Interim Government, which constituted itself immediately after Habyarimana’s death). Nyiramasuhuko had been appointed to that ministerial portfolio on April 16, 1992, so had served in the previous government (a multiparty arrangement) as well. Interim Prime Minister Kambanda pled guilty at the ICTR to charges of genocide and crimes against humanity. In his confession, he named Nyiramasuhuko as among the five members of his inner sanctum “where the blueprint of the genocide was first drawn up.”

49. Id. ¶ 10.
50. Id. ¶ 18.
51. Id. ¶ 2150.
54. Landesman, supra note 30, at 82; see also Danna Harman, A Woman on Trial for Rwanda’s Massacre, CHRISTIAN SCI. MONITOR (Mar. 7, 2003), http://www.csmonitor.com/2003/0307/p09s01-woaf.html (“Nyiramasuhuko was, once, the pride of Butare.”).
55. Ephrem Rugiririza, Pauline Nyiramasuhuko: From Women’s Rights to Rape, AGENCE FRANCE PRESSE, June 24, 2011 (on file with author); Hazeley, supra note 43.
56. The Interim Government was officially sworn in on April 9, 1994. Nyiramasuhuko was among the nineteen cabinet members. Prosecutor v. Pauline Nyiramasuhuko & Shalom Ntahobali, Case No. ICTR-97-21-1, Amended Indictment, ¶ 6.7 (Aug. 10, 1999).
Butare préfecture lies in southern Rwanda. At the time of the genocide, it “was one of the most populated préfectures in Rwanda.”\textsuperscript{60} Butare city (Butare-ville), reputed to be the intellectual heart of Rwanda, is its largest center.\textsuperscript{61} A progressive and integrated place, with a moderate Hutu population, Butare housed the National University of Rwanda. Butare préfecture was also among the regions of the country with the largest Tutsi population.\textsuperscript{62} Twenty-five percent of Rwanda’s Tutsi population lived there; in two of the préfecture’s communes, Tutsis comprised forty to forty-five percent of the total population (in contrast to approximately fourteen percent nationally).\textsuperscript{63} The MRND was relatively weak in Butare.

At the start of the genocide, in fact, Butare préfecture was the only préfecture in Rwanda to be led by a Tutsi, Jean-Baptiste Habyalimana, a politician who openly opposed massacres.\textsuperscript{64} While genocide raged elsewhere, Butare remained relatively calm and even welcomed refugees.\textsuperscript{65} This aberration caught the attention of the Interim Government, which sacked préfet Habyalimana on April 17.\textsuperscript{66} Nyiramasuhuko played a key role in this process.\textsuperscript{67} Habyalimana then was disappeared. His replacement, Sylvain Nsabimana (who eventually became another of Nyiramasuhuko’s codefendants), initiated vigorous anti-Tutsi public campaigns in which Nyiramasuhuko played a supportive role.\textsuperscript{68} On April 19, at Nsabimana’s swearing-in ceremony, senior Rwandan leaders, including Interim President Théodore Sindikubwabo and Interim Prime Minister Kambanda, made incendiary speeches exhorting violence against the local Tutsi population.\textsuperscript{69} Nyiramasuhuko, who was present, did not dissociate herself from this inflammatory invective.\textsuperscript{70} She remained silent. Although she was found to tacitly approve of the policies delineated in the speeches,\textsuperscript{71} Trial Chamber II held that this tacit approval did not substan-

\textsuperscript{60} Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, \textit{\textsection} 226.
\textsuperscript{61} \textit{Id.} \textit{\textsection} 2.
\textsuperscript{62} \textit{Id.}
\textsuperscript{63} \textit{Id.} \textit{\textsection}s 226.
\textsuperscript{64} \textit{Id.} \textit{\textsection}s 2, 636.
\textsuperscript{65} \textit{Id.} \textit{\textsection} 587.
\textsuperscript{66} \textit{Id.} \textit{\textsection}s 539, 584.
\textsuperscript{67} \textit{Id.} \textit{\textsection} 638.
\textsuperscript{68} \textit{Id.} \textit{\textsection} 585.
\textsuperscript{69} \textit{Id.} \textit{\textsection}s 584–585.
\textsuperscript{70} Prosecutor v. Pauline Nyiramasuhuko & Shalom Ntahobali, Case No. ICTR-97-21-1, Amended Indictment, \textit{\textsection}s 6.21–22 (Aug. 10, 1999).
\textsuperscript{71} Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, \textit{\textsection}s 920–921 (“The Chamber finds that Nyiramasuhuko ascribed to and supported the policies of the Government of which she was a member, as set forth in Sindikubwabo’s speech. Accordingly, her silence constituted tacit approval of those policies. . . .[T]he Chamber finds that Nyiramasuhuko’s presence at the swearing-in ceremony and her failure to dissociate herself from the statements made by the President and Prime Minister, constituted tacit approval of their inflammatory statements.”).
tially contribute to the genocide.\textsuperscript{72} Hence, Nyiramasuhuko did not bear criminal responsibility for her actions at the swearing-in ceremony.

In any event, on April 20, Nyiramasuhuko asked Nsabimana for military assistance in undertaking massacres in her home commune, Ngoma.\textsuperscript{73} That same day, widespread killings began in Butare.\textsuperscript{74} Nyiramasuhuko was a centrifugal force in the unfolding terror. On April 27, the Interim Government issued a directive encouraging the public to establish and maintain roadblocks.\textsuperscript{75} A barricade was established near the Hotel Ihuliro. This hotel was owned by Maurice Ntahobali and served as a family residence of sorts during the genocide.\textsuperscript{76}

Nyiramasuhuko was disturbed by the many Tutsi refugees huddled at the Butare \textit{préfecture} office (BPO). She ordered the Tutsi women at the BPO to be raped and then killed—this specific conduct comprised a linchpin of her ultimate criminal convictions.\textsuperscript{77} At trial, one witness, QBP, testified that Nyiramasuhuko

\begin{quote}
    told the soldiers and \textit{Interahamwe} “these are the accomplices who are here . . . there’s still a lot of dirt at the BPO, such as these Tutsi women, who previously were arrogant and did not want to marry Hutu men. Now it’s up to you [the Hutus] to do whatever you want with them."
\end{quote}

Metaphoric phrases, such as “there’s a lot of dirt here,” have since been exposed as balefully doubling as code words for eliminationism.\textsuperscript{79}

Following the ouster of the genocidal regime in July 1994, Nyiramasuhuko promptly left Rwanda.\textsuperscript{80} RPF forces razed the Hotel Ihuliro. Nyiramasuhuko traveled and worked “undisturbed in the region for three years” until she was arrested in Nairobi, Kenya, on July 18, 1997.\textsuperscript{81} She

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{72} Id. \S 6034.
\item \textsuperscript{73} Id. \S 588.
\item \textsuperscript{74} Id. \S 692.
\item \textsuperscript{75} Id. \S 1457.
\item \textsuperscript{76} Id. \S 3107.
\item \textsuperscript{77} See, e.g., id. \S 2605 n.7301 (reporting Witness FAP as testifying that “Nyiramasuhuko stood by the vehicle and told the \textit{Interahamwe} to take the young girls and the women who are not old, to rape them before killing them because they had refused to marry Hutus”). Witness FAP’s testimony was found credible. \textit{Id.} \S 5101.
\item \textsuperscript{78} Id. \S 2268. This witness’s testimony was found to be credible. \textit{Id.} \S\S 2304, 2773.
\item \textsuperscript{79} Recurrent testimony notes Nyiramasuhuko’s plea that the “dirt should be removed,” a euphemism for the Tutsi refugees at the Butare \textit{préfecture} office (BPO). \textit{See, e.g., id.} \S 2177. Testimony also suggested that Nyiramasuhuko often wore military fatigues in public during the genocide. \textit{See id.} \S 2696.
\item \textsuperscript{80} Id. \S 12.
\item \textsuperscript{81} Stephanie K. Wood, \textit{A Woman Scorned} for the “Least Condemned” War Crime: Precedent and Problems with Prosecuting Rape As a Serious War Crime in the International Criminal Tribunal for Rwanda, \textit{13 Colum. J. Gender \\ & L.} 274, 288 (2004); Barad, \textit{supra} note 34; \textit{see also Nyiramasuhuko Judgement}, Case No. ICTR-98-42-T, \S\S 14, 6295. Nyiramasuhuko left Rwanda on July 18, 1994. \textit{Id.} \S 12.
\end{enumerate}
\end{footnotesize}
never hid or assumed a different identity. She worked in a refugee camp in Zaire (now the Democratic Republic of the Congo) run by the Catholic charity Caritas, where she helped trace refugee children who had become separated from their families. Transferred to the ICTR, she made her initial appearance on September 3, 1997. On August 12, 1999, prosecutors added more counts—raising the total to eleven—to which she also pled not guilty. These indictments charged her as well as Ntahobali. During the many years between her initial capture and eventual conviction, she spent her time at a U.N. detention facility in Arusha, Tanzania, “tending a flower bed and sometimes singing to herself and concerned mainly, according to sources, about her beloved son Shalom.”

In the 2002 New York Times Magazine cover story, the author, Peter Landesman, interviewed Nyiramasuhuko’s mother, who informed him that Nyiramasuhuko’s great-grandfather was a Tutsi but had been redesignated as a Hutu because he had become poor. Owing to patrilineal kinship in Rwanda, this meant that Nyiramasuhuko descended from Tutsi roots and, arguably, was Tutsi herself. The judgment itself does not touch upon this aspect, though it explicitly—albeit briefly—refers to her husband Maurice as Hutu and her daughters Denise and Clarisse as Hutu. The ethnic aspect of Nyiramasuhuko as a defendant, whether factually plausible or not, has not galvanized public attention the way her gender has. On a broader note, other than the Landesman article, few media or academic reports endeavor to grapple with—or even explore—what fueled Nyiramasuhuko’s violence in the first place: was it opportunism, ethnic hatred, a quest for self-purification, or fear of being exposed as being of Tutsi descent? Also unexplored is the role, if any, that gender may have played in her own socialization into and leadership over collective violence.

The rape accusations against Nyiramasuhuko have proven to be particularly attention grabbing. On the one hand, this might suggest that

82. Wood, supra note 81, at 288.
85. Id. ¶¶ 13–14.
86. Id. ¶ 15.
87. Ntahobali had brought motions requesting that he be tried separately from Nyiramasuhuko, though these were unsuccessful. Id. ¶¶ 6300, 6434.
88. Rugiririza, supra note 55; see also Landesman, supra note 30, at 86.
90. Id.
92. See, e.g., Wood, supra note 81, at 287 (“[H]er case has received disproportionate media attention in comparison to her male counterparts. Presumably, rape warfare is not newsworthy in itself, but a female leader advocating violence against women is a less com-
rape is treated seriously among international crimes (even though, in this case, the Prosecution slipped and failed to properly charge rape as genocide[93]). On the other hand, though, the fact that a woman was charged with mass-rape crimes, and has now been convicted, has become sensationalized. In this vein, Canadian journalist Michele Landsberg was sharply critical of the New York Times Magazine’s decision to feature Nyiramasuhuko as opposed to any of the many Rwandan men prosecuted and convicted for mass rape (including rape as genocide). According to Landsberg:

Ever since the feminist breakthroughs of the mid-twentieth century, when male violence against females (from sexual harassment to rape, wife battering, incest and sex trade trafficking) was finally exposed, named and labelled as criminal, the media have never been more relieved and satisfied than when they can point to a woman who is “just as bad” or “even worse.”[94]

Carrie Sperling, a U.S. law professor, posits how reaction to the Nyiramasuhuko trial “says more about our continued resistance to view women as equals than it says about her uniqueness among her female peers.”[95] Sperling argues that

[t]hose who view [Nyiramasuhuko’s] actions during the genocide as somehow inexplicable because of her gender engage in the stereotypical thinking that perpetuates the special victimization of women. . . . [T]his arbitrary role of women as “the other,” “the pure,” and “the innocent” permits, if not perpetuates, the brutal and degrading treatment specifically forced on women in times of conflict.[96]

This Article, in turn, explores how both of these perspectives are suspect and, in response, ultimately posits a more nuanced approach.

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95. Sperling, supra note 2, at 638.
96. Id. at 638, 658.
II. LEGAL PROCEEDINGS

Nyiramasuhuko and Ntahobali were initially indicted together.\(^9\) The case subsequently was expanded when the other defendants were joined.\(^9\) The joint trial commenced on June 12, 2001, and concluded on December 2, 2008.\(^9\) Post-trial proceedings then ensued. In total, 726 days were taken up in trial and post-trial proceedings.\(^100\)

Each of the Butare Six defendants has appealed the convictions.\(^101\) Judges have been assigned to the case before the Appeals Chamber.\(^102\) Should the Appeals Chamber affirm Nyiramasuhuko’s sentence, then she will be transferred to one of the eight states that have concluded agreements with the ICTR to incarcerate convicts.\(^103\)

The charges against Nyiramasuhuko dryly read as follows:

| Count One:                              | Conspiracy to Commit Genocide |
| Count Two:                              | Genocide                     |
| Count Three:                            | Complicity in Genocide       |
| Count Four:                             | Direct and Public Incitement to Commit Genocide |
| Count Five:                             | Murder as a Crime Against Humanity |
| Count Six:                              | Extermination as a Crime Against Humanity |
| Count Seven:                            | Rape as a Crime Against Humanity\(^104\) |
| Count Eight:                            | Persecution as a Crime Against Humanity |

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97. Prosecutor v. Pauline Nyiramasuhuko & Shalom Ntahobali, Case No. ICTR-97-21-1, Amended Indictment (Aug. 10, 1999) (listing both individuals as indicted). This indictment opens with a succinct, and elegantly written, historical background to the Rwandan genocide. Id. ¶¶ 1.1–30. In a separate section, it offers a summary of the power structure present in Rwanda in the lead-up to genocide. Id. ¶¶ 3.1–10. These historical and political understandings, in turn, have become authenticated through ICTR judicialization.

98. The order that the six cases be tried together was made on October 5, 1999. See Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶ 6320 (June 24, 2011).

99. Id. ¶¶ 6341, 6597.

100. The ICTR website provides case minutes for each day of the proceedings. See Status of Cases, INT’L CRIM. TRIBUNAL FOR RWANDA, http://www.unictr.org/Cases/tabid/204/Default.aspx (last visited Mar. 24, 2013). Because these minutes are quite skeletal in nature, they provide little in the way of texture or detail.


104. The initial indictment drawn up against Nyiramasuhuko did not include rape charges. These were added upon subsequent amendment. See Wood, supra note 81, at 289.
Count Nine: Other Inhumane Acts as a Crime Against Humanity
Count Ten: Violence to Life as a War Crime
Count Eleven: Outrages Upon Personal Dignity as a War Crime

A person commits genocide, stipulated by Article 2 of the ICTR Statute, when he or she commits a listed act (killing members of the group, for example, or causing them serious bodily or mental harm) with the specific “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such.”

Crimes against humanity, pursuant to the specific language of Article 3 of the ICTR Statute, involve specified acts that must be “committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds.”

Nyiramasuhuko was charged with extermination (namely, the act of killing on a mass scale), murder, persecution, rape, and other inhumane acts as crimes against humanity.

War crimes (Article 4 of the ICTR Statute) concern certain acts when committed in international or noninternational armed conflict (the latter being the case for Rwanda) when there is a nexus between the act and the armed conflict. Nyiramasuhuko was charged with two counts of war crimes, namely (1) violence to life, health, and physical or mental well-being and (2) outrages upon personal dignity.

Article 6 of the ICTR Statute enumerates the bases upon which a person can be found responsible for committing the proscribed criminal conduct. Articles 6(1) and 6(3) both figured in the charges against Nyiramasuhuko. Article 6(1) states that “[a] person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.” Article 6(3) addresses the responsibility of superiors for the acts of subordi-

105. See Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶ 6186.
107. Id. art. 3.
108. Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶ 6039. The interplay among these crimes against humanity is complex and well beyond the scope of the present discussion. For example, “where the Chamber has entered a conviction for extermination as a crime against humanity, it will not consider the same underlying conduct as a basis for a conviction for murder as a crime against humanity.” Id. ¶ 6070. “The crime of other inhumane acts was deliberately designed as a residual category for sufficiently serious acts which are not otherwise enumerated in Article 3 of the Statute.” Id. ¶ 6127.
109. ICTR Statute, supra note 106, art. 4.
111. ICTR Statute, supra note 106, art. 6.
112. Id. art. 6(1).
nates. Pursuant to Article 6, then, the Trial Chamber had to consider whether Nyiramasuhuko directly committed the crimes for which she was charged, in the case of each charge, or had superior responsibility over others.

Defense counsel—Nicole Bergevin (from Canada, who served as lead counsel for many years) and Guy Poupart—put in place a multifaceted strategy. They challenged the credibility of Prosecution witnesses. At times they succeeded, but mostly they did not. They also focused heavily on alibi evidence and prevailed in refuting some of the Prosecution’s allegations regarding Nyiramasuhuko’s presence at massacre sites. In the case of the Hotel Ihuliro roadblock, although the Prosecution established “that Nyiramasuhuko was present at the roadblock... during occasions in the relevant time period,” the Chamber found that “it ha[d] not been proven beyond a reasonable doubt that Nyiramasuhuko also manned that roadblock.” Both she and Ntahobali were spared responsibility for rapes committed by soldiers at the École Évangéliste du Rwanda. But many of the Prosecution allegations were proven beyond a reasonable doubt, in particular Nyiramasuhuko’s critical presence at killings at the BPO and the yard in front of it, where many Tutsi had sought refuge only to be treated with “unfathomable depravity and sadism.” Also proven was the factual allegation that Nyiramasuhuko distributed, and ordered the distribution of, condoms to Hutu men to rape Tutsi women before killing them, so as to protect the men from AIDS. On this latter note, the Chamber found that Nyiramasuhuko ordered a woman (presumably a supporter of genocide) to distribute the condoms with the following exhortation: “Let no Tutsi woman survive because they take away our hus-

113. Id. art. 6(3) (“The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”).


115. Id. ¶ 4.

116. Id. ¶¶ 4, 249, 346, 356, 359, 382.

117. For some flavor of the level of detail involved, see, for example, id. ¶ 2577.

118. Id. ¶ 3150 (“Nor is the Chamber satisfied that the Prosecution has proven beyond a reasonable doubt that during the relevant time period, Nyiramasuhuko utilised the roadblock with the assistance of soldiers and other unknown persons, to abduct and kill members of the Tutsi population.”). Ntahobali was found beyond a reasonable doubt to have manned the roadblock. Id. ¶ 3128.

119. Id. ¶ 6186.

120. Id. ¶ 21.

121. Id. ¶ 4985. Although established, these facts proved insufficient when it came to justifying a conviction since there was not “reliable evidence to show a link between Nyiramasuhuko’s actions in distributing the condoms on this occasion... and actual rapes committed against said Tutsi women.” Id. ¶¶ 5939, 6091.
bands. Paradoxically, during the genocide, hundreds of male AIDS patients were released from hospitals and assembled into rape squads. Their goal was to rape and thereby cause a slow, inexorable death.

On June 24, 2011, Trial Chamber II, composed of Judges Willam Sekule (Presiding Judge, from Tanzania), Arlette Ramaroson (Madagascar), and Solomy Balungi Bossa (Uganda), delivered the following verdicts:

Count One: Guilty for entering into an agreement with members of the Interim Government on or after April 9, 1994, to kill Tutsis in Butare préfecture.

Count Two: Guilty for ordering the killing of Tutsis taking refuge at the BPO.

Count Three: Charge dismissed because it had been pleaded as an alternative to Genocide.

Count Four: Not guilty.

Count Five: Charge dismissed because it is cumulative of Extermination as a Crime Against Humanity.

Count Six: Guilty for ordering the killing of Tutsis taking refuge at the BPO.

Count Seven: Guilty as a superior of the Interahamwe who raped Tutsis taking refuge at the BPO. Trial Chamber II stated that the elements of the crime of genocide had been met but, because this crime had not been properly charged owing to a defect in the indictment, it was therefore not possible to enter a conviction.

Count Eight: Guilty for ordering the killing of Tutsis taking refuge at the BPO.

Count Nine: Not guilty.

122. Id. ¶ 4985. Although established, these facts proved insufficient to convict Nyiramasuhuko on the charge of direct and public incitement to commit genocide because this speech was directed only to one woman and not broadly. Id. ¶ 6016 (finding the speech “more akin to a ‘conversation’”).

123. Landesman, supra note 30, at 89, 116.


126. Id. ¶ 5969.

127. Id. ¶ 5981.

128. Id. ¶ 6034.

129. Id. ¶¶ 6071–6072.

130. Id. ¶¶ 6049–6051.

131. Id. ¶¶ 6087–6088.

132. Id. ¶ 6120.

133. Id. ¶ 6145.
Count Ten: Guilty for ordering the killing of Tutsis taking refuge at the BPO.\textsuperscript{134}

Count Eleven: Guilty as a superior of the \textit{Interahamwe} who raped Tutsis taking refuge at the BPO.\textsuperscript{135}

The official, authoritative judgment is over 1500 pages long. Understandably, the ICTR published an unofficial summary of the judgment and sentence, which was read out by the Chamber. The summary, which distills the judgment to eighteen pages, addresses the central findings.\textsuperscript{136} Producing these summaries has become common practice among international criminal tribunals.

The \textit{Nyiramasuhuko} judgment is incredibly detailed (although at times quite repetitive). Hundreds upon hundreds of pages are given over to a comprehensive analysis of the specifics of witness testimony. Careful assessments are rendered of witness credibility and reliability—as they must be, given the salience of precepts of due process and the need to connect senior leaders to the actual crimes. That said, the sterility of these assessments, even when the result is favorable to the witness, interfaces awkwardly with what is at times the most poignant of testimony.\textsuperscript{137}

In these proceedings, the Prosecution and the accused presented 189 witnesses and introduced 913 exhibits into evidence.\textsuperscript{138} \textit{Nyiramasuhuko} called twenty-six witnesses in her defense, including herself.\textsuperscript{139} The trial transcript is over 125,000 pages long.\textsuperscript{140} Witnesses were examined by each of the six defendants’ counsel.\textsuperscript{141}

The judgment often identifies defects in the Prosecution’s indictment and, in this regard, queries whether or not those defects can or have been cured. One concern in this regard is whether the material facts that support a charge are pleaded with sufficient precision and specificity so as to provide adequate notice to the accused to be able to prepare a defense.\textsuperscript{142}

\textsuperscript{134} Id. \S 6166–6167.

\textsuperscript{135} Id. \S 6183.

\textsuperscript{136} Prosecutor v. Nyiramasuhuko (\textit{Nyiramasuhuko Summary}), Case No. ICTR-98-42-T, Summary of Judgement and Sentence (June 24, 2011).

\textsuperscript{137} See, e.g., Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, \S 2185 (“Before raping Immaculée, Shalom took the youngest child from her arms and threw the child to the side. Witness TA picked up the child and consoled it to keep it quiet. After raping Immaculée, Shalom placed two heavy logs on her legs, one above the knee and one below knee. . . . Witness TA testified that she went to visit Immaculée at a hospital and Immaculée told Witness TA that she had contracted AIDS during the 1994 events. Immaculée died in January 2001.” (footnotes omitted)); id. \S 2756–2757 (“Witness SU showed them her aged breasts to discourage the men from raping her as she was very thin. . . . One night, an \textit{Interahamwe} woke up Witness SU who removed her clothes, showed him her breasts and told him ‘[p]lease, don’t take me with you, I’m an old lady and my breasts are falling.’”).

\textsuperscript{138} Id. \S 139, 142.

\textsuperscript{139} Id. \S 77.

\textsuperscript{140} Nyiramasuhuko Summary, Case No. ICTR-98-42-T, \S 5.

\textsuperscript{141} Barad, supra note 34.

\textsuperscript{142} Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, \S 100.
Another concern is whether Nyiramasuhuko had received adequate notice of the legal basis of her alleged criminal responsibility, that is, whether she was charged on the basis of superior responsibility.\(^\text{143}\) One way to cure any initial defects is for the Prosecution to subsequently disclose timely, clear, and consistent information that precludes prejudice for the defendant.\(^\text{144}\) In the case of some charges, the judges found that initial defects had been cured, but not in others.\(^\text{145}\) Concerns regarding the clarity and precision of the pleaded charges have arisen in other ICTR cases, as well.\(^\text{146}\)

Nyiramasuhuko was found to be at the core of the genocidal campaign in Butare, a pivotal region of the country. She conspired with the Interim Government, of which she formed a core part, to kill Tutsis within Butare préfecture with the intent to destroy the Tutsi ethnic group in whole or in part.\(^\text{147}\) Nyiramasuhuko’s participation in Cabinet meetings, support of Habyalimana’s ouster and replacement, and agreement with Cabinet policy each constituted key facts inferentially supporting this conviction. When informed of the massacres of the Tutsi population, the Cabinet did nothing to quell them but, instead, encouraged them through the use of directives and instructions.\(^\text{148}\) None of the other five defendants were convicted on the charge of conspiracy to commit genocide (Count 1), only Nyiramasuhuko.\(^\text{149}\)

The Trial Chamber found insufficient proof establishing Nyiramasuhuko’s responsibility for violence at the Hotel Ihuliro road-
block. But it found sufficient proof to link her to the terrible events that occurred at the BPO. In sum, the Trial Chamber found “beyond a reasonable doubt that: between 19 April and late June 1994 Nyiramasuhuko, Ntahobali, Interahamwe and soldiers went to the BPO to abduct hundreds of Tutsis; the Tutsi refugees were physically assaulted and raped; and the Tutsi refugees were killed in various locations throughout Ngoma commune.”

Regarding genocide (Count 2), the Trial Chamber again addressed Nyiramasuhuko’s involvement in Cabinet meetings, attendance at the Kambanda and Sindikubwabo speeches, and removal of préfet Habyalimana. The Trial Chamber did not find that this conduct provided a basis for responsibility under Article 6(1) of the ICTR Statute. On this note, the law requires the conduct of an accused to substantially contribute to a crime in order for aiding or abetting to be found. Nyiramasuhuko’s tacit approval of the messages in the speeches did not rise to that level. Nor did her involvement offer a legal basis for the charge of incitement to commit genocide, specifically Count 4, for which she was found not guilty. However, she was found responsible under Article 6(1) for genocide (Count 2) for ordering killings at the BPO office. This conduct also established her guilt for ordering extermination as a crime against humanity (Count 6) and ordering persecution as a crime against humanity (Count 8).

Turning to Count 7, the ICTR defines rape as “the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator.” Trial Chamber II chided the Prosecution for failing to properly plead rape as genocide. It found no basis to conclude that the Prosecution had cured this defect through subsequent adjustments. According to Trial Chamber II, “[a]lthough the evidence establishes in this case that rape was utilized as a

150. Id. ¶ 2577.
151. Id.
152. Id. ¶ 2781.
153. Id. ¶ 5746.
154. Id. ¶ 6186.
155. Id. ¶ 5596.
156. Id. ¶ 6186. A contrast arises with the Ndahimana judgment, released late in 2011, in which a bourgmestre in Kibuye préfecture was found guilty of genocide and extermination as a crime against humanity in part because his on-site physical presence at the time a church full of refugees was demolished—which resulted in the death of 1500 to 2000 Tutsi—accorded tacit approval to the demolition. Prosecutor v. Ndahimana, Case No. ICTR-01-68-T, Judgement and Sentence, ¶¶ 824-828 (Dec. 30, 2011).
158. Id. ¶¶ 5876, 5969.
159. Id. ¶¶ 6051, 6099, 6120.
160. Id. ¶ 6075.
161. Id. ¶ 5828.
form of genocide . . . it would be prejudicial to the Accused to hold them responsible for a charge of which they had insufficient notice.” 162 Hence, it did not enter a conviction for genocide on the basis of rape. 163 Convictions were entered on the basis of rape as a crime against humanity (on ethnic grounds) and outrages upon personal dignity as a war crime. 164 By her “presence and position of authority,” Nyiramasuhuko was found guilty of aiding and abetting the rapes at the BPO. 165 The ICTR found on the facts that she issued instructions to rape the women gathered at the BPO 166 and, hence, that she ordered rapes. 167 Ntahobali was convicted for committing multiple rapes himself and for ordering Interahamwe personnel to rape. 168

Yet another perplexing obstacle arose, however, in terms of the Prosecution’s pleading strategy regarding rape. This difficulty involved the question of whether Nyiramasuhuko’s responsibility could be located under Article 6(1) or Article 6(3). According to Trial Chamber II:

Although the evidence clearly established Nyiramasuhuko’s direct role in ordering Interahamwe to rape Tutsi women at the Butare préfecture office, the Prosecution only charged Nyiramasuhuko with responsibility as a superior for rape. Therefore the Chamber has only assessed Nyiramasuhuko’s superior responsibility for the rapes at the Butare préfecture office. 169

Trial Chamber II identified this as a “serious omission on the part of the Prosecution.” 170 In any event, Trial Chamber II found Nyiramasuhuko re-

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162. Nyiramasuhuko Summary, Case No. ICTR-98-42-T, ¶ 25 (June 24, 2011). For the discussion of this matter in the judgment, see Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶¶ 5828–5837 (regarding events at roadblock); id. ¶¶ 5857–5865 (regarding events at BPO). The defect in the Prosecutor’s charge could not be cured; the Prosecution “provided insufficient notice of its intention to pursue rape as genocide.” Id. ¶ 5835; see also id. ¶ 5864 (regarding events at BPO). This defect also affected the charges against Ntahobali. Id. ¶¶ 5835–5836.

163. Nonetheless “[t]he Chamber notes . . . that it will mention rapes in the course of its legal findings on genocide. This will be done to convey the entire set of facts in a coherent fashion, and will not be taken into account by the Chamber in assessing genocide. Instead, they will be considered when assessing the counts of rape as a crime against humanity, and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.” Id. ¶ 5837; see also id. ¶ 5865 (regarding events at BPO).

164. See id. ¶¶ 6076, 6185, 6200.

165. Id. ¶ 5869.

166. Id. ¶ 5870.

167. Id. ¶ 5877.

168. Id. ¶¶ 6075, 6210.

169. Nyiramasuhuko Summary, Case No. ICTR-98-42-T, ¶ 26 (June 24, 2011); see also Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶¶ 6087, 6093.

170. Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶ 6087. After all, it had “already found that Nyiramasuhuko ordered Interahamwe to rape Tutsi women at the BPO.” Id.
sponsible under Article 6(3). She was determined to have had a superior-subordinate relationship with the Interahamwe.

Regarding Count 9, other inhumane acts, Trial Chamber II considered only the allegation that Nyiramasuhuko had forced victims to undress, including before abducting and killing them. Trial Chamber II found that the Prosecution had not adduced sufficient evidence to support this allegation and, hence, entered a finding of not guilty. It is imprudent to conceptualize this dismissal as incidental or as merely reflecting an ancillary part of the violence inflicted upon women in Rwanda. Incidents of forced nudity, whether as precursors to rape and murder or simply as humiliating ends in themselves, demonstrate the widespread and public nature of the violence. Discussing gender-based crimes committed in the Holocaust, for example, Monica Tulchinsky reports on female concentration camp detainees having no “provisions for menstruation” so that they “would be forced to allow the blood to run down their legs, or would be told to collect it with their hands,” as well as being forced “to urinate in the latrines in the presence of SS men or male prisoners” and “to stand naked at roll call as punishment.” Tulchinsky concludes: “A large emphasis is placed by survivor testimonies on these humiliating experiences, and they represent the pervasive nature of the sexual degradation of women that contributed to the environment of widespread sexual violence.” The final two counts (10 and 11) concern war crimes. Nyiramasuhuko was found guilty—because of her having ordered the killings of Tutsi refugees at the BPO—for ordering violence to life, health, and physical or mental well-being of persons. She was found guilty of outrages to personal dignity for her superior responsibility for rapes at the BPO.

Trial Chamber II delivered its sentence at the same time as its judgment. When it comes to sentencing, the ICTR “has considerable, though not unlimited, discretion on account of its obligation to individualize penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.” The Trial Chamber’s discretion is to be contoured by several considerations. The gravity of the offenses committed is “the deciding factor in the determination of the sentence.” Although similar cases (that is, prior

171. Id. ¶ 6093.
172. Id. ¶ 6088.
173. Id. ¶ 6186.
174. Id. ¶ 6137.
176. Id.
178. Id. ¶ 6183.
179. Id. ¶ 6188.
180. Id. ¶ 6189.
sentences awarded) are instructive, they are not binding as benchmarks.\textsuperscript{181} Also, the ICTR Statute and the Rules provide that sentencing judges shall take into account the general practice regarding prison sentences in Rwanda, as well as any aggravating and mitigating circumstances.\textsuperscript{182}

The Prosecution requested a sentence of life imprisonment.\textsuperscript{183} Trial Chamber II granted this request.\textsuperscript{184} It emphasized the vast number of victims, Nyiramasuhuko’s abuse of her superior position, and the vulnerable nature of the victims (particularly at the BPO).\textsuperscript{185}

III. MYTH AS STRATEGY, TRIAL AS SENSATION

In Rwanda, the endemic nature of rape was motored by gender-based hatred in addition to ethnic hatred—the two brutally intersected in the demonization of Tutsi women.\textsuperscript{186} Trial testimony, authenticated by the text of the judgment, demonstrates how Nyiramasuhuko ordered the rape of those “arrogant” Tutsi women who, alternately, tempted and stole Hutu men (an image aimed at galvanizing female support for the rapes) or, on the other hand, spurned and humiliated them (an image aimed at men to commit rape).\textsuperscript{187} These taunts, discontinuous in rhetoric—depending on the gender of the audience—are, nonetheless, unified in result, regardless of the audience.\textsuperscript{188} Overall, the trial judgment carefully pursues a neutral approach to the gender of the lead defendant. Her gender, in fact, is never discussed. How to evaluate this neutrality through silence? Arguably, it avoids tabooifying Nyiramasuhuko as defendant or scandalously accentuating her guilt just because she is a woman.\textsuperscript{189} And, arguably, the silence as to gender reflects what a criminal court is supposed to do—that is, mi-

\begin{itemize}
\item \textsuperscript{181} \textit{Id.} ¶ 6190.
\item \textsuperscript{182} \textit{Id.} ¶ 6191. Whereas aggravating circumstances need to be proven beyond a reasonable doubt, mitigating circumstances need only be established on the balance of probabilities. \textit{Id.} ¶¶ 6193, 6197.
\item \textsuperscript{183} \textit{Id.} ¶ 6201.
\item \textsuperscript{184} \textit{Id.} ¶ 6271.
\item \textsuperscript{185} In mitigation, the Trial Chamber considered Nyiramasuhuko’s service as a Government Minister and previously in the Ministry of Health, but accorded these “very limited weight.” \textit{Id.} ¶ 6209.
\item \textsuperscript{187} \textit{Nyiramasuhuko Judgement}, Case No. ICTR-98-42-T, ¶¶ 2268, 2764, 4985.
\item \textsuperscript{188} Cf. Adam Jones, \textit{Gender and Genocide in Rwanda}, 4 J. GENOCIDE RES. 65, 65, 84 (2002) (noting generally “the bluntness of the génocidaires’ appeals to gendered expectations and aspirations, again including women as active agents of the slaughter” and also that “there appears to have been a kind of gendered jubilation at the ‘comeuppance’ of Tutsi females, who had for so long been depicted in Hutu propaganda as Rwanda’s sexual elite”).
\item \textsuperscript{189} In this regard, the judges defied the pessimistic, if not downright dire, predictions of one commentator that
She Makes Me Ashamed to Be a Woman

croscopically assess the guilt or innocence of the person in the dock on the basis of what that person is alleged to have done. The degendering of the lead perpetrator might additionally permit a clearer assessment of the criminal responsibility of the five other accused, all men, including her son. This silence also brings into sharper relief the judgment’s vivid exposition of the gender-based nature of many of the crimes, in particular mass rape of Tutsi women, for which Nyiramasuhuko was found responsible. That said, on this latter note, the judges chose not to cure the Prosecutor’s problematic shortcomings in failing to properly plead rape of Tutsi women at the BPO as genocide.190 Had the Trial Chamber chosen to cure this defect, it would have further authenticated the use of rape as a tool of genocide in Rwanda. The Trial Chamber, after all, said that her superior responsibility for rape amounted to genocide.191 But it chose not to convict on this basis, because it felt compelled to protect the due process rights of the defendant and, by logical extension, the integrity of the trial process.192

On the other hand, this conscious textual gender neutrality may present shortcomings and lost opportunities. For example, neutrality skips over the reality that, when disaggregating the multiple motivations that prompt a person to commit atrocity, it is somewhat stilted (perhaps even scripted) not to consider the role of gender in that process. Moreover, degendering runs the risk of glossing over the acute etiological need to better understand the role of femininities and masculinities in how mass atrocity emerges and, by logical extension, the cultivation of more effective reintegrative and preventative efforts in its aftermath.

Public representations of the trial, in any event, are rife with problematic essentialisms of femininity and motherhood.193 These caricatures informed the way in which the media expressively telegraphed the trial to the public. Essentialisms also suffuse the strategic discourse of those invested in Nyiramasuhuko’s conviction and, conversely, those invested in her acquittal (including Nyiramasuhuko herself). Although trial lawyers

Miller, supra note 3, at 372–73.


192. Id. ¶ 5835.

193. For a lucid overview and incisive commentary regarding academic and media representations of Nyiramasuhuko up until 2007, see Sjoberg & Gentry, supra note 27, at 158–71. These authors conclude: “Gendered descriptions of Nyiramasuhuko and her role in the genocide permeate media and academic accounts of her case.” Id. at 164. Some of the media and academic articles discussed by Sjoberg and Gentry also inform my discussion herein, although I include several other probative articles they do not consider. The discussion herein also builds upon their analysis by incorporating academic and media responses to the 2011 conviction, which postdates publication of their book.
re refrained from blatant excesses in this regard, they are far from the only stakeholders in the trial process. Stakeholders who condemn Nyiramurashuho's conduct, including victims, turned to her status as woman and mother to underscore her personal culpability and individual deviance (that is, she is a worse perpetrator because she is a woman, mother, and grandmother). Those who defend her conduct, including Nyiramurashuho herself, invoked womanhood and motherhood tropes to emphasize the impossibility of her culpability (that is, she can't be a perpetrator, in particular of rape, because she is a woman, mother, and grandmother). Either way, however, the outcome is unsettling. In this vein, as legal scholar Nicole Hogg observes, "[b]oth seeking to excuse [women's] behaviour and condemning it for breaching gender norms draws us into stereotyping women and undermines the complex realities of women's experiences of mass violence." It is, assuredly, deeply disturbing when a minister in part tasked with promoting women's interests exhorts policies of mass rape. Sensationalizing her conduct, however, may be counterproductive and, as explored below, may occasion troublesome externalities.

Political scientists Laura Sjoberg and Caron E. Gentry develop a heuristic that identifies the deployment of paradigmatic narratives of the mother, the monster, and the whore to stylize those women who commit political violence, including women who participate in genocide such as Nyiramurashuho. Sjoberg and Gentry argue that "[m]any stories about women's participation in genocide employ the mother, monster and whore narratives to deny women's agency in their own heinous violence." Sjoberg and Gentry trace the emergence of motherhood imagery before and during Nyiramurashuho's trial proceedings until 2007, when their book was published. As this Article demonstrates, this same imagery has persisted since 2007, including in the post-trial phase. That said, unlike Sjoberg and Gentry, I believe the analysis is not well served by classing, and often shoehorning, media representations into one of the monster, whore, or mother narratives. Rather, all three narratives overlap, whether synergistically or discordantly, and conspire to fuel gender-based tropes that both disturb and distort conversations about women as atrocity perpetrators. One effect of Sjoberg and Gentry's siloing of these narratives into three separate categories, and the resultant need to code evidence and pigeonhole it into a particular category, is a tendency toward redundancy.

194. See Hogg, supra note 33, at 100; Sperling, supra note 2, at 652–53.
195. See Hogg, supra note 33, at 82; Sperling, supra note 2, at 652–53.
196. Hogg, supra note 33, at 101.
197. SJOBERG & GENTRY, supra note 27, at 147. Sjoberg and Gentry's pioneering work on women's political violence concerns itself with how stereotypes about women who commit atrocity ultimately deny, as a collective matter, women's agency and subordinate women's choice. Hogg—writing specifically on Rwanda—argues that "[w]omen in leadership positions played a particularly important role in the genocide, and gendered imagery, including of the 'evil woman' or 'monster', is often at play in their encounters with the law." Hogg, supra note 33, at 69.
in their book and, also, a fair bit of hairsplitting as these three narratives are, in practice, not so readily distinguishable. This quibble, however, in no way unsettles Sjoberg and Gentry's crucial observation that the turn to stereotype and myth dehumanizes the implicated women and, by extension, all women.

A. Instrumental Pretexts

Protagonists, antagonists, and apologists in the proceedings invoked myth to favor operational outcomes.

Although the final judgment was carefully gender neutral, gendered themes flitted about the trial proceedings. The Prosecution’s opening statement, delivered by Silvana Arbia of Italy, emphasized Nyiramasuhuko as a “woman who had lost every sense of feeling.” The Hirondelle News Agency reports that, when she learned of the conviction, Prosecutor Holo Makwaia, who “led the prosecutions team in the case,” said: “I am very happy because according to the law even when a woman commits offences like rape could [sic] also be convicted and sentenced.” Nyiramasuhuko’s defense lawyers are quoted—in interviews conducted by Hogg—as describing her as “very nice, a mother hen” and as denying that she had any power in the genocidal government, owing in part to her being relatively new to politics.

Prosecuting the case in a court of law is one thing. Prosecuting it in the court of public opinion is quite another. And, on this latter note, stakeholders embraced well-worn, and wooly, gender-based stereotypes.

While in a Congolese refugee camp, Nyiramasuhuko—when informed that she had been accused of murder—told the BBC that “she was not involved in the killings.” Why? Because, in Nyiramasuhuko’s own words: “I couldn’t even kill a chicken. If there is a person who says that a woman, a mother, could have killed, I’ll tell you truly then I am ready to confront that person.”

198. The tendency toward repetition has been identified by a reviewer. Pamela Grieman, Book Review, 38 WOMEN’S STUD. 490, 491 (2009) (reviewing SJOBERG & GENTRY, supra note 27), available at http://dx.doi.org/10.1080/00497870902837596.


201. Hogg, supra note 33, at 93.

202. Hazeley, supra note 43.

203. Id.; see also Rugiririza, supra note 55 (very similar quotation, with some slight textual differences). Sperling argues that Nyiramasuhuko’s response to the accusations “exhibits precisely the kind of gender bias that portrays women as weak, subservient, or pure, incapable of committing the kinds of atrocities for which she stands accused.” Sperling, supra note 2, at 650. Hogg, commenting generally, argues that “[w]omen who participated in the genocide should not hide behind their sex to claim their innocence,” but also that “women
When asked whether women killed during the genocide, Nyiramasuhuko pithily responded: "I have no example [of that]. It's not possible because one did not know [how] to massacre like that."²⁰⁴ These apparently aphoristic claims were echoed by Maurice Ntahobali, who told Landesman in 2002: "'[Nyiramasuhuko] was committed to promoting equality between men and women . . . . It is not culturally possible for a Rwandan woman to make her son rape other women. It just couldn't have taken place.'"²⁰⁵ Nyiramasuhuko's mother, Theresa Nyirakabue, also chimed in on a strikingly similar note,²⁰⁶ although she later acknowledged that Nyiramasuhuko might have participated in genocide—albeit not because she wanted to but, rather, because of fear.²⁰⁷

Sperling also reports that Nyiramasuhuko "claimed to be a victim of sexism, targeted for persecution precisely because she is an educated woman."²⁰⁸ Nyiramasuhuko's argument also resurfaced—and may actually have been bolstered—by some media and academic discussion of the trial. One commentator posits that the case against Nyiramasuhuko raises the possibility that "[m]en may have found an ideal way to assuage their guilt over the rape of women: blame a woman instead."²⁰⁹ Landsberg, the Canadian journalist previously quoted for having identified how Nyiramasuhuko's prosecution may provide succor for those who wish to blame women for women's plights, further unpacks this theme in grandiloquent terms that, whether inadvertently or intentionally, render her somewhat of an apologist for Nyiramasuhuko:

> In truth, the whole sexist, patriarchal culture of Rwanda should be on the stand. . . .

> . . . In every culture where men are dominant, and where patriarchal values hold sway over minds and hearts, many women help perpetuate unspeakable cruelties against vulnerable girls and young women. Female genital mutilation, dowry burnings, honour killings—women play their roles in all these crimes, not only because they are powerless and have no choice, but also because

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²⁰⁴ Sperling, supra note 2, at 651.
²⁰⁵ Landesman, supra note 30, at 87.
²⁰⁶ "'It is unimaginable that she did these things . . . . She wouldn't order people to rape and kill. After all, Pauline is a mother.'" Id. at 125.
²⁰⁷ Landesman, supra note 30, at 132.
²⁰⁸ Sperling, supra note 2, at 650. Sperling also notes that Nyiramasuhuko stated: "The [Rwandese Patriotic Front] have put on their list all intellectual Hutus. I'm amongst those Hutu who have been to university. I studied law. All women who went to university are seen as killers." Id. (citing AFRICAN RIGHTS, RWANDA, NOT SO INNOCENT: WHEN WOMEN BECOME KILLERS (1995)).
²⁰⁹ Miller, supra note 3, at 373.
they have drunk deeply of patriarchy’s poisons and thoroughly digested them.210

This argument is excessively reductionist. Although far from coequal, gender relations in pregenocidal Rwanda, and genocidal Rwanda, were considerably more nuanced, complex, and dynamic. Rakiya Omaar, Co-Director of African Rights, has been quoted as bluntly stating that “the argument that women were helpless to act against the genocide is bull-shit.”211 In any event, pathologizing—and othering—an entire culture for sexism hearkens back to nativist rhetoric. Furthermore, the application of this logic to Nyiramasuhuko erases her individual agency in her own conduct. It also voids the agency of women in general—an outcome that is certainly not conducive to sustaining a political context of gender equality, human rights, and women’s empowerment. Nyiramasuhuko was a very powerful woman, which suggests the inaptness of caricaturizing her as nothing more than a passive tool of culture, a robotic automaton of patriarchy, or a marionette manipulated by a cabal of men.

Unsurprisingly, a genocide survivor responded to Landsberg’s polemic. In a rebuttal piece, Chantal Mudahogora rejects the analysis that Nyiramasuhuko was nothing more than a cudgel motored by structural sexism over which she had no control.212 For Mudahogora, each and every person with responsibility for genocide in Rwanda should face the consequences, regardless of gender—including Nyiramasuhuko.213 In making her case, Mudahogora marshals different gender-based memes. Mudahogora writes:

Where I disagree with Landsberg is that I believe it is very important to focus on Nyiramasuhuko in particular, not only because of her alleged active participation in genocide and her crucial position in the government, but also and above all because she is a mother, with all the social criteria and expectations that that entails.214

Mudahogora therefore turns to motherhood to underscore how much worse of a perpetrator Nyiramasuhuko is. In this regard Mudahogora, too, obscures Nyiramasuhuko’s political agency, occupational authority, and

210. Landsberg, supra note 94.
211. Hogg, supra note 33, at 80 n.66 (citing Interview by Hogg with Rakiya Omaar, Co-Director, African Rights, in Kigali, Rwanda (June 13, 2001)).
213. Mudahogora, supra note 212.
214. Id.
professional responsibilities. Despite her prominent public role, Nyiramasuhuko is tugged back into the private realm, where her real evil lies:

As I said, Nyiramasuhuko was a government minister and politician, but first of all she was the mother of a family. It was a huge shock to all of us who survived the atrocities to see educated women who were supposed to save lives but who instead became involved in the genocide and, on top of it, in some cases forced their own male children to rape and kill other children and parents. It is unbelievable.215

This discussion about Nyiramasuhuko and motherhood departs from Sjoberg and Gentry’s conceptualization of the content of motherhood as a narrative paradigm. In a nutshell, Sjoberg and Gentry depict the motherhood narrative as one in which a woman’s maternal instincts drive her to support the violence of others or, alternately, to act violently in order to avenge perceived betrayals or losses (for example, a previously murdered husband).216 Either way, the narrative’s effect is to dull the mother’s responsibility for her crimes—she is either a helpless supplicant or emotionally crazed. Echoes of the supportive-mother construct redound in Landsberg’s portrayal if applied to Nyiramasuhuko, in the sense that Nyiramasuhuko would be seen as compelled to support the genocide because she was powerless in the face of patriarchy. Nevertheless, Mudahogora presents motherhood in a more exigent and punitive fashion. Because she is a mother, Nyiramasuhuko is a bigger disgrace. Motherhood, in this regard, is not a shield so much as it is a sword. Motherhood presents a basis for Nyiramasuhuko to be cast as an even greater pariah—all the more abnormal than her male counterparts. A female perpetrator, then, becomes more of a monster if she is a mother—suggesting the malleability of Sjoberg and Gentry’s narratives, rather than their severability.

B. Her Case As News

Gender-based platitudes—even the most hackneyed ones—have been routinely invoked to mythologize, sensationalize, and spectacularize Nyiramasuhuko’s prosecution. Consider the titles of a number of published articles on the trial—whether in the academic or popular press: “A Woman Scorned,”217 “Mother of Atrocities,”218 and “A Woman’s

215. Id. Sjoberg and Gentry note similar tendencies in public descriptions of Plavšia. See SJOBERG & GENTRY, supra note 27, at 155.

216. Id. at 33 (“Within the mother narrative women are characterized as acting either in a support role (the nurturing mother) or out of revenge (the vengeful mother.”).

217. Wood, supra note 81.

218. Sperling, supra note 2.
Ironically, the “Mother of Atrocities” law review article laments how “the press seems . . . fixated on [Nyiramasuhuko’s] gender.”

1. How She Looks

Nyiramasuhuko’s physical appearance routinely arises in media coverage. For example, Elizabeth Barad, who conducted a clandestine interview with Nyiramasuhuko in 2003, describes her as “portly” and “[d]ressed in a navy-blue, nondescript dress only brightened by a floral scarf around her throat.” Barad observes how, at the time, she had a “warm attitude,” only to elaborate further:

In the years since that meeting Nyiramasuhuko’s appearance changed dramatically and accusations against her were increasingly proven. She gradually lost a great deal of weight and dressed in brighter, more flattering colours with her head wrapped in African fashion. One of her judges, Arlette Ramaroson, told me in her chambers, “She’s now wearing a gold cross around her neck . . .”

Barad adds, on the theme of Nyiramasuhuko as enigmatic paradox, that she “even included in her diary, admitted as an exhibit, lists of victims killed during the genocide, with, in a different ink, checkmarks after each name. On the same pages there were also domestic jottings detailing what she spent on vegetables, sugar and rice.”

Barad is not alone when it comes to being fulsomely drawn to Nyiramasuhuko’s physical appearance and wardrobe preferences. Landesman describes Nyiramasuhuko’s courtroom presence as suggesting “a schoolteacher” and notes that she prefers “plain high-necked dresses” that draw attention to “the gleaming gold crucifix she usually wears.” Danna Harman, writing for the *Christian Science Monitor*, opens a 2003 piece on Nyiramasuhuko with the following:


220. Sperling, *supra* note 2, at 637 (also lampooning media queries such as “how could a woman, a mother, a female that looks so feminine commit such atrocities”); see also id. at 651 (“The press seems more focused on Pauline’s womanly attributes than any other aspect of the case against her.”).

221. Barad, *supra* note 34. According to the byline of her article, Barad “practices international human rights law, gender and intellectual property law. As Chair of the New York City Bar’s Rwanda Legal Task Force, Elizabeth organised two ethics seminar [sic] and a gender-sensitivity workshop for the Rwandan justice system.” *Id.* The trial judgment very occasionally refers to some witness statements that reference Nyiramasuhuko’s appearance, although in the spirit of the witness knowing her before the genocide so as to emphasize the credibility of the witness placing her at a particular location during the genocide. See, e.g., *Nyiramasuhuko Judgement*, Case No. ICTR-98-42-T, ¶¶ 2697–2698 (June 24, 2011) (“She described Nyiramasuhuko as somewhat fat with a dark complexion.”). Similar occasional discussion arises regarding Ntahobali. *See id.* ¶ 2995.

222. Barad, *supra* note 34.

223. *Id.*

With her hair pulled neatly back, her heavy glasses beside her on the table, she looks more like someone’s dear great-aunt than what she is alleged to be: a high-level organizer of Rwanda’s 1994 genocide who authorized the rape and murder of countless men and women. Wearing a green flowery dress one day, a pressed cream-colored skirt and blouse set the next, the defendant listens stoically to the litany of accusations against her.225

In contrast, Ntahobali is described in the same article as “sitting a row ahead of her in the courtroom, cleaning his fingernails with the edge of a briefing paper. During the breaks in proceedings he sits still, avoiding eye contact with his mother.”226

In the penultimate paragraph of her article, Harman discusses the cross-examination of a prosecution witness.227 She then concludes the article, in a new paragraph, somewhat pithily: “Nyiramasuhuko adjusts one of the shoulder pads of her pretty dress and jots a note. She is listening, but it is impossible to know what she hears of the pain.”228

Reporting for the BBC on the 2011 conviction, Josephine Hazeley remarks that Nyiramasuhuko was “[l]ooking younger than her 65 years.”229 Agence France Presse picks up this same theme in its reporting on the 2011 conviction,230 while also noting her attire.231

Assuredly, the physical appearances of prominent male defendants, along with their dressing habits, also surface when the media reports on their trials.232 Perhaps invariably, these aspects of trials inveigle and titillate the public. Such references, however, tend to be more ancillary and

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225. Harman, supra note 54.
226. Id.
227. Id.
228. Id.
229. Hazeley, supra note 43.
230. Rugiririza, supra note 55 (“The mother of four, who looks markedly younger than her 65 years, was sentenced to life in jail Friday.”).
231. See id. (“Her attire has ranged from colourful African prints to sober dresses with a large cross.”).
232. Some reports of Thomas Lubanga’s conviction, for example, mention that he wore a ceremonial white robe at the time the verdict was announced and that he wore a grayish blue tie and suit at his sentencing hearing. See, e.g., Marlise Simons, Congolese Rebel Convicted of Using Child Soldiers, N.Y. TIMES, Mar. 15, 2012, at A12 (mentioning, in an approximately one-thousand-word article, his appearance only briefly: “Mr. Lubanga, 51, dressed in an elegant white ceremonial robe”); Thomas Lubanga Sentenced to 14 Years in Prison for Congo War Crimes, Use of Child Soldiers, CBSNEWS.COM (July 10, 2012), http://www.cbsnews.com/8301-202_162-57469235/thomas-lubanga-sentenced-to-14-years-in-prison-for-congo-war-crimes-use-of-child-soldiers/ (reporting that Lubanga was “[w]earing a gray suit and tie,” but also that the judge “praised Lubanga for being ‘respectful and cooperative’ throughout the case despite it twice being held up by prosecutors defying court orders linked to identifying witnesses.”). Reports of the trial of Ratko Mladic, while mentioning the cap he has worn to court, tend to focus more on how he acts—his obstructionism, in particular—than how he looks. See, e.g., Peter Biles, Mladic’s Courtroom Antics, BBC News (July 4, 2011, 12:03 PM), http://www.bbc.co.uk/news/world-europe-14016622.
less central to these reports than the discussion of clothes and looks to reports of the Nyiramasuhuko trial.233

2. What She Does

As an influential minister, Nyiramasuhuko exercised an obligation to promote the best interests of the Rwandan people, with specific responsibilities in matters of both family and women’s affairs. The breadth of her responsibilities, however, tapers off in public discourse. Her general obligations fade, as does the “family” aspect of her specific portfolio. Instead, she is projected as the “women’s” minister—which makes her choice to order women to be raped and killed all the more incomprehensible and the gravity of her crimes all the more extreme. Examples of this reductionism, and concomitant bewilderment, are plentiful:

Though it was Nyiramasuhuko’s duty to promote the rights of women, she will be recorded in history as the first woman ever convicted by an international court of genocide and for ordering rape as a crime against humanity.234

The shocking thing about her trial is that her ministerial brief was to promote and protect women’s human rights.235

As the former minister of Family and Women’s Affairs, Nyiramasuhuko, instead of protecting women, incited her son and others to rape and kill Tutsi women as she stood in a military uniform at roadblocks, sometimes carrying a machine gun.236

These facts are harrowing. More shocking still is that so many of these crimes were supposedly inspired and orchestrated by Pauline Nyiramasuhuko, whose very job was the preservation, education and empowerment of Rwanda’s women.237

The media projection of the shocking nature of her crimes, owing to her betrayal of her portfolio to protect women, departs from the more careful presentation advanced by the Prosecution. For example, on the question of sentencing, the Prosecution submitted that Nyiramasuhuko “held one of the highest positions in the country as Minister,” and “[o]ne

233. See supra note 232.


236. Barad, supra note 34.

237. Landesman, supra note 30, at 85.
of her roles was to protect the population." In determining the sentence, moreover, the Trial Chamber followed this lead and eschewed a reductionist focus on Nyiramasuhuko’s ministerial role as one geared only to women’s affairs:

Nyiramasuhuko’s position as Minister for Family and Women’s Affairs during the events made her a person of high authority, influential and respected within the country and especially in Butare préfecture from where she hails. Instead of preserving the peaceful co-existence between communities and the welfare of the family, Nyiramasuhuko, on a number of occasions, used her influence over Interahamwe to commit crimes such as rape and murder. This abuse of general authority vis-à-vis the assailants is an aggravating factor.239

In sum, the careful text of the judgment, focusing on Nyiramasuhuko as a Minister (whose portfolio included women’s issues) rather than Nyiramasuhuko as a protector of women (who also was a Minister), palpably departs from the more essentialized treatment prevalent in the media and public commentary on the case.

3. And How She Lords over That Son of Hers

Another mythologized aspect of the trial is Nyiramasuhuko’s relationship with her son. Undertones of control linger in descriptions of the mother-son relationship. The agency of the pliant son—her only son—thereby emaciates.240 Ntahobali is presented as a university student, or even just as a student, at the time of the genocide.241 This presentation is accurate, to be sure, but still has the effect of infantilizing him, insofar as he was roughly twenty-four years old at the time, worked as a part-time hotel manager (albeit in the family hotel), and—most crucially—had command over Interahamwe forces in Butare.242 Although not mentioning him

239. Id. ¶ 6207.
240. Sjoberg & Gentry, supra note 27, at 168 (“Most accounts of Pauline’s conduct include the fact that her son, Shalom, was one of the men she commanded to commit rape and mass murder . . . . [T]he narratives always tell of Shalom actually committing the violence, but often relieve him of responsibility in whole or in part because his mother made him do it.”).
242. On this latter point, Nyiramasuhuko and Ntahobali both were found to have "wielded effective control over the Interahamwe at the BPO" such that "[t]he only reasonable conclusion is that [they] had a superior-subordinate relationship over these Interahamwe." Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶¶ 5884–5885. The legal import of these findings is that is that the two accused had superior responsibility under Article 6(3) for the acts of the Interahamwe at the BPO—including abductions, rapes, and killings. ICTR Statute, supra note 106, art. 6(3).
explicitly in this regard, Mudahogora seems to have Ntahobali (and Nyiramasuhuko as the manipulative domineering mother) in mind in her commentary of how "educated women . . . forced their own male children to rape and kill other children and parents."243

Interestingly, Trial Chamber II had to address these questions of control and agency when it came to assessing whether Nyiramasuhuko stood in a superior-subordinate relationship with Ntahobali.244 It found that such a relationship did not exist:

[T]he Chamber considers that the relationship between Nyiramasuhuko and Ntahobali in 1994 was complex, owing in part to the familial and interpersonal relationship shared by these two Accused. This complexity, however, cannot be confused for a superior-subordinate relationship. Cognisant that the burden of proof falls on the Prosecution to establish this element, the Chamber finds that there is insufficient evidence to enter a finding of a superior-subordinate relationship between Nyiramasuhuko and Ntahobali beyond a reasonable doubt.245

The controlling mother trope, therefore, did not explicitly arise when it came to sentencing Ntahobali. The Trial Chamber underscored Ntahobali’s responsibility as a superior at the Hotel Ihuliro roadblock.246 It sentenced both Ntahobali and Nyiramasuhuko to life.247 Nor does it appear that the Ntahobali defense even raised this trope in mitigation, based on the judgment’s summary of the defense submissions as to mitigating factors.248 Hence, the public narrative of the controlling mother is not sourced in, nor does it derive support from, the actual legal findings. In the end, judicial text cannot control how others appropriate the content of that text.

243. Mudahogora, supra note 212.

244. For discussion of the elements of superior responsibility, see Nyiramasuhuko Judgement, Case No. ICTR-98-42-T, ¶ 5645 (“For an accused to incur criminal responsibility under Article 6 (3) of the Statute, in addition to establishing beyond a reasonable doubt that his or her subordinate is criminally responsible, the following elements must be established beyond a reasonable doubt: (1) the existence of a superior-subordinate relationship and that the superior had effective control over this subordinate; (2) that the superior knew or had reason to know that his or her subordinate was about to commit a crime or had done so; and (3) that the superior failed to take necessary and reasonable measures to prevent or punish the commission of the crime by his or her subordinate. The accused need not have the same intent as the perpetrator of the criminal act.”).

245. Id. ¶ 5883.

246. See id. ¶¶ 5847–49.

247. Id. ¶ 6271.

248. Id. ¶ 6215 (noting instead his willingness to surrender to the ICTR, his young age during the events and at the time of his arrest, that he is the father of three young children, and his good character). But see Peter Landesman, The Minister of Rape, TORONTO STAR, Sept. 21, 2002, at K1 (“Ntahobali, then a 24-year-old member of the Interahamwe, repeatedly announced he had ‘permission’ from his mother to rape Tutsis at a hospital.”).
In 2003, an ICTR Trial Chamber convicted Reverend Elizaphan Ntakirutimana, a Seventh-day Adventist pastor, and his son, Gérard Ntakirutimana, a physician, of genocide.249 In 2004, in Elizaphan’s case, the ICTR Appeals Chamber upheld one of the genocide convictions and added a conviction for extermination as a crime against humanity, in both counts on a theory of aiding and abetting;250 in Gérard’s case, it entered convictions for genocide, aiding and abetting genocide, and murder and extermination as crimes against humanity.251 Elizaphan Ntakirutimana was the first—albeit since then not the last252—clergy member convicted of genocide by an international criminal tribunal, although other clergy had been convicted at the time by national courts in Rwanda and in Belgium.253 His case acquired considerable notoriety insofar as he had moved to Laredo, Texas, after the Rwandan genocide and his extradition from the United States to the ICTR proved to be a complex matter.254 Furthermore, the letter that six Tutsi clergy in his flock wrote to him, unsuccessfully imploring his help, contained the provocative words—“We wish to inform you that we have heard that tomorrow we will be killed with our families”255—which U.S. journalist Philip Gourevitch adopted as the title for his widely read account of the Rwandan genocide.256

Whereas the Ntahobali and Nyiramasuhuko proceedings tended to become telegraphed to the public as “mother and son,” the proceedings concerning the Ntakirutimanas tended to become telegraphed as “pastor and


251. Id.


255. See Marlise Simons, Rwandan Pastor and His Son Are Convicted of Genocide, N.Y. TIMES, Feb. 20, 2003, at A3 (“[T]his case became known above all because of the astonishing letter that six Tutsi pastors wrote to him while they were at the church compound caring for refugees . . . saying ‘We wish to inform you that we have heard that tomorrow we will be killed with our families.’”).

256. See Philip Gourevitch, We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda (1999).
When it came to the elder parent figure, Ntakirutimana was reduced to his profession, not his fatherhood. Nyiramasuhuko, on the other hand, was reduced to her motherhood, not her profession. The father remains in the public domain, then, his fatherhood seen as being of low titilation value; the mother remains in the private domain, as mother. Her case is not presented as “Minister and son génocidaires,” nor is his case presented as “father and son génocidaires.”

IV. LESSONS FOR INTERNATIONAL LAW IN POST-CONFLICT SOCIETIES

The proceedings against Nyiramasuhuko offer a number of important lessons regarding the effectiveness of international legal interventions within societies transitioning from mass atrocity. These proceedings, for instance, exemplify the inordinate veneration—at times bordering on the hagiographic—that accrues to international justice as opposed to, and often at the expense of, national and local justice. Recognizing women as agents of violence, as bystanders to violence, as resisters of violence, and as victims of violence grounds a more nuanced understanding of the mechanization of atrocity and, thereby, solidifies deterrent, dissuasive, and reintegrative goals. The Nyiramasuhuko proceedings also point to the acute need to carefully examine the role of femininities and masculinities in the metastasis of atrocity. And, finally, these proceedings signal the limits of criminalization—in particular, at a distant international tribunal—in the process of transitional justice.

A. International Justice As First-Best Justice

Nyiramasuhuko is far from the first woman convicted for atrocity crimes committed in Rwanda. She may have been the first such conviction at an international tribunal, but the novelty begins and ends there. The


258. This reality eludes some media reports. See, e.g., Sukhdev Chhatbar, Pauline Nyiramasuhuko, Rwandan Woman and First Ever Convicted of Genocide, Given Life Sentence, HUFFINGTON POST (June 24, 2011, 12:13 PM), http://www.huffingtonpost.com/2011/06/24/pauline-nyiramasuhuko-rwanda-first-woman-convicted-genocide-life-sentence-_n_883857.html (reporting an “international law researcher” in The Hague as saying “she is the first woman convicted anywhere in the world of genocide”); Rwandan Woman Jailed for Geno-
fact that her conviction is presented in such overheated fashion, however, reveals the powerful tendency to view internationalized justice as the only justice, or at least iconically as the first-best form thereof, which fuels the disregard often accorded national initiatives, especially those undertaken within the post-conflict society itself. The response to the Nyiramasuhuko conviction, therefore, reflects not only problematic gender-based essentialisms, but also vexing nostrums regarding the much-vaunted superiority of enlightened internationalism over clumsy localism. International trials, nonetheless, are not the only indicia of progress, justice, or accuracy. It is, therefore, somewhat disturbing that a Google search of “women convicted for genocide in Rwanda” turns up pages and pages and pages of articles about Nyiramasuhuko (in multiple languages, and often in English), often incorrectly positing her as the first female genocide convict ever, with barely any mention of the many other Rwandan women prosecuted, convicted, acquitted, or serving sentences.\footnote{259}{See Google, http://www.google.com (last visited Mar. 24, 2013) (search “women convicted for genocide in Rwanda”).}

In fact, within Rwanda, when all modalities of post-conflict justice are considered, there are likely several thousand women at diverse levels of responsibility who have been prosecuted for genocide-related offenses.\footnote{260}{Hogg, writing in 2010 and citing evidence from 2008, notes that almost 2000 women convicted of genocide-related offenses remain in Rwandan prisons. Hogg, supra note 33, at 70. Hogg excludes from this figure those “many more” women who would have been convicted of property offenses (which do not carry a prison term). See id. Moreover, Hogg’s article focuses on “trials of female genocide suspects through the national courts, and not through the complementary ‘traditional’ justice system called gacaca.” Id. It has been estimated by others that, in 2004, approximately 3000 women, representing 3.4% of the Rwandan prison population, were incarcerated for genocide-related crimes. Reva N. Adler et al., A Calamity in the Neighborhood: Women’s Participation in the Rwandan Genocide, 2 Genocide Stud. & Prevention 209, 212 (2007). Phil Clark, a distinguished Rwanda expert whose estimate of four hundred thousand total persons prosecuted by gacaca is among the most conservative (in contrast, the Rwandan government claims two million persons), estimates that between twelve thousand and twenty thousand women have been prosecuted through gacaca for genocide-related crimes. See E-mail from Phil Clark, supra note 10.}

Turning to individual examples: Agnès Ntamabyaliro—formerly Minister of Justice in the Interim Government—“is detained in Rwanda and has received a life sentence in isolation for her alleged role in the genocide.”\footnote{261}{Hogg, supra note 33, at 75.} Yet her case has barely received any mention, certainly not in the international media, even though exactly like Nyiramasuhuko she was a high-profile Minister and another woman in the Cabinet. Undoubtedly, the fact that she was prosecuted in Rwanda, as opposed to at the ICTR, contributes to this disparate reaction. Looking beyond the kernel of power, other women who participated in the genocide at an influential level were Rose Karushara (a local official in Kigali), Odette Nyirabagenzi (known as “the terror of Rugenge,” a secteur of Kigali), and Athanasie...
Mukabatana (a nursing school teacher). Euphrasie Kamatamu, a local political official in Kigali, was convicted in 1998; she was awarded the death penalty but ultimately died in prison three years later of natural causes. Anne-Marie Nyirahakizimana, a major in the armed forces and a physician, was convicted in 1999 by a military court and sentenced to death. She was retried a decade later—after the death penalty had been abolished in Rwanda—by a gacaca tribunal and sentenced to life imprisonment in isolation. African Rights additionally identifies a number of other women as responsible for leading killings, for having cruelly turned against their neighbors, and as being journalists who preached genocide, as well as girls who were complicit in the murder of their fellow pupils.

A fulsome focus on international proceedings also distracts from the penological and rehabilitative needs of women convicted in Rwanda for genocide-related offenses. In Rwanda, women prisoners (who in 2002 numbered about two to three percent of the total prison population, but in 2008 were estimated to represent nearly six percent) face steep reintegrative challenges and, as I have argued elsewhere, are among the most isolated demographic segments in contemporary Rwanda. Women accused of genocide-related offenses, but acquitted at trial, also face obstacles upon release. Emphasizing these obstacles, to be sure, must not come at the expense of redressing the ongoing challenges that victims of these crimes face in terms of their social reintegration, economic welfare, and health.

A few Rwandan women, moreover, have also faced, and continue to face, legal process at the national level outside of Rwanda. Sister Gertrude (Consolata Mukangango) and Sister Maria Kizito (Julienne Mukabutera) were convicted in Belgium in 2001 for their role in the murders of thousands of Tutsi refugees in Butare in 1994. Both nuns had sought asylum in Belgium. They were sentenced to fifteen and twelve years' imprisonment, respectively. Ntabahali's wife, Béatrice Munyenyezi (who testified at his trial) moved to the United States in 1998, where she

262. Jones, supra note 188, at 83.
263. Hogg, supra note 33, at 94 ("Like Nyiramasuhuko, Kamatamu specifically argued she had no power to prevent the genocide.").
264. Id. at 96.
265. Id. at 96 n.156.
268. For women, the acquittal rate has been estimated at forty percent. Adler et al., supra note 260, at 212 (citing Hogg's research).
269. See Hogg, supra note 33, at 98.
270. Id.
271. Id.
claimed asylum and became a citizen in 2003. In 2010, she was indicted in the United States for allegedly falsifying her refugee (and citizenship) application by covering up her role in the 1994 genocide. Prosecutors "produced witnesses from Rwanda who testified that Munyenyezi was a Hutu extremist who helped orchestrate the rapes and killings . . . at a road-block near her home." The jury deadlocked; a mistrial was declared, and a trial is set for early 2013. In the interim, Munyenyezi has been released from custody; under strict conditions, she has returned to her home in Manchester, New Hampshire. Agathe Habyarimana (Kanziga), whose influence catalyzed Nyiramasuhuko’s own political ascent, continues to elude formal criminal prosecution, despite her place at the very heart of the extremists who incubated the genocidal campaign (ironically, she was airlifted out of Rwanda only days after her husband’s assassination and brought to France). Now seventy years old, she still lives in France, although the precise status of her legal residency in that country remains fluid and under challenge. In December 2009, Rwandan prosecutors requested Habyarimana’s extradition back to Kigali to face seven counts of genocide. French authorities arrested her.

273. Id.
274. Trial for Woman in Genocide Case Put Off 5 Months, FOSTER’S DAILY DEMOCRAT (Sept. 6, 2012), http://www.newhampshire.com/article/20120907/AGGREGATION/120909751/0/0.
276. Chris McGreal, Profile: Agathe Habyarimana, the Power Behind the Hutu Presidency, GUARDIAN (Mar. 2, 2010, 2:52 PM), http://www.guardian.co.uk/world/2010/mar/02/rwanda-france. She was the pivot of an extremist clique of Northern Rwandan Hutus known as the Akazu, believed to have conceived the plans for genocide. Id. Nonetheless, and ironically, Hogg notes that in her pleadings before the French Refugee Commission, Habyarimana (Kanziga) invoked gender essentialisms: she “stressed her role as mother of eight children,” she “claim[ed] to have passed her time preparing meals for her family and taking care of the garden and livestock,” she “argued [that] she never listened to the radio or read newspapers, and never discussed politics with her husband.” Hogg, supra note 33, at 91. Hogg sums up by opining that “[t]he image thus presented was of a simple woman, a motherly figure, who was ignorant of political affairs.” Id. In many ways, this posture is similar to that Nyiramasuhuko advanced at her own trial.
however, the extradition request was dismissed by an appeals court in Paris. Nonetheless, Habyarimana does face civil proceedings in France that have been brought by a victims' organization, and has been summoned as a witness in this regard, but no criminal charges have yet been brought.

B. Connivance and Collective Violence

African Rights' groundbreaking 1995 report, Rwanda, Not So Innocent: When Women Become Killers, details the involvement of women in genocide. This report provides a trove of evidence of how women (and even girls) participated in atrocity at multiple levels: by leading killings, by directly killing, by publicizing the names of victims, by singing genocidal songs in support of the massacres, by serving as spies, by pilfering from the morbidly injured, and by destroying homes. Public portrayals of the Nyiramasuhuko conviction—which highlight her deviance in burlesque fashion—do not reflect these much more textured, and even routine, realities of women's involvement in the Rwandan genocide.

Hogg, who has written elegantly about the role of women in the Rwandan genocide, notes that many "'ordinary' women" were involved in the genocide. According to Hogg, these women did directly take part in killings, but they "committed significantly fewer acts of overt violence than men." Genocide, however, would not have metastasized without these structural and systemic contributions. Hogg posits that, notwithstanding the broad conception of the crime of complicity in applicable domestic Rwandan law, women "may be under-represented among those

279. See Rwanda: France Will Not Extradite Agathe Habyarimana, supra note 277.


281. See AFRICAN RIGHTS, supra note 208; see also Sperling, supra note 2, at 638, 653 ("Women, girls, and mothers also willingly and enthusiastically played important roles in the Rwandan genocide. . . . [T]housands of Rwandan women directly participated in the murder, torture and rape of their Tutsi neighbors.").

282. See AFRICAN RIGHTS, supra note 208. This report is critical of the notion that all women were helpless victims or bystanders during the genocide. See id. at 1; see also Jones, supra note 188, at 84. In the case of Darfur, see Blake Evans-Pritchard & Zakia Youssif, Sudan: Female Singers Stir Blood in Darfur, INST. FOR WAR & PEACE REPORTING (Jan. 4, 2012), http://iwpr.net/report-news/female-singers-stir-blood-darfur (discussing "influential female singers" known as Hakamat, whose songs allegedly goad men into committing acts of violence against other tribes).

283. Hogg, supra note 33, at 69. Hogg argues that when women conformed to gender expectations and participated indirectly in the genocide, the legal system attributed them less moral blame, but when women played a more direct role (thereby challenging gender and cultural stereotypes), they became "regarded as 'evil' or 'non-women' and treated with the full force of the law." Id. at 70–71.

284. Id. at 69. It has been estimated that fewer than one in ten members of the Interahamwe were women who had received "civil defense" training. Adler et al., supra note 260, at 223.
pursued for genocide-related crimes." She attributes this to the indirect nature of their crimes coupled with the prevalence of male chivalry. To this, I would add that the language of the criminal law generally has great difficulty in articulating these forms of prosaically impersonal contributions to mass crime. One response to this quagmire is for the criminal law to develop vicarious liability theories, abandon strict causal-contribution requirements, and expand its reach through doctrines such as joint criminal enterprise and coperpetration. A bolder answer is to transcend the criminal law as the formal sine qua non of accountability, and instead earnestly pursue other forms of justice, restoration, and reconciliation such as truth commissions, customary ceremonies, and reparations. The reflexive answer to perceived justice shortfalls is to work criminal law tools harder and faster. Perhaps the time has come to revisit this conventional wisdom. Perceived justice shortfalls can be filled with many things other than more of the same criminal law and penal process.

Hogg's work, moreover, adds a fascinating gender dynamic to the discussion of what, exactly, international criminal law covers and offers a fecund basis for further extrapolation. For decades, activists have lamented that international criminal law failed to adequately cover the many crimes committed against women in bouts of mass atrocity. These activists are right. And their efforts have succeeded in bringing the horrors of sexual violence, rape, forced marriage, and sexual slavery—crimes that affect both men and women, although disproportionately women—into the judicial frame. Yet if international criminal law should be lauded for its expansion to cover crimes against women, then does it not remain awkwardly asymmetrical for international criminal law to undercapture crimes committed by women or, if it captures them, to do so amid great sensationalism that stylizes the situation as aberrant?

C. Femininities, Masculinities, and Individual Agency

Sjoberg and Gentry conclude that "all decisions are contextual and contingent, not only women's, and ... all decisions are made, not only

285. Hogg, supra note 33, at 69. Hogg contends that women's participation in genocide, therefore, “was more widespread than detention statistics indicate.” Id. at 71.

286. Chivalry theory is controversial, which Hogg acknowledges, although she finds it conveys some relevant insights. According to this theory:

[Investigators, prosecutors and judges are so infected by gender stereotypes that they either cannot perceive of women as criminals or feel protective towards them in spite of their suspected or proven criminality. Men therefore, perhaps unwittingly, exercise their discretion in women's favour at each level of the criminal justice system—during reports, arrests, prosecution and sentencing.

Id. at 81 (footnotes omitted). In response, perhaps one notable advantage of the gender neutrality of the Nyiramasuhuko judgment is that it eschews the apparent contagion of "chivalry theory."

men's." An acute need arises for such agile analysis in order to grasp the role of the individual—any individual—within the cauldron of collective violence. This quest remains a focus of my own research, for example, even in the most poignant cases of child soldiers and low-level perpetrators. Believing that a refusal to pursue such a direction underachieves the critical goal of deterring future atrocities, I advocate for a more nuanced, grounded, and sublime approach to victims and victimizers, at times the two being one within necropolitical contexts.

Undoubtedly, in understanding why any individual woman perpetrates atrocity, gender matters in terms of deracinating socialization into violence, hate, mythology, and group-based superiority. In understanding why any individual man perpetrates atrocity, masculinities discourse equally helps shed light on possible individual motivations and justifications. I am not arguing in favor of gender-neutral vocabularies to elucidate individual participation in collective violence. Those vocabularies are incomplete. They depersonalize and ring artificially hollow. Rather, I am arguing in favor of an alternative discourse that eschews both stereotype and reductionism and instead embraces the reality that individual participation in collective massacre arises from a complicated admixture of dispositional, situational, structural, and ideological factors—one of which is gender. Only by approaching the subject matter from this angle can a true etiology of atrocity be delineated, and a rich epistemology cultivated, with the concomitant benefits when it comes to enhancing post-conflict reconciliation and actual prevention. I have elsewhere developed the analytic tool of atrocity perpetrators as occupying interstitial positions on a spectrum of circumscribed action. Others develop different approaches,

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288. Sjoberg & Gentry, supra note 27, at 197.

289. On "necropolitics," see Achille Mbembe, Necropolitics, 15 Pub. Culture 11, 40 (Libby Meintjes trans. 2003) ("I have put forward the notion of necropolitics and necropower to account for the various ways in which, in our contemporary world, weapons are deployed in the interest of maximum destruction of persons and the creation of death-worlds, new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead.").


291. I also argue that a gendered analytic framework should focus on both men and women. In this regard, I echo Adam Jones, who posits: "The Rwandan genocide offers important evidence that 'gendering' genocide can provide powerful insights into the outbreak, evolution, and defining character of genocidal killing. For this approach to bear full fruit, however, the 'gendering' must be both careful and inclusive." Jones, supra note 188, at 87.

292. Mark A. Drumm, Reimagining Child Soldiers in International Law and Policy 98 (2012) ("A circumscribed actor has the ability to act, the ability not to act, and the ability to do other than what he or she actually had done."). Circumscribed action is presented as a spectrum or continuum, thereby encouraging "procedural inquiry into the specific histories and experiences of the individuals located within its contours." Id. at 99.
rooted in tactical agency as opposed to strategies\footnote{See ALCINDA HONWANA, CHILD SOLDIERS IN AFRICA (2006). For Honwana, tactical agency, or agency of the weak, involves short-term decisions undertaken to cope with and maximize the concrete, immediate circumstances of the surrounding militarized environments. Id. at 51, 70, 73.} or—as is the case for Sjoberg and Gentry—based on relational autonomy theory.\footnote{SJOBERG & GENTRY, supra note 27, at 196 ("According to a feminist understanding of relational autonomy, human choice is never entirely free, but it is also never entirely constrained.").} Regardless of the specifics, I believe these endeavors each present fruitful trajectories for future research, especially insofar as they move away from the polarizing binomials of victim or perpetrator.\footnote{For discussion of these themes within the context of Muslim fundamentalism, see Karima Bennoune, Remembering the Other’s Other: Theorizing the Approach of International Law to Muslim Fundamentalism, 41 COLUM. HUM. RTS. L. REV. 635, 677 (2010).} In the case of lower-level offenders, whose agency may be ambiguous but nonetheless tangible, modalities of justice other than criminal trials may be particularly apt at promoting accountability, reparation, and reintegration. In this vein, it is also important to recognize general cross-national survey data that indicates that the international activist community may excessively focus on sexual violence perpetrated by armed forces or groups during conflict and, consequently neglect the pervasiveness of domestic sexual violence—in other words, acts perpetrated by family members, partners, and acquaintances—during wartime.\footnote{HUMAN SEC. RESEARCH G RP., HUMAN SECURITY REPORT 2012, at 2 (2012) ("[T]he mainstream narrative systematically neglects domestic sexual violence in war-affected countries, even though it is far more pervasive than the conflict-related sexual violence that is perpetrated by rebels, militias, and government forces, and which receives the overwhelming majority of media and official attention.").}

Obversely, Rwandan women also exercised agency in opposing the genocide. It is not evident whether women helped Tutsis any more or less than men did, but, regardless, some women contested the genocidal narrative.\footnote{Hogg, supra note 33, at 77–80.} Much of their resistance was private, operationalized through empathetic gestures and discreet—albeit highly risky—acts. At the highest level, nonetheless, the elimination of Prime Minister Agathe Uwilingiyimana—the third woman (of three) in the Cabinet—permitted genocide to metastasize.\footnote{Prior to becoming Prime Minister, Uwilingiyimana served as Minister of Education. In that capacity, she abolished quotas for school admission (which in the colonial period had favored Tutsi, but in the republics [circa 1964 to 1994] had favored Hutu) and replaced them with a merit-based system. Elisabeth King, From Classroom to Conflict? 151–52 (2012) (unpublished manuscript) (on file with author).} A political moderate, and perceived as a foil to the genocidal movement, Uwilingiyimana was tracked down, sexually assaulted, and killed by Rwandan army personnel (including members of the Presidential Guard) on April 7, 1994.\footnote{Max L. Rettig, Transnational Trials As Transitional Justice: Lessons from the Trial of Two Rwandan Nuns in Belgium, 11 WASH. U. GLOB. STUD. L. REV. 365, 377 (2012).} Her brutal murder allowed the most extreme group of génocidaires to cement their grip on the highest
echelons of power. Unremitting portrayals of women as victims nourish prejudicial stereotypes of helplessness and, thereby, gloss over the reality that some women are victimized because they exercise the agency of resistance and, thereby, threaten the normalization of massacre.

D. The Limits of Criminalization

Survivors of mass rape and collective massacre certainly obtain a measure of justice from ICTR convictions, including the convictions of the Butare Six. These convictions, however, represent only a small step in the arc of justice. The value of these convictions, while significant, should not be overstated. Many survivors require ongoing physical and occupational therapy, medical care, and assistance with their children (including children conceived from acts of rape), poverty, stigma, and education. Many of these requirements are pressing. They matter a great deal to survivors. Criminal convictions, however, do not deliver on these fronts. Unlike the International Criminal Court, the ICTR is unable to award collective reparations. ICTR proceedings, furthermore, are very costly—estimated at $U.S. eighteen million per indictment and $U.S. twenty-one million per case completed. Since it began its operations, the ICTR's total budget has consumed over $U.S. 1.4 billion. Criminal trials receive a great deal of attention, to be sure, but they also entail a great deal of expense—this is not justice on the cheap.

Nor do ICTR convictions address the reality of human rights abuses prevalent in Rwanda today. The state is dominated by the RPF government's tight grip on power. The fact that the ICTR, as a matter of law in practice, examines only the crimes committed by Hutu, and not crimes committed by the RPF in its ousting of the genocidal government, consolidates the ethnocratic nature of governance in contemporary Rwanda.

Notwithstanding the Rwandan government's official focus on putatively draining ethnicity from public discourse, ethnicity is sustained in public discourse by the vast number of convictions entered for genocide and crimes against humanity. These convictions pivot off proof of ethnicity among the targeted group and in the mind of the perpetrator and, as a result, collectivize the crime. Hence, Rwandanness becomes myth when...
trials are used to promote retrospective justice so long as those trials target only one group as defendants.

CONCLUSION

The Nyiramasuhuko trial judgment was issued nearly fifteen years after Rwanda had tumbled into a genocidal abyss. Much has changed—strikingly for the better—over these fifteen years. From the depths of dilapidation, Rwanda’s economy has grown considerably. The country has innovated greatly in technology and transportation. Quality of life for many Rwandans has improved substantially. This economic growth, however, is not without a disquieting shadow side. The Kagame government’s grip on power is tightening, while the international community is growing increasingly critical of what it perceives as its many human rights abuses both within Rwanda and in neighboring countries, in particular the Democratic Republic of the Congo.

Genocide destroys but, in the Rwandan case, it also ironically generated new socioeconomic possibilities for survivors, bystanders, and returnees—in particular women. In postgenocidal Rwanda, women face many challenges but play more prominent roles in public life than they ever have historically. Rwanda’s population was estimated as being seventy percent female immediately following the genocide. Although that figure quickly became dated as many men in the diaspora or who had become refugees returned, in 2000 it still was estimated that over fifty-seven percent of the economically active population was female. Customary land laws and practices that discriminated against women have been scaled


307. Terrill, supra note 305 (“At least 1 million Rwandans have been lifted out of poverty in just five years . . . . Economic growth between 2006 and 2011 reduced the number of Rwanda’s 11 million people living in poverty from 57 to 45 percent.”).


309. For a discussion of these challenges, see Druml, supra note 267.


back. 312 Rwandan schools “have achieved gender parity in primary enrollment, although fewer girls complete primary school than boys.” 313 Women sit in the Rwandan Parliament in percentage numbers that well exceed the percentage of women in the U.S. House of Representatives or Senate and that also transcend international averages. In 2007, King noted that “Rwanda now holds the world record for the highest proportion of women in parliament, at 56% in the lower house.” 314

One way to consolidate these advances for Rwandan women is to demystify those Rwandan women—such as Nyiramasuhuko—who perpetrated atrocity.

But women’s advances also need to be demystified, as well. What women actually do in public roles and as public officials matters greatly. Post-conflict transitions are not always elegantly democratic. The autocratic nature of Rwanda’s government should not be denied; neither should the fact that empowered women enthusiastically support this autocracy and thrive within it. Women's rights can expand in contexts where other human rights may shrink, shrivel, or remain under siege. Gender relations can equalize while other civic rights—freedom of expression, for example—wither. Even among the winners in the game of ethnocratic politics, moreover, gains can be uneven. It is crucial to hone in on which women have seen their opportunities expand in the post-conflict phase. In contemporary Rwanda, arguably, it is the rights of educated anglophone Tutsi former émigré that have become most robustly actualized, whereas the rights of Tutsi genocide survivors—largely francophone—remain underachieved. Just as the role of women during atrocity calls out for more careful and less assumptive or categorical analysis, so, too, does the role of women as change agents after atrocity.


313. King, supra note 298, at 195 (“This achievement is particularly significant, as less than 30% of the thirty-nine sub-Saharan African countries studied by UNESCO have achieved gender parity in primary education.”).

314. Id. at 179 (noting also that the global average is nineteen percent and the sub-Saharan African average barely over eighteen percent).