

# LESSONS FROM RWANDA: POST-GENOCIDE LAW AND POLICY

Zachary D. Kaufman\*

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\* Associate Professor of Law and Political Science, University of Houston Law Center, with additional appointments in the University of Houston's Department of Political Science and Hobby School of Public Affairs. J.D., Yale Law School; D.Phil. (Ph.D.) and M.Phil, both in International Relations, Oxford University (Marshall Scholar); B.A. in Political Science, Yale University. Research was generously facilitated by institutional support from Stanford Law School (where the author was a Lecturer from 2017 to 2019) and the Harvard University Kennedy School of Government (where the author was a Senior Fellow from 2016 to 2019).

For the past twenty years—through his work in academia, all three branches of the U.S. government, and three international criminal tribunals—the author has specialized in transitional justice and genocide studies, particularly regarding the 1994 Genocide against the Tutsi in Rwanda. His latest book is *United States Law and Policy on Transitional Justice: Principles, Politics, and Pragmatics* (Oxford University Press, hardback 2016, paperback with new afterword 2017).

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## INTRODUCTION

This year marks the 25th anniversary of the Genocide against the Tutsi in Rwanda.<sup>1</sup> During one hundred days in 1994, Hutu extremists slaughtered over one million people, primarily Tutsi as well as Hutu and others who opposed the genocide.<sup>2</sup> With a murder rate that some commentators estimate to have been three to five times faster than that of the Holocaust,<sup>3</sup> the Genocide against the

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<sup>1</sup> On June 16, 2006, the Appeals Chamber of the United Nations (UN) International Criminal Tribunal for Rwanda (ICTR) issued a judicial notice concluding that it was a “fact of common knowledge” that “between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.” *Prosecutor v. Karemera* Case No. ICTR-98-44-AR73(C), Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, ¶¶ 33-38 (June 16, 2006). Subsequently, the UN’s Security Council (UNSC) and General Assembly (UNGA) both adopted the terminology of “Genocide against the Tutsi in Rwanda” to refer to the genocide targeting Tutsi in Rwanda in 1994. In 2014, the UNSC adopted a resolution referring to “the 1994 Genocide against the Tutsi in Rwanda.” S.C. Res. 2150 ¶ 1 (Apr. 16, 2014) [hereinafter UNSC Resolution 2150]. Four years later, the UNGA changed the language of its designated annual international day of reflection (on April 7) from referencing “the Genocide in Rwanda” to referencing “the 1994 Genocide against the Tutsi in Rwanda.” Press Release, General Assembly, General Assembly Designates 7 April International Day of Reflection on 1994 Genocide against Tutsi in Rwanda, Amending Title of Annual Observance, U.N. Press Release GA/12000 (Jan. 28, 2018), <https://perma.cc/F7VC-2F73>.

<sup>2</sup> In 2014, the UNSC adopted a resolution recognizing “the 1994 Genocide against the Tutsi in Rwanda, during which Hutu and others who opposed the genocide were also killed.” UNSC Resolution 2150, *supra* note 1, ¶ 1. Four years later, the UNGA adopted a resolution noting that “more than a million people were killed during the genocide, including Hutu and others who opposed it.” G.A. A/72/L.31, at preamble (Dec. 12, 2017). A huge proportion of Twa, Rwanda’s indigenous people, were murdered during the genocide. Max Bearak, *Ethnic Divisions Persist, Years After Rwandan Genocide*, WASH. POST, Apr. 7, 2019, at A18 (noting that roughly a third—at least 10,000—of the Twa were killed during the genocide).

<sup>3</sup> See, e.g., PHILIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA 3 (1998) (“The dead of Rwanda accumulated at nearly three times the rate of Jewish dead during the Holocaust.”); JEAN HATZFIELD, MACHETE SEASON: THE KILLERS IN RWANDA SPEAK 70 (2005) (noting that the Genocide against the Tutsi’s “yield proved distinctly superior to that of the Jewish and Gypsy genocide . . . . In 1942, at the height of the shootings and deportations, the Nazi regime and its

Tutsi has been characterized as “the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki”<sup>4</sup> or, indeed, at any time in the twentieth century.<sup>5</sup>

Learning from the Genocide against the Tutsi provides crucial insight into averting conflict and fostering more inclusive communities. The current era of deep political,<sup>6</sup> racial,<sup>7</sup> class,<sup>8</sup> and gender<sup>9</sup> division in the United States as well as ongoing “atrocities crimes”<sup>10</sup> abroad compel reflection. Ten lessons from Rwanda for the world generally and the United States specifically are especially pertinent to preventing further bloodshed and building more representative societies.

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zealous administration . . . never attained so murderous a performance level anywhere in Germany or its fifteen occupied countries.”); LINDA MELVERN, *A PEOPLE BETRAYED: THE ROLE OF THE WEST IN RWANDA’S GENOCIDE* 4 (1st ed., 2000) (observing that the Genocide against the Tutsi “was slaughter on a scale not seen since the Nazi extermination programme against the Jews. The killing rate in Rwanda was five times that achieved by the Nazis.”); Helena Cobban, *The Legacies of Collective Violence*, 27 BOS. REV. 1, 5 (2002) (The Genocide against the Tutsi “was so well-organized and so efficient that the killing rate was three to five times the rate at which, at the height of the Holocaust in Europe, Adolph Hitler’s industrialized killing system was able to dispatch its victims.”). *But see* Lewi Stone, *Quantifying the Holocaust: Hyperintense Kill Rates During the Nazi Genocide*, 5 SCI. ADVANCES 1, 4-5 (2019) (identifying kill rates during the Holocaust that were almost double that of the Genocide against the Tutsi in Rwanda and approximately ten times higher than commonly believed).

<sup>4</sup> GOUREVITCH, *supra* note 3, at 3.

<sup>5</sup> *See* Samantha Power, *Bystanders to Genocide*, ATLANTIC, Sept. 2001, at 84 (asserting that the Genocide against the Tutsi “was the fastest, most efficient killing spree of the twentieth century”).

<sup>6</sup> *See, e.g.,* Laura Paisley, *Political Polarization at its Worst Since the Civil War*, USC NEWS (Nov. 8, 2016), <https://perma.cc/54LH-HZ5T>.

<sup>7</sup> *See, e.g.,* Vann R. Newkirk II, *The Racial Divide is the Political Divide*, ATLANTIC (Feb. 21, 2019), <https://perma.cc/C4KS-TLHH>.

<sup>8</sup> *See, e.g.,* Josh Boak & Emily Swanson, *Many College-Educated Americans Feel Disconnected from US Middle Class*, VOICE OF AM. (May 4, 2019), <https://perma.cc/H8V8-YLBJ>.

<sup>9</sup> *See, e.g.,* Claire Cain Miller, *Women Did Everything Right. Then Work Got ‘Greedy’: How America’s Obsession with Long Hours Has Widened the Gender Gap*, N.Y. TIMES (Apr. 26, 2019), <https://perma.cc/DJ94-DBWB>.

<sup>10</sup> David J. Scheffer, *The Future of Atrocity Law*, 25 SUFFOLK TRANSNAT’L L. REV. 389, 398-400 (2002) (“plead[ing] for a new crimes category that would be called ‘atrocities crimes’” and describing criteria for crimes that would qualify); David Scheffer, *Genocide and Atrocity Crimes*, 1 GENOCIDE STUD. & PREVENTION 229, 229 (2006) (proposing the term “atrocities crimes” to collectively describe genocide, crimes against humanity (including ethnic cleansing), and war crimes); David Scheffer, *The Merits of Unifying Terms: ‘Atrocity Crimes’ and ‘Atrocity Law’*, 2 GENOCIDE STUD. & PREVENTION 91 (2007) (responding to critiques of the term “atrocities crimes”).

## 1. HATE SPEECH IS DANGEROUS

In the years leading up to the Genocide against the Tutsi, Hutu extremists monopolized and manipulated local media to differentiate, dehumanize, and demonize Tutsi.<sup>11</sup> Such propaganda—characterizing Tutsi as *inyenzi* (cockroaches), *inzoka* (snakes), and *ibytso* (traitors)<sup>12</sup>—mobilized hundreds of thousands of other Hutu,<sup>13</sup> who felt compelled to attack Tutsi.<sup>14</sup>

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<sup>11</sup> See, e.g., ALISON DES FORGES, *LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA* 65-86 (1999); GREGORY S. GORDON, *ATROCITY SPEECH LAW: FOUNDATION, FRAGMENTATION, FRUITION* 46-57 (2017); GOUREVITCH, *supra* note 3, at 99-100, 134; LINDA KIRSCHKE, *BROADCASTING GENOCIDE: CENSORSHIP, PROPAGANDA & STATE-SPONSORED VIOLENCE IN RWANDA 1990-1994* (1996); MELVERN, *supra* note 3, at 70-73; GÉRARD PRUNIER, *THE RWANDA CRISIS: HISTORY OF A GENOCIDE* 129-34, 163-66, 188-89, 200, 210-11, 217, 223-24, 241, 295-96 (1995); Jamie Frederic Metzl, *Rwandan Genocide and the International Law of Radio Jamming*, 91 AM. J. INT'L L. 628, 630-36 (1997); Christopher Tansey, *Judgment Summary: The Case of Simon Bikindi*, Case No. ICTR-01-72-A, 18 HUM. RTS. BRIEF 46 (2010) (describing the affirming judgment of the ICTR's Appeals Chamber against Simon Bikindi, a former singer and composer, whom an ICTR trial chamber convicted for direct and public incitement to commit genocide for publicly urging the killing of Tutsi); Sharon LaFraniere, *Court Convicts 3 in 1994 Genocide Across Rwanda*, N.Y. TIMES, Dec. 4, 2003, at A1 (describing the ICTR's conviction of Jean-Bosco Barayagwiza, Ferdinand Nahimana, and Hassan Ngeze for using a radio station and newspaper to foster the Genocide against the Tutsi and characterizing the case as the first of its kind since the Nuremberg tribunal, which sentenced Nazi propagandist Julius Streicher to death for his campaign against the Jews).

<sup>12</sup> The italicized words in this sentence are in Kinyarwanda, Rwanda's indigenous language.

<sup>13</sup> Kennedy Ndahiro, *In Rwanda, We Know All About Dehumanizing Language: Years of Hatred Led to Death on a Horrifying Scale*, ATLANTIC (Apr. 13, 2019), <https://perma.cc/D3ZL-UEQM>. The exact number of perpetrators of the Genocide Against the Tutsi is unknown. Estimates include "around 200,000" to "hundreds of thousands" to three million. See Scott Straus, *How Many Perpetrators Were There in the Rwandan Genocide? An Estimate*, 6 J. GENOCIDE RES. 85, 95 n.1, n.2 (2004). In 2012, Rwanda's National Service of Gacaca Courts (NSGC) stated that *gacaca* had tried 1,958,634 cases, convicting 1,681,648 (86%) for crimes related to the Genocide against the Tutsi. The NSGC further reported that *gacaca* heard appeals from 178,741 (9%) of those cases, affirming 132,902 (74%). See Zachary D. Kaufman, *Transitional Justice as Genocide Prevention: From a Culture of Impunity to a Culture of Accountability*, in CONFRONTING GENOCIDE IN RWANDA: DEHUMANIZATION, DENIAL, AND STRATEGIES FOR PREVENTION 365, 375 (Jean-Damascène Gasanabo et al. eds., 2d ed., 2015) [hereinafter Kaufman, *Transitional Justice as Genocide Prevention*]. For more information about *gacaca*, see *infra* notes 42 and 46 and accompanying text.

<sup>14</sup> Russell Smith, *The Impact of Hate Media in Rwanda*, BBC NEWS (Dec. 3, 2003), <https://perma.cc/HUY2-LCP3>.

Commentators today accuse both conservatives and liberals in the United States of employing discriminatory discourse,<sup>15</sup> some of this language even resembling such genocidal propaganda.<sup>16</sup> Most notably, critics of President Donald J. Trump's rhetoric and conduct often describe his behavior as exemplifying racism,<sup>17</sup> xenophobia,<sup>18</sup> sexism,<sup>19</sup> Islamophobia,<sup>20</sup> and anti-Semitism.<sup>21</sup> Like Hutu extremists (and Nazis and other fanatics before them),<sup>22</sup> President Trump has even referred to undocumented immigrants and his political opponents as non-human enemies.<sup>23</sup> His words and deeds are blamed for inciting violence, perhaps deliberately so;<sup>24</sup> clashes among citizens have indeed followed. In just the first

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<sup>15</sup> See, e.g., Isaac Chotiner, *Looking at Anti-Semitism on the Left and the Right: An Interview with Deborah E. Lipstadt*, NEW YORKER (Jan. 24, 2019), <https://perma.cc/P44M-M5T7>; Dahleen Glanton, Opinion, *Republican Party Has a Racism Problem, and It's Not Only Rep. Steve King*, CHI. TRIB., Jan. 15, 2019, at 3; James S. Robbins, Opinion, *Will an Increasingly Progressive Democratic Party Become Steadily More Anti-Semitic*, USA TODAY (Feb. 14, 2019), <https://perma.cc/K8LX-7MHW>.

<sup>16</sup> See, e.g., Daniel Altman, *This is How Every Genocide Begins: Why Trump's Most Un-American Moment Can't Be Overlooked*, FOREIGN POL'Y, (Nov. 30, 2017), <https://perma.cc/38C2-Q9PR>; Jason Stanley & David Beaver, Opinion, *Beware of 'Snakes,' 'Invaders,' and Other Fighting Words*, N.Y. TIMES (May 16, 2019), <https://perma.cc/A3CQ-AFP4>.

<sup>17</sup> See, e.g., Condemning President Trump's Racist Comments Directed at Members of Congress, H.R. Res. 489, 116th Cong. (2019); Charles M. Blow, Opinion, *Donald Trump, Raging Racist*, N.Y. TIMES, July 15, 2019, at A21; Charles M. Blow, Opinion, *The Rot You Smell Is a Racist POTUS*, N.Y. TIMES, July 29, 2019, at A21; Ellis Cose, Opinion, *Donald Trump's Depressing Racist Vitriol Brings Out the Worst in Too Many Americans*, USA TODAY (July 29, 2019), <https://perma.cc/4B9P-R7BB>; Christal Hayes, *Here Are 10 Times President Trump's Comments Have Been Called Racist*, USA TODAY (Aug. 14, 2018), <https://perma.cc/KC2B-ZJT7>; Nicholas Kristof, Opinion, *Racist to the Bone*, N.Y. TIMES, July 18, 2019, at A27; Fredrick Kunkle & Hannah Natanson, *#WeAreBaltimore: Maryland Denounces Trump Attacks on Baltimore*, CUMMINGS, WASH. POST (July 29, 2019), <https://perma.cc/7KMH-VN6A>.

<sup>18</sup> See, e.g., Julio Ricardo Varela, Opinion, *Trump's Border Wall Was Never Just About Security. It's Meant to Remind All Latinos that We're Unwelcome*, NBC NEWS (Dec. 28, 2018), <https://perma.cc/8FQ2-UC5D>.

<sup>19</sup> See, e.g., Claire Cohen, *Donald Trump Sexism Tracker: Every Offensive Comment in One Place*, TELEGRAPH (London) (July 14, 2017), <https://perma.cc/W5BG-7ZB3>.

<sup>20</sup> See, e.g., Altman, *supra* note 16; Brian Klaas, Opinion, *A Short History of President Trump's Anti-Muslim Bigotry*, WASH. POST (Mar. 15, 2019), <https://perma.cc/F38A-9E7H>.

<sup>21</sup> See, e.g., Anthony Man, *Donald Trump Is the 'Worst Perpetrator of Purveying Anti-Semitism'*, WASSERMAN SCHULTZ SAYS, S. FLA. SUN SENTINEL (Mar. 11, 2019), <https://perma.cc/KS5K-5TJC>.

<sup>22</sup> See, e.g., Patricia J. Williams, *Our Toxic-Speech Epidemic*, NATION (Apr. 1, 2019), <https://perma.cc/79UZ-GJMZ>.

<sup>23</sup> See, e.g., Linda Qui, *The Context Behind Trump's 'Animals' Comment*, N.Y. TIMES (May 18, 2018), <https://perma.cc/FN44-HG89> (quoting President Trump calling some undocumented immigrants "animals"); Philip Rucker, *'Like a Dog:' Trump's History of Using Canine Insults Against His Enemies*, WASH. POST, Aug. 15, 2018, at A4 (quoting President Trump calling his enemies "dog").

<sup>24</sup> See, e.g., Colby Itkowitz, *An Expert on 'Dangerous Speech' Explains How Trump's Rhetoric and the Recent Spate of Violence Are and Aren't Linked*, WASH. POST (Oct. 29, 2018), <https://perma.cc/6NMP-JYMS> (quoting Susan Benesch, an expert on "dangerous speech,"

year after his election, reported hate crime in the United States spiked 17%.<sup>25</sup> In counties that hosted his 2016 campaign rallies, hate crime accounts skyrocketed 226% in subsequent months compared to similar counties that did not host such events.<sup>26</sup> Political scientists,<sup>27</sup> legal scholars,<sup>28</sup> and other commentators<sup>29</sup> have found strong correlations between President Trump's incendiary language and violence that has ensued. The hate speech that incited the Genocide against the Tutsi should remind Americans, especially our elected officials, to scrupulously avoid inflaming tensions, amplifying hatred, or emboldening attacks.

## 2. ATROCITY PREVENTION IS POSSIBLE

Historians have documented how the United Nations (UN) and countries such as the United States, France, and Belgium were aware of the genocide in

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saying that President Trump's "rhetoric has helped to shift discourse norms in our country such that it is more acceptable among more people to denigrate and attack other groups of human beings"); Meghan Keneally, *A Look Back at Trump Comments Perceived by Some as Encouraging Violence*, ABC NEWS (Oct. 19, 2018), <https://perma.cc/JQ3W-PVWM> (providing examples of President Trump encouraging or endorsing violence); Eugene Robinson, Opinion, *Using Politics as Kindling for Hatred*, WASH. POST, Apr. 30, 2019, at A19 ("The president, primarily through his unconstrained rhetoric, has fostered an atmosphere in which hate-filled white supremacists feel motivated, vindicated and emboldened to act.").

<sup>25</sup> John Eligon, *Hate Crimes Increase for the Third Year in a Row, the F.B.I. Reports*, N.Y. TIMES, Nov. 13, 2018, at A21 (indicating that the FBI stated that hate crime reports increased 17% from 2016 to 2017 while noting that "hate crimes remain vastly underreported").

<sup>26</sup> Ayal Feinberg et al., *Counties that Hosted a 2016 Trump Rally Saw a 226 Percent Increase in Hate Crimes*, WASH. POST: MONKEY CAGE (Mar. 22, 2019), <https://perma.cc/U3NT-ARJ3> (concluding that President "Trump's rhetoric may encourage hate crimes").

<sup>27</sup> See, e.g., *id.*

<sup>28</sup> See, e.g., Itkowitz, *supra* note 24.

<sup>29</sup> See, e.g., Robinson, *supra* note 24 (President "Trump's theory of politics is based on division, not unity. He constantly stokes anger, never apologizes, always seeks another crack where he can drive another wedge. Hate crimes, meanwhile, have reached a new high. That is no coincidence.").

Rwanda (contrary to their declarations of ignorance<sup>30</sup>) and yet declined to respond effectively.<sup>31</sup> If the UN had even modestly bolstered its peacekeeper presence in the country, it would likely have deterred or mitigated the widespread, systematic violence.<sup>32</sup>

Genocide and other atrocity crimes continue to rage around the world even today, from Syria and South Sudan to Yemen and Myanmar.<sup>33</sup> A bipartisan report in 2008 by former U.S. Secretary of State Madeline Albright (a Democrat) and former U.S. Secretary of Defense William Cohen (a Republican) concluded that such offenses are preventable.<sup>34</sup> The Albright-Cohen report argued that atrocity crimes threaten “not only our values, but [also] our national interests” because they cause refugee and regional crises as well as compromise American

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<sup>30</sup> See, e.g., Rory Carroll, *US Chose to Ignore Rwandan Genocide: Classified Papers Show Clinton Was Aware of ‘Final Solution’ to Eliminate Tutsis*, GUARDIAN (Mar. 31, 2004), <https://perma.cc/ZCF9-FRCM> (describing how recently declassified documents “undermine claims by Mr. Clinton and his senior officials that they did not fully appreciate the scale and speed of the killings”); Nathan J. Robinson, *Bill Clinton’s Shameful Genocide Denial*, CURRENT AFF. (May 14, 2016), <https://perma.cc/3X5T-CPNQ> (Clinton “did not just ‘sit on his hands,’ he deliberately stalled the efforts of others to intervene, and went so far as to *deny the genocide* in order to avoid being pressured to stop it” and “Clinton’s claim not to have fully understood the situation is a lie.”) (emphasis in original).

<sup>31</sup> See, e.g., DES FORGES, *supra* note 11, at 16-17; MELVERN, *supra* note 3, at 186-209; ANDREW WALLIS, *SILENT ACCOMPLICE: THE UNTOLD STORY OF FRANCE’S ROLE IN THE RWANDAN GENOCIDE* (2014); Human Rights Watch, *Rwandan Genocide Could Have Been Stopped* (Mar. 31, 1999), <https://perma.cc/UJ76-6M8L> (“U.S., French, and Belgian authorities, as well as those at the United Nations, received dozens of warnings in the months before the genocide but failed to act effectively. Even worse, foreign leaders reacted timidly and tardily once the killing began.”).

<sup>32</sup> See, e.g., DES FORGES, *supra* note 11, at 460 (“The major international actors—policy-makers in Belgium, the U.S., France, and the U.N. . . . could have used national troops or UNAMIR or a combined force of both to confront the killers and immediately save lives. By disrupting the killing campaign at its central and most essential point, the foreign soldiers could have disabled it throughout the country. By serving as a counterweight to the elite forces under [Colonel Théoneste] Bagasora, they could have encouraged dissenters to step forward as active opponents of the genocide.”); ORG. OF AFR. UNITY, *RWANDA: THE PREVENTABLE GENOCIDE* ¶¶ 2.1, 8.17, 10.1 (2000) (“[T]he international community was in fact in a position to avert this terrible tragedy entirely or in part. . . . [T]he genocide was never inevitable. At any time either before or during the genocide, the deployment of a well-equipped international peacekeeping force with a strong mandate could at the very least have forced conspirators to modify their plans, thereby saving countless lives. . . . The simple, harsh truth is that the genocide was not inevitable; and that it would have been relatively easy to stop it from happening prior to April 6, 1994, and then to mitigate the destruction significantly once it began.”); Stephen Kinzer, *Taking the Wrong Lessons from Rwanda*, BOS. GLOBE, Apr. 28, 2019, at K5 (“A few thousand blue-helmeted peacekeepers from countries that had already volunteered—Ghana, Tunisia and Bangladesh—would have been enough [to stop the genocide].”).

<sup>33</sup> See, Zachary D. Kaufman, *The Prospects, Problems, and Proliferation of Recent UN Investigations of International Law Violations*, 16 J. INT’L CRIM. JUST. 93, 93-101 (2018) (discussing atrocity crimes in Burundi, Iraq, Myanmar, Syria, and Yemen); Nick Cumming-Bruce, *Oil Industry May be Tied to ‘Astonishing Brutality’ in South Sudan, Panel Says*, N.Y. TIMES, Feb. 20, 2019, at A4 (observing that “mass atrocities continue in South Sudan”).

<sup>34</sup> MADELEINE K. ALBRIGHT & WILLIAM S. COHEN, *PREVENTING GENOCIDE: A BLUEPRINT FOR U.S. POLICYMAKERS* ix (2008) (“We believe that preventing genocide is possible.”).

leadership.<sup>35</sup> This finding spurred passage in January 2019 of the similarly bipartisan Elie Wiesel Genocide and Atrocities Prevention Act,<sup>36</sup> which declares atrocity prevention to be “critically important” and in the U.S. “national interest.”<sup>37</sup> Given that atrocity prevention is achievable,<sup>38</sup> this law’s laudable rhetoric should finally become reality.

### 3. TRANSITIONAL JUSTICE IS ESSENTIAL

The Genocide against the Tutsi in 1994 was only the most recent in a series of atrocity crimes that Rwanda had suffered over the prior half-century. Impunity for those earlier, smaller-scale offenses contributed to the massive conflagration later.<sup>39</sup>

Even while the genocide surged, questions arose about the most appropriate and effective means of eventually holding its suspected perpetrators accountable. These issues concerned “transitional justice,” the processes and objectives of societies addressing past or ongoing atrocity crimes and other serious human rights violations through judicial and nonjudicial mechanisms. The tools available to those seeking and implementing transitional justice are numerous and varied, including prosecution, amnesty, lustration, truth commissions, exile, indefinite detention, and lethal force.<sup>40</sup> Transitional justice is highly context dependent.<sup>41</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> Sponsors of the Elie Wiesel Genocide and Atrocities Prevention Act (“Elie Wiesel Act”) echoed this language from the Albright-Cohen report when discussing the legislation. Press Release, Sen. Ben Cardin, Elie Wiesel Genocide and Atrocities Prevention Act Heads to President for Signature after Final House, Senate Passage (Dec. 21, 2018) <https://perma.cc/8RDN-2WJK>. The law was enacted on January 14, 2019. Elie Wiesel Genocide and Atrocities Prevention Act, Pub. L. No. 115-441, 132 Stat. 5586 (2019) [hereinafter Elie Wiesel Act].

The author was a lead architect of the Elie Wiesel Act while serving on the U.S. Senate Foreign Relations Committee staff as a Council on Foreign Relations International Affairs Fellow from 2016 to 2017. *See also* Zachary D. Kaufman, *Legislating Atrocity Prevention*, 57 HARV. J. LEGIS. (forthcoming) (documenting the origins of and analyzing the Elie Wiesel Act) [hereinafter Kaufman, *Legislating Atrocity Prevention*].

<sup>37</sup> Elie Wiesel Act, *supra* note 36, §§ 2, 3.

<sup>38</sup> *See, e.g.*, STEPHEN POMPER, ATROCITY PREVENTION UNDER THE OBAMA ADMINISTRATION: WHAT WE LEARNED AND THE PATH AHEAD 7 (2018) (noting that the Obama Administration successfully pursued atrocity prevention in Kyrgyzstan, Côte d’Ivoire, and South Sudan); COLIN THOMAS-JENSEN, FIGHTING FIRE WITH FIRE: THE GROWING NEXUS BETWEEN ATROCITY PREVENTION AND COUNTERTERRORISM AND ITS IMPLICATIONS FOR THE USE OF FORCE TO PROTECT CIVILIANS 9-10 (2018) (arguing that the August 2014 U.S. military-led operation to prevent genocide by the Islamic State against Yazidis was successful).

<sup>39</sup> Kaufman, *Transitional Justice as Genocide Prevention*, *supra* note 13, at 363-67.

<sup>40</sup> ZACHARY D. KAUFMAN, UNITED STATES LAW AND POLICY ON TRANSITIONAL JUSTICE: PRINCIPLES, POLITICS, AND PRAGMATICS 2 (2016). “Lustration” is the process of purging political officials. *Id.* at xxix, 29-30.

<sup>41</sup> *See generally* JUSTICE MOSAICS: HOW CONTEXT SHAPES TRANSITIONAL JUSTICE IN FRACTURED SOCIETIES (Roger Duthie & Paul Seils eds., 2017) (examining transitional justice in various geographic, political, institutional, and other contexts).



Four major transitional justice mechanisms—all prosecutorial—were implemented to address the Genocide against the Tutsi. Foreign actors pursued two such options outside Rwanda: prosecutions through the UN International Criminal Tribunal for Rwanda (ICTR) and prosecutions in foreign courts. Domestic actors employed two other methods within Rwanda: prosecutions by ordinary domestic courts and *gacaca*.<sup>42</sup>

Prosecution has been both praised and criticized as a means of addressing transitional justice. Proponents of prosecution argue that trials promote stability, the rule of law, and accountability, and that they deter atrocity crimes. Prosecution advocates also contend that ensuring due process legitimizes convictions and imposing stern sentences appropriately punishes the convicted. Yet this option may be relatively expensive and slow and involve politicized or frivolous charges. Prosecution may also result in acquittal or release of genuine atrocity perpetrators, which can lead to embarrassment and, more critically, recidivism.<sup>43</sup>

The four transitional justice mechanisms used to address the Genocide against the Tutsi mark a watershed in the development of international, foreign, domestic, and local transitional justice, respectively.<sup>44</sup> And they each have boasted achievements. The ICTR convicted some of the most egregious *génocidaires* and established significant legal precedents. It was the first international court to have jurisdiction over atrocity crimes committed during an internal conflict, to receive a guilty plea for genocide (from former Rwandan Prime Minister Jean Kambanda), to impose a genocide conviction (on Jean-Paul Akayesu, former mayor of Taba commune, Rwanda), to indict and subsequently convict a head of government for genocide (Kambanda), to clarify the definition of rape in international law and hold that it could constitute genocide (in the Akayesu case), and to pass a genocide conviction of journalists (on Jean-Bosco Barayagwiza and Ferdinand Nahimana, former leaders of *Radio Télévision Libre des Mille Collines*, as well as Hassan Ngeze, former editor-in-chief of *Kangura* newspaper).<sup>45</sup> To date, courts in Belgium, Canada, Finland, France, Germany, the Netherlands, Norway, Sweden, and Switzerland have held trials of alleged *génocidaires*. Within less than a decade of the 1994 genocide, Rwanda's ordinary courts had

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<sup>42</sup> In Kinyarwanda, *gacaca* means “the grass” or “the lawn,” referring to how proceedings occurred outside while participants and observers sat or stood on the ground. KAUFMAN, UNITED STATES LAW AND POLICY ON TRANSITIONAL JUSTICE, *supra* note 40, at xxix, 175; Kaufman, *Transitional Justice as Genocide Prevention*, *supra* note 13, at 366 n.20. For analyses of *gacaca*, see, e.g., PAUL CHRISTOPH BORNKAMM, RWANDA'S GACACA COURTS: BETWEEN RETRIBUTION AND REPARATION (2012); PHIL CLARK, THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA: JUSTICE WITHOUT LAWYERS (2010); PETER HARRELL, RWANDA'S GAMBLE: GACACA AND A NEW MODEL OF TRANSITIONAL JUSTICE (2003).

<sup>43</sup> Kaufman, *Transitional Justice as Genocide Prevention*, *supra* note 13, at 36.

<sup>44</sup> See *id.* at 367-76.

<sup>45</sup> *Id.* at 367-78; Zachary D. Kaufman, *The United Nations International Criminal Tribunal for Rwanda*, in THE ENCYCLOPEDIA OF TRANSITIONAL JUSTICE (Nadya Nedelsky & Lavinia Stan eds., 2d ed.) (forthcoming) [hereinafter Kaufman, *The United Nations International Criminal Tribunal for Rwanda*].

tried approximately 8,000 suspects, convicting 81% of them. During *gacaca*'s operation from 2002 to 2012, the courts adjudicated almost two million cases, convicting 86% of the defendants.<sup>46</sup> Given the amount of cases prosecuted overall, the Genocide against the Tutsi is sometimes referred to as “the most judged genocide in history.”<sup>47</sup>

But justice is not only evaluated on quantity; it is also assessed by quality. Serious criticisms have been raised about each of these four transitional justice mechanisms. For instance, the ICTR has been criticized for nepotism, mismanagement, incompetence, inefficiency, waste, insensitive treatment of witnesses, and early release of convicts.<sup>48</sup> So, we must consider these mechanisms' nature, not just their numbers. Although imperfect, these forums have sought to change a Rwandan culture of impunity to one of accountability.

Still, the work these four innovative transitional justice bodies have accomplished is not yet complete. Suspected *génocidaires* remain at large.<sup>49</sup> The conviction of Jean Leonard Teganya in a U.S. federal court in Boston in April

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<sup>46</sup> Kaufman, *Transitional Justice as Genocide Prevention*, *supra* note 13, at 368-75.

<sup>47</sup> Thierry Cruvellier & Ephrem Rugiririza, *Rwanda: The Most Judged Genocide in History*, JUSTICEINFO.NET (Apr. 4, 2019), <https://perma.cc/JQ3U-9P7B>.

<sup>48</sup> See, e.g., Kaufman, *The United Nations International Criminal Tribunal for Rwanda*, *supra* note 45 (enumerating criticisms of the ICTR); James Karuhanga, *Rwanda Protests Early Release of Genocide Convict Simba*, NEW TIMES (Rwanda) (Jan. 17, 2019), <https://perma.cc/M5Y4-YCFB> (noting that the Government of Rwanda condemned the early release of Aloys Simba, who was convicted of genocide and crimes against humanity, by UN International Residual Mechanism for International Criminal Tribunals (MICT) president, Judge Theodor Meron).

<sup>49</sup> The Rwandan government seeks over a thousand fugitives. James Karuhanga, *Genocide Fugitives and the Protracted Pursuit for Justice*, NEW TIMES (Rwanda) (Mar. 6, 2019), <https://perma.cc/DYY3-TXRE> (“Since 2007, some 1,012 indictments and warrants [for genocide fugitives] have been issued in 32 countries in Africa, Europe, North America, and Australia.”). Rwanda’s Prosecutor General has stated that over half of these fugitives live in two countries adjacent to Rwanda, the Democratic Republic of the Congo and Uganda. Nasra Bishumba, *Most Genocide Fugitives Hiding in Neighbouring Countries: Prosecution*, NEW TIMES (Rwanda) (Dec. 13, 2018), <https://perma.cc/ZS78-A9J5>.

The MICT and the Rwandan government seek a total of eight fugitives from ICTR indictment. See James Karuhanga, *Who Are the Eight ICTR-Indicted Genocide Fugitives Still at Large?*, NEW TIMES (Rwanda) (July 25, 2019), <https://perma.cc/45TW-ZRUT> (describing the three fugitives from ICTR indictment the MICT seeks and the five fugitives from ICTR indictment the Rwandan government seeks); *Searching for the Fugitives*, UNITED NATIONS INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS, <https://perma.cc/6J95-89ZD> (archived July 28, 2019). The U.S. Department of State’s War Crimes Rewards Program “offers rewards of up to \$5 million (USC) to individuals who provide information regarding designated defendants who have been charged with the commission of international crimes,” including individuals indicted by the ICTR. See KEY TOPICS—OFFICE OF GLOBAL CRIMINAL JUSTICE, U.S. DEPARTMENT OF STATE, <https://perma.cc/NK43-MM3F> (archived July 28, 2019).

2019—for lying about his role in the genocide on his U.S. immigration application<sup>50</sup>—is a stark reminder that identifying and bringing *génocidaires* to justice is an ongoing, imperative challenge, including in the United States.

Despite such wide-ranging efforts, full justice after genocide is impossible. Even while promoting accountability and deterrence, we must take to heart that nothing will ever truly make up for such unimaginable loss.

#### 4. SEXUAL ABUSE IS RAMPANT

Rwandan *génocidaires* deliberately used rape and sexual mutilation as tools to spread HIV/AIDS, torture and terrorize women and girls, intimidate men, reduce procreation among Tutsi, and destroy the Tutsi population.<sup>51</sup> René Degni-Ségui, then the UN Special Rapporteur of the Commission of Human Rights, stated in a 1996 report about the genocide that “rape was the rule and its absence the exception.”<sup>52</sup> Some commentators, including Degni-Ségui, have concluded that as many as half a million women—including almost all surviving female Tutsi—suffered sexual assaults during the genocide.<sup>53</sup> Given the widespread, systematic nature of such abuse, the ICTR defined rape in international law for the first time in history and developed the rape-as-genocide jurisprudence noted above.<sup>54</sup>

The #MeToo movement has emphasized how prevalent sexual abuse in the United States is, too, even in a non-genocidal context. The Rape, Abuse, and Incest National Network estimates that an American is sexually assaulted every 92 seconds.<sup>55</sup> As in Rwanda, such offenses demonstrate the rampant objectification and exploitation of and aggression towards women and girls that persist

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<sup>50</sup> Maria Cramer, *Rwandan Accused of Lying about Role in Genocide Convicted*, BOS. GLOBE, Apr. 6, 2019, at A1; *see also* U.S. IMMIGRATION & CUSTOMS ENF’T, RWANDAN MAN SENTENCED FOR IMMIGRATION FRAUD AND PERJURY IN CONNECTION WITH 1994 GENOCIDE (July 1, 2019), <https://perma.cc/CM52-GQMV> (noting that Teganya was sentenced to ninety-seven months in prison and will face removal proceedings upon completion of his sentence).

<sup>51</sup> *See, e.g.*, JONATHAN TORGONNIK, INTENDED CONSEQUENCES: RWANDAN CHILDREN BORN OF RAPE (2009); Sherrie L. Russell-Brown, *Rape as an Act of Genocide*, 21 BERKELEY J. INT’L L. 350, 353-54 (2003).

<sup>52</sup> René Degni-Ségui (Special Rapporteur of the Commission on Human Rights), *Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, ¶ 16, U.N. Doc. E/CN.4/1996/68 (Jan. 29, 1996).

<sup>53</sup> *Id.* ¶ 16 (noting that accepted statistical analysis would suggest between 250,000 and 500,000 rapes during the genocide); Nancy Sai, Conflict Profile: Rwanda, WOMEN’S MEDIA CENTER, <https://perma.cc/RDH4-LDJJ> (archived July 5, 2019).

<sup>54</sup> *The ICTR in Brief*, UNITED NATIONS INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS, <https://perma.cc/ZU2L-LZ59> (archived July 5, 2019); Kaufman, *The United Nations International Criminal Tribunal for Rwanda*, *supra* note 45.

<sup>55</sup> *Scope of the Problem: Statistics*, RAPE, ABUSE, AND INCEST NATIONAL NETWORK, <https://perma.cc/EK44-E6MV> (archived July 5, 2019).

throughout history and across societies.<sup>56</sup> We must do more to prevent and punish such crimes, including by prodding would-be bystanders to act instead as upstanders (individuals who help others in need).<sup>57</sup>

## 5. WOMEN'S REPRESENTATION IS CRUCIAL

Recognizing that women were targeted during the Genocide against the Tutsi and should play a significant role in reconstruction and reconciliation, post-genocide Rwanda instituted a 30% quota for women in elected office.<sup>58</sup> Soon, Rwanda more than doubled that minimum. By 2008, women had won 56% of seats in the parliament's lower house, including the speaker's chair, resulting in Rwanda becoming the first country in the world to elect a majority-women parliament.<sup>59</sup> Five years later, women attained 64% of seats in the same parliamentary chamber,<sup>60</sup> further cementing Rwanda's status as the world's leader in the

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<sup>56</sup> See, e.g., Ruth Seifert, *War and Rape: A Preliminary Analysis*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA* 54, 55 (Alexandra Stiglmeier ed., 1994) ("Studies show that rape is not an aggressive manifestation of sexuality, but rather a sexual manifestation of aggression. In the perpetrator's psyche it serves no sexual purpose but is the expression of rage, violence, and dominance over a woman. At issue is her degradation, humiliation, and submission.").

<sup>57</sup> Zachary D. Kaufman, *Protectors of Predators or Prey: Bystanders and Upstanders amid Sexual Crimes*, 92 S. CAL. L. REV. (forthcoming) (recommending tools and strategies to prod would-be bystanders to act instead as upstanders) [hereinafter Kaufman, *Protectors of Predators or Prey*]; Zachary D. Kaufman, Opinion, *No Cover for Abusers; California Must Close Gap in its Duty-to-Report Law*, S.F. CHRON., June 23, 2019, at A15 (identifying and proposing amendments to address shortcomings in California's duty-to-report law) [hereinafter Kaufman, *No Cover for Abusers*]; Zachary D. Kaufman, Opinion, *When Speaking Up is a Civic Duty*, BOS. GLOBE, Aug. 5, 2018, at K6 ("Given how often sexual abuse occurs with the tacit knowledge of third parties, it requires a collective response. A combination of rewards and duty-to-report laws could prompt would-be bystanders to get off the sidelines. #MeToo has been a powerful rallying cry, but upstanders also need to say #WeDo.") [hereinafter Kaufman, *When Speaking Up is a Civic Duty*].

<sup>58</sup> Elizabeth Bennett, *Rwanda Strides Towards Gender Equality in Government*, KENNEDY SCH. REV. (Aug. 14, 2014), <https://perma.cc/9A98-AWBQ> ("In 2003, the [Rwandan] government approved a new constitution that included a quota system for women at all levels of government. The legislation mandated that 30% of all representatives, including those in parliament, be women."). For accounts of the role of women in Rwanda before, during, and after the 1994 Genocide against the Tutsi, see, for example, SARA E. BROWN, *GENDER AND THE GENOCIDE IN RWANDA: WOMEN AS RESCUERS AND PERPETRATORS* (2018) [hereinafter BROWN, *GENDER AND THE GENOCIDE*]; SWANEE HUNT, *RWANDAN WOMEN RISING* (2017); Sara E. Brown, *Rwanda*, in *WOMEN IN CONFLICT AND PEACE* 123 (Jenny Hedström & Thiyumi Senarathna eds., 2015) [hereinafter Brown, *Rwanda*]; Swanee Hunt, *The Rise of Rwanda's Women: Rebuilding and Reuniting a Nation*, FOREIGN AFF., May-June 2014, at 150; Jane Dudman, *Society: Public Manager: Lessons From Rwanda's Female-Run Institutions*, GUARDIAN, July 2, 2014, at 36; Clea Simon, *Women Lead Rwanda's Renaissance*, HARV. GAZETTE (May 8, 2019), <https://perma.cc/BU9K-JGDH>.

<sup>59</sup> Brown, *Rwanda*, *supra* note 58, at 146; *Women in National Parliaments: Situation as of 31 December 2008*, INTER-PARLIAMENTARY UNION, <https://perma.cc/S9YQ-PVQ9> (archived July 5, 2019).

<sup>60</sup> Hunt, *The Rise of Rwanda's Women*, *supra* note 58, at 155.

proportion of women in a national legislature.<sup>61</sup> In 2018, Rwanda became only the second country in Africa (after Ethiopia) to feature a gender-balanced cabinet, with women holding 50% of ministerial positions.<sup>62</sup>

The same year that Rwanda achieved 64% female parliamentarians, women held only 18% of seats in the U.S. House of Representatives and only 20% in the U.S. Senate, leaving the American legislature ranked 80th in the world for women's representation.<sup>63</sup> While a record number (102) and percentage (approximately 23) of women now serve in Congress,<sup>64</sup> the proportion still trails the (equal) ratio of women in the country.<sup>65</sup> Given reports about the benefits of women's political leadership in Rwanda<sup>66</sup> and elsewhere (including the United States<sup>67</sup>), especially for initiatives to combat violence and foster gender equality, Americans should follow Rwanda's lead in promoting a greater role for women in government by identifying, recruiting, training, and supporting more female candidates.<sup>68</sup>

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<sup>61</sup> *Women in National Parliaments: Situation as of 1st December 2013*, INTER-PARLIAMENTARY UNION, <https://perma.cc/6WNS-MKB2> (archived July 5, 2019) [hereinafter IPU 2013].

<sup>62</sup> Ignatius Ssuuna, *Rwanda Unveils Gender-Balanced Cabinet with 50 Percent Women*, INDEPENDENT (Oct. 19, 2018, 5:19 PM), <https://perma.cc/FY2F-3VX6>.

<sup>63</sup> IPU 2013, *supra* note 61.

<sup>64</sup> Drew DeSilver, *A Record Number of Women Will Be Serving in the New Congress*, PEW RESEARCH CENTER (Dec. 18, 2018), <https://perma.cc/X3A2-QS9W>.

<sup>65</sup> *Quick Facts*, U. S. CENSUS BUREAU, <https://perma.cc/VBN9-3PMZ> (archived July 5, 2019) (noting that "female persons" comprise 50.8% of the population).

<sup>66</sup> Swanee Hunt, Opinion, *A Model of Prosperity with Women Leading the Way*, BOS. GLOBE, Apr. 6, 2014, at K6 (arguing that women "took the lead in rescuing Rwandan society over the past two decades" by "stabiliz[ing] their country, helping forge a more socially just, environmentally enlightened, and economically robust track"); Nina Storchlic, *Two Decades After Genocide, Rwanda's Women Have Made the Nation Thrive*, DAILY BEAST (July 12, 2017), <https://perma.cc/SC9B-JGZ3> (arguing that women in Rwanda "spearheaded the efforts to rebuild and heal" after the 1994 Genocide against the Tutsi).

<sup>67</sup> Karen Tumulty, Opinion, *In Colorado Politics, Power Has a New Look*, WASH. POST, Apr. 14, 2019, at A21 (suggesting that progress on family and climate change issues has been made in Colorado because the state legislature now has a female majority); Emily Wax-Thibodeaux, *Where Women Call the Shots*, WASH. POST, May 20, 2019, at A1 (quoting the Nevada Assembly Majority Leader as saying that none of the following bills "would have seen the light of day" but for the state legislature now having a female majority: bills combatting sexual assault, sex trafficking, sexual misconduct, banning child marriage, and examining the causes of maternal mortality); *Facts and Figures: Leadership and Political Participation*, UN WOMEN, <https://perma.cc/6ZH7-6JFH> (archived July 5, 2019) ("There is established and growing evidence that women's leadership in political decision-making processes improves them. Women demonstrate political leadership by working across party lines through parliamentary women's caucuses—even in the most politically combative environments—and by championing issues of gender equality, such as elimination of gender-based violence, parental leave and childcare, pensions, gender-equality laws and electoral reform.").

<sup>68</sup> Saskia Brechenmacher, *Tackling Women's Underrepresentation in U.S. Politics: Comparative Perspective from Europe*, CARNEGIE ENDOWMENT FOR INT'L PEACE 29-31 (Feb. 20, 2018), <https://perma.cc/VZ4H-B98G> (discussing strategies to increase women's representation in politics); Tina Brown, Opinion, *Can Women Save the World?*, N.Y. TIMES, Mar. 31, 2019, at SR6 ("In drawing on women's wisdom without apology and pushing that wisdom

## 6. GENOCIDE EDUCATION IS NECESSARY

“Those who do not remember the past are condemned to repeat it,”<sup>69</sup> the adage warns. Not only is it shocking how many people are ignorant of even basic facts about genocide, but it is thus also perilous.<sup>70</sup>

As it has been twenty-five years since the Genocide against the Tutsi, given the “youth bulge” in Rwanda<sup>71</sup> (like in other developing countries<sup>72</sup>), millions of people today (even inside the country) were unaware of the atrocity crimes as they occurred. For young and old alike, genocide education trains individuals to recognize threats of genocide and perhaps to prevent such crises.<sup>73</sup> Genocide ed-

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forward into positions of power, we can soothe our world and, maybe, even save it.”); Leila Fadel, *A First: Women Take the Majority in Nevada Legislature and Colorado House*, NPR (Feb. 4, 2019), <https://perma.cc/FAS9-CEHJ> (“The only way to achieve gender parity is to invest in women,” including through recruiting and training.).

<sup>69</sup> GEORGE SANTAYANA, *THE LIFE OF REASON OR THE PHASES OF HUMAN PROGRESS* 172 (Marianne S. Wokeck & Martin A. Coleman eds., 2011).

<sup>70</sup> Harry D. Wall, Opinion, *Ignorance About the Holocaust Is Growing*, CNN (Jan. 27, 2019), <https://perma.cc/X45B-ULAA> (citing survey data from the United States and Europe about ignorance of the Holocaust and noting that “[t]he concern isn’t only that the Holocaust is fading from memory, it’s that the lessons that can be applied to the ongoing human rights abuses and threats to democracy are also being lost”).

<sup>71</sup> Dan Ngabonziza, *At UN Assembly, Kagame Tasks World Leaders to Create Jobs for the Youth*, KT PRESS (Rwanda) (Sept. 25, 2018), <https://perma.cc/BSA2-3DQ2> (quoting Rwandan President Paul Kagame as saying that “more than 70 per cent of the [Rwandan] population is under age 30”).

<sup>72</sup> Kristin Lord, *Here Come the Young*, FOREIGN POL’Y, Aug. 12, 2016, <https://perma.cc/TJT3-T3ZQ> (“[S]ocieties across the Middle East, Africa, and South Asia are experiencing youth booms of staggering proportions . . .”).

<sup>73</sup> To this end, in June 2019, Aegis Trust (a nongovernmental organization working towards the prevention of genocide and other atrocity crimes) donated 40,000 textbooks to the Rwanda Education Board to promote genocide education in Rwandan schools. See, e.g., Michel Nkurunziza, *Rwandan Schools Set to Receive New Textbooks for Genocide, Peace Studies*, NEW TIMES (Rwanda) (June 12, 2019), <https://perma.cc/34RW-BTF7>. Prominent non-governmental organizations besides Aegis Trust engaged in genocide education include the Auschwitz Institute for Peace and Reconciliation, the Enough Project, Facing History and Ourselves, Genocide Watch (of which the author is a member of the advisory board), Humanity in Action (of which the author is a Senior Fellow and member of the American Planning Board), the International Association of Genocide Scholars (of which the author is a member), the International Network of Genocide Scholars (of which the author is a member), the University of Southern California’s Shoah Foundation, and Yad Vashem. See AUSCHWITZ INST. FOR PEACE & RECONCILIATION, <https://perma.cc/3BDM-C392> (archived July 27, 2019); ENOUGH PROJECT, <https://perma.cc/6BCV-DR28> (archived July 27, 2019); FACING HIST. & OURSELVES, <https://perma.cc/6LZW-9N7U> (archived July 27, 2019); GENOCIDE WATCH, <https://perma.cc/M9EV-QLVP> (archived July 27, 2019); HUMAN. ACTION, <https://perma.cc/69YZ-2DRA> (archived July 27, 2019); INT. ASS’N GENOCIDE SCHOLARS, <https://perma.cc/6Z8E-6E3L> (archived July 27, 2019); INT’L NETWORK GENOCIDE SCHOLARS, <https://perma.cc/8DRS-7YUH> (archived July 27, 2019); USC SHOAH FOUND., <https://perma.cc/M57S-V5N3> (archived July 27, 2019); YAD VASHEM, <https://perma.cc/GW6V-JH79> (archived July 27, 2019).

ucation can also help combat genocide denial. The UN Security Council has specifically condemned denial of the Genocide against the Tutsi and endorsed genocide education as a means of preventing such offenses.<sup>74</sup>

Genocide studies scholar Dr. Gregory Stanton identifies denial as the final stage of genocide.<sup>75</sup> He describes how denial “lasts throughout and always follows genocide” and he warns that denial “is among the surest indicators of further genocidal massacres.”<sup>76</sup> To combat denial, Stanton recommends two measures: justice and education.<sup>77</sup> At least eleven U.S. states have already mandated some form of genocide education,<sup>78</sup> and legislators in over a dozen other states have pledged to do so.<sup>79</sup> Some states even offer awards specifically for genocide education to praise and promote such teaching and learning.<sup>80</sup> In addition, a U.S. Congressperson has proposed a federal law that would create a grant program at the U.S. Department of Education to give teachers resources and training to instruct on genocide lessons.<sup>81</sup>

A third option to combat genocide denial—which is not mutually exclusive with justice and education—is to criminalize such rejections of truth. Over a

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<sup>74</sup> UNSC Resolution 2150, *supra* note 1, ¶ 2 (The UNSC “[c]ondemns without reservation any denial of this Genocide [against the Tutsi in Rwanda], and urges Member States to develop educational programmes that will inculcate future generations with the lessons of the Genocide in order to help prevent future genocides.”) (emphases in original).

<sup>75</sup> Gregory H. Stanton, *The Ten Stages of Genocide*, GENOCIDE WATCH, 1-2, <https://perma.cc/34TE-T5TD> (archived July 5, 2019) (identifying the following ten stages of genocide: classification, symbolization, discrimination, dehumanization, organization, polarization, preparation, persecution, extermination, and denial).

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

<sup>77</sup> *Id.*

<sup>78</sup> Sources differ on how many—and which—states have enacted such legislation. 50-STATE HOLOCAUST & GENOCIDE EDUCATION INITIATIVE, ANNE FRANK CTR. FOR MUTUAL RESPECT, <https://perma.cc/9JSC-HF7K> (archived July 2, 2019) (noting that the following ten states currently mandate such education: California, Connecticut, Florida, Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, and Rhode Island); Jackie Labrecque, *Oregon Lawmakers Mandate Holocaust, Genocide Education in Oregon Schools*, KATU (May 28, 2019), <https://perma.cc/7DD7-F2XN> (indicating that Oregon is the most recent and twelfth U.S. state to mandate such education); Eli Rosenberg, *Oregon Schools Will Be Required to Teach about the Holocaust: A 14-Year-Old Helped Make It Happen.*, WASH. POST (May 28, 2019), <https://perma.cc/XSW3-XHTD> (stating that the following eleven states currently mandate such education: California, Connecticut, Florida, Illinois, Kentucky, Michigan, New Jersey, New York, Oregon, Pennsylvania, and Rhode Island); *Why We Need Legislation to Ensure the Holocaust is Taught in Schools*, ANTI-DEFAMATION LEAGUE (Feb. 21, 2019), <https://perma.cc/6GEF-YJFY> (stating, in a piece published before Oregon passed its law mandating education on the Holocaust, that eleven states mandate Holocaust education).

<sup>79</sup> *Lawmakers from 20 States Pledge to Mandate Holocaust Education*, JEWISH TELEGRAPHIC AGENCY (Apr. 24, 2017, 12:32 PM), <https://perma.cc/XS7Z-77J4>.

<sup>80</sup> *E.g.*, *United High School Teacher Wins Award for Genocide Education*, LMTONLINE (updated May 16, 2019, 11:29 AM CDT), <https://perma.cc/K6K5-B486> (describing the Texas Holocaust and Genocide Commission’s Dr. Anna Steinberger Outstanding Texas Educator Award, “which recognizes the Texas teacher most dedicated to Holocaust and/or genocide education.”).

<sup>81</sup> Never Again Education Act, H.R. 943, 116th Cong. (2019).

dozen European countries and Israel have mandated that some form of genocide denial is illegal.<sup>82</sup> Many of those laws focus on the Holocaust. In April 2019, Belgium—which colonized Rwanda and exacerbated tensions between Hutu and Tutsi, in part by distributing ethnic identity cards<sup>83</sup>—broadened its Holocaust denial law to include any genocide recognized by an international tribunal, including the Genocide against the Tutsi.<sup>84</sup> The chief prosecutor of the UN International Residual Mechanism for International Criminal Tribunals—the successor to the ICTR and the UN International Criminal Tribunal for the Former Yugoslavia—has proposed an international law that would similarly criminalize denial of crimes recognized by international tribunals.<sup>85</sup> Proponents of these laws contend that genocide denial is a type of hate speech that insults victims. Supporters also assert that the laws help combat discrimination and prevent further violence against historically targeted minorities. But civil rights advocates argue that such laws violate rights of freedom of speech and expression. Other opponents believe that the laws do not work and that they turn violators into martyrs.<sup>86</sup>

Given the egregiousness and persistence of atrocity crimes, genocide education should be required everywhere. Whatever approach among justice, educa-

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<sup>82</sup> Michael J. Bazyler, *Holocaust Denial Laws and Other Legislation Criminalizing Promotion of Nazism*, THE WORLD HOLOCAUST REMEMBRANCE CENTER, <https://perma.cc/5LHN-7W8K> (archived July 5, 2019).

<sup>83</sup> See, e.g., DES FORGES, *supra* note 11, at 17, 37, 40, 42, 90; GOUREVITCH, *supra* note 3, at 56-57, 223; MELVERN, *supra* note 3, at 10-11.

<sup>84</sup> Loi portant des dispositions diverses en matière pénale et en matière de cultes, et modifiant la loi du 28 mai 2002 relative à l'euthanasie et le Code pénal social [Law to Make Various Provisions in Relation to Criminal Law and in the Matter of Religion, and Amending the Act of May 28, 2002 on Euthanasia and the Social Code] of May 5, 2019, MONITEUR BELGE [M.B.] [Official Gazette of Belgium], May 24, 2019. 50023, 50047; Alan Hope, *Law Would Make It Illegal to Deny the Rwanda and Srebrenica Genocides*, BRUSSELS TIMES (Apr. 7, 2019), <https://perma.cc/E8B4-WWYC> (stating that the proposal makes it a crime to “deny, minimise, justify or approve of genocide, crimes against humanity or war crimes recognised as such by an international tribunal”); Nasra Bishumba, *MICT Prosecutor Calls for Global Action Against Genocide Denial*, NEW TIMES (Rwanda) (June 7, 2019), <https://perma.cc/U7UQ-CSRG> (noting that the law in Belgium passed) [hereinafter Bishumba, *MICT Prosecutor*]; James Karuhanga, *Rwanda Welcomes Belgium Parliament's Vote to Criminalise Denial of Genocide Against Tutsi*, NEW TIMES (Rwanda) (updated Apr. 26, 2019), <https://perma.cc/26JT-D7MP>.

<sup>85</sup> Bishumba, *MICT Prosecutor*, *supra* note 84.

<sup>86</sup> For discussions of the controversy over genocide denial laws, see generally Paul Behrens, *Genocide Denial and the Law: A Critical Appraisal*, 21 BUFF. HUM. RTS. L. REV. 27 (2015); Sévane Garibian, *Taking Denial Seriously: Genocide Denial and Freedom of Speech in the French Law*, 9 CARDOZO J. CONFLICT RESOL. 479 (2008); Roger W. Smith, *Legislating Against Genocide Denial: Criminalizing Denial or Preventing Free Speech?*, 4 U. ST. THOMAS J. L. & PUB. POL'Y 128 (2010); Dylan Fotiadis, Note, *Undeniably Difficult: Extradition and Genocide Denial Laws*, 17 WASH. U. GLOBAL STUD. L. REV. 677 (2018); Sean Gorton, Note, *The Uncertain Future of Genocide Denial Laws in the European Union*, 47 GEO. WASH. INT'L L. REV. 421 (2015); Shant N. Nashalian, Note, *A Critique of Perinçek v. Switzerland: Incorporating an International and Historical Context is the More Prudent Approach to Genocide Denial Cases*, 24 SW. J. INT'L L. 147 (2018).



tion, and criminalization is taken, the point is that denial—an essential component of all genocides, including the Genocide against the Tutsi—must be vigorously and rigorously refuted.

## 7. POLITICAL WILL IS VITAL

As with Jews, Armenians, and others targeted for genocidal slaughter, the world abandoned Tutsi in their greatest time of need. It wasn't the world's superpowers, the UN, or Rwanda's neighbors that stopped the Genocide against the Tutsi. Rather, the Tutsi-led Rwandan Patriotic Front, commanded by now-President Paul Kagame, ultimately halted the atrocity crimes.<sup>87</sup>

Since 1994, the international community, including the United States, has developed more infrastructure, laws, norms, and technology to combat genocide. Soon after the Genocide against the Tutsi, the U.S. government established offices throughout the executive branch that focus on atrocity crimes, such as the State Department's Office of Global Criminal Justice (initially called the Office of War Crimes Issues),<sup>88</sup> the Justice Department's Human Rights and Special Prosecutions Section,<sup>89</sup> the FBI's International Human Rights Unit (previously called the Genocide War Crimes Program),<sup>90</sup> the Department of Homeland Security's Human Rights Violators and War Crimes Unit,<sup>91</sup> and the White House's Atrocities Prevention Board (an interagency body mandated to coordinate the government's efforts to combat atrocity crimes).<sup>92, 93</sup>

In 1998, 120 states around the world adopted the Rome Statute (the treaty underlying the world's first permanent international criminal tribunal, the International Criminal Court),<sup>94</sup> which entered into force four years later.<sup>95</sup> In 2005, the UN General Assembly (UNGA) unanimously adopted a resolution, the 2005

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<sup>87</sup> GOUREVITCH, *supra* note 3, at 20 (“The genocide had been brought to a halt by the Rwandese Patriotic Front, a rebel army led by Tutsi refugees from past persecutions . . .”); MELVERN, *supra* note 3, at 201, 204, 206.

<sup>88</sup> *Office of Global Criminal Justice*, U.S. DEP'T STATE, <https://perma.cc/3DCR-WS9Q> (archived July 2, 2019).

<sup>89</sup> *Human Rights and Special Prosecutions*, U.S. DEP'T JUST., <https://perma.cc/UA7E-KU7N> (archived July 2, 2019).

<sup>90</sup> *International Human Rights Violations*, FED. BUREAU INVESTIGATION, <https://perma.cc/H83B-J3LX> (archived July 2, 2019).

<sup>91</sup> *Human Rights Violators and War Crimes Unit*, U.S. IMMIGRATION & CUSTOMS ENF'T, <https://perma.cc/JV39-T7K2> (archived July 2, 2019).

<sup>92</sup> White House Office of the Press Secretary, *Presidential Study Directive on Mass Atrocities*, OBAMA WHITE HOUSE ARCHIVES (Aug. 4, 2011), <https://perma.cc/NA8A-M9U9>.

<sup>93</sup> Kaufman, *Legislating Atrocity Prevention*, *supra* note 36 (tracing the establishment of these and other offices within the U.S. government to prevent or respond to genocide and other atrocity crimes and discussing how the Trump Administration has considered or decided to dissolve certain of this infrastructure).

<sup>94</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

<sup>95</sup> *About the ICC*, INT'L CRIM. CT., <https://perma.cc/7ZT3-EWM6> (archived July 2, 2019).

World Summit Outcome, part of which declared “the Responsibility to Protect” (R2P) doctrine.<sup>96</sup> The United States and all other signatories pledged to defend their own people and, through the UN, foreign populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>97</sup> In 2004 and 2008, respectively, the UN itself created Special Advisors on both Genocide Prevention and R2P.<sup>98</sup> In 2012, U.S. President Barack Obama issued a directive declaring that “[p]reventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States.”<sup>99</sup> Over the past several years, satellite and other technology has improved detection of atrocity crimes.<sup>100</sup>

But we must not believe that these and other developments in infrastructure, laws, norms, and technology are sufficient to prevent or even mitigate genocide. First, each advancement is controversial, and some are weak or flawed. For example, the invocation of the R2P doctrine has been criticized as pretext for military aggression and colonialist intervention.<sup>101</sup> Second, political will remains vital to preventing and stopping genocide. That crucial ingredient in the genocide prevention formula remains elusive.<sup>102</sup> The American public must demand that its representatives—and the international community—meaningfully counteract genocide.

#### 8. SUPPORTING SURVIVORS IS FUNDAMENTAL

The damage wrought by genocide physically, emotionally, and financially is unfathomable. After the Genocide against the Tutsi in 1994, survivors required basic needs, such as food, water, and housing.<sup>103</sup> A 2018 survey found that 35% of survivors between 25 and 65 years old reported mental health problems.<sup>104</sup>

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<sup>96</sup> *Responsibility to Protect*, COUNCIL FOR SEC. COOPERATION ASIA PAC., <https://perma.cc/SG8Q-ZE2Z> (archived July 2, 2019).

<sup>97</sup> G.A. Res. 60/1, 2005 World Summit Outcome ¶¶ 138-40 (Sept. 16, 2005).

<sup>98</sup> *Special Adviser of the Secretary-General on the Prevention of Genocide*, U.N. OFF. ON GENOCIDE PREVENTION & RESP. TO PROTECT, <https://perma.cc/FJL6-BMJV> (archived July 2, 2019) (indicating that the first such Special Adviser, Juan Méndez, was appointed in 2004); *Special Adviser of the Secretary-General on the Responsibility to Protect*, U.N. OFF. ON GENOCIDE PREVENTION & RESP. TO PROTECT, <https://perma.cc/M4C3-8K4L> (archived July 2, 2019) (indicating that the first such Special Adviser, Edward Luck, was appointed in 2008).

<sup>99</sup> White House Office of the Press Secretary, *supra* note 92.

<sup>100</sup> Kaufman, *Legislating Atrocity Prevention*, *supra* note 36.

<sup>101</sup> Saira Mohamed, *Taking Stock of the Responsibility to Protect*, 48 STAN. J. INT’L L. 319, 335 (2012).

<sup>102</sup> Kaufman, *Legislating Atrocity Prevention*, *supra* note 36.

<sup>103</sup> Nita Bhalla, *Rwanda’s Genocide Survivors Tormented by Horrors 25 Years On*, REUTERS (Apr. 6, 2019, 2:40 PM), <https://perma.cc/FHH6-KXT9>.

<sup>104</sup> *Id.*

Such harm isn't just limited to direct survivors; studies show that genocide trauma can be intergenerational.<sup>105</sup>

The UNGA has recognized the attention that the international community should pay to genocide survivors. In 2005, the UNGA adopted a resolution proclaiming “basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law.”<sup>106</sup> This resolution urges the international community to support measures to ensure the “safety, physical and psychological well-being and privacy” of such victims and their families.<sup>107</sup> It also articulates victims' rights to remedies, including access to justice and reparation for harm suffered.<sup>108</sup>

Like with other forms of justice, full restitution for genocide is impossible. Indeed, these post-genocide objectives can be interrelated. An emphasis on retributive justice for *génocidaires* may come at the expense of survivors' other reparative justice needs.<sup>109</sup> With compassion and respect for their dignity, human rights, and autonomy, we should help genocide survivors heal and rebuild as much as possible through providing physical and mental health services, housing, economic compensation, access to justice, and other programs. Non-governmental organizations, such as genocide survivors' funds,<sup>110</sup> facilitate such assistance. However, these groups require additional support, such as direct donations from governments, the development and humanitarian aid sector, the private sector, and concerned citizens around the world.

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<sup>105</sup> Bar-Ilan Univ., *Parental CPTSD Increases Transmission of Trauma to Offspring of Tutsi Genocide Survivors*, SCIENCE DAILY (Jan. 9, 2019), <https://perma.cc/J9RM-QQTH> (citing Amit Shrira et al., *Complex PTSD and Intergenerational Transmission of Distress and Resilience Among Tutsi Genocide Survivors and Their Offspring: A Preliminary Report*, 271 PSYCHIATRY RES. 121 (2019)).

<sup>106</sup> G.A. Res. 60/147 (Dec. 16, 2005).

<sup>107</sup> *Id.* ¶ 10.

<sup>108</sup> *Id.* ¶¶ 11-24.

<sup>109</sup> Noam Schimmel, *International Human Rights Law Responsibilities of Non-Governmental Organizations: Respecting and Fulfilling the Right to Reparative Justice in Rwanda and Beyond*, 8 CAMBRIDGE INT'L L.J. 104 (2019); Noam Schimmel, *The Moral Case for Restorative Justice as a Corollary of the Responsibility to Protect: A Rwandan Case Study of the Insufficiency of Impact of Retributive Justice on the Rights and Well-Being of Genocide Survivors*, 11 J. HUM. RTS. 161 (2012).

<sup>110</sup> Several organizations focus on assisting survivors of the Genocide against the Tutsi, including Survivors Fund, AVEGA Agahozo, AERG, Solace Ministeries, IBUKA, Uvisenga N'Manzi, Kanyarwanda, GAERG, ASRG Mpore, Duhonzanywe, and Dukundane Family. See, e.g., GENOCIDE SURVIVORS FOUND., <https://perma.cc/QBE9-48F2> (archived July 2, 2019); IBUKA, <https://perma.cc/77NV-JNMK> (archived July 2, 2019); *Local Partners*, SURVIVORS FUND, <https://perma.cc/PZ72-GMEH> (archived July 2, 2019).

## 9. UPSTANDERISM IS IMPERATIVE

Dr. Martin Luther King, Jr., declared: “Man’s inhumanity to man is not only perpetrated by the vitriolic actions of those who are bad. It is also perpetrated by the vitiating inaction of those who are good.”<sup>111</sup> Such bystanderism enables atrocity crimes.<sup>112</sup>

Like all other genocides,<sup>113</sup> the Genocide against the Tutsi featured instances of rescue and resistance.<sup>114</sup> An individual who engages in such conduct is increasingly known as an “upstander”: “A person who speaks or acts in support of an individual or cause, particularly someone who intervenes on behalf of a person being attacked or bullied.”<sup>115</sup> Rwandans and foreigners,<sup>116</sup> men and women,<sup>117</sup> Tutsi and Hutu,<sup>118</sup> and Muslims and Christians<sup>119</sup> engaged in such defiance rather than compliance. For example, the only American who reportedly

<sup>111</sup> THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR. 229 (Clayborne Carson ed. 2001).

<sup>112</sup> See, e.g., STEVEN K. BAUM, THE PSYCHOLOGY OF GENOCIDE: PERPETRATORS, BYSTANDERS, AND RESCUERS 153-80 (2008) (discussing various types of actors who enable or mitigate genocide).

<sup>113</sup> RESISTING GENOCIDE: THE MULTIPLE FORMS OF RESCUE, inside flap (Jacques Semelin et al. eds., 2013) (“Every genocide in history has been notable for the minority of brave individuals and groups who put their own lives at risk to rescue its potential victims.”).

<sup>114</sup> For discussion of rescuers during the Genocide against the Tutsi, see generally, for example, AFRICAN RIGHTS, TRIBUTE TO COURAGE (2002); BAUM, *supra* note 112, at 203-04; JEAN-MARIE KAYISHEMA & FRANÇOIS MASABO, THE RWANDAN RIGHTEOUS ‘INDAKEMWA’ PILOT STUDY (2010); Kaufman, *Protectors of Predators or Prey*, *supra* note 57; Charles Kabwete Mulinda, *Crossing a Border to Escape: Examples from the Gishamvu and Kigembe Communities of Rwanda*, in RESISTING GENOCIDE, *supra* note 113, at 345; Daniel Rothbart & Jessica Cooley, *Hutus Aiding Tutsis During the Rwandan Genocide: Motives, Meanings and Morals*, 10 GENOCIDE STUD. & PREVENTION 76 (2016). For discussion of the complexity of defining a rescuer and the difficulty in classifying actors during the Genocide against the Tutsi, see, for example, Lee Ann Fujii, *Rescuers and Killer-Rescuers During the Rwandan Genocide*, in RESISTING GENOCIDE, *supra* note 113, at 145.

<sup>115</sup> *Upstander*, LEXICO, <https://perma.cc/A6QE-587X> (archived July 2, 2019). For a discussion of the word’s origin, see Kaufman, *Protectors of Predators or Prey*, *supra* note 57.

<sup>116</sup> KAYISHEMA & MASABO, *supra* note 114, at 14 (noting that non-natives in Rwanda, such as individuals from other African countries and Europe, participated in rescuing Tutsi).

<sup>117</sup> For discussion of women rescuers during the Genocide against the Tutsi, see, for example, BROWN, GENDER AND THE GENOCIDE IN RWANDA, *supra* note 58, at 54-90; Brown, *Rwanda*, *supra* note 58, at 135-39; Sara Brown, *Survival and Rescue*, in WOMEN AND GENOCIDE 189 (Donna Gosbee & JoAnn DiGeorgia-Lutz eds., 2016). For discussion of rescuers during the Genocide against the Tutsi by sex, see, for example, KAYISHEMA & MASABO, *supra* note 114, at 22.

<sup>118</sup> See, e.g., KAYISHEMA & MASABO, *supra* note 114, at 14 (noting that both Hutu and Tutsi rescued Tutsi).

<sup>119</sup> See, e.g., *id.* at 14 (noting that three Catholic priests rescued several hundred Tutsi); Zachary D. Kaufman, *Islam Is (Also) a Religion of Peace*, FOREIGN POL’Y (Aug. 4, 2016, 4:41 PM), <https://perma.cc/K8DJ-5LAA> (discussing Muslim rescuers during the Genocide against the Tutsi).

remained in Rwanda during the genocide, missionary Carl Wilkens, is credited with saving hundreds of people, mostly children.<sup>120</sup>

A pilot study in 2010 of a small portion of Rwanda found 372 rescuers during the genocide;<sup>121</sup> some scholars estimate that there may have been thousands throughout the country.<sup>122</sup> IBUKA (meaning “remember” in Kinyarwanda)—the umbrella organization of genocide survivor groups in Rwanda—has honored rescuers in ceremonies and has given them cows, a symbol of high esteem in the local culture.<sup>123</sup>

We must study and raise awareness about such upstanderism. Doing so could facilitate a more correct and complete record of the crisis, promote reconciliation and healing after the tragedy, help express a survivor community’s gratitude to upstanders, bolster the legitimacy of accountability for wrongdoers, improve understanding of how upstanderism occurs and may be supported, and help identify possible model behavior.<sup>124</sup>

#### 10. “NEVER AGAIN” IS UNFULFILLED

My fellow genocide prevention scholars and practitioners almost always end anniversary reflections, like this one, by invoking “Never Again.” I will as well, but not in the way the phrase is usually used.

“Never Again” is typically employed to declare that humanity will no longer permit the deliberate targeting of a group for extermination. But given that genocides have continued, this pronouncement has proven insufficient. Genocide has persisted since Armenia, since the Holocaust, since Cambodia, since

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<sup>120</sup> CARL WILKENS, I’M NOT LEAVING (2011) (Carl Wilkens’s self-published autobiography); Megha Mohan, *Rwanda Genocide: The Gisimba Orphanage That Saved 400*, BBC NEWS (Apr. 7, 2011), <https://perma.cc/5HD6-DVK6>; Ros Wynne-Jones, *Rwanda Heroes: 17 Years on*, GUARDIAN (June 21, 2011, 3:29 PM EDT), <https://perma.cc/U3J4-CKY9>.

<sup>121</sup> KAYISHEMA & MASABO, *supra* note 114, at 21.

<sup>122</sup> Nicole Fox & Hollie Nyseth Brehm, *Lessons on the 25th Anniversary of the Rwandan Genocide*, MOBILIZING IDEAS (Apr. 17, 2019, 9:00 AM), <https://perma.cc/Y3FN-USWC> (“While many Rwandans actively participated in genocidal violence by killing their neighbors, friends and fellow parishioners, hundreds—if not thousands—made a vastly different decision: they actively saved others who were persecuted.”).

<sup>123</sup> KAYISHEMA & MASABO, *supra* note 114, at 12.

<sup>124</sup> Kaufman, *Protectors of Predators or Prey*, *supra* note 57; Kaufman, *No Cover for Abusers*, *supra* note 57; Kaufman, *When Speaking Up is a Civic Duty*, *supra* note 57.

Rwanda. Just a year after the Genocide against the Tutsi, genocide was perpetrated in Srebrenica.<sup>125</sup> Since then, genocides have been committed in Darfur<sup>126</sup> and against the Yazidi<sup>127</sup> and Rohingya.<sup>128</sup>

We have no reason to believe that genocide won't recur. In fact, some scholars predict that climate change will increase the likelihood of genocide as groups compete for scarce resources and land.<sup>129</sup>

So, drawing from the previous nine lessons, I invoke "Never Again" differently.

Never Again must we take hate speech lightly.

Never Again must we think preventing or stopping genocide is impossible.

Never Again must we allow impunity for genocide.

Never Again must we fail to combat sexual abuse.

Never Again must we decline to promote women's political representation.

Never Again must we disregard genocide education.

Never Again must we permit political unwillingness to address genocide.

Never Again must we neglect genocide survivors.

Never Again must we be bystanders to genocide.

And Never Again must we declare "Never Again" unless we remember—and implement—these lessons.

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<sup>125</sup> Resolution on Srebrenica, EUR. PARL. DOC. P6\_TA(2009)0028 (2009) (calling on European Council and Commission to commemorate anniversary of Srebrenica genocide).

<sup>126</sup> H.R. Con. Res. 467, 108th Cong. (2004) (declaring that "the atrocities unfolding in Darfur, Sudan, are genocide").

<sup>127</sup> U.N. HUM. RTS. COUNCIL, *'They Came to Destroy': ISIS Crimes Against the Yazidis*, U.N. Doc. A/HRC/32/CRP.2, 1 (June 15, 2016) (concluding that "ISIS has committed the crime of genocide as well as multiple crimes against humanity and war crimes against the Yazidis").

<sup>128</sup> FORTIFY RIGHTS, *'THEY GAVE THEM LONG SWORDS': PREPARATIONS FOR GENOCIDE AND CRIMES AGAINST HUMANITY AGAINST ROHINGYA MUSLIMS IN RAKHINE STATE, MYANMAR* 134 (2018), <https://perma.cc/T3S2-2R75> (identifying twenty-two Myanmar officials "who should be investigated for genocide and crimes against humanity against Rohingya in Rakhine State").

<sup>129</sup> See, e.g., Jürgen Zimmerer, *Climate Change, Environmental Violence and Genocide*, 18 INT'L J. HUM. RTS. 265, 265 (2014) (arguing that "environmental violence is amongst the main driving forces of collective violence and that climate change will dramatically increase the likelihood of genocide occurring in areas at risk").