



FEUC FACULDADE DE ECONOMIA
UNIVERSIDADE DE COIMBRA

Margarida Albuquerque Gomes Antolin Hourmat

A critique of transitional justice and the victim-perpetrator dichotomy: the case study of Rwanda

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To my parents for everything

Aos meus pais, por tudo

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RESUMO

No seguimento de experiências de violência extrema, no contexto de regimes políticos autoritários e violações sistemáticas de direitos humanos, algumas sociedades são confrontadas com questões relativas ao legado desse passado de violência, cujo impacto se faz sentir diretamente ao nível dos seus processos de (re)conciliação e reconstrução pós-conflito: o que será lembrado e esquecido, na construção da memória e verdade(s) sobre o conflito, e na transmissão do conhecimento às gerações futuras? O que deve acontecer aos indivíduos que planejaram e aos que exerceram a violência? Que tipo de crimes serão julgados? Que tipo de processos judiciais e mecanismos de reparação serão estabelecidos e com que propósitos? Como é que uma sociedade pode (re)estabelecer os seus laços sociais intra-comunitários e até que ponto é que indivíduos que se percebem mutuamente como inimigos alguma vez se poderão reconciliar? Estas são questões relacionadas com o fenómeno de justiça de transição, que se tem vindo a estabelecer enquanto norma global para as sociedades lidarem com o passado. A justiça de transição não só é uma área pouco teorizada como a sua teoria e prática dependem, em larga medida, de pressupostos adquiridos e partilhados com o modelo liberal internacional de construção da paz (*peacebuilding*). Esta dissertação procura problematizar mais especificamente um destes pressupostos, a dicotomia “vítima-perpetrador” e os processos de categorização inerentes ao modelo dominante de justiça de transição, em geral, tal como este é pensado e implementado ao nível internacional e nacional. Com base no estudo de caso do Ruanda, o nosso objetivo é demonstrar as insuficiências e limitações desta visão dicotómica para interpretar dinâmicas profundas de conflito considerando, ao invés, a diversidade de experiências de violência e vitimização que esta dicotomia exclui e refletindo sobre o seu impacto nas perspectivas de (re)conciliação pós-conflito, em particular da sociedade Ruandesa. De forma a atingir o objetivo a que nos propomos, a análise desta dissertação será orientada pela seguinte pergunta de partida: de que forma, no contexto de sociedades pós-conflito, como o Ruanda, pode uma narrativa de vitimização dominante ser desafiada por excluir uma diversidade de experiências de vitimização e violência, e que repercussões pode esta contestação originar para as perspectivas de (re)conciliação nesta sociedade? A nossa

análise estará alicerçada em três hipóteses: (i) a dicotomia “vítima-perpetrador” é um elemento fundamental das iniciativas de transição pós-conflito apoiados pela ONU e implementados no contexto de intervenções internacionais; (ii) o Ruanda no pós-genocídio é caracterizado por uma narrativa nacional dominante de vitimização, baseada numa dicotomia “vítima-perpetrador” que é insuficiente para compreender a diversidade de experiências de violência e vitimização vivida por diferentes grupos sociais, excluindo-as e deslegitimando-as; e (iii) os processos de justiça de transição orientados segundo esta dicotomia provocam novas formas de re-vitimização, por um lado, invisibilizando e deslegitimando certas experiências de violência e vitimização e, por outro lado, tomando estas categorias socio-políticas como absolutas, limitando assim a agência política dos indivíduos e a sua (re)integração social, colocando em causa o processo de (re)conciliação em sociedades divididas em geral, e na Ruandesa em particular. A validação destas hipóteses será baseada numa abordagem qualitativa à investigação, com base na interpretação qualitativa de informação textual recolhida através de fontes primárias e secundárias, e também na análise de discurso. O enquadramento teórico e conceptual com base no qual articularemos a nossa crítica combina contributos teóricos de duas disciplinas distintas mas complementares: a psicologia social, mais precisamente o trabalho de Carlos Beristain sobre a abordagem psicossocial, e a teoria das relações internacionais, especificamente a vertente mais crítica da abordagem construtivista. Da nossa análise decorreu a validação das nossas hipóteses iniciais, sendo que demonstrámos assim como a dicotomia “vítima-perpetrador” se tem tornado um elemento fundamental nas iniciativas de justiça de transição apoiadas pela ONU; discutimos e detalhámos as narrativas dominantes de justiça de transição e vitimização estabelecidas no Ruanda e as suas dinâmicas de exclusão e, por último, refletimos sobre como os processos de justiça de transição orientados por esta dicotomia promovem processos de revitimização e limitam as perspectivas de longo prazo de reconciliação em sociedades divididas, como exemplificado pelo Ruanda no pós-genocídio.

Palavras-chave: justiça de transição; dicotomia; construção da paz; narrativa; Ruanda.

ABSTRACT

Following experiences of extreme violence, in the context of authoritarian political regimes and systematic human rights violations, societies are faced with questions regarding the legacy of that past of violence, which directly impact on the processes of (re)conciliation and post-conflict rebuilding: what will be remembered and forgotten, in the construction of memory and truth(s) relating to the conflict, and in the transmission of knowledge to younger generations? What should happen to those individuals who planned and those who enacted the violence? What will be the range of crimes under investigation? What kind of judicial processes and mechanisms for reparations will be established and with what purposes? How can a community (re)establish its social intra-community ties and to what extent and in which way can individuals who perceive each other as enemies ever reconcile? These questions fall within the scope of the phenomenon of transitional justice, which has been establishing itself as a global norm on how societies should deal with the past. Not only is the field of transitional justice under theorized but its dominant discourse on theory and praxis relies heavily on core assumptions taken for granted, many of which borrowed from liberal peacebuilding. Our dissertation seeks to problematize one of these, in particular, the “victim-perpetrator” dichotomy and the categorizing inherent to the dominant transitional justice model thought of and implemented at both international and national levels. Drawing on Rwanda as a case study, this dissertation will aim at demonstrating the insufficiencies and limitations of this dichotomised view in understanding deeper conflict dynamics, by looking into the diversity of violence and victimhood experiences that this dichotomy excludes and by reflecting upon its impact on the prospects of post-conflict (re)conciliation, specifically with regards to contemporary Rwandan society. In order to achieve our proposed aim, the analysis in this dissertation will be guided by the following research question: In what way, in the context of a post-conflict society such as Rwanda, can an established dominant victimhood narrative be challenged for excluding the diversity of victimization and violence experiences, and what repercussions may that dispute have on the prospects of (re)conciliation in this society? Our analysis will be grounded on three working hypotheses: (i) the dichotomy “victim-perpetrator” is a

fundamental element in UN-sanctioned post-conflict transition initiatives implemented in the context of international interventions; (ii) post-genocide Rwanda is characterized by a national dominant victimhood narrative, based on a “victim-perpetrator” dichotomy which is insufficient to understand the full diversity of violence and victimhood experiences from different social groups, therefore excluding and delegitimizing them; and (iii) transitional justice processes framed by this dichotomy promote new forms of victimization, on the one hand, by making invisible (and, therefore, illegitimate) certain experiences of violence and victimhood and, on the other hand, by essentializing these sociopolitical categories, which ends up limiting individuals’ political agency and social reintegration, hindering the reconciliation process in divided societies and, particularly, in Rwanda. The validation of these hypotheses will be based on a qualitative research approach, in this way relying on the qualitative interpretation of textual (qualitative) data collected both from the literature and from primary evidence as well as discourse analysis. The theoretical and conceptual framework supporting our critique combines contributions from two distinct but, complementary fields of study: social psychology, in particular the work of Carlos Beristain on the psychosocial approach, and international relations theory, drawing on the more critical strand of constructivism. Our discussion successfully validated our three initial hypotheses, therefore asserting how the “victim-perpetrator” dichotomy has become a fundamental element in UN-sanctioned transitional justice initiatives; discussing and detailing the dominant transitional justice and victimhood narratives in Rwanda and their dynamics of exclusion and, finally, reflecting on how transitional justice processes framed by this dichotomy promote re-victimization and hinder long-term reconciliation in divided societies such as post-genocide Rwanda.

Keywords: transitional justice; dichotomy; peacebuilding; narrative; Rwanda.

ABBREVIATIONS AND ACRONYMS

CDR – *Coalition pour la Défense de la République* (Coalition for the Defense of the Republic)

FARG – *Fonds de soutien et d'assistance aux rescapés du génocide perpétré contre les Tutsi et autres crimes contre l'humanité commis entre le 1er octobre 1990 et le 31 décembre 1994* (Fund for the support and assistance to the survivors of the genocide against the Tutsi and other crimes against humanity committed between 1st October 1990 and 31st December 1994)

CAURWA¹ – *Communauté des Autochtones Rwandais* (Community of the Rwandese Autochthons)

COPORWA – *Communauté des Potiers du Rwanda* (The Rwandese Community of Potters)

HRC – Human Rights Council

ICC – International Criminal Court

ICTR – International Criminal Tribunal for Rwanda

MDR-PARMEHUTU – *Mouvement Démocratique Républicain-Parti du Mouvement de l'Emancipation Hutu* (Republic Democratic Movement)

MRND² – *Mouvement Révolutionnaire National pour le Développement* (National Revolutionary Movement for Development)

NURC – National Unity and Reconciliation Commission

OHCHR – Office of the High Commissioner for Human Rights

PBC – Peacebuilding Commission

PBF – United Nations Peacebuilding Fund

RPF – Rwandan Patriotic Front

UN – United Nations

UNAMIR – United Nations Assistance Mission in Rwanda

UNGA – United Nations General Assembly

UNSC – United Nations Security Council

UNSG – United Nations Secretary General

¹ The previous designation of COPORWA, changed in 1995.

² After 1991, the name was changed to *Mouvement républicain national pour la démocratie et le développement* (National Republican Movement for Democracy and Development).

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1. INTRODUCTION

Following experiences of extreme violence, in the context of authoritarian political regimes and systematic human rights violations, societies are faced with questions regarding the legacy of that past of violence, which directly impact on the processes of (re)conciliation and post-conflict rebuilding (Weinstein and Stover, 2004): what will be remembered and forgotten, in the construction of memory and truth(s) relating to the conflict, and in the transmission of knowledge to future generations? What should happen to those individuals who planned and those who enacted the violence? What will be the range of crimes under investigation? What kind of judicial processes and mechanisms for reparations will be established and with what purposes? How can a community (re)establish its social bonds? To what extent and in which way can individuals who perceive each other as enemies ever reconcile?

These questions fall within the scope of transitional justice, which is being increasingly established as a fundamental element in the global human rights discourse (Nagy, 2008) as well as in contemporary peace processes (Young, 2013). In this vein, it has also been, in a way, integrated as a core component in the United Nations (UN) peacebuilding model (Sharp, 2014) and, in this context, transitional justice processes and mechanisms have been implemented in a variety of ways according to the different post-conflict scenarios of international intervention.

Through the “Guidance Note of the Secretary General: United Nations Approach on Transitional Justice”, the UN (2010) defines transitional justice as the:

(...) processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure *accountability*, serve *justice* and achieve *(re)conciliation*. (2010: 2, emphasis added)

The international community has been heavily invested in the field (Subotić, 2009), in its search for a system of dealing with the past, which has amounted to a proliferation of transitional justice models and the establishing of a “transitional justice industry” (Subotić, 2009: 24). Williams and Nagy (2012) credit the move to establish the International Criminal Court (ICC) for the institutionalization of this ongoing role of the

international community in transitional justice. At various levels throughout the world, the task of implementing mechanisms and processes of transitional justice has been supported by the UN system, notably the Office of the High Commissioner for Human Rights (OHCHR), the Peacebuilding Commission (PBC) and the Peacebuilding Fund (PBF). This involvement includes a wide array of initiatives, such as “truth” recovery, judicial prosecution, reparations programmes, institutional reform and lustration as well as national consultations (UN, 2009). Achieving the three main goals established in the definition above entails establishing a collective memory of the conflict, an interpretation of its causes and nature, as well as, necessarily, identifying all the actors involved and the different roles they played. This process entails posing a series of challenging questions: who will be held *accountable* before whom? How will *justice* be administered and on behalf of whom? Who needs to be *reconciled*? That is, achieving these goals requires a process of categorization that leads to the construction of a “victim-perpetrator” dichotomy which can be profoundly excluding and limited in its ability to capture the diversified experiences of violence and victimhood and, therefore, in promoting a process of (re)conciliation.

1.1. Goals

Bearing these discussions in mind, this dissertation seeks to problematize the “victim-perpetrator” dichotomy and the inherent processes of categorization that underlie the dominant transitional justice model, implemented at both the international and national levels. Drawing on Rwanda as a case study, this dissertation will aim at demonstrating the insufficiencies and limitations of this dichotomised view of societies in understanding deeper conflict dynamics. This will be accomplished by looking into the diversity of violence and victimhood experiences that this dichotomy excludes and by reflecting upon its impact on the prospects of post-conflict (re)conciliation, specifically with regards to contemporary Rwandan society.

In order to achieve our proposed aim, the analysis in this dissertation will be guided by the following research question: in what way, in the context of a post-conflict society such as Rwanda, can an established dominant victimhood narrative be challenged

for excluding a diversity of victimization and violence experiences, and what repercussions may that dispute have on the prospects of (re)conciliation, particularly in this society?

The argument put forward is that processes of categorization underlying the design and implementation of the dominant (retributive) model of transitional justice assume a logic of mutual exclusion between the concepts of “victim” and “perpetrator”. Furthermore, dominant victimhood narratives, based on this dichotomy, engage in additional instances of victimization by, on the one hand, rendering invisible certain victimization experiences and denying the diversity of victimhood and, on the other hand, limiting the political agency of both “victims” and “perpetrators”. Ultimately, this leads to the constraining of individuals’ political participation and national and local (re)integration based on an essentialist view of their conflict (and, subsequently, post-conflict) identities. Our analysis will thus be conducted on the basis of three working hypotheses:

- The “victim-perpetrator” dichotomy is a fundamental element in UN-sanctioned post-conflict transition models implemented in the context of international interventions;
- Post-genocide Rwanda is characterized by a national dominant victimhood narrative, based on a “victim-perpetrator” dichotomy which is insufficient to understand the full diversity of violence and victimization experiences from different social groups, therefore excluding and delegitimizing them;
- Transitional justice processes framed by this dichotomy promote new forms of victimization, on the one hand, by rendering invisible (and, therefore, illegitimate) certain experiences of violence and victimization and, on the other hand, by essentializing the sociopolitical categories “victim” and “perpetrator”, which ends up limiting individuals’ political agency and social reintegration, therefore hindering the reconciliation process in divided societies and, particularly, in Rwanda.

1.2. Case study: post-conflict Rwanda

Levis Onegi (2012) observes how many countries in Africa have turned to transitional justice in their efforts to address past injustices and grievances (notwithstanding the variety of their experiences). However, few transitional justice cases have managed to capture the international institutional (and scholarly) imaginary quite in the same manner as post-genocide Rwanda, even though the same cannot be said for when violence was being perpetrated and genocide was unfolding (Des Forges, 1999 *apud* Lemarchand, 2013). Internationally, “Rwanda’s image” (Buettner, 2011: 64 *apud* Kester, 2013: 224) is made up of a combination of piles of dead bodies and memorials. Not only has post-genocide Rwanda risen to the status of “donor darling” (Campioni and Noack, 2012: 4) but it has, along with its current President, Paul Kagame, achieved an “international cult status” (Campioni and Noack, 2012: 4), while the country has been cast as a model of peace, prosperity and development to other countries (Vergos, 2011). Therefore, this research proposes to engage Rwanda for the purpose of empirical validation, by revisiting its success story of post-genocide rebuilding and reconciliation.

In the case of Rwandan society, dominant conflict and victimhood narratives have been structured along ethnic cleavages, with “victim” and “perpetrator” overlapping with Tutsi and Hutu identities (Eltringham, 2004; Hilker, 2009), respectively, both at the international and national levels. This discourse renders invisible not only the experiences of other groups, such as the Twa community and Rwandans born out of inter-ethnic relationships, but also the diversity of experiences within perceived Tutsi and Hutu groups (Zorbas, 2004; Parent, 2010; King 2014), based on the notion of a “Hutu vision” and a “Tutsi vision” of the past (Hilker, 2009). These invisibilities entail that only certain victimhood experiences and, consequently, claims are considered legitimate and, despite their self-perception as victims, many Rwandans are only partially recognized as such, or not at all, an issue to which we will return in chapter 3.

The Twa community falls within this latter case and has merited particular attention in our analysis to the extent that it constitutes a minority that has been historically segregated and discriminated in Rwanda, occupying therefore an unfavourable social position within Rwandan society which hinders its victimhood and

rights-based claims. In addition, the Twa not only experienced but also inflicted direct violence during the 1994 genocide and have endured a process of post-genocide re-victimization. The latter process derives, on the one hand, from the fact that the Twa continue to occupy a marginal political, social, economic and cultural position in post-conflict Rwandan society and, on the other hand, from the fact that their experiences and victimhood claims are undermined and left unacknowledged due to the official post-genocide policy of abolishing ethnic identities.

In the sense that it does not grasp the multiplicity and complexity of violence and victimhood experiences, this dichotomized view of post-genocide Rwandan society as being divided between “victims-survivors-Tutsis” and “perpetrators-*génocidaires*-Hutus” (Eltringham, 2004) will undermine the long-term prospects of (re)conciliation in Rwanda.

1.3. Literature review

Since the 1980s and 1990s, and particularly following Neil Kritz’s (1995) three-volume publication *Transitional justice: how emerging democracies reckon with former regimes*, that the mechanisms and processes associated with transitional justice have been at the centre of heated debates on the academic and political realms (Forsberg, 2003), despite the fact that transitional justice practices had already been documented in other democratization processes outside Latin America and Eastern Europe (Balasco, 2013). The successive debates that have been moulding this field have been centred on a binary discourse (Turner, 2013; Buckley-Zistel *et al.*, 2014): “justice vs peace”, “retributive justice vs restorative justice”, “war vs peace”, “international vs national”, “national vs local” and the object of our analysis, “victim vs perpetrator”.

This dichotomist vision has been extensively criticized for its excessively simplified and polarized view of the experiences of violence and the processes of political transition and conflict resolution (Huyse, 2001; Biggar, 2003; Forsberg, 2003; Weinstein and Stover, 2004; Huyse and Salter, 2008; Schwedersky, 2012) and has been re-framed as describing a *continuum* between ideal-types (Zehr, 2001). The dichotomy “justice vs peace” dominated the initial debate in the field, both at the academic and political levels. At the same time, as transitional justice is constituting itself as a norm and a global

project in the realms of human rights, conflict resolution and post-conflict transitions (Nagy, 2008), it has also prompted debates not only on the explanatory and operational insufficiencies of these dichotomies but also regarding: i) the expansion of its agenda and goals (Balasco, 2013; Turner, 2013); ii) the deconstruction of the concepts of “transitional justice” and “justice” themselves; iii) the invisibilities shaped by its discourse namely in connection to the role of international actors in internal conflicts; iv) and its narrow definition of violence (focused on violations of civil and political rights) which excludes from mainstream discourse the acknowledgement of structural violence, violations of cultural, economic and social rights, and gender-based violence (Turner, 2013), therefore focusing solely on the more physical and direct consequences of violence and leaving the deeper root causes of conflict largely unaddressed (Balasco, 2013).

This dissertation is located within the recent critical wave in transitional justice debates, as it aims to build a critique of one of its most fundamental assumptions: the “victim-perpetrator” dichotomy. The identity categories of “victim” and “perpetrator” have been largely employed throughout these debates without the inherent processes of categorization and definition of “victim” and “perpetrator” status being questioned. Instead, the two have been largely taken as *a priori*. In *Traditional Justice and Reconciliation after Violent Conflict: Learning from Africa Experiences*, Huyse and Salter (2008) discuss this point, when presenting the position of those who support a retributive approach to a process of transitional justice:

[...] a post-conflict society has a moral obligation to prosecute *and* punish the perpetrators, because retribution is exactly what most victims want. It serves to heal their wounds and to restore their self-confidence because *it acknowledges who was right and who was wrong* and, hence, *clears the victim of any labels of ‘criminal’* that were placed on them by the authorities of the past or, indeed, by rebel groups or the new elites. (2008: 3, emphasis added)

In recent times, the “victim-perpetrator” dichotomy has been, therefore, criticized for promoting a reductive and simplified understanding of the dynamics of conflict, promoting an artificially neat moral division between “who was right and who was wrong”, and the establishment of dominant victimhood and perpetration discourses, marginalizing and making invisible diverse and local experiences, dynamics and

interpretations of violence (van der Merwe and Vienings, 2001; van der Merwe, 2002, 2003; Beristain, 2000, 2006, 2010; Humphrey, 2003; Govier and Verwoerd, 2004; Nwogu, 2010; Ramos, 2013, Moffett, 2014). In their contributions over the “community” and the “local” as fundamental levels of analysis and the need for transitional justice processes to accommodate and address different expectations, claims and interests between and within different societal levels, Beristain (2000, 2006, 2010), van der Merwe (2002, 2003) and Weinstein and Stover (2004) reject this dominant static and rigid view of the concepts and processes of victimization and perpetration, underscoring the need to contextualize them in the local experiences, dynamics and interpretations of violence.

1.4. Theoretical and conceptual framework

The theoretical and conceptual framework supporting our critique is constituted by contributions from two distinct but, as our analysis will demonstrate, complementary fields of study: social psychology and international relations theory. On the one hand, we will draw on some key conceptual contributions presented by Carlos Martín Beristain (e.g. 2000, 2006, 2010) in his psychosocial approach to humanitarian assistance in post-conflict societies. On the other hand, we understand that the psychosocial lenses through which we will enact our critique are limited in their ability to fully problematize the “victim-perpetrator” dichotomy (not questioning the way in which it comes to be enacted) and its political implications and processes. Therefore, in order to secure the intended depth of our analysis, our approach will be complemented with a constructivist framework, particularly its critical and discursive strands. The analysis in this dissertation will, in this sense, significantly benefit from a theoretical and conceptual framework based on a combination of contributions from different fields of study. Even though this dissertation will not focus on the context of humanitarian assistance within which Beristain develops his approach, we will rely on some of the questions raised in his analysis of post-conflict societies³ in order to build our own conceptual critique.

³ In fact, Beristain focuses on societies dealing with trauma, in general, including those struggling with a violent past and the consequences of natural catastrophes. Only the first will be considered for the purposes of our analysis.

Moreover, in spite of the fact that Beristain's reflections are essentially grounded on his work in the context of post-conflict societies in Latin America, this dissertation will draw on them as the theoretical framework through which to analyse the post-genocide context in Rwanda. By adopting a psychosocial approach this analysis will identify the limitations of the "victim-perpetrator" dichotomy in constructing post-conflict narratives on victimhood and will shed deeper light into the processes and implications of this categorization. As a case study, post-genocide Rwanda directly engages with some of the questions raised by the most recent debates in the field of transitional justice.

1.5. Research methodology

The analysis on this dissertation will be based on a qualitative research approach, in this way relying on the qualitative interpretation (Neuman, 2007) of textual (qualitative) data collected both from scholarly literature and from primary evidence. The latter consists, on the one hand, of documental and legislative output from the United Nations system, spanning between 1985 and 2011. On the other hand, it comprises legislation of the Republic of Rwanda, speeches delivered by the President of Rwanda (the majority of which in the context of the annual genocide commemorations) as well as policies and studies commissioned by the National Unity and Reconciliation Commission (NURC), which is one of the most relevant transitional justice mechanisms in the country, between 1999 and 2015. The primary evidence will be the object of a discourse analysis in specific instances when this analysis is relevant to strengthening the specific ideas we are putting forth and the argument, in general.

Our research is driven by what could be considered an eminently theoretical endeavour, spanning the first two chapters which situate and tease out our specific object of study, the "victim-perpetrator" dichotomy, in the wider transitional justice discussion. In engaging Rwanda as a case study, we intend to illustrate and provide an empirical grounding to our theoretical and conceptual discussion, considering that this reinforces our argument more solidly. It should be noted how our critique aims at questioning certain underpins and assumptions imbued in the theory and praxis of transitional justice, drawing on the Rwandan context as a case in point, in a deductive logic. In the sense that

we are building upon extensive previous theorization in the field while contributing to its review and re-interpretation on a critical vein, foregrounding certain invisibilities, the purpose of our study is essentially explanatory (Neuman, 2007).

Due to resource limitation and time constraints, we were unable to employ further qualitative techniques for data gathering when analyzing our case study, such as interviews or questionnaires with country officials and local organizations which could be considered to be representatives of different social groups whose marginalized violence and victimhood experiences will be explored throughout this dissertation. However, even if the opportunity would have risen, circumstances in the field would still have made this task particularly difficult considering the potentially detrimental political and legal implications for Rwandans to publicly identify themselves as Tutsi, Hutu or Twa and to steer away from the official historical and victimhood narratives (issues that will be addressed thoroughly in chapter 3). In light of these constraints, we sought to ground our analysis in a solid and diversified combination of both academic literature and primary evidence, while also taking advantage of important information gathered by other researchers through their own fieldwork. From our point of view, by anchoring our analysis in qualitative interpretation based on an interdisciplinary theoretical and conceptual framework and a relevant case study, we guarantee the pertinence and value of our contribution.

2. CONSTRUCTING DISCOURSES AND (IN)VISIBILITIES IN DOMINANT TRANSITIONAL JUSTICE AND PEACEBUILDING THEORY AND PRAXIS

“Amatégeko arusha amabuye kuremèra” (Laws are heavier than stones)
A Rwandan proverb (Crépeau Bizimana, 1979:101).⁴

The purpose of this chapter is to introduce the reader to the dominant contemporary institutional and normative models of international post-conflict peacebuilding and transitional justice, which are critiqued throughout the sections and chapters that follow. This chapter will by no means engage in a thorough historical review and discussion of the conceptualization and critique of contemporary peacebuilding, which others have endeavoured elsewhere (e.g Newman *et al.*, 2009; Richmond, 2010; Richmond and Mitchell, 2012); instead, we aim at demonstrating how contemporary transitional justice practices have increasingly become an integral part of post-conflict peacebuilding theory and practice, and how the theorization and practice of the former have become embedded in the normative liberal framework of the latter, contributing in this way to the reification of some of the underlying assumptions that characterize the field of transitional justice, some of which are shared with liberal peacebuilding.

One of these, which constitutes the focus of our analysis, is the assumption that reduces, on the one hand, the political and complex roles played by actors in a conflict setting and, on the other hand, their experiences of violence, victimhood and perpetration, to a single dichotomist “victim-perpetrator” framework, purported as neutral, legalist and objective. As discussed below, this process of oversimplification and de-politicization is grounded in a liberal normative framework characterized by legalism, a dualistic morality, a narrow conception of violence rooted in the privileging of violations of political and civic rights over economic, social and cultural rights and a teleological notion of transitional justice as representing a transition from a “barbaric” and “uncivilized” past to a civilized and morally superior liberal market democracy (Hinton, 2011).

⁴ Originally in Kinyarwanda and French. Translated to English from the French by Jean-Paul Martinon, http://www.jeanpaulmartinon.net/Site/Rwanda__Proverbs.html [17 February 2015].

2.1. Transitional justice: from exceptional origins to a global norm

Tracing a detailed account of the historic conceptual evolution of transitional justice is beyond the scope not only of this chapter in particular, but of our analysis in general. Nevertheless, it is important to sketch the main developments in theory and practice, the “critical cycles” (Teitel, 2003: 69) and “transitions” (Balasco, 2013: 198) of the field that will allow us to identify the dominant model of transitional justice and some of the underlying assumptions that have been constructed and reinforced over time, namely through its integration and reproduction in the liberal peacebuilding model.

A reasonable starting point for this discussion would be to determine exactly what we mean by “transitional justice”. While the conceptual discussion can be traced back to ancient Greece (Corradetti *et al.*, 2015), the theory and practice that have been shaping the field are recent (Williams and Nagy, 2012). Since Ruti Teitel first coined the term, in her path-breaking work *Transitional Justice* (2000), defining “transitional justice” (much like peacebuilding) has constituted a constant challenge in the field, subject to an increasing broadening scope (Balasco, 2013). Teitel (2003: 69) argued that transitional justice constituted a “conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel, 2003: 69). Departing from Teitel’s earlier definition, which is considered one of the narrowest (Nagy, 2008), transitional justice has also come to be regarded as a “legal, political and moral dilemma about how to deal with historic human rights violations and political violence” in transitional societies (Sriram, 2007 *apud* Sharp, 2014: 6), while also one of the broadest definitions, put forth by Rama Mani (2005: 512), defines it as “in the context of post-conflict peacebuilding (PCPB), the central requirement is that of fostering an ‘inclusive’ political and civic community after the division and fragmentation of war”.

In one of the few conceptualizations openly acknowledging a relationship between transitional justice and peacebuilding, Geneviève Parent (2010: 277) posits transitional justice as “a number of peacebuilding measures that are internationally, nationally, and/or locally rooted, such as international tribunals, amnesties, truth commissions, criminal trials, reparation programmes and memorials”. In order to sketch a

brief historical conceptual evolution of the field, we draw mainly from the genealogy of transitional justice elaborated by Teitel (2003) as well as the analysis of the “waves” within transitional justice identified by Lauren Balasco (2013). Teitel identifies three main phases in the conceptual evolution of transitional justice, post-1945 lasting throughout the Cold War, post-Cold War equated with the “third wave of democratization” in the 1980s and 1990s and the third phase starting in the beginning of the XXI century until the present.

In the first phase, transitional justice emerges associated with the Nuremberg and Tokyo *ad hoc* tribunals and particularly as a part of the nation-building project for post-war Germany, marking the height of international justice and setting the precedent for future mechanisms of international accountability. At this point, transitional justice is considered the result of exceptional and unique political and international circumstances, which the ensuing Cold War context would change.

What Teitel terms the “second phase” in this conceptual process is defined by Balasco as the first wave of “normative exploration”, when transitional justice becomes equated with moving societies from authoritarian to more democratic regimes, redressing the previous regime’s human rights violations as a result of political repression and, finally, promoting a new sense of state based on the principles of rule of law and respect for human rights in the context of an inclusive and reconciled society. At this point, democratization became also an explicit aim of transitional justice, bringing together policymakers, scholars and activists. The processes of dealing with past abuses were, nevertheless, seen as a result of elite bargaining and constrained by the (elite) actors leading and controlling the transition process. The latter was re-framed as falling within the scope of action of national and, particularly, local actors. These tensions constituted the “justice vs peace” dilemma that characterized this second phase, with the proliferation of truth commissions and amnesties in detriment of criminal trials. Other dilemmas that marked this phase came from the inclusion of certain issues such as healing, reconciliation and peace as aspirations and expectations for transitional justice mechanisms beyond accountability, framed within a human rights discourse, such as the right to the truth enshrined in resolution 2005/66 of the UN Commission on Human Rights (UN Commission on Human Rights, 2005) and the establishing of the first Special

Rapporteur on the promotion of the right to truth, justice, reparation and guarantees of non-recurrence whose mandate was approved by resolution 18/7 of the Human Rights Council (HRC, 2011). Transitional justice and the project of nation-building and liberalization became definitely connected beyond the exceptional circumstances of rebuilding post-war Germany.

Since the beginning of the XXI century, transitional justice has reached a third phase which has entailed a normalization of transitional justice processes in face of the persistence of violence and conflict. This latter phase encompasses the second and third “waves” on “growth and introspection” and the “methodological turn”, respectively; while the field of transitional justice is being ripped by internal challenges coming from a growing critical interdisciplinary strand of research, it has become, nevertheless, “the dominant language in which the move from war to peace is discussed in the early twenty-first century” (Turner, 2013: 194), coming a long way from its exceptional origins to become a paradigm of the rule of law (Lundy and McGovern, 2008), and the mainstream frame for transitional societies that have experienced past human rights violations. It is no longer a matter of *whether* to pursue justice, but *how* and *when* – through what kind of particular intervention (e.g Sharp, 2014). In sum, transitional justice is argued to have undergone a complex process of mainstreaming, institutionalization, professionalization and bureaucratization (e.g McEvoy, 2007; Rubli, 2012; Sharp, 2014, 2015) resulting in it having become a “global project” (Nagy, 2008).

2.1.1. Transitional justice in international post-conflict peacebuilding

This increasingly institutionalized nature of transitional justice as an international norm for state practice is part of the broader normative change in world politics based on a human rights and legalist discourse in international relations (Subotić, 2009). And it is at this point, both in academia and praxis, that the concepts of transitional justice and post-conflict peacebuilding seemingly begin to overlap, to the point that, according to Thallinger (2007), in order for a post-conflict peacebuilding process to succeed, it requires the deployment of diverse transitional justice efforts. Nevertheless, the fields of transitional justice and peacebuilding have often and until recently been framed largely in

opposition to one another (García-Godos and Sriram, 2013) and few transitional justice authors conceive their research within a peacebuilding framework, owing much to the prolonged “peace vs justice” debate that has historically shaped the field – the dilemma is usually framed as a trade-off (Biggar, 2003; Turner, 2013) between pursuing the goal of peace (e.g brokering a cease-fire agreement or sustaining some degree of negotiated formal peace) and that of accountability (e.g bringing those responsible for crimes to justice, often through trials) in societies negotiating peace agreements and transitioning from armed conflict or authoritarian regimes. A further conceptual oversimplification (Thallinger, 2007) is reflected on the approach that treats transitional justice and post-conflict peacebuilding as clashing opposites, considering the former as essentially backward-looking and the latter as a future-looking process; despite this record, both fields are now increasingly regarded as complementary and mutually reinforcing (Thallinger, 2007; Sharp, 2013). Transitional justice, therefore, has recently become the topic of an emerging wave of official and quasi-official international documents (de Greiff, 2010), including many issued by the UN, specifically through the Secretary-General (UNSG), the General Assembly (UNGA) and the Office of the High Commissioner for Human Rights (OHCHR). Considering the United Nations’ historical responsibility for organizing the majority of peacekeeping missions (Diehl, 2007), it is important to consider how transitional justice has been framed by the UN through its policy documents, in the context of the most recent “age of peacebuilding” (Philpott, 2007), following the UN system’s internal “revolution” which had as “manifesto” the 1992 *Agenda for Peace*, by former UNSG Boutros Boutros-Ghali (Philpott, 2007).

Three central documents provide a systematic account of the United Nations’ theory and praxis regarding transitional justice: the report by the Secretary General, *The rule of law and transitional justice in conflict and post-conflict societies* (2004), the *Guidance Note of the Secretary General – United Nations Approach to Transitional Justice* (2010) and a report by the Secretary General *The rule of law and transitional justice in conflict and post-conflict societies* (2011), that intends to assess the progress in implementing the recommendations on the 2004 UNSG report. The three of them set the tone for the approach of the United Nations to transitional justice, which is inextricably linked with the advancement of the rule of law, a relationship which is explicit in the title

of both reports and also on the *Guidance Note of the Secretary General* (2010: 2): “Transitional justice processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law.” Transitional justice initiatives are virtually equated with the rule of law, as the first are “(...) well-established components of the wider United Nations rule of law framework and indispensable elements of post-conflict strategic planning” (UN, 2011: 6). According to the same document (2010), pursuing transitional justice is normatively rooted in the UN Charter, in international law (international human rights law, international humanitarian law, international criminal law and international refugee law) and is in line with the rights-based approach enshrined in other UN tools and documents (right to justice, right to truth, right to reparations and right to guarantees of non-recurrence of violations). The 2004 UNSG report presents the definition of transitional justice endorsed by the United Nations, as the:

[...] full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. (UNSG, 2004: 4)

Despite defending the deployment of a diversity of judicial and non-judicial transitional justice mechanisms, the emphasis on all three documents is on a legalist, judicial and constitutional approach to transitional justice. Furthermore, the oversimplified “victim” and “perpetrator” categorization is endorsed throughout all three documents, without any reference to other nuanced categories and any caveats with regards to the complexities and grey areas inherent in this process of categorization. The liberal underpinnings of UN theory and praxis are subtly reflected on the claim, advocated on the 2011 UNSG report, that:

Transitional justice initiatives promote accountability, reinforce *respect for human rights* and are critical to fostering the strong levels of civic trust required to *bolster rule of law reform, economic development and democratic governance*. (2011: 6, emphasis added)

Even though the 2004 UNSG report expresses the desire to “systematically record, analyze and apply these [transitional justice] lessons in Security Council mandates, peace

processes and the operations of United Nations peace missions” (UNSG, 2004: 2), the specific areas or dimensions within these peace missions where transitional justice initiatives would be incorporated seem to remain under-specified and theorized. In particular when considering the conceptual framework of UN post-settlement peacebuilding, based on a model that comprises the “military/security”, “political/constitutional”, “economic/social” and “psychosocial” dimensions (Woodhouse and Ramsbotham, 2005; Miall *et al.*, 1999; Cravo, 2003), transitional justice strategies seem to cluster around the “political/constitutional” dimension. What is certain is that the realms of the psychological and of the psychosocial as well as the intersubjective experiences of conflict are largely marginalized by national and international peacebuilders (Parent, 2010). And some in the literature seem to regard transitional justice as a mere, if important, component of the wider peacebuilding effort (Johansen, 2010; Philpott, 2010).

Therefore, it becomes clear how transitional justice has increasingly been argued to be associated with post-conflict (liberal) peacebuilding (Young, 2013), as a UN-sanctioned global phenomenon, a routine element in the post-conflict “check-list” (Sharp, 2014) and as a core element of post-conflict peacebuilding (Sharp, 2013). According to García-Godos and Sriram (2013) and Sriram (2014), many peacebuilding processes and missions now include some sort of transitional justice mechanisms. Sharp (2015) goes as far as to identify the emergence of a “transitional justice as peacebuilding” narrative, with both having become normalized and institutionalized strategies to address conflict and mass atrocity and having a significant overlap in terms of origins and assumptions. Furthermore, according to Sharp (2015), the UN has not only developed a considerable track record of expertise in transitional justice throughout the past 20 years but also a set of policy tools aimed at promoting a deeper connection between transitional justice and peacebuilding, as illustrated by the documents we analysed above. Andrieu (2010) argues that transitional justice has joined the wider “peacebuilding package” under the same top-down state-building approach and liberal normative framework while embracing the concepts of liberal peacebuilding and democratic peace theory in a rather acritical manner (Rubli, 2012).

2.1.2. *A dominant model of transitional justice*

While the findings of Olsen *et al.* (2010) confirm the empirical normalization of transitional justice, demonstrating how transitional justice initiatives and mechanisms have been adopted following virtually every period of authoritarianism or violence, from 1970 to 2007, a recent trend of critical transitional justice scholars has been committed to questioning some of the normative assumptions of the field (Balasco, 2013). We frame our study in the pursuit of this effort. Nevertheless, the range of critiques is too vast for the scope of this work; for the purpose of our own analysis, we will be focusing next on highlighting some of the liberal underpinnings of the field and further deconstructing them in the following chapters.

In light of the previous discussion, it is possible to conclude that the latter phase in the development of transitional justice has been characterized by the consolidation of a contemporary dominant model of transitional justice. The latter is defined by assumptions which constitute the growing common sense developing in the field (de Greiff, 2012) that have only recently started to be questioned by a critical strand of literature and research (Balasco, 2013), conceptual frameworks, preferred mechanisms and expected outcomes; in other words, what some authors critically term as the transitional justice “toolbox” (Miller, 2008; Hinton, 2011; Sharp, 2014) or “toolkit” (Shaw and Waldorf, 2010; Sriram, 2014). Contemporary transitional justice has been characterized as overwhelmingly dominated by a retributive approach to justice (Parent, 2010; Engstrom, 2013), and a legalist and positivist understanding of the latter (McEvoy, 2007; Lundy and McGovern, 2008; Andrieu, 2010), with justice being essentially equated to legal accountability and, consequently, with individual accountability as the main guiding principle and a trend of criminal prosecution for those allegedly responsible for serious human rights violations (Engstrom, 2013). While Parent (2010) argues that trials have historically been the preferred mechanism deployed in transitional justice initiatives, other authors point out the relevance of truth commissions (Mani, 2005; Lundy and McGovern, 2008). Essentially legal processes are seen as adequate to deal with individual and social harm (Nagy, 2008) based on a Western-centric, top-down and apolitical human rights discourse (McEvoy, 2007). Transitional justice initiatives rely overwhelmingly on

international experts deciding upon local processes and conceptualizations of justice, peace or reconciliation, as part of the professionalization of the field (Andrieu, 2010; Rubli, 2012). The dominance of legalism places a tremendous emphasis on redressing violations of civic and political human rights while socioeconomic concerns stemming from violations of economic, social and cultural rights remain largely marginalized and unaddressed in an equal footing (Nagy, 2008; Sharp, 2014, 2015; Sriram, 2014). In sum, the “law” is perceived as a “neutral” and “safe” way to engage other countries, with the process of normalization of transitional justice entailing a judicialization of international relations and a rise in interventionism explicitly through the legal sphere, with the latter’s implications removed from the wider social, political and economic structural context (Lundy and McGovern, 2008).

Transitional justice has risen to the position of global norm (Subotić, 2009) and dominant transitional parlance, owing much to a series of deep-rooted underlying assumptions in the field (Rubli, 2012) that have acquired a “status of common sense” (Theidon, 2009: 295), to the point that transitional justice is considered to be under theorized (de Greiff, 2012) and under-verified, resting mostly on wishful thinking and beliefs with hardly any empirical grounding (Thoms *et al.*, 2008 *apud* Rubli, 2012: 3). Some of these assumptions are rooted in the legacy of earlier political transitions in Latin America, which came to equate transition to the processes of democratization and political and economic liberalization (as discussed in the previous section). In fact, Sharp (2013, 2015) argues that this has become the “paradigmatic transition” of transitional justice and that the narrative of democratic transition has contributed to shaping “the core paradigms and normative assumptions in the field” (Sharp, 2014: 149) as well as “dominant practices and conceptual boundaries” (Sharp, 2015: 1). However, it may also be argued that the incorporation of a dominant model of transitional justice as a fundamental element in the post-conflict agenda and international peacebuilding conceptualization and practice has helped to further root these assumptions in a largely liberal normative framework (Sriram, 2014). We now turn to explore this relationship and to more clearly identify some of these underlying normative assumptions that have been shaping the field.

2.2. The liberal normative framework of a dominant model of transitional justice

2.2.1. *The underlying assumptions of the model*

The power of discourse resides in rendering something as natural and taken for granted (Fetherston, 2005) and we argue that transitional justice theory and practice have been (re)producing a dominant discourse resting on (implicit) assumptions, particularly on ideas of transition and justice (Buckley-Zistel *et al.*, 2014), grounded on commonsensical Western thinking, that only more recently has started to be acknowledged and questioned. This discourse seems to be deeply embedded in a liberal framework which combines the legacy of the earlier 1980s and 1990s transitions and of its parent movement of human rights (Miller, 2008), the dominant paradigm of “transitional justice as liberal democracy building” (Sharp, 2015), the uncritical endorsement of the concepts of liberal peacebuilding and democracy theory (Rubli, 2012) and Western liberalism (Nagy, 2008), seeped overwhelmingly in Judeo-Christian principles (Theidon, 2009).

One of the most enduring assumptions that reflects a liberal modern project (McEvoy, 2007) is the role reserved to the law in transitional justice. On the one hand, it is based on a limited conception of justice (Nagy, 2008), relying excessively on a narrow notion of accountability and individual guilt (Engstrom, 2013) and an overall retributive conceptualization of justice (e.g Parent, 2010; Amstutz, 2005 *apud* McGuffey, 2012), in an attempt by international actors to implement a form of justice akin to the one practiced in the “developed world” (Weinstein and Stover, 2004). On the other hand, the expected role of the law runs deeper than the mere upholding of what Alexander Hinton (2011) describes as the liberal normative good of the “rule of law”; according to Kieran McEvoy (2007), the law, in times of transition, represents a conceptualization of what we would like the social world to be. In this sense, it encourages the notion of a rationalized and ordered world based on universal understandings, with claims of objectivity, rationality, certainty, universality and uniformity which, McEvoy (2007) further argues, are sorely lacking in many transitional societies and explain the seductive power of legalism. Therefore, transitional justice mechanisms become necessary in helping “backwards”

societies to transition to liberal, “civilized” and democratic ones (Hinton, 2011), by privileging the liberal normative goods of rule of law, peace, reconciliation, civil society, human rights, justice and combating impunity. Through the law, these societies may be welcomed back into the community of nations (McEvoy, 2007). In this sense, transitional justice embodies strong normative of teleology (Hinton, 2011; Rubli 2012; Sharp, 2015) as well as hierarchy (Hinton, 2011). In fact, according to Rosalind Shaw and Lars Waldorf (2010), this teleological notion of progress and evolution and dualistic moral vision are part of the constitutive nature of transitional justice. According to this paradigm, transitions have an end-point, a liberal status to achieve, with transitional justice mechanisms becoming a means to reach it, by adopting a prescriptive and technocratic approach (Nagy, 2008; Rubli, 2012). Moreover, they acquire a managerial logic focusing on rationality and efficiency, disconnected from local and national power struggles and assuming to be operating on a perceived political and social vacuum (Rubli, 2012).

2.2.2. Managing people: the (in)visibilities within the “victim-perpetrator” dichotomy

With this recent concern for “impact agendas”, transitional justice has also been instrumentally recast as a tool for peacebuilding (Engstrom, 2012). Law is de-politicized, considered to be neutral and objective (Nagy, 2008; Rubli, 2012; Turner, 2013; Sharp, 2014) and transitional justice as a whole becomes, inherently, an apolitical project (McEvoy, 2007). In order to pursue that managerial neutral logic, a wide range of complex political questions are boiled down to narrow and objective legal frames of action (Rubli, 2012): a narrow scope of violence and justice is maintained (for instance, focusing on violations of civic and political rights and obscuring violations of economic, social and cultural rights) since thinking otherwise would entail pursuing projects of social justice transformation (Andrieu, 2010); the aims of transitional justice are often framed as apolitical – conflict resolution and the rule of law (Sharp, 2014), while the idea of justice as legal justice is so firmly entrenched that it prevents meaningful public political engagement in transitional societies, with politics being foregrounded in public life (Turner, 2013). Chrisje Brants (2013: 2) summarized this when reflecting on how “[...]”

dealing with atrocity within the (narrow) limits of legal discourse implies a reduction of the human experience that can never fully address the multitude and complexity of issues involved in justice [...]". Owing to the notion of the "end of History" (Fukuyama, 1992), many of these conflicts in whose aftermath transitional justice is implemented are considered to be beyond politics (Kaulemu, 2012) and ideology, and can therefore be settled through one neutral concept of justice that delegitimizes all others (Turner, 2013).

The categorization of people into "liberal democratic identity categories" (Hinton, 2011: 8) is part of that process of oversimplification of reality, and includes the categorization of "victims" and "perpetrators" (Hinton, 2011). In fact, generally speaking, transitions from conflict tend to be oversimplified (Kaulemu, 2012). This oversimplification is reflected in the "victim-perpetrator" lens (Kaulemu, 2012) through which transitional justice thinks of and engages with post-conflict societies: the dichotomy is one of the basic assumptions underlying the legalist hegemonic discourse embedded in transitional justice (Brants, 2012). Moreover, not only is the "victim-perpetrator" dichotomy "a recurring feature that structures much of the transitional justice discourse and practice" (Shaw and Waldorf, 2010: 8), but the whole prevailing discourse of transitional justice is defined by a "ferocious apartheid of binary oppositions" (Spivak, s.d. *apud* Theidon, 2009: 296), overly dominated by dichotomies and binary oppositions (Turner, 2013; Buckley-Zistel *et al.*, 2014) and framed by an underlying general opposition of good vs evil (Kaulemu, 2012; Turner, 2013). In the context of these conflicts, deemed "post-ideological", transitional justice mechanisms create a narrative made up of good victims and evil perpetrators (Humphrey, 2003; Govier and Verwoerd, 2004; Nwogu, 2010; Tabak, 2011; Moffet, 2014), (re)produced by the global media when reporting violence as "an epic battle between good and evil as personified in the victims and perpetrators of societal conflict" (Nwogu, 2010: 279). Furthermore, identities are essentialized and limit the voices of victims and perpetrators to these externally ascribed and rigid roles of what it means to be a victim and a perpetrator, in a certain situation (Nwogu, 2010).

In this sense, labelling and dichotomizing people are both processes of simplifying the sociocultural complexity in transitional societies, reducing them to more manageable categories (Hinton, 2011). After all, in the aftermath of conflict, what counts

as a crime and who counts as a victim or a perpetrator is rarely straightforward (Brants *et al.*, 2013). Therefore, what is seemingly presented as an objective policy (Parent, 2010) reflects what Zinaida Miller (2008: 281) terms the “definitional power” of transitional justice mechanisms and processes, for instance, in fixating the parameters constituting and dividing people into “victims” and “perpetrators” and defining what will be regarded as crime (over which investigations and prosecutions should be pursued). Hannah Franzki and Maria Carolina Olarte (2014: 217) touch on this point, when discussing the political economy of transitional justice: “[i]n consonance with the wider ‘liberal peace’ project, transitional justice then prescribes and seeks to render ‘natural’ political decisions that could have been very distinct.” Therefore, “victim” and “perpetrator” identities and status are by no means “natural”: deciding who is what, when and why are essentially political choices (Servaes and Birtsch, 2008): victimhood is politically constructed (Moffet, 2014). The neutral, objective, rational, apolitical dominant discourse of transitional justice has been obfuscating and foregrounding the politics and power of transitional justice (Nagy, 2008; Engstrom, 2013; Sharp, 2014). Nagy (2008: 286) reaffirms this when stating how “in the determination of who is accountable for what and when, transitional justice is a discourse and practice imbued with power”. In his cautioning against the oversimplification of transitional justice, David Kaulemu (2012) urges us to acknowledge that its processes are inherently and inevitably political.

It becomes clear how the centrality of the “victim-perpetrator” dichotomy in the dominant model of transitional justice processes, with its inherent limitations, can be traced back to the normative liberal frame whose principles and assumptions have been shaping the field, as we have detailed in our previous discussion. The international dimension at play in the process of building this hegemonic discourse must be recognized. The history of transitional justice has placed it at the intersection of the work of scholars, human rights activists and policy-makers (McAuliffe, 2013), with some calling attention to the specific role of the academia in (re)producing transitional justice interventions (Franzki and Olarte, 2014).

According to Onegi (2012: 3), a significant share of transitional justice literature assumes Western criminal justice principles to be “the building blocks of any transitional justice process”. This observation seems to be reflected on what Thomason (2015)

identifies as the “primary question” that has been driving the philosophical (and mainstream, we would add) scholarship on transitional justice:

“[d]o we properly achieve justice by arresting and prosecuting the *perpetrators* of genocide and mass atrocity, or do we properly achieve justice by reconciliation between *victims* and *perpetrators* in favour of establishing peace?” (Thomason, 2015: 71, emphasis added)

The point we would like to make here is that the founding and, still to a significant extent, subsequent debates that have been (re)shaping the field of transitional justice have been confined within the “victim-perpetrator” frame, resonating with Robert Cox’s (1981) idea that “it is perfectly possible to be critical and never step outside the bounds of your own discourse” (Cox, 1981 *apud* Fetherston, 2005: 194). Which is why the commonsensical notion that ideas matter not only makes sense when thinking of transitional justice, but it becomes central when trying to understand the discourses that shape its theory and praxis (McAuliffe, 2013). Pádraig McAuliffe (2013) attributes this to

“[...] the influence of a highly mobile international coterie of practitioners and scholars who deploy to transitional states and can implement ideas circulating because their role in supranational organizations and NGOs gives them influence over government policy.” (McAuliffe, 2013: 1)

In this vein, Jelena Subotić (2009: 41) conceives international organizations as constituting locations of “transnational contextual knowledge”: making rules, setting standards and defining principles. In the context of transitional justice, the international community, represented by the UN, produces “discursive parameters” defined by its international norms thereby limiting who is to be engaged with (Young, 2013: 8). When reflecting on the politicization and power relations inherent to transitional justice processes, it is important to keep in mind how, as a concept and as practice, transitional justice is dominated by essentially Western voices, not only of scholars (Thomason, 2015) but also of practitioners and policy-makers in international organizations (Subotić, 2009), the latter of which are involved in the institutional design and implementation of transitional justice models, providing staff and consulting services (Subotić, 2009). Ultimately, it constitutes and acts as an industry (Subotić, 2009), relying on “transitional justice

entrepreneurs” who “[...] sought the victim out, categorized her, defined her, theorized her, packaged her, and disseminated her on the world stage” (Madlingozi, 2010: 211), in the process of producing victims for international *fora*.

The following chapter will introduce the reader to specific theoretical contributions from the fields of international relations and social psychology from which we will build our theoretical and conceptual framework for analysis. In the same deconstructive spirit that characterizes recent research on transitional justice (Turner, 2013; Sharp, 2013, 2015), and through this combined theoretical lens, we will problematize the enactment of dominant victimhood and perpetration narratives reflected on a “victim-perpetrator” matrix, drawing attention, on the one hand, to the impact and consequences of the dichotomy’s limitations and “constructed invisibilities” (Sharp, 2015) from a psychosocial point of view and, on the other hand, highlighting the constructed and politicized nature of these identities and of the dynamics of categorization imbedded in the wider process of transitional justice. Our analysis will, therefore, strive to go beyond the main (if important) transitional justice debates that focus on binary oppositions or in assessing the efficiency of specific mechanisms, by questioning one of what constitutes a set of “assumptions that have served to shape transitional justice theory, policy and practice up to the present day” (Arthur, 2009 *apud* Sharp, 2013: 4). We will thus be engaging with the “substantive political concerns that are not readily amenable to legal or moral rectification” (McGuffey, 2012) by explicitly reflecting on the nuanced nature, the political and power undertones and the societal and relational implications of managing transitions and rebuilding societies based on dividing and labelling people, based on normative and political underpins which are largely left unacknowledged.

3. DECONSTRUCTING THE “VICTIM-PERPETRATOR” DICHOTOMY: CONTRIBUTIONS FROM THE PSYCHOSOCIAL APPROACH AND CONSTRUCTIVISM

3.1. Framework of analysis: contributions from different fields

Having established, in the previous chapter, how the “victim-perpetrator” dichotomy that underlies transitional justice initiatives is contingent upon defined identity parameters (Miller, 2008) and relies on the exclusion of alternative categorization schemes (Ramos, 2013), we will reflect and deconstruct the terms in which this dichotomy is built on and the ways in which it (re)produces exclusions and (in)visibilities, drawing on the specific conceptual contribution from the realm of social psychology: the psychosocial approach put forth by Carlos Martín Beristain (2000, 2006, 2010).

Despite the fact that this dissertation will not be focusing on the context of humanitarian assistance, within which Beristain develops his approach, we consider that some of the questions raised in his analysis of post-conflict societies are pertinent to engage our object of analysis and build our own conceptual critique. We acknowledge that there exists a branch of social psychology (e.g. Kelman, 1998, 2005; Demirdögen, 2011) addressing the building of strategies for conflict resolution and peace negotiations in the context of inter-state conflict. However, its fundamental focus is on inter-state conflict, unofficial diplomacy and peace negotiations, which are outside the scope and purposes of our analysis. The latter will, instead, draw on some key contributions from the psychosocial approach in the relatively underexplored post-conflict context. Furthermore, we will also draw on contributions of other authors researching and practicing within a psychosocial approach, and whose input reinforces the issues posed in Beristain’s theorization.

The psychosocial approach confers depth and complexity to an analysis of victimhood, by foregrounding the importance of context, acknowledgement, interpretations, intersubjective understandings and agency. That being said, we understand that these psychosocial lenses through which we will enact our critique are limited in their ability to fully grasp and problematize the political and power undertones of the “victim-perpetrator” categorization process. Therefore, and in order to secure the

intended depth of our analysis, we will complement this theoretical approach with a constructivist framework, particularly through its critical origins and strand. The analysis in this dissertation will, in this sense, greatly benefit from an interdisciplinary theoretical and conceptual framework thus opening the discussion to include the inter-connected dimensions and insights involved.

As we propose to problematize the “victim-perpetrator” dichotomy and the processes of categorization inherent to the dominant model of transitional justice implemented at both international, national and local levels (referring here, in particular, to the case of Rwanda), we have chosen to address it using a psychosocial approach lens. We consider that the latter is uniquely placed in calling our attention to the diversity of violence and trauma experiences and, consequently, the importance of context in not only grounding but in defining experiences and ascribed interpretations and meanings of victimhood and perpetration categories. Moreover, the psychosocial approach draws our attention to the local level while providing us with a framework to focus on the interaction between three levels of analysis – the international, the national and the local. Finally, coming from a field outside international relations, this psychosocial approach explicitly relies on a combination of “cultural, social and political particularities constitutive of the psychosocial trauma” where “family and community come into focus” (Lykes and Mersky, 2006: 600), bringing to the fore dimensions and avenues of questioning often disregarded by mainstream international relations theories and post-conflict thinking.

In order to consolidate and make further sense of this theoretical lens, we will additionally draw on constructivism, particularly its more critical strand, in order to emphasize not only the constructed nature of victimhood, including in post-conflict Rwanda, and of central concepts such as victim, perpetrator and victimization, but also the notions of politics and power inherently embedded in these processes of attributing meanings to concepts and constructing (dominant) discourses. As we have discussed in the previous chapter, these are part and parcel of transitional justice processes and can be illustrated by looking at the Rwandan discourse and narrative on victimhood. While our psychosocial lenses provide us with analytical dimensions through which to critique

the current dominant model of transitional justice, particularly as implemented in Rwanda, drawing on constructivism will allow us to take a step back and look at the agency, concepts and the politically constructed nature underlying this model, its assumptions and processes. This analytical constructivist strand will allow us to explore how “victim” or victimhood can be understood as socially constructed categories and, as a consequence, the inclusion or exclusion of individuals as “victims” is a choice (Ramos, 2013). Despite the fact that the psychological dimension has been significantly absent from political science research and literature (Charbonneau and Parent, 2012) and that psychosocial concerns have been largely disregarded in international relations theory (Lambourne, 2004), we believe the combination of both theoretical approaches will provide us with a more nuanced and solid basis from which to reflect on the prospects of reconciliation for divided societies engaged in transitional justice, particularly post-genocide Rwanda.

3.1.1. The psychosocial approach to the experience of victimhood and violence

Firstly, an overview of this psychosocial approach is in order, considering how it is by no means a unified body of work and there has been little agreement on what exactly a psychosocial project entails (Clancy and Hamber, 2008). Therefore, we will identify some of the conceptual considerations which we consider to constitute relevant dimensions to frame our discussion, particularly in the case study analysis in chapter 3, deriving essentially from Beristain’s research and fieldwork.

By way of meaning, Beristain and Donà (1997:19) state that “the psychosocial approach is aimed at understanding the behaviours, emotions and thoughts of people and groups, without removing them from the social and cultural contexts in which they occur.⁵” That is to say that the consequences and impact of violence can also only be fully grasped, in all their meaning, in the social, cultural, historical and symbolic contexts in which they have occurred (Beristain, 2010). Understanding political violence through a

⁵ Free translation from the author. In the original: “Un enfoque psicosocial es una forma de entender los comportamientos, emociones, y pensamientos de las personas y los grupos, sin aislarlos del contexto social y cultural en el que ocurren.” (Beristain and Donà, 1997: 19)

psychosocial lens entails considering the context on which that violence unfolds and how social and political contexts affect individuals (Clancy and Hamber, 2008). Victimization is simultaneously an individual and a social experience, in the sense that a victim comes to terms with the violence it was subjected to based on the interpretation she or he makes of that violent experience, which in turn derives from the meanings attached to it, which are social, cultural and politically defined (Summerfield, 1997).

Taking the definition of “victim”, as enshrined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), as point of departure, Beristain (2010) argues that this conception reflects the dominant judicial terminology:

[...] persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power [...] A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. (UN, 1985)

Beristain (2010) considers it to be limited in grasping the complexities inherent to victimhood and victimization processes, although it constitutes the starting point from which we depart. Beristain’s observations on victimhood seem to contribute to adding or at least foregrounding the complexities, contradictions and nuances of what it means to be (considered) a victim, even though he himself does not frame them explicitly in this way. In Carlos Beristain’s understanding, victims constitute part of the social fabric which has been disrupted by different kinds of violence (Beristain, 2004), entailing the disruption of basic beliefs (Beristain and Donà, 1997), identities (Beristain and Donà, 2007; Beristain, 2010) and leading to cultural and symbolic losses, in general (Beristain, 2010). The process of post-violence reconstruction should be oriented towards restoring this social fabric (Beristain, 2004). It is with this intent in mind that we should consider some of Beristain’s central observations and propositions.

Beristain underlines how context is a fundamental factor and tool in addressing victimization experiences (Beristain, 2010), with different layers of meaning: on the one hand, context refers to “the way in which society perceives a [given traumatic] phenomenon or the social position of victims of human rights violations”⁶ (Beristain, 2010: 38) which constrains the launching of judicial diligences and the potential for victims to pursue legal and social campaigning for acknowledgement or reparations, for instance; on the other hand, we can understand context as the “social dimension” that, according to Beristain (2002) victim-survivors seek to ascribe to their experiences of violence, by sharing them with other people, which contributes to building a “sense of coherence” (Clancy and Hamber, 2008) by relating their private stories of violence and trauma to wider societal and collective group narratives (Lykes and Mersky, 2006).

The post-violence reconstruction of a collective memory of the past is seen as providing public meaning and acknowledgement to individual victimization (Beristain, 2000), since memory holds not only a collective therapeutic value but also plays a fundamental role in social acknowledgement and justice (Beristain, 2004). In this sense, national strategies oriented towards reconciliation should set the context to promote individual healing and mourning processes (Beristain, 2005). Furthermore, considering how context impacts on processes of victimization entails conceiving that people make sense of violence based on individual interpretations which are grounded on cultural and social references (Beristain, 2004). Ultimately, a social group may find the violence exerted upon itself to be incomprehensible (Summerfield, 1997).

On the one hand, memorialisation strategies should achieve a balance between dignifying victims and trapping an individual, who was subjected to violence, in an essentialized and stigmatizing victim identity (Beristain, 2004), narrowing the complex identity of a person to the crime that victimized her, an instance of secondary victimization (Beristain, 2005). Essentializing “victim” as an identity will make the roles, ambitions and experiences of that individual hinge on having been the victim of a particular crime, which becomes the overarching condition structuring the person’s interactions within society and with the state (Beristain, 2010). Although the author’s

⁶ Free translation from the author. In the original: “*la forma en cómo la sociedad asume un fenómeno, o la posición social de víctimas de violaciones de derechos humanos*” (Beristain, 2010: 38)

focus is on “victim” identity, we understand that the same observations can be made in reference to other identity categories such as that of “perpetrator”. On the other hand, Beristain (2000) also notices how in the aftermath of violence, it is possible to witness the reification of stereotypes and attributes labelling certain identity categories, such as ethnic, based on fear as a factor guaranteeing intra-group cohesion. Beristain explicitly refers to Rwanda as a case in point, in this regard.

According to Valerie Rosoux (2013), this idea of conceiving groups in more abstract terms through categories of identity grounded on national political divisions characterizes top-down approaches to reconciliation. In opposition to this uni-dimensional conception of identity based on a stigmatization of victimhood, Beristain (2005) advocates instead for conceiving victims as survivors, which emphasizes their resilience and ability to recover from their (situational) victimization experience (Beristain, 2010) and promotes their re-integration in society as citizens sharing equal rights (Beristain, 2005) and returns them the political agency which their identity as victim overshadowed (Beristain, 2010).

Geneviève Parent and Bruno Charbonneau (2012) note how the process of healing and reconciliation may be hindered by instances of re-victimization, which they equally term “secondary victimization” (Parent and Charbonneau, 2012: 217), lending it a wider conceptualization as “[a]ny action that harms the victim further physically, psychologically, economically or socially [...]”. This process of re-victimization can take place within the context of what Martin Baró termed the “psychosocial trauma” (Martin Baró, 1994 *apud* Beristain, 2010: 13) in which trauma is borne individually but (re)produced socially (Parent and Charbonneau, 2012), relying on the dialectic relationship between the individual and society (Beristain, 2010). In our understanding, this means that the trauma could continue to be reinforced by this relationship while at the same time framing it, even after the initial situation of victimization.

In pointing out how the status of “victim” should be regarded as conditional, Beristain introduces a further question:

[...] the condition of victim is *politically manipulated in order to secure control and representation of the “reality” of violence* according to a certain political position, for example, by *making the acknowledgement of victimhood dependent on who the perpetrator was* and by frequently making invisible the victims of State agents.⁷ (2010: 39, emphasis added)

Even though the politics of victimhood are not a focal point in Beristain’s analysis, the matter is nevertheless introduced in this passage, in which he highlights the politicized dimension of (un)acknowledging victimhood and its impact on the «representation of the “reality”».

While Beristain’s emphasis on the importance of context allows us to question the national dichotomised victimhood discourse in Rwanda, for example, which underlies the country’s transitional justice and reconciliation processes, based on a narrow conception of violence and of the roles played by actors during the conflict, the observation quoted above leads us to question the reasons behind the establishment of that specific discourse. Why and how does the post-genocide victimhood narrative in post-genocide Rwanda focus on certain specific experiences and perceptions of victimization and violence while rendering others invisible? In order to engage with this politicized dimension of victimhood, our analysis will now introduce the contribution of constructivism as a theoretical umbrella framework, complementing the psychosocial dimension discussed above.

3.1.2. A constructivist contribution to the politics of victimhood

As stated before, in this chapter, we aim at presenting a coherent but diversified framework of analysis, under which theories and approaches complement each other, with their respective lenses being used to highlight different dimensions or elements of analysis, albeit constituting a unified analytical axis.

With regards to the role of constructivism in supporting our critique, we will clarify it while attempting to avoid the issue raised by Stefano Guzzini (2000), that “the social construction of...” has become a catch-all phrase, often eclectic or redundant:

⁷ Free translation from the author. In the original: “*la condición de víctima es usada políticamente para tratar de ganar control o representar “la realidad” de la violencia de acuerdo con la propia posición política, por ejemplo, con el reconocimiento como víctima en función de quien haya sido el perpetrador y frecuentemente tratando de invisibilizar a las víctimas de agentes del Estado.*” (Beristain, 2010: 39)

Eclecticism shows up when constructivism has become a general category out of which many researchers pick and choose their particular version without necessarily looking at the theoretical coherence of the final product. Redundancy applies when a constructivist touch adds some face lift to already existing approaches. (2000: 190)

This observation derives from the fact that constructivism has become a popular trend since the 1990s, a “success story” in the field of international relations (Guzzini, 2000; Zehfuss, 2004). According to Guzzini (2000), this was achieved at the expense of considerable theoretical stretching and neglect of the main constructivist tenets: epistemological constructivism (epistemologically, the social construction of knowledge), sociological constructivism (ontologically, the construction of social reality) and the centrality of the concept and analysis of power (Guzzini, 2000). Our critique will follow the notion that constructivism is not a clearly delimited international relations theory as such, but a way to study social relations (Onuf, 1998), a meta-theory (Guzzini, 2000), a set of social theory tenets (Cavalcante, 2013). Constructivism puts forth both epistemological and ontological claims with regards to international politics, rather than presenting itself as an explanatory theory (Klotz and Lynch, 1998 *apud* Jorgensen, 2010).

Epistemologically, constructivism claims that meaning and knowledge are sociologically constructed and, ontologically, it refers to the intersubjective construction of social reality (Guzzini, 2000, 2013). Guzzini makes the analogy between intersubjectivity and languages: “[...] they exist in the shared meaning of their users and are reproduced through their practices [...]” (2000: 164). At this latter level, over the process that constitutes reality, Nicholas Onuf (1998) theorises on the reciprocal social relations between people and the world regulated by social rules, which serve as “a statement that tells people what we should do” (1998: 59). Onuf belongs to one of the more critical strands in constructivism, the “linguistic turn” (Nogueira and Messari, 2005), focusing on speech acts as (political) action and language. Rules enable people to participate in society, therefore making them agents. People are not agents in all situations. Rules and respective practices often form a stable pattern, an institution suiting the intentions of the agent. When rules exist, so does *rule*: rules and institutions create stable patterns of asymmetrical relations where some agents are rulers.

Ontologically, the social world is constituted by intersubjective meanings, subjective knowledge and material objects. Social facts depend on attributing collective knowledge to material objects. The material world does not come classified *a priori* (Adler, 2002). Furthermore, with its concern for the processes of (social) construction of reality and knowledge, a constructivist approach entails questioning and denaturalizing the *status quo* to understand how and why it came to be in the first place (Cavalcante, 2013; Guzzini, 2013). In this sense, it may even be regarded as critical theory (Cavalcante, 2013), since it “stands apart from the prevailing order of the world and asks how that order came about” (Cox, 1981: 129 *apud* Cavalcante, 2013: 49). In so doing, constructivism allows us to reflect on the dimensions of politics and power, to the extent that to be political means to be changeable, not natural, and to the extent that power implies a counterfactual, that things could have happened another way (Guzzini, 2013). To attribute power is to politicize; it “[...] redefines the borders of what can be done [...] this links power inextricably to politics in the sense of the art of the possible [...]” (Guzzini, 2013: 229). Politics is about fixating meaning to otherwise contested concepts and thereby framing our everyday common sense (Ish-Shalom, 2011).

The construction of knowledge in the processes of categorization and identification relies on categories which derive their meaning from the theories they are embedded in (Guzzini, 2013). Considering that concepts attributed with meaning – meaningful concepts – constitute the building blocks of intersubjective social knowledge, fixating conceptual meanings effectively limits the parameters according to which social knowledge is constructed (Ish-Shalom, 2011). Which is why Emanuel Adler (2002) contends that the imposition of meanings to the material world is one of the ultimate forms of power (Adler, 2002).

This discussion derives from the overall importance of normative and ideational structures in conferring meanings and shaping social identities (Reus-Smit, 2005). The latter inform interests and actions through three main mechanisms: imagination, communication and constraint. The first of these three is of particular interest to our analysis since it refers to the way in which:

[...] non-material structures affect what actors see as the realm of possibility: how they think they should act, what the perceived limitations on their actions are and what strategies they can imagine, let alone entertain, to achieve their objectives. (Reus-Smit, 2005: 198)

Furthermore, within the epistemological realm, with regards to the construction of knowledge and meaning, Guzzini (2013) claims that concepts are the condition for the possibility of knowledge. Concepts are attributed with meaning (Zehfuss, 2004) and attributing meaning is an exercise of power (Cavalcante, 2013). In this sense, constructivist approaches deny the possibility of neutral, value-free knowledge. Producing meanings entails a political practice, because different meanings imply different political practices (Cavalcante, 2013). Since the production of meaning is inherently political, all knowledge claims entail and reflect relationships and structures of power (Hurd, 2008).

Our analysis takes its cue from Adler's (2002: 153) remark that "constructivists should stress the practical and political consequences of their approach" and Christian Reus-Smit's (2005) call for constructivism to retain its "critical edge", in tune with its roots in critical theory, and therefore to embrace its moral, normative and philosophical tasks and potential. Through the constructivist lenses presented above, our analysis will challenge "victim" and "perpetrator" as *a priori* categories that can be naturally assumed in any given post-violence context. We will reflect on the processes of categorization of victimhood and perpetration and how they have become structures of knowledge or "constitutive rules"⁸ (Searle, 1995, *apud* Ruggie, 1998) in the sense of defining who is included and excluded (who counts as a victim and who counts as a perpetrator) or, in Onuf's reasoning, who counts as agent in those structures. When considering our case study, the international community and Rwandan authorities are defining and legitimising a narrow and closed "realm of possibilities" (Reus-Smit, 2005), while at the same time actively acting to reinforce and naturalise it, by constructing and institutional and discursively enshrining certain models of transitional justice and narratives of victimhood, perpetration and violence.

⁸ "Constitutive rules define the set of practices that make up a particular class of consciously organized social activity – that is to say, they specify *what counts as* that activity." (1998: 870, emphasis in the original).

Furthermore, the idea of an inherent innocence of the victim, of the victim's moral superiority and even of the need for there to exist a single "victim-perpetrator" dichotomy can all be thought of in terms of norms that define a victimhood discourse, and therefore define (in)valid and (un)acceptable victimhood experiences. These constructivist lenses also bring to our attention the political and power undertones of the construction and enactment of dominant victimhood and violence discourses, and the inherent political nature of the meaning(s) attributed to "victim(s)" and "perpetrator(s)" and the respective exercise of categorizing people. This is particularly clear in the case of Rwanda, which will be the focus of our analysis in the following chapter.

The constructivist contribution, therefore, allows us to consider and underline the constructed politicized – and often artificial and instrumentalized – nature of victimhood, calling our attention more widely to the politics of memory and victimhood. Through the above-discussed theoretical lenses, we will thus touch upon certain specific issues raised in the vast literature on the politics of memory and victimhood, in the context of our discussion on post-genocide Rwanda. These issues relate to the impact of transitional justice mechanisms in (re)producing partial truth(s) (Brewer, 2006; Carse, 2013); the politics of (constructing) memory (Barahona de Brito, 2010); the way in which a discourse of power is embedded in a discourse of victimization (McGrattan and Lehner, 2012; Enns, 2013); how actions and values associated with victimhood such as truth-telling, justice-seeking and reconciliation are inherently political processes (Arthur, 2009); the essentially performative nature of victimhood as it attempts to suspend the political and be regarded as a value-free neutral de-politicized space (Jeffery and Candeia, 2006); and the competing agendas of building conflict and victimhood narratives at the state and community levels (Chirwa, 1997; Smyth, 2003; van der Merwe, 2002, 2003; Nwogu, 2010).

The construction of this interdisciplinary analytical framework, based on contributions from different fields of the social sciences, is meant as a solid basis from which to reflect on the assumptions pertaining to the "victim-perpetrator" dichotomy which underlie our critique of the dominant transitional justice model inherent to international peacebuilding and our analysis of Rwanda as a case study.

4. THE “VICTIM-PERPETRATOR” DICHOTOMY WITHIN TRANSITIONAL JUSTICE IN POST-GENOCIDE RWANDA AND ITS (IN)VISIBILITIES

“Rwandans have become liars.

We can’t say anything because they’ll imprison us or kill us.”

(Interview with an elderly Hutu woman, King, 2014:304)

In the two preceding chapters, we have guided the reader through the main debates that have shaped the field of transitional justice, highlighting the largely unquestioned normative assumptions upon which the field rests, focusing on one in particular: the “victim-perpetrator” dichotomy. We further presented our theoretical framework which primarily draws on contributions from the psychosocial approach and constructivism, the first conceptualization borrowed chiefly from Carlos Beristain’s work but extending beyond.

With this in mind, this final analytical chapter intends to demonstrate how transitional justice as “a discourse and practice imbued with power” (Nagy, 2008: 286) and an inherent political project resting on largely implicit (liberal) underpinnings characterizes the transitional justice process of post-genocide Rwanda. This process has entailed the enactment, by national authorities, of a dominant narrative of the genocide, of victimhood and perpetration, overlapping with the Tutsi-Hutu ethnic categorization, respectively (Zorbas, 2004, King, 2014) and of the causes of violence. Not only has this move contributed to marginalizing the diversity of experiences of violence between and within these two communities (King, 2014) but it has effectively excluded the Twa community’s involvement in and understanding of the 1994 genocide and the violence that has continued in its aftermath. This intentional silencing of dissent and alternatives is part of a strategy of political legitimation (King, 2014), one which “[...] secures the new government’s position, absolves it from all responsibility for past crimes and aims to create a society which can be governed according to its intention” (Buckley-Zistel, 2009:31). However, our critique must first be introduced by a brief contextualization of the 1994 genocide as the chronological point of departure of our analysis.

4.1. The 1994 genocide and “Rwanda’s histories”⁹

4.1.1. Pre-colonial Rwanda and European colonialism

That History is a highly contested and politicized field (Buckley-Zistel, 2009) is hardly an exclusive trait of Rwanda, but perhaps not many countries have had their history “collapsed into a few easy-to-remember lines” (Pottier, 2002: 118) like Rwanda, where the script has been centred around the role of ethnicity in accounting for the Hutu-Tutsi conflict (Buckley-Zistel, 2006), particularly, the position of the Tutsi community in Rwandan society (Zorbas, 2004). Two perspectives have been identified as the most common versions of this contention (Newbury and Newbury, 1995 *apud* Buckley-Zistel, 2006), the first advocating an essentialist view of ethnic identities as pre-determined and rigid, based on cultural and biological fixed attributes, and the second suggesting the existence of a socially harmonious pre-colonial Rwandan society, where Twa, Hutu and Tutsi corresponded to socio-economic and occupational distinctions whose nature and balance was later disturbed by European colonialism, responsible for “manufacturing” local Tutsi elites (Zorbas, 2004). But Rwanda was not a *tabula rasa* upon the arrival of German and then Belgian colonial administrations; in the XIX century, an increasingly centralized and complex kingship system was already in place, ruled by the *mwami* (“king”) who had appointed a largely, although not exclusive, Tutsi local elite (Nogueira Pinto, 2012).

A combination of colonial administrations, missionaries and native (mostly, Tutsi) elites contributed to ideologically reinventing Rwanda’s history and, based on that reconstructed past, its present (Prunier, 1995)¹⁰. Faced with an already existent complex political system and elaborate religious rites, European explorers and administrators could not conceive that they had been developed by “totally savage negroes” (Prunier, 1995: 10) and therefore proceeded to proposing alternative theories, in line with the anthropological scholarship at the time concerned with race. It was argued that this sophisticated societal landscape had originated in Ethiopia and had been brought from

⁹ Borrowed from Zorbas (2004: 71).

¹⁰ This paragraph draws substantially from the work of Gérard Prunier (1995).

there by migrant pastoral communities, which had also been responsible for establishing other surrounding kingdoms of the interlacustrine region (Buganda, Nkore, Buha, Bushi and Burundi). This constituted the main idea behind the “Hamitic theory”, according to which these migrant herders, the Tutsi, descended from Ethiopia and subjugated the “natives” Hutu and Twa (Zorbas, 2004).

European colonialism inherited a process of administrative centralization as well as a certain degree of authoritarianism in the kingdom of Rwanda and reinforced them considerably. This reinvention of the past not only took the circumstances of the central authorities of the kingdom as reference, generalizing them to the rest of the country, but also forever changed the relationship and dynamics between different communities, by ascribing a condition of racial superiority to the Tutsi, in particular, and consequently promoting their almost exclusive control over the local administration and “contractual means of economic control (*ubuhake*)” (Prunier, 1995: 38). This monopoly of power, through Belgium’s strategy of indirect rule, was argued to be in accordance to local traditions, “purported to show that Tutsi dominance had always existed under such forms.” (Prunier, 1995: 38) And even though not every Tutsi benefited political and economically from this system, even the “small Tutsi” (Prunier, 1995: 38) internalized this racialized superior condition, which extended, in theory, to *all* the Tutsi, just as the opposite condition of inferiority extended to *all* the remaining Hutu and Twa communities, and was visible in their political and economic marginalization and exploitation. Despite the ongoing debate on the role of ethnicity in pre-colonial Rwanda, what seems to be consensual is that European colonialism impacted significantly in Rwanda’s social landscape, to the point that “an ancient, rich and complex society was modernised, simplified and ossified” (Prunier, 1995: 36). The importance of this reconstruction of Rwanda’s past in order to legitimise practices and policies in its present resides in the consequent politicization of ethnicity in defining the boundaries of citizenship (Buckley-Zistel, 2006).

4.1.2. *The 1959 Social Revolution and the violence of the First Republic (1959-1973)*

What became known as the 1959 Social Revolution and its aftermath relied precisely on this vision of the Tutsi as immigrants, which equated Rwandan citizenship with (Hutu) ethnicity (Buckley-Zistel, 2006) thereby excluding Tutsi from citizenship rights, advocated most fervently by the recently constituted political party MDR-PARMEHUTU, whose leader was Grégoire Kayibanda. The event, which many Hutu consider as the turning point in bringing down the Tutsi-led oppressive system (Buckley-Zistel, 2006) involved a wave of violence against the Tutsi community, involving massacres, political assassinations and resulting in thousands of internally displaced people. Thousands of Tutsi fled to neighbouring countries, mostly to Uganda, where many stayed as refugees (Nogueira Pinto, 2012). This marked the beginning of a series of mass exodus and massacres against the Tutsi population throughout the 1960s. Their descendants would, decades later, violently exert their right to return, which Rwandan authorities had successively denied them, triggering the 1990-93 civil war.

In January 1961, after a meeting organized by Grégoire Kayibanda and Belgian Colonel Logiest, representative of the Belgium colonial administration¹¹, and attended by over 300 *bourgmestres*¹² and other local authorities, independence was unilaterally declared, the monarchy abolished and replaced by a republican form of government (Magalhães Ferreira, 1998). Between 1961 and 1994, Rwanda had two presidents: Grégoire Kayibanda (1961-1973) and Juvénal Habyarimana (1973-1994). Both introduced a regime of quotas for the public administration, schools, universities, and for different sectors of economic activity and both drew their legitimacy from representing the demographic (Hutu) majority of the population (Magalhães Ferreira, 1998) although President Kayibanda practised a much more overt strategy of physical elimination, discrimination and exclusion of the Tutsi community.

¹¹ In the aftermath of World War II, Rwanda remained under Belgian administration but as a UN Trust Territory (Magalhães Ferreira, 1998).

¹² Could be translated the “mayor” of local town halls.

4.1.3. *The Second Republic, civil war and the Arusha Peace Agreements (1973-1993)*

Following his *coup d'état*, in 1973, President Habyarimana reintegrated Tutsi not only as members of his political party, MRND, but also as citizens of the Rwandan Republic, “from a non-indigenous minority without political rights into an indigenous minority with political rights and with proportional representation (...)” (Mamdani, 2002: 50 *apud* Buckley-Zistel, 2006: 106).

Habyarimana’s Presidency turned Rwanda into an increasingly heavily centralized and authoritarian state, where membership of the MRND was compulsory for the large majority of the population and for all public officials and each hill cell regularly organized ceremonies to demonstrate party loyalty (*animation*) (Nogueira Pinto, 2012). Even though the integration of Tutsis as citizens improved (Buckley-Zistel, 2006), the “Hutu-Tutsi” dichotomy remained the relevant political cleavage, defining “friend” and “enemy”, and sporadic episodes of violence, mainly against Tutsis, still occurred, reproducing a culture of impunity (Nogueira Pinto, 2012). In 1979, a group of exiled Tutsis in Uganda created the Rwandan Patriotic Front/Army (RPF/A) and started advocating for their right to return, which was systematically denied on the grounds that there was not enough land and employment opportunities to accommodate them¹³ (Magalhães Ferreira, 1998).

During the build-up to the civil war, President Habyarimana came under intense internal pressure, stemming not only from the threat of RPF incursions but also from the deterioration of the country’s economic situation. But, most of all, President Habyarimana struggled to appease a growing internal but disparate political opposition, ranging from those who called for democratization and denounced the growing corruption to the newly established mainly Hutu extremist movements and political parties– the *Interahamwe* militia wing of the MRND and the CDR (Magalhães Ferreira, 1998). Political opposition also took another form, which in present analysis has been easily overshadowed by ethnicity as a political cleavage: regionalism. Both Kayibanda and Habyarimana drew their support from the Hutu population in general, but more directly

¹³ Meanwhile, the number of Tutsi refugees in neighbouring countries had continued to grow, reaching an estimated 600 000 in the 1980s, when Habyarimana showed the first signs of willingness to negotiate their return (Buckley-Zistel, 2006).

from particular Hutu communities: the first relied mostly on the southern region of *Gitarama* and the latter on the northern *Gisenyi préfecture*, as well as Habyarimana's wife's clan and *abagaragu*¹⁴ (Prunier, 1995). Once in power, President Habyarimana ordered the arrests and executions of 58 former political adversaries and public officials, all originating from the centre and southern regions of the country (Magalhães Ferreira, 1998).

On 1 October 1990, the RPF invaded Rwanda from Uganda and the country was dragged into a civil war (Magalhães Ferreira, 1998; Buckley-Zistel, 2006). The attack triggered the intensification of racist anti-Tutsi official propaganda, violence against Tutsis and, once again, the exclusion of Tutsis from Rwandan citizenship, premised on the resurging of the ideas of Tutsi as foreign oppressors trying to re-establish the monarchy and to reassert their domination over the native Hutus (Buckley-Zistel, 2006). On 4 August 1993, the Rwandan government and representatives from the RPF signed the Arusha Peace Agreements, and two months later, the UN Security Council approved the deployment of a peacekeeping force (UNAMIR) to the country, to oversee the implementation of the peace accords, which arrived in Rwanda in November 1993. Some of the key provisions contained in the Arusha Peace Agreements concerned the end of the civil war, the return of refugees from abroad and establishing power-sharing arrangements (Magalhães Ferreira, 1998).

4.1.4. *The build-up to genocide (1993-94)*

A growing wave of extremist opposition, structured around the idea of "Hutu Power", was critical of President Habyarimana over his perceived "softness" towards the RPF, and was arming itself overtly (Prunier, 1995). It was within these extremist circles that, by the end of 1992, ideas had first started to circulate about a solution to "the ethnic problem", lists of Hutu "traitors" had started to be drawn and fears about the return to the pre-revolutionary exploitative Tutsi-led system started to be spread. The assassination of Burundi's Hutu President, Melchior Ndadaye, in October 1993, and the

¹⁴ The "clients" of the *igikingi* practice of land-holding, who received land granted by the king or a Tutsi lineage.

arrival of Hutu refugees to Rwanda, bringing with them stories of horror of the Burundian *coup*, later contributed to making Rwandan Hutus more receptive to this radical propaganda (Prunier, 1995; Magalhães Ferreira, 1998). In the meantime, President Habyarimana had been successively postponing the entry into force of the new transitional government based on a power-sharing agreement that some political forces, such as the CDR, refused to join and diplomatic pressure was strongly being exerted on the President to unblock the transitional government. The *Interahamwe* had started launching attacks on its own, violence and racist propaganda in certain radio stations was building up – calls to action and to arms were hardly ambiguous (Prunier, 1995). At around 8.30 p.m. on the 6 April 1994, the plane carrying President Habyarimana from Rwanda and President Ntaryamira from Burundi was directly hit by two missiles, just as it prepared to land in Kigali, killing everyone on board. By 9.15 p.m., roadblocks had been erected in Kigali and the country plunged into genocide.

4.2. Transitional justice in post-genocide Rwanda

In the aftermath of the 1994 genocide, Rwanda initiated what can be considered a hybrid process of transitional justice in the sense that, on the one hand, it operated, at the international, national and local levels and, on the other hand, it was based on a constellation of diverse transitional justice mechanisms (Nogueira Pinto, 2012), most noticeably: the International Criminal Tribunal for Rwanda (ICTR), domestic trials, the National Unity and Reconciliation Commission – which oversees the management of the *ingando* camps –, memorials throughout the country (such as the Kigali Memorial Centre), the institution of April as the month of national mourning (Burnet, 2009), dedicated to public rituals and ceremonies of remembrance and mourning, the creation of new national holidays¹⁵ (Thomson, 2009), the embargo on History teaching in the Rwandan educational system since 1994 (Buckley-Zistel, 2009), new legislation passed in 2001 against divisionism and genocide ideology (“Divisionism Law” and “Crime of Genocide Ideology Law”), the adoption of the *gacaca* courts system (legislated in 2001

¹⁵ Heroes Day (1 February), Day of Hope (7 April), Independence Day (1 July), Liberation Day (4 July), Patriotism Day (1 October).

and 2003, respectively), the creation of FARG, a fund assisting genocide survivors, the re-naming of geographical locations (Thomson, 2009), the issuing of new identity cards from where ethnic identities have been excluded and the abolishment and criminalization of ethnic identification in public (Nogueira Pinto, 2012).

In Rwanda, the transitional justice process and the above-mentioned mechanisms and tools provide the official framework not only to guide the transitional justice process but also to think more generally about long-term rebuilding of the country. We turn next to exploring more thoroughly some of the key mechanisms that have constituted the Rwandan transitional justice framework and their influence and impact *vis-à-vis* three different narrative strands: of conflict, in general, of the “victim-perpetrator” dichotomy, in particular, and of the country’s approach to and prospects of reconciliation.

4.2.1. International and domestic trials

In July 1994, a new Rwandan National Unity government took office, constituted not only by members of the RPF but also of other political parties considered to have not been involved in the genocide, oriented by the terms of the pre-genocide 1993 Arusha Peace Agreements which the RPF had signed with the previous government (Reyntjens, 2004). The RFP-dominated transitional government struggled with challenging choices regarding the future of post-genocide Rwanda (Nogueira Pinto, 2012), debating questions that haunt any post-conflict country, and which directly and naturally have an impact on the process(es) of reconciliation and post-conflict rebuilding (Weinstein and Stover, 2004), such as what will be remembered and forgotten, in the construction of memory and truth(s) relating to the conflict? What should happen to those individuals who planned and those who enacted the violence? What will be the range of crimes being investigated? What kind of judicial processes and mechanisms for reparations will be conducted and with what purposes?

Initially, in order to face these daunting questions, the international community and national authorities privileged a retributive approach to transitional justice (des Forges and Longman, 2004; Zorbas, 2004; Kohen *et al.*, 2011; Nogueira Pinto, 2012). In

November 1994, the United Nations Security Council (UNSC) approved resolution 955 establishing the International Criminal Tribunal for Rwanda (ICTR)¹⁶, to

[...] prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994. (UNSC, 1994)

In this resolution, the violence in Rwanda was described as amounting to “genocide and other systematic, widespread and flagrant violations of international humanitarian law” and, therefore, as constituting “a threat to international peace and security” and the ICTR was mandated to contribute towards pursuing justice against the people responsible for these crimes and “to contribute towards the process of national reconciliation and to the restoration and maintenance of peace.” It was also the international community’s belief that the Tribunal would offer a means of redress not only of the crime of genocide but also of crimes against humanity and violations of international humanitarian law.

In spite of this ambitious threefold project – of promoting justice, reconciliation and peace – numerous accusations have been set against the ICTR, ranging from incompetence to corruption (des Forges and Longman, 2004; Peskin, 2005): it was underfinanced and understaffed, its investigators, prosecutors and judges had little relevant experience and a prosecutorial strategy was lacking (des Forges and Longman, 2004: 52). It was not very promising that “[v]irtually none of the tribunal’s staff, at least in the early years, knew anything about the history and culture of Rwanda” (des Forges and Longman, 2004: 53). From the point of view of Rwandan citizens, the ICTR has proven to be a reality far away, speaking little to the majority of poor rural and illiterate Rwandans: this is not only due to its geographical distance but, most importantly, because of the gap between the Tribunal’s approach and Rwandans’ diversity of aspirations, knowledge and interpretations of issues such as justice, redress, punishment and reconciliation (des Forges and Longman, 2004; Tiemessen, 2004). This distance suddenly becomes very real

¹⁶ “International Criminal Tribunal for the Persecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and the Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1990 and 31 December 1994” (Annex “Statute of the International Tribunal for Rwanda).

when one considers that trial procedures are not conducted in Kinyarwanda, the only language that the majority of Rwandans speaks (Vergos, 2011).

Nevertheless, the ICTR's achievements are by no means negligible: it has succeeded in trying some of the "big fish" behind the Rwandan genocide, those deemed to be the most responsible, such as the Prime-Minister in office during the genocide¹⁷, high-ranking government and military officials, political and religious leaders (UNICTR, s.d; des Forges and Longman, 2004). Furthermore, the ICTR set some significant milestones with regards to the theory and practice of international justice (UNICTR, s.d): it was the first Tribunal to interpret the definition of genocide as established in the 1948 Geneva Conventions and to deliver a guilty verdict on genocide charges; it was the first of its kind to "define rape in international criminal law" and to acknowledge this as a strategy to commit genocide; in what became known as the "Media case", the ICTR was also the first Tribunal to hold members of the media accountable for the consequences of their broadcastings in urging people to participate in the genocide.

Both at the ICTR in Arusha, Tanzania, and at the domestic level in Rwanda, trials began, in earnest, in 1997 (Nogueira Pinto, 2012), with the vast majority of people detained on genocide charges to be tried in the Rwandan judicial system (des Forges and Longman, 2004). As of 1998, the number of suspected *génocidaires* awaiting trial in Rwandan jails, detained in squalid conditions, amounted to about 135 000 (Nogueira Pinto, 2012); the number had decreased to around 100 000 by early 2003 (des Forges and Longman, 2004). Domestic trials were based on the *Organic Law on the Organization of Prosecutions for Offenses Constituting the Crime of Genocide or Crimes against Humanity Committed since 1 October 1990* (Ferstman, 1997), promulgated in 1996 and thereby incorporating genocide into national Rwandan legislation (des Forges and Longman, 2004). The Organic Law not only established special courts specifically to try genocide suspects (des Forges and Longman, 2004) but also legally acknowledged different categories of perpetrators, with different degrees of responsibility (Tiemessen, 2004), according to the genocide narrative adopted by the government, which will be detailed later in this chapter.

¹⁷ Jean Kambanda (MDR) who was sworn in as Prime-Minister after the assassination of until then Prime-Minister Agathe Uwilingiyimana (July 1993-April 1994).

On the one hand, this legalist and retributive approach to justice (Zorbas, 2004) denoted a focus on ending the “culture of impunity” (Republic of Rwanda, 2000b) which had characterized the post-independence governments:

The impunity that has long been enjoyed by the authors of previous social dramas has resulted through the years in the trivialization of violations by Rwandan authorities and populations...Eradicating this impunity is a prerequisite for peaceful coexistence followed by social cohesion [and] implies the systematic capture, trial and sentencing of all those involved in the tragic events that plunged the country into mourning, without considering either their large number or the limited capacity of the country’s justice system. (Mucyo, s.d *apud* Harrell, 2003: 46)

On the other hand, it illustrates how one of the primary concerns shared by both the international community and national authorities, in the aftermath of the genocide, was the division of Rwandan society between victims and perpetrators (Burnet, 2009).

4.2.2. *Gacaca courts*

The retributive approach described above was motivated by the new government’s early post-genocide assumption that justice and reconciliation were mutually exclusive goals (Ingelaere, 2007). However, by the late 1990s and early 2000s, reconciliation not only started being introduced in official government policies but was elevated to main goal to be achieved in the country (Waldorf, 2009). This new political vector was most clearly illustrated by the institution of a National Unity and Reconciliation Commission (NURC) in 1999, which we will discuss further below, and the legislation passed in 2000 allowing for the launching of the *gacaca* courts (Vandeginste, 2003).

According to Stef Vandeginste (2003: 269), “[d]efining *gacaca* is a hard thing to do (...) its precise form strongly depends on the community in which it operates”. The *Gacaca* is a traditional dispute resolution mechanism (Tiemessen, 2004), considered to date back to the XVI century in Rwanda (Nogueira Pinto, 2012), whose *ad hoc* nature meant that these meetings would be convened whenever disputes rose requiring arbitration (Vandeginste, 2003), without being ruled by any form of written legislation (Clark, 2008). These conflicts would usually concern land rights and use, cattle ownership,

marriage, damage to propriety or animals, among others (Nogueira Pinto, 2012; Vandeginste, 2003) and they would be settled by *gacaca* judges – community elders (Nogueira Pinto, 2012). Pre-genocide *gacaca* were most commonly used in rural areas, in the outdoors, and women were only allowed to participate as claimants or defendants (Clark, 2008). Conflicting parties would bring their grievances to family or community elders who, upon hearing their case and allowing them to answer any charges, would pass judgement (Clark, 2008). *Gacaca* judges would encourage confession, public apology and asking for forgiveness on the part of the defendant, which might be followed, additionally, by some degree of restitution to the victim (Clark, 2008). The *gacaca* were a form of restorative justice, seeing as their purpose was to “sanction the violation of rules that [were] shared by the community, with the sole objective of reconciliation” (Mbonyinge, 1995 *apud* Clark, 2008: 52). Throughout colonialism and post-independence, the *Gacaca* system grew increasingly more institutionalized and acquired a regular and administrative nature, working alongside and sometimes providing evidence for the formal national judicial system (Clark, 2008).

Following its initial dismissal as a transitional justice strategy, in the immediate aftermath of the 1994 genocide (Clark, 2008), the *Gacaca* system re-entered the public debate when it became a topic of discussion in the context of a series of reflection meetings¹⁸ held each Saturday, between May 1998 and March 1999, by the President of the Republic, Pasteur Bizimungu. In the agenda were the unity of Rwandans, economic, justice, democracy and security problems. The final report, published in August 1999, recommended that post-genocide justice be based on “Gacaca Rwandese heritage” (Office of the President of the Republic, 1999: 52) in the form of a “new Gacaca” (Office of the President of the Republic, 1999: 52) duly adapted to contemporary circumstances, in order to promote what was considered to be the sort of more participatory form of justice which had existed in pre-colonial Rwanda (Office of the President of the Republic, 1999b).

¹⁸ The meetings took place in Village *Urugwiro*, the official residence of the President of the Republic, which is why they have also become known as the “*Urugwiro* Talks”.

In this way, a heated debate was generated around the suitability of *gacaca* to judge genocide cases (Nogueira Pinto, 2012) and even the current President of the Republic, Paul Kagame (who was then Vice-President) was skeptical, at first (Clark, 2008):

I for one wasn't convinced that gacaca was the best approach. I still don't think gacaca gives us all we need and it has major limitations. When we were talking [at Urugwiro] about how to achieve justice and reconciliation, I wanted something stronger than gacaca. [...] Eventually I was persuaded that gacaca could help us deal with the massive numbers of genocide suspects who were in prison. (Kagame, 2006 *apud* Clark, 2008: 58)

In this interview excerpt, Vice-President Kagame identified the main practical reason why, despite initial resistance, *Gacaca* was eventually adopted: the formal judicial system was simply overwhelmed. At the time, it was estimated that national courts would take more than a hundred years to try all genocide suspects, in a country where life expectancy was 45 years (Nogueira Pinto, 2012). Furthermore, the *gacaca* were also seen as a way to provide a "Rwandan answer" (Nogueira Pinto, 2012: 32) to a tragedy that had been perpetrated by and had targeted Rwandans. Nevertheless, national authorities were also mindful of the international community's perception of Rwanda's transitional justice process – the first had been particularly uneasy with the public executions of twenty-three *génocidaires* across the country, in 1998 (Oomen, 2005). It was this concern with the international community's perceptions of post-genocide policies that finally convinced Vice-President Paul Kagame and other skeptics (Clark, 2008). However, the international community itself was also divided on this issue: in fact, the report on the *Urugwiro* Talks completely ignored the position voiced by the Special Representative of the UN Commission on Human Rights that the *gacaca* were not suitable for trying crimes against humanity but could be used to encourage truth-telling to promote reconciliation (Clark, 2008). Even so, despite the initial skepticism, as of 2002, after the *gacaca* legislation had come into force in Rwanda, all of Rwanda's main donors were supportive of the initiative:

[...] they financed the training of the 250,000 inyangamugayo ('persons of integrity') who would serve as judges, funded the wooden benches on which these judges [...] would sit, the red motorcycles on which the government monitors would go from one meeting to the other and the general, complicated logistics of holding trials in 11,000 jurisdictions. (Oomen, 2005: 902-903).

The new *Gacaca* system was enacted to prosecute and try the crimes of genocide or crimes against humanity committed between 1 October 1990 and 31 December 1994 (Republic of Rwanda, 2001). Post-genocide *Gacaca*, nonetheless, differs in some significant aspects from its ancestor; and this is purposefully so, as Rwandan authorities acknowledge that this traditional system has been adapted to suit the severity of these crimes (Tiemessen, 2004). The starkest difference, from which all others, more or less directly, derive, is the fact that the new *gacaca* courts enforce a written (national) legislation through their work – the Organic Law No. 40/2000 of January 26, 2001 (Vandeginste, 2003; Tiemessen, 2004). Furthermore, this same law sets out the structure, jurisdiction and powers of the *gacaca* tribunals (Vandeginste, 2003), and has been amended four times since its inception.

Therefore, the *gacaca* courts operate within a strict categorization of perpetrators and respective sentences attributed to each category, dependent on whether and when a confession was made by the suspect, as well as accessory sentences (Ingelaere, 2008). As a whole, the *Gacaca* system has been placed under the control of the *Gacaca* Tribunals department, specifically created for this purpose within the Supreme Court and the Ministry of Justice (Ingelaere, 2008). The *gacaca* courts were assigned five main goals:

to reveal the truth about the Genocide; to speed up the cases of Genocide and other crimes against humanity; to eradicate the culture of impunity; to strengthen unity and reconciliation among Rwandans; to prove the Rwandans' capacity to solve their own problems. (Republic of Rwanda, 2012: 33, emphasis added)

The first purpose attributed to the *gacaca*, truth-revealing, corresponds to what Bert Ingelaere (2008: 39) classifies as “the basis of the entire transitional justice framework in post-genocide Rwanda” therefore making *gacaca* the most important transitional justice mechanism in the country (Ingelaere, 2008). On the one hand, Rwandans were encouraged to step forward and tell the truth regarding their actions during and knowledge on the genocide, while on the other hand, suspects were strongly advised to confess, plead guilty, repent and ask for forgiveness (Republic of Rwanda, 2012). Verdicts and sentencing are pendent upon this twofold process of “truth telling” and can be

considered an instance of what Phil Clark (2008: 196) terms “truth hearing”, the outcomes and reactions to revelations of truth. The *Gacaca* manual illustrates this dynamics when stating that the tasks of the Gacaca Jurisdictions are “[t]o help *facilitate the emergence of the truth* of what happened during the genocide and other massacres; to *recognize the victims* [...]” (Gacaca Manual, [?] *apud* Clark, 2008: 191). According to Clark (2008), the two above-mentioned processes correspond to the government’s understanding of truth through the *Gacaca* system. In this way, based on the established goals, the *gacaca* courts operated under the assumption that concepts such as truth (“*the truth*”) and Genocide (“*the Genocide*”, with capital ‘G’) can be reduced to a single, objective and homogenous knowledge – truth – out there that is known *a priori*, simply waiting to be “revealed” (Buckley-Zistel, 2009).

4.2.3. *The National Unity and Reconciliation Commission (NURC)*

The idea of establishing a National Unity and Reconciliation Commission was already enshrined in the Protocol of Agreement on the Rule of Law included in the Arusha Peace Agreements of 1993, stipulating the creation of two different entities, the National Commission on Human Rights (article 15) and the Commission for National Unity and National Reconciliation (article 24). The first was mandated to investigate human rights violations perpetrated on Rwandan territory and its findings should be used for legal and educational purposes. This Commission might be equated to a truth commission, in the sense of dealing with what Clark (2008: 187) terms the “legal truth”, which allows for the passing of judgements of guilt or innocence. In fact, Clark notes how Jeremy Sarkin considers that this Commission could be a precedent for establishing a post-genocide truth commission (Sarkin, 1999 *apud* Clark, 2008: 56). The second institution, the Commission for National Unity and National Reconciliation, was assigned the preparation of a national debate on national unity and reconciliation, the education of the population in these issues and the achievement of these twin goals, although the terms and means by which these objectives would be accomplished are not specified. The work of the National Commission on Human Rights was interrupted by the 1994 violence and the idea

behind the Commission for National Unity and National Reconciliation would be picked up by post-genocide authorities and incorporated in the transitional justice process.

In the spirit of the restorative turn taken by Rwandan authorities in the late 1990s, establishing a truth commission was one of the proposed strategies to embody this approach. The government debated but ultimately rejected the option of using a truth commission to address genocide crimes (Clark, 2008; Kohen *et al.*, 2011). Instead, it decided to bring the Commission of National Unity and Reconciliation back to life, deeming it “of paramount importance in achieving the objectives of unity and reconciliation of Rwandan people assigned to the Government of National Unity” (Republic of Rwanda, 1999a, preamble). The NURC was seen as working in complementarity with the ICTR and the *gacaca* tribunals (Clark, 2010) bearing the main onus with regards to the promotion of unity and reconciliation (Outreach Programme on the Rwandan Genocide and the United Nations, s.d). It was been established for an indeterminate period of time, under the supervision of the Office of the President (Republic of Rwanda, 2008). The NURC holds a diversified mandate, working mostly in the areas of education, sensitization and research, with specific responsibilities including:

[t]o prepare and coordinate the national programs aimed at promoting national unity and reconciliation; establish and promote mechanisms for restoring and strengthening the Unity and Reconciliation of Rwandans; [t]o educate, sensitize and mobilize the population in areas of national unity and reconciliation; [t]o carry out research, organize debates, disseminate ideas and make publications on the promotion of peace, and the unity and reconciliation of Rwandans; [t]o propose measures and actions that can contribute to the eradication of divisionism among Rwandans and reinforce unity and reconciliation; [t]o denounce and fight actions, publications, and utterances that promote any kind of division and discrimination, intolerance and xenophobia; [...] [m]onitor how public institutions, leaders and the population in general comply with the National Unity and reconciliation policy and principle (NURC, “NURC Background”, 2014b [?]).

The NURC’s mandate, therefore, does not foresee a truth-finding dimension (TRIAL, 2015). Nevertheless, in line with its research-oriented work dimension, the Commission has been actively engaged in commissioning and publishing numerous reports and studies, ranging from a general analysis of the Rwandan conflict to specific studies on the roles of women, land and community as they related to the process of promoting unity and reconciliation (NURC, “Documents”, 2014a [?]). Most of the NURC’s research work

includes, to varying extents, an unavoidable reference to Rwandan pre-colonial, colonial and post-genocide history which, considering the NURC's institutional position, can be considered the official political narrative on Rwandan history and, particularly, on the violence and genocide of 1994.

Bearing in mind the scope of its mandate, it can be argued that the NURC is mostly a forward-looking institution, especially when considering that it has acquired a permanent nature (unlike, for instance, the *Gacaca* system), since its work has no stipulated time frame. This means that the NURC far exceeds its role as a transitional justice mechanism, having become, instead, a central element in the project of constructing a "new Rwanda", while it materializes a new beginning for the country as a new nation (Turner, 2015). This move becomes all the more apparent when one considers the extensive curriculum covered at the *ingandos* ("solidarity" or civic re-education camps) and prepared by the NURC, with "topics ranging from the new administrative structures put in place to sexual mores" (Zorbas, 2004: 38) and including, naturally, a state-sanctioned version of Rwandan history (Turner, 2015). The *ingandos* are "solidarity" or civic re-education camps and one of the NURC's "reconciliation tools" (NURC, 2014b[?]), whose main target group was initially constituted by former Hutu combatants who had returned to Rwanda mainly from the Democratic Republic of Congo but, as of 2002, had extended to politicians, local leaders and *génocidaires* (Clark, 2010). Presently, the main focus is on students (Clark, 2010). The Rwandan transitional justice process has been designed by Rwanda's RPF-dominated political authorities as a "revolutionary political project of creating a specific nation in a specific political image" (Turner, 2015: 23).

4.3. Dichotomizing post-genocide Rwanda: enacting narratives, constructing identities and roles

The building of narratives is an integral aspect of transitional justice processes, through which memories, identities and experiences can be (un)acknowledged as well as (re)enforced (Ramos, 2013). According to Ramos (2013), the creation of narratives is not only inherent to transitional justice, but it constitutes one of its three main ambitions,

along with justice and reconciliation, all of which are interconnected. A narrative is the lens through which “[w]e constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void” (Cover, 1983: 4). In the specific context of transitional justice processes, a narrative “could be understood as context or category of meaning that relates the memory of the past to the processes of searching for truth and justice” (Grørdum, 2012: 160). Therefore, transitional justice narratives are forward-looking, in the sense of projecting a vision of how the country will deal with its past of violence, war or massive human rights abuse and what kind of post-transitional justice future is being envisioned, while at the same time being deeply rooted in the reinterpretation and projection of memories of the past. In the end, past and future are purposefully realigned through a transitional justice narrative in order to narrate them as a “followable story” (Grørdum, 2012: 160), by which they acquire a sense of meaning.

Consequently, narrative-construction is a work of vital importance and, therefore, a concern for any new government looking to legitimize its newfound position and to mold a governable society (Buckley-Zistel, 2009), in line with the debates in transitional justice which have moved on from questioning whether societies should “remember or forget” past violence to discussing the impact of *the way* societies do remember. In the case of Rwanda, few dispute the fact that the genocide should be remembered (Brandstetter, 2012). This places narratives right at the core of power politics, since not only are they the work of agency (for instance, of the new government) but they entail a process of choosing what to remember and shaping how to do it (Brandstetter, 2012), in this way imbuing memories with interpretations and meanings.

In sum, the selective nature of remembrance requires one to pose the question of whose stories are told and whose are excluded, when often “[...] governments make unequal space for different memories of violence” (King, 2014: 295). As importantly, and as post-genocide Rwanda illustrates, this also prompts us to question the way in which these stories are included based on a “victim-perpetrator” frame which comes to serve as an identity-grid of the past that forms the basis for how identities, roles and dynamics of inclusion/exclusion continue to be reproduced.

4.3.1. *The Rwandan transitional justice narrative on violence and victimhood*

Even though the violence that took place between April and July 1994 has been directly dealt with by Rwandan transitional justice mechanisms, most notably by *gacaca* courts, unity and reconciliation have been established as the twin principles and ambitions guiding not only the Rwandan transitional justice, in particular, but also the country's post-genocide future, more widely (Republic of Rwanda, 2007). The 1994 genocide has been officially interpreted as the culmination of historic violent practices of division, discrimination and persecution which, at different times, took an ethnic, regional or religious base (Republic of Rwanda, 2007). The National Unity and Reconciliation Commission has published several official reports and studies dealing with violence, social cohesion, reconciliation and the implementation of specific policies in post-genocide Rwanda; it has also commissioned a particular study which is one of the few documents detailing the official version of the 1994 violence and its historic roots.

This study, "The Rwandan Conflict: Origin, Development and Exit Strategies", argues that an identity-based conflict "[...] has been devastating Rwanda for several decades" (Republic of Rwanda, s.d: 8) while explicitly framing it as "the Hutu-Tutsi conflict in Rwanda and Burundi" (Republic of Rwanda, s.d: 8), despite caveats of other identity-based cleavages (such as "North-South") and of intra-group differentiation. Moreover, "[t]he 1994 genocide has drastically made it [identity-based conflict] more acute, weakened and complicated its resolution but has not made it definitely impossible" (Republic of Rwanda, s.d: 38). This quotation introduces two very important official notions with regards to our discussion of the 1994 genocide and interpretations of violence and victimization. Firstly, that the 1994 genocide is regarded as an episode, albeit one of unprecedented proportions, within a chronologically lengthier context of the ethnicization and racialization of Hutu and Tutsi identities "[...] due to divisionist discourse and successive anti-Tutsi pogroms [...]" (Republic of Rwanda, s.d: 5) and of the historical victimization of one specific Rwandan group, the Tutsi. While the first process is depicted as having been initially shaped and reproduced by colonial racialized discourses and praxis and then exacerbated by post-independence governments, the latter became a policy of both post-1959 republics, in such a way that

“Rwandan” democracy used violence and exclusion against the Tutsi [...] constantly considered as the troublemaker of sovereignty and therefore of democracy. All democratic processes, from the 1959 revolution to the 1994 genocide, went back to their roots and found their legitimacy in the victimization of the Tutsi. (Republic of Rwanda, s.d: 21)

The current President endorsed this idea in his speech at the genocide commemoration ceremony in 2012, when he stated that “we remember our loved ones who perished in the genocide *now and in the past*” (Republic of Rwanda, 2012, emphasis added). President Kagame synthesizes this process leading up to the genocide, attributing the latter to “[...] bad politics, bad politicians and bad leaders” in his speech to mark the 16th anniversary of the genocide, further adding that “[...] bad politics was not just internal [...] The convergence of bad national politics with bad international politics resulted in what we commemorate today – the tragic situation of 1994” (Republic of Rwanda, 2010a). In this way, the role played by international actors in the long-term preparation of the genocide is seen as twofold: on the one hand, as colonial authorities whose ideological legacy was appropriated by the two post-independence governments and, on the other hand, as “[...] those who said “never again”, yet abandoned those they were responsible for, those they were supposed to protect [...]” (Republic of Rwanda, 2009b). The excerpt further implies that, even though the 1994 genocide had a start date and was ultimately brought to a halt once the RPF took the capital city of Kigali, in July 1994, the underlying Rwandan conflict has yet to come to a definite resolution.

Pertaining to this point, and while drawing a comparison with tensions between the Hutu and Tutsi communities in Burundi, the study cautions how

[t]hat risk [of open conflict] is also still hanging over Rwanda after the genocide. As a matter of fact, the wounds left by the genocide which are not healed yet and the fear of another genocide constitute a significant constraint which implies that key positions are often assigned to the Tutsis to maximize the guarantee for security. (Republic of Rwanda, s.d: 27)

In his most recent address, on the occasion of the 21st commemoration of the genocide, President Kagame touched this point, acknowledging that people are still being persecuted although “[...] it happens in another form [...] through genocide denial, and denigration of survivors everywhere” (Republic of Rwanda, 2015), which is in line with his

position, presented in an earlier speech, that the genocide is still happening because not all *génocidaires* have been brought to justice, particularly the ones who fled abroad (Republic of Rwanda, 2011a). However, he seems to take it one step further, again in his most recent speech, when he categorically states that

[w]hen you despair, you give an opportunity to those who want to *destroy you*. That would be betraying the more than a million lives lost. When you allow *the enemy in*, you are betraying all those whose lives were cut short due [to] injustice. The Rwandans I am talking about, in this changed Rwanda understand that it's unacceptable to let in those who want to destroy us. All Rwandans: men, women, children, the youth, generations to come, *should follow the same line of thinking*. (Republic of Rwanda, 2015, emphasis added)

After which he goes on to conclude how Rwanda is a country of people “[w]ho are ready for peace and for war, for our lives. We are ready for both. If it’s for war, *to take us back to our past*, we are more than ready to fight that war” (Republic of Rwanda, 2015, emphasis added). Considering the post-genocide context, the recommendation of President Kagame for Rwandans to “follow the same line of thinking” can be interpreted as an instigation for them to act according to the country’s National Policy of Unity and Reconciliation, most particularly, for them not only to adhere to but to actively stand up for certain notions of unity and reconciliation. According to the National Policy of Unity and Reconciliation,

[...] unity and reconciliation is *the only option that Rwanda chose to undertake* after the discriminatory and divisive practices that plunged the country into wars that culminated in the 1994 Genocide. (Republic of Rwanda, 2007: 23, emphasis added).

Unity and reconciliation are rarely, if ever, referred to separately from one another. In fact, as the excerpt above shows, they are taken to represent one single post-violence path. This is admittedly conducted with the purpose of restoring “[...] ethical and cultural values that used to guide harmonious inter-personal relations of Rwandans and to seal their unity” (Republic of Rwanda, 2007: 8). This notion of unity is a founding myth for a post-genocide nation-building project, to such an extent that, during the meetings which took place at Village *Urugwiro* between 1998-1999, a Committee was set up specifically to discuss the issue of the unity of Rwandans, as we referred earlier in this

chapter, whose report offers a portrait of Rwanda's pre-colonial harmonious society and traces the process of historical destruction of the latter's sense of national unity.

In broad strokes, this unity was based on a shared allegiance to the King, a shared language, belief and culture, and on a sense of complementarity between people (Republic of Rwanda, 1999b: 8). This last element is of particular relevance because it directly relates to the official post-genocide position on ethnicity, which is that it never existed prior to colonialism (e.g Republic of Rwanda, 2000a); instead, Rwandan society was marked by "subtle social differences" (Republic of Rwanda, 2000a: 7). Johan Pottier described this as a "functionalist narrative on Rwandan society and history" (2002: 179): the idea that in pre-colonial Rwanda, Twa, Hutu and Tutsi were socio-economic categories, attached to varying degrees of wealth, as measured by cattle ownership, and differences in economic specialization (Republic of Rwanda, s.d: 5), and the prevailing identity referent was that of the clan (Republic of Rwanda, s.d). In line with this historical version, the suppression of ethnicity is one of the main strategies guiding the National Policy of Unity and Reconciliation and Rwandans have been urged to

[u]nderstand that maintaining themselves prisoners of their belonging to ethnic Hutu, Tutsi [and] Twa groups is one of the biggest obstacles standing in their way to development [...] and break their narcissism and wake up to the progress the world has achieved. (Republic of Rwanda, 1999b: 58)

As demonstrated in the above excerpt, ethnicity is framed negatively in opposition to "development" and "progress" perceived as pre-determined endpoints, an identity reference Rwandans should abandon in order to catch up with the rest of the world, which serves as reference point. This pursuit of unity is included in the dual notion of reconciliation advocated by the former Executive Secretary of NURC, Fatuma Ndingiza: reconciliation at the political level, on the one hand, and individual/interpersonal level, on the other hand (Ndingiza, 2008). The latter dimension entails a process of personal transformation and involves displaying remorse, confessing, being forgiven/forgiving and restoring the Rwandan social fabric (Ndingiza, 2008). Which is why, in Rwanda, "[m]emory, the truth, justice, confession and forgiveness are at the heart of the process of reconciliation [...]" (Ndingiza, 2008: 3). The onus placed on unity and reconciliation and this particular approach to reconciliation instill a restorative nature to Rwanda's

transitional justice process (Republic of Rwanda, 2010b). As we have elaborated elsewhere, within the Rwandan transitional justice constellation, the *Gacaca* system has been explicitly endowed with a restorative justice mandate in the sense of rebuilding the broken social bonds of the Rwandan social fabric (Republic of Rwanda, 2010b). This restorative twist to the initial exclusively retributive approach can be particularly detected in the preamble of the law enacting the *Gacaca* system, which reads that the latter is adopted to allow “convicted prisoners to amend themselves and to favour their reintegration into the Rwandan society [...]” (Republic of Rwanda, 2001: 2).

The ICTR was mandated to try cases of genocide and crimes against Humanity whereas the *gacaca*, in addition to those two, could also prosecute suspects of war crimes. In its interim report of October 1994, the Commission of Experts of the United Nations instated by the UN Security Council concluded that, between 6 April and 15 July 1994, genocide, crimes against Humanity and war crimes had been committed, and the Tutsi community had been the target of genocide (Eltringham, 2004). In spite of this, during the first commemoration of the genocide, in April 1995, Tutsi and Hutu were both remembered and represented as victims of genocide (Burnet, 2009). Whether Hutu can be considered victims of this specific genocide is debatable, since they were persecuted as a political group; the persecution of the latter does not fall within the scope of genocide (Eltringham, 2004). Nonetheless, that first commemorative ceremony sought to call attention for the fact that some Hutu had also been targeted by genocide perpetrators thus avoiding the risk of collective guilt (Vidal, 2001 *apud* Burnet, 2009).

The Statute of the ICTR and the law establishing the *Gacaca* system both delimit the crimes falling within their jurisdictions – thus, they also implicitly acknowledge the experiences of certain victims and perpetrators (of those crimes). However, Nigel Eltringham observes that “[...] assertions regarding the ‘victimological status’ of the Hutu ‘moderates’ [...] make no reference to ‘crimes against humanity’[...]” (Eltringham, 2004: 71) which leads to the conclusion that “[...] contemporary Rwandan society is understood exclusively through the interpretative lens of genocide” (Eltringham, 2004: 71). This observation reflects Mahmood Mamdani’s (2001) “genocide framework” that has come to dominate post-genocide societal identification. Genocide monopolizes the frame

through which experiences of violence are recounted and understood in post-genocide Rwanda, whether of victimization, perpetration, or something else in between. Susan Thomson (2009) further reinforces this position when arguing that «[t]he programme of national unity and reconciliation relies on two interpretative filters to shape the post-1994 Rwandan political and social order. The first is “history” and the second is “genocide”» (2009: 114).

This translates into the fact that many Rwandans are finding it increasingly difficult to be recognized as a victims (Parent, 2010). Because “[...] the official narrative postulates the 1994 genocide as the defining event in Rwandan history [...]” (du Toit, 2011: 9), the strategies and programmes to promote national unity and reconciliation have exclusively identified Tutsi as victims (Nagy, 2009) and as survivors (Burnet, 2009). Interestingly, this categorization is not explicitly spelled out in official policies or by authorities, since it would go against the vigorous post-genocide effort to discourage and abolish the use of ethnic identity categories in public discourse (Ramos, 2013) and to promote unity based on the national *Banyarwanda* identity (Clark, 2010). Instead, this victimhood discourse is enacted through more subtle practices by political authorities and mechanisms. Until 2008, the official terminology to refer to the 1994 genocide, in Rwanda, was *itsebabwoko n’itsembatsemba* (genocide and massacres), thereby acknowledging different types of violence going on at this time, and particularly, the killings of Hutu people (Burnet, 2010: 103). In May that year, a constitutional amendment changed this designation, legal and officially enshrining it as *jenosie yakorewe aba Tutsi*, genocide against the Tutsi (Burnet, 2010: 103; Brandstetter, 2010: 6).

According to Burnet (2009), in the aftermath of the 1994 genocide, the term “survivor” extended simultaneously to both Tutsi and Hutu. In fact, the 2008 law relating to the establishing of FARG defines “survivors” as “survivors of the Genocide against the Tutsi and *other crimes against humanity* committed between 1st October 1990 and 31st December 1994” (Republic of Rwanda, 2009a, emphasis added). FARG’s assistance, therefore, seems to be highly inclusive since genocide victims and survivors are not categorized as its only beneficiaries. In light of this, some dispositions regarding eligibility criteria set in “FARG Citizen’s Charter” are particularly troubling. When listing the various

services available to its beneficiaries, eligible beneficiaries are defined as “vulnerable genocide survivors” (Republic of Rwanda, 2011b: 12-18). FARG’s vision is that “[b]y year 2019, all *genocide survivors* are fully integrated in Rwandan Society [...]” (Republic of Rwanda, 2011b: 10, emphasis added). This has motivated criticism that FARG discriminates against non-Tutsi citizens in the provision of its services (Thiebou, 2007; Burnet, 2009).

The notion that the 1994 genocide was the final chapter of a longer history of genocidal violence entails that the first eventually and definitely shattered “all that was left of the Rwandan social fabric that provided a degree of social cohesion prior to the genocide” (Republic of Rwanda, 2010b: 13). While NURC’s work in carrying out community consultations is intended to encourage Rwandans to present their own ideas to “promote their *social cohesion*” (Republic of Rwanda, 2010b: 15, emphasis added), in the aftermath of *gacaca*, some communities have been successful in reintegrating former prisoners and “reestablish the weft of the *social fabric*” (Burnet, 2010: 96, emphasis added). Thus, the restoration of the social fabric became the ultimate and comprehensive aim driving the strategy of “unity and reconciliation”, assumed in slightly different ways throughout the Policy of National Unity and Reconciliation (2007), but condensed in this definition:

Unity and Reconciliation of Rwandans *is* defined as a consensus practice of citizens who have common nationality, who share the same culture and have equal rights; citizens characterized by *trust, tolerance, mutual respect, equality, complementary roles/interdependence, truth, and healing of one another’s wounds inflicted by our history*, with the objectives of laying a foundation for sustainable development. (Republic of Rwanda, 2007: 7, emphasis added)

According to Beristain *et al.* (1999), the rehabilitation of the social fabric is a crucial element in the process of post-violence reconstruction, whether it is in the aftermath of conflict, natural disasters or socio-economic reforms. Following the 1994 genocide, the strategy of national unity and reconciliation has recast post-genocide Rwandan society, the country’s social fabric, along the lines of Mamdani’s (2001: 266) “genocide framework”: contemporary Rwanda is understood, thought and spoken of, through new socio-political categories: victim, perpetrator, survivor, refugee and

returnee (Mamdani, 2001), seemingly in detriment of the former “Hutu-Tutsi” ethnic ones. At first, this may appear as a comprehensive identity frame, acknowledging other roles and historical experiences beyond victim and perpetrator, particularly by explicitly differentiating between deceased and living victims, the latter of which constitutes the category of survivors. Nonetheless, not only have we discussed above, and will continue to demonstrate, how the former ethnic dichotomy is still very much present in Rwanda but also, as we shall see below, when adopting a psychosocial approach to post-violence rebuilding, it becomes evident that these post-genocide categorization and memorialization strategies are actually hindering the processes of reconciliation and of repairing the Rwandan social fabric.

4.4. Post-genocide Rwanda through a psychosocial lens

4.4.1. (Un)acknowledgement in collective memory

According to Beristain and Donà (1997), the construction of a collective memory, thus, the acknowledgment of experiences and memories, is an important component in the process of social rehabilitation, particularly in the aftermath of sociopolitical violence. The absence of this social acknowledgement pushes grief and mourning exclusively into the private sphere, preventing the victim from re-attaining her/his dignity and depriving her/him of the broader social context which can provide wider meaning to individual experience(s) of violence (Beristain and Donà, 1997). As the excerpt below demonstrate, post-genocide Rwanda is a case in point in this regard. Non-Tutsi victimhood experiences are only partially included or virtually excluded from the official 1994 victimhood discourse. Elisabeth King (2014) interviewed an elderly Hutu woman, from northern Rwanda, who shared her own experience of the 1994 violence:

The other history that we have to teach [besides the government version disseminated at memorials, ingando re-education camps, and schools]. For example, I lost three-quarters of my family during the war. There's my mother who died during the war. There is my daughter, her child that died. I say in my house there was my father who died, there was my little sister, my brother-in-law, my grandchildren. My brother-in-law and his wife were killed. *But we [Hutu] don't have the right to say we lost people.* There

are orphans of the genocide, widows of the genocide, *everything of the genocide*. That's it. (King, 2014: 300, emphasis added)

The above testimony brings to light experiences of violence and victimization and grievances endured by some Hutus, specifically those labeled as Hutu “moderates” and those who openly resisted joining in the genocide violence and assisted targeted victims; these fall within what King (2014: 298) defines as “somewhat recognized Hutu memories” accommodated in the official discourse by national authorities. Nevertheless, she notices how, in the stories of both survivors and rescuers featured at the Gisozi Memorial website, the ethnic identification of the first is often mentioned, while the latter's is always omitted (King, 2014: 299). Interestingly, in describing the running of a two-week seminar to promote “reconciliation between Tutsis and Hutus” (Staub, 2008: 395), Staub notes how the Hutus present “[...] did not tell the *stories* of their experiences during the genocide. Hearing the painful stories of Tutsis [...] led, however, to the emphatic participation of Hutus, which may have helped Tutsis” (Staub, 2008: 407). While stories of Hutu victimization are often silenced and excluded from official memory (Schuberth, 2013), their participation is perceived as important to legitimize the dominant Tutsi victimhood discourse. Hutu experiences of violence feed into the official genocide and victimhood discourses through the “victim-perpetrator dichotomy” frame predominantly as perpetrators (Eltringham, 2004; Nagy, 2008; Thomson, 2009a; Vergos, 2011; Ramos, 2013) or, at the very least, genocide suspects (Hintjens, 2008).

4.4.2. *Essentializing identities, excluding people*

From a psychosocial point of view, this discourse has several evident implications: firstly, it racializes post-genocide sociopolitical categories (Hintjens, 2008) and therefore maintains “the fiction of race” among Rwandans (Hintjens, 2008: 23) rooted, in this case, on mutual distrust and conflict. This racialization process dangerously implies the ascription of collective guilt. According to Eltringham (2008: 70), while at a conference that took place in Brussels, in 1999, the then Rwandan ambassador to Belgium argued that there had been two million *génocidaires* in 1994, which corresponded to the entire Hutu adult population. Therefore, although national Rwandan

authorities claim to be working towards changing the way Rwandans perceive their social identities (Longman and Rutagengwa, 2004), their discourse is, in fact, hindering the (re)building of social bonds and relationships between Hutu and Tutsi, particularly at the community level, since it promotes and reinforces a dichotomized way of thinking Rwandan society (Parent, 2010) instead of curtailing it: «[t]he Tutsi constitute an us; the Hutu represent the “other”» (Parent, 2010: 285).

Beristain (2010) warns against the risk of essentializing a “victim” identity, to the extent that it obfuscates all other identity references and categories, therefore limiting an individual’s roles and aspirations. We believe this rings equally true for both terms of the “victim-perpetrator” dichotomy. In our understanding, Beristain’s observation that this conception of victim identity can be stigmatizing, in the sense that it comes to structure beliefs, feelings and social interactions (2010) applies to both survivors and perpetrators in post-genocide Rwanda, especially considering how this monopoly on identity is as much a result of trauma as it is of personal changes, group influences and social expectations (Beristain, 2010). Parent reflects upon this question, concluding that

[f]or Tutsi, being reminded of the genocide through commemoration on a daily basis can only feed his/her trauma symptoms, fears and negative feelings and perceptions towards “the other”. Moreover, the impoverished conditions of many Tutsi survivors make matters worse [...] For Hutu, being identified as accomplices or suspected génocidaires, receiving no acknowledgement for their sufferings and/or good deeds, and being marginalized and stigmatized (often worsening their material conditions) in addition to their post-conflict and post-genocide trauma symptoms (even if they are different than the Tutsi’s) produces increasing resentment toward Tutsi. (Parent, 2010: 285)

As most of the literature on the Rwandan genocide and post-genocide Rwanda, we have so far conducted our discussion within the boundaries of the Tutsi-Hutu identity frame. While we have sought to demonstrate how Hutu memories and experiences of victimization are largely absent from official 1994 violence discourse and memorialization practices, our critique of the excluding nature of this narrative and of the underlying “victim-perpetrator” dichotomy intends to bring to the foreground a third identity group in Rwanda: the Twa. According to Vandeginste (2014: 4), the vast majority of scholarly work on violence and genocide in Rwanda and Burundi “refers to the Batwa literally as a footnote in the history of both countries” and the literature is considerably focused on

the Hutu-Tutsi relationship, consequently ignoring the Twa almost completely (Beswick, 2011). The extent of their relevance in Rwandan society seems to be restricted to the mention that they make up for approximately 1% of the population.

Despite having lost about a third of its population as a direct result of the 1994 violence, the Twa community has been excluded from the national discourse on genocide and its victims as well as from the programme of reparations (Lewis, 2006; Thiebou, 2007). The Twa were simultaneously victims and perpetrators. Killings within the Twa community were perpetrated both by Hutu-led groups and the Rwandan Patriotic Front (RPF), the latter of which has dominated post-genocide Rwandan politics since 1994. Following the genocide, the Twa are still subjected to daily forms of victimization, most of which started before 1994 but persist in the present. The Twa are subjected to structural violence that excludes them from institutions, decision-making processes and full enjoyment of their citizenship rights, in general. Their economic and cultural rights have been systematically violated, with a significant symbolic impact in communities, deriving essentially from their pre-1994 forced eviction from the forest regions of Rwanda which they had historically inhabited, a situation which has not been reversed in the present; if anything, it has been exacerbated. The forest, its resources and the relationship with nature play a crucial role in Twa culture and identity (Lewis, 2006). The Twa have chronically been characterized by extreme poverty, low levels of schooling and terrible living conditions (Lewis, 2006; Matthews, 2006).

During her fieldwork among Twa communities in Rwanda, Thomson (2009b) interviewed a Twa man who had been barred from participating in an *ingando* camp, which he considered would help him “learn how to live in the new Rwanda” (Thomson, 2009b: 314). However, according to a local official, his self-identification as a Twa person made him ineligible to attend:

‘You don’t need re-education because you are not part of the genocide. Your people did not kill or get killed.’ I was so angry with him. I lost my mother and sister and I even hid some Tutsi in my home! [...] He called some people and I spent the next week in prison for disrespecting national unity. (Thomson, 2009b: 314, emphasis added)

This testimony poignantly illustrates the paradoxical situation experienced by the Twa community in post-genocide Rwanda *vis-à-vis* the official, top-down, national narrative on genocide, national unity and reconciliation. On the one hand, the testimony reaffirms our previous contention that the crime of genocide serves as the reference point for individual categorization in post-genocide Rwanda – “you are not part of the genocide”. On the other hand, it demonstrates how the Twa are excluded from this identity construction process, by authorities. From the perspective of the latter, they are neither victims nor perpetrators and therefore, have no role to play in post-genocide reconciliation and rebuilding. Which is why Lisa Matthews (2006) claims that the Twa are “the people who don’t exist”. While Hutus are selectively portrayed as “perpetrators-*génocidaires*” as opposed to the Tutsi “victim-survivor” (Eltringham, 2004), motivating the grievances which we explored above, the Twa are conspicuously absent during and after the genocide. As Parent (2010: 285) categorically states, “[t]he Twa remain invisible/non-existent”. In fact, the Rwandan Reconciliation Barometer (Republic of Rwanda, 2010b) shows how, when inquired over which parties should reconcile in post-genocide Rwanda, interviewees were given several options to rank, including one specifying “Hutu and Tutsi ethnic group” (Republic of Rwanda, 2010b: 63). A mention of the Twa ethnic group was nowhere to be found in any of eleven answer options. We can only assume that if anyone would have considered Twa as a relevant party in reconciliation, they would have been forced to answer “Other”.

Nonetheless, the Twa were, indeed, victimized by the 1994 violence: according to Lewis (2006), about a third of the population is estimated to have died or been killed during the 1994 genocide and violent conflict. However, the stories of death, resistance and struggle among the Twa community are overwhelmingly left unacknowledged (Jackson, 2003; Lewis, 2006). In addition to having been persecuted as a direct consequence of being a Twa and of the perception, on the part of the *Interahamwe* and other militia groups, that the Twa were somewhat connected to the Tutsi-dominated monarchy (Lewis, 2006), the Twa are known to have protected both persecuted Hutus and Tutsi during the genocide (Jackson, 2006). In the aftermath, the Twa were also the victims of extra-judicial killings carried by the RPF (Lewis, 2006) and many who had fled

the violence were imprisoned upon returning to their respective communities, on genocide charges (Lewis, 2006). The Twa were targeted both by the *génocidaires* and the RPF and, according to testimonies, were forced to act as “human shields” by both parties (Matthews, 2006). While some criminal accusations were indeed legitimate, the majority that were levelled against the Twa were based on “derogatory stereotypes and unjustified generalizations” (Lewis, 2006: 14).

The excerpts we have analyzed throughout this chapter as well as our discussion lead us to reflect more profoundly on the way in which the official transitional justice narrative was constructed in post-genocide Rwanda: it builds on the idea that there is *the* Hutu and *the* Tutsi (and *the* Twa) experience of genocide (Eltringham, 2004; Hilker, 2009; Thomson, 2009a; Parent, 2010; Vergos, 2011) which dangerously resonates with the dichotomist view of peoples espoused by the 1994 genocide perpetrators (Eltringham, 2004), implicitly maintaining the ethnic divide in Rwandan society (Pottier, 2002). According to Thomson (2009a), the official narrative therefore excludes Tutsi and Twa perpetrators, Hutu and Twa rescuers, Tutsi, Twa and Hutu resisters and Hutu and Twa survivors. In reality, the official narrative straightforwardly ignores the fact that Rwandan lives simply do not fit within the over-simplified options made available by post-genocide authorities (Lemarchand, 1999 *apud* Hintjens, 2008: 26). According to Lyndsay Hilker (2009), not only is ethnicity still an extremely important factor in determining social interactions between Rwandans but also, disturbingly, ethnic categorization is still predominantly based on stereotypes, some of which mobilized in 1994. Furthermore, the notion of *the* Hutu and *the* Tutsi genocide experiences has actually provided a new layer of stereotypes, in addition to physical complexion and political perspectives (Hilker, 2009).

4.4.3. *Context matters: post-genocide claims and interpretations of violence*

Twas’ experiences in 1994 are of particular interest because of the complexity of their role in the violence and of their victimization, considering that the Twa participated as victims, rescuers and perpetrators, while some simply fled. The fact that they have been forgotten in the process of re-constructing post-genocide Rwanda (Thiebou, 2007)

seems all the more puzzling. A way to understand this is by considering Beristain's (2010) reflection on the impact of *context* on how victimization stories are expressed and acknowledged. This refers more specifically, for instance, to the living conditions and circumstances of the victim and the social position it assumes within a certain society (Beristain, 2010: 39). Seeing as the Twa have been historically marginalized, segregated and still endure severe social stigmatization, they have an extremely diminished standing as part of Rwandan society. After all, they have inclusively been stereotyped "as not fully human or socialised beings" (Lewis, 2006: 7). In this sense, their peripheral social position in the fringes of Rwandan society heavily precludes their capacity to voice claims with regards to reparations, particularly, symbolic ones in the way of acknowledgement of their experiences and memories.

We discussed above the consequences of this lack of acknowledgement in depriving the victim of a wider social context within which to understand his or her own individual victimization: in the case of the Twa, this absence is particularly acute. For instance, Jerome Lewis (2006) contrasts the testimonies of Tutsi and Hutu individuals in which they showed awareness of the political relevance of the shooting of the Presidential plane on April 6 1994 and frequently began their stories with reference to this event, with the testimonies of Twa people: "[f]or the Twa, rarely able to listen to radios, the massacres and war took most by surprise when they began hearing shooting. The Twa often started their testimonies with the arrival of fighting in their commune [...]" (Lewis, 2006: 9). Based on the testimonies collected in Lewis (2006), it is possible to conclude that the Twa struggle to understand the reason why they were targeted and victimized. In the words of a Twa interviewee:

[...] *we don't know why* all these terrible things are happening to Twa people as we don't support anyone. This is very stressful because many innocent people have suffered for *no reason*. (Lewis, 2006: 18, emphasis added)

Once again, context is key to understanding how the Twa deal and interpret their victimization. Another Twa interviewee suggested that "[m]aybe this is happening to us because we are Twa" (Lewis, 2006: 13). According to Lewis, the Twa interpreted and rationalized their experiences through their familiar experiences and language of

discrimination: “[...] because they are Twa, people despise and hate them” (Lewis, 2006: 17).

4.4.4. *Post-genocide (re)victimization and trauma*

Therefore, through their exclusion of the official narrative underlying the programme of national unity and reconciliation (Thomson, 2009b), the Twa are enduring a process of (re)victimization at multiple levels. On the one hand, they are prevented from discussing their genocide experiences, since these can only be openly addressed in state-sanctioned scenarios such as the *gacaca* and *ingando* (Thomson, 2009b), which the Twa are barred from attending, as we have seen above. On the other hand, while Twa were targeted during the genocide for being Twa (Lewis, 2006), they cannot secure recognition on the part of post-genocide authorities for what they perceive to be their specific group identity, particularly, as indigenous people of Rwanda, (Thiebou, 2007; Thomson, 2009b), despite their indigeneity claims being internationally acknowledged and legitimated, for instance, as demonstrated in a joint report published by the African Commission on Human and Peoples’ Rights and the International Work Group for Indigenous Affairs (ACHPR and IWGIA, 2010). Tellingly, in 2004, CAURWA, the most prominent civil society organization advocating on behalf of the Twa community, was pressed by the Rwandan Ministry of Justice to change its name by dropping the reference to indigeneity (Vandeginste, 2014) and works now under the designation of COPORWA (Thomson, 2009b: 319), although it is no longer permitted to campaign specifically on behalf of Twa interests (Thomson, 2009a). This explains one Twa woman’s statement that “[i]t is better to avoid contact [with local authorities] than to be forced to reject your ancestry” (Thomson, 2009a: 213).

According to Thomson (2009a: 6), the policy of national unity and reconciliation is “[...] the defining feature of state power in post-genocide Rwanda as it structures the interactions of individual Rwandans with the state as well as with each other.” In this sense, the process of Twa (re)victimization can be thought of in terms of a “psychosocial trauma” (Baró, 1990 *apud* Beristain, 2010: 13), which refers to “the trauma [that] was

socially produced but is nursed by this relationship between the person and society¹⁹” (Beristain, 2010: 13). Not only have the Twa been historically marginalized throughout Rwandan history, but the policy of national unity and reconciliation perpetuates their socio-economic and political exclusion of Rwandan society (Thomson, 2009b), therefore providing the setting for the reproduction of this trauma in Twas’ relations with other Rwandans and the Rwandan state.

This complex notion of trauma “[...] situates it within socio-political, economic, and historical contexts of power and its abuse [...]” (Lykes and Mersky, 2006: 598). From our point of view, this “reconceptualization of trauma” (Lykes and Mersky, 2006: 598) is equally valid to understand Hutu grievances, in the sense that they are ascribed a role of perpetrators or genocide suspects in post-genocide Rwanda, through a perception of collective guilt, which is not only performed in their interactions within their community and with the state, but also impacts and limits their participation in community life as they are constantly regarded with suspicion (Thomson, 2009a). In sum, Burnet (2009) argues that fear has become a way of life for the Rwandans whose experiences of violence go against the officially-endorsed narrative, thereby accentuating their trauma. As a result, Rwandans endure, to a certain degree, a self-imposed amnesia based on the version of the past they know they can *safely* remember (Nyirubugara, 2013). In this way, the Rwandan process of reconciliation seems to be succumbing to a common pitfall in post-conflict divided societies of strengthening attributes that define victim identity, and identities in general, which hinders the prospects for reconciliation (Beristain, 2010). We sought to demonstrate how this reflection is similarly useful to understanding the reinforcement of the “victim-perpetrator” dichotomy.

4.5. The politics of victimhood: post-genocide Rwanda through a constructivist approach

While the psychosocial lens above enabled us to criticize several of the limitations and invisibilities produced by the official post-genocide national unity and

¹⁹ Translated by the author. In the original: “[...] el trauma ha sido producido socialmente pero se alimenta en esa relación entre individuo y sociedad.” (Beristain, 2010: 13)

reconciliation narrative, our critique seeks to dig deeper into the process of how this narrative came to be the *status quo* and the political dynamics and intentions underlying it.

The RPF-led political regime detains domination over the construction of knowledge in Rwanda (Pottier, 2002); knowledge production, control and dissemination are the core of Rwandan politics (Schuberth, 2013). The “voices of the people who have stories to tell” (Pottier, 2002: 202) are easily marginalized in the official narrative on victimhood, genocide and history, seeing as the Rwandan government holds the monopoly on the model of reconciliation and on the construction of knowledge and parameters defining the concepts of “history”, “memory” and “ethnicity” (Vergos, 2011). Rwandan authorities also seem to act based on the idea that there is one objective truth “out there” in explaining genocide and Rwandan history: “What matters is that one knows *the truth*. So there is the need to remember, based on what *really* happened”, stated President Kagame (Republic of Rwanda, 2009b, emphasis added) on the 15th commemoration of the genocide.

In post-genocide Rwanda, the law, most notably through the Constitution, effectively restricts the parameters of what is considered valid or acceptable political activity and behaviour, acting as a “dominant public framework” (Beswick, 2011: 498). The constructed impact of the Constitution on Rwandan reality runs deeper, however: in article 9, it stipulates the “eradication of ethnic, regional and *other divisions* and promotion of national unity” as a fundamental principle guiding the Rwandan state (Republic of Rwanda, 2003, emphasis added). Notwithstanding the understandable focus on national unity, considering the wider historic context of civil violence and, most notably, of genocide, the 2003 Constitution effectively restricts and shapes Rwandans’ space for and process of identity-building. This is in line with Beswick’s (2011) argument that Rwandan authorities have set for themselves the goal of controlling identity discourse in the country.

The programme of national unity and reconciliation is a *discourse*, not only in the sense that it normalizes a certain narrative of events, by appropriating the concepts of “history” and “genocide” and precluding alternative representations of reality (Thomson,

2009b) but also in the way in which it prescribes acceptable and valid norms, roles and memories:

[...] the post-genocide government uses the apparatus of the state to ensure that ordinary Rwandans respect *the rules of who can speak* about their experiences of the genocide, *and how*, through its programme of national unity and reconciliation. (Thomson, 2009a: 158)

Defining rules is central to the capacity of Rwandan authorities to enact a dominant discourse. Here we recall our earlier reflections on social rules as they enable individuals to participate in society as agents (Onuf, 1998) as part of the process of constituting reality, through the social construction of meanings and knowledge (Guzzini, 2000, 2013). The post-genocide discourse on national unity and reconciliation prescribes, on the one hand, the valid post-genocide identity matrix (Burnet, 2009) and the legitimate model of reconciliation: according to President Kagame, “[...] remembering is a must and an obligation. In remembering we must also forgive – it is a duty – to forgive those who sincerely seek to be forgiven” (Republic of Rwanda, 2010a). Survivors are instigated to forgive and perpetrators to tell the truth (Thomson, 2009a).

Officially, the former “Hutu-Tutsi” identity frame no longer holds legitimacy, which is why individuals who identify along those lines in non-state-sanctioned spaces incur in divisionism or genocide ideology charges. Because remembering and forgiving are non-negotiable options, attending *gacaca* courts and *ingando* camps, as two mechanisms that enforce the national unity and reconciliation programme, is compulsory (Thomson, 2009a). If identifying as a “survivor” or a “perpetrator” allows an individual to participate as an agent in post-genocide Rwanda, it does so within the meaning that has been attached to those specific concepts. Attributing meanings is the ultimate form of power (Adler, 2002) in the sense that it defines the boundaries of knowledge, of what can be done (Guzzini, 2013), of the “realm of possibilities” (Reus-Smit, 2005). “Survivor” is not a valid identity for a Twa or a Hutu; neither can frame his or her experiences and memories nor socially interact according to this sociopolitical category. Interestingly, the fact that perpetrators are overwhelmingly referred to as *génocidaires* (instead of perpetrators, for instance) shows how the realm of possibility is so narrowly defined and discursively

naturalized so as to only include the crime of genocide and the victimization experience of genocide victims, in detriment of other types of violence, such as massacres, and their respective victims. This illustrates a modality of what we had previously identified as the “definitional power” of transitional justice (Miller, 2008) which, in the case of post-genocide Rwanda, is reflected on the national unity and reconciliation programme which discursively defines the parameters of what constitutes post and pre-genocide social reality (Thomson, 2009a) including establishing boundaries on the possibilities for self-identification and fixating the meanings of identity categories and other political concepts.

5. CONCLUDING REMARKS

Transitional justice has become a global project in guiding societies dealing with a past of violence, spanning the fields of human rights, conflict resolution and post-conflict transitions (Nagy, 2008). International transitional justice mechanisms are now a common feature in conflict resolution negotiations and peacekeeping missions worldwide (Subotić, 2009). Transitional justice has been explicitly endorsed by the United Nations as a central element within the system's rule of law framework and post-conflict strategic planning (UNSG, 2011), to be incorporated in Security Council mandates, peace processes and the operations of the UN peace missions (UNSG, 2004). In this context, we discussed in detail the conceptual relationship between transitional justice and contemporary peacebuilding, focusing particularly on how the latter's normative liberal underpins have influenced the theory and praxis of what is still the largely under theorized field of transitional justice, based on taken for granted assumptions (Theidon, 2009).

At this point, we situated the object of our analysis, the "victim-perpetrator" dichotomy, showing how it is a central underlying assumption of the dominant model of transitional justice, stemming from the legalist hegemonic discourse that dominates the field, despite being increasingly challenged by the most recent critical strand of scholarly work on transitional justice (Miller, 2008; Balasco, 2013; Turner, 2013). Inserting itself within this critical line of research, our dissertation aimed at discussing the limitations and insufficiencies of what constitutes one of the dominant underpins of transitional justice: the "victim-perpetrator" dichotomy (Parent, 2010). We chose to draw on post-genocide Rwanda as a case study to illustrate some of the issues raised in our theoretical and conceptual critique.

Just as transitional justice has become the dominant transitional norm, so has post-genocide Rwanda been praised for having "spectacularly managed to overcome an uncommon tragedy and, in fact, transformed it into a source of strength for the future; a future that glows brighter by the day, month and year" (UNDP, 2004: ii). We sought to demonstrate how the "victim-perpetrator" dichotomy carried certain implicit and unacknowledged normative assumptions and political intentions, which undermine the

notion of transitional justice as neutral, value-free and an apolitical project (McEvoy, 2007).

The analysis of our case study was based on the psychosocial approach as conceived mostly (although not exclusively) by Carlos Beristain (e.g Beristain, 2000, 2010), to analyse the processes of victimization, perpetration and reconciliation in post-1994 Rwanda, complemented with reflections grounded on a constructivist lens to highlight the dimension of power and politics (Guzzini, 2000, 2013).

We believe we were able to satisfactorily confirm the three initial hypotheses we had proposed ourselves to validate through our research: that the “victim-perpetrator” dichotomy is a fundamental element in UN-sanctioned post-conflict transitional justice models; that post-genocide Rwanda is characterized by a national dominant victimhood narrative, based on this binary, which is insufficient to fully understand the diversity of violence and victimhood experiences from different social groups, therefore promoting a dynamics of exclusion and de-legitimation; and, finally, that transitional justice processes framed by this dichotomy promote new forms of victimization, on the one hand, by making invisible (and, therefore, illegitimate) certain experiences of violence and victimhood and, on the other hand, by essentializing these sociopolitical categories, which ends up limiting individuals’ political agency and social reintegration, hindering the reconciliation process in divided societies in general and, particularly, in Rwanda.

The post-genocide Rwanda that the former UNDP Resident Representative and UN Resident Coordinator, Macharia Kamau, described as having “[...] a future that glows brighter by the day, month and year” (UNDP, 2004: ii) is the same that Buckley-Zistel (2006: 113) describes as being “[...] full of rumours, allegations and mistrust” and where

“Tutsi and Hutu live in fear and most are too afraid to talk about the current situation, their experience related to the circumstances that led to their victimization, or to their participation in violence” (Parent, 2010: 284).

In spite of the fact that victims’ rights have ascended to the status of international norm (Bonacker and Safferling, 2013), probably owing to recent developments in the fields of international criminal law and transitional justice, in

particular, our discussion has intended to demonstrate how the way in which victims and other identity categories of conflict have been framed within transitional justice, as the “victim-perpetrator” dichotomy underlying much of the theory and praxis of its dominant model, is deeply flawed. It essentializes and reifies what are ultimately the *roles* played by individuals in conflict settings, meaning they can co-exist within the same individual (Govier, 2009), and obscures other potential identity categories that lie somewhere in between. Not only is this identity matrix a choice, but it is one that is socially constructed (Ramos, 2013) and whose political and power implications are often overlooked and left unaddressed. We have endeavored to raise some of these issues by analyzing them according to a combined conceptual and theoretical interdisciplinary framework, grounding our analysis in the case study of Rwanda.

Our discussion led us to conclude that, despite predominantly structuring the self-understanding of the new post-genocide Rwanda, the “victim-perpetrator” dichotomy which underlies the country’s national unity and reconciliation strategy excludes the majority of experiences lived by ordinary Rwandans during the war and genocide (Hankel, 2013). Therefore, we reflected upon the Rwandan transitional justice process’ prospects for long-lasting reconciliation with apprehension, observing how what Rosoux (2013: 554) terms as “the system that frames the parties relation”, in its political, economic, cultural, social and psychological dimensions, has been left unaddressed by current authorities in Rwanda, while their actions and engagement with Rwandan society display troubling parallels with the pre-genocide regimes which instigated the 1994 violence (Hankel, 2013).

As we believe our empirical chapter has demonstrated, the implications of challenging largely unquestioned assumptions, in the case of this research, the division of post-conflict societies between victims and perpetrators, are not purely academic (Borer, 2003). (Un)acknowledging victimhood and offending experiences exerts, at the micro level, direct psychosocial impact within people and community’s lives and, at the macro level, it influences nations’ journeys of rebuilding and potential reconciliation. Deconstructing these assumptions also reveals (unequal) relations of power at work, between and among the different levels of policy, and brings politics back into the field of transitional justice.

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7. ANNEX 1 – Map of the Republic of Rwanda



Source: United Nations Development Programme (UNDP) (2004) *Ten Years On: Helping Rebuild a Nation. The United Nations in Rwanda*. New York: UNDP, p. 2.

