

Women Who Kill Women. A Gendered Reading of The Crime of Genocide: From *Mass* to *Genocidal Rape**

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1. Introduction

Whether there is or there must be a connection between gender and genocide is increasingly under debate in international criminal and human rights law.

The feasibility of a gendered reading of the crime of genocide has nevertheless not yet been fully endorsed and it is likewise debatable whether it should be appropriate and, even more, necessary to disentangle the concept of genocide from that of race and ethnicity.

In as much as genocide is inherently linked to the destruction of an ethnic, racial, or religious group¹ and, at the same time, women are not conceived as a social group, there has always been very little discussion in the literature about the legitimacy in

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¹ On this, see the definition of the concept of genocide endorsed by the UN Convention on the Prevention and Punishment of the Crime of Genocide according to which: «genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group» (article 3).

defining as genocide even the systematic killing of women belonging to a racial or ethnic group.

Without neglecting the traditional notion enshrined in the Geneva Convention², the article seeks to question whether a renewed definition of genocide might emerge that takes gender into proper account as it does with race, ethnicity and other factors of discrimination used to identify targeted social groups.

The chance is offered by the case of Pauline Nyiramasuhuko³ in the 1994 Rwanda Tutsi genocide, the first woman in history ever condemned for the crime of genocide. This case offers the opportunity to rethink the adequacy of international criminal law and international human rights law in addressing the key features of the crime of genocide by way of challenging its traditional definition.

The article departs from a description of Rwanda and Rwandan women's *status* before the 1994 genocide to then go on to examine the specifics of the case brought against Pauline Nyiramasuhuko.

As the first woman ever condemned for the crime of genocide, the article sets out to challenge the gender stereotype that depicts women as mere passive victims without considering their active role in the context of armed conflict.

Lastly, the article argues for a gender interpretation/perspective of the crime of genocide that will eventually favor the emergence of the true features of the conduct under scrutiny, neglecting a unilateral interpretation of women and their agency in times of war and ignoring their active, and sometimes even, leading role, in perpetrating crimes against humanity.

2. Rwanda before the Genocide: from Ethnicity to Gender

To understand the reality behind the 1994 Tutsi genocide, it is necessary to start by looking at the ethnic composition of Rwanda before 1994⁴.

From the data available, Rwanda was originally composed of three major ethnic groups. The Hutus represented almost 85% of the population, whereas the Tutsis and the Batwa, who were the natives of Rwanda, made up 14% and 1% of it respectively⁵.

It would exceed the scope of this article to discuss the reasons that brought two very diverse ethnic groups inhabiting the same territory under the sovereignty of the same legal system, but it might likewise be worth recalling that the boundaries of

² For an overview of the contents and significance of the UN Convention on the Prevention and Punishment of the Crime of Genocide, see N. Robinson, *The Genocide Convention. A Commentary*, New York, 1960.

³ For an insight into the life of Pauline Nyiramasuhuko, see P. Landesman, *A Woman's Work*, in *The New York Times*, 15 Sept. 2002.

⁴ For a study on the ethnic composition of Rwanda before the genocide, C. Newbury, *The Cohesion of Oppression: Clientship and Ethnicity in Rwanda, 1860-1960*, New York, 1993.

⁵ See C. Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994*, London, 1999.

Rwanda, as they are known nowadays, are the result of the Belgian colonial occupation that exacerbated the lines of division among the ethnic groups⁶ and lasted until 1962 when Rwanda finally gained its independence. It is reported that following the European colonization and despite the physical differences between the Tutsis and the Hutus, the consolidation of the theory was favored that the two social groups should have belonged to a different race⁷.

Ethnicity was nevertheless not the only trait that featured in Rwanda before the genocide. Alongside ethnic and racial differences, there were also significant gaps between the *statuses* of men and women regardless of whether women belonged to the majority of the said minority groups.

Rwandan women were structurally discriminated against, based on sex in the private as well as in the public spheres. They were denied inheritance rights of any sort and they lacked economic autonomy as they were under the obligation to get their husband's consent before opening a bank account.

In a similar way, the rules governing citizenship acquisition were strongly inspired by discriminatory principles. A Rwandan woman was supposed to lose her citizenship following her marriage with a non-Rwandan man following a trend that similarly characterized several other laws governing the consequences of mixed marriages, meaning marriages contracted with a non-member of the ethnic group.

The reality of the public sphere was quite close in that Rwandan women were almost lacking in every representative political body, and they were also excluded from leading positions in the executive or the judiciary. The absence of women in the public sphere is something to keep in mind in the light of the consequences of the genocide, which resulted in the increase in women's activism and participatory role, even overcoming men's presence in national elective bodies.

⁶ On this and with specific reference to the role of women, see M. Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Rwandan Genocide*, Princeton and Oxford, 2001; S. Peterson, *Me Against My Brother: At War In Somalia, Sudan, and Rwanda*, London, 2001; A.A. Miller, *From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the Definition of Genocide to Include Rape*, in *Penn State Law Review*, 108, 2003, p. 349 ff., who underlined that: «The status enjoyed by the Tutsi served as the mechanism by which Belgian colonizers in the early twentieth century created an ethnic rift between the two groups. These colonizers encouraged a historical myth of differences between Hutu and Tutsi to control the majority Hutu and institutionalize minority rule. In addition, the Belgians proposed a 'scientific' racial theory, which eventually became the official history of Rwanda. This 'scientific' racial theory asserted that the Tutsi were a Nilo-Hamitic race from Egypt and Ethiopia who naturally ruled over the Bantu Hutu»: *ivi*, p. 352.

⁷ See G. Prunier, who notes that: «[u]sing physical characteristics as a guide – the Tutsi were generally tall, thin, and more 'European' in their appearance than the shorter, stockier Hutu – the colonizers decided that the Tutsi and the Hutu were two different races. According to the racial theories of the late 19th and early 20th centuries, the Tutsi, with their more 'European' appearance, were deemed the 'master race' [...]. By 1930 Belgium's Rwandan auxiliaries were almost entirely Tutsi, a status that earned them the durable hatred of the Hutu», in *Rwanda's Struggle to Recover from Genocide*, in *Microsoft Encarta Encyclopedia* 99. See, also, of the same Author, his *The Rwanda Crisis: History of a Genocide*, London, 1998.

3. *The 1994 Tutsi Genocide: A New “Victim Paradigm” between Gender Stereotypes and Intersectionality*

Before going into the case of Pauline Nyiramasuhuko, at least two other aspects deserve proper attention.

The first deals with the factual reality of the genocide.

The second with the aspects of the victim targeted during the 1994 Tutsi genocide, which sees a departure from the victim definition endorsed by the Geneva Convention.

About the first aspect, the Tutsi genocide lasted around one hundred days. It is reported to have started on April 7th, 1994 and lasted until July 15th of the same year. One hundred days resulted in the killing of 1,174,000 individuals out of 7,300,000 Rwandan citizens, which means four hundred victims per hour, seven victims per minute. Around 250,000 women were raped, some of them later killed or infected by HIV⁸.

The enormous number of women who were raped, killed or both constitutes one of the key features of the 1994 Tutsi genocide⁹.

Distancing itself from the traditional legal concept of genocide, which would solely rest on racial or ethnic traits, the target of the Rwandan genocide was largely women and, more specifically, women belonging to the Tutsi minority.

The hatred against the Tutsi population by the Hutu majority did not just come out of nowhere but was instead preceded by a massive propaganda campaign¹⁰.

⁸ On this, R. Degni-Ségui, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Report about Human Rights in Rwanda*, United Nations Economic and Social Council, 1996, Special Reporter of the Commission on Human Rights in Rwanda. The full report is available at the following link: <https://digitallibrary.un.org/record/228462?ln=en>. More specifically, the Report highlights that: «[t]he 15,700 cases of rape recorded by the Ministry of the Family included women aged between 13 and 65. Under-age children and elderly women were not spared. Other testimonies mention cases of girls aged between 10 and 12. Pregnant women were not spared either. Women about to give birth or who had just given birth were also the victims of rape in the hospitals. Their situation was more alarming in that they were raped by members of the militias some of whom were AIDS virus carriers (as was the case of the national chief of the militias, as several witnesses report). Women who had just given birth developed fulminating infections and died. Women who were ‘untouchable’ according to custom (e.g., nuns) were also involved and even corpses, in the case of women who were raped just after being killed», 7

⁹ See E. Powley, *Strengthening Governance: The Role of Women in Rwanda’s Transition*, in *inclusivesecurity.org*, 2003.

¹⁰ On the role played by propaganda and, more specifically, on the intersectional nature of the propaganda perpetrated against Tutsi women even highlighting the inadequacy of international human rights law to properly tackle hate speech and incitement to sexual violence, see extensively L.L Green, *Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law*, in *Columbia Human Rights Law Review*, 33, 2002, p. 733 ff.

One of the leading newspapers of the country, the *Kangura*, is emblematic of the public incitation of violence against the Tutsis and, even more so, the Tutsi women.

In a number of the newspaper published just a few months before the first day of the Hutu genocidal campaign, the *Kangura* read as follows: «[e]very Hutu should know that a Tutsi woman, wherever she is, works for the interest of her Tutsi ethnic group. As a result, we shall consider a traitor any Hutu who: marries a Tutsi woman; befriends a Tutsi woman; or employs a Tutsi woman as a secretary or a concubine. Every Hutu should know that our Hutu daughters are more suitable and conscientious in their role as women, wives, and mothers of the family. Are they not beautiful, good secretaries, and more honest?»¹¹.

This extract depicts the intertwined and double dimensions of the enemy. The enemy is the Tutsi, but more so are Tutsi women that were targeted as evil in comparison with the “good” well-mannered Hutu women.

The commandments were even more specific according to the gendered dimension of the target which superseded or, at least, went hand in hand with the ethnic and racial motif behind the committed crime of genocide. According to the above-mentioned commandments every woman was considered an enemy who: belonged to the Tutsi minority; was married to a Tutsi man regardless of her affiliation to the Hutus; was associated with the Tutsi group or happened to be in the «wrong place at the wrong time».

From this perspective, it might be argued that the intersectionality between ethnicity and gender stood at the core of the Rwandan genocide, in that the mixture of these two human traits constituted one of the main criteria to identify the out-group¹².

¹¹ P. Landesman observed with this regard that: «[u]nlike the Nazis, who were fueled by myths of Aryan superiority, the Hutus were driven by an accumulated rage over their lower status and by resentment of supposed Tutsi beauty and arrogance. [...] This pernicious idea [...] came to full fruition during the genocide. The collective belief of Hutu women that Tutsi women were shamelessly trying to steal their husbands granted Hutu men permission to rape their supposed competitors out of existence. Seen through this warped lens, the men who raped were engaged not only in an act of sexual transgression but also in a purifying ritual», in *A woman's Work*, cit.

¹² On this, see Human Rights Watch/Africa, *Shattered Lives. Sexual Violence during the Rwandan Genocide and its Aftermath 1996*, that underlined that: «Tutsi women were targeted based on the genocide propaganda which had portrayed them as calculated seductress-spies bent on dominating and undermining the Hutu. Tutsi women were also targeted because of the gender stereotype which portrayed them as beautiful and desirable, but inaccessible to Hutu men whom they allegedly looked down upon and were ‘too good’ for. Rape served to shatter these images by humiliating, degrading, and ultimately destroying the Tutsi woman. Even Tutsi women married to Hutu men were not spared, despite the custom that a wife was protected by her husband's lineage after marriage. Most of the women interviewed described how their rapists mentioned their ethnicity before or during the rape. Rape survivors recounted comments such as: ‘We want to see how sweet Tutsi women are’; or ‘You Tutsi women think that you are too good for us’; or ‘We want to see if a Tutsi woman is like a Hutu woman’; or «If there were peace, you would never accept me». The full report is available at the following link: https://www.hrw.org/sites/default/files/reports/1996_Rwanda_%20Shattered%20Lives.pdf.

Nevertheless, the intersection of gender and race in the context of the Rwandan genocide does not only rely on the fact that the victims were targeted based on their sex and race, as women were systematically raped and killed. Additionally, race and gender played a central role also on the perpetrators' side.

As the case at issue exemplifies, women were not only victims but, rather, they were actively involved and contributed to the planning and the realization of the Tutsi genocide.

The latter represents the most significant aspect of the Rwandan genocide. The one that pushes for a renovated construction of the role of women during armed conflict and that aims at questioning the unilateral interpretation of women as passive targets disregarding their agency in the committing of crimes against humanity.

4. *The First Woman Condemned for Genocide: the Pauline Nyiramasubuko Case*

The *Pauline Nyiramasubuko* case represents the first judgment in history that found a woman responsible for the crime of genocide¹³. This is the most significant feature of the case which could hardly reconcile with the ideal type that neglects women's agency in war times, peace-building processes and, more broadly, in situation of concerns.

The case originated from the accusations of crimes against humanity and genocide against the Tutsi minority brought before the International Criminal Tribunal for Rwanda (ICTR) against six members of the established government at the time of the 1994 genocide.

The ICTR was the first tribunal that delivered judgments against individuals responsible for the crime of genocide in Rwanda, as enshrined in the United Nations Geneva Convention¹⁴. It is reported that, throughout its judicial activities, the ICTR indicted 93 individuals and sentenced 62 persons¹⁵.

As well as other well-known cases, such as *Akayesu*, the peculiarity of the case goes beyond the condemnation of the six individuals indicted. Conversely, the novelty of the case lies first in the prominent role acquired, as said, by a woman, Pauline

¹³ A second case is offered by the conviction of Biljana Plavgi by the International Criminal Tribunal for the Former Yugoslavia. For further details, see *Prosecutor v. Plavgi*, Case No. IT-00-39 & 40/1-ES, Decision on the Application for Pardon or Commutation of Sentence, 15 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 14 2009). For an overview on the legal proceedings featuring the case at issue, see M.A. Drumbl, *She Makes Me Ashamed to Be a Woman: The Genocide Conviction of Pauline Nyiramasubuko*, in *Michigan Journal of International Law*, 34, 3, 2011, p. 599 ff.

¹⁴ The ICTR was established in 1995 by the United Nations Security Council to «prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighboring States, between 1 January 1994 and 31 December 1994». The Tribunal is in Arusha, Tanzania, whereas its Appeals Chamber in The Hague, Netherlands.

¹⁵ More statistics are reported on the ICTR's webpage at the following link: <https://unictr.irmct.org/en/tribunal>.

Nyiramsuhko, in orchestrating and realizing the systematic ethnic eradication of the Tutsis and the Tutsi women.

The second reason worth mentioning deals with the involvement of Pauline Nyiramsuhko's son in the crimes, which highlights the complexity of the figure of Pauline Nyiramsuhko who, at the same time, was appointed to promote women's rights across the country, and was also the mother of one of the individuals belonging to the group found responsible for crimes against humanity and genocide and was the mastermind behind the ethnic cleansing of the Tutsi community.

Third, Pauline Nyiramsuhko was the incumbent Minister of Family and Women's Development of the interim government that followed the death of Rwandan President Habyarimana on April 6th 1994, which deteriorated the relationships among ethnic groups forced to cohabit in Rwanda resulting in the following genocide of the Tutsi community. Not only does, therefore, the case witness a woman, and not a man, ordering the commitment of crimes against humanity and genocide, but it also demonstrate that, unfortunately, sometimes, empowered women do not always "do good". In a nutshell, the case entirely challenges gender stereotypes, and it represents a prominent example of the risks of wrong and harmful categorizations.

4.1. From the International Criminal Tribunal for Rwanda to the Appeals Chamber

Coming to the specifics of the case, the judicial proceeding started before the International Criminal Tribunal for Rwanda after the arrest in Belgium in 1995 of two of the six individuals indicted – namely Kanyabashi and Ndayambaje –, whereas Pauline Nyiramsuhko and her son were arrested two years later in Kenya, on 18 July 1997 and 24 July 1997 respectively.

All six individuals were jointly charged before the ICTR for the crimes of conspiracy to commit genocide, genocide, complicity in genocide, crimes against humanity of extermination, murder, persecution, and other inhumane acts as well as violence to life as a war crime. With the only exception of Ntahobali, Pauline Nyiramsuhko and the other four members of what will become dramatically famous as «The Butare Group» were additionally charged with direct and public incitement to commit genocide against the Tutsis, and Pauline Nyiramasuhuko and Ntahobali for the crime of rape as a crime against humanity and other significant outrages against personal dignity defined as a war crime.

As stated in the ICTR's judgment, that trial commenced on June 12th 2001 before the II Chamber¹⁶, the prosecution closed its case on October 18th 2004 and involved 59 witnesses as well as expert witnesses. Pauline Nyiramasuhuko's defense

¹⁶ An overview of the content of the indictment, its criticisms, and challenges in bridging the gap between rape and genocide before the first judgment of the ICTR, see A.A. Miller, *op. cit.*

ran from January 31st, 2005, until November 24th 2005, with 26 witnesses heard during the proceeding.

The judgment more broadly dealt with two main legal questions that were brought before the ICTR. The first concerned the feasibility of the interpretation of rape during armed conflict as a form of crime against humanity. This was a legal question that had nevertheless had already been answered by the same Tribunal in the *Akayesu* case, but that in the case at issue gains more weight and peculiarities due to the gender trait of the person who ordered the systematic rapes and killings of Tutsi women. From this perspective, the key legal question rested on the identification of the major traits to take into consideration to define rape not merely as a form of sexual violence, but as a crime against humanity.

The second argument the ICTR was asked to clarify was the identification of the criteria to establish a nexus between the alleged offenses of crimes against humanity and the proof of the criminal liability of the accused.

As to the legal norms, the six members of the «Butare Group» were indicted for the following alleged violations: Article 3(g)¹⁷, *Genocide*, of the Geneva Convention, Articles 4(a)¹⁸, *Violations of Article 3 common to the Geneva Conventions and Additional Protocol II*, and (e)¹⁹, 6(1)²⁰, *Individual criminal responsibility*, and Article (3)²¹, *Crimes against humanities*, of the Statute of the International Criminal Tribunal for Rwanda.

Narrowing down the analysis of Pauline Nyiramasuhuko and leaving aside the indictments of the others involved in the trial, the ICTR found her criminally responsible for several crimes covered under the umbrella of the crime of genocide and crimes against humanity.

On the question of genocide, Nyiramasuhuko was firstly held responsible for the crime of conspiracy to commit genocide against the Tutsi, defined by the Tribunal

¹⁷ Common to the Geneva Conventions and Additional Protocol II.

¹⁸ The provision reads as follows: «The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include but shall not be limited to: (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation, or any form of corporal punishment».

¹⁹ Letter e) states as follows: «Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault».

²⁰ «A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime».

²¹ The provision comprehends a vast series of war crimes and reads as follows: «The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts».

as the «agreement between two or more persons to commit the crime of genocide»²², pursuant to Article 2 (3)(b) of the Statute. According to the ICTR, «Nyiramasuhuko agreed with other members of the Interim Government to issue directives to the population to encourage the population to hunt down and kill Tutsis»²³ and she similarly took part in the events that led to the killings of several men and women belonging to the Tutsi community in the Butare *prefecture*. Most importantly, as to the recurrence of the crime at issue, the ICTR established without any reasonable doubt that Nyiramasuhuko «agreed with members of the Interim Government [...] to kill Tutsis [...] with the intent to destroy, in whole or in part, the Tutsi ethnic group»²⁴.

Together with the conspiracy to commit genocide under Article 6(1) of the Statute, Nyiramasuhuko was additionally considered responsible for committing genocide, in that, given the evidence at its disposal, the ICTR was at the time of the trial capable of proving that she «ordered the killings of Tutsis taking refuge at the Butare prefecture office, which constituted genocide»²⁵ and that, even sooner, she was also complicit in the removal of the former President of Rwanda for reasons «other than maintaining peace»²⁶.

Conversely, Nyiramasuhuko was not found criminally liable for the crime of complicity in genocide under Article 2 (3)(e) of the Statute despite her direct and public incitement to commit genocide proving the existence of the genocidal intent²⁷. The ICTR, therefore, concluded by acquitting her of this charge excluding her responsibility for direct and public incitement to commit genocide according to Article 6 (1) of the Statute²⁸.

²² ICTR, *Prosecutor v. Nyiramasuhuko et al.*, cit., para. 5655.

²³ *Ivi*, para. 5678.

²⁴ *Ibidem*.

²⁵ *Ivi*, para. 5969.

²⁶ *Ivi*, para. 6736.

²⁷ According to the jurisprudence of the ICTR, «In the light of the Tribunal's jurisprudence, genocidal intent may be inferred from certain facts or indicia, including but not limited to: (a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) the repetition of destructive and discriminatory acts, and (i) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators», see ICTR, *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, para. 731.

²⁸ ICTR, *Prosecutor v. Nyiramasuhuko et al.*, cit., para. 6034.

Concerning the crimes against humanity, Nyiramasuhuko was charged with and found guilty of extermination²⁹, murder³⁰, prosecution³¹, and rape as a crime against humanity³².

About Pauline Nyiramasuhuko's indictment for rape as a crime against humanity, the prosecutor charged her with incitement to rape in connection with the acts of her son, Nathobali, who was indicted and subsequently found guilty of rape.

In the appeal judgment the ICTR and the ICJ found Pauline Nyiramasuhuko responsible for rape as a crime against humanity, in that there was enough evidence to prove her involvement in the incitement to rape Tutsi women. What was instead missing in the indictment was a charge of rape as genocide, as in Akayesu, because it was assumed lacking the intent to make use of rape to destroy the Tutsis. Since rape could be interpreted as genocide only in the presence of a demonstrated genocidal intent, Pauline Nyiramasuhuko was considered not guilty of rape as genocide, but merely of rape as a crime against humanity.

The centrality of the crime of rape in the context of the Rwandan genocide will be further explored, but it is worth mentioning that the ICTR considered an aggravating factor the «numerous victims of rapes and killings at the Butare 204 préfecture office in particular, many of whom were particularly vulnerable»³³. Even though the ICTR did not ascertain that mass rape constitutes genocide, it nevertheless emphasized its relevance in connection with the criminal responsibility of Pauline Nyiramasuhuko.

Moreover, the ICTR found Nyiramasuhuko guilty of ordering prosecution³⁴ alongside a long list of other serious violations of article 3 Common to the Geneva Convention and of the Additional Protocol II pursuant to article 4€ of the Statute, including – as corollaries of the crime of genocide and crimes against humanity – violence to life, health and physical or mental well-being, and outrages upon personal dignity.

Following the verdict of the ICTR on June 24th, 2011, that sentenced Nyiramasuhuko to life imprisonment, the case was heard before the International

²⁹ For more details on the argumentation endorsed by the ICTR, see paras. 6049 ff.

³⁰ *Ivi*, paras. 6067 ff.

³¹ *Ivi*, paras. 6093 ff.

³² On the specifics of the reasoning of the ICTR concerning the allegations of rape as a crime against humanity and not as a conduct integrating the crime of genocide itself, see critically paragraph no. 4.2.

³³ ICTR, *Prosecutor v. Nyiramasuhuko et al.*, cit., para. 6208. One additional aggravating factor established by the ICTR with respect to Nyiramasuhuko was the abuse of general authority *vis-à-vis* the assailants as the ICTR recognized that «Nyiramasuhuko's position as Minister for Family and Women's Affairs during the events made her a person of high authority, influential and respected within the country and especially in Butare préfecture from where she hails. Instead of preserving the peaceful co-existence between communities and the welfare of the family, Nyiramasuhuko, on several occasions, used her influence over Interahamwe to commit crimes such as rape and murder», *ivi*, para. 6207.

³⁴ *Ivi*, para. 4.3.6.4.

Court of Justice which delivered its sentence on December 14th, 2015. The ICJ confirmed the charges³⁵ alongside the most significant aggravating factors, but it limited the definitive punishment to 43 years of imprisonment following up on Nyiramasuhuko's defense that submitted that the punishment of life imprisonment sentenced by the ICTR constituted inhumane and degrading treatment.

Like the ICTR, the ICJ excluded that rape constitutes genocide, but it firmly reaffirmed the reasoning endorsed in Akayesu, therefore grounding its jurisprudence on sexual violence.

4.2. Rape as Genocide: between Intersectionality and Group Crimes

«[R]ape was the rule and its absence the exception»³⁶.

This is how the report of the UN Special Rapporteur about human rights in Rwanda in 1994 described the massive resorting to sexual violence against Tutsi women and girls during the genocide.

In the following passage, the UN Special Rapporteur states that: «[r]ape was systematic and was used as a 'weapon' by the perpetrators of the massacres»³⁷.

Given the seriousness and widespread pattern of sexual violence, the report dedicates a vast section of its analysis to the crime of rape, its nature, forms, and consequences on women and young girls during and even after the genocide in the light of its dramatic long-lasting effects on women's bodies and their societal *statuses*.

«Systematic» is the word most frequently used in the report of the UN Special Rapporteur. In fact, «systematic», structured, and widespread, was the prominent feature of rapes occurring in Rwanda.

About the victims, the Special Rapporteur underlined that: «[n]o account was taken of the person's age or condition»³⁸, which included women aged between 13 and 65 years old, under-age children, elderly women, pregnant women, women about to give birth or who had just given birth, «untouchable» women like nuns and even corpses of women previously killed.

Besides the identification of the victims and the lack of differentiation of any sort among those who were subjected to sexual violence, another element that contributed to the «systematic» pattern of rape that occurred during the genocide lies

³⁵ See p. 208 of the Appeal judgement, ICTR-98-42-A. The ICJ affirmed the convictions for: conspiracy to commit genocide; genocide, extermination, violence to life, health and physical or mental well-being and rape as a crime against humanity and outrages upon personal dignity. The text is available at <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-98-42/MS46274R0000566969.PDF>.

³⁶ R. Degni-Ségui, *op. cit.*, para. 16.

³⁷ *Ibidem*.

³⁸ *Ibidem*.

in its ways of realization or manifestation. The report claimed that mass or gang rape but, even more, incest were the two most recurrent types of rape. According to the report, it was common for militiamen to force «fathers or sons to have sexual relations with their daughters or mothers and vice versa», dramatically increasing the cruelty and brutality of the crimes committed.

An additional facet of rape in Rwanda, that helps highlight its long-lasting effects on the victims, was the deliberate plan to rape Tutsi women by Hutu men who were also very likely AIDS carriers. Despite the evidence that the Special Rapporteur relied on in her document and the connection between the increase in HIV infections following the genocide and the high percentage of Tutsi militiamen who were AIDS carriers, the ICTR and the ICJ did not consider Pauline Nyiramasuhuko responsible without any reasonable doubt for having ordered the constitution of armed forces composed of HIV positive soldiers. Nonetheless, there were claims that she voluntarily chose to release groups of Hutu HIV positive militiamen with the goal of raping, infecting and eventually causing Tutsi women to die in the years to come.

The intersection between present and future harm caused to Tutsi women is even more evident when examining the consequences of mass rape and incest.

The report details the numerous and heterogeneous consequences suffered by Tutsi women raped during the genocide. Tutsi women were firstly massively and extensively physically injured, and some of them, especially the youngest, died soon after being raped. The others who survived the genocide were psychologically affected and socially excluded from the community of belonging³⁹ whose affiliation was considered ultimately disrupted by the «contamination» with non-member of the groups.

Social stigma, together with the death of women after having been raped, is the most significant consequence to consider in investigating the appropriateness of an alternative interpretation of the crime of genocide, which includes rape within the conduct that constitutes an act of genocide.

Despite the widespread and systematic nature of rape that occurred in Rwanda, there is nothing in the judgments that suggests that mass rape and incest should be regarded as genocidal or as acts possibly subsumed under the notion of genocide.

Following the definition of the *actus rea* of rape according to its jurisprudence⁴⁰, the ICTR and the ICJ found Nyiramasuhuko guilty of rape, but, at the same time, both

³⁹ The social stigma was especially severe for young girls the victims of rape who would be unable to find a husband and, even more so, for women pregnant or who had given birth to children born because of rape or incest. According to the Report: «[t]heir situation is all the more delicate because conception has been the result of rape and/or incest; it is therefore difficult for them to accept their offspring, the fruit of their own womb», *ivi*, p. 22.

⁴⁰ There is no universal definition of rape regardless of its prohibition under international human rights law, neither under international criminal law. Rape is, therefore, not autonomously considered as an international crime. A first definition of rape was suggested by the ICTR in *Prosecutor v. Jean-Paul Akayesu*, in 1998 establishing that rape constitutes: «a physical invasion of a sexual nature, committed on a person under circumstances which are coercive» and, also, that «rape is a form of aggression and

Courts confined their reasoning and narrowed the interpretation of rape pursuant to article 6 (3) of the Statute as a crime against humanity instead of considering it a manifestation of the crime of genocide⁴¹ as in the *Akayesu* case.

In short, neither the ICTR nor the ICJ believed that rape in the case at stake represented a constitutive element of the crime of genocide, nor did the two Courts acknowledge the existing link between the rape and killing of Tutsi women with the crime of genocide. In other words, once again the ICTR or the ICJ did not fully examine how gender shaped the crimes committed in Rwanda by Nyiramasuhuko and the other members of the «Butare Group».

In so doing, the judgments neglected an alternative reading of the crime of genocide, set forth under Articles 2 and 3 of the Geneva Convention, in a way that would consider relevant two additional types of conduct to define the notion of genocide. First, acts intended to destroy a social group by targeting the victims because of his/her sex or gender and not solely due to his/her nationality, ethnicity, race, or religion as lines of divisions among humans explicitly mentioned under the normative provisions; second, conduct that does not immediately cause the death of the victim but that, likewise, negatively impacts on the survival of the ethnic group in the years to come.

From this angle, the two judgments depart from *Akayesu* for two reasons: they did not endorse the interpretation shared in *Akayesu* where rape was considered an act capable of integrating the crime of genocide. Furthermore, they convicted a woman as the perpetrator of gender-based crimes and not a man as in *Akayesu*.

On the first aspect, the ICTR and the ICJ defined rape only as a crime against humanity and did not go further. The difference from *Akayesu* thus rests on the definition of the acts under scrutiny, in that rape was not equated to genocide.

The ICTR and the ICJ shared the view that rape is an individual crime without emphasizing its collective dimension and its feasibility as an act instrumental in destroying the targeted social group. Although the ICRT and the ICJ discussed and

that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. This approach is more useful in international law», para. 138. In the Nyiramasuhuko case, the ICTR defined rape as: «the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator. Consent for this purpose must be given voluntarily, because of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to affect this sexual penetration, and the knowledge that it occurs without the consent of the victim», ICTR, Prosecutor v. Kunarac et al., cit., para. 125.

⁴¹ On the distinction between crimes against humanity and genocide, in that only the latter presupposes the intent to destroy an identifiable social group, see S. Glaser, *Droit international conventionnel*, Brussels, 1970, p. 165 ff. and P. Thornberry, *International law and the rights of minorities*, London, 1991, p. 58.

investigated mass rape cases, they did not endorse the *Akayesu* approach that recognizes mass rape as an act of genocide⁴² and as a group crime.

There is no difference among types of rape in Nyiramasuhuko that seems to go backward in the evolving conceptualization of the acts integrating the crime of genocide in a gender-sensitive approach. The denial of the collective dimension of rape lies in the fact that Courts did not state that rapes were motivated by genocidal intent, which stands at the core of its definition as a crime against humanity and not, conversely, as a crime of genocide⁴³.

Turning to the second element mentioned above, while the ICTR and the ICJ did not innovate their jurisprudence on the interpretation of the crime of rape, they nevertheless contributed to suggesting a new role for women in the context of armed conflicts.

In accepting and recognizing that even a woman can order the committing of the crime of genocide and other sexual violence-related crimes, Nyiramasuhuko reshaped gender relationships in a way consistent with the possibility that a woman, together with or even without a man, is fully capable of committing crimes against humanity, including rape and genocide.

Despite the lack of judicial acknowledgment of systemic rape as acts integrating the crime of genocide, it may therefore be argued that there are features of the crime of rape perpetrated in the context of the Rwandan genocide that should instead foster a closer connection with the crime of genocide, as in *Akayesu*, boosting the identification of a new type of rape, defined as «genocidal rape».

The idea is that there are circumstances where due to the ways used in armed conflicts and its systematic nature, rape results in the destruction of a social group like all other conduct that the jurisprudence sanctions as acts of genocide under Articles 2 and 3 of the Geneva Convention.

When it is an integral part of the policy of a State, a strategic method to fight against the targeted group, capable of causing the dismantling of the ethnic and racial unity of a social group, rape, and specifically mass rape, can no longer be regarded as isolated practices and solely as crimes against humanity.

In other words, the recurrence of these elements should favor the departure from the conceptualization of rape as an individual crime against sexual autonomy to its interpretation as a group-based crime⁴⁴, shifting its definition from being a crime

⁴² For a comment on the *Akayesu* case, see C.A. MacKinnon, *Defining Rape Internationally: a Comment on Akayesu*, in *Columbia Journal of Transnational Law*, 44, 3, 2006, p. 940 ff., and, of the same Author, C.A. MacKinnon, *Are Women Human? and Other International Dialogues*, Cambridge (MA), 2007.

⁴³ On the challenging relationships between interpreting mass rape as a group crime or as an individual crime, see D. De Vito - A. Gill - D. Short, *Rape characterised as genocide*, in *International Journal on Human Rights*, 10, 2009, p. 29 ff.

⁴⁴ On the interpretation of mass rape as a group crime, see J.L. Green, *Uncovering Collective Rape: A Comparative Study of Political Sexual Violence*, in *International Journal of Sociology*, 34, 1, 2004, p. 97 ff.; S.L. Russell-Brown, *Rape as an Act of Genocide*, in *Berkeley Journal of International Law*, 21, 2, 2003, p. 350 ff.

against humanity to genocide. As the cruelest manifestation of sexual violence, rape therefore becomes something more in the light of its ability to cause the integral or partial destruction of a social group. That is to say that when coupled with the genocidal intent as it was in Rwanda, rape becomes a tool of ethnic cleansing like all other acts of killing.

Time is also an important factor to be considered.

Rather than being confined to the moment when the rape took place, its effects on women are severe and prolonged in time. Raped women are often isolated, suffer from social exclusion and stigma, and are eventually forced to leave their community of belonging. The genocidal intent that was behind the mass rapes that occurred in Rwanda requires the recognition of the recurrence of genocide even when its effects are postponed and are other than the killing of other human beings⁴⁵.

What must also be considered is the fact that children born because of rape are considered impure because they are deemed the result of intercourse between a member and a non-member of the social group. The report of the UN Special Rapporteur is clear and in line with this argument when it recalls that Rwandan children born because of rape committed during the genocide were called «little monsters», «gifts of the enemy», or «children of shame», highlighting the unfortunate destiny of their and their mothers' lives who abandoned their lands in search of a quiet place to settle in peace⁴⁶.

As a second aspect, even the deliberate infection of women with deadly diseases could represent a relevant reason to turn rape into «genocidal rape», meaning to consider rape as an act of genocide.

Despite the absence of an ascertained responsibility in the case at stake, the report testifies to the high number of women raped during the genocide, who later died of HIV. Similarly, it is estimated that around 35% of Hutu militiamen were HIV positive at the outbreak of April 1994. Rape thus somehow transforms itself into a peculiar but very effective mechanism to kill members of the out-group by way of sexual violence. Not an immediate killing as mentioned, but a postponed one which shares the result with the former: the death of the woman infected and the ultimate destruction of the victim's group.

The fact that the victim is targeted based on her sex rather than solely in the light of his/her race, ethnicity, religion, or nationality, as the definition of genocide requires,

⁴⁵ Share this view, H. Fein, *Genocide, and gender: the uses of women and group destiny*, in *Journal of Genocide Research*, 1, 1, 1999, p. 43 ff., where the A. observes that: «[v]ictimization estimates should not be based solely on numbers killed and destroyed but must take into account the numbers tortured, raped, maimed and impaired»: *ivi*, p. 59.

⁴⁶ In this sense, rape cannot be immediately equated to a «measure to prevent births within the group» as provided under Article 2, lett. d) of the Geneva Convention, but the effects caused by limiting the reproductive capacity of a social group overlap those arising in the case of women victims of rape who are excluded from the group, therefore preventing them from contributing to the reproduction of the group.

should not in itself neglect the gendered and intersectional facet of the crime of genocide and the dramatic but essential role that sexual violence and rape possess in putting into practice a genocidal intent like in the *Nyimarasuhko* case.

To conclude on this point, it could be argued that although the judgments did not put forward any argument in favor of the endorsement of an intersectional approach to the crime of genocide, nor did they endorse a conceptualization of mass rape as an act of genocide being a group-based crime, nevertheless, they left at least some conceptual space to reflect on the persistent need to reshape the gender perspective of sexual violence in armed conflict.

5. *Following up: Women as Victims or /and Women as Perpetrators?*

As mentioned above, the true novelty of the Pauline Nyimarasuhko case has not much to do with the merit of the judgment itself, but rather with the factual circumstances that originated it, as it recognized the agency's criminal responsibility for crimes against humanity of a woman⁴⁷.

Following the genocides witnessed in the 1990s in Rwanda and the former Yugoslavia and the demonstrated gendered feature of the crimes committed against women, the relationship between women and peace and the issues concerning violence against women in armed conflicts started gaining more attention from international organizations.

The United Nations negotiated and approved UN Resolution No. 1325 on *Women, Peace, and Security*⁴⁸ advocating for the increase in the presence of women in peace-building processes and peace negotiations. The *rationale* was that women could greatly help the peaceful resolution of potential or already existing conflicts. In other words, women could serve peace, fight wars and ethnic conflicts and eventually prevent armed conflicts.

Although acknowledging the necessity to include women in peace-building processes and post-conflict strategies, it should also be stressed that the UN Resolution *rationale* rests on a gender stereotype, that conceptualizes women as naturally or

⁴⁷ On the role of women as perpetrators in the context of genocide, see S.E. Brown, *Female Perpetrators of the Rwandan Genocide*, in *International Feminist Journal of Politics*, 16, 3, 2014, p. 448 ff. In line with this interpretation of the case, see P. Landesman, *A woman's work*, cit., who not surprisingly speaks about a «new kind of criminal».

⁴⁸ The Resolution can be read at the following link: https://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomenPeaceSecurity_SRES1325%282000%29%28english_0.pdf. For a comment on the innovative content of the Resolution, see, among others, T.I. Gizelis - L. Olsson, *Gender, Peace and Security: Implementing UN Security Council Resolution 1325*, London, 2014; C. Cohn - H. Kinsella - S. Gibbings, *Women, Peace and Security Resolution 1325*, in *International Feminist Journal of Politics*, 6, 1, 2004, p. 130 ff.; and, more recently, S.E. Davies - J. True, *The Oxford Handbook of Women, Peace, and Security*, Oxford 2019; C. Chinkin, *Women, Peace and Security in International Law*, Cambridge, 2022.

inherently incapable of fighting or not inclined to fight or to order the committing of crimes.

The Pauline Nyimarasuhko case and, more broadly, the entire facets of the Rwandan genocide proved quite the opposite.

In Rwanda, women were perpetrators of violence and victims at the same time and Pauline was in charge and ordered several of them. Victims and perpetrators in the same way as men can be.

The twofold role of women in the context of the Rwandan genocide was also acknowledged by the UN Special Rapporteur in the above report of 1996 that, in the paragraph dedicated to «special situations», noted that «[i]t is true that a number several parts in the genocide and other crimes against humanity. Most, however, were rather the victims. They may even be regarded as the main victims of the massacres, with good reason, since they were raped and massacred and subjected to other brutalities»⁴⁹.

Rwandan women were actively involved in the perpetration of genocide as leaders in the Hutu government, such as Pauline Nyimarasuhko. They also acted as spies to recruit and imprison Tutsi women and even helped in the execution of mass or gang rape by luring Tutsi women into their traps.

The analysis and typology of the Hutu women's role in the genocide and genocidal rapes perpetrated by them to the detriment of Tutsi women are emblematic of the different nature of gender relationships existing between men and women during armed conflicts. From this perspective, it is evident that women can no longer be confined to the victim *statutes* and that their agency as perpetrators in armed and ethnic conflicts should instead be fully acknowledged.

In the case of Pauline Nyimarasuhko, the two aspects are peculiar and worth underlining in the present analysis.

The first is that Nyimarasuhko was also a mother of one of the other individuals indicted at the same trial. Not only was Pauline a woman with political responsibilities, but she was also a mother, one who closely cooperated with her son in planning and ordering the systematic rape and killing of Tutsi women.

However, the case not merely needs a re-shaping of gender relationships between men and women in war times, recognizing that women can be likewise as brutal, cruel, and rationally evil as men. It also proved that women could perpetuate the most brutal crimes even when they are mothers. In other words, maternity does not figure as a factor capable of altering a woman's attitude to commit crimes and acts of violence. This assumption represents another pattern of the case. In a nutshell, women were victims during the Rwandan genocide, but they showed themselves to be as capable as men of committing all forms of violence against other women and their children regardless of their gender and even maternal roles.

The second aspect likewise revolves around another of Pauline's traits. She was Minister in a State that, as shown above, hardly ever recognizes women's roles in the

⁴⁹ R. Degni-Ségui, *op. cit.*, para. 12.

political sphere. On the contrary and despite the general underrepresentation of Rwandan women in politics, at the time of the genocide, Pauline was one of the very few women at the head of a governmental position. From this standpoint, it is impressive to note that even before such a scarcity of women in politics, those who were appointed to high-ranking positions so actively contributed to the committing of the genocide instead of preventing the deterioration and subsequent displacement of the Tutsi community. This element represents an additional demonstration of the misleading interpretation of the inherent (and immutable) peaceful nature of women compared to men.

Lastly, it can be argued that the urge to close the gender gap, that persists in the political governance of peacebuilding processes, needs to be interpreted as an equality-based claim, meaning that men and women should be treated equally in the political sphere, but not as an imperative deriving from the erroneous conceptualization of women as human beings inherently unable to fight a war. In other words, the presence of women and the recognition of their right to have a say in war, peace, and security discourse should be linked to the realization of the principle of equality instead of being anchored to misleading gender stereotypes.

Pauline Nyiramasuhko proves that there is nothing more wrong than believing women are incapable of committing genocide and gender-based crimes. Instead, a step forward would be the acknowledgment of their agency in perpetrating individual and group crimes on an equal footing with men.

6. Rwanda after the Genocide: The Rise (and Fall) of Rwandan Women

Looking beyond the case, it is interesting to examine what happened to Rwandan women after the genocide⁵⁰.

While it is true that Tutsi women were heavily targeted and many of them did not survive the genocide or died shortly afterwards, and that before 1994 Rwandan women did not fully participate in the public life of their country, the situation radically changed in the years following the end of the ethnic conflict between the Hutus and Tutsis⁵¹.

⁵⁰ A very detailed analysis is offered by E. Powley, *op. cit.*, and P. Abbott - D. Malunda, *The Promise and the Reality: Women's Rights in Rwanda*, in *African Journal of International and Comparative Law*, 24, 4, 2016, p. 561 ff. More details on post conflict Rwanda might be found in P. Musoni, *Rebuilding Trust in Post Conflict Situation Through Civic Engagement: The Experience of Rwanda*, in *Building Trust Through Civic Engagement*, Publication based on the 7th Global Forum workshop on Building Trust Through Civic Engagement 26 to 29 June 2007, Vienna, Austria, full text available at the following link: https://digitallibrary.un.org/record/655054?ln=zgh_CN.

⁵¹ P. Abbott, D. Malunda, *op. cit.*, refer to the genocide as a «catalyst for change and enabled women to seize openings, change gender ideologies and make significant political gains». On the same subject see also, E. Powley, *op. cit.*

One of the most significant elements to consider is that in the aftermath of the genocide Rwanda's population was made up of almost 70% women⁵². Rwanda became what was later called a «Country of women», which suggested that the men were the true victims of the genocide, whereas women were “only” sexually abused but eventually survived the genocide.

The same data support the argument that neglects the gendered features of the genocide. In other words, it is argued that the higher percentage of women living in the country after the genocide testifies the more severe impact of the genocide on men and boys.

The data are nevertheless quite conclusive.

On the contrary, it was extensively motivated by the significant numbers of Tutsi men who left Rwanda before or during the genocide. On the Hutu side, the data are consistent with the mass incarceration of Hutu men, that did not include those Hutu women who similarly took part in the genocide but whose agency was neglected because of their gender and supposed inability for a woman to commit violence and perpetrate acts of war.

Regardless of the reasons that justified the higher female composition of Rwanda after the genocide, it is interesting to look at what changed for women and their rights after 1994.

From 1994 to 2021 Rwandan women – at least, some of them – moved from being considered subordinate to their male counterparts to having a say in the public and political life of their country.

Women were actively involved in the drafting of the 2003 Constitution, which marked a significant step forward in the recognition and safeguard of Rwandan women's rights. The commitment to gender equality results in the text of the Constitution starting from its preamble⁵³, and in the Conventions and international human rights law treaties ratified by Rwanda over the years⁵⁴.

Data gathered in the decades that followed confirm this trend.

In 2021 the World Economic Forum placed Rwanda among the top 10 best countries in the Global Gender Gap Index and, as of January 2021, Rwanda ranked first among the countries with the highest number of women in national parliaments, reaching 61.3% of women in national elected bodies.

Despite the data showing the significant presence of women in the public sphere, there are two aspects to consider when examining the effects of the genocide on the rights of Rwandan women.

⁵² This data is reported by Human Rights Watch in the report, *Shattered Lives. Sexual Violence during the Rwandan Genocide and its Aftermath*, 1996, cit.

⁵³ The Preamble reads as follows: «We, the People of Rwanda, [...] COMMITTED to building a State governed by the rule of law, based on the respect for human rights, freedom and on the principle of equality of all Rwandans before the law as well as equality between men and women».

⁵⁴ It suffices to of the UN Convention on the Elimination of All Forms of Discrimination against Women, ratified in 1981.

Firstly, the data do not take into proper account the reality of the private sphere. Conversely to what could be possibly interfered from the statistics, Rwandan women continue to occupy a subordinate position in the private sphere, where patriarchal relationships between husbands and wives continue to be the norm.

Secondly, data on the participation of Rwandan women in the public sphere, especially regarding their presence in the political assemblies, do not properly consider the condition two additional elements. The first is that these statistics do not consider Rwandan women living in the rural area of the country, who conversely do not enjoy the same equal *status* that data suggest with respect to women living in the urban areas. Another aspect deals with the female contribution to the political agenda. In fact, it should be noted that the high percentage of Rwandan women sitting in Parliament did not result in any significant legislative improvement in the recognition of women's rights under national law⁵⁵. For instance, the Rwandan Parliament did not tackle the rural environment as it should have done and, more broadly, the agriculture sector where most Rwandan women are employed⁵⁶. Likewise, the Parliament did not enact any significant legislation except for a regulation on gender-based violence in 2018⁵⁷.

Moreover, as more women live in the rural areas of Rwanda, the data are not truly representative of the conditions of all Rwandan women, whereas picturing just some information about the *statuses* of a very small portion of them.

One conclusion could be drawn beyond the statistics. The higher numbers of women after the genocide facilitated their active public role in governmental organisms and elected bodies. At the same time, it nevertheless did not result in the abandonment of deep-rooted Rwandan customs and traditions that are still widespread, testifying to a much more complex reality when it comes to the full realization of the principle of gender equality.

7. Beyond Nyiramasuhuko: Group-based v. Gender-based Genocide?

Like Akayesu, the case of Pauline Nyiramasuhuko proved the existence of a close connection between gender and genocide.

The institutionalized and widespread resorting to mass and gang rape to violate and exploit Tutsi women and young girls belonging to the victim group likewise contributes to unifying genocide and sexual violence as intertwined notions.

⁵⁵ On this, see J.E. Burnet, *Women Have Found Respect: Gender Quotas, Symbolic Representation, and Female Empowerment in Rwanda*, in *Politics and Gender*, 7, 3, 2011, p. 303 ff.

⁵⁶ See S. Randell - M. McCloskey, *Sustainable Rural Development in Rwanda: The Importance of the Focus on Agriculture*, in *International Journal of Agricultural Extension for Sustainable Development*, 2014, p. 107 ff.

⁵⁷ Reference is to Law No. 59/2018 on Prevention and Punishment of Gender-Based Violence, which came into force on 30 August 2018. The text can be read at the following link: <https://www.refworld.org/docid/4a3f88812.html>.

Linking gender-based violence to genocide eventually revealed an additional pattern of the traditional concept of genocide as enshrined in the Geneva Convention.

Leaving behind its unique and bidirectional relationship between genocide and race and/or ethnicity or religion, the Rwanda case demonstrates the feasibility of a notion of genocide that additionally emphasizes its intersectional dimension deriving from the overlapping relationships between gender and ethnicity.

Following this line of reasoning, genocide is no longer to be interpreted solely as a concept that covers all acts aimed at destroying a racial or ethnic group because of its race, ethnicity⁵⁸, or religion by way of the intentional and structural killing of its members, but as a concept that also includes conducts whose target rests on the interrelation between gender and ethnicity. Put differently, this “new” concept of genocide should value the role of gender in the process of the identification and subsequent annulment of the victim group⁵⁹.

The challenges of connecting genocide to factors of discrimination other than race, ethnicity and religion derives from the group or collective concept that lies underneath the traditional concept of genocide. Genocide is defined traditionally as a group crime, in that genocide is committed only when a social group has been subjected to a threat to its survival and to the extent to which it is eventually eliminated and canceled by another ethnic or racial group. Recognizing genocide as a group crime leaves no space for including sexual violence, and its gender pattern within its framework, as rape is essentially first and foremost conceived as an individual-based crime.

Therefore, a joint interpretation of genocide and rape requires envisioning a different approach to rape, that should first depart from the interpretation of rape as an individual crime only to identify a new type of rape – the so-called genocidal rape or gendecide –, whose peculiarity is instead centered on its attitude to impact on the survival of a collectivity. This should eventually support the view that rape, and not only genocide, should possess a collective dimension.

Genocidal rape would therefore become something other than (individual) rape. Defining rape as genocidal should require proof of the recurrence of several elements: firstly, rape and sexual violence should be institutionalized, meaning they should perform and result from a policy implemented by the State or a political organization; secondly, (genocidal) rape should seek to target and destroy a social group identified by race/ethnicity and gender as well; thirdly, it should cause the ethnic cleansing of the out-group by infiltrating the purity of its race or ethnicity by way of ceasing the

⁵⁸ For an insight into the significance attributed to the concept of race and ethnicity, see C. Nardocci, *Razza e etnia. La discriminazione tra individuo e gruppo nella dimensione costituzionale e sovranazionale*, Napoli, 2016.

⁵⁹ On the concept of ethnic group under international human rights law, see, extensively, F. Capotorti, *Study on the persons belonging to ethnic, religious, and linguistic minorities*, New York, 1979 and, by the same A., F. Capotorti, *Minorities*, in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam, 1985, p. 385 ff.

connection between members and non-members of the group as a result of forced mixed sexual intercourse and forced impregnation.

Nevertheless, there is another argument that generally hinders the acknowledgment of rape as an act of genocide. Besides the lack of an adequate definition of acts of sexual violence, including rape, as gender-based crimes under international human rights law and constitutional law, the reluctance to consider women as a social group⁶⁰ is often used to disclose the contradiction existing between rape and genocide. As the concept of genocide implies the destruction of a group, if women are not defined as such, any act committed against them cannot reach the definition of conduct having a group-based *rationale*.

As opposed to such a strict and literal interpretation of genocide, Akayesu represented a significant step forward in the direction of the correct understanding of the implication of mass rape on the group's survival.

Mass rape can prevent birth within the community, as sexually assaulted women are often expelled by the community, left unable to procreate or pregnant, giving birth to mixed racial babies unwanted by the group of belonging. Rape is an incredibly powerful tool to destroy a group, causing harm to women who are the first chain of transmission of the ethnicity of the social group.

Recognizing that rape can constitute an act of genocide does not therefore imply the endorsement of any of the theories strongly fought for by the feminist movement, that depicts women as a social group in need of special protection. Rather, it offers a more truthful understanding of the traits of genocide, ensuring a prompter response by international and national Courts.

While the so-called "gender-specific" genocides are rarer than retributive genocides⁶¹, understood as genocides that respond to threats, and although the comparative analysis offers us only one at least universally accepted example of an entirely gender-specific genocide⁶², the case of Pauline Nyiramasuhuko should be rightly included within this last category regardless of the outcome of the judgment. Whereas genocide in Rwanda has been depicted as both a total and a gender-specific genocide, Akayesu and Nyiramasuhuko demonstrate that rape was institutionalized and instrumental in the destruction of the Tutsi.

A more recent confirmation of the correctness of the argument that conceives rape as a tool for mass destruction is offered by the Rohingya genocide⁶³ in Myanmar which constitutes an example of gender-specific genocide, as the violence perpetrated

⁶⁰ The definition of women as a social group is first and foremost denied by the feminist movement, emphasizing its negative consequences, especially linked to the general inferior status attributed to communities defined as social groups.

⁶¹ On this, see H. Fein, *op. cit.*, p. 58 ff.

⁶² Reference is to the genocide perpetrated by the Serbs to the detriment of the Bosnians and, especially, the Muslim minority of the Bosnians.

⁶³ Additional situations of current concern cover the cases of the Uyghurs, the Yazidis and the Tigrayans.

by Myanmar's security forces was profoundly gendered. The Rohingya genocide is currently the subject of an application pending before the International Court of Justice in the case *Gambia v. Myanmar*⁶⁴. In reading the judgment of the Court, it will be interesting to verify whether and to what extent the gender perspective will play a role in sanctioning the rape and sexual abuse endured by women belonging to the Rohingya ethnic group.

Undoubtedly, the Rohingya case will offer a chance to move forward in the interpretation of the crime of genocide, as being gender-specific and not merely as retributive genocide, and possibly give entrance and recognition to gender-based crimes in the international criminal law scenario⁶⁵.

8. Concluding Remarks: Placing Gender in the Genocide Discourse

Going beyond the traditional definition of genocide to give entrance to a gender-specific concept of genocide seems more urgent than ever⁶⁶.

Patterns of rape and sexual abuse are becoming increasingly intertwined with acts aimed at eliminating the "other" social group and therefore call for a rediscovery of the inherent facets of the crime of genocide as enshrined in the UN Geneva Convention.

The consequences arising from mass rape perpetrated during genocide and its destructive impact on the ethnic unity and survival of the victim group are no different

⁶⁴ The Republic of Gambia issued its suit against the Republic of the Union of Myanmar on 11 November 2019 claiming the violation of the Genocide Convention before the International Court of Justice. All the information and latest developments on the case might be consulted at the following link: <https://www.icj-cij.org/en/case/178>.

⁶⁵ On the implementation of a gender-sensitive perspective in international human rights law, see the *World Conference on Human Rights: Vienna Declaration and Programme of Action*, 12 July 1993, UN Doc. A/CONF.157/23.

⁶⁶ On this see, among others, the 2021 Report issued by the New Lines Institute for Strategy and Policy, *Gender and Genocide in the 21st Century: How Understanding Gender Can Improve Genocide Prevention and Response*, that might be read at the following link: https://newlinesinstitute.org/wp-content/uploads/Final-Edits_Gender-and-Genocide-Conference-Report_ep-Final.pdf. Interestingly, the gender perspective is likewise missing in the 1951 UN Refugee Convention that, similarly to the Geneva Convention, does not consider gender as an element on which to establish membership. On the concept of membership within the meaning of the UN Refugee Convention, see also, the *Guidelines on International Protection: "Membership of a Particular Social Group" Within the Context of article 1a (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, UNHCR (7 May 2002), available at the following link: <http://www.unhcr.org/3d58de2da.html>. The literature likewise debated on this topic, see the seminal work by A. Macklin, *Refugee Women and the Imperative of Categories*, in *Human Rights Quarterly*, 17, 2, 1995, p. 213 ff., and, more recently, M. Randall, *Particularized Social Groups and Categorical Imperatives in Refugee Law: State Failures to Recognize Gender and the Legal Reception of Gender Persecution Claims in Canada, The United Kingdom, and the United States*, in *American University Journal of Gender, Social Policy & the Law*, 23, 4, 2015, p. 529 ff.

from the killings unanimously covered under the umbrella of the traditional notion of genocide.

As examined above, the passing of time between the act of rape and its consequences on women, as members of the victim group, does not contradict this line of reasoning and does contribute to altering the genocidal effect. The destruction of the victim group through acts of rape occurs due to a variety of reasons, ranging from the forced impregnation of women belonging to the victim group, birth prevention because of physical injuries caused to women by rape, social stigma, and expulsion from the affiliated group, ethnic contamination, along with forced marriages and ethnic cleansing.

All the above reasons, therefore, justify the inadequacy of the interpretation that neglects the existence of a connection between genocide and rape owing to the absence of the immediate death of the victim exposed to episodes of sexual violence. Put differently, the crime of genocide should be considered as recurring even before the absence of a direct and temporarily traceable causal link between the act of rape itself and the death of the woman or young girl subjected to it.

Moreover, not only are recent experiences of genocide emblematic of the gendered nature of the crimes committed but, with the need for the development of the interpretation of the crime of genocide, stands a different conceptualization of the inherent traits of the crime of rape.

In connecting genocide to rape and *vice-versa* both concepts undergo profound challenges in their original and historical meanings. When occurring during genocide and when used as a weapon of war, rape leaves behind its nature of individual crime to assume a communitarian trait. Systematic rape occurring in war times thus becomes an example of a group crime, that should be regarded as an act of genocide.

The same conclusion should be drawn even neglecting the controversial definition of women as a social group. In other words, the “genocidal” effect rests on the intent that supports the committing of the crime, and it is once again the genocidal intent that transforms the traditional concept of rape, as an individual crime of sexual violence violating sexual autonomy, into a group-based crime, closing the gap between the traditional meanings of the two crimes at stake.

Neither the group-based dimension featuring genocide, which could by definition possibly exclude its applicability to women as a social group, nor the individual one attached to the concept of rape, that similarly could separate rape from the crime of genocide, are capable of distancing the existing link between gender and genocide.

Gender-specific genocides do happen, and mass rape is one of the most efficient and structured practices used during armed conflicts to orchestrate and realize a genocidal intent.

By all counts, it is the time to acknowledge the gendered pattern of the crime of genocide and to recognize and tackle gender-based crimes associated with genocide especially once occurring during armed conflicts.

Abstract: The paper analyses the case of Pauline Nyiramasuhuku who was the first woman in history ever convicted for the crime of genocide during the 1994 Rwandan genocide. By way of the investigation of the circumstances of the facts and the normative provisions at stake, the paper argues that the Pauline Nyiramasuhuku case offers the chance for a re-reading of the crime of genocide through gendered lens.

The paper, therefore, emphasizes and supports the existence of a strong link between forms of sexual violence and exploitation perpetrated during armed conflicts, gang rape or mass rape, with the ultimate goal to boost a new envisioning of the crime of genocide under international criminal law and human rights law.

Abstract: Il presente testo analizza il caso di Pauline Nyiramasuhuku, la prima donna nella storia a essere condannata per il crimine di genocidio durante il genocidio ruandese del 1994.

Attraverso l'indagine dei fatti e delle disposizioni normative in gioco, il saggio sostiene che il caso Pauline Nyiramasuhuku offre l'occasione per una rilettura del crimine di genocidio attraverso una lente di genere.

Il documento, quindi, sottolinea e sostiene l'esistenza di un forte legame tra le forme di violenza sessuale e lo sfruttamento perpetrati durante i conflitti armati, lo stupro di gruppo o di massa, con l'obiettivo finale di promuovere una nuova visione del crimine di genocidio ai sensi del diritto penale internazionale e del diritto dei diritti umani.

Keywords: Genocide – Gender-Based Genocide – Sexual Violence – Rape – Armed Conflict – Women's Rights.

Parole Chiave: Genocidio – Genocidio di genere – Violenza sessuale – Stupro – Conflitto armato – Diritti delle donne.

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