

INTERNATIONAL CRIMINAL COURTS IN ACTION: THE ICTR'S EFFECT ON DEATH PENALTY AND RECONCILIATION IN RWANDA

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ABSTRACT

This Article focuses on a major reform encouraged by the International Criminal Tribunal for Rwanda (ICTR)—the abolition of the death penalty in Rwanda. For a decade prior to this reform, Rwandan courts had been imposing the death penalty in genocide cases. Using a qualitative empirical research method, still uncommon in international legal studies, the Article shows how the ICTR's requirements influenced the abolition, and then considers the impact of the abolition on national reconciliation in Rwanda. The findings suggest that the abolition has contributed to reconciliation, including through re-humanizing perpetrators and their relatives, improving survivors' perception of society, and inspiring both survivors and perpetrators to envision a shared future. This is remarkable considering that, during the debates on the ICTR's establishment, Rwanda insisted that sentencing genocide perpetrators to death was necessary for post-conflict justice and reconciliation. This Article thus sheds a new light on the relationship between international tribunals and national reconciliation. In particular, it suggests that international tribunals can advance national reconciliation (and thus attain one of their explicit goals) through encouraging domestic legal developments such as death penalty reforms. Moreover, by raising awareness of the abolition's positive effects on interethnic relations in Rwanda, the Article could inform debates about the future of capital punishment in other death penalty countries.

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INTRODUCTION

Between April and July 1994, approximately 800,000 Rwandans¹ were slaughtered in what has been considered the fastest genocide in modern history.² The genocide targeted the Tutsi ethnic minority group, as well as ethnic Hutus who were considered “moderate.”³ Victims were hacked to death with machetes, many tortured and raped before they were killed.⁴ The perpetrators were mostly of Hutu ethnicity and included soldiers, militia members, and civilians who were mobilized by Hutu extremist leaders.⁵ The genocide occurred at the tail end of a four-year civil war between Hutu-dominated government forces and the Tutsi-dominated rebel group called the Rwandan Patriotic Front (RPF).⁶ In July 1994, the RPF won the war, ended the genocide, and established a government of national unity.⁷ In the name of justice and reconciliation, the new RPF-led government adopted a policy of maximum accountability for genocide-related crimes.⁸ This policy was implemented through criminal trials, resulting in capital punishment for the most extreme cases.⁹ The Rwandan government has also employed non-retributive measures to promote reconciliation, including civic

1. U.N. Secretary-General, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, U.N. Doc. S/1999/1257 (Dec. 15, 1999), <http://www.un.org/en/peacekeeping/resources/reports.shtml>. Rwandan officials estimate that over one million people died in the genocide. See Eline Gordts, *5 Staggering Statistics For Why We Can Never Let a Tragedy Like Rwanda's Happen Ever Again*, HUFFINGTON POST (Apr. 6, 2014), http://www.huffingtonpost.com/2014/04/06/rwanda-genocide_n_5084747.html.

2. See Samantha Power, *Bystanders to Genocide*, ATLANTIC (Sept. 2001), <http://www.theatlantic.com/magazine/archive/2001/09/bystanders-to-genocide/304571/>.

3. U.N. Human Rights Council, Rep. of the Independent Expert on Minority Issues on Her Mission to Rwanda, ¶ 37, U.N. Doc. A/HRC/19/56/Add.1 (Nov. 28, 2011), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-56-Add1_en.pdf.

4. See *id.* ¶ 34 (estimating that between 250,000 and 500,000 victims, mostly Tutsi women and girls, were raped during the genocide); Power, *supra* note 2; ALISON DES FORGES, *LEAVE NONE TO TELL THE STORY* 8, 10 (1999), https://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-02.htm#P46_20329.

5. DES FORGES, *supra* note 4, at 8.

6. In the context of the war, Tutsis also committed serious crimes against Hutu civilians. See Preliminary Rep. of the Independent Commission of Experts, ¶¶ 146–48, U.N. Doc. S/1994/1125 (Sept. 29, 1994), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/381/91/PDF/N9438191.pdf?OpenElement>.

7. DES FORGES, *supra* note 4, at 13, 450, 980.

8. William A. Schabas, *Genocide Trials and Gacaca Courts*, 3 J. INT'L CRIM. JUST. 879, 880 (2005) [hereinafter *Schabas 2005*].

9. *Id.* at 893.

education programs, reparations, repatriation, and commemoration.¹⁰

In November 1994, the U.N. Security Council responded to the genocide by establishing the International Criminal Tribunal for Rwanda (ICTR).¹¹ The ICTR was mandated to prosecute the major architects of the atrocities and thereby “contribute to the process of national reconciliation ” in Rwanda.¹² However, as the ICTR concludes its activities over 20 years later,¹³ there are little, if any, empirical assessments of the Tribunal’s impact on reconciliation in Rwanda.¹⁴ This Article begins to fill this gap by examining one manner in which the ICTR has affected reconciliation in Rwanda: through encouraging Rwanda to abolish the death penalty.

Rwanda abolished the death penalty in mid-2007 as part of a larger set of legal reforms intended to satisfy the ICTR’s requirement for referring cases to national courts.¹⁵ This Article explores some of the abolition’s effects on reconciliation in Rwanda. Capital punishment was one of Rwanda’s carefully chosen responses to

10. The government organization in charge of coordinating reconciliation activities in Rwanda is the National Unity and Reconciliation Commission (NURC). See THE NAT’L UNITY & RECONCILIATION COMM’N, *NURC Background*, <http://www.nurc.gov.rw/index.php?id=83> (last visited Dec. 21, 2015). In 2001, the Rwandan government established “*gacaca*” courts, intended to handle most genocide cases through blending retributive and restorative approaches to justice. See relevant discussion in notes 65–66, *infra* and accompanying text.

11. S.C. Res. 955, pmbl. ¶ 1 (Nov. 8, 1994).

12. *Id.* pmbl. ¶ 7. The resolution does not define national reconciliation. For present purposes, the term is understood as the restoration of relationships between individuals and collectives who were in conflict.

13. At the time of writing, the International Criminal Tribunal for Rwanda (ICTR) completed all of its first instance trials, which concerned seventy-three accused (not including two persons who were tried for contempt of court). The Tribunal is still holding appeals proceedings in one case, involving six accused, which is expected to conclude in 2015. See Rep. on the Completion Strategy of the International Criminal Tribunal for Rwanda as at 5 Nov. 2014, ¶ 3, U.N. Doc. S/2014/829 (Nov. 19, 2014), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/829.

14. More generally, there is a lack of empirical studies on domestic impacts of international tribunals. Noted exceptions are studies conducted under the DOMAC Project (in which the present Author participated) that empirically assess the impacts of various international criminal tribunals on domestic atrocity-related proceedings in their target countries. See *DOMAC Reports*, DOMAC, <http://www.domac.is/reports> (last visited Jan. 23, 2016).

15. See Organic Law N° 31/2007 of 25/7/2007 Relating to the Abolition of the Death Penalty, Special Journal Officiel of 25 July 2007 (July 25, 2007) (Rwanda) [hereinafter Abolition Law]. For a discussion on the larger set of legal reforms intended to satisfy the ICTR’s referral requirements, see Sigall Horowitz, *How International Courts Shape Domestic Justice: Lessons from Rwanda and Sierra Leone*, 46 *Isr. L. Rev.* 339, 345–353 (2013) [hereinafter *Horowitz 2013*]; see also relevant discussion *infra* Section III.A.

the genocide, which seems to have enjoyed public support.¹⁶ By mid-2007, over 1,300 Rwandans were on death row for their role in the genocide.¹⁷ Removing capital punishment meant that these inmates would remain alive, and that the death penalty would no longer be applicable to thousands of additional genocide suspects who awaited trial.¹⁸ However, despite survivors' resistance to the abolition, and Rwanda's official position in the years following the genocide that capital punishment was important for national reconciliation, my research suggests that the abolition had a positive impact on reconciliation processes in Rwanda. The abolition achieved this in a number of ways, including re-humanizing perpetrators and their families, improving survivors' perception of society, and inspiring Rwandans (including survivors and perpetrators) to envisage a future with better social relations within their communities. A public campaign led by an abolitionist leader may have contributed to some of these effects.

This Article introduces new empirically based knowledge about post-genocide reconciliation in Rwanda and the domestic effects of the ICTR. It also sheds light on the potential of all international criminal tribunals to influence reconciliation in their target countries *through encouraging domestic legal reforms* in those countries.¹⁹ Finally, the findings suggest that abolishing the death penalty could be a means for promoting reconciliation (regardless of the involvement of an international tribunal).²⁰ A recent study demonstrates that states tend to abolish the death penalty in connection

16. See *infra* Part II.

17. Florence Mutesi, *Death Row: Over 1300 Survive Gallows*, NEW TIMES (Aug. 27, 2007), <http://www.newtimes.co.rw/section/article/2007-08-27/988/> (estimating that 1,365 individuals were on death row when Rwanda abolished the death penalty) [hereinafter *Mutesi 2007*]; see also HUMAN RIGHTS WATCH, LAW AND REALITY: PROGRESS IN JUDICIAL REFORM IN RWANDA I, 31 (July 2008), <http://www.hrw.org/en/reports/2008/07/24/law-and-reality-0>. However, Amnesty International reported that around 600 prisoners were on death row at the time. See *Rwanda Abolishes Death Penalty*, AMNESTY INT'L (July 27, 2007), <https://www.amnesty.ie/content/rwanda-abolishes-death-penalty>.

18. As of mid-2007, about 12,000 genocide suspects were eligible for the death penalty. See *infra* note 46.

19. Not only the ICTR but also other international criminal tribunals are expected to promote reconciliation in their target countries. See U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*, ¶ 38, U.N. Doc. S/2004/616 (Aug. 23, 2004) (referring to "promoting national reconciliation" as an objective of UN-backed criminal tribunals).

20. However, this study does not disprove the claim that, under some circumstances, national reconciliation could be promoted *with* the death penalty in place. In this regard, see discussion in Part II.E, *infra*, about Rwanda's position in 1994—that applying the death penalty could benefit national reconciliation.

with post-conflict democratic transitions.²¹ This Article goes one step further in investigating how the abolition impacts reconciliation processes on the ground, and what factors enable this impact.

The research underlying this Article is qualitative in nature, consisting primarily of in-depth interviews with eighty-eight persons and supplemented by documentary analysis.²² At the first stage, I interviewed thirty-five key professionals affiliated with the ICTR or the Rwandan justice system.²³ Focusing on the interactions between the two justice systems, and the consequent legal developments in Rwanda, these interviews drew my attention to the ICTR's role in encouraging Rwanda to abolish the death penalty. At the second stage, I interviewed fifty-three Rwandans about the abolition's effects on their communities and Rwandan society more generally. Interviewees included fifteen political and social elites, and thirty-eight non-elite Rwandans who were "direct beneficiaries" of the abolition.²⁴ The latter group was comprised of nine prisoners who received the death penalty for their role in the genocide, eight of their relatives and neighbors, two of their surviving victims, and nineteen relatives and surviving victims of other perpetrators who were also eligible for the death penalty. These Rwandans were interviewed because they were likely to experience the effects of the abolition more intensely than others. They were asked short and open-ended questions, which encouraged them to provide rich and detailed information, and prevented me from influencing their answers by "imposing" my own theories. The interviews were recorded, transcribed, analyzed and thematically coded. Themes that emerged provided insights into the abolition's broader socie-

21. THE POLITICS OF THE DEATH PENALTY IN COUNTRIES IN TRANSITION 13 (Madoka Futamura & Nadia Bernaz eds., 2013) [hereinafter FUTAMURA 2013]. Chapter 8 therein discusses the history of the death penalty in Rwanda.

22. Assessing domestic effects of international tribunals poses methodological obstacles because their interactions with national systems and societies are usually not documented. Interviews can therefore help to understand how the ICTR interacts with Rwanda's justice system, and what the impacts of this interaction are on legal and social developments in Rwanda.

23. These interviews were held in 2008 in Arusha (the ICTR's base in Tanzania) and Kigali (Rwanda's capital), in connection with my research under the DOMAC Project. See *DOMAC Reports*, *supra* note 14. Interviewees were selected based on their seniority and familiarity with the ICTR or Rwanda's justice system.

24. These interviews were held in various locations throughout Rwanda during 2012 and 2013. My selection of interviewees was informed by expert advice from relevant Rwandans. For example, a Rwandan prison director identified former death row prisoners whom I could interview, whereas leaders of survivors' associations helped me access relevant genocide survivors. Interviewees who only spoke Kinyarwanda participated with the help of a Rwandan translator. To respect their privacy and security, interviewees are referred to in generic terms unless they gave me explicit permission to reveal their identity.

tal effects.²⁵ This interview-based approach was essential for the research not only due to the lack of relevant literature, but also because the perspectives of the individuals who are expected to reconcile can be crucial for understanding dynamic and complex social processes such as reconciliation.²⁶

In addition to interviews, the Article draws on records of two Rwandan parliamentary discussions of the abolition bill.²⁷ The records reveal the positions of Rwandan lawmakers regarding the abolition (at least what they stated on the record), which presumably reflect the views of various sectors of Rwandan society (although not necessarily a representative cross-section). Additional sources of information for this Article include U.N. and NGO documents, international and national jurisprudence, academic studies, and media reports. These materials supplement the interviews by providing additional data or relevant context.²⁸

25. This is sometimes referred to as a phenomenological research approach, which is considered useful for understanding complex and multidimensional phenomena from the point of view of the individual. See Stan Lester, *An Introduction to Phenomenological Research*, STAN LESTER DEVELOPMENTS (1999), <http://devmts.org.uk/resmethy.pdf>.

26. A major limitation of any interview-based research is that data is based on *perceptions* of (and sometimes misrepresentations by) interviewees. However, reconciliation processes are dynamic and experienced differently by different individuals. Thus, even if interviewees exaggerated or misrepresented facts, their message is still valuable for understanding their experiences of reconciliation. In any case, I indicate which observations are based on interviews, allowing the readers to disagree with my analysis. It is noted in this context that there is a lack of empirical studies on how reconciliation is perceived and experienced by post-conflict societies. Notable exceptions include: PHIL CLARK, *THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA: JUSTICE WITHOUT LAWYERS* (2010); Brandon Hamber & Gráinne Kelly, *Beyond Coexistence: Towards a Working Definition of Reconciliation*, in *RECONCILIATION(S): TRANSITIONAL JUSTICE IN POST CONFLICT SOCIETIES* 287 (Joanna Quinn ed., 2009); Susanne Buckley-Zistel, *Remembering to Forget: Chosen Amnesia as a Strategy for Local Coexistence in Post-Genocide Rwanda*, 76 *AFRICA* 131 (2006); Wendy R. Lambourne, *Justice and Reconciliation: Post-Conflict Peacebuilding in Cambodia and Rwanda*, (2002) (unpublished Ph.D. thesis, University of Sydney) (on file with author); A. Dirk Moses, *Official Apologies, Reconciliation, and Settler Colonialism: Australian Indigenous Alterity and Political Agency*, 15 *CITIZENSHIP STUD.* 145 (2011). My research seeks to add to these projects.

27. Parliament of Rwanda, *Minutes of Parliamentary Debates on the Abolition of the Death Penalty*, Mar. 16, 2007 (copy with author) [hereinafter *Abolition Debates of Mar. 16, 2007*]; Parliament of Rwanda, *Minutes of Parliamentary Debates on the Abolition of the Death Penalty*, June 8, 2007 (copy with author) [hereinafter *Abolition Debates of June 8, 2007*]. These official documents are in Kinyarwanda. My Rwandan translator unofficially translated relevant parts to English.

28. It is also noted that my own professional experience at the ICTR, where I worked as a legal officer between the years 2005 and 2008, helped me contextualize the answers. In addition, valuable socio-political contextual information was also acquired through dozens of informal meetings with Rwandan experts, officials, clergy, journalists and ordinary citizens, as well as one focus group discussion I held with thirteen survivors and perpetrators who were members of a "reconciliation association" in south Rwanda.

While international legal studies often involve documentary analysis, they rarely draw on in-depth interviews. Hopefully, this Article will inspire future use of qualitative interview-based methods to examine international criminal justice questions.

The Article proceeds as follows: Part I provides essential background information about Rwanda's resort to the death penalty in the immediate aftermath of the genocide, and its objection to the ICTR's exclusion of this penalty. Part II addresses the dynamics surrounding Rwanda's abolition of capital punishment, including the ICTR's role in encouraging the abolition. Part III sheds light on the abolition's impact on reconciliation in Rwanda by presenting and contextualizing local perceptions of the abolition and reports of its influence on the lives of Rwandans. Finally, Part IV offers brief concluding remarks.²⁹

I. THE ICTR AND DEATH PENALTY IN RWANDA: 1994–2007

On November 8, 1994, the U.N. Security Council held a historic meeting in which it decided to create the ICTR.³⁰ Three months later, it agreed to locate the Tribunal in Arusha, Tanzania.³¹ The only country that voted against establishing the ICTR was Rwanda, which was a non-permanent member of the Security Council at the time.³² One of Rwanda's major reasons for objecting to the ICTR was the Tribunal's exclusion of the death penalty. The Rwandan representative to the Security Council explained:

Since it is foreseeable that the Tribunal will be dealing with suspects who devised, planned and organized the genocide, these may escape capital punishment whereas those who simply carried out their plans would be subjected to the harshness of this sentence. That situation is not conducive to national reconciliation in Rwanda.³³

29. The research was authorized by the Rwandan Ministry of Education (permits MINEDUC/S&T/0078/2012 and MINEDUC/S&T/0078/2013) and the Rwandan National Ethics Committee (Review Approval No. 49/RNEC/2012 dated Mar. 12, 2012).

30. See generally U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/PV.3453 (Nov. 8, 1994) [hereinafter *Security Council Record*] (protocol of meeting in which the U.N. Security Council adopted S.C. Res. 955, the resolution that created the ICTR). In this meeting, the U.N. Security Council adopted the resolution that created the ICTR. See S.C. Res. 955, *supra* note 11.

31. See generally S.C. Res. 977 (Feb. 22, 1995). It is noted that the Tribunal's exact location was not determined by the resolution that created the ICTR in November 1994.

32. *Security Council Record*, *supra* note 30, at 3.

33. *Id.* at 16 (statement by Rwanda Representative Mr. Bakuramutsa). Rwanda also disapproved of the Tribunal's limited temporal jurisdiction (which excluded prosecuting the crimes of 1990–1993), its location outside Rwanda, the possibility that its sentences would be enforced outside Rwanda, and its jurisdiction over war crimes (which allowed it

At the time, the death penalty was applicable in Rwanda to over thirty domestic crimes,³⁴ but had not been enforced in practice since the early 1980s.³⁵ In fact, Rwanda committed to abolishing the death penalty in the Arusha Accords finalized in the 1993 peace negotiations between the Rwandan government and the RPF.³⁶ Despite their failure to end the hostilities, or prevent the ensuing genocide, the Arusha Accords continue to have constitutional force in Rwanda.³⁷ Nonetheless, it seems that the magnitude and nature of the 1994 violence led the RPF to reconsider its earlier commitment to abolishing the death penalty—at least with respect to genocide perpetrators.

In October 1996, Rwanda adopted a law that authorized national courts to prosecute genocide-related crimes and apply the death penalty in certain circumstances.³⁸ The law divided genocide crimes into four categories according to their gravity and the seniority of the perpetrator, with Category I comprising the most extreme crimes and most senior offenders, followed by Categories II, III, and IV.³⁹ The law imposed a mandatory death penalty in

to prosecute members of the ruling RPF party). *Id.* at 15–16. Rwanda also complained that the composition and structure of the Tribunal were “inappropriate and ineffective” and that certain countries that “took a very active part in the civil war in Rwanda” could “propose candidates for judges and participate in their election” (likely referring to France, which supported the previous Rwandan government). *Id.* at 15.

34. Aimé Muyoboke Karimunda, *The Death Penalty in Rwanda: Surrounding Politics and the ICTR's Battle for Abolition*, in FUTAMURA 2013, *supra* note 21, at 128, 136 [hereinafter *Karimunda 2013*].

35. WILLIAM A. SCHABAS, *THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW* 250 (2002) [hereinafter *Schabas 2002*].

36. See The Arusha Accords, *Protocol of Agreement Between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Miscellaneous Issues and Final Provisions*, art. 15, (Aug. 3, 1993), <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/rwan1.pdf>. This provision states that Rwanda “shall ratify all International Conventions, Agreements and Treaties on Human Rights[.]” *Id.* Rwanda was therefore expected to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty. See William A. Schabas, *Genocide, Impunity and Accountability in Rwanda: Is it Reasonable to Expect a Devastated Legal System to Deal Justly with Those who Destroyed it?*, 6 INROADS 130, 137 (1997) [hereinafter *Schabas 1997*].

37. THE CONSTITUTION OF THE REPUBLIC OF RWANDA, June 4, 2003, pmb1.

38. See Organic Law N° 08/96 of 30th August 1996 on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity committed since October 1, 1990, 17 *Journal Officiel* 14 (Sept. 1, 1996) (Rwanda).

39. *Id.* art. 2 (providing that Category I included: (i) “planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a crime against humanity[.]” (ii) persons “in positions of authority” who committed or encouraged these crimes, (iii) “notorious murderers” who committed the crimes with particular “zeal” or “malice”, and (iv) “persons who committed . . . sexual torture”; Category II included others who committed murder or violent crimes resulting in death, Category III included perpetrators of serious non-lethal crimes against the person, and Category IV covered property offenders).

Category I cases,⁴⁰ while excluding the death penalty from Categories II-IV (even though Category II included cases of genocidal murder).⁴¹ Rwandan courts began imposing the death penalty in genocide trials in early 1997.⁴² The first execution of genocide perpetrators in Rwanda took place on April 24, 1998. That day, twenty-two individuals convicted of genocide were shot in public by firing squads in four different locations in Rwanda, including Kigali's Nyamirambo stadium.⁴³ Among those executed in Nyamirambo was high-profile former political leader, Froduald Karamira.⁴⁴ This was the last time Rwanda carried out the death penalty in practice. However, its national courts continued meting out this punishment in Category I genocide cases. By mid-2007, the courts had sentenced 1,365 individuals to death.⁴⁵ Approximately 12,000 more genocide suspects, who awaited trial in Rwanda, were eligible for the death penalty.⁴⁶

40. See *id.* art. 14 (providing that Category I offenders were "liable to the death penalty"); *id.* art. 5 (banning sentence reductions in Category I cases even following confessions).

41. Since capital punishment was excluded from genocide cases falling under Category II, which includes cases of genocidal murder, it has been suggested that "the death penalty now ceases to apply for all other common law offenders who are not covered by the special genocide legislation." See William Schabas, *Bringing Rwandan Genocidaires to Book 8* (Yale Ctr. for Int'l & Area Studies, Genocide Studies Program Working Paper GS11, 1999), <http://gsp.yale.edu/node/303>.

42. Schabas 1997, *supra* note 36, at 135. See also MARK A. DRUMBL, ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW 71–82 (2007) [hereinafter *Drumbl 2007*].

43. Amnesty International, *Rwanda: 22 People Executed on 24 April*, AFR 47/15/98 (Apr. 27, 1998), <https://www.amnesty.org/download/Documents/148000/afr470151998en.pdf>; *From Butchery to Executions in Rwanda*, BBC News (Apr. 27, 1998), http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/84120.stm.

44. During the genocide, Froduald Karamira was the vice-president of Rwanda's extremist MDR political party. He was arrested in June 1996 in Mumbai and extradited to Rwanda for trial. His trial began on January 13, 1997, before a Kigali court. On February 14, 1997, he was found guilty of genocide (as well as murder, conspiracy, and non-assistance to people in danger) and was sentenced to death. See *Ministère Public v. Karamira*, 1 Recueil de Jurisprudence Contentieux du Génocide 75, 75 (1st inst. Kigali, Feb. 14, 1997). His appeal was rejected on September 12, 1997. See *Profiles, Froduald Karamira TRIAL*, <http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/580/action/show/controller/Profile.html> (last modified Apr. 24, 2012).

45. See *supra* note 17, referring to sources estimating that 1,365 individuals were on death row when Rwanda abolished the death penalty, but noting that another source reported that around 600 prisoners were on death row at the time. In principle, these estimates may include prisoners who committed non-genocidal crimes. However, as discussed in note 41, *supra*, the death penalty was considered inapplicable to ordinary crimes due to its exclusion from Category II genocide cases.

46. According to Rwandan official sources, as of May 31, 2006, there were 77,269 suspects listed in Rwanda under Category I (and thus liable to receive the death penalty). See RWANDAN JUSTICE MINISTRY, CCM RESEARCH ON GACACA 99 (June 2, 2012), http://www.minijust.gov.rw/uploads/media/CCM_Research_on_Gacaca.pdf. An expert on this

It is beyond the scope of this Article to explore the vast literature on the death penalty, or to examine punishment theories more generally. Suffice it to note that while there is a growing trend among states to abolish the death penalty, and some international treaties ban capital punishment, it is unclear whether customary international law prohibits this penalty, particularly in relation to extreme crimes such as genocide.⁴⁷ Nevertheless, even in 1994, it would have been politically impossible to garner the support of certain members of the U.N. Security Council for an international tribunal that could impose the death penalty. At the Security Council meeting on the establishment of the ICTR, the representative of New Zealand expressed his regret at Rwanda's position, and explained why the Tribunal could not provide the death penalty:

We recall that the Government of Rwanda requested the Tribunal. That is a fact. We are disappointed that it has not supported this resolution. We understand that this is principally because of its desire that those convicted of genocide should be executed. As a State party to the Optional Protocol to the International Covenant on Civil and Political Rights, New Zealand could never support an international tribunal that could impose the death penalty. For over three decades the United Nations has been trying progressively to eliminate the death penalty. It would be entirely unacceptable—and a dreadful step backwards—to introduce it here. Indeed, it would also go against the spirit of the Arusha Agreement, which the Government of Rwanda has said it will honour and which commit all parties in Rwanda to accept international human rights standards.⁴⁸

The Rwandan representative did not specifically respond to these issues, but instead stressed that fighting impunity and learning new values were necessary for building the rule of law and attaining national reconciliation in Rwanda:

[I]t is impossible to build a state of law and arrive at true national reconciliation if we do not eradicate the culture of impunity which has characterized our society since 1959. The Rwandese who were taught that it was acceptable to kill as long as the victim was from a different ethnic group or from an oppo-

matter explained that in March 2007, tens of thousands of Category I defendants were reclassified as Category II defendants, leaving about 12,000 genocide suspects under Category I. See Interview with R76, foreign legal expert in Rwanda (Nov. 14, 2008).

47. See Jens David Ohlin, *Applying the Death Penalty to Crimes of Genocide*, 99 AM. J. INT'L L. 747 (2005); see also International Covenant on Civil and Political Rights, art. 6(2) Dec. 19, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171 ("In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes . . .").

48. *Security Council Record*, *supra* note 30, at 5 (statement by New Zealand Representative).

sition party, cannot arrive at national reconciliation unless they learn new values. The national reconciliation of the Rwandese can be achieved only if equitable justice is established and if the survivors are assured that what has happened will never happen again.⁴⁹

While equitable justice and non-repetition of violence can be crucial for national reconciliation, this statement fails to clarify why Rwanda could not guarantee justice and non-repetition through imprisonment penalties (and avoid the problematic sentencing disparity between the domestic and international courts). We must therefore look elsewhere for answers.

In 1998, Rwanda's Prosecutor General explained his conclusion that, after considering historical and socio-political contexts, the death penalty was the only punishment that could deter future atrocities in Rwanda:

Death sentences must be carried out so that Rwandans understand the life of a person cannot be trampled on. . . . Killers have been pardoned throughout Rwanda's history. . . . Social and political conflicts have been settled using machetes and this has to change. . . . One can always debate using the death penalty to serve as an example, but Rwanda is a unique case.⁵⁰

Additional justifications for applying the death penalty in post-genocide Rwanda were offered by Rwanda expert Gérard Prunier, in his 1995 book *The Rwandan Crisis*:

The Europeans are shocked when they hear the Rwandese . . . ask for the trials to be held in Rwanda and for the death penalty to be used. But the Rwandese are right. The immensity of the crime cannot be dealt with through moderate versions of European criminal law made for radically different societies. . . . To reassure the 'small guys' who used the machete and to assuage the immense pain of their victims' relatives, only the death of the real perpetrators will have sufficient symbolic weight to counterbalance the legacy of suffering and hatred *which will lead to further killings if the abcess [sic] is not lanced*. . . . They have to die. This is the only ritual through which the killers can be cleansed of their guilt and the survivors brought back to the community of the living.⁵¹

Prunier invokes retributive justifications for the death penalty (e.g., extreme criminality deserves extreme punishment; future killings must be deterred) as well as a restorative justification for

49. *Id.* at 14 (statement by Rwanda Representative).

50. Mark A. Drumbl, *Rule of Law Amid Lawlessness: Counseling the Accused in Rwanda's Domestic Genocide Trials*, 29 COLUM. HUM. RTS. L. REV. 545, 546 (1998) (quoting Prosecutor General of Rwanda, Siméon Rwagasore).

51. GÉRARD PRUNIER, *THE RWANDA CRISIS 1959–1994: HISTORY OF A GENOCIDE* 354–55 (1995).

the penalty, namely, its redeeming effect on survivors and low-level perpetrators. Indeed, my interviews suggested that the death sentences might have had a liberating effect on survivors. For example, a survivor I interviewed in 2012, who lost most of her family in the genocide, recalled how she and her remaining relatives felt when they observed the public executions in Kigali's Nyamirambo stadium in 1998:

We went to watch the executions. . . . We were happy because we were still wounded from what happened during the genocide . . . can you imagine losing the whole of your family and then they put [the killers] up front and say: 'we are going to execute them, come and watch!'⁵²

The interviewee's eyes lit up when she spoke about the executions, as if experiencing their cathartic effects once again, fourteen years later. Other survivors I interviewed also recalled their support of the death penalty in the years following the genocide.⁵³ Two prominent Rwandan lawyers, who represented genocide survivors in many capital cases,⁵⁴ confirmed that survivors were generally satisfied when genocide perpetrators were sentenced to death.⁵⁵ One of them added that "the pain that they had to endure during the genocide" led many survivors to request the death penalty.⁵⁶

Following the trial of Froduald Karamira, Prunier reported about the reactions of Hutus to Karamira's death sentence:

[I]t was very interesting to see the reactions of the people to Karamira's condemnation to death. A lot of Hutus [who] were not particularly sympathetic to the Tutsi regime now in power, said, 'Well, after all, he got what he had called for. He was one of the men who unleashed all of that evil on all of us. He's now going to die.'⁵⁷

This observation begs the question whether the death penalty could have had a reconciling effect by uniting survivors and low-level perpetrators around their joint condemnation of the top-level

52. Interview with R64, Rwandan genocide survivor (May 1, 2013).

53. See Section III.B *infra*.

54. Rwanda follows the civil law system, which allows victims to actively participate in criminal proceedings as civil parties entitled to reparations and legal representation. GERALD GAHIMA, *TRANSITIONAL JUSTICE IN RWANDA: ACCOUNTABILITY FOR ATROCITY* 255 (2013).

55. Interviews with R20, Rwanda legal expert (Aug. 15, 2012) and R22, Rwanda legal expert (Aug. 16, 2012).

56. Interview with R20, Rwanda legal expert (Aug. 15, 2012).

57. Frontline, *Correspondent Fergal Keane's Interview with Gerard Prunier, Author of The Rwanda Crisis*, PBS (Apr. 1997), <http://www.pbs.org/wgbh/pages/frontline/shows/rwanda/etc/interview.html>.

perpetrators.⁵⁸ Relatedly, with the benefit of hindsight, a senior Rwandan prosecutor I interviewed in 2012 explained that the death penalty helped national reconciliation in Rwanda by “removing bad people from the society”:

[For] criminals who had terrorized one ethnic group and killed it there was no sentence other than the death penalty. . . . So [the death penalty] was somehow showing the society that reconciliation can be obtained by removing bad people from the society. . . . It was somehow good because actually it is how reconciliation was built, how it was started.⁵⁹

It is interesting to compare Rwanda’s approach to the death penalty in the years following the genocide with contemporaneous developments in post-Apartheid South Africa, where the death penalty was abolished in 1995 in the name of building a fair and egalitarian society.⁶⁰ The abolition in South Africa was a means of breaking away from a past in which this penalty was extensively used by the Apartheid government to repress the black majority.⁶¹ Rwanda’s death penalty policies in that period also seemed to be inspired by the desire to turn a new page; however, for the Rwandan leadership this meant *re-introducing* the death penalty.

In any event, Rwanda’s implementation of the death penalty in connection with genocide crimes, after over a decade of practicing a *de facto* moratorium on it, has led commentators to argue that the RPF-led government used capital punishment as a means to retaliate against those associated with the former regime, rather than

58. Hugo van der Merwe claims that when reconciliation is achieved through criminal justice, it is flawed because it excludes the convicted individuals; these individuals become “scapegoats” and “[t]he rest of society is thus united through a condemnation of their actions and their exclusion from the new society[.]” See Hugo van der Merwe, *The Truth and Reconciliation Commission and Community Reconciliation: An Analysis of Competing Strategies and Conceptualizations*, (Summer 1999) (Ph.D. dissertation, George Mason University), <http://www.csvr.org.za/index.php/publications/1736-the-truth-and-reconciliation-commission-and-community-reconciliation-an-analysis-of-competing-strategies-and-conceptualizations.html>.

59. Interview with R19, Rwandan prosecutor (Aug. 10, 2012).

60. *State v. Makwanyane* 1995 (3) SA 391 (CC) at para. 190 (S. Afr.) (the first judgment of South Africa’s Constitutional Court, abolishing capital punishment in South Africa on June 6, 1995).

61. Similarly, forty-five years earlier, in 1949, Germany abolished the death penalty in connection with its post-Nazi transformation. See GRUNDGESETZ [GG] [BASIC LAW] art. 102 (F.R.G.). Also in Argentina, writes Engstrom Par, “[t]he abolition of the death penalty in the immediate transition to democracy was intended to signal the commitment of the new civilian government to a break with the repressive laws and practices of previous political regimes.” Engstrom Par, *Transitional Justice, Democratization and the Politics of the Death Penalty in Argentina*, in FUTAMURA 2013, *supra* note 21, at 47.

achieve justice or reconciliation.⁶² Legal scholar William Schabas, who worked in Rwanda in the years following the genocide, considered Rwanda's insistence on imposing the death penalty to be "[t]he most disturbing problem I encountered in attempting to assist Rwanda to bring genocide perpetrators to justice"⁶³ Writing in 1997, Schabas notes:

Will the death penalty help or hinder Rwanda's search for reconciliation and renewal? Proponents of capital punishment, inside and outside Rwanda, argue that it is compelled by imperatives of vengeance and retribution. Yet vengeance and retribution may only plunge Rwanda into new cycles of violence.⁶⁴

We cannot be sure whether Rwanda's practice of imposing the death penalty helped reconciliation, but it did not seem to plunge Rwanda into new cycles of violence. It should be noted that, in addition to the death penalty, Rwanda adopted certain restorative forms of justice. Most notably, in 2001, the Rwandan government established a system of "*gacaca* courts" that would handle genocide cases in Categories II, III and IV.⁶⁵ The *gacaca* courts were a modified version of a Rwandan traditional community-based dispute resolution mechanism. They were designed to encourage apologies, confessions, and alternative punishments (mainly community service and compensation), though they could also impose imprisonment terms—short of capital punishment.⁶⁶ Furthermore, in 2003 and 2005, Rwanda approved the early release of more than 60,000 prisoners who were accused of genocide and integrated them back into society.⁶⁷ Rwanda's National Unity and Reconciliation Com-

62. See, e.g., Melynda J. Price, *Balancing Lives: Individual Accountability and the Death Penalty as Punishment for Genocide (Lessons from Rwanda)*, 21 EMORY INT'L L. REV. 563, 595 (2007).

63. Schabas 1997, *supra* note 36, at 137.

64. *Id.* Schabas also approvingly notes that Rwanda's exclusion of capital punishment from Category II genocide cases "sits squarely within a rapidly emerging abolitionist trend on the African continent" *Id.*

65. Organic Law N° 40/01/2001 Setting up Gacaca Jurisdictions and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed between October 1, 1990 and December 31, 1994, 6 Journal Officiel 33, art. 2 (Mar. 15, 2001) (Rwanda) [hereinafter Gacaca Law]. The Kinyarwanda word *gacaca* is pronounced "gachacha."

66. While reconciliation was a major goal of the *gacaca* courts, they were established when the Rwandan government realized that the national courts could not process the large number of genocide cases. See, e.g., Phil Clark, *Hybridity, Holism and Traditional Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda*, 39 GEO. WASH. INT'L L. REV. 765, 830 (2007).

67. In 2003, around 25,000 prisoners were prematurely released from jail, for humanitarian reasons (e.g., old age, illness), or following confessions. In 2005, an additional 36,000 prisoners were released for similar reasons. See Schabas 2005, *supra* note 8, at 880;

mission (NURC), a government institution in charge of reconciliation programs, prepared the population to receive the prisoners and encouraged the formation of “reconciliation associations” that included both genocide survivors and released perpetrators.⁶⁸ At the time, Category I genocide cases continued to be sent to national courts that could impose the death penalty but, as the next Part illustrates, Rwandan judges and legislators became less enthusiastic about the death penalty after the 1998 executions. Still, in 2003, Rwanda adopted a law that applied the death penalty to a range of international crimes, including all future cases of genocide and many cases of crimes against humanity and war crimes.⁶⁹ Thus, in the first decade after the genocide, Rwanda seemed to be constantly searching for the right balance between vengeance and renewal.

II. RWANDA ABOLISHES THE DEATH PENALTY: 2007

This Part discusses the dynamics of Rwanda’s abolition of capital punishment, including the role of the ICTR, the public campaign for the abolition, the relevant parliamentary debates, and the fate of an extraordinary penalty that briefly replaced the death penalty. While the discussion below shows that the abolition resulted from a combination of several factors, it also suggests that the abolition would not have been approved in mid-2007 but for the ICTR’s requirements.

A. *ICTR Requirements Versus Internal Pressure*

The ICTR was created in 1994 as a temporary institution, but was given a closure deadline only nine years later, in U.N. Security Council Resolution 1503 of August 2003⁷⁰ and Resolution 1534 of March 2004.⁷¹ These resolutions requested that the Tribunal “complete all work in 2010,”⁷² and, to that end, “transfer cases involving intermediate- and lower-rank accused to competent

Rwanda Starts Prisoner Releases, BBC News (July 29, 2005, 12:20 UK), <http://news.bbc.co.uk/2/hi/africa/4726969.stm>.

68. For further information on NURC, see note 10 *supra*.

69. Law N° 33bis/2003 of 2003 Repressing the Crime of Genocide, Crimes Against Humanity and War Crimes, 21 *Journal Officiel*, arts. 3, 6, 9, 11, 13 (Nov. 1, 2003) (Rwanda).

70. S.C. Res. 1503, ¶¶ 6–8 (Aug. 28, 2003).

71. S.C. Res. 1534, ¶¶ 4–7 (Mar. 26, 2004).

72. *Id.* ¶ 3, pmb. ¶ 3; S.C. Res. 1503, *supra* note 70, ¶ 7, pmb. ¶ 8. In 2010, the Security Council extended the ICTR’s completion deadline to 2014. See S.C. Res. 1966, ¶ 3 (Dec. 22, 2010).

national jurisdictions, as appropriate, including Rwanda.”⁷³ In compliance with these resolutions, in 2004, the ICTR amended Rule 11 *bis* of its Rules of Procedure and Evidence to allow the referral of cases to national jurisdictions in which “the accused will receive a fair trial . . . [and] the death penalty will not be imposed or carried out”.⁷⁴

Consistent with its policy of maximum accountability for genocide-related crimes, the Rwandan government has long been interested in receiving cases from the ICTR.⁷⁵ To satisfy the Tribunal’s referral requirements, in March 2007, Rwanda excluded the death penalty from cases transferred from abroad.⁷⁶ Rwanda achieved this using a special law applicable to cases from the ICTR and third states, and tailored to meet the ICTR’s referral requirements.⁷⁷ Four months later, in July 2007, Rwanda took another step in this direction by adopting a law which abolished the death penalty altogether (the Abolition Law).⁷⁸ The Abolition Law commuted all outstanding death penalties to life imprisonment or, in the case of convicted genocide perpetrators, to life imprisonment with special provisions (discussed in more detail below).⁷⁹

But did Rwanda’s abolition stem from the ICTR’s requirements? After all, the ICTR’s referral conditions required the relevant state to exclude capital punishment merely from cases it would receive from the Tribunal, not from all domestic criminal cases.⁸⁰ Nonetheless, in my interviews with experts on Rwandan law and key ICTR members, interviewees often claimed that Rwanda abolished the death penalty to satisfy the ICTR’s referral conditions.⁸¹ Inter-

73. S.C. Res. 1503, *supra* note 70, pmb. ¶ 88.

74. ICTR R. P. & EVID. 11 *bis* (C).

75. *Rwanda Wants to Detain Defendants, to Try Them and to Possess the Archives*, HIRONDELLE NEWS (Dec. 11, 2007), <http://www.hirondellenews.com/ict-rwanda/407-collaboration-with-states/collaboration-with-states-rwanda/21296-en-en-111207-ict-rwanda-wants-to-detain-defendants-to-try-them-and-to-possess-the-archives1034710347>; Stephanie Nieuwoudt, *Rwandan Tribunal Under Pressure to Wind Up*, INSTITUTE FOR WAR & PEACE REPORTING (Jan. 29, 2007), <http://www.iwpr.net/report-news/rwandan-tribunal-under-pressure-wind>.

76. Organic Law N° 11/2007 of 16/03/2007 Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States, Special Journal Officiel of 19 March 2007, art. 21 (Mar. 19, 2007) (Rwanda).

77. *Id.*

78. See Abolition Law, *supra* note 15.

79. *Id.* arts. 3, 5. The special life penalty is discussed in Section II.D *infra*.

80. See *supra* note 74 and accompanying text.

81. Interviews with R13, Rwandan prosecutor (Aug. 8, 2012); R19, Rwandan prosecutor (Aug. 10, 2012); R73, Rwandan lawyer (Oct. 22, 2008); R21, Rwandan political scientist (Aug. 15, 2012); R83, ICTR member (Nov. 1, 2008); R85, ICTR member (Dec. 2, 2008); R92, ICTR defence counsel (Nov. 1, 2008); R76, foreign legal expert in Rwanda (Nov. 14,

viewees who explicitly endorsed this view included not only non-Rwandan members of the ICTR, but also Rwandan lawyers and scholars, as well as foreign legal experts based in Rwanda.⁸² One of these interviewees was a foreign legal expert who was heavily involved in Rwanda's legal reforms of 2007. He was confident that Rwanda abolished the death penalty to meet the ICTR's requirements, but also suggested that Rwandan leaders do not admit that the ICTR was the main reason for the abolition:

Rwanda is trying to live up to all the international standards, which the ICTR demands of a country to extradite. So the death penalty was abolished, which 'officially' was not done because of the ICTR but we all know that of course it was done for that main reason.⁸³

This duality is illustrated in a Rwandan news report published shortly after the abolition. On the one hand, the reporter confirms that the abolition "was largely motivated by the government's desire to have Genocide suspects extradited and be tried here."⁸⁴ But on the other hand, the report refers to a statement made by Rwandan judge and current Chief Justice Samuel Rugege that "the international community's push for abolishing the death sentence was not the main reason [for the abolition] though [Rugege] admitted it was one of the factors."⁸⁵ Similarly, Rwandan officials interviewed downplayed the ICTR's role in encouraging the abolition. However, some of them alluded to a connection between the ICTR and the abolition. For example, when asked about the abolition, a senior Rwandan official explained that such national reforms were prompted by local demands—adding that local demands included Rwanda's desire to have genocide suspects extradited to Rwanda from foreign states that harbored them.⁸⁶

Courts in third states have relied on the ICTR's referral decisions in deciding whether to transfer genocide suspects to Rwanda.⁸⁷

2008); R78, international NGO member (Oct. 27, 2008); R79, international NGO member (Nov. 13, 2008); R80, international NGO member (Oct. 20, 2008).

82. See Interviews with R13, Rwandan prosecutor (Aug. 8, 2012); R19, Rwandan prosecutor (Aug. 10, 2012); R73, Rwandan lawyer (Oct. 22, 2008); R21, Rwandan political scientist (Aug. 15, 2012); R83, ICTR member (Nov. 1, 2008); R85, ICTR member (Dec. 2, 2008); R92, ICTR defence counsel (Nov. 1, 2008); R76, foreign legal expert in Rwanda (Nov. 14, 2008); R78, international NGO member (Oct. 27, 2008); R79, international NGO member (Nov. 13, 2008); R80, international NGO member (Oct. 20, 2008).

83. Interview with R76, foreign legal expert in Rwanda (Nov. 14, 2008).

84. *Mutesi 2007*, *supra* note 17.

85. *Id.*

86. Interview with R66, Rwandan official (Oct. 27, 2008).

87. See, e.g., *Leon Mugesera v. Ministry of Immigration et al.*, [2012] F.C. 32 §§ 66–67 (Can. Que. Fed. Ct.) (referencing judgments of Appeals Chamber of International Crimi-

Thus, satisfying the ICTR's referral requirements may have been a way for Rwanda to receive cases from third states. Another senior Rwandan official, while firmly denying that the abolition was encouraged by the ICTR, admitted that excluding the death penalty from cases transferred from abroad had intensified internal discussions in Rwanda about abolishing the penalty altogether.⁸⁸ This last proposition finds support in the records of the Rwandan parliamentary debates on the abolition bill.⁸⁹

In a 2008 interview, a Rwandan lawyer insisted that the abolition could only be partly attributed to the ICTR because Rwandans have for years been ready to abolish the death penalty; the public execution of twenty-two genocide perpetrators in 1998 was met with outcry in Rwanda and gave rise to local pressure to abolish capital punishment.⁹⁰ In addition, there is evidence that Rwandan courts became increasingly less inclined to impose the death penalty after the 1998 executions: Statistics published by *Amnesty International* indicate that the percentage of cases that received the death penalty out of all genocide cases in Rwanda declined on an annual basis from 30.8 percent in 1997 to only 3.4 percent in 2002.⁹¹ While this decline suggests that there was less judicial enthusiasm around retaining the death penalty, it must also be evaluated in the context of a more general movement towards lenient sentences in

nal Tribunal for Rwanda and and European Court of Human Rights); *Brown (aka Vincent Bajinja) et al. v. Government of Rwanda et al.*, High Court of England and Wales, [2009] EWHC (Admin) 770 [11, 37–48] (Eng.) (citing decisions of ICTR concerning transfer of defendants for trial in Rwandan High Court).

88. Interview with R70, Rwandan official (Nov. 1, 2008).

89. See Section I.C *infra*.

90. Interview with R90, Rwandan attorney (Nov. 11, 2008). For a discussion on the 1998 executions, see *supra* notes 43–44 above and accompanying text. As the next segment suggests, a public campaign, carried out around the time of the abolition, also gave rise to popular support for the abolition.

91. Amnesty International, *Rwanda: Gacaca: A Question of Justice*, AFR 47/07/02, at 17 (Dec. 17, 2002), <https://www.amnesty.org/en/documents/afr47/007/2002/en/> (referring to statistics compiled by the Rwandan NGO Liprodhor, indicating that the percentage of cases that resulted in death penalty out of all genocide cases in Rwanda was 30.8 percent in 1997, 12.8 percent in 1998, 11 percent in 1999, 6.6 percent in 2000, 8.4 percent in 2001, and only 3.4 percent in 2002).

Rwandan genocide cases,⁹² and the introduction of *gacaca* courts and alternative punishments in 2001.⁹³

Category I genocide cases still remained under the exclusive jurisdiction of the national courts, but legislators replaced the mandatory death penalty in these cases with a discretionary death penalty (and with imprisonment sentences in cases of confessions).⁹⁴ Already in 1996, Rwanda's parliament excluded the death penalty from the majority of genocide-related cases, including cases of genocidal murder that fell under Category II.⁹⁵ However, the same parliament introduced capital punishment in the 2003 law that criminalized all future cases of genocide, many cases of crimes against humanity, and war crimes.⁹⁶

In any case, the question is not whether there was local resistance to the death penalty but whether Rwanda would have abolished the death penalty in mid-2007 without the ICTR's referral requirements.⁹⁷ The following sections, which focus on the major local developments that led to the abolition, shed additional light on the respective roles that local and international demands played in Rwanda's decision to abolish capital punishment.

B. *Karugarama's Public Campaign*

The main sponsor of the Abolition Law was Rwanda's then Justice Minister, Tharcisse Karugarama.⁹⁸ Karugarama explained that while he had always objected to the death penalty, Rwandans were

92. *Id.* The report provides an annual breakdown of all sentences imposed in genocide cases in Rwanda between 1997 and mid-2002. It identifies the following trends: (i) a gradual decline in the percentage of death penalties (from 30.8 percent in 1997 to 3.4 percent in 2002); (ii) a gradual decline in the percentage of life imprisonments (from 32.4 to 20.5 percent); (iii) an increase in fixed prison terms (from 27.7 to 47.2 percent); (iv) the acquittal rate almost tripled itself (from 8.9 to 24.8 percent). *Id.* Mark Drumbl attributes this trend, at least in part, to the facts that (a) the perpetrators prosecuted in the earlier trials were more notorious than those prosecuted later, and (b) recourse to guilty pleas became more popular with time. *See Drumbl 2007, supra* note 42, at 76.

93. *See supra* notes 65–66 and accompanying text.

94. *Gacaca Law, supra* note 65, art. 68 (requiring judges in Category I cases to choose between life imprisonment and death penalty when convictions were not based on confessions; and to impose between twenty-five years imprisonment and a life sentence when convictions were based on confessions).

95. *See supra* note 41 and accompanying text.

96. *See supra* note 69 and accompanying text.

97. For a discussion on Rwanda's inclination to abolish the death penalty irrespective of the ICTR's impact, see A. Boctor, *The Abolition of the Death Penalty in Rwanda*, 10 HUM. RTS. L. REV. 99 (2009).

98. *See, e.g., Tharcise Karugarama*, JUSTICE LEADERSHIP FOUND., <http://justiceleaders.org/leaders/jordan-tharcisse-karugarama/> (last visited Jan. 23, 2016).

ready to seriously consider abolition only in 2007.⁹⁹ Still, he added, even in 2007 not all cabinet members shared his abolitionist views and he had to work hard to convince them to support his abolition bill before he could present it to the parliament.¹⁰⁰ Once he obtained the cabinet's support for the bill, Karugarama began leading a public campaign to garner popular support for the abolition. Gaining the support of the public was important in its own right, he explained, but it was also important as a means to influence parliament members to support the bill and pass it into law.¹⁰¹ Karugarama and his colleagues travelled around the country, and spoke about the abolition's merits in public gatherings.¹⁰² This public campaign advanced three justifications for removing the death penalty: (1) the cruelty involved in killing large numbers of perpetrators; (2) the death penalty's lack of a deterrent effect; and (3) the high educational and rehabilitative value of imprisonment.¹⁰³

A senior Rwandan official indicated that the public campaign succeeded in increasing support for the abolition, even among genocide survivors:

The government, especially through the Ministry of Justice and other relevant institutions, had a lot of consultations [about the abolition] with survivors. . . . And I think [that] with these consultations [they] handled or confronted the anxiety.¹⁰⁴

The official further considered that Rwandans accepted the abolition because the death penalty was replaced with the harsh punishment of life imprisonment with special provisions.¹⁰⁵ A foreign legal expert, who was based at the time in Rwanda, also recalled that the public campaign was very effective.¹⁰⁶ Particularly persuasive, he added, was the government's explanation that retaining the death penalty would entail great cruelty, as it would force the president to sign the execution orders of hundreds of prisoners.¹⁰⁷ The population agreed that this was too inhumane and became supportive of the abolition, even though some survivors' associa-

99. Interview with R24, Tharcisse Karugarama, Rwandan Justice Minister (Aug. 16, 2012).

100. *Id.* For a discussion on life imprisonment with special provisions, see notes 110-112 *infra* and accompanying text.

101. *Id.*

102. *Id.*

103. *Id.*

104. Interview with R26, senior Rwandan official (Aug. 17, 2012).

105. *Id.*

106. Interview with R76, foreign legal expert in Rwanda (Nov. 14, 2008).

107. *Id.*

tions continued to call for the death penalty.¹⁰⁸ The interviewee, who was involved in Rwanda's legal reforms, nonetheless stressed that Rwanda abolished the death penalty mainly in order to satisfy the ICTR's requirements for case referrals.¹⁰⁹

C. *Rwandan Parliamentary Debates*

Despite internal demands and external incentives, the decision by the Rwandan parliament to abolish the death penalty was far from unanimous. The Rwandan parliament held two discussions focusing on the abolition bill before passing it into law. The first of these discussions was held on March 16, 2007, the exact same day on which the parliament excluded the death penalty from cases received from the ICTR and third states.¹¹⁰ This timing suggests that readiness to discuss the abolition of the death penalty in parliament was linked to the penalty's exclusion from transferred cases.¹¹¹ Further support for this conclusion is found in the records of the parliamentary discussion, which reveal that the Justice Minister invoked the exclusion of the death penalty from transferred cases as an argument in favor of abolition:

[Capital] punishment particularly in our country has contradictions. We have removed it from those who committed genocide. Recently that law was passed, now it is a law that is in promulgation as we have voted it, excellent deputies, regarding [ICTR] cases from Arusha, and other cases from other countries, already that punishment is removed.¹¹²

It still took a second parliamentary debate, held on June 8, 2007, before the Abolition Law was adopted on July 25, 2007.¹¹³ The records of both parliamentary debates suggest that they were lively, with strong arguments voiced against the abolition.¹¹⁴ Opponents

108. *Id.*

109. *Id.*; see also *supra* note 106 and accompanying text.

110. See *Abolition Debates of Mar. 16, 2007*, *supra* note 27; Organic Law N° 11/2007 of 16/03/2007 Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States, Special Journal Officiel of 19 March 2007, art. 21 (Mar. 19, 2007) (Rwanda); Amnesty International, *Rwanda: Suspects Must not be Transferred to Rwandan Courts for Trial Until it is Demonstrated that Trials will Comply with International Standards of Justice*, AFR 47/013/2007, at 5 (Nov. 2007).

111. One Rwandan official noted that excluding the death penalty from cases transferred from abroad intensified internal discussions in Rwanda about abolishing the penalty altogether. See *supra* note 83 and accompanying text.

112. *Abolition Debates of Mar. 16, 2007*, *supra* note 27, at 8 (statement by Justice Minister Tharcisse Karugarama, unofficial translation from Kinyarwanda).

113. *Abolition Debates of June 8, 2007*, *supra* note 27; Abolition Law, *supra* note 15.

114. See *Abolition Debates of Mar. 16, 2007*, *supra* note 27; *Abolition Debates of June 8, 2007*, *supra* note 27.

claimed that the death penalty should remain in place to address extreme domestic crimes,¹¹⁵ as well as contemporary calls to continue the genocide.¹¹⁶ They also argued that imprisonment terms would fail to deter crimes because some Rwandans would prefer prison conditions to their own living conditions.¹¹⁷ However, other parliament members considered that lengthy imprisonment terms could send a strong enough warning to others, as reflected in the following words:

For the child who will see his father serving for many years in the prison, people talking about how he killed people, saying how his relatives also killed people, it will be a lesson for him, it will be a testimony, something to learn from so that in future he will be able to do good¹¹⁸

Eventually, legislators found a solution that satisfied those who believed genocide should carry a heavier sentence than ordinary imprisonment, and was still acceptable to those who supported the abolition for ideological reasons: replacing capital punishment with the penalty of life imprisonment with special provisions.¹¹⁹ This penalty, often referred to in Rwanda as “special life,” amounts to a life sentence with exceptional conditions including isolation.¹²⁰ In the second parliamentary debate on the abolition, Justice Minister Karugarama described the special life penalty as follows:

115. *Abolition Debates of June 8, 2007*, *supra* note 27, at 28 (“I am surprised that the Rwandan government reached to the level of abolishing the death penalty . . . I am wondering if you are looking at this issue in the Rwandan context, because if we are looking at it from the Rwandan perspective, we still have issues, even now people are sexually abusing one-month-old babies.”) (statement by Prime Minister [hereinafter PM] Kayirangwa Rwaka Alfred, unofficial translation from Kinyarwanda).

116. *Abolition Debates of Mar. 16, 2007*, *supra* note 27, at 14 (“In this country heavy atrocities happened, and criminals are still out there, still committing crimes that we know. We forgive them but we are not sure if they want also to leave us alone. I am wondering about those people who still want to kill”) (statement by PM Makuba Aaron, unofficial translation from Kinyarwanda).

117. *See id.* at 14 (“[T]here is no risk if a person can eat beans and ugali in the prison, and think that he is in heaven. Can’t he deliberately offend people so he can be sent there? He would say ‘let me kill as many as possible so I can stay there for a longer time’. This country has many challenges including poverty”) (statement by PM Makuba Aaron, unofficial translation from Kinyarwanda).

118. *Abolition Debates of Mar. 16, 2007*, *supra* note 27, at 21 (statement by Dusabeyezu Thacienne, unofficial translation from Kinyarwanda).

119. Abolition Law, *supra* note 15, art. 4. *See supra* notes 110–112 and accompanying text.

120. Abolition Law, *supra* note 15, art. 4 (“Life imprisonment with special provisions is imprisonment with the following modalities: 1° a convicted person is not entitled to any kind of mercy, conditional release or rehabilitation, unless he/she has served at least twenty (20) years of imprisonment; 2° a convicted person is kept in isolation.”).

[In] the previous debates we had on this issue [of the death penalty], people were thinking that [genocide perpetrators] should not be given any sentence other than death. So there is this small element of ‘special’ for those who were convicted of genocide. . . . The ‘special’ element . . . is an addition to the punishment because of the gravity of the crime committed. The convict would be isolated instead of being executed, so that the criminal also would get a sense of being heavily punished. It is not a new thing, it is just that big criminals would be punished in a special way by being ‘isolated’, and it would be a fair punishment what is approved by the government. . . . Though these big crimes against humanity may be few, still they should be punished in a special way.¹²¹

This explanation seemed to persuade parliament members to vote for the abolition bill. On July 25, 2007, the death penalty was abolished and special life became Rwanda’s maximum penalty, applicable to extreme crimes including genocide.¹²² However, the penalty of special life met with significant restrictions even before it could be applied in practice, pursuant to an ICTR decision issued in 2008, and discussed in the following paragraphs.¹²³

D. *The Rise and Fall of Special Life*

The preceding discussion suggests that introducing the special life penalty was meant to help persuade Rwandan lawmakers to adopt the Abolition Law in 2007, as it guaranteed that genocide would be treated with the appropriate seriousness.¹²⁴ In 2008, the ICTR deliberated on the first requests to transfer cases to Rwanda.¹²⁵ When addressing Rwanda’s special life penalty, the

121. *Abolition Debates of June 8, 2007*, *supra* note 27, at 14 (statement by Justice Minister Karugarama, unofficial translation from Kinyarwanda).

122. Abolition Law, *supra* note 15, art. 3 (“the death penalty is substituted by life imprisonment or life imprisonment with special provisions”); *id.* art. 5 (“the following atrocious crimes are punishable by life imprisonment with special provisions: 1° torture having resulted in death; 2° murder or other killing with dehumanizing acts on the dead body; 3° crimes of genocide and crimes against humanity; 4° acts of terrorism resulting in the death of persons; 5° rape of children; 6° sexual tortures; 7° establishing or running a criminal organization aimed at killing persons.”).

123. *See infra* Section II.D.

124. *See supra* notes 110–112 and accompanying text.

125. Prosecutor v. Munyakazi, Case No. ICTR-97-36-R11*bis*, Decision on the Prosecution’s Appeal Against Decision on Referral Under Rule 11*bis*, ¶ 2 (Oct. 8, 2008); Prosecutor v. Kanyarukiga, Case No. ICTR-2002-78-R11*bis*, Decision on the Prosecution’s Appeal Against Decision on Referral Under Rule 11*bis*, ¶ 2 (Oct. 30, 2008); Prosecutor v. Hategekimana, Case No. ICTR-00-55B-R11*bis*, Decision on the Prosecution’s Appeal Against Decision on Referral Under Rule 11*bis*, ¶ 2 (Dec. 4, 2008); Prosecutor v. Gatete, Case No. ICTR-2000-61-R11*bis*, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, ¶ 1 (Nov. 17, 2008) (no appeal was filed); Prosecutor v. Kayishema,

ICTR found that this penalty could amount to life sentence in isolation and was therefore a form of cruel and inhuman treatment that violated international law.¹²⁶ In part on this basis, the Tribunal denied the requests to transfer cases to Rwanda.¹²⁷ Within weeks, Rwanda excluded the special life penalty from cases received from the ICTR or third states.¹²⁸ In 2010, Rwanda adopted a law providing that life imprisonment with special provisions must be interpreted in light of the national constitutional prohibition of torture.¹²⁹ Following this and additional reforms in Rwanda,¹³⁰ the ICTR began referring cases to Rwanda in 2011.¹³¹

A Rwandan attorney, as well as ICTR members and foreign experts who followed legal developments in Rwanda, confirmed that discussions in Rwanda about limiting the special life penalty

Case No. ICTR-01-67-R11*bis*, Decision on Prosecutor's Request for Referral of Case to the Republic of Rwanda, ¶ 1 (Dec. 16, 2008) (no appeal was filed).

126. Prosecutor v. Kanyarukiga, Case No. ICTR-2002-78-R11*bis*, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11*bis*, Appeals Chamber, ¶ 15 (Oct. 30, 2008).

127. A second basis for the ICTR's refusal to refer cases to Rwanda was the possibility that defendants would not receive a fair trial in Rwanda because potential witnesses might be reluctant to testify for the defense due to fears of being harassed, subjected to *gacaca* trials, or charged with the crime of "genocide ideology." See *id.* ¶ 26.

128. See Organic Law N° 66/2008 of 21/11/2008 Modifying and Complementing Organic Law N° 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty, 23 Journal Officiel 97, art. 1 (Dec. 1, 2008) (Rwanda); Organic Law N° 08/2013/OL of 16/06/2013 modifying and complementing Organic Law N° 31/2007 of 25/07/2007 relating to the abolition of the death penalty as modified and complemented to date, Special Journal Officiel of 16/06/2013, 148, art. 1 (June 16, 2013) (Rwanda).

129. Organic Law N° 32/2010 of 22/09/2010 relating to Serving Life Imprisonment with Special Provisions, Special Journal Officiel of 14/10/2010, 2, art. 4 (Oct. 14, 2010) (Rwanda).

130. For example, Rwanda reformed its witness protection system to address the concerns which led the ICTR to refuse to transfer cases to Rwanda in 2008. See *Horowitz 2013*, *supra* note 15, at 353.

131. Prosecutor v. Jean Uwinkindi, Case No. ICTR-01-75-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (June 28, 2011) (upheld on appeal on Dec. 16, 2011); Prosecutor v. Fulgence Kayishema, Case No. ICTR-01-67-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (Feb. 22, 2012); Prosecutor v. Charles Sikubwabo, Case No. ICTR-95-ID-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (Mar. 26, 2012); Prosecutor v. Ladislas Ntaganzwa, Case No. ICTR-96-9-R11*bis*, Decision on Prosecutor's Request for Referral of the Case to the Republic of Rwanda (May 8, 2012); Prosecutor v. Bernard Munyagishari, Case No. ICTR-05-89-R11*bis*, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda (June 6, 2012) (upheld on appeal on May 3, 2013); Prosecutor v. Charles Ryandikayo, Case No. ICTR-95-1E-R11*bis*, Decision on Prosecutor's Request for Referral of the Case to the Republic of Rwanda (June 20, 2012); Prosecutor v. Phénéas Munyarugarama, Case No. ICTR-02-79-R11*bis*, Decision on Prosecutor's Request for Referral of the Case to the Republic of Rwanda (June 28, 2012) (upheld on appeal on Oct. 5, 2012); Prosecutor v. Aloys Ndimbatu, Case No. ICTR-95-1F-R11*bis*, Decision on Prosecutor's Request for Referral of the Case of Aloys Ndimbatu to Rwanda (June 25, 2012).

were prompted by the ICTR's referral decisions.¹³² This again exemplifies the potential of international tribunals to affect penalty reforms in their target countries. It also highlights Rwanda's eagerness to receive genocide cases from abroad. To ensure the referral of such cases, Rwanda was willing not only to abolish the death penalty but also to remove the very penalty that was regarded by Rwandans as an acceptable substitute for the death penalty.

E. *Discussion*

Even if Rwanda's 1998 executions gave rise to local opposition to the death penalty, and to a more relaxed approach of judges and legislators to the penalty, capital punishment was not formally abolished until nine years later.¹³³ At that time, over 1,300 additional individuals were sentenced to death.¹³⁴ These hard facts are difficult to reconcile with the claim that Rwanda was on the road toward abolition following the 1998 executions. The parliamentary debates, moreover, reveal parliament members' mixed views on the death penalty.¹³⁵ Finally, in September 2003, Rwanda adopted a law that imposed the death penalty on future cases of international crimes suggesting that lawmakers continued to favor capital punishment for genocide perpetrators even five years after the 1998 executions.¹³⁶ Against this background, Rwanda's abolition of the death penalty in 2007 is a somewhat surprising development. While this development could be partly explained by local dynamics, it seems that the ICTR's referral requirements tipped the scales in favor of abolition.¹³⁷

The abolition is important in its own right. But its significance in the Rwandan context also stems from its impact on post-genocide reconciliation. As the next Part of this Article illustrates, the abolition positively affected reconciliation processes in Rwanda. Admittedly, Rwanda may have still ended up abolishing the death penalty even without the ICTR's requirements. But this would have likely taken place at a much later stage, when the abolition's

132. Interviews with R78, international NGO member (Oct. 27, 2008); R79, international NGO member (Nov. 13, 2008); R80, international NGO member (Oct. 20, 2008); R93, ICTR member (Nov. 27, 2008); R90, Rwandan attorney (Nov. 11, 2008).

133. Abolition Law, *supra* note 15.

134. See *Mutesi 2007*, *supra* note 17; LAW AND REALITY: PROGRESS IN JUDICIAL REFORM IN RWANDA, *supra* note 17; *supra* note 45.

135. See *supra* Section II.C.

136. See *supra* note 69 and accompanying text.

137. A recent study by a Rwandan academic also supports this conclusion. See *Karimunda 2013*, *supra* note 34, at 151.

effect on reconciliation may have been less significant. The discussion in Part III below even suggests that retaining the death penalty for longer could have had adverse effects on reconciliation.

III. FROM ABOLITION TO RECONCILIATION IN RWANDA

This Part analyses the views and experiences of Rwandans, including genocide survivors and perpetrators, in an effort to understand how the abolition affected reconciliation processes in Rwanda. It employs a qualitative research methodology, which is explained in the introduction to this Article.¹³⁸ As illustrated below, the interviews suggest that the abolition had a positive impact on reconciliation. It re-humanized perpetrators and their relatives, filled them with hope and gratitude, made survivors feel better about their society, and inspired both survivors and perpetrators (and their relatives) to envision a future with improved social relations within Rwandan communities.¹³⁹ The discussion below also sheds light on the role that Karugarama's public campaign may have played in this regard.

A. *Perpetrators Regain Hope and Humanity*

Over 1,300 prisoners received the death penalty for their involvement in the Rwandan genocide.¹⁴⁰ When the death penalty was abolished, their punishments were commuted to life or special life sentences.¹⁴¹ I interviewed nine of these prisoners and their relatives, as well as relatives of other perpetrators who were eligible for the death penalty.¹⁴² Most of these interviewees recounted the relief and gratitude they felt when they realized the lives of their loved ones were spared.¹⁴³ Some of them spoke of a renewed hope

138. See *supra* notes 22–28 and accompanying text.

139. See *infra* Sections III.A–III.E.

140. See *supra* notes 17, 45.

141. See *supra* note 79 and accompanying text.

142. For the sake of brevity, I sometimes refer to prisoners who were sentenced to death as “death row” prisoners or convicts, even though their sentence has since been commuted to imprisonment. Perpetrators who were convicted for genocide under Category I but did not receive the death penalty, although they were eligible for it, are referred to as Category I genocide convicts.

143. See, e.g., Interviews with R6, wife of death row genocide convict (July 31, 2012) (noting that the abolition filled her family with happiness and hope, as it paved the way for the release of their loved one); R7, son of death row genocide convict (July 31, 2012) (explaining that the abolition gave him hope that his father would return home one day); R17, son of Category I genocide convict (Aug. 9, 2012) (“[a life sentence] is different [than the death penalty], because instead of being executed you can spend your days in prison with the hope that maybe you would get released, either by presidential pardon or any other means . . . many times I dream that I see [my father] come home.”).

that their family members would return home one day, in case of a presidential pardon or a successful appeal.¹⁴⁴ Not only the relatives, but also the prisoners I interviewed, reported that the commutation of their death penalty sentences had made them hopeful that they would be free one day.¹⁴⁵ One of them noted that he eventually confessed and apologized in order to expedite his release from jail.¹⁴⁶ As discussed further below, he believed his confession and apology contributed to reconciliation.¹⁴⁷ A pastor who preached in prisons explained that a prisoner whose death penalty was commuted felt forgiven and this helped reconciliation processes in Rwanda.¹⁴⁸ The positive effects that the abolition had on prisoners and their relatives were so apparent that several survivors also referred to them in the interviews. For example, one genocide survivor explained that the abolition promoted reconciliation because of the happiness it instilled in perpetrators' relatives.¹⁴⁹

For some interviewees, being able to imagine their relative's release has enabled them to envision reconciliation in their society. For example, the wife of a death row prisoner noted that the abolition filled her family with happiness and hope, as it paved the way for the release of their loved one.¹⁵⁰ Such release, she explained, would bring "true reconciliation because people would come together as it used to be in the past[.]"¹⁵¹ Another interviewee expressed his belief that his father would be received well in the village after his release, despite having been convicted as a Category I genocide perpetrator.¹⁵² A third interviewee, the son of a death row prisoner, explained how the release of his father would benefit the entire community and promote reconciliation:

[My father's release] would be positive for the community. He wouldn't be the first one to be received because we received

144. *Id.*

145. For example, one prisoner said that he was "very happy [about the abolition] since when you are waiting for the death penalty you can be executed any day but being on life sentence you can have hope that one day you will be free." Another prisoner said that he was "happy, as I was not going to die. Even if you were sentenced to life you may one day be released. For example, look at Nelson Mandela, he was sentenced to life but was released." Interviews with R32, death row genocide convict (Aug. 20, 2012) and R34, death row genocide convict (Aug. 20, 2012).

146. Interview with R40, death row genocide convict (Aug. 31, 2012).

147. See *infra* notes 224–226 and accompanying text.

148. Interview with R2, pastor and genocide survivor (July 28, 2012).

149. Interview with R46, genocide survivor (Sept. 4, 2012).

150. Interview with R6, wife of death row genocide convict (July 31, 2012).

151. *Id.*

152. Interview with R17, son of Category I genocide convict (Aug. 9, 2012).

many people before. If he came, we would gather families who we were in conflict with and try to resolve our issues and build a new relationship.¹⁵³

These reports suggest that the abolition has given new hope and confidence to perpetrators' relatives, and inspired them to envision a shared society and improved relationships with survivors. It is noted in this context that, in addition to the above perspectives on the abolition, interviewees also considered cases of actual release of prisoners as conducive to reconciliation. These will be discussed later.

The daughter of a death row prisoner highlighted an interesting "humanizing" impact of the abolition: Prior to the abolition, whenever she brought food to her father in prison, she was banned from speaking with him. After the death penalty was abolished, the prison guards allowed her to speak with her father for three minutes during each visit.¹⁵⁴ The guards, moreover, began treating her and her father better:

[Prior to the abolition] the prison guards beat us and sometimes we would not be able to give food to our people. After the abolition it looked as if they started to value . . . the prisoners and us who always take food to them.¹⁵⁵

Another interviewee, whose father was also on death row, recalled that before the abolition he was not allowed to visit his father in prison. But this changed with the abolition, he explained, when he could "go there, talk to him, spend time with him, and [] feel happy about this[.]"¹⁵⁶ He also reported that prior to the abolition "when I met people [in the neighborhood] who spoke against my father I felt I couldn't even give them water to drink. . . . Anyone who spoke against my father was considered as an enemy to me" ¹⁵⁷ However, after the abolition, he was once again able to communicate with his neighbors.¹⁵⁸ Thus, the abolition may have diminished the severe stigma attached to certain genocide perpetrators and their families, humanizing them in the eyes of others and improving their own self-image.

153. Interview with R7, son of death row genocide convict (July 31, 2012). The interviewee also envisaged an improved material situation, as he would be able to carry out activities he could not perform without his father's close guidance. *Id.*

154. Interview with R44, daughter of death row genocide convict (Sept. 3, 2012).

155. *Id.*

156. Interview with R7, son of death row genocide convict (July 31, 2012).

157. *Id.*

158. *Id.* Later in the interview, he clarified that his improved attitude towards the neighbors was encouraged by the combined effect of the death penalty's abolition and educational initiatives. *Id.*

Several interviewees explained that the abolition contributed towards ascertaining the truth, which they associated with reconciliation. For example, the son of a convicted perpetrator stressed that the abolition of the death penalty promoted the disclosure of perpetrators' evidence: "Many of these suspects have a lot of information about what happened. If they die, who will ever know what happened?"¹⁵⁹ Another interviewee, the above-mentioned pastor who preached in prisons,¹⁶⁰ explained that many perpetrators had told their families that the RPF was trying to destroy them, and executing these perpetrators would leave the families believing that lie.¹⁶¹ According to him, retaining the death penalty would not only have prevented the disclosure of information about the genocide, but it would have also helped reinforce lies that may sustain inter-ethnic animosities in Rwanda.¹⁶²

Other interviewees connected the abolition even more directly to reconciliation. For example, the wife of a convicted genocide perpetrator (who did not receive the death penalty) stressed that:

If the death penalty was still there, then forgiveness would be in vain, there would be no reason for forgiveness. . . . If the death penalty were still in place, even if only for those who committed bigger crimes, there would be no reconciliation among Rwandans.¹⁶³

This is how the sister of a death row prisoner connected the abolition to reconciliation:

[Retaining the death penalty] could have paralyzed social cohesion [and] harmony between Rwandans . . . many could have been sentenced to this punishment and it would have caused nothing but conflict.¹⁶⁴

Another interviewee, the son of a convicted genocide perpetrator, expressed similar sentiments:

[Death penalty] would always cause conflict [and] resentment. I think justice would be paralyzed. There is no way people could have been united if [the death penalty] was still in place, because some people would revenge [or] have resentment. . . . [The abolition] brought a good spirit among people.¹⁶⁵

It accordingly seems that these Rwandans regarded the death penalty as an impediment to reconciliation that the abolition removed.

159. Interview with R1, son of Category I genocide convict (July 28, 2012).

160. *See supra* note 148 and accompanying text.

161. *Id.*

162. *Id.*

163. Interview with R16, wife of Category I genocide convict (Aug. 9, 2012).

164. Interview with R3, sister of death row genocide convict (July 28, 2012).

165. Interview with R1, son of Category I genocide convict (July 28, 2012).

However, not all relatives of perpetrators believed the abolition contributed to reconciliation. For example, the son of a death row prisoner felt stigmatized by his father's conviction and incarceration, even after the death penalty was abolished.¹⁶⁶ This, he explained, made it difficult for him to have good relations with his neighbors.¹⁶⁷ Although he was happy that his father would remain alive and could be visited, the interviewee explained that the abolition did not lead to improved relations with his neighbors and even after the abolition "many of our neighbors were not happy about us at all . . . in rural areas there is always this sort of hatred[.]"¹⁶⁸ According to the interviewee, there was no reconciliation in Rwanda because it was impossible to forget what had happened in 1994.¹⁶⁹ The interviewee opposed the death penalty, but considered that replacing this penalty with a life sentence was unsatisfactory given the economic implications.¹⁷⁰ To illustrate this point, the interviewee explained that he had to prematurely terminate his studies in order to take care of his father in prison:

There is a lot of money spent in terms of taking care of [my father in prison]. . . . We have to take food every day. You cannot achieve anything because you are always worried about his life. You can imagine, transportation from here to the prison is at least 2000 [Rwandan francs] plus the cost of the food. . . . You have not done anything and meanwhile others are achieving a lot.¹⁷¹

His sister revealed another economic aspect of their father's incarceration: She explained that the neighbors had falsely accused her father because they "thought they would get our land as compensation[.]"¹⁷² She added that "many people were not concerned by the fact that people died, they just wanted material things[.]"¹⁷³ Since she continued to blame their neighbors for falsely accusing her father, it was hard for her to see how the abolition could improve their relations. At the same time, this was the interviewee (quoted above) who believed that the abolition encouraged prison guards to treat her and her father better.¹⁷⁴ Thus, even if the abolition had no impact on her relationship with neighboring survivors,

166. Interview with R42, son of death row genocide convict (Sept. 1, 2012).

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. Interview with R44, daughter of death row genocide convict (Sept. 3, 2012).

173. *Id.*

174. *See supra* notes 154–155 and accompanying text.

she still identified a humanizing effect of the abolition. On the whole, the perpetrators and their relatives who were interviewed considered the abolition as a gesture of mercy and humanity that was conducive to reconciliation.

B. *Survivors Gradually Embrace Abolition*

It is natural that the abolition would please genocide perpetrators and their families, but that survivors would support the abolition was less expected. As noted in Part I, survivors were generally satisfied when the death penalty was imposed in genocide cases.¹⁷⁵ Nevertheless, survivors I interviewed noted that over time they came to accept and even support the abolition.¹⁷⁶ The following explanation by a survivor captures what other survivors have reported:

We were backing up this idea of death penalty but our government abolished it. . . . In the first place we were angry, very sad with a lot of sorrow, and we wanted these people to die. But as life goes on, as we get healed, then we can accept and live with what happened to us, and we realized that death [penalty] is not the solution¹⁷⁷

Another survivor stressed that he was “shocked” when the death penalty was abolished and thought the government sided with the killers and no longer understood the survivors.¹⁷⁸ However, he became supportive of the abolition after learning about the virtues of forgiveness and the inappropriateness of the death penalty. These were his words:

We were educated and informed about different killings that happened around the world [and] how people were able to forgive in order to make progress in life. . . . Because of meeting different people at churches and in meetings, we came back to our senses and realized that the death penalty’s abolition was necessary.¹⁷⁹

175. See *supra* notes 55–56 and accompanying text.

176. See, e.g., Interviews with R46, genocide survivor (Sept. 4, 2012) (“Right after our people had been killed we felt that their killers should also die, but then, after that, we realized that it was not important for them to be killed”); R64, genocide survivor (May 1, 2013) (“We were happy [about the death penalty] because we were still wounded from what happened during the genocide. . . . But now I think they should sentence them to life instead Q: What made you change your mind? A: You know, as time goes by”); R11 (“[A]s life goes on, as we get healed, then we can accept and live with what happened to us, and we realized that death [penalty] is not the solution.”).

177. Interview with R11, genocide survivor (July 31, 2012).

178. Interview with R45, genocide survivor (Sept. 4, 2012).

179. *Id.*

To understand his statement it is helpful to consider an explanation provided by a senior Rwandan official who previously served with the National Unity and Reconciliation Commission (NURC).¹⁸⁰ The official explained that survivors supported the abolition due to several factors, including the years of *gacaca* trials and civic education programs, and the reconciliation activities initiated around the mass release of prisoners in 2003 and 2005.¹⁸¹ These processes, according to the official, helped reduce survivors' fears and need for revenge, and paved the way for their acceptance of the abolition.¹⁸² The official also noted that the government's abolition campaign and introduction of the special life penalty helped garner support for the abolition.¹⁸³ As discussed in Part II, a foreign legal expert based in Rwanda also confirmed that the abolition campaign was effective.¹⁸⁴

Indeed, some of the survivors I interviewed supported the abolition for reasons advanced by the government.¹⁸⁵ For example, one survivor claimed that imprisonment serves education and rehabilitation goals, whereas imposing the death penalty would not allow perpetrators "to realize and be reminded of what they did[.]"¹⁸⁶ Another survivor approvingly noted that replacing the death penalty with imprisonment allowed "perpetrators [to] think back about all that happened during the war."¹⁸⁷ While the survivor supported the abolition, she still considered that punishing the perpetrators was essential because "it is important that they understand that they committed a crime."¹⁸⁸ Other survivors also supported the abolition while still believing in the importance of punishment. One of them stressed that "punishment for crimes is important for deterrence . . . when a person is punished for the crimes he committed it will let other people know not to do the same thing[.]"¹⁸⁹ However, he also explained that "we want them to be punished but not to be killed, because that would never bring back our people who we lost."¹⁹⁰ Even a survivor who was in favor

180. For information on NURC, see *supra* note 10.

181. See *supra* note 67 and accompanying text.

182. Interview with R26, senior Rwandan official (Aug. 17, 2012).

183. *Id.* See *supra* notes 105–106 and accompanying text.

184. Interview with R76, foreign legal expert in Rwanda (Nov. 14, 2008). See *supra* note 104 and accompanying text.

185. For a discussion of the government's abolition campaign, see *supra* Section II.B.

186. Interview with R2, pastor and genocide survivor (July 28, 2012).

187. Interview with R46, genocide survivor (Sept. 4, 2012).

188. *Id.*

189. Interview with R45, genocide survivor (Sept. 4, 2012).

190. *Id.*

of forgiveness still considered that “forgiveness is good, but it doesn’t mean that [perpetrators] should not be punished[.]”¹⁹¹

Another survivor explained:

We are happy with the life sentence because they are going to be there for the whole of their life, they have the entire time to think about what they did. For us, it is a real punishment.¹⁹²

These views resonate with the government’s argument that imprisonment had a higher educational and deterrent potential than the death penalty. But regardless of what shaped their opinions, these interviewees seem to support the abolition.¹⁹³

One of the survivors I interviewed explicitly addressed the government campaign. He explained that the death penalty “was removed because the government believed that if this penalty was going to be operational, many people would have died[.]”¹⁹⁴ The survivor noted that four perpetrators who were convicted for killing his relatives had received the death penalty.¹⁹⁵ Nonetheless, he supported the abolition because “we have maybe a million people who killed; if you kill these people—do you think there would be anyone left?”¹⁹⁶ He also tried to create a principled argument in support of the abolition, based on the need to overcome feelings of revenge. However, in explaining why revenge was inappropriate, he returned to his pragmatic claim: “[R]evenge was not good because if it happened no one would be alive.”¹⁹⁷ Another survivor invoked a similar argument, noting that he supported the abolition “because there were many people who killed others and if all these people were killed then the current government would be a government of killers.”¹⁹⁸ A third survivor stressed the trans-generational effect of imposing the death penalty on so many perpetrators:

Let us think of two million people who committed genocide. Now these people have families. If you kill them, you would prompt hatred among people in the next generation. The government was right [to abolish the death penalty]; it projected ahead of time so this does not happen¹⁹⁹

191. Interview with R47, genocide survivor (Sept. 4, 2012).

192. Interview with R64, genocide survivor (May 1, 2013).

193. However, in democratizing countries it can be difficult to know if someone is truly convinced or merely uneasy about disagreeing with the government.

194. Interview with R45, genocide survivor (Sept. 4, 2012).

195. *Id.*

196. *Id.*

197. *Id.*

198. Interview with R46, genocide survivor (Sept. 4, 2012).

199. Interview with R2, pastor and genocide survivor (July 28, 2012).

These reports suggest that the interviewees (even if they were influenced by the government's campaign) regard the abolition as a sign that their government and society have improved their moral standing.²⁰⁰

Other survivors felt better about their society after the abolition because they associated the abolition with deeply held religious values. For example, one survivor noted that "it is God who has the authority of taking life, nobody [else] has the authority of taking a life of a person"²⁰¹ Another survivor opined:

I think the death penalty is not an option. Even though these people participated [in genocide] my wish is that these people could come back and be integrated in the society. . . . Personally I am at peace with these people, and we meet with them in different activities and functions, and this is what I am supposed to do as a Christian.²⁰²

Of the non-elite survivors I interviewed, only one was disapproving of the abolition.²⁰³ This survivor, who witnessed her daughter's murder during the genocide, was happy when the killer was sentenced to death: "I was happy for that. I wanted him dead as my child also died[.]"²⁰⁴ She added: "You know, in the court room, when I was there, I told the judges 'please get me a knife! I want to stab him as he stabbed my daughter!'"²⁰⁵ When we discussed the commutation of the perpetrator's sentence to life imprisonment, she uttered: "I wish he could die in prison . . . so that he couldn't come here in our neighborhood. I wish him to die. God forgive me, I don't want ever to see him."²⁰⁶ However, as the above discussion shows, other survivors I interviewed did not share these views.

Interestingly, none of the non-elite interviewees associated the abolition with demands of the ICTR or foreign jurisdictions. They seem to have been unaware of these developments on the international level. It is also interesting that only one of the fifty-three interviewees who discussed the abolition's domestic impacts mentioned the penalty of special life.²⁰⁷ While I did not explicitly ask

200. However, their belief that the government and society have improved their moral standing may be based on the misconception that two million individuals were eligible for the death penalty.

201. Interview with R8, genocide survivor (July 31, 2012).

202. Interview with R9, genocide survivor (July 31, 2012).

203. Interview with R51, genocide survivor (Sept. 5, 2012).

204. *Id.*

205. *Id.*

206. *Id.*

207. This does not include the thirty-five interviewees asked about the ICTR's impact on legal reforms in Rwanda, and who explained that Rwanda restricted the special life penalty following the ICTR's criticism of this penalty. See *supra* note 127 and accompany-

interviewees about the special life penalty, it is surprising that almost none of them mentioned it on their own initiative—as either a satisfactory or problematic replacement to the death penalty. Perhaps this can be explained by the short-lived existence of the special life penalty, or by the fact that it was not imposed in practice.²⁰⁸ Of the fifty-three interviewees who discussed the abolition’s impacts, the only interviewee who mentioned the special life penalty was a senior Rwandan official.²⁰⁹ This official noted that substituting the death penalty with the severe punishment of special life helped increase public support for the abolition as it guaranteed that genocide would be punished and stigmatized harshly even without the death penalty.²¹⁰ However, the official added that survivors who belonged to Rwanda’s political and social elite continued to object to the abolition.²¹¹ The attitude of such elite Rwandans towards the abolition is the focus of the next segment.

C. *Elites Express Mixed Views*

While some Rwandan elites supported the abolition for ideological reasons (e.g., the former Justice Minister) or in order to receive cases from abroad, other elites expressed different views. For example, a senior Rwandan prosecutor considered that the death penalty should have been retained for extreme cases: “I think that a death penalty [should] be there, but reserved for those extremely, extremely cruel offences[.]”²¹² Another prominent Rwandan legal professional spoke similarly: “In some circumstances I would like the death penalty to be maintained, and remain careful in the way it is applied . . . because some of the crimes are extremely horrible [and their] sanctions also should go to the extreme[.]”²¹³ Both interviewees noted that their relatives were killed during the genocide, but they were personally outside Rwanda at the time.

ing text. For a discussion on the penalty of special life, which replaced the death penalty as Rwanda’s maximum punishment, see *supra* Section II.D.

208. According to a Rwandan legal scholar, Rwandan judges were reluctant to impose life imprisonment in isolation and, in any case, Rwanda lacked prisons where such a penalty could be effectively carried out. Email from Rwandan legal scholar to author, (Nov. 29, 2013) (on file with author).

209. Interview with R26, senior Rwandan official (Aug. 17, 2012).

210. See *supra* note 182 and accompanying text. See relevant discussion *supra*, Section II.C (suggesting that the introduction of special life convinced certain parliament members to support the abolition).

211. *Id.*

212. Interview with R13, Rwandan prosecutor (Aug. 8, 2012).

213. Interview with R20, Rwanda legal expert (Aug. 15, 2012).

I also interviewed two senior members of Ibuka, Rwanda's largest genocide survivors association.²¹⁴ Ibuka has a strong influence on Rwandan policies and its leaders are among Rwanda's elite.²¹⁵ A senior member of Ibuka expressed the view that capital punishment was necessary for deterrence (including with respect to ordinary crimes):

[I]t is too early to abolish the death penalty because our people in Rwanda, many are not educated to respect human rights. . . . Even when you are a bandit or a murderer you appreciate the value of your life. Criminality should be [addressed through] a kind of fearful punishment. . . . When there was the death penalty, people were fearful of committing crimes. . . . Even if death penalty is not executed . . . it makes people fearful. . . . If it is stopped officially, people feel free to do crimes of different kinds.²¹⁶

The interviewee added that the death penalty also had a symbolic value, and survivors resented its abolition on this ground as well:

Abolishing it [was] kind of denying the weight of genocide. . . . There is a kind of negative feeling [towards] the government, which is not weighing enough the importance of difficulties among survivors, not giving enough weight to genocidaires . . . it's a bad feeling . . . I think the government has been more flexible than expected by ordinary people. . . . In general, some survivors say that the government is not hard enough towards genocidaires, towards perpetrators of genocide. Survivors want to have more severe punishment.²¹⁷

Another senior Ibuka member considered that "some survivors even today [in 2013] would have liked the death penalty to be in place[.]"²¹⁸

A Rwandan political scientist, whose relatives were killed in the genocide, argued that the abolition came too early for survivors:

From the side of survivors, [the abolition] was very, very, very negatively perceived. . . . But if I was a member of the government, or if I was in charge of making such decisions, I would have taken the same decision, [although] maybe after some years . . . [because] re-building the society means saving human lives. . . . But I know, for survivors, this is very very bad news, and . . . if there is resentment among the survivors, this means there

214. Interviews with R41, Rwandan activist (Aug. 31, 2012) and R62, Rwandan activist (Apr. 19, 2013).

215. See, e.g., HUMAN RIGHT WATCH, JUSTICE COMPROMISED: THE LEGACY OF RWANDA'S COMMUNITY-BASED GACACA COURTS 1, 82 n.380 (May 2011), <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>.

216. Interview with R41, Rwandan activist (Aug. 31, 2012).

217. *Id.* The term "genocidaire" is used in Rwanda to refer to a genocide perpetrator.

218. Interview with R62, Rwandan activist (Apr. 19, 2013).

is a negative impact on the process of reconciliation, because they will be saying ‘the government is not on our side; it has helped those people, they have covered their rights, they can have back their families while we can’t have back our parents’, etc. etc.²¹⁹

It is interesting that some of these elite Rwandans claim that “survivors” in general (i.e., including non-elite survivors) resist the abolition, while interviews with non-elite Rwandan survivors suggest that most of them accepted the abolition.²²⁰ A possible explanation for this discrepancy is that elite interviewees are merely trying to legitimize their personal position (i.e., objection to the abolition), or are hopeful that their position has influenced non-elite survivors. In any case, the attitudes of the interviewed non-elite survivors towards the abolition were much more favorable than those attributed to them by the elites I interviewed.

D. *Released Prisoners and Reconciliation Associations*

As discussed above, removing the death penalty created opportunities for those who were previously on death row to confess and apologize, including in order to shorten their sentences.²²¹ Of the nine former death row prisoners I interviewed, three have had their sentences reduced and another was expecting an appeal hearing.²²² One of them explained that two years after the death penalty was abolished, in 2009, he was able to confess and apologize before a *gacaca* court.²²³ His sentence was reduced to twenty-two years and his release is expected in 2019.²²⁴ The prisoner, who held a leadership position during the genocide, described the events as follows:

In my [*gacaca*] trial, the local leaders and policemen people were present and it was more a political issue. Then I admitted and confessed and repented . . . [I admitted] that I didn’t help Tutsis who were being killed and did not stop Hutus from killing . . . I admitted that, even though I didn’t do it; just to relieve the hearts of those who were accusing me, because my trial was

219. Interview with R21, Rwandan political science expert (Aug. 15, 2012).

220. See *supra* Section II.B.

221. See *supra* note 146 and accompanying text.

222. Interview with R34, death row genocide convict (Aug. 20, 2012) (noting that his prison sentence was reduced to 19 years); Interview with R38, death row genocide convict (Aug. 30, 2012) (noting that his prison sentence was reduced to 30 years); Interview with R40, death row genocide convict (Aug. 31, 2012) (noting that his prison sentence was reduced to 22 years); Interview with R30, death row genocide convict (Aug. 19, 2012) (noting that he expected his appeal to be heard in the following month).

223. Interview with R40, death row genocide convict (Aug. 31, 2012).

224. *Id.*

politically driven . . . I hoped that if I did that, my sentence would be reduced, because it was too big . . . I thought it was better to admit [doing] what I didn't do, instead of spending my life in prison. Saying that I did something even though I didn't do it does not make me a criminal before God²²⁵

When I asked the prisoner whether his confession helped reconciliation, he replied as follows:

One day I decided to tell them that I realized that I took part in what happened. They asked me 'do you admit your crimes?' and I said 'yes.' They said 'ok, tell us more.' I told them that I did not help them and 'you were brothers and I did not sensitize Hutus not to kill you.' So their hearts were relieved. And then, when we walked out, some thanked me for doing that, and they said they wished I would have done that before. They said 'we knew you didn't eat our cows or destroy our houses or kill any of our family members, but you were watching when it happened and you knew about the plans and this is what we were looking for.'²²⁶

These sentence reductions, in addition to affecting the specific prisoners whose releases were granted (and their families), also filled the relatives of *other* prisoners with hope that their loved ones will return home, and this hope bears on their relationships with and attitudes towards others.²²⁷ The discussion in Section III.A indicates that even when death row prisoners are not released, the fact that they are kept alive rather than executed allows their relatives to feel a sense of relief that can be conducive to reconciliation.²²⁸ As noted by a wife of a Category I convict, "waiting to die it is different from waiting for a prison term to end."²²⁹

Not only perpetrators and their relatives, but also survivors associated the abolition with the release of prisoners, which even they regarded as a reconciliation measure. Here is how one survivor explained this idea:

Q: Did the death penalty's abolition promote reconciliation?

A: Yes.

Q: How?

A: You see many families of the perpetrators who received the death penalty were happy when their people were not executed, even though they have to take food to them to the prison, but it cannot be compared. Some people got the chance of getting out of prison.

Q: So how did that help reconciliation?

225. *Id.*

226. *Id.*

227. See related discussion *infra* Section III.E.

228. See discussion *supra* Section III.A.

229. Interview with R12, wife of Category I genocide convict (Aug. 4, 2012).

A: Because if one of their people came from the prison they are happy when realize that we didn't wish them to die, and if one of the released prisoners come to visit us, then they go to their families and tell them that we received them, so that can help too.²³⁰

Such perspectives must be understood in the context of individual Rwandans' experiences with the release of genocide perpetrators, and in light of NURC's efforts to prepare the communities for the mass release of prisoners in 2003 and 2005.²³¹ These perspectives are also informed by a frequent dynamic in which early discharges from prison follow confessions, and confessions in court lead perpetrators who return to their communities to apologize directly to their victims.²³² Thus, one of the interviewees, a teacher who was detained for nine years for genocide charges, noted that when prisoners were released they received an "opportunity to apologize and that process is indeed taking place, and unity and reconciliation is making progress, and now we have associations joining survivors and perpetrators."²³³ He also stressed that "those who had confessed, even if they were sentenced to death, got a chance to come out of the prison[,]"²³⁴ and connected the early release of prisoners to reconciliation:

After *gacaca* started, the number of perpetrators who got out of prison was increasing. That's when [reconciliation] associations got stronger as many people were released and also educated. And also our families who were around, they were also trained . . . they attended meetings [where the authorities] would teach them about what happened and the importance of unity and reconciliation

Q: Did that help reconciliation?

A: Very much, now we don't have any problem.²³⁵

Similarly, one survivor associated the abolition with the formation of reconciliation associations. In particular, he explained that abolishing the death penalty promoted reconciliation because "perpetrators and survivors of genocide do activities together in

230. Interview with R46, genocide survivor (Sept. 4, 2012). However, the interviewee added that reconciliation did not take place between survivors and relatives of perpetrators who *did not* confess. *Id.* ("The problem we have is with the people who didn't confess, because you see their families, they don't trust us. Those who confess, we meet their families, they come to us, and those who didn't confess we just meet and say hi to their families but there is nothing beyond that in terms of visiting each other for example. So that's why there's a problem up to now . . . there are not many, there are a few.")

231. See *supra* note 67 and accompanying text.

232. Interview with R52, acquitted of genocide charges (Sept. 5, 2012).

233. *Id.*

234. *Id.*

235. *Id.*

cooperatives and different programs in which they meet, and most of the time their hearts are restored no matter what happened.”²³⁶ However, the fact that released perpetrators formed cooperatives with survivors was not necessarily linked in reality to the abolition, as such cooperatives started forming in 2005, two years before the death penalty was abolished.²³⁷ Furthermore, the perpetrators who were released from jail and joined the cooperatives were not necessarily those who received the death penalty. Nonetheless, the two above interviewees made connections between reconciliation associations and the abolition of the death penalty.²³⁸ While this connection might be misperceived, such views may still suggest that the abolition has encouraged Rwandans to consider former death row prisoners (and possibly thousands more perpetrators who were eligible for the death penalty) as participants in the reconciling society.

E. Discussion

In July 2007, capital punishment was abolished in Rwanda and over 1,300 Rwandans who were convicted for genocide had their death penalties commuted to life imprisonment.²³⁹ The abolition also meant that thousands of additional genocide suspect were spared the death penalty.²⁴⁰ I interviewed thirty-eight “direct beneficiaries” of the abolition, including former death row prisoners, their relatives, neighbors and surviving victims, as well as relatives and surviving victims of other perpetrators who were eligible for the death penalty. These Rwandans, who came from different regions and social groups, related their personal experiences while also providing insights into the abolition’s broader societal effects. Their accounts were complemented by the perspectives of fifteen Rwandan elites who were also interviewed about the abolition’s societal impact.²⁴¹

236. Interview with R45, genocide survivor (Sept. 4, 2012). When I asked him what he meant by the words “their hearts are restored[,]” he replied: “[I]t is to encourage yourself not to think much about what happened, how your people died, who were the people who killed them, and that helps you not to seek revenge, and that can help us not to all the time think about what happened and be sad.” *Id.*

237. See *supra* note 68 and accompanying text.

238. See *supra* notes 232, 236 and accompanying text.

239. See *supra* note 17.

240. As of mid-2007, about 12,000 genocide suspects were eligible for the death penalty. See discussion *supra*, note 46.

241. For a detailed explanation about my methodology, see *supra* notes 22–28 and accompanying text.

Perpetrators' relatives spoke of the relief and gratitude they felt when they realized the lives of their loved ones were spared.²⁴² Some of them described being filled with hope that their relatives would return home one day.²⁴³ Even survivors, with only a few exceptions, considered the abolition as a tool helping them to achieve improved social relations within Rwandan communities.²⁴⁴ In addition, survivors were encouraged by the abolition because it made them feel part of a moral society.²⁴⁵ While some of them initially wanted Rwanda to retain the death penalty, many survivors ultimately accepted the abolition, and considered it to have a positive effect on reconciliation.²⁴⁶ Like the perpetrator's relatives, survivors also associated the abolition with the release of imprisoned genocide perpetrators, which they understood as conducive to national reconciliation.²⁴⁷

Furthermore, interviewees associated the death penalty with impediments to national reconciliation: They considered the death penalty to have traumatized the relatives of those who received this punishment, fostered resentment, and prevented the truth from being exposed.²⁴⁸ They therefore believed that the abolition removed some serious impediments to reconciliation.²⁴⁹ Survivors still considered justice as a condition for reconciliation but they regarded imprisonment, confessions and apologies as satisfactory forms of justice.²⁵⁰ Relatives of death row prisoners reported that after the abolition they were perceived by others more positively and experienced an improvement of their own attitude towards others.²⁵¹ Thus, the removal of the death penalty may have diminished the severe stigma attached to certain genocide perpetrators and their families, humanizing them in the eyes of others and improving their self-image.²⁵² It is noted, however, that some elite Rwandans expressed their objection to the abolition.²⁵³ However, overall, the above findings suggest that the abolition of the death

242. See discussion *supra* Section III.A.

243. *Id.*

244. See discussion *supra* Section III.B.

245. *Id.*

246. *Id.*

247. *Id.*

248. See discussion *supra* Sections III.A, III.B.

249. *Id.*

250. See discussion *supra* Section III.B.

251. See discussion *supra* Section III.A.

252. *Id.*

253. See discussion *supra* Section III.C.

penalty had a significant positive impact on reconciliation processes in Rwanda.

The abolition was encouraged by the ICTR's requirements. However, this Article demonstrates that non-elite Rwandans did not associate the abolition with the ICTR.²⁵⁴ Justice Minister Karugarama's campaign defended the abolition without referring to international norms or institutions, helping Rwanda assert "ownership" over the reform and leaving the population with little room to associate the abolition with international demands.²⁵⁵ This approach could explain some of the reconciliatory effects interviewees attributed to the abolition, especially because Rwandans may reject reforms that they perceive to be internationally imposed.

IV. CONCLUDING REMARKS

International tribunals may not be equipped to directly affect highly politicized domestic processes such as national reconciliation in post-conflict environments. However, these tribunals can encourage domestic legal reforms that could, in turn, have an overall positive effect on national reconciliation. This Article illustrates this point by focusing on one specific reform encouraged by the ICTR—the abolition of the death penalty in Rwanda. This Article shows that the ICTR's referral procedure prompted Rwanda to abandon a criminal justice approach that the country was adamant about adopting thirteen years earlier—the application of the death penalty to the most serious genocide perpetrators.²⁵⁶ My empirically based research also suggests that Rwanda's abolition of the death penalty in July 2007 had a significant positive effect on national reconciliation.²⁵⁷ Because the abolition is largely attributable to the ICTR, the abolition's effect on national reconciliation may also be indirectly attributable to the ICTR. This proposition does not deny that national or local processes shaped the abolition's societal effects. The proposition merely acknowledges that the ICTR played a critical role in encouraging the abolition, and thereby contributed to a multidimensional complex process that ultimately affected reconciliation on the ground. It is both interesting and ironic that while the abolition was mainly meant to achieve retributive goals (i.e. more criminal trials against genocide

254. See discussion *supra* Section III.B.

255. See discussion *supra* Section II.B.

256. See *supra* note 15 and accompanying text.

257. See discussion *supra* Part III.

suspects transferred from abroad) it eventually promoted restorative goals in Rwanda.²⁵⁸

While the ICTR placed the abolition on Rwanda's parliamentary agenda in 2007, this Article suggests that everyday Rwandans did not associate the abolition with international demands.²⁵⁹ If anything, their perceptions of the abolition were shaped by a domestic campaign that endorsed the abolition without referring to international norms or institutions.²⁶⁰ Other states have also initiated legal reforms, including abolishing the death penalty, in order to satisfy the requirements of international organizations.²⁶¹ Ultimately, the societal effects of those reforms are influenced by national and local processes. Still, studying the societal effects of an internationally induced domestic reform can teach us about the value of the relevant international intervention. Identifying domestic legal reforms that were encouraged by international tribunals and understanding how such reforms, in turn, influence national reconciliation can help us develop a richer and more nuanced view of the reconciliation impact of these tribunals. Even if this impact is indirect or "mediated" by the national justice system, its effects can, over time, reach a significant population as they permeate through a society.

258. I thank Dr. Ilan Saban for drawing my attention to this point.

259. See discussion *supra* Section III.B.

260. See discussion *supra* Section II.B.

261. See, e.g., Schabas 2002, *supra* note 35, at 14 ("The Council of Europe requires new members to undertake to ratify [Protocol 6 of the European Convention on Human Rights], a condition that has resulted in abolition of the death penalty throughout Eastern Europe and deep into Asia."). It is also noted that studies published under the DOMAC Project show that international criminal tribunals have encouraged domestic legal reforms in their target countries. See *DOMAC Reports*, *supra* note 14.

