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CAN MEMORY AND TRUTH BE TAILORED BY LAW?

MEMORY LAW AND THE RIGHT TO THE TRUTH IN RWANDA

ABSTRACT The concept of memory laws has been gaining attention for the past few years. It is commonly defined as legal provisions governing history, including repressive measures against the denial of past crimes. Memory laws also include state-approved interpretations of crucial historical events, the law establishing state holidays and commemoration of victims of past atrocities. The laws have a big part in transition and reconciliation, however, they may also lead to a distortion of historical truth. The main purpose of the paper is to analyse the coexistence between memory laws and the right to the truth in the context of human rights violations and international crimes. For that reason, firstly, the legal nature of the truth and memory under international law is evaluated. Secondly, the Rwandan legal provisions on genocide are analysed and comments are made on the elements of the Rwandan traditions concerning the past. That example serves to show the danger of the politicization of memory laws. Finally, the paper is an attempt to answer the question whether the conjunction of the right to the truth and memory laws is necessary.

Keywords: memory laws, Rwanda, right to the truth, reconciliation, genocide

INTRODUCTION

It has been 28 years since the 100-day mass slaughter in Rwanda, during which about 0.5 to 1 million people (mostly Tutsis) were killed, and more than 1.5 million people were found guilty of the crime. In 2019, during a memorial ceremony, Rwandan President Paul Kagame declared that the country had become ‘a family once again,’ thereby clearly letting it be known that Rwandans had finally managed to reconcile and overcome the trauma. The President ensured that the state had made great efforts to reconcile and that ‘unity’ became a motto of the Republic. It is argued that the country is no longer inhabited by Tutsi, Hutu and Twa, but only by Rwandans who have forgotten about the ethnic divisions and, therefore, have managed to heal the wounds and slowly move forward. It is widely believed that national law governing the past atrocities and their memories is one of the tools that enables the Rwandan society to achieve reconciliation and peace. However, some critics claim that the Rwandan President and his ruling party use the law not for the purpose of healing, but mostly for tailoring memory and history in order to legitimize their rule. It is also believed that the Rwandan legislation gives priority to selected memories and narratives and promotes the policy of “one truth.”

The speech delivered by President Paul Kagame in 2019 contributed to the debate on the reconciliation processes in Rwanda and the manner in which national law is used in that context. It also reflected general considerations on memory laws and the role they play in settling accounts with the past in general and past atrocities in particular. Although universally the past rarely gets portrayed as it actually happened, the adoption of a one-sided perspective of past crimes always creates the danger of (deliberate or unintentional) inclusion or exclusion of information.¹ It may lead to historical revisionism and picturing the history anew, especially when the rearranging and redescription of past atrocities is supported by law.² This, in turn, may generate social tensions and deepen social divisions.³ The Rwandan case may therefore serve as an example of what may happen when memory laws do not aim at providing the truth and counteracting the denial of past crimes, but rather correspond with political strategies.

With reference to the above, the main purpose of the paper is to analyse the coexistence between memory laws and the right to the truth in the context of human rights violations and international crimes. For that reason, firstly, the legal nature of the truth and memory under international law is evaluated. Secondly, the Rwandan legal provisions on genocide are analysed and comments are made on elements of the Rwandan

¹ S. Buckley-Zistel, “We Are Pretending Peace: Local Memory and the Absence of Social Transformation and Reconciliation in Rwanda”, in P. Clark, Z.D. Kaufman (eds), *After Genocide: Transitional Justice, Post-Conflict Reconstruction, and Reconciliation in Rwanda and beyond*, New York 2009, p. 156.

² L.P. Hinchman, S.K. Hinchman. (eds), “Introduction,” in *Memory, Identity, Community: The Idea of Narrative in the Human Sciences*, Albany 1997, p. 16.

³ A. Richters, C. Dekker, K. de Jonge, “Reconciliation in the Aftermath of Violent Conflict in Rwanda,” *Intervention*, vol. 3, no. 3. (2005), p. 206.

traditions concerning the past. That example serves to show the danger of the politicization of memory laws. Finally, the paper is an attempt to answer the question of whether the conjunction of the right to the truth and memory laws is necessary.

TRUTH AND MEMORY: LEGAL OR MORAL CONCEPTS?

For the past few years, there has been a strong tendency to emphasize the importance of the truth and memory with regards to serious atrocities. Victims and a whole community demand information about the circumstances of a crime, its motives, and perpetrators' identities. It is believed that the uncovering of the truth and its preservation are essential elements of achieving reconciliation, both at individual and social levels.⁴ Therefore, the right to know the truth and memory laws are now becoming the focal point of the reconciliation process and are reflected in national and international legislations.

The right to the truth is complex in nature and although it may raise some reservations, it is currently recognized as one of the fundamental human rights. The origins of the right date back to the adoption of the Geneva Conventions in 1949 and the Additional Protocols in 1977. It related to an obligation of a state to provide information on missing persons during an armed conflict.⁵ However, over the years, the scope of the right to the truth has been significantly extended.⁶ In 2005, the Commission on Human Rights adopted Resolution no. 2005/66: *Right to the Truth*,⁷ pursuant to which victims of serious violations of human rights and their relatives have the right to the truth about the events, including the circumstances of the crime and identification of the perpetrators. The right was also expressed in the *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* adopted by the UN General Assembly in 2005⁸ and in the *Updated Set of principles for the protec-*

⁴ W. Lambourne, "Justice and Reconciliation: Postconflict Peacebuilding in Cambodia and Rwanda," in M. Abu-Nimer (ed.), *Reconciliation, Justice, and Coexistence: Theory and Practice*, Lanham 2001, p. 314.

⁵ Article 32 of the I Additional Protocol states that parties of a conflict as well as humanitarian organizations "shall be prompted mainly by the right of families to know the fate of their relatives." More: International Committee of the Red Cross, "Commentary on Article 32 of Protocol I," in *Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict. Commentary*, Geneva 1987, p. 343, para. 1196-1198; *Official Records of the Diplomatic Conference on the consideration of draft Protocol I and II. Summary Record of the 78th meeting*, CDDH/II/SR.78, para. 46.

⁶ T. Lachowski, „Prawo do prawdy podstawowym prawem człowieka? Refleksje na temat sprawiedliwości okresu przejściowego (*transitional justice*)”, *Zeszyty Analityczne Instytutu Badań nad Stosunkami Międzynarodowymi*, vol. 1 (2013), p. 8.

⁷ *Resolution No. 2005/66: Right to the Truth*, Commission on Human Rights, 20 April 2005.

⁸ *Resolution No. 60/147: Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly, 16 December 2005.

tion and promotion of human rights through action to combat impunity adopted by the Commission on Human Rights in 2005.⁹ In both documents the state's obligation to verify the facts and to disclose the truth about past atrocities is indicated *expressis verbis* (sequential Principle 22(b) et seq. and Principle 2 et seq.). The state is also obliged to implement all necessary measures in order to preserve the collective memory and, in particular, to guard against the development of revisionist and negationist arguments. Peoples' knowledge of the history of its oppression has been recognized as part of its heritage and, as such, must be protected by states. The collective and societal dimension of the right to the truth has also been confirmed by the Office of the High Commissioner for Human Rights in a study published in 2007.¹⁰

Although all the above regulations have contributed to an extension of the scope of the right to the truth, they gave it only the *soft law* characteristics. This has changed, however, with the adoption in 2006 of the *International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED).¹¹ Article 24(2) states that each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Furthermore, each state shall take appropriate measures in this regard. Since the adoption of the ICPPED, the right to the truth in relation to enforced disappearance has been given a legally binding character. Moreover, the independent nature of the right has been confirmed, thus, crowning the efforts made over many years¹² and proving the importance of the right in the transitional and post-transitional period.¹³ The significance of the right to the truth has also been affirmed by human rights bodies, which do not limit the right only to enforced disappearances. Human rights bodies have frequently underlined that the right to the truth is a strong tool to combat impunity and to counter many further atrocities.¹⁴ The awareness of the truth by victims, their families and the whole community, and preserving the memory of it, also contribute to a restoration of the sense of human dignity.¹⁵

⁹ *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, Commission on Human Rights, 8 February 2005.

¹⁰ *Report "Right to the Truth"*, Office of the United Nations High Commissioner for Human Rights, 7 June 2007, A/HRC/5/7.

¹¹ *International Convention for the Protection of All Persons from Enforced Disappearance adopted on 20 December 2006*, UN Treaty Series, vol. 2716 p. 3, C.N.737.2008.

¹² M.B. Berna, "Argument in Favour of Identifying the Right to Truth as an Autonomous Prerogative within the General Theory of Human Rights," *Analele Universității Titu Maiorescu*, vol. 31, no. 26 (2017), p. 34; E. Ferrer Mac-Gregor, "The Right to the Truth as an Autonomous Right under the Interamerican Human Rights System," *Mexican Law Review*, vol. 9, no. 1 (2016), p. 137.

¹³ I. Kovras, *Grassroots Activism and the Evolution of Transitional Justice: The Families of the Disappeared*, Cambridge 2017, p. 121.

¹⁴ *Case Kawas Fernandez v. Honduras*, Inter-American Court of Human Rights, Ser. C No. 196, Merits, Reparations and Costs Judgment, 3 April 2009, para. 190; *Case Tiu Tojin v Guatemala*, Inter-American Court of Human Rights, Ser. C No. 190, Merits, Reparations and Costs Judgment, 26 November 2008.

¹⁵ *Case "Las Dos Erres" Massacre v. Guatemala*, Inter-American Court of Human Rights, Ser. C No. 211, Preliminary Objections, Merits, Reparations and Costs Judgment, 24 November 2009, para. 245.

The right to the truth is of an individual as well as collective nature, so the uncovering of the truth of past atrocities and its public disclosure are immensely important for the victims and the whole society.¹⁶ It has a strong connection with a memory of the past and a narrative developed in internal and external perspectives. The first represents personal stories and memories of individuals they use to reconstruct the history, while the second explains the past from a perspective of an outside observer.¹⁷ These two perspectives may sometimes be in conflict, especially when the right to the truth is not properly fulfilled and the narrative of past atrocities becomes politicized. In order to avoid that, states (in particular those which are in transition) should create laws which deal with history and memory of past atrocities.¹⁸

The above-mentioned regulations prove that the truth and memory of past atrocities cannot be understood only in the moral context. Both the truth and memory are determined in legal terms. The concept of memory laws has been gaining attention and significance for the past few years. Memory laws are commonly defined as legal provisions that uncover the truth, govern history, and include repressive measures against a denial of past crimes.¹⁹ In its broad sense, the concept also includes state-approved interpretations of crucial historical events, laws establishing state holidays, celebrations, dates of mourning and commemoration of the victims of past atrocities.²⁰ Memory laws are often associated with Europe, as most European countries have introduced acts concerning past atrocities into their legislative system, thus confirming the growing importance of the concept in the public and legal discourse.²¹ Moreover, both the European Union and the Council of Europe have built their normative concepts upon the value of acknowledging past crimes and avoiding them in future.²² It must be noted, however, that memory laws are also introduced by non-European states.

¹⁶ See e.g.: *Case El-Masri v. The Former Yugoslav Republic of Macedonia*, European Court of Human Rights, Application no. 39630/09, Merits and Just Satisfaction Judgment, 13.12.2012, para. 191.

¹⁷ P.J. Steward, A. Strathern, *Violence: Theory and Ethnography*, London 2002, pp. 15-16.

¹⁸ N. Roht-Arriaza, "Measures of Non-Repetition in Transitional Justice: The Missing Link?," *UC Hastings Research Paper*, vol. 160 (2016), p. 9; See e.g.: *Study on human rights and transitional justice activities undertaken by the human rights components of the United Nations system*, Office of the United Nations High Commissioner for Human Rights, 7 February 2006; *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 7 September 2015.

¹⁹ G. Baranowska, A. Gliszczyńska-Grabias, "Right to Truth' and Memory Laws: General Rules and Practical Implications," *Polish Political Science Yearbook*, vol. 47, no. 1 (2018), p. 98; V. Grosswald Curran, "History, Memory and Law," *Roger Williams University Law Review*, vol. 16, no. 1 (2011), p. 101.

²⁰ U. Belavusau, A. Gliszczyńska-Grabias, "The Remarkable Risk of 'Law and Historical Memory' in Europe: Theorizing Trends and Prospects in the Recent Literature," *Journal of Law and Society*, vol. 47, no. 2 (2020), p. 326.

²¹ Y. Gutman, "A Declaration of Memory War: The Symbolic Effect of Illiberal Memory Laws in a Comparative Perspective," *Mémories en jeu/Memories at Stake*, vol. 9 (2019), p. 75; Y. Gutman, "Memory Laws: An Escalation in Minority Exclusion or a Testimony to the Limits of State Power?," *Law and Society Review*, vol. 50, no. 3 (2016), p. 576.

²² A. Sierp, *History, Memory, and Trans-European Identity: Unifying Divisions*, New York 2014, pp. 125-127.

MEMORY LAW IN RWANDA: TAILORING TRUTH AND MEMORIES

In post-genocide Rwanda, one of the priorities for the new government was to promote national unity and reconciliation. It intended to reimagine and reinvent Rwanda as a new country without ethnic diversities.²³ Those objectives were achieved through the implementation of legislative, social, and cultural changes. Since the end of 1994, numerous legal acts concerning past crimes have been introduced. They reflect the narrative built on the credence that the Rwandan Patriotic Front²⁴ heroically put an end to the genocide that was planned by the former Hutu regime and was eventually carried out by the Hutu population. At the same time, the government dismissed accusations of its own engagement in the atrocities.²⁵ This view was reflected, *inter alia*, in the Preamble to the Constitution of Rwanda,²⁶ where a phrase “genocide against Tutsi” is used. It is a glaring example of a one-sided narrative, with no space left for any other interpretations. Prevention and punishment of the crime and a fight against denial, revisionism and trivialization of “the genocide against Tutsi” have become the fundamental principles for Rwanda (Art. 10(1)). The constitutional regulations were clarified and specified in the so-called Law Punishing Genocide, which was released in 2003.²⁷ Art. 4 of the Law states that any persons who will have publicly shown, by their words, writings, images, or by any other means, that they have negated “the genocide against Tutsi,” rudely minimized it or attempted to justify or approve its grounds, shall be sentenced to imprisonment for a term of 10 to 20 years.

In Rwanda, the memory laws are not limited to the interpretation of ethnicity and the genocide in 1994; in 2006, a special state-approved report containing a definition of genocide ideology was issued.²⁸ The definition was so broad that practically any mention of ethnicity or any criticism of the government falls within its ambit and is

²³ J. Pottier, *Re-Imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century*, Cambridge 2002, p. 19; Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda*, New York 1999, p. 63.

²⁴ The Rwandan Patriotic Front (RPF) is the ruling political party in Rwanda. Led by President Paul Kagame, the party has governed the country since its armed wing defeated the government forces, winning the Rwandan Civil War in 1994.

²⁵ A. Richters, C. Dekker, K. de Jonge, *Reconciliation...*, p. 206.

²⁶ *The Constitution of the Republic of Rwanda adopted on 4 June 2003* (with amendments), O.G n° Special of 4 June 2003 (the Constitution was revised in 2015). Between 1994 and 2003 Rwanda was governed by a set of documents combining Constitution from 1991, the Arusha Accords and some additional protocols introduced by the transitional government.

²⁷ *Law No. 33bis/2003, Repressing the Crime of Genocide, Crimes Against Humanity and War Crimes*, art. 4., Official Gazette of Rwanda, 1 November 2003.

²⁸ Report of the ad hoc Parliamentary Commission created on 20 January 2004 by the Parliament, the Chamber, in charge of examining the killings perpetrated in the province of Gikongoro, the genocidal ideology and those who propagate it throughout Rwanda, Rwandan Senate, Republic of Rwanda, Genocide Ideology and Strategies for its Eradication, 2006.

punishable.²⁹ It went along with the governmental efforts to prove that there was no ethnicity in Rwanda. Moreover, in 2008, the government passed a subsequent regulation, the Law Punishing the Crime of Genocide Ideology,³⁰ which seems to be not only very vague, but also disconnected from the crime of genocide.³¹ It does not require that perpetrators intend to assist in or facilitate genocide or are aware of any planned or actual acts of genocide.³² Art. 3 of the Law 2008 specifies the “criteria” of the crime of genocide ideology, which include, e.g.:

- threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;
- marginalising, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;
- killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology.

The “criteria” of genocide ideology further aggravated the already existing imprecision and confusion around the term. Moreover, the new law caused serious social and political unrest while people started to fear they may be suspected of committing the crime of genocide ideology. It is worth mentioning that Art. 4 and seq. of the 2008 Law specify very harsh penalties for the crime: imprisonment for 10 to 25 years in prison or a fine for first time offenders. The penalties may be doubled and even increased to life imprisonment for recidivists. Furthermore, the 2008 Law provides sanctions also for children if they are found guilty of the crime of genocide ideology (the child can be taken to a rehabilitation centre for a period of up to 12 months). Where it is evident that a parent of the child, a tutor, a teacher or a school headmaster of the child participated in inculcating the genocide ideology, they shall be sentenced to imprisonment for a term of 15 to 25 years.

As evidenced above, the Rwandan government seeks to dominate the discourse on genocide by legal means. All the mentioned regulations can be characterized as “the policy of maximal accountability” for genocide perpetrators³³ in conjunction with “the policy of one truth” about the past crimes.³⁴ In addition, the memory law is

²⁹ L. Waldorf, “Instrumentalizing Genocide: The RPF’s Campaign against ‘Genocide Ideology,’” in S. Straus, L. Waldorf (eds), *Remarking Rwanda: State Building and Human Rights after Mass Violence*, Madison 2011, p. 54.

³⁰ *Law No. 18/2008, Relating to the Punishment of the Crime of Genocide Ideology*, Official Gazette of Rwanda, 15 October 2008.

³¹ *Law and Reality: Progress in Judicial Reform in Rwanda*, Human Rights Watch, July 2008, p. 42.

³² *Ibid.*, p. 41.

³³ N. Palmer, “Transfer or Transformation? A Review of the Rule 11 Bis Decisions of the International Criminal Tribunal for Rwanda,” *The African Journal of International and Comparative Law*, vol. 20, no. 1 (2012), p. 12.

³⁴ Y.-O.N. Jansen, “Denying Genocide or Denying Free Speech? A Case Study of the Application of Rwanda’s Genocide Denial Laws,” *Northwestern Journal of International Human Rights*, vol. 12, no. 2

based on the idea of “just deserts” (degradation of the offender) and deterrence, which are believed to be an effective tool for restoring and maintaining peace in Rwanda and for encouraging reconciliation.³⁵ As many scholars have pointed out, the language of the Constitution and the subsequent acts is disturbingly vague³⁶ and is used to control the public discussion. Moreover, the regulations are biased in nature, which is reflected in the administrative measures of renaming the Rwandan genocide and of designing reconciliatory laws through the lens of the victors’ wishes.³⁷ The biased nature of the memory law in Rwanda is also evident in the criminalization and penalization of those who may dispute the official narrative. According to the Human Rights Watch, only in twelve months between mid-2007 and mid-2008, 243 people were charged with revisionism and negation, often for merely diverging from the government’s approved history of the genocide.³⁸ This can be exemplified by the case of Victoire Ingabire, a Hutu and an opposition party leader. In 2010, she delivered a speech in which she underlined that it was necessary to punish not only all Hutus who had killed Tutsis, but also all Tutsis who had killed Tutsis.³⁹ In response, Ms. Ingabire was sentenced to 15 years in prison by the Supreme Court.⁴⁰ That case is not an isolated incident; a number of politicians, journalists and human rights activists who did not share the official “one truth” were also arrested and prosecuted on the grounds of denying the Tutsi genocide, thus, questioning the real nature of memory law in Rwanda. As a result, fear and mistrust are still present in Rwanda.⁴¹

(2014), p. 203; S. Thomson, “Rwanda’s National Unity and Reconciliation Program,” *E-International Relations*, 1 May 2014, at <https://www.e-ir.info/2014/05/01/rwandas-national-unity-and-reconciliation-program/>, 29 July 2021.

³⁵ J. Clark, “Judging the ICTY: Has It Achieved Its Objectives?,” *Southeast European and Black Sea Studies*, vol. 9, no. 1-2 (2008), pp. 123-124.

³⁶ E.g.: L. Waldorf, “Instrumentalizing Genocide...”, p. 51; Y.-O.N. Jansen, “Denying Genocide...”, p. 11.

³⁷ C. Kavuro, “Gacaca Courts, Reconciliation and the Politics of Apology in Post-Genocide Rwanda,” *South African Journal of Criminal Justice*, vol. 30, no. 1 (2017), p. 67.

³⁸ Human Rights Watch, *Law and Reality...*, p. 40.

³⁹ “Unity and Reconciliation Speech at Gisozi Genocide Memorial Centre,” *Victoire Ingabire Umuhozo*, at <http://www.victoire-ingabire.com/Eng/victoires-quotes/>, 20 February 2020.

⁴⁰ Immediately after her speech, Ms Ingabire was arrested and charged with a number of genocide crimes, including divisionism, revisionism and genocide denial. More on that: *Case of Victoire Ingabire* (2013/2641(RSP)). See also: *Case of Ingabire Umuhozo Victoire*, Urubanza RP 0081-0110/10/HC/KIG. 4 other cases worth mentioning include that of *Case of Leonard Kavutse*, leader of the opposition MDR party (High Court, Case No. RP 0004/05/HC/KIG-RP 41.934/KIG, decision of 20 April 2005); former President Pasteur Bizimungu and former Minister Ntakirutinka (Tribunal de première Instance de Kigali, judgement RP 4064/KIG, RMP 8394/S14, decision of 7 June 2004).

⁴¹ T. Longman, T. Rutagengwa, “Memory, Identity, and Community in Rwanda,” in E. Stover, H.M. Weinstein (eds), *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge 2004, p. 165.

REMEMBERING TO FORGET: UTILIZING ELEMENTS OF TRADITION AND CULTURE

The memory laws in Rwanda that promote a one-sided picture of the past atrocities and erase the myth of ethnic differences might not be sufficient without support from elements of culture and tradition. The Rwandan authorities have included some grassroots customs into their official narrative and activities. Among practical examples of this is the idea of special government-run solidarity camps, e.g. “Ingando.” They are organized to include people from the same backgrounds, like students, teachers, ex-prisoners, and to involve them in reconciliation processes.⁴² The main narrative during the camps is that all Tutsis are victims or survivors, whether they were in the country or not at the time of the genocide, while all Hutus are perpetrators, whether or not they participated in the crime.⁴³ Ingando aims to erase the myth of ethnic differences and convince everyone that only Rwandans (not Hutus or Tutsis) inhabit the country.⁴⁴ In fact, solidarity camps are characterized by a low level of political pluralism and a lack of sufficiently open and broad discussion.⁴⁵ Similar features are shared by “Itorero” – a special program organized by the National Itorero Commission⁴⁶ and dedicated to young persons. The official mission of the program is to re-introduce the culture of service to the country with no financial reward with the aim of encouraging patriotism, positive values, responsibility and selfless service – the attributes that contribute to accelerating progress, promote social cohesion, peace and reconciliation and democratic governance.⁴⁷ It is argued, however, that promoting such a narrative may not help to unite the community, but rather to create a new memory, identity and to redefine a future.⁴⁸

The inclusion of elements of culture and tradition into the memory laws may also serve as a justification and stimulus for individuals to follow the restrictions. For this reason, *umuganda* – a grassroots culture of self-help and cooperation – was

⁴² Personal field notes, Research conducted in Rwanda in 2019 with cooperation with “Never Again Rwanda.”

⁴³ S. Thomson, “Re-Education for Reconciliation: Participant Observations on *Ingando*,” in S. Straus, L. Waldorf (eds), *Remarking Rwanda: State Building and Human Rights after Mass Violence*, Madison 2011, p. 333.

⁴⁴ A. Molenaar, *Gacaca, Grassroots Justice After Genocide: The Key Reconciliation in Rwanda?*, Leiden 2005, p. 59.

⁴⁵ C. Mgbako, “*Ingando* Solidarity Camps: Reconciliation and Political Indoctrination in Post-Genocide Rwanda Note,” *Harvard Human Rights Journal*, vol. 18 (2005), p. 203.

⁴⁶ The National Itorero Commission was established in 2013 on the basis of the Law N° 41/2013 of 16 June 2013 establishing the National Itorero Commission and determining its mission, organization and functioning.

⁴⁷ “National Itorero Commission (Strategy),” at *nic.gov.rw*, https://www.nic.gov.rw/fileadmin/user_upload/ITORERO_POLICY.pdf, 29 July 2021.

⁴⁸ P. Nora, “General Introduction: Between Memory and History,” in P. Nora, L.D. Kritzman (eds), *Realms of Memory: Rethinking the French Past*, vol. 1: *Conflicts and Divisions*, transl. by A. Goldhammer, New York 1993, p. 11.

institutionalized and became mandatory. Traditionally, Rwandans would call upon their family, friends and neighbours to help them complete a difficult task. Nowadays, *umuganda* became compulsory and was included in the laws passed in 2007⁴⁹ and 2009.⁵⁰ On the last Saturday of each month all citizens (able persons aged 16 to 65) work together (activities such as tree planting, building houses, cleaning streets) in order to foster growth and reconciliation. Despite its initial nature, the activity may currently create further fear and mistrust, as artificial social bounds are well-known from earlier times.⁵¹ Furthermore, during *umuganda* people have to implement governmental instructions and plans. This, in turn, casts doubt on the purpose of such activities: it seems that *umuganda* serves to control society and the political discourse more than it facilitates the exercise of the right to the truth and the pursuit of unity and reconciliation.

Not only does the adoption of memory laws that reflect a one-sided narrative and the use of elements of culture and tradition for political purposes violate the individual and collective right to the truth, but it also recreates and changes the Rwandan identity.⁵² Furthermore, this practice leads to an exclusion of some historical aspects from social, political and legal discourses and it may result in “chosen amnesia.”⁵³ Many Rwandans pretend to have no memory of the past atrocities and cleavages, however, it seems to result less from an inability to remember them than from a conscious strategy enforced by the ruling party.⁵⁴ The amnesia enables the Rwandan authorities and society to deal with the past atrocities and to include or exclude certain historical and political aspects from the collective identity.⁵⁵ It must be remembered that the official lack of memory of the past atrocities does not mean that the former divisions and antagonisms are currently irrelevant. The “chosen amnesia,” supported by law, may deepen the inconsistency of the collective memory⁵⁶ and cause a paradigm of silence. It excludes Rwandans from the possibility to express their opinions without fear and, eventually, from a real chance for reconciliation.⁵⁷

⁴⁹ *Organic Law No. 53/2007, Governing Community Works*, Official Gazette of Rwanda, 7 November 2007.

⁵⁰ *Prime Ministerial Order No. 58/03, Determining the Attributions, Organisation and Functioning of Community Works Supervising Committees and Their Relations with Other Organs*, Official Gazette of Rwanda, 24 August 2009.

⁵¹ Personal field notes, Research conducted in Rwanda in 2019 with cooperation with “Never Again Rwanda.”

⁵² A. Molenaar, *Gacaca...*, p. 52.

⁵³ S. Buckley-Zistel, “We Are Pretending Peace...”, p. 157.

⁵⁴ *Ibid.*, p. 154.

⁵⁵ *Ibid.*, p. 160.

⁵⁶ S. Haugbolle, “Public and Private Memory of Lebanese Civil War,” *Comparative Studies of South Asia, Africa and the Middle East*, vol. 25, no. 1 (2005), p. 198.

⁵⁷ C. Ntampaka, “Mémoire et réconciliation au Rwanda: écart entre les pratiques populaires et les actions de l'autorité,” *Dialogue*, vol. 226 (2002), p. 17.

MEMORY LAW AND THE RIGHT TO THE TRUTH: NECESSARY COEXISTENCE?

The Rwandan regulations that govern the history and memory of the past atrocities may serve as an example of the so-called memory law that, while ostensibly providing a guarantee for accessing historical truth, in fact strives to reshape it and control the nation.⁵⁸ It proves that regulations concerning the past may be a source of danger if they do not fully respect and satisfy the right to the truth in its individual and collective dimensions. The adoption of law that aims only at consolidating selected, state-approved narratives may result in misunderstanding and mistrust. Furthermore, the law may be considered to be contrary to the basic democratic values.⁵⁹

The legal governance of history, if not conducted in line with the right to the truth, may be used as an excluding and discriminatory tool and may lead to the persistence of blaming mistrust and antagonism.⁶⁰ This, in extreme cases, may lead to transnational memory wars.⁶¹ Moreover, the negation of other views and opinions by the states (and law) may cause a phenomenon of balancing atrocities.⁶² Comparisons between different groups of victims and showing favour to one of them by law not only deepen social divisions, but also inhibit healing and reconciliation processes. The result of setting the suffering of one group against the suffering of another is a denial of particular crimes and impunity of perpetrators. It also affects individual and collective memories, which is of great significance in the transition period.⁶³ It is not uncommon that over the years individuals, groups and institutions sometimes twist, recall and forget “information” about past atrocities when they reframe their shameful past and enhance the victims’ status.⁶⁴ This can arise from a desire to lessen one’s responsibility or to increase power and position one social group in relation to another. However, when this phenomenon is supported or stipulated by laws (as in the Rwandan case), it becomes a hazard. The presentation of only one narrative of the past increases the risk of idealizing certain political regimes. Another huge risk involving memory laws is that they indicate which

⁵⁸ See: A. Sundaram, *Bad News: Last Journalists in a Dictatorship*, New York 2016, p. 98.

⁵⁹ M. Mälksoo, “‘Memory Must Be Defended’: Beyond the Politics of Mnemonical Security,” *Security Dialogue*, vol. 46, no. 3 (2015), pp. 221 et seq.

⁶⁰ E. Staub, L.A. Pearlman, “Healing, Reconciliation, and Forgiving after Genocide and Other Collective Violence,” in E. Staub (ed.), *The Psychology of Good and Evil: Why Children, Adults, and Groups Help and Harm Others*, Cambridge 2003, p. 440.

⁶¹ I. Nuzov, “Freedom of Symbolic Speech in the Context of Memory Wars in Eastern Europe,” *Human Rights Law Review*, vol. 19, no. 2 (2019), p. 231; M. Bucholc, “Commemorative Lawmaking: Memory Frames of the Democratic Backsliding in Poland after 2015,” *Hague Journal on the Rule of Law*, vol. 11 (2019), p. 85.

⁶² See: S. Cohen, *States of Denial: Knowing about Atrocities and Suffering*, Cambridge 2001.

⁶³ S.K. Hom, E.K. Yamamoto, “Collective Memory, History, and Social Justice,” *UCLA Law Review*, vol. 47, no. 6 (2000), p. 1748.

⁶⁴ *Ibid.*, p. 1758.

persons and events should be commemorated and which should not as they are not state-approved.⁶⁵ Therefore, memory laws may be a clear threat to democracy and be used sometimes as an instrument for state control over a society.⁶⁶ The regulations may classify certain narratives and stigmatize and punish other views and opinions. This, in turn, may lead to “the institutionalization of memory”⁶⁷ or to “forced forgetting,”⁶⁸ especially when it is intensified by the use of culture and traditions. Both phenomena are a real threat to the right to the truth, as they validate the memory of one group of people over another, taking away a chance to truly grieve and reconcile.

The foregoing clearly shows that memory laws must comply with the right to the truth in its individual and collective dimensions. Then, memory laws may be essential instruments to exercise the states’ obligations indicated in the *Updated set of principles for the protection and promotion of human rights through action to combat impunity*, such as an obligation to prevent the collective memory from extinction and to give the guarantee of non-repetition. Moreover, they may counter historical revisionism, combat a culture of impunity and guarantee respect for victims’ dignity and rights.⁶⁹ It must be remembered, however, that it is possible only if the coexistence of the right to the truth and memory laws is ensured.

CONCLUSIONS

Legal provisions governing history may bring a certain number of opportunities if they are used in an appropriate way. At the same time, memory laws may sometimes be a source of inequality, injustice and counterfeit. Evidence from Rwanda suggests that the construction of the public (collective) memory of past atrocities may suffer under the project of state-building and national-building that focuses more on the consolidation of power than it contributes to reconciliation. Thus, priority is given to selected memories and narratives, while divergent opinions and views are systematically eliminated. The Rwandan policy to accept only “one truth,” while delegating “divisionism,” is intensified by practices based on culture and traditions. It leads to a critical dissonance between collective memory and private memory and is far from the fulfilment of the right to the

⁶⁵ V.L.B. Jereza, “Burying “National Trauma”: Memory Laws and the Memory of the Marcos Regime,” *Philippine Law Journal*, vol. 93, no. 1 (2020), p. 413.

⁶⁶ R. Dudai, “Transitional Justice as Social Control: Political Transitions, Human Rights Norms and the Reclassification of the Past,” *The British Journal of Sociology*, vol. 69, no. 3 (2018), p. 695. See: M. Innes, *Understanding Social Control: Deviance, Crime and Social Order*, Maidenhead 2003.

⁶⁷ O. Muñoz-Rojas Oscarsson, “Granite Remains: Francoist Monuments Today,” *Public Art Dialogue*, vol. 2, no. 2 (2012), pp. 147-148.

⁶⁸ Y. Gutman, N. Tirosh, “Balancing Atrocities and Forced Forgetting: Memory Laws as a Means of Social Control in Israel,” *Law and Social Inquiry*, vol. 46, no. 3 (2021), p. 2; N. Tirosh, A. Schejter, “I Will Perpetuate Your Memory through All Generations’: Institutionalization of Collective Memory by Law in Israel,” *International Journal of Media and Cultural Politics*, vol. 11, no. 1 (2015), p. 27.

⁶⁹ V.L.B. Jereza, “Burying ‘National Trauma...’,” p. 423.

truth. Consequently, the peace in Rwanda may be seen as “conterfeit peace” based on a fear of punitive measures rather than real reconciliation. This inevitably results in the wall of silence, which has nothing to do with the fulfilment of the right to the truth.

In view of the above, it must be concluded that memory laws, which prohibit the spread of particular historical interpretations or narratives and regulate the manner in which individuals and the community interpret events from the past, must be fully consistent with the right to the truth in its individual and collective dimensions. Legal regulations should enable victims and the whole society to know the truth about past atrocities, perpetrators’ identities and their motives. The relatives of the victims should be able to receive information about the fate and whereabouts of their loved ones. The adoption of such regulations is crucial to satisfying the victims’ rights and, on the other hand, to fulfilling states’ international obligations. It is also substantial for shaping individual and collective memories of past atrocities. If memory laws comply with the right to the truth, then they may be an excellent tool for settling the past and memories. And conversely, if the regulations do not reflect the truth about past crimes and do not provide victims and society with an opportunity to grieve and reconcile, they are more likely to distort memories. A failure to adopt memory laws in conjunction with the right to the truth (in its individual and collective nature) will deepen the disparities and mutual grudges in societies and, thus, will lead to larger divisions and further victimizations. The avoidance of serious inconsistencies between the public (state-approved) and private memory must be fundamental to a state when adopting memory laws. Only then, the truth and memory of past atrocities will be properly protected and preserved, not just tailored to the political aspirations of the authorities.

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