

<b>Institution:</b> SOAS University of London		
<b>Unit of Assessment:</b> 19 – Politics and International Studies		
<b>Title of case study:</b> Informing Court Cases against Rwandan Atrocity Suspects		
<b>Period when the underpinning research was undertaken:</b> 2010–2019		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Prof Phil Clark	Professor of International Politics	2010–present
<b>Period when the claimed impact occurred:</b> 2013–31 July 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>Research at SOAS into post-genocide Rwanda increased accountability for crimes committed during the genocide against the Tutsi, and enhanced public and practitioner awareness of legal and historical issues raised in court. Providing expert testimony in 9 criminal proceedings concerning Rwandan genocide suspects in the UK, the US and Sweden, Clark helped to establish sufficient grounds to pursue extradition where none existed; challenged negative perceptions of the workings of the <i>gacaca</i> community-based courts; informed courts about the capacity of the Rwandan judiciary to maintain political independence; and provided vital historical and regional context to help judges understand and analyse crimes committed.</p>		
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>The court cases in question stem from the 1994 genocide against the Tutsi in Rwanda, in which an estimated 800,000 people – including 75% of the Tutsi minority as well as large numbers of their perceived sympathisers among the Hutu and Twa ethnic groups – were killed. While hundreds of thousands of everyday genocide perpetrators have been prosecuted in Rwanda and elsewhere, hundreds of identified genocide suspects remain at large in more than 20 countries around the world, including the UK, the US and Sweden.</p> <p>Prof Phil Clark's role as an expert witness in these court cases drew on his field research in Rwanda, including extensive interviews with international, national and community-level actors. At SOAS, Clark developed the data gathered during field work into research themes, and ongoing analysis has subsequently refined his research findings. The 4 key themes that are relevant for international court cases concerning Rwandan suspects are: a) the nature and impact of genocidal violence at the national and community levels in Rwanda; b) the evolution of the Rwandan national political environment since the genocide; c) the country's legal and judicial reforms since 2008; d) and the function and societal effects of the <i>gacaca</i> community court system. Between 2002 and 2012, <i>gacaca</i> prosecuted approximately 400,000 genocide suspects, arguably the largest post-atrocity justice process enacted anywhere in the world.</p> <p>Based on Clark's research findings as laid out in his monograph, <i>The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers</i> [3.1], and a series of journal articles and a co-authored NGO report with Nicola Palmer at REDRESS [3.2–3.5], he argues that, while the Rwandan political arena displays a high degree of repression, the country has made impressive strides in terms of peace and stability, judicial reform, socio-economic development, tackling cross-ethnic structural inequalities and laying the foundations for sustainable reconciliation. Clark's analysis of the post-genocide situation in Rwanda challenges common depictions of the country as exclusively authoritarian, in which dissent is completely stymied, the judiciary is simply the tool of an all-powerful executive, a cowed population</p>		

experiences the same ethnic tensions as in the past, and a return to mass violence is increasingly likely. While recognising some concerning political trends in Rwanda – especially clampdowns on political opposition by the ruling Rwandan Patriotic Front (RPF) – Clark’s research reaches more complex conclusions, including highlighting positive developments in the judicial and socio-economic realms that counter some of the more damaging political dynamics at the national level.

Specifically on the issue of gacaca, Clark shows how this hybrid traditional-modern justice system allowed respected individuals elected by local populations to prosecute genocide cases in open-air hearings before community members. Gacaca encouraged everyday citizens to provide eyewitness testimony, including to detail the emotional and psychological impact of the genocide, in publicly accessible hearings held in the same locations where crimes were committed [3.2, 3.3]. The vast majority of adult Rwandans participated in gacaca, yet the prohibition of lawyers from proceedings generated widespread international criticism of the courts’ legitimacy. Employing original empirical evidence and interviews with hundreds of international, national and community stakeholders, Clark counters this scepticism, arguing that, while not without problems, mass participation in truth-telling and accountability through gacaca has laid crucial foundations for reconciliation in Rwanda, including by creating a forum for Hutu and Tutsi to openly discuss the causes and impact of the genocide [3.4, 3.5]. Clark’s research on gacaca offers invaluable insights into a unique approach to post-genocide justice and raises the important question of whether Rwanda’s experience might provide a model for other African nations seeking post-conflict resolution, a theme developed further in his 2018 monograph, *Distant Justice: The Impact of the International Criminal Court on African Politics* [3.6], which explores the intersections of international criminal law, national and community-based responses to atrocity across Africa.

### 3. References to the research (indicative maximum of six references)

3.1. Clark, P. (2010). *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*. Cambridge: Cambridge University Press. ISBN: 9780521193481  
Available on request **Peer-reviewed**

3.2. Clark, P. and Palmer, N. (2012). ‘Testifying to Genocide: The Challenges of Victim and Witness Testimony and Protection in Rwanda’. London: REDRESS  
<https://redress.org/publication/testifying-to-genocide-victim-and-witness-protection-in-rwanda/>

3.3. Clark, P. (2014). ‘Negotiating Reconciliation in Rwanda: Popular Challenges to the Official Discourse of National Unity’. *Journal of Intervention and Statebuilding*, 8(4), pp. 303–320.  
<https://doi.org/10.1080/17502977.2014.958309> **Peer-reviewed**

3.4. Clark, P. (2014). ‘Bringing Them All Back Home: Displacement, Return and Post-Atrocity Accountability in Rwanda and Uganda’. *Journal of Refugee Studies*, 27(2), pp. 234–259.  
<https://doi.org/10.1093/jrs/fet051> **Peer-reviewed**

3.5. Clark, P. (2014). ‘Bringing the Peasants Back In, Again: State Power and Local Agency in Rwanda’s Gacaca Courts’. *Journal of Eastern African Studies*, 8(2), pp. 193–213.  
<https://doi.org/10.1080/17531055.2014.891782> **Peer-reviewed**

3.6. Clark, P. (2018). *Distant Justice: The Impact of the International Criminal Court on African Politics*. Cambridge: Cambridge University Press. ISBN: 9781108474092. Submitted to REF2021. **Peer-reviewed**

### 4. Details of the impact (indicative maximum 750 words)

Clark’s research into post-genocide justice in Rwanda was used in 9 court cases in the UK, the US and Sweden and led to him providing expert evidence to support the prosecution, extradition or deportation of Rwandan genocide suspects. In all of these cases, Clark’s 2010 monograph was submitted as evidence, followed by his oral testimony either in person or via video-link. Clark’s research also contributed directly to accountability for Rwandan genocide crimes and led to greater public involvement in courtroom debates through media engagement in Rwanda and internationally.

*Developing legal principles to support the prosecution, extradition or deportation of Rwandan genocide suspects*

As an expert witness, Clark had a substantial and wide-ranging effect on these cases, and 5 cases are used as illustrative examples. These effects can be summarised under 4 themes.

### *1. Establishing sufficient grounds to pursue extradition where none existed*

First, in the UK case of Brown et al, Clark's research (particularly **3.1**) was instrumental in convincing the Crown Prosecution Service (CPS) that there were sufficient grounds to pursue the extradition of 5 suspects living in the UK, despite having lost similar cases on appeal in the High Court in 2009. As the Head of the CPS Extradition Unit outlined, the CPS discovered Clark's research after reading an op-ed he published on the UK High Court ruling for the New Vision newspaper in Uganda **[5.5]**. Shortly after, the CPS arranged a meeting at which Clark shared the draft manuscript of his monograph **[3.1]**. The CPS was convinced by Clark's demonstration that genocide suspects routinely receive fair trials in gacaca and the Rwandan national court system, and that significant shortcomings exist in the methodologies of international organisations such as Human Rights Watch, upon whose testimony the 2009 High Court judgments hinged. Clark subsequently conducted further research and compiled an expert report, commissioned by the CPS, for a second set of UK extradition hearings which took place in 2014 **[5.4]**. The CPS also shared Clark's report with prosecutors at the UN International Criminal Tribunal for Rwanda (ICTR), to inform their own deliberations over the possible transfer of suspects to Rwanda. Even though the eventual UK hearings did not lead to the 5 suspects' extradition, Clark's research was instrumental in convincing the CPS to pursue the case in the first instance and shaped their trial strategy (discussed below), while opening the possibility for future proceedings against them.

### *2. Challenging negative perceptions of local justice initiatives*

Second, Clark helped overcome negative perceptions of gacaca generated by human rights organisations and defence counsel in court cases in the UK, US and Sweden **[5.1, 5.2, 5.3]**. Explaining and legitimising the gacaca process – a justice system profoundly different from those in these three countries – was crucial in these foreign cases, which relied heavily on community-level evidence gathered through gacaca. In all 9 cases, as a result of Clark's evidence, the courts in question accepted gacaca evidence as admissible in their own proceedings and referred favourably to the importance of gacaca for Rwandan society (often in the face of contrary evidence presented by human rights organisations and defence counsel).

In the Ngombwa case in the US, for example, the judge's sentencing determination stated: 'The court credits Dr. Clark's testimony because of his vast experience – both academic and in-person – with the gacaca system. Particularly, the court credits Dr. Clark's testimony over the testimony of defense witness Leopold Nsengiyumva, whose experience stemmed primarily from the International Criminal Tribunal for Rwanda and who had never personally observed or interacted with gacaca proceedings'. The judge's determination found that the defendant's gacaca convictions to be reliable for purposes of sentencing and stated, 'Furthermore, the court recognizes that the gacaca courts found, after their investigations, that Defendant participated in genocide' **[5.2a, p43 note 8]**.

Similar statements concerning the importance of Clark's evidence for convincing these courts of gacaca's legitimacy can be found in: Brown et al **[5.1a p151]**; Mbanenande **[5.3a p11 and pp36–39]**; Berinkindi **[5.3b pp51–53]**; Rukeratabaro **[5.3c pp159–161 and p170]**; and Teganya **[5.2b p19]**. Regarding the UK cases, the CPS indicated that 'The judgments [at Westminster Magistrates Court and the High Court] continued to bar extradition but increasingly recognized the legitimacy of gacaca courts and in 2017 the High Court left open the possibility of hearing further evidence on Rwanda's justice system meeting fair trial standards' **[5.4]**.

### *3. Establishing confidence in the independence of the Rwandan justice system*

Third, Clark's oral and written testimony helped inform the UK and Swedish courts on the political environment in Rwanda, particularly the relationship between national politics and the independence of the national judiciary, as well as the concern that witnesses and evidence provided by the Rwandan judiciary were tainted by executive interference. Clark's evidence – accepted as convincing in the 3 cases where this issue arose – emphasised that, since the beginning of systematic reforms in 2008, the Rwandan judiciary had maintained a high degree of independence despite a repressive political atmosphere. For example, the judgment in Brown et al **[5.1b]** stated (quoting Clark's expert report): '[Dr. Clark] explains and I accept that seeing the

suspects transferred or extradited and then prosecuted in Rwanda is significant for the [Government of Rwanda] and the population. He also argues and I accept that the GoR has shown a marked dedication to “reforming the domestic judiciary in order to facilitate international transfers and extraditions” . . . He explains how the Government of Rwanda has used the recent International Criminal Tribunal of Rwanda and UK High Court rulings as a checklist of reforms to improve the domestic system. I accept that this is the case’ [5.1b pp96-97]. Clark’s evidence on Rwandan politics and the interplays between the national executive and judiciary was also cited favourably in Berinkindi [5.3b pp51–53] and Rukeratabaro [5.3c pp160–161].

#### *4. Contributing to new analysis of crimes on the ground*

Finally, in the Teganya case in the US, Clark’s evidence – gathered during his research into gacaca – concerning the nature of genocidal violence throughout Rwanda and specifically in the province of Butare (where Teganya was accused of committing genocide crimes) was central to Teganya’s conviction and sentencing [5.2b]. The Boston Globe reported on Clark’s expert evidence describing how ‘Prosecutors will focus in particular on the attack at the Butare hospital, where Tutsis had fled seeking safety from Hutu extremists. Their hopes were misplaced, said Phil Clark, the first witness called by prosecutors. “Many Tutsis sought refuge in . . . churches, schools, and hospitals,” when Tutsis tried to seek refuge in these places, more often than not they were killed” [5.8e p2].

At Teganya’s sentencing hearing, the prosecution attorney highlighted the centrality of Clark’s testimony for the successful prosecution case, explaining that with ‘something that big as the Rwandan genocide’ they were ‘worried that people would not be able to apprehend the horror of what happened then, the worst genocide since the Holocaust. And that’s why we started out with an expert, an expert who could basically talk about the historical record, and what other people had seen and done not only throughout Rwanda but in Butare and around the hospital itself, to base that so that other people could understand the testimony – the eyewitness testimony that they were going to hear, and to judge what Mr. Teganya had said in the immigration proceedings.’ [5.2b pp12–14]

Taken together, these 4 dimensions highlight the impact of Clark’s research on the 9 cases in question. His findings helped launch a new extradition case against 5 Rwandan genocide suspects in the UK. His evidence regarding genocide crimes, the function of gacaca and the nature of executive-judiciary relations in Rwanda was central to the successful prosecution of 8 suspects in the US and Sweden.

#### *Increasing accountability for crimes among perpetrators and access to justice among Rwandan survivors*

Despite decades of investigations and legal initiatives, only a handful of the hundreds of genocide suspects who fled Rwanda after 1994 have been arrested abroad and prosecuted. Clark’s work aided the pursuit of Rwandan genocide suspects around the world by increasing foreign prosecutions and increasing the international confidence in the Rwandan justice system necessary to facilitate extraditions. Throughout these cases, prominent media reports also ensured that Clark’s evidence had a wider societal impact, increasing accountability for the Rwandan genocide and its aftermath.

The Head of the Genocide Fugitive Tracking Unit in the Rwandan National Public Prosecuting Authority indicated that Clark had made ‘vital contributions to the pursuit of accountability for suspected perpetrators of the 1994 genocide’, which ‘constitutes an invaluable contribution to the quest for justice and reconciliation in Rwanda’ [5.6]. Survivors in Rwanda and in the Rwandan diaspora followed Clark’s court cases with great interest. The Ishami Foundation is a UK- and Rwanda-based charity that draws on the experiences of survivors of the 1994 genocide against the Tutsi to promote awareness of the genocide and reconciliation. The CEO noted that Clark’s research had helped ‘achieve accountability for genocide crimes – something that genocide survivors (whether they live in Rwanda or in the diaspora) believe is imperative’ [5.7].

*Engaging the media to stimulate debate among stakeholders*

Beyond the courtroom, Clark's research helped raise awareness and understanding of the genocide and of gacaca thanks to traditional and social media coverage of his involvement in these court cases, particularly in Rwanda [5.8c], the wider African region [5.8a] and in the US. The Boston Globe [5.8e] and The Gazette in Iowa reported the ways in which Clark's testimony in the Ngombwa case challenged negative perceptions of gacaca expressed by one expert witness for the defence: "The defense expert . . . testified defendants in the gacaca courts didn't have a right to a lawyer and the judges were not trained or lawyers themselves. Clark agreed with him, saying the courts were specifically set up that way. The biggest issue the country had was how to handle the masses of genocide suspects [with only] a small handful of judges or lawyers. Many were killed or fled the country after 1994.' [5.8b]. This coverage was reproduced on IGIHE in Rwanda [5.6bii]. The East African noted that Clark raised his misgivings in requiring Rwanda to invite foreign judges and lawyers to try cases domestically, quoting Clark as saying '[t]he UK legal system would never tolerate the idea of foreign judges... in British courts' [5.6a]. Similarly, a widely cited piece on Quid Justitiae, a key blog for legal practitioners and students, covered the Mbanenande case in Sweden and quoted Clark's courtroom testimony: 'Many believe that gacaca justice should not be discredited as it greatly helped Rwanda to recover after the genocide. We share this point of view. Phil Clark agrees: '[A]fter 10 years you can honestly say that the vast majority of genocide perpetrators have been prosecuted, not perfectly, but there is a sense in the hills now of who is responsible for what. . . . people in the communities know more about the genocide now because of the Gacaca process'" [5.8d].

**5. Sources to corroborate the impact** (indicative maximum of 10 references)

## 5.1. Court cases in the UK

a) Republic of Rwanda v. Vincent Brown et al Approved Judgement High Court (2017); b) Republic of Rwanda v. Vincent Brown et al Judgement Westminster Magistrates Court (2015)

## 5.2. Court cases in the US

a) Sentencing Memorandum - Gervais Ngombwa, Cedar Rapids, Iowa, 2017; b) Transcript - Jean Leonard Teganya, Boston, Massachusetts, 2019;

## 5.3. Court cases in Sweden (all Swedish)

a) Stanilas Mbanenande, Stockholm City Court, 2013- Judgement; b) Claver Berinkindi, Stockholm City Court, 2016 - Judgement; c) Theodore Rukeratabaro, Stockholm City Court, 2018 - Judgement

5.4. Letter from the Head of the Extradition Unit, Crown Prosecution Service, Feb 2021

5.5. International community has failed Rwanda again – New Vision, 14 May 2009

<https://www.newvision.co.ug/news/1220908/international-community-failed-rwanda>

5.6. Letter from Head of the Genocide Fugitive Tracking Unit, Rwandan National Public Prosecuting Authority

5.7. Letter from CEO of Ishami Foundation.

## 5.8. Media and blog reports:

a) UK court's tough terms for Rwandan trio's trial, The East African 8 Aug 2017:

<https://www.theeastafrican.co.ke/news/UK-court-tough-terms-for-Rwandan-trio-trial--/2558-4050020-pbvipw/index.html>;

b) Testimony concludes in Rwandan man's sentencing on immigration fraud, The Gazette, 23 Sept 2016: <https://www.thegazette.com/subject/news/public-safety/testimony-concludes-in-rwandan-mans-sentencing-on-immigration-fraud-20160923>;

c) Gacaca disputes erupts in Ngombwa case against Twagiramungu, IGIHE, 24 Sept 2016: <https://iqihe.com/amakuru/mu-mahanga/article/usa-havutse-impaka-ku-nkiko-gacaca-mu-rubanza-rwa-ngombwa-wisanishije-na>

d) Fight against impunity: Sweden is assuming its role, Quid Justitiae, 30 Oct 2013 (French) <http://www.quidjustitiae.ca/en/bloque/lutte-contre-limpunite-la-suede-assume-son-role>

e) Prosecutors: He helped commit genocide, then tried to claim asylum, Boston Globe, 11 Mar 2019: <https://www.bostonglobe.com/metro/2019/03/11/prosecutors-helped-commit-genocide-then-tried-claim-asylum/0aRkrLmaqlQNOPNRksehml/story.html>