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## TRANSITIONING WITHOUT RECONCILIATION: COMPARING MECHANISMS FOR ADDRESSING GENOCIDE DENIAL IN RWANDA AND BOSNIA

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### ABSTRACT

Rwanda and Bosnia and Herzegovina (BiH) have both faced the devastating consequences of genocide and have subsequently implemented different strategies to foster reconciliation and address genocide denial. Genocide denial laws have been enacted in both BiH and Rwanda, but with differing outcomes. In both Rwanda and BiH, the law aims primarily to deter genocide and uphold the rule of law; however, BiH has largely struggled in achieving these goals, as evidenced by the limited number of prosecutions. This inadequacy has adversely affected reconciliation efforts within the region.

Conversely, Rwanda's approach to genocide denial legislation is distinctly oriented toward fostering peace and reconciliation. The Rwandan legal framework has facilitated numerous prosecutions related to denial, resulting in a marked decline in genocide denial over time and ultimately contributing positively to the reconciliation process. A key factor behind the efficacy of Rwanda's genocide denial law is its integration with prior transitional justice mechanisms, which established a robust foundation for legal and societal healing, a contrast to the situation in BiH.

**Keywords:** Genocide, genocide denial, genocide denial laws, reconciliation, prosecutions, acknowledgement, apologies

## 1. Introduction

The Rwandan genocide was fundamentally planned by Jean Kambanda who pleaded guilty before the International Criminal Tribunal for Rwanda.<sup>1</sup> Jean Kambanda served as the Prime Minister of the Interim Government from 8 April 1994, to 17 July 1994, following the assassination of President Habyarimana on 6 April 1994. He issued directives that resulted into the massacre of the Tutsi population. Kambanda acknowledged that his government provided arms and ammunition to trained youth groups, specifically the Interahamwe and the *Impuzamugambi*, to carry out the killings of Tutsis and moderate Hutus.<sup>2</sup> It is estimated that around 800,000 to 1,000,000 Rwandans were massacred during the genocide.<sup>3</sup>

On the other hand, the genocide in Bosnia occurred from 1992 to 1995, following a significant political upheaval instigated by Bosnia-Herzegovina's intent to secede from the former Yugoslavia. In 1991, prior to the outbreak of violence, Radovan Karadžić made a declaration on the impending conflict, which reflected the escalating tensions within the region. This announcement served as a catalyst for the subsequent atrocities that unfolded during the Bosnian War.<sup>4</sup> In 1992 also, captured Muslim Serbs were susceptible to gang rape, girls and boys were also killed.<sup>5</sup> This resulted into the death of approximately 100,000 Bosnian Muslims constituting 80% of the population.<sup>6</sup>

Despite various initiatives aimed at addressing the situation including the Dayton Accords of 1995, Bosnian Serb representatives persistently contended that the acts of violence perpetrated against the Muslim Croats should not be classified as genocide, but rather as the consequences of a civil conflict.<sup>7</sup> In 2021, the High Representative invoked his powers under the Dayton Accords and enacted a law prohibiting the denial of genocide. Breaches of this statute would result in imprisonment for a duration specified within the law.<sup>8</sup>

Rwanda on the other hand established the Law on the Crime of Genocide Ideology and Related

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<sup>1</sup> *Prosecutor v. Jean Kambanda* ICTR-97-23-S

<sup>2</sup> *Ibid.*

<sup>3</sup> D E Kiwuwa, *Ethnic Politics and Democratic Transition in Rwanda* (2012) 100

<sup>4</sup> E Becirevic *Genocide on the Drina River* (2014) 60-69

<sup>5</sup> <https://hnh.org/library/research/genocide-in-bosnia-guide/> (accessed 21 November 2024)

<sup>6</sup> *Ibid*

<sup>7</sup> <https://balkaninsight.com/2024/09/20/srebrenica-genocide-denials-rise-amid-lack-of-prosecutions-report/> (accessed 3 January 2025)

<sup>8</sup> <https://www.aljazeera.com/news/2021/7/23/bosnias-peace-envoy-imposes-jail-terms-for-genocide-denial> (accessed 3 January 2025)

Crimes (Law 59 of 2018, revised). According the law, it is an offense for an individual to deny the characterization of the Rwandan genocide as genocide, to distort the historical facts surrounding the genocide, to assert the existence of a double genocide, or to suggest that the genocide was not a result of premeditated planning.<sup>9</sup> The Rwandan Constitution similarly reflects this principle, stating that "propagation of ethnic, regional, racial, or any other form of discrimination or division is punishable by law."<sup>10</sup>

Genocide denial is not a new phenomenon in countries that have experienced the horrific impact of genocide. Perpetrators often go to great lengths to deny the occurrence of genocide or to revise its historical narrative, primarily to escape accountability thereby complicating reconciliation endeavours.<sup>11</sup> The central argument of this paper is that, if properly enforced, genocide denial laws can play a significant role in facilitating ongoing reconciliation efforts.

## 2. Conceptualizing Genocide Denial

### 2.1 Understanding Genocide

The Genocide Convention defines genocide as actions aimed at the complete or partial destruction of a national, ethnical, racial, or religious group. Under the Convention, genocide encompasses any measures that intentionally inflict harm or undermine the existence of such groups, either through direct violence, cultural erasure, or systemic oppression.<sup>12</sup> Perpetrators of genocide may employ various methods to carry out their objectives, including systematic killings, implementing policies aimed at preventing births within the targeted population, forcibly transferring children from the victimized group to another demographic, and imposing conditions of life designed to bring about the partial or total destruction of the group.<sup>13</sup>

Genocide can be perpetrated by either state or non-state actors. In the case of *Prosecutor v. Popović*, it was determined that a genocidal plan is not a necessary element of genocide. As a

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<sup>9</sup> Article 5 of the Genocide Ideology and Related Crimes (Law 59 of 2018, revised), herein after referred to as the Genocide Denial Law

<sup>10</sup> Article 33 of the Constitution of the Republic of Rwanda, Law No. 33 bis/2003

<sup>11</sup> H Alibašić *The Post-Factual Polity: Ethical, Governance, Administrative and Policy Crises in the Disinformation Era* (2024) 107

<sup>12</sup> Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951 (Herein after referred to as the Genocide Convention).

<sup>13</sup> Article II of the Genocide Convention, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII.

result, the Appeal Chamber concluded that since genocide does not require a genocidal plan, it follows that genocide does not necessitate a state policy.<sup>14</sup>

In determining the *mens rea* of an accused individual, evidence of the accused's intent can be inferred from their direct involvement in the genocidal acts. When the accused engages in actual killings that contribute to genocide, this involvement serves as clear evidence of their intention to perpetrate genocide.<sup>15</sup> The intention to commit genocide may be deduced from circumstantial evidence. In the case of *Prosecutor v. Nyaramashuko et al.*, the Tribunal established that genocidal intent can be inferred from specific factual elements. Notably, the Tribunal noted that the defendant's directive to distribute condoms for the purpose of sexual assault of Tutsi women serves as a clear indicator of her genocidal intent.<sup>16</sup>

## 2.2 Genocide Denial and its Forms

Genocide denial constitutes a critical progression of genocide, characterized by the intentional refusal to recognize or acknowledge the occurrence of such events. This phenomenon involves the deliberate falsification or distortion of historical facts, frequently portraying the victims as the instigators or facilitators of the violence inflicted upon them. Such revisionism not only obscures the truth but also manipulates public perception and discourse surrounding the nature and repercussions of the genocide in question.<sup>17</sup> In the same vein, according to Hennebel and Hochmann, "under its purest form, denial is an expression contesting the existence of a crime or a characteristic feature of a crime."<sup>18</sup>

The absence of guilt in perpetrators of genocide often leads to a phenomenon known as genocide denial. This denial, irrespective of its manifestation, serves to obstruct the reconciliation process and exacerbates the suffering of victims. Guilt, in various forms, serves to sustain collective memory to the degree that a nation may ultimately be compelled to refrain from repeating its past atrocities due to their horrific nature. This ongoing awareness of responsibility can function as a critical mechanism for fostering accountability and preventing the recurrence of similar crimes.<sup>19</sup> Genocide denial ultimately positions deniers as accomplices

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<sup>14</sup> *Prosecutor v. Vujadin Popović et al*, IT-05-88-A, para 430

<sup>15</sup> *Prosecutor v. Munyakazi Yussuf*, ICTR-97-36A-A, Para 142

<sup>16</sup> ICTR-2015-42-A, Para 1011-1030

<sup>17</sup> G Parent 'Genocide Denial: Perpetuating Victimization and the Cycle of Violence in Bosnia and Herzegovina (BiH)' (2016) 10 *Genocide Studies and Prevention: An International Journal* 41

<sup>18</sup> H Ludovic and H Thomas *Genocide Denials and the Law* (2011) 14

<sup>19</sup> E Becirevic *Genocide on the Drina River* (2014) 147

in the very acts of genocide, as it contributes to the erosion of historical accountability and the recognition of the profound impact of these atrocities.<sup>20</sup>

The International Institute of Social Sciences identifies three distinct forms of genocide denial. The first form is literal denial, which entails disputing the occurrence of genocide altogether. The Institute notes that supporters of the Hutu regime for instance, explicitly denied the existence of genocide during the Rwandan crisis. Furthermore, this pattern of denial was mirrored within United Nations discussions, where officials refrained from using the term “genocide” during their deliberations on the 1994 violence in Rwanda. During certain proceedings at the International Criminal Tribunal for Rwanda, some defendants contended that the genocide did not occur, arguing against the characterization of events in Rwanda as genocidal in nature.<sup>21</sup>

The second form of genocide denial is known as interpretative denial, characterized by the revision or dilution of established facts surrounding the genocide. This form often employs distraction mechanisms, redirecting focus away from the genocide itself and onto other atrocities that, while significant, do not capture the genocidal nature of the events in question. Denialists may claim, for instance, that the genocide was an act of suicide or a consequence of self-defence. In the most severe instances, assertions of a ‘double genocide’ emerge, in Rwanda’s case suggesting that both Hutu and Tutsi groups were victims, thereby concealing the specificity and gravity of the genocidal acts committed against particular populations.<sup>22</sup>

Interpretative denialists, often termed revisionists, exhibit a tendency of restructuring the historical narrative surrounding specific crimes. Notably, many of these revisionists were not even witnesses to the events in question, which raises concerns on the authenticity and reliability of their accounts.<sup>23</sup> In the context of the Bosnian genocide, Bosnian Serbs tend to dispute the characterization of the crimes committed against the Bosniaks as genocide. They argue that the targeting was primarily directed towards Bosniak men, thus excluding women and children from the scope of the violence. This rationale leads them to frame the conflict not

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<sup>20</sup> B Der Matossian ‘Genocide Denial in the Twenty First Century’ in B Der Matossian (ed) *Denial of Genocides in the Twenty-first Century* (2023) 3

<sup>21</sup> H Hintjens *the Politics of Art, Death and Refugee: The Turning Tide* (2023) 120

<sup>22</sup> Hintjens (n 21)

<sup>23</sup> A Binagwaho and others, ‘Rwanda and Revisionist History’  
[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)30121-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)30121-7/fulltext)  
(accessed on 25 November 2024)

as a genocide, but as a civil war, diverting attention from the legal definitions and implications of genocide as established by international law.<sup>24</sup>

According to the International Institute of Social Studies, the final form of genocide is classified as implicative denial, where denialist apportion blame on others. For instance, the Hutu population assigns blame to the Tutsi for the atrocities committed during the genocide. This kind of denial suggests that the Rwandan Patriotic Front (RPF) is responsible for orchestrating the genocide, positing that such actions were intended to elicit international sympathy and secure the legitimacy needed for their rise to power.<sup>25</sup>

### **3. Genocide Denial Concepts**

#### **3.1 Genocide Denial Laws and Freedom of Expression**

Over the years, several countries, including Rwanda, have enacted laws to combat genocide denial, primarily to curb hate speech and hinder the potential recurrence of genocide. In Rwanda, the genocide denial law, under Articles 5 and 6, criminalizes specific actions: denying the occurrence of the genocide, distorting factual accounts, asserting the notion of a double genocide, claiming the genocide lacked premeditation, minimizing its severity, misrepresenting statistical data related to the genocide, or downplaying the means employed to execute the genocide.

Moreover, Article 9(1) of the Rwandan Constitution articulates the nation's commitment to eradicating genocidal ideologies and their manifestations. Article 13 further reinforces this stance, stipulating that any form of revisionism, negationism, or trivialization of genocide is subject to legal penalties. These provisions collectively underpin Rwanda's legal and constitutional framework aimed at preserving the historical truth of the genocide and fostering a culture of remembrance and accountability.

Notwithstanding the aforementioned provisions, laws on genocide denial frequently face scrutiny for infringing established international human rights norms. Key critiques highlight potential violations of the right to be presumed innocent until proven guilty and the

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<sup>24</sup> B Narcis 'Transitional Justice in Bosnia and Herzegovina: Examining the Effects of Post-Conflict State building, Transitional Justice and Reconciliation' Master of Arts Thesis, 2015 67

<sup>25</sup> Narcis (n 24)

fundamental right to freedom of expression.<sup>26</sup> Articles 33 and 34 of the Rwandan Constitution safeguard the right to freedom of expression, which is subject to existing laws. When states consider enacting laws that criminalize genocide denial, it is essential that this process is approached with caution to ensure compliance with international standards on freedom of expression and the right to be presumed innocent until proven guilty.<sup>27</sup>

Freedom of expression must be exercised in alignment with established human rights standards. It is essential to recognize that the right to free speech is not absolute; it is subject to limitations imposed by subsequent laws. The contention that international instruments safeguarding freedom of expression extend protection to genocide denial has been categorically dismissed by the European Court of Human Rights, particularly in the case of *Witzsch v. Germany*. In this case, the applicant's denial of the existence of gas chambers and mass exterminations during the Holocaust was deemed a violation of the Charter. The Court determined that such revisionism does not fall within the protective scope of Article 10 of the European Convention on Human Rights.<sup>28</sup> Article 10 of the European Convention protects freedom of expression.

Again, in the case of *Garaudy v. France*, the European Court of Human Rights in regard to revisionism stated that:

There can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth. The aim and the result of that approach are completely different, the real purpose being to rehabilitate the National-Socialist regime and, as a consequence, accuse the victims themselves of falsifying history... The denial or rewriting of this type of historical fact undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Such acts are incompatible with democracy and human rights because they infringe the rights of others.<sup>29</sup>

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<sup>26</sup> Article 14(2) and Article and Article 19 of the International Covenant on Civil and Political Rights, 1967

<sup>27</sup> UN Policy Paper on "Combating Holocaust and Genocide Denial Protecting Survivors, Preserving Memory, and Promoting Prevention" June 2022, [https://www.un.org/en/genocideprevention/documents/22-00041\\_OSAPG\\_PolicyPaper\\_Final.pdf](https://www.un.org/en/genocideprevention/documents/22-00041_OSAPG_PolicyPaper_Final.pdf).

<sup>28</sup> *Witzsch v. Germany* (1998) ECHR

<sup>29</sup> *Garaudy v. France* (24 June 2003) ECHR

Rwanda has maintained a rigorous stance on prosecuting genocide denial. A notable instance involved the arrest of two journalists in 2010, charged with minimizing the genocide through the phrase “they killed themselves,” implying that Rwandans were responsible for their own deaths during the genocide. The High Court found the defendants guilty of genocide minimization, defamation, and endangering national security. However, upon appeal to the Supreme Court, the justices acquitted the journalists of the genocide denial charges. The acquittal was based on the lack of a precise legal definition for “minimizing genocide” under the Law Repressing the Crime of Genocide, Crimes Against Humanity, and War Crimes of 2003 (No. 33 bis/2003) under which the defendants were prosecuted.<sup>30</sup>

However, the Supreme Court upheld the High Court’s ruling on the charges of defamation and compromise of national security.<sup>31</sup> When the case was filed before the African Commission on Human and Peoples Rights, the Commission concluded among other things that “expressions that entail denial of the genocide against the Tutsi cannot be protected under Article 9 of the African Charter.”<sup>32</sup> Article 9 of the African Charter on Human and Peoples Rights protects freedom of expression.

### 3.2 Presumption of Innocence and Genocide Denial

The International Covenant on Civil and Political Rights stipulates that an individual accused of a criminal offense is entitled to a presumption of innocence until proven guilty as established under Article 14(2).<sup>33</sup> One justification frequently presented in defence of laws against genocide denial is that such legislation may infringe upon the fundamental right enshrined in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). It is important to distinguish between genocide denial and a “not guilty” plea that may be asserted during the prosecution of genocide offenses, as these represent fundamentally different legal concepts. King has argued that:

Genocide denial laws do not directly address individual denial of responsibility—denial of individual responsibility instead falls at the

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<sup>30</sup> *Le Ministère Public v. Uwimana Nkusi and Mukakibibi*, Case No. RPA 0061/11/CS (S.C. Apr. 4, 2012)

<sup>31</sup> The Uwimana Case

<sup>32</sup> Communication 426/12, *Agnes Uwimana-Nkusi & Saidati Mukakibibi* (represented by Media Legal Defence Initiative), para 207

<sup>33</sup> Article 14(2) of the International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 1966



intersection of legislative text, policy underlying denial laws, and the fundamental due process rights of international criminal defendants.<sup>34</sup>

In the context of criminal justice, an accused has the option to enter a plea of either guilty or not guilty. When a defendant opts for a not guilty plea, it becomes the prosecution's burden to establish guilt beyond a reasonable doubt. Notably, in genocide trials, a not guilty plea should not be construed as an act of genocide denial; rather, it is a fundamental aspect of criminal procedural rights. To equate a not guilty plea with genocide denial would undermine the principle of the presumption of innocence, which is a cornerstone of fair trial standards.

The African Commission on Human and Peoples' Rights emphasizes that during the preliminary stages of criminal proceedings, courts must refrain from forming a definitive view on the accused's culpability. This approach ensures that the defendant maintains their right to be presumed innocent until proven guilty, thereby upholding the integrity of the legal process. This procedural safeguard is vital in ensuring that the rights of the accused are protected and that justice is administered fairly.<sup>35</sup>

In a similar context, challenging a court's ruling that establishes the accused's guilt for genocide should not be equated with genocide denial. The primary objective of an appeal is to address any procedural anomalies that may have arisen during the trial process. Furthermore, the appeal mechanism serves as a safeguard against potential miscarriages of justice, ensuring that the judicial outcome is fair and accurate.<sup>36</sup>

### 3.3 Genocide Denial and the Right to Truth

The right to truth is an increasingly recognized principle within international law, reflecting a significant evolution in law. This concept underscores the obligation of states to ensure access to information on serious human rights violations and to encourage truth-telling in contexts such as transitional justice and reparations.<sup>37</sup> Individuals and families affected by severe human rights violations possess a fundamental right to comprehensive information on the events surrounding those violations. This includes essential details such as the identities of those who

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<sup>34</sup> J E King 'Evisceration of the Right to Appeal: Denial of Individual Responsibility as Actionable Genocide Denial' (2021) 74 Vanderbilt Law Review 229

<sup>35</sup> *Tsikata v Ghana*, Communication 322/06, African Commission on Human and Peoples' Rights, 55th Ordinary Session (2014) para 125

<sup>36</sup> King (N 34) 236

<sup>37</sup> <http://ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-Chapter1-2013-English.pdf>

orchestrated the violations, the methods employed in both the planning and execution phases, as well as the specific victims involved. The concept of the right to truth obligates states to conduct thorough investigations into violations, thereby uncovering and clarifying the factual circumstances behind such violations.<sup>38</sup>

One of the reports of the Commission of Human Rights highlights the right to truth. Under the report, the right to know is explained to the effect that:

This is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a "duty to remember", which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism...<sup>39</sup>

A report issued by the Commission of Human Rights emphasizes the critical importance of the right to truth. This right encompasses not only the individual entitlement of victims and their families to understand the facts surrounding past atrocities, but it also embodies a collective right that leverages historical awareness to avert future violations. At the core of this right is the principle of a "duty to remember," which is an obligation that the state is required to uphold. This commitment serves as a safeguard against historical distortions often manifested through revisionism or negationism, thereby ensuring a truthful and accurate representation of events that ultimately contributes to collective memory and accountability.<sup>40</sup>

In RS, the narrative surrounding the genocide has undergone significant revisionism, to the point where some individuals assert that the victims who were purportedly killed during hostilities are, in fact, alive or have simply relocated to different areas. Furthermore, there is a prevailing belief among some segments of the population that Bosnian Serbs themselves are the primary victims of genocide. This distortion of historical facts reflects a broader trend of denialism and manipulation of memory that complicates reconciliation efforts and exposes the

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<sup>38</sup> J. Davis, *Seeking Human Rights Justice in Latin America: Truth, Extra-Territorial Courts and the Process of Justice*, Cambridge University Press, New York 2014, 90-91

<sup>39</sup> Paragraph 17 Question of the impunity of perpetrators of human rights violations (civil and political), Revised Final Report Prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997

<sup>40</sup> MR Amstutz, 'Is Reconciliation Possible After Genocide? The Case of Rwanda' (2006) 48 *Journal of Church and State* 550

challenges associated with post-conflict history. Revisionism conveys a message to victims that the violations they experienced are insignificant. Furthermore, it fosters a culture of impunity by enabling perpetrators to evade accountability for the crimes they have committed.<sup>41</sup>

Rwanda has adopted a robust approach to truth-telling particularly through its education system. The curriculum in secondary schools explicitly addresses the detrimental effects of genocide denial, with an emphasis on fostering reconciliation and peacebuilding. Educational materials, including textbooks, have been developed to provide a thorough account of Rwanda's history, detailing the inception of the genocide and the subsequent measures undertaken to facilitate national healing and unity. This comprehensive educational framework aims to cultivate an informed citizenry capable of understanding the complexities of Rwanda's past and the need of reconciliation.<sup>42</sup>

On the contrary, in 2024 a new curriculum for elementary education was implemented in RS, which controversially presents the perpetrators of genocide as heroic figures. This educational framework effectively promotes genocide denial, undermining efforts to address and mitigate denialism and complicating processes of reconciliation. The implications of this curriculum raise significant concerns on historical memory, collective identity, and the challenges of fostering a culture of accountability and acknowledgment of past atrocities.<sup>43</sup> The implementation of the Dayton Accords has resulted in the segregation of educational institutions along the lines of the two entities, effectively inhibiting interaction and dialogue between students from the BiH and RS. This separation has, over time, fostered divisionism between the entities and impeded any genuine prospects for reconciliation.<sup>44</sup>

## 4. The Nexus between Genocide Denial and Reconciliation Prospects

### 4.1 An Overview of Reconciliation

The Black's Law Dictionary defines reconciliation as "The renewal of amicable relations between two persons who had been at enmity or variance; usually implying forgiveness of

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<sup>41</sup> P De Marco *the Forgotten Massacre: A Journey through the Bosnian Catastrophe* (2025) 93-95

<sup>42</sup> Jessica Viggers "How Post-conflict Narratives in History Textbooks Impact Peacebuilding Efforts: The Case of Rwanda" 19 September 2024, <https://www.norrag.org/how-post-conflict-narratives-in-history-textbooks-impact-peacebuilding-efforts-the-case-of-rwanda/> (accessed 2 January 2025)

<sup>43</sup> A Petrilă and H Hasanović *Voices from Srebrenica* (2021) 212

<sup>44</sup> Ivan Avramović 'Reconciliation in Bosnia and Herzegovina' <https://www.beyondintractability.org/casestudy/Avramovi%C4%87-Bosnia-Herzegovina> (accessed 8 January 2025)

injuries on one or both sides”.<sup>45</sup> Reconciliation may be defined as the process of restoring a relationship to its original state prior to the occurrence of harm or injustice. This involves the strategic development of a metaphorical bridge to address the divides created by conflict, thereby facilitating harmonious coexistence among the affected parties. The process requires a comprehensive understanding of the underlying issues, the implementation of effective communication strategies, and a steadfast commitment to mutual respect.

Ultimately, the objective is to re-establish trust and foster positive interactions.<sup>46</sup> Boem and Kaplan expand the traditional understanding of reconciliation beyond its reparative aspects, asserting that it necessitates a fundamental alteration in behaviour. They contend that for true reconciliation to occur, the perpetrator must transition from a 'destructive' to a 'constructive' role. This shift is essential for establishing and ensuring lasting peace.<sup>47</sup>

Achieving genuine reconciliation requires several critical components. Firstly, perpetrators need to acknowledge the injustices they have committed and accept full responsibility for their actions. Secondly, they must offer a formal apology to the victims affected by their crimes. Thirdly and concurrently, it is essential for victims to engage in a process of reconciliation by finding mechanisms to forgive past transgressions. Fourthly, victims should be afforded avenues for redress for the harms suffered. These elements work collectively to foster a more restorative approach to healing.<sup>48</sup>

#### **4.2 Reconciliation and Acknowledgement of Genocide**

Acknowledgement refers to articulation of facts and includes a public declaration of truths. This serves as a formal acknowledgment of the significant realities surrounding gross human rights violations. It acts as a declaration that outlines the comprehensive understanding prior genocide events, emphasizing the critical need for recognition and reflection. Acknowledgement requires the perpetrator to “recognise” the atrocities committed against

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<sup>45</sup> H C Black *Black's Law Dictionary* (1968) 1435

<sup>46</sup> B Klun 'Reconciliation: A Conceptual Analysis' in J Juhant and B žalec (eds), *Reconciliation: The Way of Healing and Growth* (2012) 90

<sup>47</sup> T Boem and S Kaplan *revenge, on the dynamics of the frightening urge and its taming* (2011) 174

<sup>48</sup> RJ Fisher 'Social-Psychological Processes in Interactive Conflict Analysis and Reconciliation: Theory and Practice' in M Abu-Nimer (ed) *Reconciliation, Justice, and Coexistence* (2001) 27

victims.<sup>49</sup>

Amnesty International asserts that all stakeholders implicated in human rights violations must acknowledge abuses and engage in mechanisms established to prevent future occurrences. The failure of conflict parties to address these violations increases the likelihood of renewed violence.<sup>50</sup> The South African Truth and Reconciliation Commission asserts that acknowledgement of historical human rights violations serves a dual purpose: it seeks to rehabilitate the dignity of the victims and at the same time enables perpetrators to confront and reconcile with their own pasts.<sup>51</sup>

In fact, in the case of Prosecutor v. Biljana Plavšić, the Tribunal in relation to reconciliation in BiH stated that:

The Trial Chamber accepts that acknowledgement and full disclosure of serious crimes are very important when establishing the truth in relation to such crimes. This, together with acceptance of responsibility for the committed wrongs, will promote reconciliation.<sup>52</sup>

The denial of the Bosnian genocide by its perpetrators significantly undermines reconciliation efforts in the region. Notably, Milorad Dodik, the eighth President of the RS, has publicly characterized the genocide as "the greatest deception of the 20th century." This dismissal not only perpetuates historical revisionism but also undermines meaningful dialogue and acknowledgment of the atrocities committed, creating substantial barriers to healing and collective memory.<sup>53</sup>

Reconciliation is significantly derailed when perpetrators fail to acknowledge the atrocities they have perpetrated. For instance, when the UN initial proposal to establish 11 May as an International Day of Remembrance for the 1995 genocide in former Yugoslavia, it encountered public resistance from Serbian President Aleksandar Vucic, who has openly opposed such

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<sup>49</sup> JR Quinn 'Cultivating Sympathy and Reconciliation: The Importance of Sympathetic Response' in S Maddison and others (eds), *the Limits of Settler Colonial Reconciliation Non-Indigenous People and the Responsibility to Engage* (2016) 123

<sup>50</sup> Statement Delivered by Amnesty International (Violation of Human Rights in Armed Conflicts: Proposal for Action) at the International Conference for the Protection of War Victims, Geneva, on 31 August 1993.

<sup>51</sup> The Truth and Reconciliation Commission of South African South Africa Report, Volume One, 29 October 1998, 49.

<sup>52</sup> *Prosecutor v. Biljana Plavšić*, IT-00-39&40/1-S, para 80

<sup>53</sup> J Connelly from *Peoples into Nations: A History of Eastern Europe* (2020) 795-796

measures. These sentiments have been echoed by Milorad Dodik, further illustrating the complexities that surround the recognition and acknowledgement of historical atrocities.<sup>54</sup>

Contrary to Bosnia's situation, Rwanda's reconciliation model is fundamentally anchored in its robust policy of genocide acknowledgment, which traces its origins in the *Gacaca* courts. Established in the wake of the genocide, the community-based courts required the accused to provide a comprehensive account of their actions, including specifics on the timing, location, and circumstances of the offense, as well as their participation with others. This structured approach encouraged confessions and expressions of guilt, repentance, and apology, ultimately contributing to national healing and the restoration of societal cohesion.<sup>55</sup>

The *Gacaca* courts established a foundational framework for the Rwandan genocide denial law. The courts served to reconstruct the social fabric that had been severely torn by the genocide. By facilitating open narratives and truth-telling, the *Gacaca* courts significantly contributed to the processes of healing and reconciliation between victims and perpetrators, fostering a collective path toward restorative justice.<sup>56</sup> The acknowledgment of responsibility, alongside confessions and formal apologies from perpetrators, served as a foundational step toward establishing a law addressing genocide denial.

Rwanda also implemented the *Ndi Umunyarwanda* program, designed to facilitate dialogue between genocide victims and perpetrators. This initiative focuses on fostering reconciliation by encouraging open discussions on the genocide, allowing for expressions of remorse, and promoting forgiveness among participants. The program aims to address the deep-seated divisions in Rwandan society by creating a platform for shared narratives and healing.<sup>57</sup>

The initiatives adopted by Rwanda to acknowledge and address the genocide stand in stark contrast to the initiatives in Bosnia. There has been a notable absence of reconciliation efforts

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<sup>54</sup> <https://www.aljazeera.com/news/2024/5/14/why-has-a-un-resolution-on-srebrenica-genocide-ignited-tensions-in-bosnia> (accessed on 15 December 2024)

<sup>55</sup> Article 54 (1-3) of the Organic Law N° 16/2004 of 19/6/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1<sup>st</sup>, 1990 and December 31, 1994 (Hereinafter referred to as the Organic Law N° 16/2004 of 19/6/2004)

<sup>56</sup> M Thibodeau 'Analysing the Social Impact of Gacaca Courts in the Reconciliation Process in Rwanda' <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1273&context=djilp> (accessed 2 January 2025)

<sup>57</sup> B Michael and N Dominic 'The Prevailing Denial of the 1994 Genocide Against the Tutsi in Rwanda: Revisiting Falsities and Upholding the Universal Responsibility to Truth' [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4417758](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4417758) (accessed 8 January 2025)

between victims and perpetrators in the Bosnian context, rendering the proposal of a genocide denial law to be, on the whole, premature. Enacting a law that condemns a crime that is not recognized by the perpetrators is ultimately and addresses only the symptoms of the issue, rather than its underlying causes.

#### 4.3 Acceptance of Responsibility

For reconciliation to be effective, it transcends a simple recounting or acknowledgment of historical injustices; it necessitates a genuine acceptance of responsibility by the perpetrator for the inflicted harm. This acceptance implies a recognition that one has either directly or indirectly perpetuated human rights violations. Without this crucial admission of accountability, the validation sought by victims may remain unaddressed.<sup>58</sup> Acceptance provides the perpetrator with the opportunity to express their involvement in the atrocities, whereas acknowledgement allows for the recognition of the fact that a specific crime has taken place.

In RS, the absence of accountability mechanisms has significantly downplayed the recognition of individual responsibility for crimes committed against victims. This environment has hindered the path to reconciliation and healing.<sup>59</sup> Research indicates that victims of the Srebrenica genocide believe perpetrators are unlikely to acknowledge their individual or collective responsibility for the Srebrenica genocide.<sup>60</sup>

#### 4.4 On Partial Apologies: When Sorry is not Enough

Apology, a crucial aspect of reconciliation, entails a comprehensive acknowledgment and painful acceptance of one's actions, accompanied by a formal expression of regret. In this context, an apology signifies that the offender not only recognizes the detrimental impact of their actions but also conveys a commitment to prevent future occurrences of such harm.<sup>61</sup> To determine whether a statement qualifies as a genuine apology, it is essential to evaluate four critical components: First, the perpetrator must acknowledge the occurrence of an atrocity as a factual event. Second, there must be recognition that these atrocities inflicted harm on the

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<sup>58</sup> W Vandenhoe, 'Obligations and Responsibilities in a Plural and Diverse Duty-Bearer Human Rights Regime' in W Vandenhoe (ed) *Challenging Territoriality in Human Rights Law: Building Blocks for a Plural and Diverse Duty-Bearer Regime* (2015) 133

<sup>59</sup> Parent (n 17) 52

<sup>60</sup> J Kador, *Effective Apology: Mending Fences, Building Bridges, and Restoring Trust* (2009) 113

<sup>61</sup> *Ibid*

affected parties. Third, the individual apologizing must accept some degree of accountability for the resultant harm. Fourth, the apologizer should express authentic remorse for the impact of their actions. Finally, it is crucial that there is a commitment or assurance that such atrocities will not recur in the future.<sup>62</sup>

In the context of Bosnia, there have been notable instances of apology, but primarily not originating from the Bosnian Serb community. A significant occurrence was in 2022 when the Dutch Minister of Defence extended an apology to the Bosniak population for the Dutch peacekeepers' inability to avert the atrocities that transpired during the conflict.<sup>63</sup>

The apology issued was significantly undermined by the inclusion of justifications and the allocation of responsibility to external parties for the atrocities committed. The Minister specifically attributed the inaction to the international community, asserting that while the government acknowledges its accountability for the massacres, it refrains from accepting blame.<sup>64</sup>

When apologizing, the individual responsible for the wrongdoing must avoid justifying their actions or providing excuses for the violation of the relevant right.<sup>65</sup> The Minister's decision to attribute blame to others for the atrocities while declining to accept responsibility diminishes the statement's apologetic intent. It is therefore not surprising that the victims ultimately regarded the apology as insufficient.<sup>66</sup>

In 2010, the Serbian Parliament formally issued an apology for the atrocities committed during the Bosnian War, with a particular emphasis on the Srebrenica massacre of July 1995. This apology was made through a resolution that categorically condemned the crimes committed against the Bosnian Muslim population, as established in the findings of the International Court of Justice. The statement reflected a significant acknowledgment of the legal and moral ramifications of the court's ruling, emphasizing the recognition of the severity of the violations under international law.<sup>67</sup> It has been reported that there was an agreement stipulating that

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<sup>62</sup> CTevez 'on Apology' in T Bently (ed) *Empire of Remorse: Narrative, Postcolonialism and Apology for Colonial Atrocity* (2016) 23

<sup>63</sup> <https://www.aljazeera.com/news/2022/7/11/the-netherlands-apologises-for-role-in-1995-srebrenica-genocide> (accessed 23 December 2024)

<sup>64</sup> *Ibid.*

<sup>65</sup> Kador (n 77) 113

<sup>66</sup> Aljazeera (n 80)

<sup>67</sup> [https://www.rferl.org/a/Serbian\\_Parliaments\\_Srebrenica\\_Apology\\_Hailed\\_Criticized/1999079.html](https://www.rferl.org/a/Serbian_Parliaments_Srebrenica_Apology_Hailed_Criticized/1999079.html) (accessed 24 December 2024)



responsibility for the massacres would be acknowledged only on the condition that the term “genocide” be excluded from the discourse.<sup>68</sup> While the apology may have appeared to be a significant milestone, it ultimately fails to meet the criteria of a genuine apology, which necessitates a clear acknowledgment of the crime and its specifics.

Again, in 2013, Tomislav Nikolic, the then President of Serbia, issued an apology for the “crimes” perpetrated against the Bosniak population. However, he notably refrained from recognizing the acts as genocide. This hesitation rendered the apology ineffective, as it was primarily the acknowledgment of genocide that victims sought from Serbian leaders for a genuine reconciliation process.<sup>69</sup> It has been suggested that the apology was primarily a strategic move aimed at satisfying the expectations of the European Union, particularly in relation to Serbia's ongoing integration processes within the EU.<sup>70</sup>

A sincere apology should not downplay the severity of the offense or deflect responsibility. It must accept culpability for the act committed and address the specific crime at hand, rather than diverting focus to a different offense.<sup>71</sup> The exclusion of the term “genocide” in apologies extended to the Bosniak population constitutes a form of genocide denial, especially when such apologies refer to the atrocities as mere “massacres.” This minimization not only diminishes the gravity of the crimes but also fails to capture the specific nature of the genocidal acts committed.

In a notable instance, in 2007, after the International Criminal Tribunal for the Former Yugoslavia (ICTY) categorized the actions of Bosnian Serb forces as genocidal, the government of RS issued an official apology expressing regret for the “crimes” committed. However, it avoided acknowledging the genocide itself, reflecting a broader tendency of minimization that characterizes genocide denial.<sup>72</sup>

In contrast, Rwanda has made significant strides in both public and private expressions of remorse related to the genocide. A noteworthy example is the apology issued by the Rwandan Catholic Church in 2016, which openly addressed its involvement in the genocide. The

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<sup>68</sup> *Ibid*

<sup>69</sup> <https://www.bbc.com/news/world-europe-22297089> (accessed 23 December 2024)

<sup>70</sup> J Dragović-Soso, ‘*Apologising for Srebrenica: The Declaration of the Serbian Parliament, the European Union 68 and the Politics of Compromise*’ (2012) 28 *East European Politics* 169

<sup>71</sup> D Denti *Sorry for Srebrenica? Public Apologies and Genocide in the Western Balkans* (2026) 69

<sup>72</sup> *Prosecutor v. Radislav Krstić*, IT-98-33-A, para 32-34.

statement clearly acknowledged that church members were involved in the genocide through "planning, aiding, abetting, and executing" acts of violence against the Tutsi population.<sup>73</sup> This apology stands in stark contrast to an earlier one made in 2005 by Ignace Murwanashyaka, the leader of the Democratic Forces for the Liberation of Rwanda (FDLR), which significantly contributed to the 1994 Rwandan genocide. In his statement, Murwanashyaka simply condemned the genocide and pledged to combat genocide ideology and ethnic hatred.<sup>74</sup>

## **5. Genocide Denial Laws, Deterrence of Genocide Denial, and Reconciliation**

### **5.1 The Rwandan and Bosnian Genocide Denial Laws**

One notable distinction between the genocide ideology legislation in Bosnia and that of Rwanda lies in the severity of the sanctions imposed against the crime of genocide denial. According to Article 1(4) of Bosnia's law on genocide denial, dissemination of genocide ideology carries a minimum imprisonment term of one year. Furthermore, if genocide denial is perpetrated by a public official or an individual holding a position of authority within an institution, the law stipulates a more stringent penalty, with a minimum imprisonment term of three years.<sup>75</sup>

In Rwanda, the law operates under a principle of equality before the law, meaning that the offender's status is irrelevant when adjudicating guilt. For individuals convicted of crimes, the punitive measures are uniformly applied, irrespective of the accused's background. In Rwanda, the minimum sentence for genocide denial is five years of imprisonment, contrary to Bosnia's minimum of one year. The maximum sentence in Rwanda is seven years, but Bosnia's law does not specify a maximum penalty. Additionally, Rwanda permits an alternative punishment of a fine, which is not an option under Bosnian law.<sup>76</sup> Alternatively, for Rwanda, offenders may incur monetary penalties ranging from a minimum of five hundred Rwandan Francs to a maximum of one million Rwandan Francs.<sup>77</sup>

In Bosnia, the legal repercussions for denying genocide, crimes against humanity, or war

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<sup>73</sup> <https://www.aljazeera.com/news/2016/11/20/catholic-bishops-apologise-for-role-in-rwanda-genocide> (accessed 24 December 2024)

<sup>74</sup> <https://www.theguardian.com/world/2005/apr/01/rwanda.jeevanvasagar> (accessed 8 January 2025)

<sup>75</sup> Article 1(7) of the Bosnian Genocide Denial Law

<sup>76</sup> Article 1(7) of the Bosnian Genocide Denial Law and Article 4 of the Law on the Crime of Genocide Ideology and Related Crimes Law 59 of 2018.

<sup>77</sup> Article 4 of the Law on the Crime of Genocide Ideology and Related Crimes Law 59 of 2018.

crimes range from three months to three years of imprisonment. In Rwanda, denial is limited to genocide and does not extend to crimes against humanity or war crimes.

## 5.2 Genocide Denial Laws in Action: On Prosecution and Deterrence

The fundamental concern is to what extent the existing legal measures adopted have influenced both genocide denial and the overall process of reconciliation. In the specific case of Bosnia, it has been observed that, contrary to expectations, instances of genocide denial have escalated despite the presence of the law against genocide denial.<sup>78</sup>

Contrary to Bosnia, the Rwanda Investigation Bureau disclosed a notable increase in cases on genocide ideology in 2023, reporting a total of 187 cases during the genocide commemoration week, compared to 178 cases in the previous year (2022). Among the individuals accused of harbouring genocide ideology, approximately 10.7% were found to have been involved in the 1994 genocide.<sup>79</sup> According to the reports, cases on concealing or destroying evidence or information on genocide had risen by 120%.<sup>80</sup> Recent statistics from the Rwandan Investigation Bureau indicate a significant reduction in instances of genocide denial over the past five years, with reports showing an 89% decline. Additionally, genocide minimization has decreased by 75%. These figures suggest a substantial shift in public discourse and awareness on genocide and genocide denial generally.<sup>81</sup>

Again, in contrast to Bosnia, Rwanda's prosecutorial approach to genocide denial has significantly reduced instances of such denial. This decline has, in turn, played a crucial role in advancing the reconciliation process within the Country.<sup>82</sup>

A report on genocide denial in Bosnia states that the enactment of the genocide denial law significantly reduced instances of denial in Bosnia and Herzegovina at the initial stage.<sup>83</sup> When the law was not subsequently enforced, the absence of prosecutions accompanying the law led

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<sup>78</sup> <https://balkaninsight.com/2024/10/02/bosnian-war-survivors-launch-genocide-denial-monitoring-website/> (accessed 24 December 2024).

<sup>79</sup> IGIHE 'Cases of genocide ideology dropped by 32.5% over past five years' <https://en.igihe.com/news/article/cases-of-genocide-ideology-dropped-by-32-5-over-past-five-years>

<sup>80</sup> AT Ufitiwabo 'A Look at Genocide Ideology Cases in the Last 5 Years' the New Times, <https://www.newtimes.co.rw/article/15882/news/crime/a-look-at-genocide-ideology-cases-in-the-last-5-years> (accessed 2 January 2025)

<sup>81</sup> Ufitiwabo (n 80)

<sup>82</sup> Ufitiwabo (n 80)

<sup>83</sup> <https://srebrenicamemorial.org/en/news/srebrenica-genocide-denial-report-2022/97> (accessed 2 January 2025).

to a marked increase in genocide denial.<sup>84</sup> The insufficient enforcement of criminal sanctions directly undermines the fundamental purpose of criminal law: deterrence. When there is uncertainty of punishment, the deterrent effect is seriously compromised. Consequently, both actual and prospective offenders are less likely to recognize a credible risk of consequences for their actions, thereby weakening the overall effectiveness of the legal system in upholding societal order.<sup>85</sup>

Bentham, a foundational scholar in the development of deterrence theory, states that effective deterrence necessitates the actual enforcement of punishment, rather than relying solely on the prospect of punitive measures. He asserts that for deterrence to be realized, punishment must be administered authentically and consistently, ensuring that the criminal experiences the consequences of their actions.<sup>86</sup>

In 2023, BiH made a significant move toward accountability when the Prosecutor's Office issued an indictment against Milorad Dodik, the former leader of the Bosnian Serbs, for the crime of genocide denial.<sup>87</sup> In 2024, the Prosecutor's Office officially closed the case, indicating that there were no sufficient grounds to conclude that Dodik had perpetrated the alleged offenses.<sup>88</sup> Contrary to the Prosecutor's conclusion, Milorad Dodik has repeatedly voiced his position on the genocide by denying the occurrence of genocide in Srebrenica. His statement on the non-existence of genocide is consistently reflected in both his public addresses and his written works.<sup>89</sup>

In Bosnia, the inadequate prosecution of relevant cases has significantly hindered the reconciliation process, aggravating existing tensions and undermining efforts towards societal healing and justice.<sup>90</sup> The absence of accountability for genocide denial has led to the dehumanization of victims and instilled a fear of renewed violence against them. Over time,

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<sup>84</sup> <https://balkaninsight.com/2024/09/20/srebrenica-genocide-denials-rise-amid-lack-of-prosecutions-report/> (accessed 2 January 2025)

<sup>85</sup> L N Malu *the International Court and Peace Processes* (2019) 46

<sup>86</sup> S Easton and C Piper *Sentencing and Punishment: The Quest for Justice* (2022) 146

<sup>87</sup> RL's Balkan Service 'Prosecutor Files Case Against Bosnian Serb Leader Dodik For Genocide Denial' <https://www.rferl.org/a/bosnia-dodik-genocide-denial/32305177.html> (accessed 7 January 2024)

<sup>88</sup> N1 'Bosnian Prosecutor's Office Dismisses Genocide Denial Charges against Dodik and Cvijanovic' <https://n1info.ba/english/news/bosnian-prosecutors-office-dismisses-genocide-denial-charges-against-dodik-and-cvijanovic/> (accessed 9 January 2025)

<sup>89</sup> J Subotić 'Regional Political Implications of Bosnian Genocide Denial' in B Der Matossian (ed) *Denial of Genocides in the Twenty-First Century* (2023) 264

<sup>90</sup> Parent (n 17) 52

this denial has fostered significant mistrust among survivors, further fracturing the social fabric of affected communities.<sup>91</sup>

### 5.3 Courts in Defence of Laws Prohibiting Genocide Denial

Judicial systems serve a critical function in facilitating reconciliation within post-conflict societies by addressing impunity. They play a critical role in preventing perpetrators from re-engaging in violence against victims.<sup>92</sup>

The judicial systems in Rwanda and Bosnia have been central in upholding genocide denial laws, aiming to prevent genocide denial altogether. In 2022, following the declaration of the genocide denial law by the Office of the High Representative (OHR) in Bosnia, Zeljka Cvijanovic, the then President of RS, issued a decree stating that the law would not be enforced within their jurisdiction and that they would refrain from implementation it.

Notably, the Criminal Code of RS explicitly criminalizes the incitement of hatred against individuals or groups, whether disseminated via media channels or expressed publicly through speech. Offenders convicted under this provision face a minimum sentence of three years' imprisonment or a substantial monetary fine.<sup>93</sup> The provision, although it does not explicitly address genocide denial, implicitly covers aspects related to it.

When RS enacted a law that challenged the applicability of the genocide denial law within its jurisdiction, the action led to the filing of a case with the Constitutional Court of BiH, seeking a review of the constitutionality of the High Representative's amendment to Article 145(a) of the BiH Criminal Code, which introduced a new article prohibiting genocide denial. Additionally, the Constitutional Court was tasked to examine the constitutionality of the law enacted by RS that denies the applicability of genocide denial law within its territory.<sup>94</sup> A panel of nine judges determined that the Law on Non-Applicability of the High Representative's Decision on the Amendment to the Criminal Code of Bosnia and Herzegovina, as published in the Official Gazette of the RS (89/21), is incompatible with Article I(2) and Article III(3)(b) of the Constitution of BiH.<sup>95</sup> Article 1(2) of the Constitution of BiH establishes the nation as a

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<sup>91</sup> Parent (n 17) 49-52

<sup>92</sup> Malu (n 85) 68

<sup>93</sup> Article 359 of the Criminal Code of RS

<sup>94</sup> Case no. U-15/21, Decision on Admissibility and Merits, 2022

<sup>95</sup> Paragraphs 32 and 33, Case no. U-15/21, Decision on Admissibility and Merits, 2022

democratic state operating under the rule of law, while Article III (3)(b) asserts that the legal framework within the entities must align with the Constitution, which takes precedence over any conflicting legal provisions.

A critical concern revolves around the impact of court rulings on the deterrence of genocide denial and the promotion of reconciliation between the two entities in BiH. Unfortunately, evidence suggests that following decisions of the Constitutional Court addressing various matters related to the RS, there have been recurrent threats of secession from RS, undermining any potential progress toward reconciliation.<sup>96</sup>

The RS' defiant stance is evidenced by enactment of a law that disregards the authority of the Office of the High Representative (OHR), despite the Constitutional Court's ruling affirming the OHR's mandate to implement the Dayton Accords and his decisions regarded as final. These responses do not signify elements of deterrence. Persistent denial of genocide and resistance against efforts made to hold accountable those responsible for genocide denial poses a significant challenge to reconciliation.

In Rwanda, after the law against genocide denial was enacted, individuals were immediately prosecuted for violating the law. By 2009, almost a year after the law was enacted, Rwandan courts had tried 435 cases related to genocide ideology.<sup>97</sup> In 2012 and 2013, there were 772 prosecutions. By 2015 and 2016, cases prosecuted had dwindled down to 59.<sup>98</sup> In 2023, a total of 234 individuals were arrested for genocide ideology related crimes.<sup>99</sup>

It is noteworthy that the Rwandan genocide denial law has faced critique for its potential politicization, often being employed as a tool to target and suppress dissenting voices against the government.<sup>100</sup> Despite this challenge, compared to BiH Rwanda has relentlessly managed to prosecute many genuine genocide denial cases.

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<sup>96</sup> Stefano Fella 'Bosnia and Herzegovina: secessionism in the Republika Srpska'

<https://commonslibrary.parliament.uk/research-briefings/cbp-10013/> (accessed 7 January 2025)

<sup>97</sup> Amnesty International *Safer to Stay Silent: The Chilling Effect of Rwanda's Laws on 'Genocide Ideology' and 'Sectarianism'* (2010) 19

<sup>98</sup> S Pamar 'Reckoning with the past? Rwanda's revised Genocide Ideology Law and international human rights law on freedom of expression' in Paul Behrens and others (eds) *Holocaust and Genocide Denial: A Contextual Perspective* (2017) 115

<sup>99</sup> Ufitiwabo (n 80)

<sup>100</sup> Pamar (n 97) 114-115

## **6. Conclusion**

The comparative analysis of genocide denial in BiH and Rwanda indicates differing outcomes in addressing genocide denial. In BiH, although laws against genocide denial have been enacted, ineffective enforcement has led to an increase in denial, ultimately complicating the reconciliation process. Conversely, Rwanda has enacted its genocide denial law with strong and immediate enforcement, resulting in a substantial reduction in denial narratives. This decisive legal action has not only curtailed instances of denial but has also supported broader reconciliation efforts.

Rwanda's effective enforcement of its genocide denial law can be attributed to prior initiatives that established accountability for the genocide's perpetrators. These initiatives facilitated an early acknowledgment of the genocide, resulting in a reduced prevalence of genocide denial following the law's implementation. In contrast, BiH lacks established mechanisms for dialogue between victims and perpetrators, which has rendered the genocide denial law somewhat premature in its enactment. This deficiency hampers the legal system's ability to address past events, ultimately delaying reconciliation generally.