

Jill Rosenthal

Enduring Ethnicities:  
An Examination of Government Efforts to Erase Ethnic Tensions From the Public  
Sphere of Rwanda: 1994-2004

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## Chapter I

“The history of the world is the world’s court of justice.”  
-Friedrich von Schiller

### 1) Introduction

All of human history is embedded with war, atrocity and slaughter. The 20<sup>th</sup> century stands out among this history as a time of experimentation not only in methods of warfare, but in modes to redress the causes and the perpetrators of war crimes. Otherwise known as crimes against humanity, these acts were first named, outlawed, and punished in the legal documents of the first half of the last century. They culminated in the halls of Nuremberg and the United Nations with the recognition of the crime of genocide, and the pledge that such acts would ‘never again’ plague humanity. During the second half of the 20<sup>th</sup> century this pledge went unfulfilled. Instead, nations and international institutions struggled with the question of how to acknowledge, and correct, causes of genocide, as well as bring justice to its victims. In the process, new modes of thinking about the origins of communal violence began to emerge. These new models no longer rely on state centered approaches to understand collective aggression, but rather on examinations of the social fabric of the communities involved. In genocide, violence stems from community perceptions of self and of a perceived ‘other.’ In post-colonial nations these community identifications tend to be rooted in colonial racial methods of rule which transformed indigenous identities into their more violent incarnations. Cambodia, the former Yugoslavia, Guatemala and South Africa stand out as just a few examples of new nations struggling with the same theme; how to achieve justice and reconciliation for societies rent by ethnic conflict and facing a shared future. Of the experiments in legal and community rebuilding that followed, government efforts in Rwanda in the aftermath of genocide, stand out as unique for two reasons. The first was the emphasis placed on community identifications of self as a cause of violence,

and the subsequent effort to erase ethnicity from the public sphere of Rwandan life. The second was the massive program by which the government attempted to try and punish all of those implicated in the ethnic cleansing. The scale and nature of the Rwandan experiment in reconciliation and punitive justice remains unparalleled by other legal and community efforts meant to respond to the causes and perpetrators of ethnic cleansing. The failure of Rwanda's effort to redress the historical wrongs of colonialism and genocide is a lesson that has enormous implications for future restorative justice projects in other post-genocide societies.

The history of the Rwandan genocide and its aftermath are the result of the changing political salience of two terms; Hutu and Tutsi. It was on the basis of these labels that, in the Spring and Summer of 1994, one group became victim and the other victimizer. At the heart of the Rwandan crisis, therefore, is a question of perception; how communities perceive themselves. This paper is an exploration of Rwandan perceptions of self and community in the context of Rwandan governmental efforts to eradicate the causes of genocide from Rwandan society in the ten years following the bloodshed. Before an analysis of recent Rwandan history can be given an understanding of recent literature on the causes of communal violence, as well as a historical description of the changing nature of the terms "Hutu" and "Tutsi," is necessary. The story of the transformation of these ethnic categories is part of the history of European colonization in Africa. The modern history of Rwanda is a testament to the endurance of contrived ethnicities, to the strength of colonial definitions of race. This paper is not about the true meaning behind the terms "Hutu" and "Tutsi," a question which has no concrete answer but which is briefly discussed in order to provide a context for recent Rwandan history. Rather, what is focused on here is the incredible longevity of colonial 'political' definitions of ethnicity in the context of recent historical efforts to eradicate such terms from the public sphere. Specifically, the actions on the part of the Rwandan government in its effort to address and eradicate the causes of

genocide served to heighten ethnicity as a basis for identity and for conflict among Rwandans during the period from 1994-2004. The administration was not the sole actor involved in the continuance of ethnic identity, as will be shown in the brief counterpoint given by the refugee example. Nevertheless, the government's choice of punitive justice as a method of reconciliation, and the very makeup of the organization, served to further cement the colonially derived definitions of "Hutu" and "Tutsi" within the population.

## 2) Methods

The question addressed here, the effects of Rwandan efforts to redress violence in the aftermath of genocide, has enormous value to the study of Rwandan, African, Colonial and reconciliation histories. As the topic is of contemporary history, and as a student without access to the nation itself or knowledge of Kinyarwanda, the resources available were necessarily constrained. There is, however, a growing body of literature on the public uses of history, and a focus on the redress of historic violation. Like these studies, I have focused on a set of bureaucratic documents, created by the U.S government as well as by international NGOs. I believe that the testimonies gathered herein from such sources as African Rights reports, the press, Legal Aid Rwanda reports and State Department reports have more than adequately provided me an understanding of events during the ten years following the genocide in Rwanda. Of these, the first three sources are used to understand events through the eyes of Rwanda; its survivors, prisoners, refugees and government. The last source is useful as an overview of the civil, military and economic changes that the nation underwent during the time period studied.

## Chapter II

New approaches to the study of genocide<sup>1</sup> have begun to incorporate sociological and psychological studies of populations in order to discern the willingness of communities to participate in (often) state sponsored murder.<sup>2</sup> The etiology of communal violence is therefore no longer understood in terms of state, or elite, action alone. Rather, in the current paradigm of thought, violence is determined by initiatives within the personal and community spheres of the localities in question.<sup>3</sup> Genocide, in this context, is the interaction of the political and the pathological character of a community.<sup>4</sup> In order to embark on a program of genocidal violence, a group must first define who constitutes itself and who the 'other' is to be eliminated. This process is part of how communities perceive themselves as well as how the group to be eliminated is defined. In Rwanda the identities of Hutu and Tutsi were transformed into racial categories through colonialism. These constructed identities have endured through independence and, as will be shown in Part II, through efforts to redress the historical violations of these categories of Rwandans.

What matters in the context of the aftermath of the Rwandan genocide is not who the people denoted by the terms "Hutu" and "Tutsi" originally were, as these terms are not static but rather

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<sup>1</sup> Many scholars have pointed out that the word 'genocide' is inexact as it evokes the problematic paradigm of the preeminent genocide in human history; the holocaust. For the debate surrounding the uses of the term 'genocide' see Mark Mazower, "Violence and the State in the Twentieth Century," American Historical Review, 107 (October 2001): 1158; and Ervin Staub, "Genocide and Mass Killing: Origins, Preventions, Healing and Reconciliation," Political Psychology, 21. (2000): 177.

<sup>2</sup> For an elaboration of the "Europeanist state centered approach" to violence see Mazower, "Violence and the State," paragraph 17.

<sup>3</sup> The former notion that communal violence belonged to the purview of the underdeveloped world; what Hegel referred to as the "dark mantel of night" has been widely discredited. Georg W.F Hegel, The Philosophy of History, (New York: Dover Publications, Inc., 2005), 91. See Gyanendra Pandey History and the Question of Violence: Reflections on the Reconstruction of Partition, (Calcutta: K.P. Bagchi & Co., 1999), 9 and Mazower, Violence and the State in the Twentieth Century, all.

<sup>4</sup> Pandey, History and the Question of Violence Memory, 17. Pandey describes the modern study of violence as that of the "social fact of violence." Pandey, 14.

dynamic in nature; they have changed in meaning in accordance with different forms of political rule.<sup>5</sup> Nevertheless, in order to understand the enduring changes that European colonialism enacted upon Rwandan perceptions of the categories of “Hutu” and “Tutsi” it is necessary to offer here a brief history of the words. Before the ancient and pre-colonial history of the Rwandan people can be addressed however, a brief cautionary note is necessary: the literature on the history of pre-colonial Rwanda is almost never objective. The issue of the origins of the two ‘ethnicities’ has been clouded by over a century of subjective writings based on the political and ethnic affiliations of the author.<sup>6,7</sup> As such, it is best not to conjecture into actual origins but to stick with verified facts; during colonialism the terms were so distorted as to be re-constructed into new racialized identities whose conceptual prevalence continues to plague the Rwandan nation.

## 1) Pre-Colonial History

“By the 1940s...[Rwandans] were obeying the logic of the script rather than that of their more complex organic past, which by then was receding into historical unreality.”<sup>8</sup>

Like all histories, that of the Rwandan people begins with geography. The relative highlands of the “land of a thousand hills” traditionally provided the area with natural barriers against both invading armies as well as malaria carrying mosquitoes.<sup>9</sup> This relatively benign topography was, from the beginning of human habitation in the area, conducive to relative stability and so to a high

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<sup>5</sup> There is no single answer to the question of who the Tutsi and Hutu are or were as the terms have “changed as political identities along with the state that has enforced those identities.” Mahmood Mamdani, When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda (Princeton: Princeton University Press, 2001), 34.

<sup>6</sup> As will become apparent, those who are pro-Tutsi tend to argue that there is no real difference between the Tutsi and Hutu people; those pro-Hutu that there is a real genetic and geographical difference. Mamdani, When Victims Become Killers, 41.

<sup>7</sup> I have placed the term ethnicity in quotation marks, because as is described below, ‘Hutu’ and ‘Tutsi’ denoted not an ethnic group, despite their modern connotation as such, but rather one’s ranking within the Rwandan pre-colonial power structure.

<sup>8</sup> Gerard Prunier, The Rwanda Crisis: History of a Genocide (New York: Columbia University Press, 1995), xiii.

<sup>9</sup> This is the name often given to the country. In its present incarnation Rwanda is separated from Uganda by the Virunga volcano chain, from Congo by the Rift Valley and the large lakes Tanganyika and Kivu, and from Tanzania by marshes. Prunier, The Rwanda Crisis, 2.

degree of government centralization.<sup>10</sup> We do not know who exactly the Tutsi were, or how they came to live in Rwanda.<sup>11</sup> What is known is that a centralized state in the area known as Rwanda began to emerge sometime during the 15<sup>th</sup> century as an incorporation of several autonomous chieftships into a single kingdom under a royal clan.<sup>12</sup> The most logical assertion for this development is that the Tutsi were a nomadic pastoralist people who came to settle in the area which was inhabited by agriculturalists.<sup>13</sup> The Pastoral chief became the Monarch (*mwami*) of the new kingdom, which grew out of several Hutu “micro-monarchies,” while his spiritual powers were channeled through the agriculturalists in a power-sharing arrangement.<sup>14</sup> As the kingdom expanded ‘Hutu’ became synonymous with all those groups that came under the power of the centralized, growing Tutsi monarchy, while Tutsi came to be associated with power.<sup>15</sup> Hutu thus never referred to a single ethnicity, but rather to a trans-ethnic conglomerate of peoples who were subject to the Rwandan state.<sup>16</sup> At the time of European arrival to Rwanda there was a non-uniform phenotypal difference between some Hutu and Tutsis, with Tutsis generally taller<sup>17</sup> and lighter of skin.<sup>18</sup> An un-generalized socio-

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<sup>10</sup> There is an ongoing debate among Rwandan scholars about the role of the central state in forming a population that was and continues to be inclined to taking orders. For a debate on degrees of social control in Rwandan society see Prunier, The Rwanda Crisis, 3; and Mamdani, When Victims Become Killers

<sup>11</sup> Knowledge of the history of the area prior to the 16<sup>th</sup> century is severely limited due to a lack of written record, and the absence of a reliable oral record.

<sup>12</sup> The kingdom that is today associated with modern day Rwanda was first established somewhere around the year 1650 when the chief of a band of Pastoralists (Tutsi) named Ndore, made a pact with the chief of a band of cultivators (Hutu). The King of the Rwandan monarchy traditionally came from the *Abanyiginya* clan.

<sup>13</sup> In eastern Africa the cow has always been seen as a symbol of wealth, however as we will see the status of Tutsi was not associated with a socio-economic standpoint alone as many Tutsi were poor themselves.

<sup>14</sup> Prunier, The Rwanda Crisis, 17. The *mwami* received spiritual power from the Hutu *abiru* spiritualists who prescribed the *ubiru*, or ritual prescriptions that the King undertook in order to maintain the loyalty of his kingdom.

<sup>15</sup> Religion was essential to both rule and society in Rwanda for most of its existence, with the *Kubandwa* cult acting as a unifier of the people Prunier, The Rwanda Crisis, 15. It is important to note that the origin ascribed to the king was mystical, not alien or foreign, for purposes elaborated upon in the next chapter.

<sup>16</sup> Mamdani, When Victims Become Killers, 74. Before European centralization there were still some independent ‘Hutu’ principalities in the Northwest and Southwest of the country.

<sup>17</sup> A German anthropologist working at the beginning of the 20<sup>th</sup> century claimed there to be a 12-cm difference in average height between Tutsi and Hutu. (See Mamdani, When Victims Become Killers, 44). In most cases however it was impossible to differentiate a Hutu from a Tutsi, and then as now there are many cases of false identifications

<sup>18</sup> Explanations for this physical difference have varied from the opinion that the Tutsi were a separate race of peoples who migrated into the area, to another belief that social selection of marriage partners and a different diet account for the differences in phenotype. Mamdani, When Victims Become Killers, 44-46.

cultural division also existed between Hutus and Tutsis, but this separation was permeable to social mobility.<sup>19</sup>

While those known as Tutsi generally held positions of power, this was by no means always the case as the Tutsi identity was always porous.<sup>20</sup> In order to preempt the creation of a Hutu counter elite it was possible, over generations, for wealthy Hutu to be Tutsified, a process known as *Kwihutura*. Conversely, a Tutsi who lost status (generally through the diminishing of power associated with a loss of cattle) would be *Gucupira* or ‘Hutufied.’<sup>21</sup> Although the numbers of Rwandans who underwent these processes are estimated as statistically small, their occurrence was important in that it signified social fluidity within the state, in addition to a mobility between the two groups that erodes claims of concrete ethnic distinctions. Moreover, there was always in existence a large group known as petits- Tutsi who had not undergone *Gucupira* but who were nevertheless without cattle and thus indistinguishable from their Hutu peasant counterparts. The large presence of the petits-Tutsi serves to further obliterate claims of socio-economic distinctions between the two groups. Thus, ironically in light of colonial and modern history, high rates of intermarriage,<sup>22</sup> a common language as well as shared military and religious traditions have led ethnographers to agree that “Hutus and Tutsis cannot be called distinct ethnic groups.”<sup>23</sup>

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<sup>19</sup> Tutsis, since European observation, have accounted for 14-15% of the population, Hutu for 85%, and Twa (a pygmy people native throughout the area) for 1%.

<sup>20</sup> Each district, or hill, in Rwanda had three chiefs, one for taxation, one for the military and one for pastoral matters. Often one of these three chiefs was Hutu. For a further elaboration on the pre-colonial Rwandan administration see Prunier, *The Rwanda Crisis*, 10-15. Mamdani posits that first and foremost Hutu and Tutsi were identities of power. Mamdani, *When Victims Become Killers*, 75.

<sup>21</sup> Mamdani, *When Victims Become Killers*, 70. For a more in depth understanding of these processes, as well as the changing nature of clientship (umuheto/ubuhake) within Rwandan society see Catherine Newbury, “The Cohesion of Oppression: Clientship and Ethnicity in Rwanda, 1860-1960,” *American Historical Review*, 95 (October 1990): 1264.

<sup>22</sup> There are no exact statistics, but it is believed that the rates of intermarriage between Hutu and Tutsi were high. As Rwanda was a patriarchal society, the offspring of such marriages took on the identity of their father. Mamdani, *When Victims Become Killers*, 53

<sup>23</sup> Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories From Rwanda*. (New York: Farrer, Straus and Giroux, 1998), 48.

During the regime of mwami Rwabugiri (1860-1895) the political and social climate within Rwanda did begin to change somewhat, due to Rwabugiri's program of centralization of power. The result was a "degrading" of the Hutu political and social position.<sup>24</sup> Most significantly, Rwabugiri imposed *uburetwa*, or a corvee of manual labor on only the Hutu populace. This act began to socially polarize the difference between Hutu and petits-Tutsi, and provided a platform for later Belgian expansion of Tutsi privilege. However, before colonization this development was offset by countertendencies within the military and administrative systems.<sup>25</sup> The arrival of German colonizers to the area, around the year 1898, coincided with the death of Rwabugiri and a subsequent civil war over the issue of succession. This war did not pit Hutu against Tutsi. In fact, before the advent of colonialism there is no record of in state violence between these two groups.<sup>26</sup> Rather, the fight over succession was more of a "center-periphery" affair in which Tutsi's excluded from power, and those Hutu newly subjected to it, allied to oppose the small group of empowered Tutsi elite.<sup>27</sup> It was into this context of division and warfare that the Germans first entered Rwandan history. They helped the elite Tutsi to purge their ranks of dissenting voices, and in return received material and administrative support in subduing the nation.

## 2) COLONIALISM

"It is impossible to link the notion of Hamite...with the slightest historical, geographic, linguistic or ethnic reality...all the experts agree that this term has no serious content, and yet not one of them fails to use it as a kind of master-key to explain the slightest evidence of civilization in Black Africa." Cheikh Anta Diop.<sup>28</sup>

As seen, Hutu and Tutsi were categories of persons related to changing configurations of political power. The most radical change in Rwandan power structures occurred with German, and later Belgian, Colonial rule which began in 1898 and transformed Rwandan identities in accordance

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<sup>24</sup> Mamdani, *When Victims Become Killers*, 64. Another example of change was the switch in land tenure from the right of a lineage over the land it had cleared (*ubukande*); to a priority of political land grants given from the *mwami* (*igikingi*). In order to receive *igikingi* one had to be Tutsified, which was possible only for the Hutu middle class. Prunier, *The Rwanda Crisis*, 22.

<sup>25</sup> The army included all social groups, and in fact many *mwamis* and generals favored Hutu fighters over their Tutsi counterparts. Mamdani, *When Victims Become Killers*, 66.

<sup>26</sup> Prunier, *The Rwanda Crisis*, 39.

<sup>27</sup> The opposition alliance of Hutu and Tutsi was led by Tutsi Queen Muhumusa. For a full discussion on the succession crisis following the death of King Kigeli IV Rwabugiri see Prunier, *The Rwanda Crisis*, 23-25

<sup>28</sup> Cheikh Anta Diop, *The African Origin of Civilization* (Chicago: Lawrence Hill, 1974), 9.

with European notions of racial superiority.<sup>29</sup> European concepts of African race were anchored in the hamitic hypothesis; an idea which posited a superiority of races in which white men in black skin, or hamites, were seen as the cause for all evidence of civilization on the African continent.<sup>30</sup> Anything of value in Africa, from iron working to monotheism, was thus declared to be the work of non-indigenous hamitic conquerors.<sup>31</sup> In Rwanda the Belgian colonial leaders employed the hamitic hypothesis to explain the complex civilization they found, as well as to facilitate their subjugation of the county through the creation of a Tutsi subject race.<sup>32</sup> It was because of this brutal racial categorization of Hutu and Tutsi that Rwandans began to perceive themselves as their Belgian colonizers did.<sup>33</sup>

European racist ideas on the differences between Hutu and Tutsi were reproduced within the Rwandan population through three main avenues; the Native Authority administration, education system, and the 1933 census which formalized irrecoverably each Rwandan's identity. Belgian rule in Rwanda was a "half-way house" between direct and indirect forms of governance; while one section of

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<sup>29</sup> The majority of the period under discussion took place under the rule of Belgium, who invaded the German colony in 1916 and then received formal sanction of rule by the League of Nations in 1919.

<sup>30</sup> The biblical basis for the hamitic hypothesis was found in the book of Genesis, chapter 5 in which Noah's son Ham looked upon his drunk, naked father, and in return his descendants were cursed. Later, the 6<sup>th</sup> century Babylonian Talmud asserted that Ham was black of face, and so the inferiority of the cursed Negro race came into existence. (Mamdani, When Victims Become Killers,80). With the discovery of great civilizations in black Africa Europeans remembered that only Ham's son Canaan's descendants were cursed, while his other son Mizraim's line remained uncursed. Mizraim's descendents became known as hamites, a migratory people who brought civilization to Canaan's Negro line, and were in turn corrupted by that race. For a more in depth explanation on the origin and uses of the hamitic hypothesis see Edith R. Sanders, "The Hamitic Hypothesis; Its Origin and Functions in Time Perspective," Journal of African History, x, 4, (1969), 521-532.

<sup>31</sup> There were many European explorers, intellectuals and politicians who ascribed to this theory. Perhaps most influential among these was John H. Speke who wrote that in all African areas with complex civilizations "the government is in the hands of foreigners, who had invaded and taken possession of them." John H. Speke, Journal of the Discovery of the Source of the Nile, (New York: Harper and Brothers Publishing, 1864), 247. Similarly, the renowned intellectual Hegel noted that the Negro was "capable of no development or culture." Hegel, The Philosophy of History, 98.

<sup>32</sup> "Subject races" is a term that applies to all 'races' that were privileged by colonial authorities in return for their complicity in managing the operations, and in oppressing, the other 'races' of the colony. (Mahmood Mamdani, interview notes on file with author.)

<sup>33</sup> The influence of European notions of superiority on a colonized people's conception of identity is not unique to Rwanda. According to Bernard Cohn, "not only have the colonial peoples begun to think of themselves in different

the population was subject to customary law, this law was not based on ethnicity.<sup>34</sup> Rather, all Hutu chiefs were removed from service due to their inferior status as an indigenous race.<sup>35</sup> In their stead Tutsi chiefs were appointed based upon their willingness to perform in the interests of the Belgian authorities in return for material incentives. These chiefs were answerable only to the Colonial administration, their worth dependent upon their ability to implement Belgian colonial law.<sup>36</sup> This omnipotent power increased with the 1936 introduction of Native Tribunals in which the Tutsi chief sat in ultimate judgment of his area as well as himself.<sup>37</sup> While only a few Tutsi were part of this new elite in Belgian favor, other colonial laws, particularly those concerning taxes and education, cemented perceptions of Tutsi and Hutu as alien and indigenous races in the minds of both groups.

Belgian colonial systems of education played a large role in indoctrinating Rwandans in European concepts of superiority. The education offered to the sons of Tutsi chiefs was qualitatively different than that given to Hutu children, and was steeped in racial explanations of Rwandan history and justifications of the current political order.<sup>38</sup> One example of educational segregation was the Groupe Scolaire d'Astrida, the top school for the Belgium colonies of Rwanda and Burundi, where there were no Hutu children enrolled up to the year 1945.<sup>39</sup> This was but one example of the ways in

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terms...but the way they think about their culture has changed as well.” Bernard Cohn, An Anthropologist Among The Historians and Other Essays, (New Delhi: Oxford University Press, 1987), 228.

<sup>34</sup> In many cases of Indirect rule the European powers elevated a ‘subject race’ that was responsible to civic/European law and which was involved in the administration of the colony, while local rule was determined by one’s ‘custom’ .i.e each tribe lived by its own laws. In Rwanda the Belgians recognized all those who were not Tutsi or Twa as Hutu, and they were subject to the law of not their own chiefs, but of the Tutsi chiefs placed in charge by Belgian authorities. (See Mamdani, When Victims Become Killers, 34).

<sup>35</sup> In 1959 43 of 45 Rwandan chiefs were Tutsi. Prunier, The Rwanda Crisis, 26.

<sup>36</sup> Additionally, the number of local or ‘hill’ chiefs was reduced from three to one which “deprive offered the chiefs “unfettered control” over the people. Rene Lemarchand, Rwanda and Burundi, (New York: Praeger, 1970), 119-120.

<sup>37</sup> Any Tutsi chief who dissented from Colonial rule was subject to death, or at the least, whipping in front of his subjects. There were nevertheless many Tutsi who fought against the Belgian administration and who were killed in the hundreds. (Mamdani, When Victims Become Killers, 91).

<sup>38</sup> The first European schools were opened in 1912 for the training of Tutsi children who were taught in French and groomed for administrative roles. When Hutu children did receive any education it was in Kiswahili. Mamdani evidences one occasion where a school was moved simply because there were too many Hutu in the area. See Mamdani, When Victims Become Killers, 89.

<sup>39</sup> Lemarchand, Rwanda and Burundi. (New York: Praeger Publishers, 1970), 138.

which elite Tutsi children were privileged, indoctrinated, and groomed for service in the Colonial administration.<sup>40</sup> In addition, under the Belgian administration, taxes increased exponentially depending on the ‘race’ of the family in question.<sup>41</sup> The increase of *Ubureetwa* was particularly divisive in that it socio-economically divided the Hutu from their previously indistinguishable peers the petits-Tutsi, who were exempt from such state ordered manual labor due to their alleged superiority of race.<sup>42</sup>

The racial divide between Hutu and Tutsi was cemented into popular perception in an enduring form with the commissioning of the 1933-1934 census.<sup>43</sup> In 1933 Belgian authorities decided that a more comprehensive system was needed to ensure that official decrees on racial matters (such as *ubureetwa*) were adequately followed. The census of 1933-1934 classified every Rwandan individual by their ‘race,’ and thereafter all individuals were required to carry I.D cards with their ‘race’ noted at all times.<sup>44</sup> Ironically, no one is sure by what criteria all of Rwanda was so classified, indicating an artificial nature of the categorizations.<sup>45</sup> It was nevertheless this arbitrary labeling that determined who was Hutu and who Tutsi in Rwanda from 1934 on. The census was the final stroke that sealed off traditionally mobile classifications.

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<sup>40</sup> Belgian rule also severely affected the nutritional health of Rwandans who were made to grow compulsory cash crops (such as coffee) which they were then forced to sell at Belgian prices. The subsequent loss of manpower due to the many state mandated obligations led to a series of famines, after which the government ordered the cultivation of ‘famine crops,’ such as manioc and tubers, which are protein deficient and left the population in a constant state of malnourishment. Mamdani, interview notes on file with author.

<sup>41</sup> Everything from the individual, to a minimum annual contribution to the state and the church was taxed. The local chiefs often added their own demands to the long list given by the Europeans.

<sup>42</sup> Prunier has estimated that 50-60% of an adult Rwandan Hutu’s time in Rwanda was spent on *ubureetwa* in such endeavors as the building and maintaining of roads, buildings, anti-erosion terraces etc. If one did not work severe beatings commenced. Prunier, *The Rwanda Crisis*, 35.

<sup>43</sup> The census came on the heels of the Belgian Reforms of 1926-1931, or les Re-formes Voison after the Belgium Governor Charles Voisen, which formed and implemented the administrative, tax, educational and agricultural reforms.

<sup>44</sup> Mamdani, *When Victims Become Killers*, 98. The legal necessity of the I.D card continued until after the 1994 genocide, and was a key method by which Tutsis were identified for slaughter during the genocide itself.

<sup>45</sup> There is an ongoing debate as to what methods the colonial administrators use to classify their subjects; Mamdani suggests that it was a combination of one’s phenotype, number of cows owned, and church records. Mmdani, interview, notes on file with author.

### 3) Aftermath

“In Rwanda, by 1940, the myth had become reality. Tutsi and Hutu conformed to the images which had been forcefully projected upon them...Tutsi even those who wore rags-had become haughty lords-and the Hutu mass felt-and was-oppressed.”<sup>46</sup>

The effects of Belgian colonial philosophies and politics of rule on the perceptions of Rwandans in the aftermath of colonization was enduring. The average Tutsi, due to a system of separate laws and privileges, viewed himself the ancestor of Egyptian kings-a settler who brought civilization to the area. The Hutu, due to a half century of extortion by Europeans and their Tutsis ‘agents,’ saw himself as the only true native of Rwanda. Subsequently, independence initiated the era of Hutu consciousness, or Hutu Power, in which the Hutu ‘race’ took its natural inheritance as the indigenous rulers of Rwanda. The 1959 revolution thus “repudiated only the consequences of colonial rule, but not the native/settler dynamic that was its institutional premise.”<sup>47</sup> Punctuated by three extensive massacres of Tutsi, usually following exiled Tutsi attempts to regain power, the First (1962-1972) and Second (1973-1994) Rwandan Republics are widely held as racist dictatorial regimes which, presciently for the question of redress in the aftermath of violence, provided impunity for crimes committed against Tutsi.<sup>48</sup> Postcolonial events therefore increased the antagonism between the two groups as the historical memory of colonialism thrived, retold from generation to generation and solidifying itself in each groups’ conception of its own identity and of the other. The violence that engulfed Rwanda in the Spring of 1994 was thus not the result of ancient tribal anger, but rather of racial divisions and hate placed in Rwandan minds by Belgian colonization.<sup>49</sup> Rwanda before Belgian colonialism was not devoid of violence, but colonialism re-defined and amplified that violence as based solely on ethnicity. The “profound racism” instilled in the country by colonialism and cemented by years of state dialogue, was responsible for the ideological underpinnings of communal ethnic cleansing in Rwanda.<sup>50</sup> Thus, it is believed that in the aftermath of violence, removing the presence of

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<sup>46</sup> Prunier, *The Rwanda Crisis*, 347.

<sup>47</sup> Mamdani, *When Victims Become Killers*, 36.

<sup>48</sup> While both Republics were ruled by small corrupted elites, there is some argument that the Second Regime, under General Habyarimana, attempted to convert the racialized difference between Hutu and Tutsi into a more benign ethnic difference. For this debate see Prunier, *The Rwanda Crisis*; Mamdani *When Victims Become Killers*; Uvin *Aiding Violence* and Lemarchard, *Rwanda and Burundi*.

<sup>49</sup> At the start of the genocide, and even well after, the press, including the International Red Cross, often referred to events in Rwanda as “tribal violence.” See *The Washington Post*, 22 April 1994, pA1. Even in 2004 some in the international media still referred to Hutu and Tutsi as “tribes.” See *Women’s Feature Service*, April 26, 2004.

<sup>50</sup> Uvin, *Aiding Violence*, 138-139.

a malevolent and manipulative government is not enough; the psychological makeup of society must somehow be affected in order to completely remove the cancers that infected the state with communal violence.<sup>51</sup> The pernicious existence of ethnic racial identities in the aftermath of genocide, and in the face of efforts to address and eliminate the causes of genocide, is the subject of part II.

### Chapter III)

#### 1) Reconciliation and Justice: Theories

“Without forgiveness, there is no future.” Archbishop Desmond Tutu.

This section presents a brief debate over the two main avenues of justice that were pursued in Rwanda; punitive and restorative justice. The following is not meant to evaluate the efficacy of different methods of justice and reconciliation. Rather, what are described are the positive and negative attributes of each technique in order to provide a background to those procedures used by the Rwandan government and described in Part II. It is important to remember that Rwanda is somewhat of a unique circumstance in the history of genocide and thus in the history of reconciliation as well, due to the fact that a majority of citizens were implicated in crimes against humanity and that victims and perpetrators were forced to live in the same small communities following the violence. Thus, the brief comparison with the pursuit of justice in South Africa that comes at the end of this chapter highlights the dangers of generalizing successes across contexts, as well as the peculiarities of the Rwandan case.

The attempts to reconcile sectors of society cleaved apart by ethnic strife are as varied as the events themselves. Reconciliation has been described as the willingness of all members of society to engage in a non-violent, shared, future.<sup>52</sup> There is no exact formula for how to heal societies rent by

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<sup>51</sup> One often unexplored aspect of communal violence is the presence of structures of violence within society. For an elaboration on this distal cause of genocide see Peter Uvin, Aiding Violence: the Development Enterprise in Rwanda, (West Hartford: Kumarian Press, 1998); and David Newbury, “Ecology and the Politics of Genocide: Rwanda 1994,” Cultural Survival Quarterly, 22, (January, 1999) 32-38.

<sup>52</sup> “At the core of any reconciliation process is the preparedness of people to anticipate a shared future.” Andrew Rigby, Justice and Reconciliation: After the Violence, (Boulder: Lynne Rienner Publishers, Inc., 2001), 12.

civil conflict, however, it is generally acknowledged that for a nation to be politically stable and viable in the aftermath of genocide what is needed is “some degree...of truth, mercy, justice and peace” as well as a fifth often ignored variable; time.<sup>53</sup> A last part of this equation is what some have called forgiveness, or in other words a “surrendering [of] the right to get even.”<sup>54</sup> No matter the vocabulary used to describe ‘reconciliation,’ it is apparent that in the wake of crimes against humanity the past must be in some way publicly addressed. The two major legal methods of confronting the past and achieving justice reflect different conclusions about the nature of forgiveness.<sup>55</sup> They both employ similar conceptual bases; the acknowledgement<sup>56</sup> of past wrongs and the ending of impunity as crucial factors in the achievement of both reconciliation and justice.<sup>57</sup>

## 2) Punitive Justice

The first legal means used to address the crime of genocide was that of the courtroom trial, which made its first appearance in the Nuremburg trials of Nazi war criminals. Since that time trials and the punishment of perpetrators has been a common tool of ‘justice’. Trials of genocide perpetrators serve to end impunity for crimes by penalizing the perpetrators, as well as contributing to a legal record of the events in question, which in turn forces public acknowledgment of wrongdoing.<sup>58</sup> Additionally, it is held by some that trials can serve an important function by “relieving the sentiment

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<sup>53</sup>Rigby, Justice and Reconciliation, 13. This is the element most missing from my study of the evolution of colonial political identities in the aftermath of genocide in Rwanda.

<sup>54</sup>Lewis B. Smedes in Michael Henderson, Forgiveness: Breaking the Chain of Hate, (Portland: America Publishing, Inc, 1999), 2.

<sup>55</sup> These methods are described as “legal devices” because they are generally devised within either national or international law. This itself is significant as the law is necessarily the domain of politics. Many of these social devices are thus often viewed by the public as being the retributive tools of a ‘victor,’ a fact that often deters the methods effectiveness in reconciling segments of society,

<sup>56</sup> In the words of murdered South African Steve Biko’s mother “Yes, I would forgive my son’s killers...But first I must know who to forgive, which means I must be told fully what happened and why.” Henderson, Forgiveness, 50.

<sup>57</sup> The “ending of a culture of impunity...is crucial in providing a sense of security and confidence.” This is particularly true in the case of Rwanda in which violence against Tutsis had perpetually gone unpunished in the decades and years prior to the outbreak of 1994’s genocide. Trudy Glover, Taking Wrongs Seriously: Acknowledgement, Reconciliation, and the Politics of Sustainable Peace (Amherst: Humanity Books, 2006), 15.

<sup>58</sup> Martha Minow, Breaking the Cycles of Hatred: Memory Law and Repair, (Princeton: Princeton University Press, 2002), 21.

of revenge” on the part of the victims.<sup>59</sup> However, it is doubtful that this can be the result in more than a handful of situations as victims often still seek revenge due to feelings of inadequate judgments.<sup>60</sup> Advocates of the trial method of dealing with genocide perpetrators, point out its merits in the context of the aftermath of the Holocaust and, more recently, events in the former Yugoslavia. In these contexts, the trial atmosphere served to individualize guilt, rather than collectivizing it upon the nation.<sup>61</sup> However, its usefulness in a situation where the majority of a population is culpable in genocide, is far from certain. Indeed, it will be shown that the attempt to impose punitive justice upon a large number of citizens in Rwanda led to the strengthening of ethnic divisiveness, rather than reconciliation. Even in cases where guilt can be individualized the trial may be unhelpful, and even a deterrent, to the reconciliation of parties. This is because punitive justice is often seen as the prerogative of the ‘victors’ in a larger context of war, and can provoke hostility within those deemed as ‘responsible’ for atrocities. Thus, “at best, criminal trials of some of the most conspicuous offenders provide a partial route toward diminishing resentment and increasing confidence...the legal story is not the story of reconciliation.”<sup>62</sup> .

### 3) Restorative Justice

The second method of justice is that of restorative justice; a method that “seeks to repair the relationship between the parties involved,” by encouraging repentance and forgiveness without imposing punishment on perpetrators.<sup>63</sup> This tool is most useful in situations where logistics prevent extensive trials, or where trials promote divisionism rather than reconciliation. The main legal means that have been devised to achieve restorative justice are Truth and Reconciliation Commissions (TRCs)

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<sup>59</sup> Glover, Taking Wrongs Seriously, 15

<sup>60</sup> According to Trudy Glover “it is highly implausible to suppose that simply by imposing hard treatment on selected parties we will succeed in building a positive relationship.” Glover, Taking Wrongs Seriously, 16

<sup>61</sup> In the words of a Bosnian Serb “it is important that the Serbs know who is a war criminal and who isn’t...otherwise the world will think it is all of us.” Minow, Breaking the Cycles, 21.

<sup>62</sup> Trudy Glover, Taking Wrongs Seriously, 151.

as well as more traditional forms of community justice. Both forums tend to employ forms of amnesty in return for a full admission of an individuals' culpability. Although this method has been criticized by human rights advocates for its use of 'immunity' in return for admissions of guilt, in situations where it is impractical to punish all of those involved, or where the possibility of punishment is met with threats of violence, restorative justice may be the only avenue by which to promote justice and reconciliation.<sup>64</sup> Additionally, restorative justice is often the most practical vehicle by which an accurate narrative of past atrocities can be publicly agreed upon. In Rwanda the answer to a failure of punitive justice was the implementation of Gacaca-a legal institution that combines the idea of the (TRC) within a traditional form of justice.

*a.) South Africa; A Successful Case of TRC*

South Africa has been a symbol to the world of how a society can transition peacefully from a period of enmity, torture and murder, to peace. The image of victim and torturer embracing on the floor of the TRC has left an indelible picture of what has been dubbed the South African 'miracle.' For Desmond Tutu, the 'miracle' was due to the fact that South Africans were ready to forgive.<sup>65</sup> However, in South Africa, it was not forgiveness alone that accounted for the outbreak of relative peace and prosperity, but rather a political context that allowed such impulses to be nourished. For Michael Henderson the "carefully crafted political compromises and imaginative leadership shown by people of all races" were elements of the 'miracle' as important as the work of the TRC.<sup>66</sup> As will be shown, there was no such political compromise at work in Rwanda, but rather its opposite as politics again became the domain of an exclusive group of an ethnically characterized elite. The South African TRC

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<sup>63</sup> Maria Ericson, Reconciliation and the Search for a Shared Moral Landscape: An Exploration Based Upon a Study of Northern Ireland and South Africa, (Frankfurt: Peter Lang GmbH, 2001), 25.

<sup>64</sup> Maria Ericson, Reconciliation and the Search for a Shared Moral Landscape, 25.

<sup>65</sup> Desmond Tutu: "Had Mandela...and...others not been willing to forgive, we would not have even reached first base." From Michael Henderson, Forgiveness: Breaking the Chain of Hate, (Portland: America Publishing, Inc, 1999), 42.

<sup>66</sup> Henderson, Forgiveness, 42.

was also lauded for its acknowledgment of all suffering, both white and black. Again, the Rwandan case departs from the South African ‘miracle’ in this respect, as both trials and community type TRC’s only heard cases of Hutu abuses, rather than a more inclusive acknowledgment of the many Tutsi violations.<sup>67</sup> Lastly, it is important not to overestimate the effectiveness of truth commissions in the area of reconciliation. Even in the case of South Africa the TRC was not itself enough for national reconciliation, it rather provided “avenues” to reach toward such a lofty goal by “correcting the national narrative and memory,” a necessary, but not sufficient, condition of reconciliation.<sup>68</sup>

## Part II

“It’s materially impossible to judge all those who participated in the massacres, and politically it’s no good, even though it’s just. This was a true genocide, and the only correct response is true justice. But Rwanda has the death penalty, and-well, that would mean a lot more killing.”-An RPF Officer.<sup>69</sup>

“Unity, transparency and the fight against ignorance.”<sup>70</sup>

One of the causes of the Rwandan genocide has been ascribed to the belligerency of the Rwandan Patriotic Front (RPF) which first invaded Rwanda from Uganda in 1990. Made up largely of Rwandan Tutsis living in exile in Uganda, the RPF invaded in order to secure the right of return for Rwandan Tutsis living in the Tutsi Diaspora abroad, as well as to bring an end to the corrupt Habyarimana regime of the Second Republic.<sup>71</sup> The presence of this army, combined with Hutu extremist propaganda, convinced many Rwandan Hutu that there was an imminent threat of a return to Tutsi supremacy and so Hutu subjugation of the type witnessed during colonialism. When the

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<sup>67</sup> In Rwanda Tutsi human rights violators in the Army and police were summarily sentenced by Court Marshall’s. See chapter V2 for an analysis of this decision.

<sup>68</sup> Minow, Breaking the Cycles of Hatred, 26.

<sup>69</sup> From Phillip Gourevitch, We Wish to Inform You that Tomorrow We Will Be Killed With Our Families: Stories From Rwanda. (New York: Farar, Straus and Giroux, 1998),249.

<sup>70</sup> According to the Rwandan Government of National Unity, formed after the genocide, the sun on the new Rwandan flag symbolizes this statement. The New York Times, 1/1/2002, 10.

<sup>71</sup> The Tutsi Diaspora refers to those Tutsi who fled the area following the independence movements and subsequent massacres. See Mamdani, When Victims Become Killers, for a counterargument on the intentions of the RPF invasion. For information regarding the corruption of the second republic see Jay Arthur Klinghoffer, The International Dimension of Genocide in Rwanda. (New York: New York University Press, 1998).

President's plane was shot down on April 4, 1994, the organized extermination of Tutsis began, to be stopped only with the victory of the RPF. The scale and speed of the Rwandan genocide were unprecedented both in terms of the percentages of the community directly involved in the violence as well as the numbers of victims.<sup>72</sup> In addition, the Rwandan genocide was set apart from its contemporaries by the primary technology of death; the machete. Unlike other methods of execution, such as a gun or even a gas chamber, the machete requires a brute force, and so a personal intimacy with death, that is significantly different in terms of the violence inflicted not only upon the victim, but also upon the arbiter of murder. With hundreds of thousands of people implicated in the murder of their fellow citizens, a government with no infrastructure, money or functioning judiciary, and a refugee population infused with hostile genocidaires, the future of the Rwandan nation was very much in question at the end of 1994.<sup>73</sup> Slowly the RPF, headed by its Tutsi general Paul Kagame, began to rebuild the nation and the government, and attempted to bring justice and reconciliation to the nation. However, the makeup up and actions of the new government resulted in just the opposite; the promotion of traditional ethnic hatred.

## Chapter IV

### 1) Composition of the Government of National Unity

"We are convinced that if the current state of affairs continues, the Hutus will prepare for war and in 15 or 20 years they will have driven out the Tutsis with all the foreseeable consequences...mechanisms need to be set up so that each community can genuinely participate in the government, until we have forged a national identity that transcend Hutu-Tutsi divisions...The war of 1990 is not over."<sup>74</sup> Words of former President Pasteur Bizimungu..

In the aftermath of genocide perceptions of ethnic identity and antagonisms were quickly identified by Rwandan leaders as having been a root cause of the genocide. In an attempt to eradicate this ethnicity from Rwandan life, and so secure a peaceful future for the nation, the new government

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<sup>72</sup> Various estimates place the casualties of the Rwandan genocide somewhere between 600,000 and one million people. These numbers include the number of Tutsi and Hutu who died

<sup>73</sup> Genocidaires is the terms used for all those who took part in the 1994 Rwandan genocide.

outlawed any public mention of the terms “Hutu” and “Tutsi.”<sup>75</sup> Ironically however, the underlying mechanism by which the Rwandan government operated remained one of ethnic elitism, which undercut its effort to erase ethnicity from Rwandan perceptions of self and community. Although the RPF was not exclusively Tutsi, it was nonetheless comprised in the majority of Tutsi ex-patriots living in Uganda. While the RPF did bring representatives from four other opposition parties to form the Government of National Unity of Rwanda in August 1995, and although the posts of the Presidency and Prime Ministries were given to Hutus;<sup>76</sup> the new government was nevertheless immediately branded as an ‘illegal regime’ by the majority of Rwandan Hutus.<sup>77</sup> This development was in no small part due to the powerful figure of Paul Kagame, an ethnic Tutsi and the head of the RPF who assumed the twin posts of Vice President and Defense Minister. Symbolically for many, Kagame was the only minister at the Presidential Inauguration not to swear allegiance to the Hutu President, thus creating questions as to who was in actual control of the new government.<sup>78</sup> The image of a Tutsi dominated National Government was furthered still by the fact that those cabinet posts given to Hutus were in many cases “symbolic,” and in almost all cases where a Hutu was in power the deputy minister or cabinet director of the same ministry would be a “handpicked member of the RPF”.<sup>79</sup> It thus appeared, even from the beginning, that Paul Kagame’s promise to “build a multiparty democracy in which

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<sup>74</sup> Colin Waugh, Paul Kagame and Rwanda: Power, Genocide and the Rwandan Patriotic Front, (Jefferson: McFarland & Company, Inc., Publishers, 2004), 155.

<sup>75</sup> To this end it became illegal to publicly utter the words “Hutu” and “Tutsi” under a law known as “divisionism” further described below. Additionally, ethnicity was removed from all schoolbooks and government identification cards and “re-education camps” were set up to inform the population that ethnicity no longer existed in Rwanda. The New York Times, 4/9/2004, 3.

<sup>76</sup> Pasteur Bizimunu, an ethnic Hutu from the RPF became President, while the post of Hutu was given to Twagiramungo a Hutu of the Republican Democratic Movement (MDR), a political party from before the genocide.

<sup>77</sup> State Department, Country Report on Human Rights: Rwanda, 1995.

<sup>78</sup> The new constitution was based on the Rwandan Constitution of 1991, the Arusha Accords of 1993, the RPF declaration of August 1994 and the Interparty Accords of 1994. State Department, Country Report on Human Rights: Rwanda, 1995; Waugh, Paul Kagame and the RPF, 152.

<sup>79</sup> See Waugh, Paul Kagame and the RPF, 121. According to Allison DeForges, senior adviser to Human Rights Watch, and researcher on Rwanda, “The Tutsi occupy the most important positions in the army and in the civil administration - the ones with the real power. And they are the greatest beneficiaries of the important posts in the economy.” BBC Monitoring, 7 April 2004 <http://news.bbc.co.uk/2/hi/africa/3557565.stm>

ethnic origin is no longer an issue” was to go unfulfilled.<sup>80</sup> Hutu sensitivity to the makeup of the new Government was exemplified in the reaction to the dismissal of the Hutu Prime Minister Twagiramungo.<sup>81</sup> Despite the fact that the post of Prime Minister was quickly filled by Pierre Rwigema, a Hutu, the departure of such a high level Hutu leader nevertheless sowed new terror among Hutu refugees who then refused to return to Rwanda.<sup>82</sup>

Events that occurred subsequently in 2000 seemed to confirm Hutu suspicions that the Rwandan government was indeed an ethnically polarized institution. In early March of that year a key aid to Hutu President Bizimungu was ominously shot and killed in front of her house. Three weeks later the President tendered his resignation, and one year later was under house arrest.<sup>83</sup> Bizimungu was later sentenced to 15 year imprisonment for embezzlement on evidence that Human Rights groups have since questioned.<sup>84</sup> Similarly, during that year the Hutu Prime Minister Rwigema resigned, and by 2001 was living in exile.<sup>85</sup> During this time period several political parties were also outlawed. The reason given by the government for its imprisonment of certain political leaders, as well as its prohibition of some political parties, was that these parties and people promoted ‘divisionism’-or ethnic tension. Many Rwandans took issue with the frequency with which allegations of ‘divisionism’ were used. “In this country when one wants to abuse someone, they always bring up the topic of divisionism,” former Prime Minister Twagiramungo noted, he then wondered why the word was never

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<sup>80</sup> The New York Times, 7 September 1994, A10.

<sup>81</sup> Twagiramungo claimed that he had resigned, but the Government of National Unity maintained that he had been dismissed.

<sup>82</sup> The New York Times, 1 September 1995, A6. For more on Refugees see chapter VI.

<sup>83</sup> Bizimungu’s resignation was eighth in a string of prominent Hutu political resignations. Christian Science Monitor, 3/27/2000, 7.

<sup>84</sup> The Financial Times, 5 December 2006, 5. He was released in 2007.

<sup>85</sup> State Department Human Rights Country Report: Rwanda, 2000; Waugh, Paul Kagame and the RPF, 149. In addition the Hutu Interior Minister Seth Sendashonga went into exile in Nairobi where he was later assassinated. Members of other oppositional parties have also been harassed or imprisoned. State Department, Country Report on Human Rights: Rwanda, 1998.

applied to the RPF.<sup>86</sup> It is apparent that many of those parties deemed illegal for their ‘divisionism,’ were created for the purpose of uniting Hutu and Tutsis, and that in so banning their existence the government was actually promoting divisionism.<sup>87</sup>

Ominously, after President Bizimungu’s resignation, Paul Kagame quickly assumed the position of President of Rwanda. Kagame’s decision not to appoint a Vice President appeared reminiscent to many Rwandans of the military dictatorships they had experienced in the past.<sup>88</sup> This led one prominent politician to note “our leaders, even when we choose them to lead us, start to impose their will on us. Thus, a president of the republic slowly changed into a king.”<sup>89</sup> This sentiment of distrust was not the purview of Rwandan politicians alone; a U.S State Department report also alleged corruption as certain key Rwandan leaders were “forced from office due to a political party power struggle.”<sup>90</sup> Additionally, the reach of government in every aspect of Rwandan life, and in particular the judiciary, was extremely troubling to many Rwandans. According to one senior Justice official there were often times that “the office of a very senior official...tells us what to do. The judicial system is therefore not independent...” This type of government interference played into the hands of some detainees who sought to portray the genocide trials as a persecution of the Hutu community.<sup>91</sup> (See Chapter VI, 4a) Similarly, the 2003 national elections occurred under claims of “harassment and

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<sup>86</sup> From BBC Monitoring, 22 August 2003, <http://news.bbc.co.uk/2/hi/africa/3174031.stm>

<sup>87</sup> One such example was ex-President Bizimungu’s Democratic Renewal Party (PDR)/Ubuyanja (Rebirth), which was outlawed shortly before his arrest and incarceration for ‘divisionism.’

<sup>88</sup> Kagame did name a new Minister of Defense; Colonel Emmanuel Bernard Mauza. State Department, Country Report on Human Rights: Rwanda, 2000. It should be noted that many Rwandan Tutsi were not happy with the evolution of the Rwandan government, as most posts and privileges were given to Ugandan Tutsi émigrés.

<sup>89</sup> Former Presidential Candidate Nayinzira. Quoted in BBC Monitoring, 7 April 2004, <http://news.bbc.co.uk/2/hi/africa/3557565.stm>.

<sup>90</sup> This quote referenced the targeting of a prominent opposition spokesman of a Tutsi survivor group, and Speaker of the National Assembly, Joseph Sebarenzi, who subsequently fled to the United States. U.S State Department, Country Report on Human Rights, 2000.

<sup>91</sup> African Rights, Confessing to Genocide, 48. The Rwandan judiciary also experienced problems of “corruption, mostly of bribery of officials, ranging from clerks to judges.” State Department, Country Report on Human Rights, 1998. The government attempted to fight such corruption in 1999 by forming a 12 member Anti-Corruption Commission. State Department, Country Report on Human Rights, 1999.

intimidation of opposition candidates.”<sup>92</sup> Reportedly, supporters of Kagame’s main challenger Faustin Twagirimungu were imprisoned along with members of the media.<sup>93</sup> As has been illustrated, the cases in which reconciliation seems to work best are in the presence of a political compromise, and in the case of ethnic warfare, a power-sharing agreement.<sup>94</sup> This has clearly not been the case in Rwanda where claims of ethnic divisionism have served to eliminate any opponents of an increasingly polarized ethnic elite. Kagame’s pledge that ethnicity would “no longer be used to infringe on somebody’s rights” was thus tragically revealed as without substance.<sup>95</sup>

## 2) RPF Reprisals

“Victims of RPA operations included elderly persons, women, and children, as well s insurgents and suspected collaborators.”<sup>96</sup>

In addition to the makeup of the Government of National Unity, other government acts also served to cement perceptions of ethnic dissention within the population. Throughout the time period under discussion there occurred cross-border raids carried out by Hutu extremists from refugee camps located in Zaire(see chapter VII).<sup>97</sup> Predictably, the RPA and Rwandan Government’s reaction to the presence of rebel insurgents in refugee camps was one of anger and, eventually, violent action.<sup>98</sup> The RPF response, in particular to guerilla attacks against civilians within Rwanda, was to go after the rebels within the villages and camps where they hid. However, as the insurgents often hid among

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<sup>92</sup> Financial Times, 5 December, 1999, 5

<sup>93</sup> The Financial Times, 5 December 2006, 5.

<sup>94</sup> In order to secure peace, “ultimately Rwanda must develop a new power-sharing arrangement.” Drumble, “Rule of Law Amid Lawlessness,” 636. See section on South Africa in IIIa.

<sup>95</sup> Kagame quoted in The New York Times, 7 September 1994, A10.

<sup>96</sup> State Department, Country Report on Human Rights, 1998

<sup>97</sup> Zaire is now the Democratic Republic of the Congo (DRC).

<sup>98</sup> The RPA (Revolutionary Patriotic Army) was the fighting arm of the RPF, and in the ten years following the genocide remained the primary force of the Rwandan army.

civilians, the casualties of RPA attacks increasingly included women and children.<sup>99</sup> The result was a spiraling increase of ethnic tension and violence in which the RPF often killed hundreds, and in some years, thousands of civilians. This prompted Hutu leaders and civilians to allege that the Government was committing genocide against Hutus.<sup>100</sup> Although the RPF admitted to this, it went on to explain that its’ “troops cannot distinguish between insurgents wearing civilian clothing and bi-standers.”<sup>101</sup> Even though the RPF did censure and punish some of those soldiers whose conduct was considered undisciplined, the fact that these men were not tried under the same system as Hutu prisoners greatly contributed to a popular perception of an anti-Hutu, pro-Tutsi judicial system, and so enhanced feelings of traditional ethnic hatred.(See chapter 6a).<sup>102</sup>

### 3) Tutsi Returnees; a Question of Land

“We’ve been out of the our country for so many years that when our boys won, we had to return... This place was abandoned and the doors were open, so we decided to occupy.” –Ms. Mbabazi<sup>103</sup>

The 1994 genocide and RPF victory in August of 1994 created twin refugee crisis, the first, that of Rwandan Hutus is described briefly in chapter VII. The second refugee crisis that followed the events of the spring of 1994 was the influx of external Tutsis into Rwanda following the victory of the RPF. According to the U.S state department, in 1994 “as many as 400,000 to 600,000” Rwandan Tutsi returned following their exile during the massacres in the 1950s and 60s.<sup>104</sup> This occurrence further

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<sup>99</sup>Perhaps the most notable example of such violence that found Hutu civilians in the crossfire was the RPA attempt to close an Internally Displaced Persons (IDP) camp at Kibeho, Rwanda. For more information see U.S State Department, Country Report on Human Rights, 1995.

<sup>100</sup> See Chapter VI 4a.

<sup>101</sup> State Department, Country Report on Human Rights, 1997. As the RPA gained the upper hand against insurgents after the summer of 1998 such extrajudicial killings dropped in number. State Department, Country Report on Human Rights; Rwanda, 1998.

<sup>102</sup> Particularly after the seizure of Kigali, RPA soldiers and Tutsi civilians did commit random revenge killings, lootings and destruction of (primarily Hutu) property. State Department, Country Report on Human Rights 1994. An example of the type of judgment that RPA soldiers faced was the court martial of 700 RPA soldiers after their summary executions of 17 civilians following an ambush. State Department, Country Report on Human Rights, 1995.

<sup>103</sup> The New York Times, 24 September 1994, 3.

<sup>104</sup> State Department, Country Report on Human Rights; Rwanda, 1994.

complicated matters in that it created animosity between Tutsi nationalities, added to Rwanda's already heavy population burden, and most presciently seized land belonging to Hutu refugees.<sup>105</sup> Land disputes between returning Hutu refugees and Tutsi emegres plagued the government and people for the entirety of the decade following genocide.<sup>106</sup> Subsequently, many prisoners claimed that they were imprisoned simply because their homes had been taken over by Tutsi returnees. The Chief Prosecutor for Kigali, Francois Nsanzuwera, stated that a substantial number of prisoners were innocent and were in prison because people were settling personal scores or looking for material gain. However, as he did not have the means to carry out so many investigations there was no way for him to ascertain the guilt or innocence of so many people.<sup>107</sup> (See Chapter VI, 1) Although the Rwandan government continually and publicly stated that Hutu refugees were free to return, its refusal to make good on its pledge to evict squatters further complicated its image among Rwandan Hutu.<sup>108</sup> In conclusion, the Government's welcoming of so many exiled Tutsi, many of whom had been out of the country for over 40 years, may have contributed to the original Colonial myth of the alien, Hamitic, Tutsi people, who allegedly stole Rwandan land and subjugated the Hutu people.

## Chapter V) The Pursuit of Justice; Rwanda

He who opts for revenge must first dig two graves.-Chinese Proverb<sup>109</sup>

This chapter seeks to examine the interaction between government and judicial mediums and the strength of colonial legacies of ethnic identities in Rwanda. The Government of Rwanda prioritized two goals in an effort to repair Rwandan society in the aftermath of civil war and genocide.

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<sup>105</sup> Much of the literature on the Rwandan genocide cites high population densities as a cause of the violence. In particular see Newbury, Ecology and the Politics of Genocide.

<sup>106</sup> Eventually, almost all of the over two million Hutu refugees would return to Rwanda. As many returned at once following the wars in the DRC (described in chapter VIII) they presented the nation with a dire humanitarian problem, as well as adding numbers to the already overpopulated prisons. State Department, Country Reports on Human Rights, 1994-2000.

<sup>107</sup> The New York Times, 1 January 1995, A10.

<sup>108</sup> State Department, Country Report on Human Rights, 1994.

<sup>109</sup> In Henderson, Breaking the Chain of Hate, 4.

The first was one of reconciliation and integration; a process it was hoped that would erase ethnic identifications from Rwandan politics and society.<sup>110</sup> The second, related goal, was the ending of the impunity by which Hutu had killed Tutsis over the last century through a pursuit of punitive justice. The case for ethnic understanding was, however, damaged by the very technique that was intended to further reconciliation: the pursuit of justice. In choosing a path of punitive justice by which all of those involved in genocide were to be tried and punished, the government of Rwanda presented itself with a monumental problem, one that it did not have the resources to resolve. Although justice was ostensibly pursued in order to achieve the goals of rehabilitation, protection, deterrence and punishment, in practice reconciliation and restitution were sidelined in favor of the goal of justice through punishment.<sup>111</sup> In the words of then Rwandan Prime Minister Twagiramungu; “our policy is to integrate. But if people think we’re going to integrate people who massacred they are wrong. They must go another way toward justice.”<sup>112</sup> Moreover, as the categories of victim and killer were linked to the ethnicity of the individual, the trials of suspected genocidaires were unavoidably dependent on the very groupings that the government was attempting to eliminate. The government’s choice of inclusive punitive justice thus worked in practice against its stated purpose of reconciliation, deepening the fissures of ethnicity in Rwandan society, and in effect forestalling the creation of a national consensus on Rwandan history.

#### 1) Pursuit of Punitive Justice; The Organic Law

“You cannot try two million people unless you are insane. Why doesn’t the government in Kigali try its own troops for the crimes committed against us?” –Jean Nzebahimana<sup>113</sup>

In August of 1996 the Rwandan government enacted special legislation to try suspected perpetrators of genocide.<sup>114</sup> The Organic Law on the Organization of Prosecutions for Offenses Constituting the Crime of Genocide or Crimes Against Humanity enumerated who and what crimes

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<sup>110</sup> State Department, Country Report on Human Rights, 1994.

<sup>111</sup> Commentaries on Organic Law. See Mark Drumble, “Rule of Law Amid Lawlessness; Counseling the Accused in Rwanda’s Domestic Genocide Trials,” Columbia University Human Rights Law Review. (1997-1998: 544-639), 626.

<sup>112</sup> The New York Times, 3 August 1994, A1.

were to be tried in the Rwandan judiciary.<sup>115</sup> The Organic Law divided perpetrators into four categories with corresponding recommendations on punishment.<sup>116</sup> It also created a court structure to adjudicate the trials, in essence rebuilding the court system that had been destroyed by genocide and war. Ironically, although the Organic Law was meant to deliver justice to the victims of genocide, its very composition left the judicial system vulnerable to vast injustices against those whom it was meant to judge.

The Organic Law pigeonholed suspects into discrete categories that did not accurately reflect the nature of the genocide. In reality, many Rwandan prisoners did not easily fit into one group. Rather prisoners often had varying degrees of culpability that did not conform to the government's notion of justice. Most pronounced among these was the citizen who during the genocide both murdered and saved Tutsis, or the prisoner who, forced to choose between his life or the life of another, chose to kill in order to save himself.<sup>117</sup> Unfortunately, the Rwandan system presented no way to address the particularities of individual circumstances.

Another problem presented by the makeup of the Organic Law, and indeed by the scope of the situation itself, was one of logistics. According to the Organic Law the specialized chambers that were to hear genocide trials were to be staffed by "career" or "auxiliary" magistrates.<sup>118</sup> However, the Rwandan judiciary had been nearly destroyed by genocide and war in the summer of 1994. At the end

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<sup>113</sup> The New York Times, 15 July 1995, A1.

<sup>114</sup> State Department, Country Report on Human Rights: Rwanda, 1996.

<sup>115</sup> Hereafter, the Organic Law.

<sup>116</sup> The four categories of perpetrators are as follows: Category One-the "planners organizers, instigators, supervisors and leader of the crime of genocide or of a crime against humanity" whom, if convicted, can face punishments up to and including death. Category Two- 'perpetrators, conspirators or accomplices of intentional homicide or of serious assaults against the person causing death,' and includes a punishment up to and including life imprisonment. Category Three-perpetrators of "other serious assault against the person" which can include manslaughter and is punished according the judges' interpretation of the penal code. Category Four applied to those who "committed offenses against property," upon conviction a punishment of civil damages to be determined by the parties involved is incurred. From Rwanda's Organic Law as found in Drumble, "Rule of Law Amid Lawlessness," 581-582.

<sup>117</sup> One example is a man who hid his Tutsi neighbors, but "spent the days at the roadblocks [killing Tutsi]...in order to avoid casting suspicion on his home." Drumble, "Rule of Law Amid Lawlessness," 585 Foot Note 163.

<sup>118</sup> Organic Law, article 20. Found in Druble, "Rule of Law Amid Lawlessness," 594 FN 202.

of that year only 40 of 800 magistrates remained in Rwanda, the rest had either been murdered or had fled during the genocide.<sup>119</sup> Although new judges and prosecutors were quickly trained, according to one judge from Gitarama prefecture “the situation with training is alarming: judges get four months’ training, the IPJs get six months and the deputy public prosecutors get two months...”<sup>120</sup> Additionally, the judiciary was left with no material resources with which to try suspects, everything from a deficit of paper and pens to a lack of trained personnel impeded the search for justice.<sup>121</sup> In terms of the investigation of genocide crimes the collapse of the judicial system was second only to the collapse of the criminal investigation system. Thus, in order to investigate genocide the new government had to first completely rebuild its criminal and judicial systems. The former was given a boost by the National Government, in coordination with United Nations assistance, which recruited and trained civilian police (gendarmes) to provide internal security.<sup>122</sup> Despite this quick and often insufficient training given to investigators, judges and prosecutors, it still took the Rwandan judicial system two years to begin functioning on even a limited basis- by 1997 only 200 genocide cases had been completed.<sup>123</sup> However, this did not stop the police from arresting thousands of genocide suspects. The justice system had neither the holding facilities nor the manpower to try those arrested (see section 3). Lastly, the Organic Law did not apply to acts of vengeance committed by Tutsis after the RPF victory. This created a public image of an ethnically biased judiciary and government.

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<sup>119</sup> State Department, Country Report on Human Rights, 1994.

<sup>120</sup> Interview with Isidor Bihibindi, a judge in Gitarama, African Rights Confessing to Genocide Kigali, 2000. 46. An IPJ is a Judicial police inspector. In regards to the lack of trained defense lawyers Gerald Gahima, a high ranking justice official pointed out that even before the genocide took place few people retained defense lawyers in criminal trials.

<sup>121</sup> It should be noted that even before the civil war and genocide of 1994 the judicial system in Rwanda was far from perfect. The Pre-April ‘94 judiciary was extremely susceptible to influence from the executive, and “the low educational level of most judicial officials, budgetary constraints, and the absence of a body of case law and precedent...” created a judiciary that diverged from western legal norms. State Department, Country Report on Human Rights, 1994

<sup>122</sup> The RPA nonetheless remained the chief guarantor of internal security, including control over camps for the internally displaced and centers for processing returning refugees, as well as arrests of suspected individuals. State Department, Country Report on Human Rights, 1994

<sup>123</sup> State Department, Country Report on Human Rights: Rwanda, 1997.

## 2) Trials – Guilty Until Proven Innocent

“Can you say that we should not punish genocide just because our country doesn’t have enough lawyers?” -Gerald Gahima, Justice Official. <sup>124</sup>

Rwandan genocide trials were generally devoid of western notions of due process due to the arbitrary nature of arrests, lack of a comprehensive investigative team and, most importantly, the lack of well qualified defense lawyers and judges.<sup>125</sup> Although Rwandans were allowed a defense lawyer at the time of trial, the obtaining of that right was not paid for by the state. The effects of a lack of a qualified defense were most in evidence on the rare occasion when defense was obtained. Such was the case of Ms. Mukakayujuka who was spared the death penalty only because her defense lawyers, provided from Avocats sans Fronteires, were able to educate the judges on the importance of cross examination of inconsistent and suspect witnesses.<sup>126</sup> In most cases however, “untested hearsay evidence” was often presented as fact simply because there was no mechanism to check the veracity of the evidence and because “no questions were raised as to their admissibility.”<sup>127</sup> The admissibility of false evidence thus led to situations of flagrant inaccuracy, where people were in prison for allegedly killing someone still alive, or because they were mistaken for another person.<sup>128</sup> Similarly, due to the lethargic nature of the trial system, there were many cases where suspects were imprisoned for category four crimes which they had already served their total prison time while waiting for court summons and sentencing.<sup>129</sup> In Rwanda, it soon became apparent, a detainee was guilty until proven innocent-with the burden of proof often on the detainee himself<sup>130</sup> The unfair and arbitrary nature of a

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<sup>124</sup> The New York Times, 2 November 1997, A3.

<sup>125</sup> Drumble, “Rule of Law Amid Lawlessness,” 594

<sup>126</sup> Drumble, “Rule of Law Amid Lawlessness,” 594

<sup>127</sup> “Misinformation...becomes ‘accurate’ only because of the absence of methods to test its veracity.” Drumble, “Rule of Law Amid Lawlessness,” 620 FN 273.

<sup>128</sup> According to one observer “one group related the case of a man who is being held for the murder of his wife, who was in fact out of the country at the time...she has since returned and now comes to the prison each day to bring him food.” Drumble, “Rule of Law Amid Lawlessness,” 601 FN 231.

<sup>129</sup> Drumbl, “Rule of Law Amid Lawlessness,” 611.

<sup>130</sup> Drumble, “Rule of Law Amid Lawlessness,” FN 211, 595.

justice system intent on trying all those alleged to have participated in the genocide further frustrated attempts to reconcile the community.

### 3) Prison Conditions

“Conditions in many prisons and detention centers in Rwanda still constitute cruel, inhuman or degrading treatment...In some cases, the torture or ill-treatment was so severe that detainees have died.”<sup>131</sup>

The mass participatory nature of the genocide in Rwanda, combined with the government’s policy of trying all of those implicated in the violence, created the potential for hundreds of thousands to be incarcerated and tried by the judiciary. Combined with a lack of an experienced, efficient judiciary the Rwandan prison system was soon completely overwhelmed. Despite the fact that the prisons in Rwanda were built to hold a maximum of 17,000 people, the police continued to arrest suspects, many coming from the returning refugee populations.<sup>132</sup> By 1997 the number of prisoners arrested had reached 120,000-nearly 10% of the adult Hutu male population was thus incarcerated in a space meant to hold a fraction of that number. Although the International Committee on the Red Cross (ICRC) did help to feed about 42,000 detainees in 1995, and more prisoners as safe access was provided, the sheer number of people and the harshness of conditions led to many deaths.<sup>133</sup> One observer on a visit to Kigali Prison in 1998 noted that prisoners

“...stand sit and sleep in one courtyard. There are no cells. Overcrowding is so pronounced that one has to step over and on bodies...There are a handful of water taps and no toilets, only latrine trenches which, owing to the overcrowding, are often themselves inhabited.... many prisoners we interviewed mentioned that they ate only once every two days... because the prison is not covered, the heavy rainfalls in February and March soak the prisoners and the prison grounds, facilitating the spread of disease.”<sup>134</sup>

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<sup>131</sup> Amnesty International, “Rwanda; The Enduring Legacy of the Genocide and War,” Amnesty International, AFR 47/008/2004, 6 April 2004.

<sup>132</sup> State Department, Country Report on Human Rights, 1995.

<sup>133</sup> For example, in April of 1995 13 prisoners died of asphyxiation from overcrowding in a holding cell in a Kigali gendarme station. While the government did later arrest the officer in charge for ‘criminal negligence’ this situation was far from novel. State Department, Country Report on Human Rights, 1995.

<sup>134</sup> Drumble, “Rule of Law Amid Lawlessness,” 572.

In 1997, 860 prisoners died from preventable diseases and the “debilitating effects of overcrowding.”<sup>135</sup> By 1998 the number of dead prisoners had reached the thousands.<sup>136</sup> The effects of long delays, arbitrary arrests, and lack of due process were thus often lethal. Justice pursued in Rwanda proved to “deepen rather than reconcile the wounds in Rwandan society” particularly as long stays among suspected genocidaires increased solidarity and ethnic pride of the Hutus incarcerated, as well as their distrust and antipathy towards the new Rwandan government (see section 4a).<sup>137</sup> In the words of one inmate the government was not wise to “leave us in prison; it’s like being at a school for the wicked.”<sup>138</sup>

#### 4) Confession and Guilty Procedures

“Who is innocent of the genocide of the Tutsis? I assure you there are very, very few. I was there and I saw it. Even the children, the women and the old people on every hill took part in it. Parents killed their own children because their partners were Tutsis. Who dares to say they are innocent?” Louis Musangwa, convicted genocidaire.<sup>139</sup>

The Government of National Unity in Rwanda was not naive to the problems caused by the overcrowded prisons and lack of swift justice.<sup>140</sup> However, the government was also unwilling to allow the perpetrators of genocide to go unpunished, particularly as it claimed that without a perception of justice the country would be prone to vigilante vengeance killings: “you must be careful not to wreak vengeance,” Vice President and Defense Minister Paul Kagame warned “I promise we will bring to justice those responsible for the massacres.”<sup>141</sup> As such, it initiated what it hoped would work

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<sup>135</sup> State Department, Country Report on Human Rights, 1997.

<sup>136</sup> Prison deaths in 1998 were 3,300. State Department, Country Report on Human Rights, 1998.

<sup>137</sup> Drumble, “Rule of Law Amid Lawlessness,” 601.

<sup>138</sup> Words of Basile Nsabumugisha, former prefect of Ruhengeri during the genocide, who denies that the genocide ever happened. African Rights, Confessing to Genocide, 16.

<sup>139</sup> African Rights, Confessing to Genocide, 28.

<sup>140</sup> From January 1998 to August 1998 the arrest rate per month fell from 400 to 31, indicating a Government awareness of the overwhelming caseload as well as increased enforcement of arrest laws. State Department, Country Report on Human Rights, 1998.

<sup>141</sup> The New York Times, 2 October 1994, 3. President Bizimungu also stated that “we can’t release those persons” of those in custody without dossiers, “if we release them there is the risk that there may be acts of revenge.” The New York Times, 7 October 1994, 19.

to both pre-empt and lessen the problematic effects of its policy of complete punitive justice: the Confession and Guilty Procedure, a piece of legislation created as part of the Organic Law. Initially, enacted for a period of 18 months and then extended, the procedure allowed suspects in categories two to four to confess to their actions during the genocide in return for a reduction in sentencing.<sup>142</sup> However, the government severely miscalculated both the attitude of its prisoners, as well as its ability to process confessions. The reaction that both the Hutu and Tutsi populations of Rwanda had towards this legislation is indicative of the extent to which ethnic identities and antagonism continued to thrive within the Rwandan polity.

#### 4a) Prisoner Reactions

Virtually none of the Hutu prisoners volunteered to take part in the Confession procedures. By October, 1998 only 45 prisoners had confessed despite the introduction of the Procedures two full years earlier.<sup>143</sup> The reasons for this undoubtedly included continued solidarity with the Hutu cause, intimidation from other inmates/genocidaires at large,<sup>144</sup> a distrust of the government, lack of a structure by which ordinary prisoners were able to confess, fear of financial liability and at least initially, a lack of information on the confession procedure.<sup>145</sup> However, the greatest impediment to participation in the confession procedure was the fact that most Hutu prisoners did not consider themselves guilty of any crime, and even if they did recognize that they were involved in murder, tended to view their culpability ambivalently and without regret. As such, there was very little remorse

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<sup>142</sup> The Confession option was also open to those in Category 1 who had not yet been named on the list published by the Prosecutor General of the Supreme Court of Rwanda on November 30, 1996. By confessing (pleading guilty and giving a full, accurate account of events) one was able to preempt their names' addition to the list. African Rights, Confessing to Genocide, 9.

<sup>143</sup> The New York Times, 2 November 1997, E6. According to the investigations at African Rights, "most prisoners claim they have no crimes to confess." African Rights, Confessing to Genocide, 23.

<sup>144</sup> This was particularly the case when it came to those Hutu prisoners already on the "list" and therefore ineligible for any amnesty. These prisoners, as former leaders of the people, had much to lose if implicated and so often "prevented others from confessing." Ipolite Sebazungu Zikama in African Rights, Confessing to Genocide, 17.

<sup>145</sup> Drumble, "Rule of Law Amid Lawlessness," 591-593. Observers have noted that there is a correlation between illiteracy and a lack of knowledge on the procedures. Drumble, "Rule of Law Amid Lawlessness," 590. However,

and desire for forgiveness among Hutu inmates.<sup>146</sup> According to a Tutsi member of the RPF imprisoned for his own crimes, “they have no regrets. Some of them have told me: ‘If we get another opportunity to kill the Tutsis, we won’t hesitate and we will do much better and kill more people than during the genocide of April 1994.’”<sup>147</sup>

Furthermore, many prisoners believed that they were not guilty, but rather were being held as prisoners of war, rather than genocide perpetrators. Various former leaders and intellectuals of Hutu Power used this argument to rally support for Hutu extremism. In the words of Pierre Zirugure, a teacher and former president of MRND in Mugina during the genocide; “it wasn’t genocide but rather a civil war. The people defended themselves.”<sup>148</sup> His words were echoed by many others, including Jean-Claude Nshimiyimana, who asserted that “what happened in April 1994 was a civil war. The Tutsis were killed because they were at war with the Hutus.”<sup>149</sup> An additional distrust of the current government also served to promote hatred and a reluctance to confess to any crimes. This belief was given credence by the blatant corruption within the Rwandan judiciary, as discussed in chapter V1.<sup>150</sup> Again, colonial definitions of identity surfaced as many Hutu “think the RPF is an organization set up to oppress the Hutus,”<sup>151</sup> and that “in general, Tutsi’s lie” and cannot be trusted.”<sup>152</sup>

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since the time of those writings the government has embarked on several extensive campaigns to explain the confessing procedure. African Rights, Confessing to Genocide 14.

<sup>146</sup> This statement is based upon a review of the testimony of prisoners given to African Rights from 1999-May, 2000; as well as the findings of Mark Drumble during his time as legal defender working for Legal Aid Rwanda during 1998.

<sup>147</sup> Jean Paul Ntagwabira is a genocide survivor and prisoner, sentenced to death for a murder he allegedly committed in 1995. African Rights, Confessing to Genocide, 103.

<sup>148</sup> African Rights, 91. MRND was a Hutu extremist political party whose militia was at the center of the killings in 1994. The party was subsequently outlawed by the RPF.

<sup>149</sup> Drumble, “Rule of Law Amid Lawlessness,” 569; African Rights, Confessing to Genocide, 91-92.

<sup>150</sup> African Rights 48. Distrust of the Government by Hutu prisoners was also manifest when foreign defense lawyers have to prove that they are not “agents of the RPF Government” in order to get any words from their clients. Drumble, “Rule of Law Amid Lawlessness,” 604-605

<sup>151</sup> African Rights, Confessing to Genocide, 14.

<sup>152</sup> Rachel Nyiransabimana in Miyove prison. African Rights, Confessing to Genocide ,27. It should be noted that there were a few Hutu prisoners who admitted their guilt, and that of their fellow detainees and sought to reconcile with the families of their victims. There were even some prison initiatives set up to obtain confessions from all of those guilty of genocide within their prison communities. See African Rights, Confessing to Genocide, 136-138). While indicating hope for a normalcy in ethnic relations, these programs were rare and often opposed by others within the prison community.

Of particular concern for Rwanda's future perceptions of ethnicity, were the many children who were implicated in aiding and even carrying out the genocide. A youth worker noted "they come together for lessons on unity, reconciliation and related topics...they have no intention of confessing...These youngsters feel no remorse. It is as though they really believe the genocide was justified..."<sup>153</sup> The continuance of guerrilla warfare between the Rwandan government and Hutu militias also promoted the belief that prisoners would be released by the insurgent rebels based in the Congo.<sup>154</sup> (see chapter VII). Lastly, due to the actions of the RPF, many prisoners spoke of a 'double genocide' in which the RPA sponsored Tutsi killings of Hutu. According to Cyriaque Sabera, "the Hutus have been exterminated; one must think of their orphans and widows just as one thinks of those of Tutsis."<sup>155</sup> In conclusion, the reluctance of the prisoner population to participate in the confession procedure must be viewed as connected to the colonial definitions of identity that underpinned the genocide itself, and so the subsequent program of punitive justice as well<sup>156</sup> (See Chapter II). The Confession and Guilty Procedure did not have the effect of enabling a national narrative through the acknowledgment of guilt on the part of prisoners, and did nothing to ease the long detentions of Hutu prisoners, which itself tended to increase the propagation of anti-Tutsi radical Hutu sentiment.

#### 4b) Tutsi Reactions to the Confession Procedure

Many Tutsis opposed the Confession and Guilty Procedure on the basis that it provided amnesty to genocidaires who did not really regret their actions, and who often told only partial truths. Additionally, many survivors were offended by the government's apparent compromise of justice for

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<sup>153</sup>Quote from a worker in the youth rehabilitation centre for minors accused of genocide at Gitagata. African Rights, Confessing to Genocide, 93.

<sup>154</sup> Particularly during the 1998 war against Laurent Kabila in the DRC and insurgency in the northwest, "there was a definite drop in confessions....The prisoners hope that they would be freed one day by the rebels. They even refused to be questioned by the prosecution service." Augustin Shakondo, Prosecutor's Office; Giatarama. African Rights, Confessing to Genocide, 19.

<sup>155</sup> African Rights, Confessing to Genocide, 113.

incomplete facts. According to Claire, a survivor who looked after Tutsi orphans in Kigali, “for survivors like me, what matters is not that all Rwandese admit that genocide took place. *Recognizing* genocide does not mean its practitioners’ ideology will be eradicated. We need justice to eradicate that ideology and not justice in name only.” Other survivors found the confession procedure to be a way for Hutu murderers to “boast in public about what [they] did to [our] relatives...”<sup>157</sup> Such feelings were especially common among survivor groups because of the accurate perception that most confessions came not from a sense of regret, but rather were coerced from the government for reasons of political expediency, and given out of a desire to reduce sentences.<sup>158</sup> Thus, not only has the Confession procedure failed to attract many prisoners and so create a national understanding of the genocide, but it further alienated Tutsi survivors and Hutu prisoners into an ‘us’ and ‘them’ standpoint. Hutus viewed Tutsis as liars and the government as complicitous in a ‘second genocide,’ while Tutsis viewed Hutus as unrepentant murderers. An inclusive ‘Rwandan’ identity remained elusive.

## 5) Death Penalty

“What else can we do with a man who took part every time Tutsis were massacred; in 1959, 1963, 1973, etc.? Do you think that if we let him off today, he would become a good citizen?...Instead he would set a bad example to the younger generation.” –Minister of Justice Jean de Mucyo<sup>159</sup>

On April 24, 1998 the Rwandan National Government, over the protests of the international community, publicly executed 22 of the highest ranking genocidaires in its custody, across five different Rwandan towns. The reaction to the executions represented two undercurrents in Rwandan society. The first was a temporary upsurge in the numbers of Hutu prisoners willing to make

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<sup>156</sup> According to Jules Kayibanda, an inmate in Nyanza prison “the extremist ideology is still in the minds of prisoners. They analyze and interpret all that is done by the government according to tribal thinking...” African Rights, *Confessing to Genocide*, 16).

<sup>157</sup> “... There confessions are just another means for them to express their contempt for us and to humiliate us still further...” African Rights, *Confessing to Genocide*, 102

<sup>158</sup> African Rights, *Confessing to Genocide*, 102.

<sup>159</sup> In African Rights, *Confessing for Genocide*, 67

confessions of their participation in the genocide.<sup>160</sup> While the rise in the rate of confessions was temporary, its occurrence represented the degree to which testimonies on genocide were motivated not by remorse or a desire to unearth the truth; but rather out of a sense of self-preservation.<sup>161</sup> Indeed, there have been few ‘spontaneous’ prisoner’s confessions, or expressions of guilt or remorse. The slow rate of trials for those who did confess also worked as a deterrent against further confessions. In 2000 Adrien Niyitegeka, formally a communal policeman in Kivumu, Kibuye explained that he had not confessed his crimes and didn’t “see what interest I have in doing so. The prisoners from my commune who have confessed have not gained anything from it. Only one person has been judged...So how do you expect the others to find the courage to confess?”<sup>162</sup> The executions also aroused the ire of many in the Hutu community who saw it as an attack against the Hutu losers of the civil war. “The execution was not well received by the detainees and their families” noted Jean de Mwangi, “it was a way of perpetrating hatred.”<sup>163</sup>

The Tutsi populations’ response to the public executions has been equally indicative of the survivors’ feelings toward ethnic relations in Rwanda. Present at the event were tens of thousands of Rwandans who “surged forward” and “cheered” at the moment of death. In the words of one Tutsi survivor, “how can we talk about reconciliation with people who killed your family? I think the only solution is to kill the killers.”<sup>164</sup> In addition to the problems inherent to reconciling society after the mass attempt to exterminate the Tutsi race, the lack of remorse exhibited by the Hutu population at large has been felt within the survivor’s community. “If only the genocidaires would express *some*

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<sup>160</sup> After the executions 2,777 prisoners immediately confessed while 8,000 others expressed an interest in the procedure. The rate of confessions was often dependant on the prison involved, indicating a social character to the confessions and indeed, Rwandan society itself. African Rights, Confessing to Genocide, 11-12.

<sup>161</sup> In the words of Jean-Léonard Bagirigonwa, a farmer in Rilma prison, “we saw our own death outlined on the horizon.” African Rights, Confessing to Genocide, 11.

<sup>162</sup> African Rights, Confessing to Genocide, 39.

<sup>163</sup> African Rights, Confessing to Genocide, 65

<sup>164</sup> The New York Times, 7 April 1995, A1.

regret,” one survivor noted.<sup>165</sup> The response to the failure of the confession procedure, as well as the attitudes of the Hutu genocidaires themselves has thus been to further polarize the two ‘ethnicities.’

#### 6) Failure Admitted

The failure of the Confession and Guilty Procedure to attract large numbers of prisoners, as well as the Courts inability to process those confessions that were forthcoming, led the Government to embark upon a new form of communal justice called Gacaca.<sup>166</sup> Gacaca was the name of the traditional Rwandan community ‘trial’ system in which social grievances were brought to village elders and aired in front of the community to be judged. While popular in pre-colonial Rwanda, the system had been in disuse since colonialism. The government’s decision to use Gacaca as a way to expedite trials, as well as to enable acknowledgment of a communal truth about the genocide, signaled its shift away from punitive justice toward a more retributive, “TRC,” approach.<sup>167</sup> Beginning with a pilot program in 2000, prisoners appeared before locally elected judges in their communities to hear and respond to witnesses’ allegations. In exchange for a confession at Gacaca the prisoner was then eligible to receive a halved sentence, including half of his prison time spent working on community projects. At the time of this writing Gacaca is ongoing in Rwanda. Problems such as lawyer interference, witness intimidation, and Tutsi feelings of injustice continue to plague the system. The Rwandan experiment in punitive justice accomplished none of its stated goals of reconciliation and justice, but rather the opposite. As the categories of victim and criminal were necessarily ones of ethnicity, attempts to redress violence through a program of inclusive punitive justice unavoidably relied on these same classifications and so perpetuated ethnic identifications of self within the populace.

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<sup>165</sup> African Rights, *Confessing to Genocide*, 99.

<sup>166</sup> It has been argued that the long detentions of so many Rwandan Hutus may have been part of a power ploy undertaken by the RPF to keep prisoners from joining Hutu guerrillas, and creating opposition political parties, “locking people in prison is ,after all, a form of social control.” Drumble, “Rule of Law Amid Lawlessness,” 601.

<sup>167</sup> Many have pointed out that the traditional Gacaca system could not be applied to modern Rwanda because intense mobility of people had disrupted the makeup of each village, and destroyed any sense of community spirit. In addition, the Gacaca proceedings were meant to deal with smaller, family or social crimes.

Moreover, the Rwandan experience proves that in a case where a large percentage of the population is implicated in the violence, it is logistically impossible to prosecute all of the perpetrators.

## Chapter VI) Refugees

“...The imaginative processes of constructing nationness and identity can come to be influenced by the local, everyday circumstances of life in exile...”<sup>168</sup>

The Rwandan Government’s use of trials and limited amnesty through the Confession and Guilty procedure, although intended to bring about the reconciliation of the Rwandan people through the deliverance of justice and truth, only succeeded in continuing the nation’s long history of ethnic tension. However, the continuance of ethnicity as a defining factor in Rwandan society cannot be explained in totality by the miscalculations of the justice system, or the exclusivity of the government. During the time that the government in Rwanda was setting itself up and trials began, there was another ongoing conflict that impacted not only Rwanda but the whole region of Central Africa, and indeed, the continent itself. This was the continuing ethnic conflict surrounding the issue of Rwandan refugees. As the RPF advanced upon Rwanda, it was opposed by opposition Hutu groups, such as the army, or ex-FAR, and the Hutu militias or interahamwe.<sup>169</sup> When the RPF seized Kigali and gradually took control of the provinces, many, if not most Hutus feared for their safety. As a consequence well over two million people fled the country, including civilians and genocidaires.<sup>170</sup> The reasons for this flight were three fold. To begin with, the Rwandan people were inculcated by years of Government propaganda to believe that the RPF was a vicious force which threatened the lives of all Hutu people. Secondly, the leaders of the now former government spread rumors of RPF atrocity among the people,

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<sup>168</sup> Liisa Malkki, Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania. (Chicago: Chicago University Press), 1995, 3

<sup>169</sup> There were in fact several Hutu militias operating in Rwanda, most associated with and funded by particular political parties. For the sake of expediency in this chapter they will be known as the interahamwe.

and sometimes forced the flight of individuals from the nation. The last reason why many individuals fled was a genuine fear of revenge killings by Tutsis. The Rwandan Hutu community fled mainly to Zaire, Tanzania and Burundi, thus creating an international African refugee crisis.<sup>171</sup> However it was the large concentrations of refugees in the DRC that was to most effect perceptions of ethnicity within and without Rwanda.

### 1) Humanitarian Complicity

“Goma has taken pre-eminence over genocide carried out with impunity...let the world not forget.” –Abdul Kabia, Executive Director of the U.N Mission in Rwanda.<sup>172</sup>

“We appreciate what is happening to help the dying in the camps, but beyond that, what? Must we get cholera to be helped?– Prime Minister Twagirimungu”<sup>173</sup>

Refugees are often seen by the international community as objects of purely humanitarian concern. However, the category of the refugee transcends the humanitarian question to influence state, and interstate, events. In reaction to the humanitarian crisis posed by the fleeing Hutu refugees, the international aid community mobilized to set up refugee camps. In so doing, they inadvertently provided the space in which genocidaires regrouped, re-trained and perpetuated colonial identities of race, hate and violence. The most prescient example of this occurrence was the refugee camp set up by international NGO’s in Goma, DRC. Here the international aid community spent hundreds of millions of dollars, and here was where Hutu extremists mobilized in defense of their cause.<sup>174</sup> By the end of 1995, thanks to humanitarian aid from Western nations, the Goma camp had clean water, medical care

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<sup>170</sup> State Department, Country Report on Human Rights, 1994. This was in addition to the two million people internally displaced by the war and genocide.

<sup>171</sup> Refugees also fled to Uganda, Malawi, Zambia, Angola, Cameroon, Central African Republic, Togo and Benin

<sup>172</sup>The New York Times, 18 September 1994, 5.

<sup>173</sup>Then Prime Minister Twagirimungu was referring to the Cholera epidemic that had broken out among the Rwandan Hutu refugees in Goma. The publicity of that epidemic had hastened the flow of aid to the refugee camps. NYT The New York Times, 18 September 1994, 5.

<sup>174</sup> In 1995 alone the World Food Program provided 84,000 metric tons of food worth \$42 million. In protest the Rwandan Government closed its border in order to keep from feeding those involved in genocide. The New York Times, 15 July 1995, A1.

and a nutrition rate in children under age 5 more than twice the African average.<sup>175</sup> It also had a re-armed and re-trained group of genocidaires capable of carrying out cross-border raids into Rwanda. Intent on increasing racial hate, these groups produced vast amount of “hate literature designed to persuade readers of the justness of their cause, their strength against the government, and the evil intentions of the RPA.” These writings “identified anyone who opposed the insurgents’ cause as an enemy...”<sup>176</sup> The tactics employed by the militia were brutal, and they included acts against Tutsis and, like in the genocide of 1994, acts against Hutu who refused to cooperate.<sup>177</sup> Shockingly, the militia/ex-FAR contingent did not bother to mask its presence within the camps as they were “recognizable by their black boots and early morning group jogging.”<sup>178</sup> Thus, the international community helped to provide a safe haven for genocide perpetrators and insurgents. Ironically, this was at the same time that aid agencies refused to give aid to the resource starved Rwandan government.<sup>179</sup> In particular, the E.U conditioned aid to Rwanda on the repatriation of its refugees, despite the obvious fact that the return of refugees was being prevented by the very individuals who international aid *had* chosen to help.<sup>180</sup> The incongruity of the situation in Rwanda and that of the refugees served to widen the feelings of animosity and isolation of many Tutsi Rwandans. Not only did these militarized groups preach the mantra of genocide, but as mentioned above, they attempted to continue their project of extermination through cross border raids into Rwanda where they targeted Tutsi survivors of the genocide, as well as local Hutu officials who they deemed complicit in the Tutsi

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<sup>175</sup> The New York Times, 15 July 1995, A1.

<sup>176</sup> State Department, Country Report on Human Rights, 1998.

<sup>177</sup> For example, in August of 1998 insurgents cut off the hands of a 14 year old Rwandan boy when he refused to join them. State Department, Country Report on Human Rights, 1998. Not only was this action reminiscent of the genocide, but also of the Belgian colonial masters who would cut off the hands of native Congolese if they did not work hard ‘enough.’

<sup>178</sup> The New York Times, 15 July 1995, A1.

<sup>179</sup> According to Shaharyar Khan, a U.N Special Representative to Rwanda, “there is somewhat of a vicious cycle. First there is a great frustration because of the lack of justice...the killers are running free in the camps. Yet the world community gives them free food. They are saying where is the justice?” The New York Times, 7 April 1995, A1.

regime.<sup>181</sup> The groups also targeted Human Rights workers, roads and prisons, regularly freeing Hutu detainees in Rwanda, and separating out Tutsis for immediate death by machete or bullet.<sup>182</sup> The goal of the groups' attacks in Rwanda was to "create panic and undermine confidence in the Government's ability to protect the population." This resulted in a spiraling violence of Hutu extremist raids and RPF reprisals. Both served to intensify a vilification of the other, and so a reification of colonial identities.

## 2) Colonial Identities Endure; the Refugee Camp

"If we go back without negotiating, we will all be killed, especially the men and boys. So I will not go back." – 18 year old Hutu refugee Josue Twahira<sup>183</sup>

Because the refugee camps were not integrated within the communities that the refugees had fled to, they existed in relative isolation. In this atmosphere civilians were particularly susceptible to the propaganda of Hutu extremists. Within the ranks of these men lived the ideology of Tutsi extermination, and their place as leaders among the refugee community expedited the creation of a reformed version of Rwandan history that was "sharply different from internationally accepted accounts" and which portrayed the Tutsis as both alien to Rwanda, and dangerous to Hutus.<sup>184</sup> This occurrence was consistent with the findings of Liisa Malkki who noted that for the refugee who lived in isolated camps, historical narratives were woven into every day discussions that highlighted a

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<sup>180</sup> According to the U.N refugee agency "few refugees are able to come back...90% of the problem is related to the presence of ex-Government soldiers in these camps." The New York Times, 2 February 1994, 3.

<sup>181</sup> The casualties of these attacks quickly rose in number, from double to triple digits. (SD 1996). Such attacks were relatively common until the RPF managed to push the insurgents out of the Northwest prefectures of Rwanda and into the Kivu Region of the DRC in 1998. State Department, Country Report on Human Rights, 1994-2000.

<sup>182</sup> Interestingly, many Hutus thus freed, often gave themselves voluntarily to the authorities. An example is the November 1997 attack on Bulinga jail in which 550 prisoners were freed and 470 voluntarily surrendered themselves. State Department, Country Report on Human Rights, 1997. There are several reasons speculated for this phenomenon, including that the prisoners expected to be re incarcerated by the Rwandan authorities in any event, and that they were tired of war and thus not willing to follow the Hutu militias back to the DRC. This last reason is given credence by the viciousness of the Hutu militia and ex-FAR against Rwandan refugees.

<sup>183</sup> The New York Times, 15 July 1995, A1.

<sup>184</sup> The New York Times, 15 July 1995, A1

history based entirely upon the plight that the Hutu had experienced at the hands of Tutsi.<sup>185</sup> The refugee community thus continuously experienced a daily reaffirmation of the alleged pain of the Hutu people; indeed "...Hutu and Tutsi had become identified with abstract, moral qualities" of all that was good and evil respectively.<sup>186</sup>

### 3) A Regional Problem of Identity

The problem of colonially constructed political identities was not that of Rwanda's alone. In Central Africa the political constructions of "Hutu" and "Tutsi" existed throughout Rwanda, Burundi, the Congo and in different forms wherever else subject races ruled for colonial masters. In terms of the Rwandan crisis, the presence of Rwanda refugees in Zaire regionalized the ethnic divisionism that plagued Rwanda. The Hutu genocidaires who took refuge in the Kivu prefectures of Zaire embarked upon a program of ethnic cleansing not only across the border to Rwanda, but also in the areas surrounding the refugee camps. Zairean President Mobutu was in no way an ally of the RPF, and evidence soon mounted that the governors of the provinces of North and South Kivu were conspiring with the exFAR/interahamwe militias in an effort to cleanse those districts of their Banyamulenge, ethnically Tutsi, peoples. In response the Rwandan Government of National Unity backed what would become two regional wars in the DRC, aimed ostensibly to force the refugees to repatriate, as well as to destroy the base of the insurgency.<sup>187</sup> While this did result in most of the refugees' repatriation to Rwanda, it also sparked a series of guerrilla rebel movements within the

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<sup>185</sup> Malkki studied ethnic perceptions of self and community in the context of two refugee Hutu communities in Tanzania. The first was a community living in a confined refugee camp, the second in Kigoma, a bustling city. She found that the refugee's surrounding context strongly corresponded to ethnic identifications.

<sup>186</sup> Malkki, *Purity and Exile*, 54.

<sup>187</sup> The first of these wars was begun in 1996 when Kagame and the RPF forces backed Laurent-Desire Kabila and his Alliance of Democratic Forces for the Liberation of Congo-Zaire. Those Interhamwe-ex-FAR members who fled further into the interior of the Congo, with many of forced Rwandan refugees, regrouped, as did many of its members inside Rwanda itself, with supply lines running back to Zaire. A second and more complicated war began in late 1998

Congo, as well as a humanitarian crisis that involved the death of Congolese on a number that even exceeded that of the Rwandan genocide. Many of those murdered were singled out for their 'ethnic identity,' proving the durability of such terms on a regional, in addition to national, basis. The wars in the Congo soon involved African nations as far away as Eritrea and Kenya, revealing that refugees are not solely objects of humanitarian assistance, but actors on the international stage as well.

## Conclusion

The history of the period following genocide in Rwanda is central to an understanding of how efforts to redress contrived ethnicity often work in ways opposed to their purpose, and how colonial definitions of ethnicity endure beyond the attempts to eradicate them and even beyond the borders thought to control them. The task that the RPF and the Government of National Unity set for themselves of erasing ethnicity from Rwandan politics and society was one that faced dire obstacles. The most obvious and difficult issue facing the nation were the psychosocial wounds inflicted by genocide. However, theoretically, the largest obstacle facing the government was the continual fact that it may not be possible to eliminate ethnicity from perceptions of self.<sup>188</sup> It is unclear if it is possible to remove the stain of ethnic cleavages from such conceptions, according to psychologist Arnd Lipjart "...although ethnicity may be manipulated, it is not completely manipulable-and certainly not in the sense of being easily manipulated out of existence."<sup>189</sup> In addition, Liisa Malkii's study reveals that even under the most auspicious of circumstances there remained a degree of hatred and mistrust toward an ethnic, 'traditional enemy.'<sup>190</sup> In a situation where the whole

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in which not only ethnicity, but resources and regional as well as pan-African alliances played a part. Waugh, Paul Kagame and the RPF, 108-110; 129-132.

<sup>188</sup> According to Karl Deutch "Eliminating ethnic groups by trying to forge them into a homogeneous nation is not a practical approach to peacemaking in multiethnic societies." In Montville, Conflict and Peacemaking, 492.

<sup>189</sup> In Montville, Conflict and Peacemaking, Pg 492.

<sup>190</sup> Malkii, Purity and Exile, 178;162.

community was in one way or another party to, or witness and survivor of, genocide we can only theorize on what method might have reconciled the country.

The last hundred years of human history has proven that violence is a constant, it cannot be wished away by the words 'never again.' The search for how best to address the causes of genocidal violence, and so embrace a shared peaceful future, will doubtless continue in places like Iraq, Sudan, Chechnya and Rwanda. The lesson of Rwanda's experiment with justice and reconciliation in the ten years following the genocide is that divisions cannot be simply erased from society, even by legal decree. In fact, such legislation can be counterproductive; by outlawing the mention of ethnicity the Rwandan government gave itself a mechanism by which to restrict its political opposition through the charge of 'divisionism.' The government thus remained rooted in ethnic elitism, ruled by a clique of Tutsis whose presence reified ethnicity as a factor of subvert identification. Rwanda also reveals that in situations where a majority of citizens may be implicated in genocide, it is not only logistically impossible to prosecute all suspects, but that such a program works to cement the very divisions that caused the violence by relying on previous classifications to identify suspects and victims. There may have been no path to achieve reconciliation and justice in Rwanda, the refugee genocidaires situation proves the endurance of the ideology of ethnic hatred outside of government efforts of redress. What is clear, however, is that the path chosen by the Rwandan government served to increase ethnic identifications, divisions and tension in a polity already full of all three.

Appendix:

*1.) ICTR (International Criminal Tribunal: Rwanda)*

During this time period of punitive justice in Rwanda, domestic courts were not the only institutions attempting to punish and elucidate the truth about the Rwandan genocide. The international community additionally set up a controversial court, the International Criminal Tribunal for Rwanda (ICTR). Due to the differences in the court structures and the high expenditures and low productivity of the court, the ICTR has increased a sense of injustice and impunity among the Rwandan community. The ICTR was created by the U.N Security Council Resolution 955 on November 8, 1994 to try the highest-ranking perpetrators of genocide. The Court sat in Arusha, Tanzania and trials followed the strictest rigors of international standards of due process. The Court has been criticized for its slow start, allegations of corruption, large budget, and some say too lenient judgments.<sup>191</sup> For President Bizimungu the purpose of the ICTR was for the “international community,” along with the Rwandan government to “show that what has been done is not acceptable” and to “reassure the victims that tomorrow what has happened can’t be repeated.”<sup>192</sup> In practice the ICTR has not lived up to any of these goals, and has at times has abetted the increase of ethnic solidarities. To begin with, the nature of the trials and detention itself was enough to harbor feelings of injustice among the Rwandan Hutu and Tutsi communities. Because the trials were not held in Rwanda, but in Arusha, the context of detention was very different. As has been shown the prison conditions in Rwanda were extremely uncomfortable, if not life threatening. However in Arusha conditions were much more favorable. Additionally, because the ICTR did not offer the death penalty as a punishment, those who organized and created the genocide often received lesser punishments than their subordinates who carried out their orders. In the words of Jean de Dieu Ntetimna, a plumber in

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<sup>191</sup> Allegations of bribery, embezzlement, nepotism, prejudice against Africans, “sexual harassment and intimidation...and interfering with the judicial process” have abounded. The New York Times, 1 January 1997, A3.

Rilima Prison “ I don’t know how the people who incited us to massacre our friends and neighbors, who gave us the weapons and planned everything can go gallivanting around Arusha, living in nice little house with lawyers, while the people they involved in genocide are crammed in prisons.”<sup>193</sup> The ICTR’s failure to mete harsher sentences to the organizers of genocide and originators of its ideology only served to strengthen a sense of impunity, and thus extremism, within the Hutu community. In particular, the case of former Prime Minister Jean Kambanda, who was responsible for orchestrating much of the genocide is demonstrative. Although sentenced to life imprisonment in 1998<sup>194</sup> after pleading guilty to the crime of genocide, he later retracted his plea in favor of not guilty.<sup>195</sup> The fact that Kambanda did not receive the death penalty, and that the court accepted his retracted testimony “strengthen[ed] Hutu extremism. They encourage those who won’t confess.”<sup>196</sup>

In addition to promoting a sense of injustice and impunity the ICTR was extremely costly and inefficient, as well as often at odds with the Rwandan government. The tribunal cost about \$40 million a year (Get stats on how many tried, and on corruption allegations). This has led many to question if that money might have been better spent on the Rwandan justice system, such as in the procurement of information technology equipment and increased salaries.<sup>197</sup> The Rwandan government has broken ties with the ICTR several times, most often after the Court has given high ranking officials light

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<sup>192</sup>The New York Times, 9 October 1994, 19.

<sup>193</sup> In the words of Immaculee Mujawamariya “we hear that the prisoners responsible for the misery in Rwanda have televisions in their cell The little people are condemned to death in Rwanda while they enjoy exceptional prison conditions.” African Rights, Confessing to Genocide, 63. An example of a typical sentence given by the ICTR to the leaders of genocide was the 1999 sentence of Omar Seruchao who pleaded guilty for crimes against humanity and the direct murder of 37 people. He received a sentence of 15 years imprisonment. In Rwanda a likely sentence would have been death by firing squad, or at the least, life in prison. State Department, Country Report on Human Rights, 1999

<sup>194</sup> In addition, Kambanda’s family received special protection.

<sup>195</sup> State Department, Country Report on Human Rights, 1998.

<sup>196</sup> Jules Kayibanda in African Rights, Confessing to Genocide, 64.

<sup>197</sup> This point is especially prescient because, as Mark Drumbl point out, it is questionable whether an international tribunal was necessary in the case of Rwanda. In Rwanda it was not a case of nationals from one state attacking another, and this was not a situation where international action was necessary to prevent the impunity of genocidaires. Additionally differences in rules of evidence, prison conditions and a mandate on ringleaders resulted in the

sentences.<sup>198</sup> A further testimony to the ICTR's reputation for leniency within the ranks of genocidaires itself, were the many Hutu militia members who sought to turn themselves in to the ICTR rather than face extradition and justice within Rwanda itself.<sup>199</sup> International efforts to redress genocide may therefore not be any better equipped to provide justice than national programs of justice.

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entitlement of the organizers to "fairer trials and less severe penalties than their subordinates." Drumble, "Rule of Law Amid Lawlessness," 625

<sup>198</sup> The Rwandan government has been critical of the Tribunals' slow progress as well as many of its outcomes. In 1999, after the Tribunal released Jean-Bosco Barayagwiza, a former leader of the most extreme Hutu party, due to 'procedural errors' and 'lengthy delays,' the Rwandan Government broke ties with the court and denied a visa to the Chief Prosecutor. The ICTR later decided to try Barayagwiza after new evidence was presented. State Department, Country Report on Human Rights, 1999.

<sup>199</sup> One such case is that of Bernard Ntuyahaga a former army major who "feared he would be deported to Rwanda to face trial" and so turned himself in to the ICTR. State Department. Country Report on Human Rights, 2000.

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### *Interview*

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