`A Sense of shared loss'

Post-Genocide justice and Reconciliation in Rwanda

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Master Thesis 60 credits 2012

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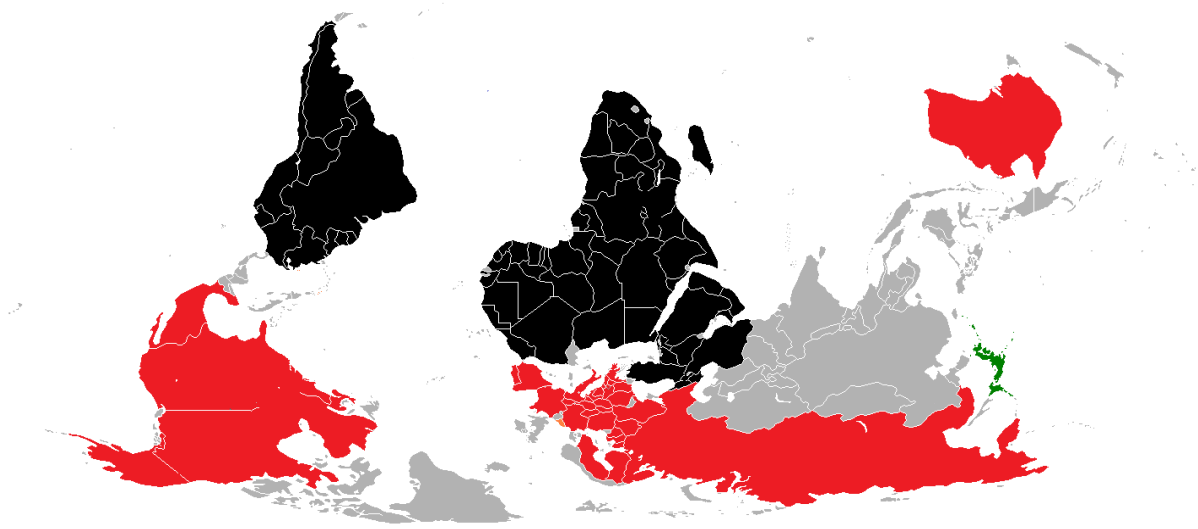

Master's Thesis in International Relations

Submitted in Part Fulfilment of
Master of Science in International Relations

by

Cho Lucas Yabah

A SENSE OF SHARED LOSS:
POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA

CERTIFICATION

This is to certify that the study title "A Sense of shared loss: Post-Genocide Justice and Reconciliation in Rwanda" is the original work of **Cho Lucas Yabah.**

CONTENTS

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DEDICATION:

This work is dedicated to every Patriot volunteer risking their lives every day for a just, peaceful and an equitable world.

ACKNOWLEGEMENT

I am indebted in gratitude to so many people who helped me through the entire process of stitching together this work. To my supervisor, Dr. Benjamin who made the entire process looked so simple; his inspiration and down to earth approach during the supervisory process were all push factors that spurred me to be better.

I am also indebted in gratitude to my wife, Linda, without whom, I would never have enrolled in this program. Her support at home and motivation are all elements that contributed to the realisation of this study.

To my kids Lum, Shuri and Cho Ayaba, whom this study robbed of their play time and undivided attention; I am gratified and thankful they still, call me 60 times a day daddy.

The field trip would never have been realised without the sacrifice of Theo. His dedication, sacrifice and cooperation merit my gratitude

To Jan Peter, who made me feel better each time we met; his inspiration and moral compass, guided me in the most difficult of times.

Without all the support in the world; the constant reminder of the merit of our study to our existence and our struggle; the advice and all other things that made this study stand the test of scrutiny, my gratitude goes to a long-time friend and brother, Akwanga Ebenezer.

In realising this project, many people showed me courtesy, offered me support along the way, hosted me and provided me with Shelter and food; Thanks to Gaston, Mr and Mrs Fuabeh, Mr and Mrs Suhtah and Nde Scholastica.

Finally, my gratitude goes to the very kind Librarian at NUPI for all the help she rendered in finding books and other literature relevant to this study

Map No. 3117 Rev. 2 UNITED NATIONS
December 1997 (Colour)

Department of Public Information
Cartographic Section

Curled from the ICTR website

LIST OF ABBREVIATIONS

APA – Arusha Peace Accord

DPKO – Department of Peace Keeping Operations

DRC – Democratic Republic of Congo

ECOWAS – Economic Community of West African States

EO – Executive Outcome

FAR – Force Armee Rwandaise (Rwandan Army)

ICISS – International Commission on Intervention and State Sovereignty

ICTR – International Criminal Tribunal for Rwanda

ICTY – International Criminal Tribunal for former Yugoslavia

KLA – Kosovo Liberation Army

NATO – North Atlantic Treaty Organisation

OAU – Organisation of African Unity

R2P – Responsibility to Protect

RPF – Rwandan Patriotic Front

RPA – Rwandan Patriotic Army

RUF – Revolutionary United Force

SAP – Structural Adjustment Program

SG – Secretary General

TRC – Truth and Reconciliation Commission

UN – United Nations

UNAMIR – United Nations Assistant Mission in Rwanda

UNECE – United Nations Economic Commission for Europe

UNGAOR – United Nations General Assembly Organisation Resolution

UNSC – United Nations Security Council

WWII- World War Two

ABSTRACT:

This study couldn't have been timelier. During the entire period of this study the doctrine of R2P approached a normative turn with NATO's intervention in Libya under a UNSC Chapter VII mandate and a near total shattering with the Syrian conflict; Mubarak's reign over Egypt was ended by a popular uprising and a domestic justice mechanism set in motion to bring him and his sons to justice; Charles Taylor is sentenced to 50 years in jail for aiding and abetting the commission of serious crimes in the conflict in Sierra Leone. Despite these rapid developments in international justice, human security and the protection of civilians, the nexus between justice and reconciliation remains questionable. This study is thus set in this backdrop as it sorts to examine Rwanda's post genocide justice system instituted as a necessary prerequisite to genuine reconciliation. By employing specific qualitative techniques designed to capture the perception of Hutu exiles and by examining four thematic issues associated with Rwanda's genocide and employing a context driven dispute and conflict theory as a framework of analysis, the study reaches the conclusion that in the situation of an intra-state conflict deeply immersed in long term historical antagonisms driven partially by exogenously constructed 'mythologies' and a bystander effect that allowed the construction of a particular conflict frame the necessity of a post conflict justice system that recognizes a sense of shared loss is the most appropriate mechanism to achieve reconciliation.

CHAPTER I

1. General Introduction

Most wars in Africa are marked by enormous human suffering and destruction. The post war period is also marked by denial, revisionism, accusations and counteraccusations on the culpability of not only the conflict parties but also the distant and nearby bystanders and actors. Rwanda fits well into the frame of this description. The intrastate nature of the Rwandan conflict underscored by contested issues of creed, greed and need or even all of the three and fought in the full glare of the world's media and the international community meant its prohibitions could hardly be ignored. By framing war as a world of 'permissions and prohibitions' Walzer underscores in a very salient way the complexity of the war enterprise and even more so its aftermath (Walzer 1977:38).[1] In Africa, the absence of legitimate institutional framework to mediate between the various forces of society has transformed the conflict space into what Mbembe describes as a duality of facticity and arbitrariness void of rational or empirically tested justification (Mbembe 2001; 3-4). This arbitrariness is exacerbated by mythologies that become the singular unalterable norm that legitimate people's actions.

In many conflict ridden lands, ethnic plurality has become symbols of patriotic and racial identity discord which most often are instrumentalised by political elites to justify action and gain legitimacy. As a result, the lines between nationalistic hatred, racial prejudice, ethnic rivalry and religious enmity are virtually indistinguishable.

Newbury argues that in Rwanda, while European policies did not create ethnic distinctions, they defined them within a particular set of oppositions, placed within a new resource environment. These constructed mythologies re-enforced through colonial stereotypes nursed that environment on which a conflict defined around ethnic lines will take root. The genocide in Rwanda cost the lives of hundreds of thousands of Rwandans and changed the demographic reality of the country through massive loss of life and voluntary and forced migration into neighbouring countries. In less than three months, an estimated number of about 800.000 Tutsis and moderate Hutus who declared their sympathy with the Rwandese

[1]War is still somehow a rule governed activity, a world of permissions and prohibitions, a moral world, therefore in the midst of hell. Though there is no license for war makers, there is a license for soldiers and they hold it without regard to which side they belong…

Patriotic Front (RPF) were slaughtered' (Pottier 2002; 9). As Holzgrefe describes, an estimated 43,000 Tutsis were killed in Karama Gikongoro, a further 100,000 massacred in Butare; over 16,000 people were killed in around Cyangugu; 4000 in Kibeho; 5,500 in Cyahinda; 2,500 in Kibungo[2]. Mamdani (2002) observes that unlike the Holocaust, the Rwandan genocide was not carried out in a distance; in remote concentration camps beyond national boarders…it was as he contends executed with the slash of machetes. The proximity between the perpetrators and the victims throws an interesting dilemma in post genocide reconciliation. This dilemma of knowing your abuser or that of your neighbour is what complicates a healing process still characterised by denial or revisionism.

The genocide like past pogroms against the Tutsis resulted in millions of Hutus relocating into neighbouring and across western countries. Like in the past, the role of exiles in the next Rwandan episode has been crucial. The desire for accountability as a measure of fostering reconciliation necessitated the institution of a dual approach to post genocide justice rationalised as both a forward and backward looking regimes in dealing with Rwanda's culture of impunity. There is always a strategic incentive for a post conflict state to frame its post conflict justice regime using political rational that defines its involvement in that conflict. This is based on several factors which are considered subsequently. These rational are important not only because a) they determine the nature of justice and b) subsequently translate transitional justice into foundation justice but also their crucial role in shaping post conflict institutions after the period of transition.

Most post World War II post conflict justice systems have been designed around the 'Nuremberg paradigm' in which the victor(s) set out to arraign, try and convict the vanquished mediated by international justice or customary norms and sometimes domestic rules. A paradigm shift since Nuremberg has been observed as innovative post conflict justice systems have emerged to prioritised forward looking approaches that foster reconciliation between former enemies. Despite these innovations there seems to be a gap between the theoretical conception of transitional justice and their practical operationalization. This gap is even more glaring because of the increasing tension between the necessity for truth or justice, and the global or the localised conceptions of justice. After the genocide, Rwanda became a case study for the United Nations and Rwanda itself for both state and nation building. The

[2] Alison Desforges (1999). Leave no one to tell the story; genocide in Rwanda. Human Rights Watch

former was underscored by the destruction of the institutions of the state that could carter for the needs of the population and the latter by the lack of an overarching projected national identity beyond ethnic allegiances.[3] Consequently after the genocide, the United Nations set up an ad hoc tribunal to investigate and prosecute those responsible for the violations of international humanitarian law during the period of 1st January to 31st December 1994.[4] It rationalised the institution of this tribunal on the grounds of fostering reconciliation through accountability.[5] Despite the effect the genocide had on the nation, the desire of the victorious leaders of the Rwandan Patriotic Front (RPF) to end what they perceived as a culture of impunity necessitated the setting up of domestic institutions of post genocide justice to bring to justice those responsible for the genocide and to foster reconciliation. The focus on retributive justice would be dealt with in more details in subsequent chapters. But as Levene argues, those mechanisms for forward or backward looking, massacre, real or imagined can be the rallying cry for a people or nation aggrieved, and thereby can potentially cast a shadow over inter-communal or even interstate relations. (Levene, 1999;3). Accordingly Elster argues, legal justice requires that processes of justice are based on unambiguous laws; that the judiciary is insulated from other branches of government, that judges and jurors are unbiased, and that the justice adhere to principles of due processes.(Elster, 2004; 135-139) The challenges according to Teitel are which rule of law values ultimately takes precedence in transition is a function of the particular historical and political legacies that is of the primary understanding of the sources of fear, insecurity.(Teitel, 2000:215). These historical realities transcended the particular situation of Rwanda and relate to a broader problematic in the constant struggle between local and international approaches to justice after massive violations of human rights. These historical realities shall be framed around four thematic areas which shall be dealt with extensively under specific areas in this study.[6] The study thus focuses on these four thematic areas associated with the nature of post conflict justice and to eventually examine the challenges they posed and continue to pose to reconciliation and political order in Rwanda.

[3] Lemarchand argue that to «justify this drastic reconfiguration of collective identities, Rwandan officials are prompt to point out that the aim of the state at this critical juncture is to build a nation…»(Clark & Kaufmann 2008;65)
[4] UNSC Res. 955(1994)
[5] Ibid;1
[6] They shall include(1) Codification of genocide under international law (II) Ethnicity (III) Humanitarian Intervention and (IV) Post conflict justice

The first two chapters focus on the research methodology and the basic approach to the study. Before positivist empiricism became the dominant mode of scientific validation, historiography provided an important inductive approach to scientific knowledge. Stedman argues that history was a science because it was composed of facts which were events which resulted from the actions of individuals producing them through the framework of institutions (Stedman, 1972;98). Capturing the historical development in Rwanda with a view to contextualising the genocide as a central issue within Rwanda's post genocide justice system would be the essence of Chapter III of this study. Chapter IV focuses on the detail examination of themes associated with Rwanda's post genocide justice architecture. The presentation of the raw data collected through various qualitative methods, their conceptualisation and analysis and the conclusion which summarises the findings of the study would be the essence of Chapter V of the study.

1.1 OBJECTIVE OF THE STUDY

The purpose of this study is to examine the various parameters, missteps and shortcomings that have made reconciliation an elusive enterprise in Rwanda. In undertaking this examination the study identifies four thematic areas that have been at the centre of scholastic work, political debates and have seem to shape our understanding of the Rwandan conflict. Though these thematic areas have been examined before, this study is set out on the presumption that a proper examination of these thematic areas within the scope of the general thrust of conflict situations and narrowing such understanding to Rwanda would produce a better understanding of the post genocide reconciliation enterprise in Rwanda. It is on the basis of such understanding that an appropriate system of post conflict reconciliation that reflects local realities and at the same time adheres to international standard of fairness can be instituted and 'tolerated' by both the vanquished and victors of any conflict.

1.2 SIGNIFICANCE OF THE STUDY

There is a vast body of knowledge on the role of the ICTR, Gacaca and the national courts as both retributive and restorative form of justice dispensation in fostering reconciliation and establishing the basic state of political stability for development. Furthermore there is a strong knowledge base on the challenges this choice and form of arrangement has had on political stability. However it is the presumption of this study that these pools of knowledge reflect a holistic approach to determining the impact of a particular arrangement to

reconciliation based on the parameters that determined the choice of that arrangement. This study takes a micro approach by examining the effect of the specific themes associated with the genocide in Rwanda through a macro perspective. Although there is a holistic approach in dealing with these themes, it is designed at translating what is perceived to be a global phenomenon to a local reality.

1.3 RESEASRCH QUESTION AND ITS RELEVANCE TO THE LITERATURE

After most conflicts end the victors or an international regime (Paternalistic or trustee) has engaged in processes of dealing with the legacy of the conflict through arrangements known as post conflict justice or transitional justice. These have taken the forms of truth and reconciliation commissions, trials, purges; some of which have resulted in reparations, amnesties. These processes have been rationalised on the search for reconciliation and accountability and have been dependent on the duration of the conflict, the mode of its termination, the nature of the post conflict regime and at times the role the international community played in terminating the conflict and the what Teitel (2000) refers to as the historical realities of the particular situation. One of the most important reasons advanced across such societies have been the desire to foster reconciliation and to create the conditions of durable peace as an important prerequisite for reconstruction. In Rwanda the post genocide justice process worked on a crucial assumption. This assumption is that the nature of the conflict being addressed is accurately framed i.e. there was a genocide of Tutsis perpetrated by Hutus. This RPF centric conflict frame supported by a 'guilty' international community has been crucial in determining the nature of justice and the institutions that deliver it.

My research question is therefore designed based on this assumption without any prejudice to its validity or not.

What are the implications of post genocide justice on reconciliation efforts in Rwanda?

1.4 STATEMENT OF THE RESEARCH PROBLEM

A research problem defines an issue which exists in literature, theory or practice which necessitates a study (Creswell, 1994; Strauss et al, 1993). In light of the genocide that occurred in Rwanda in 1994, the Rwandan government and the international community have attempted to factor out the painful legacy; bestiality that took over Rwanda for 100 days

resulting in the death of hundreds of thousands of people. The basic premise for attempting to understand how human nature, rational or bestial, society ordered or anarchical could be so easily transformed as to devour its own children is necessary if post genocide Rwanda would be healed. The post genocide justice arrangement was established based a presumption. The presumption that there was genocide on the Tutsis perpetrated by Hutus at its early days was greeted by the Euphoria that enveloped a world still trying to come to terms with what had happened in Rwanda and its own negligence. On the other hand the Rwandan society was faced with the grimed task not only of rendering justice to those who had suffered but also to reconcile the society through processes that ensured accountability, healing, justice and possibly forgiveness. The startling reality then as it is today is that Rwanda was not dealing with a 100 day event. It was dealing with events of 100 days looking through the scope of its entire history. One of the first historical issues that had defined the conflict in Rwanda had been that of ethnicity. This problem stems from the construction of ethnicity designed around stereotypical physiological features meant purposefully to facilitate colonial rule. These stereotypical ideational structures were duly inherited by post-colonial regimes and were immediately translated into material structures of power and used to justify policies. This is an issue that either by omission or commission has been used to define Rwanda's post genocide justice arrangements. The framing of the genocide convention and its subsequent codification into law as a deliberate intent to destroy an indelible group seems by all intent negationist in terms of the suffering of the other party to the conflict. While the ICTR statute defines its mandate as to deal with all crimes during the conflict, the domestic jurisdiction within Rwanda according to most Hutus has adopted a victor's justice approach. This is reflected in an invitation I received to commemorate the 17th anniversary of what this Belgian Hutu group calls the 'Rwandan tragedy'. Consequently post genocide justice has followed a pattern that fails to address the root causes of the conflict between Hutus and Tutsis; instituted what Hutus perceived as the Nuremberg paradigm and has thus created a perceived justice system tailored towards collective retribution. The Hutus have a sense of collective guilt which does not only stem from how the genocide convention frames the crime from both a legal and sociological perspective but also from an angle that portrays justice as a victims/victors system of justice. While the Rwandan instituted both a traditional and community system of justice in what is popularly known as the Gacaca courts, speedy administration of justice was lacking due to the sheer number of people being detained. By the end of 2001 about 6500 genocide suspects had been judged with acquittal rate of 1000 verdicts issued annually. The Tutsis also feel that the Hutus revisionist tendency amounts to

genocide denial or better put attempting to equate organised pattern of state-centric violence aimed at annihilation to acts of what Kagame describes as actions of rogue elements of the military arm of the RPF. They also feel that the current system of justice at the level of the ICTR established under UNGAOR 995 fails to provide effective justice. And at a very huge financial cost, bureaucratic inefficiency, insuperable and managerial difficulties between the Chambers, prosecutor's office and the registry has portrayed the ICTR as an inefficient system of justice dispenser. It is a point stressed by President Kagame. Tutsis feel not only betrayed by such a justice system but also by the fact that some countries which pushed for such a system considered divorced or abstracted from the reality of the victims still shelter some of the planners and perpetrators of the genocide (Mills & Brunner 2002;250). These countries and institutions are perceived as having failed the Rwandan people in their direst moment of need. The Rwandan government has also attempted to solve this problem with solutions that seems to de-ethicise Rwanda. By attempting to outlaw ethnicity through formulating laws that criminalise speech perceived as inciting or revisionist and at the same time instituting a remembrance ideology that translates into collective guilt of the Hutus generates conflict and as Hutus argue undermines the post conflict reconciliation efforts. The Hutus perceived such policies as an attempt to create an ethnocracy. Lemarchand describes these setups as 'manipulated and enforced memory' which he asserts helps nurture ethnic enmity. The failure by the international community to intervene in Rwanda created a sense of abandonment and even conspiracy which seems to influence the form of justice and consequently the general sense of Hutu suspicion. Review of the literature has shown that many scholars of sort to explain possible reconciliation and healing mechanism. One of the most interesting was Staub's 'bottom-up to reconciliation, which attempt to promote changes in the population, and top-down approaches working with the media and leaders who can shape the attitudes of the community as well as the nature of institutions that may further reconciliation'. This approach seems to focus on the internal dynamics to reconciliation. On the other hand, Rwanda's history has shown that while internal dynamics seems to play a role in justifying rebellion against tyranny and oppression, the role of the expatriate community seems a constant in Rwanda's ethnically driven cyclical alteration of power dynamics.

1.5 LIMITATION OF THE STUDY

The study adopted of an explorative format and thus did not seek to advance any normative judgement on the issues under study. It was also limited in its scope of data collection by focusing mainly on Hutu Rwandan exiles within some European countries. Though this is

within the scope of the study, it is relevant to note that most Rwandan exiles are in the immediate neighbouring countries surrounding Rwanda. Another important limitation of the study is rooted in the fact that the area of study is still on-going. Consequently some information presented in the study might actually change overtime.

1.6 RESEARCH METHODOLOGY

1.6.1 RESEARCH DESIGN

The selection of the research methodology for this study was informed by the requirements of research topic, the hypothesis underlying the research variables as well as access to relevant information on the topic. The research process involved developing a purpose, developing research questions, collecting and analysing data, describing the methods used within the process, and presenting the information in a final conclusion or discussion section (Creswell, 2005). There are two types of research methods relevant to the collection and analyses of data: Qualitative and Quantitative. The basic difference between the two methods lies in the research design which encapsulates the methods of data collection and analysis. Quantitative research involves gathering data that is absolute, such as numerical data, so that it can be examined in as unbiased a manner as possible. This method is very effective especially where the researcher has unimpeded access to the research area and the sources of data. On the other hand, qualitative research method aims at providing an in-depth understanding of human motivations and activities and the reasons that govern such behaviour. This was appropriate for this study considering the duration of the Rwandan conflict and the development of other conflicts which indicates the belligerent nature of the Rwandan. The propensity of the Rwandan people to resort to violence and to make peace can only be understood through a study of the motivations of the Rwandan people based on their socio-cultural and psycho-sociological behaviour. Considering that the study is based on the specific case of Rwanda, the qualitative research method is more relevant in generating information only on the particular case study with a view to creating new hypothesis for further research. Through qualitative research method, the study undertook a more succinct and cost-effective methodology that produced the relevant outcome.

1.7 SAMPLE SIZE:

The study initially set out to interview about $20 \leq n \leq 30$ respondents. The purpose was to have a number that could enable the detection of most or at least all of the perceptions that might

be important in answering the research question. Despite this very small number of projected respondents, I reached data saturation quite early during the interview process as most of the respondents were giving similar answers with very little noticeable variations. Nonetheless since the initial approach was not designed to develop a theory through some form of data saturation method, reaching the projected number of intended respondents was pursued. This part of the study ended up including 21 individuals as individual respondents and focus group participants. While I embedded for three days within Hutu exiles in Germany and Belgium and spoke with most of them, observed certain trends, these numbers are not factored into the study as 'actual respondents'.

1.8 ENTERING THE FIELD

The objective of the interviews was to determine the ways that each individual perceives the individual aspect of the post conflict justice regime, how group solidarity influences such perceptions and how such perceptions influences reconciliation.

I began my research in a very unlikely location. Berlin was not supposed to be my first stop but the cheap cost of flying into Berlin than Dusseldorf made the once divided city and now the powerhouse of European Unity and centre of a new European economic landscape the best place to begin a research about justice. I landed at the Berlin Schoenefeld airport, not far from the historic Templehof airfield that served so pivotally in the 1948 Berlin airlift. In 1948, the Soviet Union blocked Western Ally's rail and road access to parts of their occupied section of Berlin. The Western allies responded with an historical airlift to Western Berlin to supply the almost 2.5 million inhabitants dependent on external aid for survival. Controversially the success of the airlift led to the lifting of the blockade and the effective creation of two separate German states. Schoenefeld since then became the main airport that served the Democratic State of East Germany. From Berlin, I travelled to Duisburg where I setup base for the interview processes. My first second respondent was respondent A who was very instrumental in snowballing me to other respondents.

Five days later, I travelled to Cologne where I attended a rare meeting of the Rwanda National Congress (RNC). The RNC is a loose association of exile Rwandans of both Hutu and Tutsi extractions. Though dominated by Hutus, a small group of influential Tutsis seem to have played an important role in its founding. The meeting started at 15.00 pm. I was introduced by respondent E to most of the officials before the meeting actually started. Most of the officials including respondent C, a former prosecutor at the ICTR were comfortable

with my presence including one of two ladies who actually referred to me as a 'I am their brother'. It is a familiar theme echoed throughout the study. Il est Bantu one said with confidence. As the door shut behind me at 15.15, l had an eerie feeling. It felt like taking part in an Akazu meeting. Most of the participants seem very calm and most were also soft spoken. The former prosecutor actually assigned someone to help me in translation as the meeting ran entirely in Kinyarwanda. I took a seat near the exit as though preparing for any eventuality should any need arise. This seems to be prejudice at its best dictating my pattern of reasoning. The interpreter helped for a few minutes before becoming himself drowned in the deliberations. I took some pictures but was embarrassed when a former military officer of the FAR insisted his image be cut off the picture. All attempts to convince him that only his leg had appeared in the picture would hit a brick wall. I was forced to delete the picture.

In a 23 page document written in English, the RNC stated its 'core values, goals and an agenda for a new Rwanda.' Its principal objective as stated in this document is to 'stop and prevent violent conflict, including genocide and grave human rights violations…', 'eradicate a culture of impunity for human rights violation'. It proposes 13 strategies for 'moving Rwanda towards achieving its goals and objectives'. The first of this thirteen strategy approach is 'mobilizing the people of Rwanda to unite in the struggle against dictatorship'. It rationalized this strategy on the claim that 'political leaders in Rwanda have fuelled sectarian divisions merely to cover-up their plans to monopolize political power'. Rwanda's ex-army chief, Faustin Kayumba Nyamwasa who now resides in exile in South Africa participated by Skype. General Nyamwasa survived an assassination attempt in June 2010 as gun men claimed to be under the orders of Rwanda attacked and wounded the General as he was being driven home. Also present at the meeting was Rene Mugenzi who had been informed by Scotland Yard in May 2011 that '"The Rwandan government poses an immediate threat to his life'

Many will wonder why a research about Rwanda should be taken place in Europe. I am interested in talking to exile Hutus on their opinion on a wide range of issues that impact political order in Rwanda. The choice of Hutu exiles is deliberate. Bakke in a 2010 paper argues as follows; 'the causes or catalysts for intrastate struggles sometimes rest abroad. Scholars have argued, for example, that neighbouring states may become sanctuaries for rebel groups (Salehyan and Gleditsch 2006; Salehyan 2007), and that diaspora communities in either near or far-away countries sometimes fund and support rebellions back home (Adamson 2004; Lyons 2006; Smith 2007). First the Hutus form the majority of the Rwandan

population'. With a staggering 85% of the population they form a solid majority that within a continent of ethnic solidarity even under a democratic setup can swing the country either way. Secondly the history of Rwanda is one that has seen exiles to be very instrumental in determining which ethnic group takes over the realm of powers. Thirdly it is my believe and supported by the literature that in present day Rwanda the criminalization of ethnicity makes it unlikely to get home base Hutus freely talking about the issues relevant to this study. The government initiated a policy of unity and reconciliation, a rare, intentional societal process to help people heal and reconcile. However, as part of unity, people are expected to consider themselves Rwandans and not to use the terms Hutu and Tutsi. Discussing differences between the groups has been called "divisionism." This policy does noy allow Hutus to express their concerns and identity.

Lastly, what better place to start a research about post conflict justice than Germany where in 1949 the Nuremberg paradigm was established? In international justice, the state has always been seen as the locus of legality, shielded from interference by the waning concept of sovereignty. In post WW II, the state became the central focus of investigation for being the central personality in the perpetration of crime. The shift from Nuremberg has been a shift in the consideration of the state as the central unit of analysis. If Nuremberg perceived crimes against humanity from an international perspective a shift in this paradigm has clearly situated crimes against humanity, war crimes and genocide within a supranational perspective. Armed with an overwhelming believe that the RPF is liable in equal measure and convinced that continuous pressure will see the Convention on the Non-Applicability of Statutes of Limitations to War Crimes and Crimes Against Humanity of 1968, one day work in their favour and convinced that the Rwandan cycle of alteration of power fuelled from abroad will continue, Hutu exiles seems to be the most important source of data to answering the research question of this study.

1.9 TARGET POPULATION

My decision to interview exile Hutus as opposed to Hutus in Rwanda is informed by two rational. The Hutu ethnic group carries with it a collective sense of guilt for the genocide. This is based on the way the genocide convention frames the crime and what Larmarchand calls a remembrance syndrome instituted by the post genocide government of Paul kagame. Apart from lack of funding to help me gather data from Rwanda as to validate my assumption of the fear factor in Rwanda, I presume base on reports of arrests, extra-territorial

assassination that those Hutus still residing in Rwanda have a stronger sense of this guilt and when interviewed, it is clear they will speak from a position of remorse and fear also exacerbated by 'anti-ethnic policies' of post genocide Rwanda. This may mask the underlying anger that the Hutu feels of the Tutsi based on perceived historical injustices they faced and the underlying rational informing the Tutsi rebellion which they perceived as a willingness by the Tutsis to regain power and continue the persecution of the Hutus. On the other hand exile Hutus have been at the forefront of anti Kagame activities that of course they perceive epitomises Tutsi domination. As exiles, despite living under the fear of external threat emanating from Rwanda they can speak out from a position of deep feeling. This is important to capture a frank and uninfluenced source of data that will be relevant for my analysis. I have decided not to interview Tutsis not only because there is enough literature that captures the genocide and explains the horrifying journey of the Tutsi but also because I do not want to fall into a comparative study. I have nonetheless been very close to Tutsis through my political activism. I have spoken to Rwandan diplomats of Tutsi origin and I have lived in the same home here in Norway with a Tutsi family that lost many family members during the genocide and through whom I have come to meet many other Tutsis including individuals who are still deeply involved in the resistance against what they called the genocidaires in Eastern Congo. I thus have a fairly understandable depth of the mind frame of the Tutsi which of course will be supplemented through the method of discourse analysis. The discourse analysis part of the research will focus on primary and secondary data obtained from the literature about the genocide and the other interrelated concepts including speeches, court transcripts, books, journal articles, movies, the analysis of documents and materials especially press releases, resolutions propagated by exile Hutu groups and other relevant sources of data. All though the qualitative method will enable the study to capture relevant information towards understanding most of the concepts under investigation; it will be most useful in the paper on post genocide justice in Rwanda.

1.10 DATA COLLECTION METHOD

The form of interview was informed by my desire to give the Hutus a voice as to permit me capture the relevant issues necessary to answering my research question. Thus an in-depth unstructured interview was adopted throughout the interview process. This was appropriate not only because it provided a free flow of information but also because it captured perception, tone, attitude and other relevant issues necessary to understanding the Hutu. I also took part in strictly Hutu exile political conferences in Cologne and Bruxelles within which it

was possible to follow how they formulated their grievances and postulated on solutions to the issues meaningful to them. Furthermore it permitted me to have uncensored primary source of data through the various articulations during conferences and how these articulations are narrowed down into resolutions and policy positions. Taking part in focus groups discussions also added a comparative take on the various themes and issues that defines the Hutus not only as an ethnic group but also as a political block. I lived in a refugee camp with a couple of Rwandan exiles from Hutu extraction. One of this refugee comes from a prominent Rwandan family with a high level political background. The father is currently in jail for crimes committed during the genocide. Through him I came to meet several other Hutus and it will be fair to say they are all bonded together in solidarity to a common history.

1.11 DATA ANALYSIS

The data analysis method adopted varied based on the type of data and the method used in collecting them. In qualitative data analysis observer impression is vital. Considering that, both primary and secondary data was collected for this study, my objective was to produce the data in a format that could be easily be analysed. The format included transcripts from interviews, focus group, field notes collected by participating in political meetings, demonstrations and 'evening outings' with more than one dozen Hutu Rwandans. The memos and notes were developed as soon as the data collection process began. These helped focus my mind and alerted me to significant points which came from the data. These memos and notes were analysed along with the transcripts.

The qualitative nature of the research implied that data analysis was an on-going process, taking place throughout the data collection process. The study also took into consideration the emerging themes, adapting and changing the methods as required. Another analytical method that was employed in this research was discourse analysis. This method examined the patterns of speech, such as how people talked about a specific subject under discussion, the metaphors they use, and how they took turns in conversation. This analysis was used to interpret speech both as a performance which indicated an action and described a specific state of affairs or specific state of mind. Much of this analysis was intuitive and reflective. Finally, the data obtained through interviews, focus group discussions were validated using secondary data from books, research reports, journal articles. The information from published sources was analysed using content analysis. The findings were then extrapolated from the

competing arguments from the diverse group of respondents in relation to the secondary sources through triangular arguments. This represented an effective method of conveying original results based on a study like this. Using this method, data from different people and sources was compared and contrasted and the process continued.

CHAPTER TWO

2. THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.1. THEORETICAL FRAMEWORK OF THE STUDY:

The main aim of a theoretical framework is to explain the theoretical foundation of a research topic. A theory is regarded as a systematically related set of statements including some law-like generalizations that are empirically testable. It is possible to perceive a number of common characteristics of a theory viz; abstractness, logic, propositions, explanations, relationships and acceptance by the scientific community. It is therefore important to base a study on a particular theory (Mjøset, 2000). The theoretical framework identifies and labels the important variables that are relevant to the research problem. This exercise enables the researcher to connect the dependent variables with the independent variables and elaborate any moderating variables.

A theory is regarded as a systematically related set of statements including some law-like generalizations that are empirically testable. It is possible to perceive a number of common characteristics of a theory which include abstractness, logic, propositions, explanations, relationships and acceptance by the scientific community. They are generalisations about how the world works and why and how people act as they do. The role of theory in the field of social science and where it situates in the research framework has always created a challenge for the researchers consequently all studies must have a solid theoretical basis. Though such validities are questioned as legitimating itself by stressing its capacity to construct universal grammar that produces forms of knowledge that privileges a number of categories…defining the objects of enquiry, establishing relations of similarity and making classifications. Situations of conflicts and consequently post conflict reconciliation can be context specific depending on whether they are intra or interstate conflicts. A towering question raised by Professor Menkel Meadow is whether the field of conflict resolution has any broadly applicable theory that works across the different domains of international and domestic conflicts. He answers this question by stressing the need of context in understanding and resolving conflicts. As he aptly puts it ‘context may matter a great deal, as does the history, culture, personality, situations, geography, economics, and politics that construct those contexts’. Though Meadow negates the metamorphosing dynamics of conflicts, the

externalities that sustains and makes conflicts possible and in case of Africa, that 'context' might actually not preclude historical realities of state formation, his question nonetheless touches the core of the tension between universalism and relativism. Raymond Shonholtz(2003) attempted to answer the question raised by Meadow in developing a general theory of conflict resolution applicable in different domains. According to Shonholtz (2003) the general theory on conflicts and disputes, situates conflicts and disputes within two different paradigmatic frameworks. Shonholtz assigns disputes to transitional and mature democracies and conflict to authoritarian regimes. The first premise of this theory is that in democratic societies, there are no conflicts, rather only disputes. The second premise of this theory is that in authoritarian regimes there are only conflicts and politicised systems of settlements. On the other hand the general theory of conflicts and disputes situates disputes within democratic societies. Within such societies, Shonholtz argues that there are no conflicts. The Third Premise is that in international relations, national states can transform conflicts into disputes. Conflicts are those issues that lack a legitimate, reliable, transparent, non-arbitrary forum for the peaceful settlement of differences. Disputes, conversely, are pre-described as having recognized forums for their expression and resolution that meet the above criteria. In short, conflicts lack a viable "container" for the routine management of differences. Based on Shonholtz postulation it wouldn't be contradictory to reason and empirical evidence to assume that Rwanda has had both conflicts and disputes which have both become protracted over time. The three premises advanced by Shonholtz would be considered to apply to the long and protracted situation of Rwanda which has traversed different forms of political regimes. Rwanda as it stance would be considered a transitional democracy. Consequently the first premise of Shonholtz theory, wherein the situation of protracted conflict has been mitigated by democratic institutions into a dispute would explain the present situation in Rwanda. The second premise of Shonholtz theory would fit perfectly the period under the Habyarimana regime and the conflict resolution mechanisms attempted within the framework of the Arusha accords. The conflict resolution mechanisms adopted by the regime strived to settle differences through forms of repression, violence, avoidance, or ideology. The latter settlement mechanisms that were overseen by the UN could be seen as politicised system of settlements designed as compromises between the belligerents focused around power sharing. More-over, existing settlement mechanisms are always subject to political influence and accordingly politicized depending on the parties, issues, and regime interest. The interests of successive regimes in Rwanda were the politicization of ethnicity. With regards to the third premise of the general theory on conflicts and disputes, Blake

Morrant (1998) asserts that nation states live in a Hobbesian world which dictates that individuals or states would employ any means including violence to attain and defend power, possessions and reputation. The argument that conflicts create the opportunity to democratize issues by limiting state power to an international regime or agreement prescribing how future matters will be settled fits squarely with the role the International Community through a system like the International Criminal Tribunal for Rwanda (ICTR) can play in 'democratising' post genocide justice.

2.2 LITERATURE REVIEW

Literature review and theoretical framework describe, summarizes, evaluates, clarifies or integrates existing research related to the area of inquiry. The theory helps structure the analysis of the empirics in a logical manner. Amongst other purposes, literature review serves to identify gaps in the study area, avoid duplicating the work of others and increase the breadth of knowledge of the researcher, it provides the intellectual context of the study enabling the researcher to position the study in relation to other works.

CHAPTER THREE

3. BACKGROUND FOR THE STUDY:

Stedman argues that history was a science because it composed of facts which were events which resulted from the action of individuals producing them through the framework of institutions (Stedman 1972;98)

3.1. HISTORIOGRAPHY

The genocide in 1994 was not a sudden eruption of anger which translated into targeted killings of Tutsis and moderate Hutus. These events were tied to historical developments that stretched beyond Rwanda's recent history as an independent state. It is therefore logical to set the reader through this historical path as to establish a holistic picture on recent tensions and their impact on efforts at genuine reconciliation.

Rwanda is a land lock country in Central Africa hemmed in the North and Northwest by Uganda. Sødenbaum and Taylor perceive Uganda as the epicentre of conflicts in the great lakes region (Søderbaum and Taylor 2007; 153).[7] In the South of Rwanda is Burundi with its own dynamics of internal strife characterised by evolving tension between Hutus and Tutsis. This changing dynamic has been the barometer that records internal dynamics in Rwanda. At the Eastern border of Rwanda is Tanzania a base of former Ugandan rebels who overthrew the autocratic regime of Idi Amin and have since as explained above been the ideological godfathers of the present Rwandan government authorities. This geographic location has a socio-economic, political, demographic and security dynamic in the countries evolution. It is a complexity Sødebaum and Taylor describe as, micro-regionalism'.[8] This micro-regionalism has its macro consequences best described as the threat to international peace and security caused by a pull and push effect beyond the intra-state nature of the conflict. Rwanda's current population according to the CIA Fact book stands at 11 million inhabitants making it one of the most densely populated countries in Africa. 85% of Rwandans are ethnic Hutus, about 12 % ethnic Tutsis and barely 1% ethnic Twas.

[7]Boås and Jennings in Søderbaum and Taylor (2007): 153 fighting a war of proxy in Sudan; involved in its own internal struggle with the Lord's Resistance Army in the north; also involved in what is seen as Africa's world war in the DRC and a former hoop and ideological mentor of former Rwandan rebel group, the RPF

[8]…micro-regions appear on the continent in various guises: they might be sub-national or cross-border; formal or informal; economic, political, administrative, cultural and so forth…'The Dynamics of Cross Border Micro-Regionalism in Africa edited by Søderbaum and Taylor(2007)

3.1.1 COLONIAL PERIOD:

Rwanda was ruled by Germany from 1897 to 1916. Following Germany's defeat in World War 1, like most of its colonies, Rwanda was ceded to the victorious powers and in 1923 became a League of Nations protectorate administered by Belgium. This mandate system conferred to the Belgians joint administration of Rwanda and Burundi as Rwanda-Urundu with the authority to govern it based on strict guidelines spelt out in the treaty of Versailles.[9]The idealist vision of the League of Nations was not in tangent with a statist realist interest driven world and could not survive the resurgence of a defiant Germany. Its failure to halt Hitler and Germany's expansionist lust led to its demise. In 1946, the United Nations was formed and apart from its prime objective of maintaining international peace and security it also set itself a moral duty to hasten the decolonisation of dependent or non-self-governing territories. Rwanda-Urundi became a UN Trust territory under Belgian rule in 1946 governed by the principles of the UN Charter.[10] Rwanda gained independence from Belgium in 1962.

3.1.2. CHANGING SOCIAL DYNAMICS:

The Belgian period of rule created an ethnic base system of governance in which the minority Tutsis controlled political power through entrenched feudal institutions and maintained a social hierarchical system that discriminated and exploited the majority Hutus. It was a system that translated into institutionalised curtailment in areas of education, landownership, job opportunities and instituted a form of patron-client relationship between the feudal institutions and the Hutu. Mambani (2002) argues that this form of rule led to the creation of a Hutu counter elite through three social locations; northern pre-independence Hutu elites forcibly incorporated into the Rwandan state and subjugated; the second was created through the introduction of a market economy, especially in Uganda and the Congo. The introduction of the market economy according to Mambani liberated the Hutus from the servitude inside Rwanda by expanding their labour opportunities beyond the borders of Rwanda itself. The market economy also introduced a certain degree of liberalisation which permitted Hutus to engage in agrarian production for export purposes. This became a great source of Hutu empowerment. This in a way challenge the social supremacy of the Tutsi partly derived through cattle ownership and consequently land control. The third area of the counter elite

[9]Article 22 of Versailles Treaty of 1919
[10] See Chapter XII Article 75 of The UN Charter

argument was education which helped to 'erode the social supremacy of the Tutsi and opened the way for Hutus to question the political institutions as erected for its maintenance. The political institutions ensured the survival of the social supremacy which was in turn legitimated by the Belgian colonial administration operating in alliance with the churches. According to Prunier, Belgian colonial rule was under a dual pressure of the international community and the majority Hutus to democratise the institutions of power (Prunier 95: 41-54 quoted in Paris (2004). The struggle for decolonisation went hand in hand with the struggle to terminate what the majority Hutus perceived as a symbiotic coexistence between two arms of repression. They both manifested themselves as external and indigenous minority rule. The normative basis for this struggle though grounded in customary believe was expressed in the 'majority declaration' called the 'the Bahutu Manifesto' which called for the double liberation of the Hutu from both the Hamites and the Bazungu (Mambani 2001;103-104). As Mambani aptly observed, the choice of the 'Bahutu', rather than the Rwanda manifesto was rooted in the Hutu believe that they were beyond just being an indigenous group which held claim to the land but they were the 'nation'. Most scholars have highlighted several factors which made a Hutu revolt imminent. What I perceive is missing in the literature is a third force. This third force was a moral one happening far away from Rwanda. It was the desire by the capitalist block to assume a moral supremacy over the Communist block and consequently force it out of Eastern Europe. This could not happen if countries central to the capitalist block were still seen as occupying powers over distant lands. This moral rational translated into the 1960 UN declaration against colonial rule. As a UN Trust territory under Belgian rule, the Trustee was bound by Article 76 of the UN Charter on trust territories to administer the trust territory towards independence or self-rule.[11] The

[11]The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:
-to further international peace and security;
-to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
-to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
-to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the

duality of Belgian rule, its manipulation of identity to facilitate this rule and Tutsi domination through entrenched feudal institutions were all inconsistent with the spirit of the UN decolonisation agenda coded in the Trusteeship Charter. Although the desire to abandon direct rule was governed by a moral rationale, direct rule itself was governed by a duality of political and economic reasons. Consequently the Belgians instituted policies for administrative convenience which will set the stage for a violent cyclical alteration of power that began in 1959.

3.1.3. THE EFFECT OF SOCIAL TRANSFORMATION:

In 1959 a Hutu revolt led to what Uvin describes as 'localised anti-Tutsi violence and small pogroms' and the 1960 and 1961 legislative elections which brought to power an anti-Tutsi party and the subsequent overthrow of the Monarchy sent thousands fleeing into neighbouring Uganda and Burundi. According to Paris, Tutsi resistance to Hutu rule continued in the following years which provoked waves of repression by the Hutu government (Paris, 2004;70). The first post-colonial republic under president Kayibanda chased out and killed most former Tutsi power holders and politicians as well as moderate Hutu politicians (Uvin 1999;6).[12] The shift in political power and the termination of its source of sustenance did not only leave the minority Tutsis vulnerable but the effect of historical mythologies, identity reconstruction and ethnic manipulation that legitimated Tutsi rule was transformed into a source of Hutu fear that in turn legitimated repression of Tutsis. These tensions would continue into the second republic under Juvenal Habyarimana as impunity became the norm and institutionalised discrimination legitimated by a claim of fighting historical injustices. As Newbury argues, repression was not mainly on Tutsis but also on critical opponents of the regime from Hutu extraction.[13]The counter elite Mambani argues

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administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

[12] Peter Uvin(1999). Ethnicity and power in Burundi and Rwanda: Different Paths to Mass Violence: Comparative Politics Vol. 31, No. 3 (April 1999), pp. 253-271

[13]In the 1980s, Habyarimana adopted increasingly harsh measures against political opponents, including, most notably, many imprisoned leaders from the First Republic; the late 1980s saw a rash of political assassinations, often in the guise of car accidents. The targets of these murders - almost exclusively Hutu - were usually people seen as too critical of the regime; the courageous editor of Kinyamateka (a widely read weekly newspaper written in Kinyarwanda) and an outspoken, popular female Member of Parliament were among the victims. Catherine Newbury(1999)' A catholic Mass in Kigali: Contested views of

created under the first and second republic installed a culture of impunity which was tolerated or at best promoted through legislation in the name of resisting Tutsi dominance and fighting for liberation from a dual historical injustice. These claims were not helped by trying to replace one repressive system by another. The toleration by both Kayibanda and Habyarimana of a culture of impunity directed principally against Tutsis and moderate Hutus resulted in a marriage of convenience between Tutsis mostly operating from exile and an internal Hutu opposition. The dual pressure on Habyarimana was raised in October 1990 when a well organised and disciplined exiled based mainly Tutsi force invaded Rwanda from Uganda. Though this invasion was repelled with the help of France's support, it nonetheless exposed the vulnerability of the structures of power and hardened the resolve of a small group of hardliners within the Habyarimana government to resolve to deal with its internal Tutsi support base.

3.1.4. STRUCTURING A PEACE ACCORD:

In August of 1993, following negotiations between the Rwandan Patriotic Front (RPF) and the Rwandan government, the then Organisation of African Union (OAU) mediated the signing of a cease fire agreement within the framework of the Arusha Peace Accord (APA). The Accord was a comprehensive peace agreement designed to bring the war between the RPF and the Rwandan government to an end.[14] The Accord trumped national unity over ethnic or regional preferences and resolved the question of the return of Rwandan refugees. The focal point of the protocols and then the Accord was the formation of a transitional government to be headed by a prime minister, the integration of both armies, institution of plural democratic political order in which sovereignty rested with the people and in which the respect of human rights protected by the constitution but reflective of universal norms and values was guaranteed. Apart from the civilian monitoring regime composed of the parties to the Accord, and representatives of the countries that oversaw its signing were critical in its implementation. Also included was a military monitoring component sanctioned by UN Security Council Resolution(UNSC) 872 under a Chapter VI mandate of the UN Charter and included the establishment of the UN Assistant Mission for Rwanda (UNAMIR).[15]The outline of the agreement was consistent with international demand for the liberalisation of the

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ethnicity and genocide in Rwanda: Canadian Journal of African Studies, Vol. 33, No. 2/3 pp. 292-328

[14] Article 1 of the APA

[15] UNSC Res. 872(1993)

institutions of state which included what Paris (2004) calls the 'democratisation and marketisation' of the state. The marketization angle involved devaluation of the Rwandan currency, implementation of a strict Structural Adjustment Program (SAP) which involved reduction of the deficit, spending cuts, liberalisation of imports, elimination of subsidies for coffee producers. The democratisation angle involved the introduction of a multiparty plural society within which domestic political opposition could operate free from repression. It should also be noted that the price of coffee which provided almost two third of Rwanda's foreign revenue had plummeted (Paris 2004;7). The consequences of these changes; the economic pressures caused by the war, the marketization demands of Multilateral institutions and the political compromises in ending the war according to Newbury were also the "major factor in the growing schism within the government itself".

3.1.5. THE GRADUAL UNRAVELLING OF THE ACCORD:

The schism alluded to by Newbury further weakened the Habyarimana government and threatened the premise of the Arusha Accords and its protocols. As Uvin explains, the regime was under attack from all fronts and its most radical factions took recourse in the usual time-tested solution: the revival of ethnicity steered by the 'small house' headed by the president's own wife (Uvin 199;9). The Akazu became an ideological setting whose legitimacy rested on a fluid and skewed foundation that would be used all through the genocide. The Akuza derived its legitimation in terminating Tutsi power which was defeated in the 1959 revolution. The hardliners perceived the Arusha Accords as capitulation and the provision of a soft landing spot for Tutsis bent on reclaiming political power. It was a claim they effectively transformed into a propaganda tool to instil fear into their Hutu base. The birth of Hutu power Mambani argues was designed as an organised political tendency alongside a comprehensive propaganda effort meant at discrediting Habyarimana's effort at reconciliation(Mambani 2002;190). Once discredited, Habyarimana became a seating dock for both the Akazu and the RPF. In April 1994, the plane carrying Habyarimana and the president of Burundi was shot down over Kigali.[16] The circumstances of the downing of this plane still remains shrouded in controversy and the power vacuum Habyarimana's demise created would be immediately filled by the hardliners opposed to the Arusha Accords.[17] The

[16] See appendix 1 for a Communique by victims of the plane crash on its 18th anniversary

[17] A recent report issued by a French on January 10, 2012 contested a former report by judge Jean Luis Brugiere which accused the current Rwandan president of having brought down the plane of president Habyarimana. The findings were based on the presumed origin of the

Hutu hardliners spread out within the presidential guard, Interahamwe militias, the youth wing of the ruling Hutu party, began executing anyone whose identity cards identified them as Tutsis(Holzgrefe & Keohane (eds) 2003;15). In less than three months, an estimated number of about 800.000 Tutsis and moderate Hutus who declared their sympathy with the Rwandese Patriotic Front (RPF) were slaughtered (Pottier 2002;9). An estimated 43,000 Tutsis were killed in Karama Gikongoro, a further 100,000 massacred in Butare; over 16,000 people were killed in around Cyangugu; 4000 in Kibeho; 5,500 in Cyahinda; 2,500 in Kibungo.[18]Mamdani (2002) observes that unlike the Holocaust, the Rwandan genocide was not carried out in a distance; in remote concentration camps beyond national boarders…it was as he contends executed with the slash of machetes(Mambani 2002;5). The proximity between the perpetrator and the victim throws an interesting dilemma in post genocide reconciliation.

Staub argues that the non-spontaneous nature of genocide during which both victims and perpetrator undergo a gradual transformation characterised by dehumanisation and intoxication respectively (Staub 1989;15)[19] creates an interesting dilemma in any post conflict society. This progressive nature of human transformation explains the underlying reasons why fixing a society that has suffered the scars of genocide, demands a meticulous and time consuming reordering of society in a way that unwraps and exposes the past for what it was and reconstructing a future based on mutual trust. Mamdani summed the genocide and the challenges as follows: if Rwanda was the genocide that happened, then South Africa was the genocide that didn't…if South Africa has millions of beneficiaries and few perpetrators, Rwanda has perpetrators at least in their hundreds of thousands and few beneficiaries (Mamdani 2002;185). It is the nature of the genocide, its rationalisation based on fear that makes post genocide reconciliation a complicated enterprise. Rwanda and the international community have since 1995 engaged in a triad process of accountability as a

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missile that brought down the plane of Habyarimana. The enquiry concluded that the missile originated from the Kanombe hill which had a military base of the FAR; The French foreign minister Alain Jupe responded to the new findings with 'on prende act'http://www.pacificfreepress.com/news/1-/10662-judge-jean-louis-bruguiere-is-alive-and-well-and-in-the-news-again.html accessed 15.01.2012

[18] Alison Des Forges in 'Leave no one to tell the story quoted by Holzgrefe

[19]Genocide and mass killings do not directly arise from difficult life conditions and their psychological effects. There is a progression along a continuum of destruction…victims are further devalued…perpetrators change and become more able and willing to act more against victims. In the end people develop powerful commitment to genocide or to an ideology that supports it.

way of ending the country's culture of impunity, helping it deal with its past and fostering reconciliation as a healing process. This triad system of justice dispensation under the International Criminal Tribunal of Rwanda (ICTR), national courts and the Gacaca traditional system of justice follows the dual track of retributive and restorative justice mechanism respectively. The ICTR which is based in Arusha Tanzania has brought into custody alleged key planners of the genocide[20] rendered important judgement on the genocide which have been key to the discourse of genocide as a whole.[21] On the other hand the domestic process of dealing with the culture of impunity and rendering justice has been a source of tension between the need for justice and reconciliation. This tension is exacerbated by the backlog of unresolved historical issues raised at the beginning of this section and the ever evolving tension on the definition of genocide. It is all together befitting to begin the next section in addressing the competing positions on the discourse of genocide which I think is important if not critical for post genocide justice and reconciliation.

3.2. CONSTRUCTING THE GENOCIDE DISCOURSE:

The way the genocide discourse is framed challenges the individual culpability regime of criminal responsibility that has defined most post conflict justice regimes. It is a discourse framed around intent, purpose and physical elimination of an 'indelible' group. It has been related in social theory to both social and political structure: i.e., ethnoclass exclusion and discrimination and types of polities undertaken by mostly authoritarian regimes (Fein 1993;79).[22] The aftermath of the 1994 genocide erected what most Hutus describe as another ethnoclass authoritarian regime that established a post genocide justice mechanism grounded in 'victor justice' This section is dedicated to framing that discourse and to relate its limitations and strength in the on-going discussion about accountability after massive violations of human rights.

Genocide is both a sociological and legal terminology conceptualised as a narrative constructed to encompass different interrelated concepts. Its state centric definition rooted in

[20] Prosecutor vs. Bagosora et al (Case No. : ICTR-98-41-T): http://www.unictr.org/Portals/0/Case/English/Bagosora/decisions/061006c.pdf accessed 18.11.11

[21] Prosecutor vs. Akayesu (Case No. ICTR-96-4-T): http://www.unictr.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf accessed 18.11.11

[22] Helen Fein (1993). Accounting for genocide after 1945:theories and some finding; International Journal on Group Rights 1:79-106, 1993

a world seen through a realist lens negates the dynamic nature of human relationship compounded by dynamic identities, waning cloak of sovereignty and technological advancement. Genocide has been a subject matter that has interested psychologists, sociologists, anthropologists, political scientists, legal scholars and even historians. As a legal category, the 1948 Convention for the prevention and punishment of the crime of genocide defines the crime of genocide in its Art. II. The ictr and International Criminal Tribunal for Yugoslavia (ICTY) have developed a huge pool of case law that helps bring more clarity to the legal definition.

As a sociological concept it has been well researched by Scholars like Fein (1990, 1993b,), Chalk and Jonassohn (1990) Kuper (1981, 1983), Staub (1989), Power(2007), Charny(1999).

3.2.1 CONSTRUCTING THE CRIME:

Raphael Lemki constructed the word genocide by combining the Greek word genos (tribe, race) and the Latin word cide (killing of). The 1948 genocide convention transformed it into a legal category within which ethnicity and intent played a central role in its determination. Hintjens submits that in any attempt to explain something as complex as the genocide in Rwanda, parallels with other situations of mass state murder are unavoidable. Beyond parallels, theoretical explanation to mass murder gives a macro perspective into those conditions that make such events not only possible but sometimes unavoidable. Though conscious that the disparities and the dissimilarities between them must limit, if not render dubious any attempts to find common characteristics or at least common causations to them, it is reasonable to pursue macro-explanations to consistent pattern of events that sometimes stubbornly defy the logic of micro explanations.

3.2.2. THEORETICAL EXPLANATION OF THE CRIME:

In relation to human rights or human rights abuse Bauman Zygmunt illustrates how such a model gets us to understand genocide with his work on the Holocaust. He looked at society concentrating largely on factors internal to it. We know already Baumann argues that the institutions responsible for the Holocaust, even if found criminal, were in no legitimate sociological sense pathological or abnormal (Baumann 1989; 19). On the other hand

Baumann as a functionalist contends that the Holocaust was the product of modernity. Of course modernity has perfected killing and abstraction which diminishes moral responsibility; set in place bureaucratic machinery then employs rational thoughts but this argument fails to explain the Rwanda genocide that was rudimentary at its best. Bauman argues that the spirit of instrumental rationality and its modern bureaucratic form of institutionalisation did not only make the Holocaust possible but 'emminently reasonable'. Yet it is also acceptable that instrumental rationality became a latter Nazi design only in 1941 after they had failed to use ethnic cleansing as a way of building a German Reich free of Jews. Rwanda throws in an interesting dimension in the modernity mass killing argument. Like Germany, it has been argued that almost a generation of pogroms, massacres and targeted killings was unable to deal with what the Hutus perceived as the 'Tutsi problem'. Consequently instrumental rationality which is based on using the end to justify the means seem to have been the best approach of the 'small house' to end Tutsi mythological and inherent right as a group 'born to rule'. Of course this could only hold true if the decision was physical elimination of the Tutsis. And as Baumann argues the utilisation of the bureaucratic machinery vested in the state made this enterprise even much easier. My interest in Bauman's explanation flows from his attempt to establish causality between institutions and the people who worked in it. This is an argument Giddens frames as the agency structure relationship which he underscores as an immutable reciprocating feature in shaping agency and structural action i.e. both the medium and the outcome of practices which constitute social systems (Sewell 1992;4).[23] What modernity took away from Nazi Germany, it did same for the State of Rwanda. Economic and political liberalism as two of the cornerstone of the modern state was a liberating force for the Hutus as it was to Germany and challenged the state-centric monopoly that defined Hutu domination of Rwanda's society. This is the same monopoly Hutus attributes to the current structure of power centred on Kagame. It is this autocracy that defines the post genocide justice architecture in a way Hutus claim has the potential of wrecking the fragile peace the country currently enjoys.

On another count Fein argues that genocide may lead to war and war may lead to genocide. She particularly cited the situation of 'lostwars' as instrumental to the genocidal project which is premised on the destruction of groups labelled as aliens within (Fein 1993;84). Fein once more argues that there is a similarity in genocidal killings which lies in the ideologies of

[23] William H. Sewell (1992). A theory of structure: Duality, Agency and Transformation; American Journal of Sociology, Vol. 98 No.1:1-29

national homogeneity dictating the choice of victims and she explains, this follows with the exclusion of the victim group from the universe of moral obligation of the perpetrator. Rwanda thus challenges Fein's argument. This is a case study where the victim was part and parcel of the universe of moral obligation of the perpetrator. Despite persistent and systematic forms of discrimination under Rwanda's post-independence republics which amounted to a certain degree to social exclusion, there is enough evidence to show that both ethnic groups were connected at least from a bottom up perspective. In this connection some have argued makes the genocide itself difficult to rationalise and post genocide reconciliation an enterprise of near insurmountable proportion.

Palmer weighs in with the colonial argument by positing that the main difference between colonial and modern genocide is that in the former the victim is excluded from the perpetrator group prior to exclusion. In Rwanda both the perpetrator and victim were integrated within the same socio-economic and political structures. According to Palmer's theory the Tutsis would have been considered to be both an obstacle and a threat to the perpetrator society and viewed with fear (Palmer 1998;95).[24] Consequently post-colonial influence kept Rwanda permanently divided along multiple interest lines.

Newbury & Newbury (1999) sets this argument into a clearer framework by stressing the failure of the nature of the post-colonial state and the changing configuration of regional, class and ethnic divisions in Rwanda in addressing the concerns of ordinary Rwandans. Kuper becomes more specific on the structural basis for genocide when he posits that the plural society which is consistent with the presence of diversity of racial, ethnic and or religious groups in which genocide is defined as a crime committed against these groups. But what are those conditions that support either argument of genocidal massacre?

The dominant perspective O'Byrne contends appears to have emerged from the Weberian tradition which emphasises the role of the centralised authoritarian state in modern societies and the existence of conflicting groups within the plural society. The plural society argument hinges on the assumption that only in heterogeneous ethno class societies can the sociological and legal definitions of genocide apply. For it is in such societies in which persistent discrimination, marginalisation are institutionalised that rebellion by the 'other' leads to the possibility of genocides. The Rwandan genocide has been explained on several grounds. Yet

[24] Alison Palmer (1998). Colonial and Modern genocide: explanations and categories; Ethnic and Racial Studies Volume 21, No. 1(1998), Routledge

like the Holocaust which happened more than sixty years ago, there is hardly any consensus on what actually caused the genocide. None of the arguments advanced in explaining the genocide has independently captured the cause(s) of the Rwandan conflict, its resilience and the difficulties associated with its resolution, accommodation or transformation for beneficial purposes. That is why Zartmann's question on the sequential, phasal or concomitant nature of conflicts (Zartmann 2005) strikes an interesting chord with my approach to the Rwandan conflict. Consequently, looking at the genocide debate first through Zartmann's postulation of creed argument is very important. Fisher (1990) defines a creed conflict as one that revolves around incompatible preferences, principles or practices that people believe in and are invested in with reference to their group identity. The Rwandan conflict is thus at times situated within this realm of value tension and consequently described as an ethnic conflict conducted along the defence of sometimes immutable identities. This argument is re-enforced by the fundamental premise underlying the definition of the crime of genocide. It is a supposition advanced by Newbury and rejected by Mamdani (2002).

3.2.3. THE INDIVIDUAL PROPENSITY TO COMMIT GENOCIDE:

Psychoanalytical explanation of genocide has characterised the works of scholars like Ervin Staub in genocide and mass killings, Peter Uvin in prejudices, crisis and genocide in Rwanda in which he attempts to answer the question of how do situations come about in which people massively participate in massive violence against their neighbours who have not harmed them. Parsons uses the plant analogy to argue that human development is a function of genetic constitution. Consequently, he argues, his interaction with his environment is not the fundamental determinant of his personality. This line of argument fits squarely with the Hobbesian notion of inherent and immutable character of human cruelty borne out of the necessity of self-preservation. Beyond the individual accountability which Hobbes attributes to innate characteristic is the necessity of social contract that gave rise to a strong centralised state to protect individuals. The agency structure rational advanced by Parsons and Hobbes does not explain why genocide above all other crimes is chosen by perpetrators. In a background paper published by the United Nations Economic Commission of Europe (UNECE) on aggressive driving behaviour, the paper explains the causes of aggressive driving behaviour. The paper began by exploring the different theoretical arguments to aggressive behaviour. From innate human character to the frustration-aggression hypothesis which focuses on external factors, the paper argues that situations that 'impede or prevent some form of goal-directed behaviour are believed to act as a catalyst for aggressive

behaviour'. Another argument advance to explain this phenomenon is territoriality. Human beings, the paper argues are 'naturally prone to territoriality and have the tendency to view their vehicles as an extension of their personal domains and consequently feel threatened by other vehicles and respond aggressively or out of an instinct of self-protection.' The arguments advance in this paper revolves around two suppositions. The first already reviewed follows the innate biological argument inherent in human desire of protection, preservation and survival; an impulse towards the protection of a goal. In this argument aggression is thus rationalised as a survival instinct. Consequently humans will act aggressively out of fear and the desire to protect their own or their kind from the defined other. This is the 'conflict centric' argument advanced throughout this study by most Hutu respondents. The second supposition drawn from this paper revolves around autonomy and the preservation of cohesive attributes between groups. Muench (2004) argues along this line that conflict with the other only strengthens the border, membership, values, norms and the interactive patterns of the group members. Consequently, he argues, conflict is thus a method of defining the identity of one group against the other to be confirmed. As we all know all conflicts or acts of aggression do not lead to positive outcomes. The paper on aggressive driving behaviour stressed the consequences of the innate or external influence attitude on road safety and environmental protection. The individual capacity for aggression that leads to crimes like genocide can thus be an issue of life instinct (Eros) and the death instinct (Thanatos). It is these essentialist explanations of human character that informed Adorno's theory of the 'authoritarian personality' which sort to explain why the Holocaust happened. It stressed the need for unquestionable obedience to authority. Mika Fatouros (1979) in answering the question of what makes the torturer stresses the important role of external factors and used the Greek dictatorship between 1967 and 1974 to argue that torturers are not sadistic but ordinary people who have been remoulded, refashioned. Urvin thus concluded that racist prejudice as a structural feature in Rwandan society had socio-psychological functions for the peasant masses. These psycho-sociological factors epitomised by peer pressure and structural issues can only be seen as contributing factors to what I perceive as material and ideational structural questions of competing claims in a society that is struggling to define itself.

What is clear here is that constructing the conflict frame can be very challenging. Without a proper framing of the conflict, the motivation of individuals and the structural situations that permit such crimes, it would be extremely difficult to construct any justice institution to deal with its fallouts.

Chapter Four

4. DELINEATION OF THEMATIC AREAS:

It will be difficult to understand the present post conflict justice regime without having a deeper understanding of the possible underlying rational that informed its choice and scope. These rational are not specific to Rwanda but because the domestic political history of Rwanda is invariably linked to international socio-economic and political situations, a broader understanding of these thematic areas might help narrow the scope on the realities of the situation under investigation. I have carefully selected these four thematic areas based on their recurrent nature in the discussion about Rwanda. The literature under review here will include desktop data and field interviews. The conflict in Rwanda received an ethnic tagging in its early days. Pietese argues that this misperception is due to anti-popular imagery going back to crowd theory and the assumption of popular disorganization… (Athina & Andrew 2010; 246). While ethnicity may have been a factor in the conflict, it remains to be proven that the war between the RPA and the FAR was an ethnic one. This perception of things has filtered down into the post genocide justice arrangement as Hutus allege that 'justice' comes down to them in ethnic clothing. Apart from ethnicity, there is little doubt that the way the genocide Convention was framed some fifty or more years ago has shaped the way post conflict justice mechanisms are organized. The 1948 Convention frames genocide in a very narrow way and excludes other victims of war. A better understanding of this definition, its limitations and possible effect on post genocide justice in Rwanda is important in capturing its impact on reconciliation. During the conflict, the United Nations got heavily involved in brokering a peace agreement between the belligerents. Despite the UN presence in Rwanda, massacres were ongoing as the hardliners opposed to a peace settlement were bent on its failure. It is clear that the United Nations failed in its role and the consequences of this failure was the death of hundreds of thousands of people. Understanding the concept of humanitarian intervention, its historical application, why it failed in Rwanda and the consequences that failure has on the post genocide justice system is vital. Lastly, I will review the current literature of Post conflict justice mechanisms with a particular focus on the Gacaca and the ICTR. There are several factors that influence the selection of a particular form of post conflict justice arrangement. The effect of such an arrangement on the notion of

reconciliation is vital and this can only be captured by an extensive understanding of the way Rwanda's post genocide justice works.

4.1. THE ETHNIC DIVIDE

Rwanda's history is mired in intense debate. It is one contested by both scholastic writings that research Rwanda's history as a precursor to the genocide and the Rwandans themselves. The reason Urvin (2007) argues lies in the absence of a 'consensual scientific knowledge' partly due to inherent difficulties in recreating a history of oral societies, as well as the distortion introduced by the Eurocentric and sometimes outright racist account by the first colonizers…'. It is an argument Mudimbe (1988) takes further in ascribing to the racist or what Urvin describes as the Eurocentrism of historical discourses that perceives the continent as one of 'metaphors through which the West represents the origins of its own norms, develops a self-image and integrates this image into the set of signifiers asserting what it supposes to be its identity (Mbembe 2002;2). Apart from empirical and historical contestation of history, theoretical models on identity and ethnicity add to the confusion on the relationship and differences between the Hutus and Tutsis. Ethnicity and its relationship to ethnic conflict have also inflated the literature with varying rational to explain specific conflicts.

Omeje argues that primordialism is largely a western-centric paradigm that perceives the proliferation of conflicts in Africa as a 'primordial inevitability' rooted in the underlying phenomenological features and differences among the heterogeneously bunched together by colonial diktat to form sovereign states(David 2008;71). This framework sees identity as inherent in fixed and immutable characteristics of individuals rooted in biology. On the question of fixed identities Lake and Rothschild (1998) argue that identity is rooted in biology and an 'extensive history of practices and tradition that makes ones identity unalterable' (Lake & Rothschild 1998; 5). Its focus in contextualising rather than operationalizing ethnicity and its relation to conflict makes it to my opinion an insufficient framework in analysing the Hutu/Tutsi conflict. It may be a reasonable assertion to make about immutable identity which of course one would hardly argue but alone an immutable biological characteristic like colour could hardly have been a definite determinant. Instrumentalists on the other hand predicate identity as a dynamic phenomenon subject to

manipulation by conscious political elites. This is an assertion the Rwanda National Congress (RNC) wholly subscribes to. In its 23 page declaration of core values it argues thus;

"The horrendous violence and suffering that Rwanda has experienced have always been masterminded and organized by political leaders as a strategy of strengthening their grip onto power…and have fuelled sectarian divisions merely to cover-up their political plans to monopolize political power"(RNC 2010;7)

Howard and Rothman (1999) in justifying their instrumentalists' stance argue that the human capacity to form distinct groups is rooted in their evolutionary history and more recent experiences and debunk the inevitability notion of conflict advance by the primordialist school of thought (Rothman and Howard 1999:5). For one thing they argue, "we are persuaded that there are many contexts in which different groups live peacefully for relatively long periods of time…and there are cases where intense enemies find ways to end their quarrels and establish patterns of coexistence in previously strife-torn regions"(Ibid;5). The notion of human conflict as rooted in human nature buys into the Hobbesian argument of inherent human cruelty for self-preservation and the inevitability of conflict. This argument of course negates the rationality that informs genocide and the exploitative nature of human interest in choosing genocide as a way of resolving conflict. Instrumentalists, Omeje argues do not contest the existence of primordial characteristics within ethnic groups, but as this school contends, this existence on its own does not naturally result in violent conflicts. Primordial factors he argues instigate and affect conflicts only to the extent that they are deliberately manipulated and politicised by political actors and local elites, usually for their self-seeking advantages. To the extent that this is true, the association of the genocide with the Akazu,[25] could lend credit to the instrumentalist school of thought. Gatwa (2005;8-9)[26], Mamdani (2002;87-88)[27] all uphold the notion of the construction and instrumentalization of identity as pivotal in the institutionalization of what Gatwa describes as the basis of changes in socio-political and cultural relations.

[25] Also known as the 'little house', the Akazu was an elite group at the head of which was Agathe Kanziga; see Melvern 2009

[26] 'What had been social classes the Batutsi, Bahutu and Batwa were gradually transformed into ethnic groups'

[27] 'The racialization of the Tutsis/Hutu was not simply an intellectual construct…moreover racialization was also an institutional construct. It is this political institutional fact that intellectuals alone would not be able to alter'. Belgian power turned Hamitic racial supremacy from an ideology into an institutional fact by making it the basis of changes in political, social, and cultural relations;

Respondent C concurs with this characterization by asserting that;

'Rwanda before was a society of social classes until colonialists turned it into an ethnic society that fuelled antagonism…'

Mamdani and Gatwa further describe this instrumentalisation in a way that further challenges the immutability thesis of primordialism. The Hamitic hypothesis offers an example of how traditional economic and social differences can be reified into perceived immutable differences (Adelman 2005; 24). The Hamitic hypothesis[28] that translates mythologies into social facts is upheld by colonial institutions in a way that upholds the Tutsis as a civilising group whose origin is external (Gatwa 2005;81)[29]. It is this same externality hailed by Belgian colonialist as depicting Tutsi supremacy which makes them "destine are regner" that was used as a factor in Hutu claim of indigenous origin. The same report raised the spectre of racial similarity between Hutu and Tutsi as an unfortunate aspect of some 'declasses' whose blood isn't pure anymore. Newbury throws in an important dimension to the triad perspective of primordialism, constructivism and instrumentalism by explaining ethnicity as identity contextually configured (Newbury 1999:4).[30]As Johan Pottier (2000) contends, Hutu labour force associated with the institutions created by King Rwabugiri "undermined the livelihood security of Hutu commoners and made survival more difficult". It was, he contends through 'labour prestation' that social relations between the two groups took on a strong ethnic character before European colonists arrived (ibid; 13). This ethniticisation of labour and consequently the relationship between the two groups made social mobility difficult and thus brings to question the existentialists' supposition about ethnicity. As Newbury explains, king Rwabugiri made this categorization more static or what she describes as being 'rigified'. Johan thus argues that wealth and not race informed the categorisation into Tutsi or Hutu.

Most people treated the Rwandan genocide as an ethnic conflict. From the perspective of scholarly articulations, policy orientation, the conflict in Rwanda has been described from tribal resentments to a usual African practice of brutal slaughter. Pottier argues that the Rwandan bloodbath was not tribal (Pottier 2002:9). Rather he argues, it was distinctively modern tragedy, a degenerated class conflict minutely prepared and callously executed; a

[28] The Hamitic hypothesis offers an example of how traditional economic and social differences can be reified into perceived immutable differences

[29] The Tutsi are another people…the Tutsi of good race has, apart from colour, nothing of a negro1925 race report

[30] Ethnicity they argue is best understood not as an enduring, unchanging elements to social formations, nor as an instantaneous, recent invention…rather it is seen as an identity contextually configured, one which can be understood only through close familiarity with the history of social relations and political power'

shamelessly twisted ethnic argument for the sake of class privilege (Ibid;9). These descriptions alone whether viewed through empirics, case study or theory does not adequately capture the historical and contemporary discourses on post genocide Rwanda.

Ethnicity whether primordial, constructed or instrumentalised has fizzled itself either by omission or commission into the post genocide arrangements. Respondent A claims that his name features on Kagame's list of those to be assassinated. We met under a tense atmosphere in the German capital of Berlin. He argues that for true reconciliation to happen;

"We need an ICTR in Arusha which is not politicised, which is independent; charges Tutsis also; not the RPF kind of justice…for true reconciliation Hutu victims must be remembered and Tutsis perpetrators must be brought to justice…"

By making ethnicity the central focus of their critic on the way post genocide justice arrangements are made, Hutus have recast the debate on the old rivalry that has followed Rwanda's difficult transition from colonial to self-rule. Consequently by their assertion most Hutus have seen the ICTR and Gacaca as instruments of Tutsi domination. The most compelling argument against the Gacaca is its perceived role as an institution designed to prosecute the vanquished. This system of victors' justice is seen by most respondents as biased, partial, based on retribution of the Hutus. The organisation of such an institution based on victor-vanquished dichotomy they argue fosters acrimony between the two peoples. Respondent B was a former prosecutor of the ICTR before escaping to exile where he is now an executive member of the RNC.

"It is an abomination on all lines established to destroy part of the society…"(Respondent B)

During my field trip, I was astonished by how many Hutus were conscious of the exact way the genocide Convention is framed. Even more exciting was the fact that most followed with deep interest the proceedings in Arusha. I could only conclude that they were interested in using its shortcomings to buttress their case that either there was no genocide in Rwanda or if there was one, there was 'double genocide'.

"If there was genocide in Rwanda there was double genocide" (Respondent A)

That is why the next section will focus on the impact the legalisation and criminalisation of what evolved as a sociological concept had and is having on the country's effort at establishing order through justice.

4.2. THE IMPLICATIONS OF THE CODIFICATION OF GENOCIDE:

The nature of international treaties means they are product of negotiations, subject to derogation and reservation. Such negotiations lead to compromises in content, scope and area of applicability. While in 1948 the Genocide Convention was the product of compromises by the victorious powers of WWII, its universal criminality, assumption of a jus cogens status[31] and viewed as a crime under customary international law has given it added scope.[32] Despite these developments within the jurisprudence of various ad hoc tribunals the Convention as defined in 1948 still remains a source of great criticism. The debate about the limitation of the scope of this definition is usually derived in part from the scale of the atrocities that gave rise to the terminology and the moral, legal and political implications a more broadened definition would have had on the victorious powers of WWII. The 'uniqueness' of the Holocaust has made the application of genocide on other atrocities quite limited. A focus on these limitations and its implication on the ICTR and Gacaca systems will throw more light on its implication on reconciliation.

Rosenbaum (1996) on the Holocaust as well as on perspectives on comparative genocide asked a fundamental question; was the holocaust unique? First used by Polish Jurist Raphael Lemkin in 1944, he defined genocide as 'a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves'. Lemkin's definition finds resonance in the National Socialist Workers Party (NSDAP) doctrine that saw the nation rather the state as its central focus. In its original formulation Lemkin defined genocide in line with the several practices undertaken by the German state designed to achieve the objective of undermining the foundation of other nations. The corresponding limitations following codification exclude other entities defined by economic class, political affiliation or sexual preference. This exclusion has been one of the sources of great criticism of the convention. Drost slammed the exclusion by arguing that such exclusions leave a '…dangerous loophole for any government to escape the human duties under the Convention…' (Fein 1990; 5). This is an argument that fits well when one considers the implications of the non-cooperation by the current Rwandan government with the ICTR. This non-cooperation has translated into the exclusion of possible RPF war criminals from the proceedings of the court and has strengthened the argument of respondent

[31] Prosecutor vs. Servashago (Case No. ICTR-98-39-5) Sentence, February 2, 1999, 15, where genocide is described as 'the crime of crimes'

[32] Judgment, Akayesu (ICTR 964-T), Trial Chamber I, 2 September 1998.

B that the court operates around the premise defined by the victors. Charny on the other hand argues that the limitation translates into ignoring 100,000 to 500,000 Indonesian Communists killed between 1965 and 1966, 1.8 million Khmer Rouge killings in 1975-1979(Charny 1999;12). Fein (1990) argues that the limitation excludes one of the fundamental units of society. Staub advances a contrary argument which posits that such limitations have the potential of complicating cases of genocide by apportioning them different names as in politicide. It is such a fear that helps explain the negation of thousands of Hutu killed by the Rwandan Patriotic Front (RPF). Kuper suggests that for genocide to occur there must be a state, a position preferred by Chalk and Jonassohns as 'state and other authorities' or perpetrators (Fein 1990;12). These positions narrow the agent or perpetrator as defined by Article IV of the Convention. These are some of the structuralist arguments that challenge the codified definition that relies on some essentialist notion of innate wickedness and intent. Fein defines it in a way that addresses the limitation as ...sustained purposeful action (intent as in the UNGC) by a perpetrator to physically destroy a collectivity...'(Fein 1993;24) By using collectivity, Fein negates the limited scope of the UNGC and the genocide case law that defines that collectivity in a narrow 'indelible centric' manner[33]. Kuper (1981) argues against the exclusion of political groups; an argument which if followed would have excluded Polpots victims as genocide victims and the thousands of Hutus killed in refugee camps as victims of genocide. The implication would have obviously been a post genocide justice that takes away the perception of a victims/victors' justice system. In view of this limitation in definition Rummel coined democide to encompass all groups whether delible or indelible; a coinage which took away the ambiguity provided by the UNGC's assertion of in "part or in whole". Harff and Gur coined an entirely different word to rationalise killings that target political groups apparently agreeing with Kuper's argument. Drost addresses the issues of partial or whole destruction and group identity by positing genocide as "deliberate destruction of physical life" by virtue of membership of any human collectivity'. Chalk and Jonassohn (1990) have argued that group identity is defined by the perpetrator in their quest for their destruction…Katz(1994) defined genocide as "the actualization of intent, however successfully carried out, to murder in its totality any national, ethnic, racial, religious, political, social, gender or economic group, as these groups are defined by the perpetrator, by whatever means. Jones describes proponents of the soft approach to the definition as important in seeing a "…dynamic and evolving genocide framework, rather than a static and

[33] Ibid

inflexible one" (Jones 2006;19). Tatz (2003) argues for genocide to be categorised into levels when he asserts that genocide is not a flat word that covers, equally, all systematic attempts to attack the essential foundations and institutions of a targeted people; a proposition seen as consistent with the different level of categorisation by the Rwandan organic law[34] to try and punish those responsible for the genocide. "In my view, killing large numbers of people without the apparent purpose of eliminating the whole group is best regarded as mass killing. The purpose of mass killing may be to eliminate the leadership of a group, or to intimidate the group, and in general to re-establish dominance" (Staub 1989). This definition reflects the position expressed by kagame in debunking Hutu claim that there was some systematic process at eliminating the Hutus as an ethnic group. On the other hand all through my interviews with Hutu exiles there was across the board acceptance that the killing of Hutus was systematic.[35] The targeting in a systematic way of people for the purpose of elimination for simply belonging to a group defined as the other did not begin with the Holocaust. The Armenian genocide which has recently been given a new thrust by the French parliament also followed a similar pattern even though not of the scale of the Holocaust.

The decision to codify this crime into law in a state centric world meant certain compromises and reservations had to be worked out to get it through the scrutiny of many countries. It is these reservations and compromises that seem to pose the greatest challenge to adjudicating the prohibitions of war and to find middle grounds between the perpetrators and victims. Most conflicts which end by collapse can employ the spirit of the Convention to the letter without any fear of domestic resistance. The Rwandan conflict ended by 'retreat'. This means that though the former regime collapsed from within, it regrouped in exile in both a political as well as a military force. The retreat of the regime and millions of Hutus who were either conducted or forced to flee with the fighting force were targeted by the RPA. This continued into the Congo resulting in the death of hundreds of thousands of Hutus. Because the Convention is codified to exclude what is now known as 'genocidal massacres', this means Hutu victims may not find justice within the framework of the present post genocide justice system. As it is argued latter, genocide is not the only crime being looked into by the domestic and ICTR jurisprudences. The problem with the ICTR is its inability to receive the

[34]Law No.08/96(see section 1.3)

[35] Respondent B argues that 'What happened in Rwanda cannot be termed as genocide according to the genocide convention…if there was genocide in Rwanda, then there was double genocide…Tutsis being killed because they were Tutsis and Hutus were also killed because they were Hutus.(field notes)Philipe also argues that 'Arusha judges one side and not the other which has committed war crimes'.(fieldnotes)

cooperation needed from Rwanda to investigate RPA officers. This non-cooperation dealt with earlier would be rationalised based on several grounds including the lack of intervention to protect Tutsis during the genocide.

Some have argued that the failure to intervene in Rwanda was due to the difficulty in establishing whether genocide was really happening. As I argue below, genocide is not void of its overarching notions of intent, organisation and the definition of the other. The International Commission on Intervention and State Sovereignty (ICISS) in introducing the concept of R2P in 2001 distinguished between prevention and protection (ICISS 2001;xi). At the time of the genocide the UN was already engaged in 'root cause' issues through the Arusha peace accord. It failed in 'direct prevention' measures. Decisions to intervene follow a political rather than a legal process. And in a world of competing interest, soft and hard goals underpinning any decision to intervene and the, Morgadishu' experience seemed to have strengthen the position of the bystander.

4.3. THE INTERVENTION THAT NEVER WAS

The competing claims and definition attributed with the crime of genocide highlights the moral and legal dilemma underpinning intervention and how such dilemmas have influenced the post genocide justice system in Rwanda and consequently seems to be affecting post genocide reconciliation. Once genocide is ascertain to be happening member states signatory of the 1948 Genocide Convention are obligated to act to stop or mitigate its consequences and punish its perpetrators[36]. The punishment arm epitomised by the ICTR is currently in force while the intervention arm of the Convention was never effected even though operation Turquoise could be viewed as half-baked too late an endeavour to protect the perpetrator, legitimate its political inclinations and ensure that status quo remained. The basis of this section is to review the normative basis of intervention, bring in other cases of intervention, their legality and moral arguments advanced in their defence as a precursor to understanding the failure of the United Nations and individual state responsibility under the Genocide Convention. It is through the review of these cases and the particular reality of Rwanda that one can establish the causal relationship between non-intervention and the post genocide justice regime.

[36]Article 1 of 1948 Genocide Convention

4.3.1. THE NORMATIVE ARGUMENT

The normative doctrine of non-intervention is underpinned by the non-violability of the concept of sovereignty defined as "…the political organization based on the exclusion of external actors from authority structures within a given territory' (Krasner 1999: 4). As a social construct that impinges on this exclusion from domestic affairs, it is "… a basic rule of coexistence within the international society of states, and states as independent political communities asserting sovereignty in relation to a particular portion of the earth's surface and a particular segment of the human population (Bull 1977: 66). Without this protective cloak over a territory the concept of statehood becomes a myth. This mythology is explained by the fact that states have generally been accepted as the most important unit in the international system. Thus the codification of international principles to protect it was seen quintessential for the survival of the international system. While others have challenged the historical evolution of the concept which they claim has produced a rigid statist ontology that is ill-equipped to handle the challenges of global governance… (De Carvalho et al 2011), the concept still remains the most evoked premise upon which "political independence and territorial integrity" of the state system is impinged. It is as de Carvalho et al argue through this "mythology" that western countries have been able to construct statehood. Through the application of exclusive internal policies ranging from deprivation to racism, they have used nationalism to build the internal cohesion and a collective overarching symbol of national unity to prevent internal implosion. In all, external protection and internal cohesion has stabilised 'Western international system'. As de Carvalho et al explains, this 1648 mythology as a universal concept, mask the proliferation of international imperial hierarchies, which comprised a series of single sovereign colonial powers, each of which stood atop a conglomerate of dependent non-sovereign polities. This mythology became an aspect of what Krasner alludes to as 'internal legal sovereignty' which translated into the mutual recognition of states. The UN charter in defining the juridical equality of states makes the premise of its sovereignty a non-violable binding legal paradigm. This is codified in article 2(4) of the UN charter. Counter restrictionist invoke the same Charter to argue for individual and collective right to protect human rights with the claim that article 2(4) only prohibits armed intervention against the 'political independence' and 'territorial integrity' of states(Damrosch 1991). Despite the desire and interest in peace, international politics is still dominated by old rigid dogmas defined around state sovereignty. This dogma was informed by old systemic understanding of the state as 'the' only arbiter in international relations that could represent

the interest of peoples, prosecute and be prosecuted. Under such a system, the notion of keeping the peace was directly in conflict with this ordering of world politics and thus a clash of principles inevitable. In his agenda for peace 1992, former UN Secretary General Kofi Annan argues about the centrality of the state in the protection of human security but challenges the static nature of sovereignty as a protective cloak to state action.[37]The waning nature of this concept has been given more thrust by the changes imposed by the constriction of time and space, economic interdependence and the perceived 'universal value of human rights. Humanitarian intervention thus defined as the threat or use of force across state borders by a state or group of states aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals…with or without the permission of the state within whose territory force is being applied (Holzgrefe and Keohane 2003), puts a dead knell on this 'mythology'. The problematic with humanitarian intervention is it's premised in protecting a value fashioned as universal but contested as a driving force for a liberalisation agenda that projects power and domination through marketization and democratisation.

The protection of human rights rest on the ability of its primary guarantor to function in accordance with its role as the principal instrument in the guarantee of human security. On the other hand, Humanitarian intervention is a direct attack on the very concept that protects the state from external actors and a consequent loss of its primacy as the guarantor of this supposed universal value. As Weiss (2007) asserts, humanitarian intervention is associated with the use of force to rescue civilians who live in a state that is unable or unwilling to protect and succor them'. This explanation seems to suggest that the concept of statehood is without a qualificative directive that describes its form. That is why Frost has argued that the application of such norms must be "piecemeal" and an asymmetrical process, since without internal validation the concept of humanitarian intervention in an anarchical international environment void of what Weber calls an "orderer" can face questions of scope and legitimacy. (Frost 2009:113)

[37] The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality. It is the task of leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world.
http://www.un.org/Docs/SG/agpeace.html accessed 25.05.11

4.3.2 SOVEREIGNTY AND ITS MITIGATING EFFECT

The discussion about the association of sovereignty with territoriality is giving way to functional sovereignty. But this discussion like others is still a regional one. African states are still grappling with statehood that is associated with territory. This is understood as a consequence of indefensible borders imposed at their conception and that are rarely within the control of central authorities. But what is the state? Max Weber once defined the ideal state as an organisation "that claims the monopoly of the legitimate use of physical force within a given territory". Waldron posits that sometimes we use the term to apply to a whole community-a territory and everybody in it. Urry (2000) defines the state as a structure that "possess the monopoly of jurisdiction or governmentality over members living within the territory or region of the society". The object of territory is central to the notion of statehood. Today the concept extends beyond territorial delimitation in which responsibility of actions of central authority goes beyond metropolitan territory to jurisdictions over persons. The internal organisation of the state is quite important in the nature of the rule of law. Autocracies are arbitrary while democracies follow due process. This will be dealt with in detail in the due course but suffice to say here that from the first republic of Kayibanda to the second of Habyarimana Rwanda has been structured as an autocracy which could in a way explain the circle of repeated pogroms and amnesties.

The constriction of time and space has dented the notion of firm territoriality; commercial interest has replaced sovereign interest and respect of human rights has further strained the notion of territorial sovereignty and 'internal affairs'. All of these constraints to the notion of statehood had defined Africa's states emergence from one form of territorial usurpation and control to another. Even at independence most African states lacked the legal personality due to the lack of full territorial control and the presence of multiple centres with claim to the use of legitimate violence. This makes the application of this notion to African states quite shaky since the sovereignty of most African states has been an illusionary social construct that revolves around artificial borders inherited from their colonial masters and lacks territorial control that projects authority to inhospitable territories. The notion of sovereignty Weber argues follows the logic of possessing …absolute authority of its territory and people and to have independence internationally (Weber 2010:14). And as Herbst concludes, 'states are only viable if they are able to control the territories defined by their borders (Herbst 2000:3). It is also a point emphasised by Lemken in his research on "African lessons for International

Relations research"[38] and emphasised in the definition of states advanced by Urry. The debate about statehood in Africa is informed on the one hand by the ideal, developed and functional state that guarantees peace and security and the sole authority in the use of force as crystalized by the Westphalian notion and on the other hand by the utilisation of prefixes like pariah, failed in describing the same concept with respect to the continent. The treaty of Westphalia for the first time impugned on the state the notion of sovereignty underpinned by territoriality and the principle of non-intervention. It is these two notions that today forms the legal foundation of the state and to a certain extend guides relations between states. The African states were therefore spared the huge effort of legitimating sovereignty; a notion resolved by what Jackson called a "rights model of international relations" (Herbst 2000; 98)[39]. As I earlier indicated, these two premises are questionable when it comes to the defining a of state in Africa, not least because of the historical processes that shaped borders between African states, but more so because the notion of true independence that underpins the principle of non-intervention remains very fluid. Although according to status quo adherents this notion still defines international relations to a large extend, revisionist challenge the dominant role of statism due to other emerging legal entities at the international level. It is these revisionists believe that further complicates the notion and role of the nation state in Africa with respect to the Westphalia principles. And if Lemke's research outcome that "dyads with a territorial disagreement are eleven times more likely to experience war than are dyads without a territorial disagreement…" is anything to go by, then the value, norm and belief symmetry that informed post-colonial African leadership minimised territorial dispute and consequently reduced the possibilities of wars. Or was it simply because these 'states' were not states in the classical Westphalia sense with the control of territory and military? In reviewing the notion of internal organisation in determining the way states function or the role statesmen play in defining its interest, it will be easy to conclude on the inevitability of conflict in the continent. But how do these notions of territorial control, internal organisation and attitude of statesmen inform our understanding of the conflict in Rwanda? Rwanda like most African states did not have full control of its territory at the time

[38]Africa's states are states in name only-legal entities that have failed to consolidate political power within the territories over which they are the legally recognized authorities. Instead, political power is exercised by a variety of state and non-state actors in Africa.

[39] 'In the new model of international relations, epitomised by UNGAOR 2621, states no longer had to earn sovereignty but deserved it, simply on the basis of being decolonised'(Jackson, The weight of ideas in Decolonisation: Normative Change in International Relations' pp. 117, 125)

of the genocide and thus the concepts of "national consolidation and self-preservation" (Rosecrance 1979;17) and the monopoly of violence very questionable. This lack of territorial control exacerbate internal strives. These conflicts in values and economic discrepancies are exploited by dominant groups which translate in material structures of power for dominance. The combination of lack of territorial control and autocratic form of rule were important in determining the notion of peace and war in Rwanda. Conversely it was the latter; that is the attitude of the statesman that held Rwanda together and kept the level of conflict abbey. Morgenthau opined about the statesman that: "they speak for it, negotiate treaties in its name, define its objectives, choose the means of achieving them, and try to maintain, increase, and demonstrate power" (Morgenthau 1985;118). He further argues that the protection of sovereignty goes beyond the protection of territory. It is deeply embedded in the protection of a culture, a political system that ensures the preservation of that culture and the territorial integrity that localises that culture within a geographic location. Without such a control and protection of territory a nation's culture would be at the mercy of more sophisticated and enduring cultures and thus renders the loss of that culture inevitable. Intervention is thus seen to be antithetical to this principle. It is a notion that has been given a "qualitatively new and different thrust" (Ayoob 2002;83). Ayoob goes on to define this thrust in two fold. The first involves defining intervention in terms of "objectives or goals" encapsulated as humanitarian. This thrust narrows the scope of intervention to a very specific goal directed at arresting an on-going catastrophe. The second projection of intervention Ayoob argues has been in terms of the "international community". This multilateral underpinning of intervention takes away the 'soft goals' restrictionists have consistently used in arguing against intervention. In debunking the sovereignty cloak to humanitarian intervention Liberalist like Teson makes sovereignty a contingent concept. And as Smith argues, "the justification for state sovereignty cannot rest on its own presumptive legitimacy" (Rosenthal & Barry 2009:79), consequently he asserts that "a state that oppresses its own people violates the integrity and autonomy of its subjects and consequently forfeits its moral claim to full sovereignty". And if the moral claim of a society rest on its ability to protect and respect the rights of its members and their consent, explicit or implicit, to its rules and institutions, (Ibid;78) could Rwanda have invoked any moral claim over its territory? Walzer would answer this with a no and argues that "the moral standing of any particular state, depends upon, the reality of the common rights it protects…and if the state does not defend the common life that does exist, its own defence may have no moral justification"(Walzer 79;54). State centric arguments which are consistent with the principle of non-intervention on

the other hand reject any claim of moral judgement about war, preferring to situate war within the context of what Walzer describes as 'self –interest and necessity'(Ibid;3). The "survival and freedom of political communities…" Walzer argues "…whose members share a way of life, developed by their ancestors, to be passed on to their children…"(Ibid;254). While Walzer accepts the notion of intervention, he doesn't do it without great reservation when he argues about setting "radical limits to the notion of necessity". In vilifying Spanish intervention in the Americas, Francisco de Vitora decried the extent to which intervention in the internal affairs can go. While acknowledging certain moral obligations in intervening for victims even if not invited, he warned against "translating intervention into lawful conquest" (Nardi 1988). The state-centric premise of realist assumptions transforms the state into a moral space with a communitarian agenda. This is however not incompatible with Liberalist claim for the duty of states to protect and respect human rights. The right to self-preservation is consistent with realist strong desire with the protection of territorial integrity, culture and political institutions, and thus at odds with a notion of forcible military intervention. And if "War is still somehow a rule governed activity, a world of permissions and prohibitions, a moral world, therefore in the midst of hell… though there is no license for war makers, there is a license for soldiers and they hold it without regard to which side they belong…" (Walzer 77;38) at what stage is intervention grounded in moral and legal claims? The debate as we know is non-consensual.

4.3.3 HISTORICAL PRECEDENCE OF INTERVENTION

4.3.3.1 THE CASE OF BANGLADESH

In 1971, India intervened in the civil war in Pakistan on the premise of self-defence even though it could still have invoked a moral rational based on the systematic nature of human rights violation by the Pakistani authorities; a claim seen as genocidal in nature.[40]The intervention of India was incremental beginning with indirect assistance and a full land invasion after a Pakistani air raid on its basis. The moral basis for India's intervention can be argued on two grounds. The evidence of massive human rights violation which was systematic in nature can hardly be contested. India also faced an unprecedented influx of refugees which of course translated into a humanitarian crisis that could threaten international peace and security. This alone Teson and others argue makes the violation of Pakistani

[40] International Commission of Jurists: The events in East Pakistan; http://nsm1.nsm.iup.edu/sanwar/Bangladesh%20Genocide.htm also see Leo Kuper 1981

sovereignty a moral one. On the other end of the morality conundrum, there is no doubt that 'hard goals' informed India's intervention. On the legality of the intervention, it is clear that there was no explicit UN Security Council mandate sanctioning India's intervention. India however invoked the right to 'self-defence' to situate its right to intervene. It is a similar dilemma the US faced 32 years later with the invasion of Iraq.

4.3.3.2 THE CASE OF IRAQ

On the 2nd August 1990, Iraq invaded Kuwait and declared it an integral part of its territory. On the 29 November the United Nations Security Council (UNSC) passed resolution 678[41] authorising the use of force to end the occupation of Kuwait. In 1991 Iraqi forces were defeated and a cease fire sanctioned under UN resolution 687. Twelve years later and specifically in March of 2003, the United States of America led another coalition of states that invaded Iraq without an explicit UNSC resolution to do so. Opponents of the invasion have argued that the absence of a UN authorisation and any reasonable claim of self-defence made the US invasion illegal and a war of aggression. Another school of thought espoused by those who claim legality of the 2003 invasion argue that two independent sources of law gave the United States and its allies a legal cover for the invasion. The right to anticipatory self-defence and UNSC resolution 678(1990)[42] which authorised member states to "use all necessary means to uphold and implement resolution 660(1990)[43] and all subsequent relevant resolutions and to restore international peace and security in the area"[44]. In UNSC resolution 1441,[45] the Security Council found Iraq to be in breach of its earlier resolutions and that its continuous development of weapons of mass destruction (WMD) programs, its support for international terrorism and its repression of the civilian population presented an on-going

[41] The Security Council 'acting under Chapter VII of the Charter authorises member states…to use all necessary means to uphold resolution 660(1990) and all subsequent relevant resolutions and to install international peace and security in the area'. Viewed through Council on Foreign relations http://www.cfr.org/un/un-security-council-resolution-678-iraq-kuwait/p11205?breadcrumb=%2Fregion%2F408%2Fkuwait

[42] UNSC Resolution 678(1990)http://www.cfr.org/un/un-security-council-resolution-678-iraq-kuwait/p11205

[43] UNSC Resolution 660(1990) in its point 2 'Demand that Iraq withdraw immediately and unconditionally all its forces to the position to which they were located on 1st august 1990

[44] Ibid

[45] 1441 was a UNSC resolution adopted unanimously on November 8, 2002 which called on Iraq to respect its disarmament obligations and found Iraq to be in material breach of the cease fire terms especially with respect to the 'proliferation of WMD and long range missiles' Council on Foreign relations site: http://www.cfr.org/un/un-security-council-resolution-1441-iraq/p11207

threat to international peace and security. On the other hand the United States as a party to resolution 687(1991) invoked the Vienna Convention on the Law of Treaties to argue of the legality of the 2003 invasion. The Vienna Convention on the law of treaties allows a party to a treaty affected by its "material breach…" to "invoke the breach as a ground to terminating the treaty or suspending its operation in whole or in part".[46] On the moral aspect of the intervention, the US failed to show any moral claim beyond its national security interest; as advanced by the Bush administration. The later claims of human rights have been discredited as US's attempt at hoodwinking the world to grant it international legitimacy over its actions after having failed to find weapons of mass destruction.

Other cases of unilateral interventions without UN mandate but with far reaching moral claims are the 1978 Vietnam's intervention in Cambodia which was impinged on the genocidal actions of the Khmer Rouge and the 1979 Tanzanian invasion of Uganda. Like the case of India, Tanzania advanced self-defence after Uganda annexed part of its territory and self-determination by Ugandan exiles to replace a brutal dictatorship. Even though the moral claim for intervention was overwhelming, they were hardly advanced as justification for Tanzanian action. Another humanitarian intervention that underscores the evolving normative framework void of legal validity was the NATO 1999 intervention in Kosovo. In 1989 after late president Milosevic revoked the autonomy that Kosovo had enjoyed since the time of President Tito, the corresponding direct rule inflamed ethnic Albanian nationalism which resulted in the declaration of independence in 1990. For almost a decade there was heightened tension between Kosovo and Belgrade as the separatist strived to erect separate institutions of self-rule. This escalated in 1998 with fighting between Serb forces and separatist elements of the UCK otherwise known as KLA. In the same year the UN Security Council passed resolution 1199 (1998)[47] under its Chapter VII mandate in which it was "deeply alarmed…with the grave humanitarian situation…" which it considers a threat to international peace and security. As the security situation deteriorated with reports of massacres the North Atlantic Treaty Organisation (NATO) issued an activation order on 13 October 1998 for airstrikes against Serb forces. Like the 2003 Iraq invasion there was no

[46] Article 60(1) and 60(2)(b) of The Vienna Convention on the Law of Treaties: http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
[47]http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/321/21/PDF/N9832121.pdf?OpenElement

explicit Security Council authorisation of the action and like the same 2003 invasion the reliance on resolution 1199 was rooted in the inability of the lead members of the alliance to secure an explicit Council authorisation after Russia threatened a veto. Yet the moral grounds for NATO's action though uncontested in terms of the humanitarian and human rights situation and the history of the bestiality of conflict in the region, there is no doubt that 'hard goals' rooted in the desire to weaken the last base of Russian influence greatly influenced NATO's action. It is clear that post 1945 humanitarian interventions have been greatly shaped by issues of national security, territorial integrity and rationalised on Charter principles of self-defence.

On the other hand post-cold war interventions have been greatly influenced by the increasing argument of cosmopolitanism and the universal validity of human rights norms across time and space. Despite the abysmal failure in Somalia in 1992 in what has become popularised as 'Black Hawk Down', the incentive to intervene on human rights grounds remained strong. This was not however the case in Rwanda as 'crossing the Mogadishu line' was deemed irrevocably counterproductive and political suicide.

4.3.4 COULD INTERVENTION HAVE STOPPED THE GENOCIDE?

Kupperman (2001) argues that humanitarian intervention wouldn't have stopped the Rwanda genocide. The genocide he argues "happened much faster, the West learnt from it much later and the requisite intervention would have been much slower…" He however believes that political will could have engineered an intervention that could have mitigated the effect of the genocide. In Rwanda even if intervention could have saved only one quarter of the ultimate Tutsi victims, that still means approximately 125,000 innocent lives could have been spared. ' It is a sentiment echoed by Barnett (2002). As a UN insider who read cables from Rwanda on what he described as "the gruesome nature of the violence, murder campaign that seems to have no limit, and reported bodies lining the streets and mutilated corpses piled high in churches and schools", like Kupperman he still expresses his doubt that intervention could have halted the genocide. It is a similar sentiment expressed in a 1999 Human Rights Watch report, "leave no one to tell the story".[48] Barnett's argument of a bureaucratic culture that transforms individuals as independent thinkers with a well-developed and conscientious thought pattern into agents of Weberian bureaucratic rationality seems to negate the interest

[48]As in Rwanda in 1994, the UN troops were too few and their mandate too restricted to permit effective action quoted in Human Rights Watch, Leave None to Tell the Story: Genocide in Rwanda, 1 March 1999, 1711

prone and rational foreign policy doctrine that sometimes shapes international relations. This sentiment of 'bureaucratic inertia' is expressed by Dallaire after a September 6, 1993 meeting with Kofi Annan when he served as head of the Department of Peace Keeping Operations (DPKO) (Dallaire 2003:80). It was some have argued not the bureaucratic inertia that prevented action but geo-political interest and the legal and moral implications attached with identifying the killings in Rwanda as genocidal in nature.[49] As Barnett(2002), elucidate, that "various high ranking officials were not as ignorant as they let on…that the constraints were self-imposed and how those who assumed roles that gave them authority over Rwanda allowed alternative commitments to trump their obligations…" It was these alternative commitments that defy the logic of the universal application of ideal norms. It is this 'many morality', Barnett argues that lies at the heart of UN intervention doctrine. Rwanda epitomises the tension between morality and empiricism. On the moral end of the tension, Barnett's 'many morality' highlights why empirical evidence of murder that should have initiated intervention were doctored, poorly communicated or quietly hidden in UN parlance of 'we are seized with the situation'. This was highlighted by the conflict between Jacques-Roger Booh Booh and General Dallaire not only in actions on the ground (Dallaire 2003;213),[50] but also in terms of the content and interpretation of the situation on the ground.[51] On the empirical side, it is a truism that the genocide never occurred in a vacuum. At the time of the genocide, there was a Peace agreement in force that was overseen by a UN contingent whose head had a vast understanding of the situation that was unfolding and repeatedly cabled the UN on the systematic nature of the killings around Kigali, including information on intelligence about arms caches, their distribution to civilians and the UN refusal to authorise confiscation. (Melvern 2009;108-109).[52]On the other hand massacres in

[49]They knew, but they did not say. The U.S. may have been the only government to caution its officials in writing to avoid the word "genocide," but diplomats and politicians of other countries as well as staff of the U.N. also shunned the term. Some may have done so as part of their effort at neutrality, but others surely avoided the word because of the moral and legal imperatives attached to it. Human Rights Watch 1999

[50] See Dallaires account on Booh Booh's attitude

[51]Authorities in New York, apparently including the secretary-general, preferred BoohBooh's reports to those of Dallaire. A diplomat from Cameroon, BoohBooh reportedly thought highly of Habyarimana and presented optimistic assessments of his intentions.(Human Rights Watch 1999)

[52] Also see Human Rights Watch; Leave no one to tell the story 'When Dallaire sent his January 11 telegram, he understood his mandate to permit seizing illegal arms: he stated that he was undertaking the operation rather than requested authorisation for it. But his initiative drew an immediate and supposedly unanimous negative response from the secretariat staff.

1992 at Bugesera which were systematic in nature (Ibid;63) would have serve as an early warning system to the UN. A 1993 report of an international investigation commission on the violation of human rights between 1990/1993 documented systematic killings which amounted to targeted massacres of Tutsis,[53] and made far reaching recommendations to the international community.[54]These attacks and massacres were not unrelated to the ensuing conflict between the predominantly Tutsi exile group of RPF and the predominantly Hutu forces in government. The racist ideology that had characterised these massacres was enough evidence to paint a picture of the nature of any finale in the ever evolving Hutu/Tutsi imbroglio. Apart from the consistent cables, history presented itself to us then and now as a reliable data base from which the international community could have drawn experiences from to enable far reaching decisions about the consequences of inaction. This history lies in the nature of the crime of genocide. Kupperman's assertion that the speed of the genocide did not lend itself to any humanitarian rescue seems to suggest that genocide occurs in a vacuum; in a situation of tranquillity. This argument is obviously at odds with the early warnings that existed prior to the genocide. Quoting a citation from the ICTR[55] which states clearly when the 'other' was defined and identified, Melvern makes the argument that the commission created by Habyarimana to identify the enemy and to identify what had to be done to defeat it militarily, in the media and politically(Melvern 2000;61). A report commissioned by the then Organisation of African Unity (OAU) concluded that the genocide in Rwanda was the easiest to stop. It reached this conclusion amongst others by using the same argument of the presence

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Recalling that an attempt to confiscate arms had sparked violence and subsequent failure for the U.N. operation in Somalia, they ordered Dallaire not to act'.

[53]Rapport de la Commission Internationalle d'enquete sur les violation de droite de l'homme au Rwanda depuise le 1er Octobre 1999. It documented massacres in Kebilira, Rubona, people of Bagogwe and concluded on the systematic nature of the attacks in which the authorities of the had directed attacks in 8 of the 10 districts: http://cec.rwanda.free.fr/documents/doc/RapportMars93/ComIntMars93.pdf accessed on 18.09.11

[54] The Commission made Four principal recommendations to the international community which included 1) To condition Aid to the respect of human rights, 2) To put an end to all military aid to the belligerents, 3) To continue to raise the situation of human rights in front of the competent international institutions, 4) To continue to encourage the parties to adhere to the outcome of the Arusha Accord…but ofcourse as Dallaire reported, the international community was not prepared because of Balkans commitment, non -strategic nature of Rwanda and the strong believe that the Arusha Accord will not survive to support and encourage the letter of the Accord

[55] Prosecutor vs. Bagosora; ICTR 96.7.D quoted in Melvern 2000:61

of early warning signs.[56]In a similar vein Adelman (2005) though conscious of contrary positions like those expressed by Kupperman, concluded that such early warning signs as they existed in Rwanda could serve as part of a warning system about the initial stages in a trend towards extra-ordinary evil (Adelman 2005:11). Akkhavan (1997) supplements this argument first by dismissing the "tribal war thesis" that greets African conflicts and added that the efficiency and scale of the killings especially in an African country depicted an impressive feat of organisation and thus cannot simply be dismissed as an unforseable outburst of primordial bloodlust.[57]Genocide is not an act defined by spontaneity void of conception, definition of the other, dehumanisation of the other, planning and execution.[58] Let me presume against the literature that there was no smoking gun that could have warranted intervention even a belated one to challenge Kuppermans assertion; France's arming and diplomatic defence of the genocidaires, Belgium's withdrawal of its troops in the wake of the genocide and president Clintons' demand of the withdrawal of UN peacekeepers seems against all conventional wisdom to have hasten the killings (Mills and Brunner 2002; 250).

Rwanda seems to have been by design or fate fallen out of the moral imperative that defines intervention. Rwanda lends itself as a geopolitical standoff in which France's support politically and militarily of the Habyarimana regime gave the West a raison d'être to invoke the 'crossing the Mogadishu line' argument to allow mass murder run its course. From the literature of cases reviewed above, it is clear that intervention could have stopped the genocide or atleast reduce it into some massacres. This scenario inadvertently would have shaped the post conflict frame into one of compromise. The consequence of inaction was the genocide, an outright victory by the RPF and its insistence on determining the post genocide

[56]There is a record of atrocities, all of which was publicly exposed throughout the early 1990s by credible human rights organizations. [20] Massacres of Tutsi were carried out in October 1990, January 1991, February 1991, March 1992, August 1992, January 1993, March 1993, and February 1994. [21] On virtually each occasion, they were carefully organized. On each occasion, scores of Tutsi were slaughtered by mobs and militiamen…Rwanada; The Preventable Genocide:42 http://www.africa-union.org/official_documents/reports/Report_rowanda_genocide.pdf accessed 05.09.11

[57]Payan Akhavan (1997), Justice and Reconciliation in the Great lakes Region of Africa: The contribution of the International Criminal Court for Rwanda: 7 Duke Journal of Comparative and International Law, 325-348 (1997)

[58] 'Given the pattern of killings, given previous massacres of Tutsi, given the propaganda demanding their extermination, given the known political positions of the persons heading the interim government, informed observers must have seen that they were facing a genocide'. Human Rights Watch 1999

justice system that has been innovative in its design, ambitious in its goal and in equal measure ambiguous in its operationalization.

In this section, the study has reviewed the moral and legal premise of humanitarian intervention while injecting some case studies to substantiate the various arguments. The main purpose of this general thrust has been to locate where the various arguments about non-intervention in Rwanda lies as to situate its effect on its post genocide justice framework and its impact on reconciliation. The question that now arises is what would have happened should there have been an intervention in Rwanda. This would form the basis of the counterfactual argument in the preceding section.

4.3.5 INTERVENTION AND RECONCILIATION: THE COUNTERFACTUAL ARGUMENT

Humanitarian intervention as defined in section 4.3.1 has been sold as an action of last resort by a country or group of countries intervening in the internal affairs of another country because of the unwillingness or inability of that country to protect its own people. The new thrust of intervention defined under the new regime of the responsibility to protect (R2P) revolves around the same argument but premised on the notions of prevention, the protection of civilian population (PoC) and reconstruction.

In its 2001 report on state sovereignty and protection, the ICISS stressed the reactive arm of R2P as a "responsibility to react to compelling needs of human protection".[59] The Commission emphasised coercive intervention as a consequence of the failure of "preventive measures" and only when the "state is unable or unwilling to redress the situation" of massive human rights abuses.[60] Rwanda thus fulfilled the "just cause" premise advanced by the Commission in that there was "large scale loss of life and large scale ethnic cleansing". The Commission also argues that in the contemplation of intervention, the need for "post intervention strategy is also of paramount importance…as true reconciliation is best generated by ground level reconstruction effort.

In a 1998 report on the Causes of conflict and the promotion of durable peace and sustainable development in Africa, then UNSG Kofi Annan argued that

[59] ICISS, The Responsibility to Protect, p.29
[60] Ibid;29

"The prevention of conflict begins and ends with the promotion of human security and human development".[61]

The SG reports continues to argue that

"to avoid a return to conflict while laying a solid foundation for development, emphasis must be placed on critical priorities such as encouraging reconciliation and demonstrating respect for human rights; fostering political inclusiveness and promoting national unity; ensuring the safe, smooth and early repatriation and resettlement of refugees and displaced persons;"

Consequently it must be argued that for intervention that leads to reconciliation to be successful or at least manageable a holistic approach which emphasises both protection and reconstruction must be considered. Rwanda presents itself as a classic example where prevention failed and in which even in the absence of hindsight the legitimacy and legality of intervention could have bestowed international legitimacy to any post intervention reconstruction efforts. Intervention as argued before could have protected the civilian population and fulfilled a very important aspect of the human security development nexus link. The other consequence of non-intervention was that the war ended by the collapse of the former regime and consequently allowed the victorious party to define the conflict frame and imposed a post genocide justice system that the vanquished has long described as a victors justice system. This consequently challenges the legitimacy of the process and frustrates efforts at using accountability as a source of reconciliation.

A genealogy of past interventions has produced a very mix result on their effect on reconciliation. Although these interventions have been different in their complexity, scope and source of authority, no consistent pattern that can be generalised has so far emerged. A synopsis of a few of these interventions analysed in a comparative manner would paint a clearer picture of what could have happened in Rwanda should the international community have decided to intervene.

In 1993 the United States led a coalition of states that overthrew the government of Iraq and arrested Saddam Hussein and other top members of the Baath party. The complexity, scope and legality of this invasion have been dealt with in section 4.3.3.2. The mode of termination of the conflict was similar to that of Rwanda. Rwanda is depicted as a conflict that terminated by collapse. On the other hand it is also a reality that most of Rwanda's military officers actually retreated with the thousands of refugees that moved into the DRC. Some civilian

[61] Annan, Causes of conflict and promotion of durable peace and sustainable development(1998;2)

officials like Theoneste Bagosora were actually airlifted by France to safety.[62] In Iraq the conflict terminated by retreat. Unlike in Rwanda where most of the military and civilian officials moved into the DRC, in Iraq the military and civilian officials simply vanished into internal strongholds where they organised resistance against the occupation. Iraq's "post conflict" justice was initiated with the hope that retributive justice would unite the three main groups and sap out the energy and motivation from the insurgency and allow the political process to reconcile the different stakeholders in the conflict. Intervention as argued above is actually centred on the necessity to protect the civilian population and to ensure that post conflict does not engineer reverse ethnic cleansing. Intervention in Iraq failed to either protect the civilian population or fostered reconciliation. The complexity of the Iraq situation mirrors to a certain extent that of Rwanda with its internal dynamics of group tension and external influence ethnic loyalties and geopolitical, strategic and economic interest.

The situation of Sierra Leone injects an interesting distinction to that of Iraq. In 1995 and 1997, Executive Outcome mercenaries (EO) and forces of the Economic Community of West African States (ECOWAS) countries subsequently intervened in the bloody civil war that had pitted forces of the government of Sierra Leone and rebels of the Revolutionary United Front (RUF). In the year 2000, the United Nations and the government of Sierra Leone invited the British government to intervene in the conflict to save a fledgling Lome Agreement that was being threatened by a resurgent RUF. The source of authority of the British mandate was resolution 1270 under a UNSC Chapter VII mandate.[63]

The intervention was a sweeping success as the British forces were able to defeat the RUF and secure the environment for military victory to be translated into political success. The success of intervention and a reconstruction process that enjoyed international legitimacy injected the critical ingredient needed for post conflict reconciliation to take root.

Similar to Sierra Leone, Rwanda was both a case for state and nation building. Both countries had suffered long years of dictatorship and protracted conflict that had rendered the institutions of state totally ineffective. Like in Sierra Leone, in Rwanda allegiance to different ethnic groups superseded that to any overarching national identity. The post conflict justice mechanisms in Sierra Leone were product of a peace accord. Despite the institutionalisation of a hybrid system that married both a retributive and restorative form of justice dispensations

[62] Alison Desforges(1999). Leave no one to tell the story: Human Rights Watch
[63] S/RES/1270 (1999) para 14

the conditions that existed in Sierra Leone were absent in Rwanda. While in Sierra Leone the post conflict justice mechanism was an element inscribed in the Lome peace accord, in Rwanda the domestic post genocide justice mechanism was simply a contingency institution solely decided and instituted by the RPF led government to mitigate the massive arrests and detentions. Consequently success in Sierra Leone could be attributed partially to a successful intervention both as reactionary and reconstruction tools, a post conflict justice system limited in scope and an inclusive political process. In Rwanda if intervention had produced the same result as in Sierra Leone it could have still terminated the conflict by collapse but that would not have been defined as an RPF victory. Consequently the conflict frame would have been defined differently and the initial insistence on a backward looking approach of post genocide justice designed to end the culture of impunity could at least have been altered. The difference however between Sierra Leone and Rwanda is that while in Sierra Leone the state was not the primary perpetrator of impunity, in Rwanda the state was the agent that violated both its positive and negative obligations towards its citizens. And worst still in Rwanda the church as an institution that had been so pivotal for restorative justice whether in Sierra Leone or South Africa was part and parcel of the genocidal machinery. Consequently it wouldn't be untrue to argue that intervention could have had the legal and moral cover to influence in a significant way the post conflict reconstruction design and grant the necessary legitimacy any post conflict reconciliation effort requires to be successful.

4.4. POST GENOCIDE JUSTICE:

The argument that the genocide in Rwanda was fatalistic is not unusual position about plural societies in Africa. This argument trickled down in the early days of post genocide Rwanda to shape attitudes about its post conflict reconstruction package. On the contrary the thrust of the three preceding thematic have all been somehow deterministic in rebutting at least to a certain extent the fatalistic presuppositions about the genocide. After having been able to establish some level of causality between the thematic considered and the post genocide justice architecture, the proceeding section would focus on the justice mechanism itself, its operations, and the form of justice it delivers and the effect of this justice from a general and Hutu perspective on reconciliation.

The United Nations perceives Transitional or post conflict justice as a tool of post conflict peace building. The question of justice in post conflict societies has been approached in

different ways. It may encompass either a restorative or retributive arm or both as in Rwanda depending on the objective set by the post conflict society. Kerr and Mobekk (2007) define post conflict justice as "the range of judicial and non-judicial mechanisms aimed at dealing with a legacy of large scale abuses of human rights and/or violations of international humanitarian law". As Clark argues, at the heart of transitional justice are questions of what reconstructive objectives post-conflict societies should pursue and how they should pursue them' (Clark and Kaufman (eds)2008;191). There is no static system valid across time and space. Each transitional society chooses a system commensurate with its objective and suited to its socio-cultural and political system. This as Clark argues, also depends on the objective such a transitional society has set as its main goals. Two extremes and opposite goals Malan argues seem to be morally defective and should be ruled out; revenge and forgetting and moving on (David(ed) 2008;144). Irrespective of the form of transitional justice chosen by any society, there is an inherent tension between the objective set forth and the means designed to achieve those objectives. The tensions between the ideal and the practical means of achieving particular objectives are not unique to transitional justice (Clark and Kaufman (eds)2008;382). While the ideal in most post conflict societies is achieving peace and order through reconciliation which are necessary prerequisites for post conflict reconstruction. On the practical end of the conundrum lies the reality these societies face after a devastating conflict that has not only wrecked institutions of post conflict peace building but has constructed a wedge between the different components of the society. Overcoming these tensions and facing the reality of such situation is what most post conflict societies grapple with. This section reviews Rwanda's post genocide justice mechanism within the context of its local reality and international demands of fairness with a particular focus on the Gacaca.

The literature is rich with ideas about the prerequisites, structural conditions that determine a particular choice of post conflict justice system.[64] South Africa instituted the Truth and Reconciliation Commission (TRC) which had as its main objective the exposition of the truth in exchange to the granting of amnesty. This method of post conflict justice was tailored towards achieving reconciliation between peoples who were bound to inhabit the same country. This objective was influenced by the intra-state nature of the conflict and rationalised by fear of the possibility of civil war should retributive form of justice be pursued. It could also be argued that South Africa unique mix amplified this fear since

[64] Elster(2004), Morbekk (2005), Binningsbø, Elster & Gates (2005), UNSG/S/2004/616 Report

economic power was wholly vested in the hands of the white minority and any form of retributive justice could have backfired in terms of capital flight and its consequences on post-apartheid reconstruction would have been enormous.[65] Snyder and Vinjamuri (2003) argue that the relationship between order and justice is characterised by tensions, with justice seen to be realisable only within the context of order.[66] Zaum on the other hand reverses the trend arguing that Western states perceive justice as a necessary prerequisite for order, peace and stability(Clark and Kaufman(eds)2008;364). Kaufman et al further argue that some of these tensions may be avoidable often by prioritising one objective over the other or simply adopting a holistic approach to post conflict justice. Other tensions they argue are inevitable because of the inherent complexity of the conflicts. After the genocide, the Rwandan government and the international community embraced retributive justice as a post genocide mechanism designed to punish the perpetrators of the crime of genocide and to end what both parties considered as the culture of impunity that had characterised Rwandan history,[67] and replace such a culture with that of accountability. The urge for judicial accountability was in sharp contrast with the perceived notion of African redress mechanism and especially coming at the heels of the truth and reconciliation commission (TRC) designed to achieve post-apartheid reconciliation in South Africa. At the international level, the UN Security Council passed resolution 955 establishing the International Criminal Tribunal for Rwanda (ICTR) as an ad hoc design to use judicial procedure to achieve reconciliation.[68] As Hassan argues, the

[65] This view of abstention from retributive justice based on the nature of transition and powers of previous regime is supported by Gloppen (2005: 23) quoted in Tove et al(2006), when she suggests that prosecution is more likely to be deterred by the fear of increasing conflict in situations where the previous regime has retained significant support.

[66] J.Snyder and L. Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice", International Security, 28/3 (Winter 2003/2004), 5-44

[67] For a Chronology of the much written about culture of impunity Martin Ngoga illuminates in his paper 'The institutionalization of impunity' what he perceived as a 'legislation of impunity' passed by successive Rwandan governments to 'protect themselves and their supporters from prosecution for serious violations of human rights'. On 06 August 1962 post-independence president Gregoire Kayibanda passed a legislation which granted amnesty to individuals responsible for atrocities between 1 April and 1 December 1961. Another law passed on 20 May 1963 granted amnesty for all political crimes committed between 1 October 1959 and 1 July 1962. This controversial law granted amnesty only to those who committed atrocities associated with the fight against colonialism and feudalism. On the other hand the amnesty was not extended for violations committed by persons who fought against the liberation of the masses oppressed by feudal-colonialist rules. On 15 February 1975 Habyarimana signed law No. 03/79 granting amnesty to former president Kayibanda following case N0. 0001/74/CM conducted by the special military court on 29 June 1974: Martin Ngonga in After Genocide (2008): 223-225

[68] UN Document S/RES/955, of 8 November 1994

normative basis for the UNSC involvement in establishing the ICTR was Chapter VII of the UN Charter and the four pillars of the global legal order(Clark and Kaufman(eds)2008;262). What Hassan calls the four pillars of the international legal order encompasses international humanitarian and human rights law, international criminal law and refugee law. But reading the text of resolution 955, it is unmistaken that the ICTR is designed to prosecute crimes perceived as occurring strictly in times of conflict and within the period of 1 January 1994 and 31 December 1994. This explains some of the sharp reservations of the Rwandan government addressed elsewhere in this study. In a 2004 report by the former Secretary General of the UN to the Security Council (SC) Kofi Annan stressed the need for transitional justice to be context driven but one that "ensures a common basis of international norms and standards." The report warns against the "one size-fits all formulas and the importation of foreign models'.[69]On the question of the tensions raised by Snyder and Vinjamuri (2003, Kaufman et al (2008) and Zaum, the report argues that "justice peace and democracy are not mutually exclusive objectives but rather mutually re-enforcing imperatives". Thus the argument of Kaufman et al that such tensions could be mitigated by prioritising one objective over the other stands in sharp contrast with the mutually re-enforcing imperative' doctrine of the UN and the reality of post genocide in Rwanda.

4.4.1. THE ICTR VERSUS LOCAL CONCEPTION OF JUSTICE

Rwanda initially opposed the resolution setting up the ICTR on several grounds amongst which included the ad hoc nature of the tribunal which limited its mandate to prosecuting only crimes that occurred in 1994. The second rational was underpinned by the lack of an independent prosecutor and an appeals chamber; the imprisonment of those found guilty outside of Rwanda which abstracts them from the pressure of the moral space of the victims; the non-exclusion of certain countries 'complicit' in the genocide from nominating judges and any firm commitment to locating the seat of the tribunal in Rwanda. These are points current Rwandan president argues takes away the process of justice from the reach of victims. It is one amplified by Kaufmann et al when they argue that 'investigation, prosecution and punishment of alleged perpetrators may not promote genuine reconciliation among antagonists, especially if the imprisonment of convicted perpetrators separates them physically from victims of violence and the rest of the population, thus minimising the

[69] UN Document S/2004/616, The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the SG to the SC (3 August 2004)

capacity of offenders and victims to engage, and reconcile with each other (Clark and Kaufman (eds)2008;387).[70]

The rational of resolution 955 which created the ICTR rested on two pillars. The first which has been drummed up by most institutions dealing with post genocide Rwanda rest on the need to promote what the statutes of the tribunal affirms would contribute to the process of national reconciliation and the restoration and maintenance of peace. The other pillar of the tribunal rests on the need to punish perpetrators and to ensure that the violations of international humanitarian law upon whose mandate the tribunal rest are halted and effectively addressed. Akhahan (1997) emphasises the effect of this undertaking on reconciliation by pointing out the symbolic effect on national reconciliation and deterrence of prosecuting even a small number of the leaders before such an impartial international jurisdiction. In a 2006 paper on polarisation and Conflict project, Tove et al argue that from the point of "psychology retributive justice can enable victims to attain closure and restore healthy relations toward one another".[71] They nonetheless emphasize the nature of the post conflict regime as an important element in delegitimizing the prestige and discrediting the ideology of the old order while also emphasizing the cardinality of the outcome of the conflict in determining the form of the justice mechanism.[72] In recognising the role the national jurisdiction of justice dispensation has on reconciliation, article 8 of the statute of the tribunal emphasises its concurrent role with national jurisdiction even though in a situation of conflict the ICTR according to article 8 will have primacy over national courts. The Rwandan authorities feel that the current system of justice at the level of the ICTR established under UNGAOR 955 fails to provide effective justice. And at a very huge financial cost,

[70] For a contrary argument to this see Payam Akhavan argument in footnote 9

[71] Tove et al (2006). Post Conflict Justice and sustainable peace: Tove et al also argue that retributive justice can also serve to demonstrate a break with the immoral order of the past and help to build trust in the new social order.
http://www.prio.no/files/file47830_post_conflict_justice_and_sustainable_peace.pdf accessed on 08.01.12

[72] Ibid. One should, nonetheless, believe that the possible effect of legitimizing the post-conflict regime and depriving the legitimacy of the old one should be more important if the post-conflict regime is a democratic one, dependent upon support from the electorate. Tove et al add that retributive justice (political justice or show trials) under autocratic regimes which act more to deter than build confidence, still help to stabilize the country. On the cardinality of the form of justice system they stressed that 'the prosecution of war-criminals is most feasible when the insurgents or the former regime is severely defeated and no longer poses a threat to the incumbent leadership. In situations of clear victory, negotiations over amnesty, as a guarantee against retributive justice, are unlikely'.

bureaucratic inefficiency, insuperable and managerial difficulties between the Chambers, prosecutor's office and the registry has portrayed the ICTR as an inefficient system of justice dispenser.[73] It is a point stressed by President Kagame[74] and supported by a 2007 workshop report commissioned by the International Center for transitional justice.[75] Tutsis feel not only betrayed by such a justice system but also by the fact that some countries which pushed for such a system considered divorced or abstracted from the reality of the victims still shelter some of the planners and perpetrators of the genocide. These countries and institutions are perceived as having failed the Rwandan people in their direst moment of need. Despite the tension between international justice and domestic justice being pursued in Rwanda and the reservations expressed by Rwanda, there has been some rapprochement in addressing the concerns of Rwanda. In June 2011, the first case under the tribunals' jurisdiction was referred to the jurisdiction of Rwanda.[76] Generally for any such referral to take place, the tribunal certified that the victim would receive a fair trial and if found guilty will not face the death penalty. Despite certification that the national jurisdiction must proceed with trials consistent with international standards and norms of fairness without which such referral will be revoked, this marked a significant development in cooperation with a sceptical Rwanda. Apart from the referral, the arrest, trial and conviction of high profile suspects like Ernesto Bogesora,[77] Akayesu and others and the first high profile judgement in the Akayesu case did not only increase the reputation of the tribunal but also redefined in a more specific manner certain ambivalent concepts in the debate on genocide.[78]

[73]JimamTimchang Lar in Post conflict justice in Rwanda: A Comparative analysis

[74] The ICTR , established by the UN against the wishes of the Rwandan government…its physical detachment from Rwanda has prevented it from meaningfully engaging with the Rwandan people; After Genocide

[75] An ethical prosecutorial policy should be informed (but not bound) by the views of victims. Rather than being viewed as simple vessels of evidence or sources of investigative leads to be introduced in the trial at strategic moments, victims should be involved from the outset and be consulted on various decisions.

[76] Prosecutor vs. Jean Uwinkindi, Case No.ICTR- 2001-75R11bis . Jean BoscoUwinkindi was arrested in Uganda on 30 June 2010 and transferred to the UN detention facility in Arusha, Tanzania. He was initially charged with genocide, complicity to cause genocide, extermination as a crime against humanity which was later amended simply to genocide and crimes against humanity

77 BAGOSORA, Théoneste (ICTR-96-7)

[78]Statement by U.N. Secretary-General Kofi Annan on the Occasion of the Announcement of the First Judgment in a Case of Genocide by the International Criminal Tribunal For Rwanda. UN doc. PR/10/98/UNIC,1998.

On the contrary, the recommendations of a 1995 Kigali conference "stressed the vital need of bringing the perpetrators of genocide to justice". In stressing the need for punishment as opposed to the South African system under the TRC, the conference pushed for "…an uncompromising step to take in order to combat the tragic history of impunity that led to repeated genocide in the country and rejected the possibility of a blanket amnesty". The culture of impunity is cited by the UN special Rapporteur for human rights as one of the principal causes of genocide. Apart from the rejection of alternate political power and the effect of incitement, this culture of impunity spans almost half a century and its devastating effectiveness could only be seen as a perfection of a tool of politics that had been perfected overtime. On the need to achieving reconciliation and political order, the conference stressed the need to balance the "imperative need for justice and the stability of the society"[79]. Underscoring the need for punishment rather than amnesty, Shabas writes that the Rwandan president at the time called for an innovative form of justice while ruling out any form of amnesty (Clark & Kaufman 2008;213). The desire by Rwandan authorities to deal with this crime from a broader spectrum translated the recommendations of the Kigali conference into legislation and structures as a domestic approach to dealing with the impunity of the country's past.[80] The study shall then focus on properly analysing this alternative domestic approach and how such a locally owned approach deals with the notion abstraction and collective conscience.

4.4.2. CODIFYING A DOMESTIC APPROACH TO JUSTICE:

Recognising the different levels of involvement in the genocide the Rwandan authorities passed legislation that dealt separately with planners, instigators and the hundreds of thousands of foot soldiers who by commission or omission took part in the genocide. Chapter II of the legislation categorised different levels of offenders to be treated through different judicial and non-judicial procedures. Category I offenders are seen as the principal planners, instigators, supervisors, leaders of the crime of genocide, murderers[81]. Category II offenders are seen of a slightly lower tier and categorised as the main foot soldiers in the genocide especially as conspirators and perpetrators. Lower down the classification ladder is category III offenders who are judged as having committed "other serious assault against persons".

[79] 1995 Kigali Conference-http://www.grandslacs.net/doc/3186.pdf
[80] On 30 August 1996, Organic Law No. 08/96 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990 came into force
[81] Article 2(a, b,c and d) of Organic Law 08/96

The lowest tiers of offenders are listed in category IV as arsonist and those who took part in the destruction of property. The central tenet of the organic law was embedded in the restorative aspect of the quasi-judicial organ of what Kerr and Morbekk (2007) alludes to as the non- judicial aspect of post conflict justice. The confession and guilty plea procedure accepts the participation of everyone in the confession[82] procedure but the bargain end of the scheme cannot hold for persons listed as category I offenders. It should also be noted that confessions and guilty plea does not exempt categories I-IV offenders from prosecution. What it does according to arts 15 and 16 of the organic law is reducing and commuting the sentences of the offenders. The problematic with this procedure is its lack of incentive and its threat arm to dismiss confessions deemed not genuine enough to warrant acceptance and recourse to the normal judiciary process based on the penal code. In one aspect, it encourages false confessions from persons who might likely be category I offenders and in the other forces even innocent persons fearing being pushed through the conventional judiciary process. The domestic approach to post genocide justice as defined by the organic law is retributive to say the least and seems to follow the logic that accountability through punishment remains the best option at achieving reconciliation. Categorisation of offenders seems not to have solve the fundamental problem of what Mambani(2002) described as a genocide of too many offenders and too few beneficiaries. The third mechanism dealing with the genocide is a customary system of dispute resolution known as the gacaca.

4.4.3 THE GACACA

Rwanda premised post genocide justice in punishing those responsible for the crime of genocide. This has been rationalised based on the desire to end the culture of impunity that has characterised Rwandan history since independence. Although such a stance was initially viewed as consistent with international model of dispensing justice, it was seen by others as antithetical to an African tradition epitomised by 'forgiveness and reconciliation'. Faced with a reality that defies logic, the Rwandan government renege on the solely retributive arm of justice. This reality was reflected by the sheer number of persons who had actually taken part

[82] Confession includes 'a detailed description of all the offences set out under Article 1 that the applicant committed, including the date, time and the scene of each act, as well as the names of victims and witnesses, if known;(art.6a);)information with respect to accomplices, conspirators and all other information useful to the exercise of public prosecution(6b); an apology for the offences committed by the applicant(6c); an offer to plead guilty to the offences described by the applicant in accordance with the provisions of sub-paragraph (a)(6d)

in the genocide. It is a tension described by Kaufmann et al as one between 'justice' and 'reconciliation'. This tension translates into a conflict between 'idealism' and 'capability' (William & Clark 2008;382). The duality of these tensions sits at the heart of the Rwandan post genocide justice. At one end of the tension is the need for reconciliation through justice and on the other end is the need for order through justice. The second tension is that between what Kaufmann et al termed idealism versus capability. It is clear from the Rwandan situation that the desire to use prosecution as a way of ending what many called the culture of impunity didn't quite marry with the capability of a bottom up genocide that destroyed the institutions of justice. This is where an old form of family institution of justice was invoked and rebranded to deal with a contingency situation characterised by massive incarceration. Gachacha or simply written Gacaca has been a traditional model of dispute settlement that focused on restoration rather than retribution especially in non-criminal domestic feuds. Faced with the reality of bottom up and top bottom participation, the Rwandan authorities enacted Law No.40/200 of 26 January 2001 creating the Gacaca tribunals charged with the prosecution of persons who fall within category 2, 3 and 4 as defined by article 51 of Organic Law No. 40/200. The organisation of the Gacaca courts followed the administrative setup of Rwanda which constituted 12 divisions, 145 municipalities, 1531 sections and 8981 cells. According to article 4 of the Gacaca legislation, the jurisdiction of the various Gacaca courts shall be the divisions, municipalities, sections and cells. Each Gacaca tribunal according to article 5 of the organic law is composed of a general assembly, a seat and a coordinating committee. The composition of each unit reflects a typical jury selection method; persons tapped from within the community considered as "honest Rwandans" of "good behaviour and good morals, always tell the truth, trust worthy, speak openly, free from sectarianism and discrimination…"[83]. The functioning of the various jurisdictions follows a conventional pattern of the organisation of judicial procedures whether in civil or criminal justice issues. The "*Gacaca* tribunals" have jurisdictions similar to those of ordinary criminal jurisdictions to try defendants using testimonies in favour or against them[84]. The lowest jurisdiction which is at the level of the cell establishes the list of residents in the cell before, during and after the genocide. Most importantly the list of victims and perpetrators and is endowed with the responsibility of examining category 1V cases as defined by the organic law. These are cases of individuals responsible for minor crimes especially in the destruction of property realm. Its preliminary hearing role makes it an important level of the escalation procedure. Those seen

[83] Article 10 of Organic Law No 04/200 of 26 Jan. 2001
[84] Art.37

as fitting within category III are forwarded to the sector 'Gacaca tribunal' and the II and I to the districts and provinces respectively. These levels hear the appeals of verdicts delivered by the cells, provides evidence for the defence or prosecution in the trials of genocide and crimes against humanity; receives confessions and guilty pleas'.[85] The basis of this strictly community form of composition is deemed consistent with the purpose for which this form of justice dispenser is rationalised. Accordingly, it wouldn't be wrong though not totally consistent with other restorative forms of justice systems to say the Gacaca tribunals are organised to act as restorative institutions with the aim "to establish the truth about what happened, with the communities which were the eye witnesses of the crime giving witness about the crimes." The genocide in Rwanda destroyed the institutions of states and robbed the country of its human resource in the management of societal relationship. This has been the focus of post genocide reconstruction whether in terms of peace building or reconciliation. The Gacaca system seems to add another level of post genocide justice and reconciliation. By its method of composition based on community and its form of operation rooted in customary traditions that taps into endogenous attributes, the Gacaca is sold as an institution that addresses the psychological trauma left by the genocide. The proximity of the killings and the massive participation of the society left a traumatic gap that can only be filled by a well-crafted method of truth, confessions, forgiveness and reconciliation. By engaging perpetrators and victims within this close setup meant to expose the truth about the crime of genocide and concurrently punish category 1 participants, the Gacaca tribunals' sets precedence in Africa's post conflict peace building mechanism that could stand out as a model for the continent. Apart from seeking to establish the truth which forms a proper point of departure for reconciliation, the Gacaca tribunal also seeks to fight the culture of impunity through accountability and effecting proper re-integration without recrimination into society. Despite its merit speedy administration of justice has been lacking due to the sheer number of people being detained. By the end of 2001 about 6500 genocide suspects had been judged with acquittal rate of 1000 verdicts issued annually.[86] The Gacaca system while portraying an indigenous system of justice dispenser does not as Tiemessen (2004) alludes preclude its potential for inciting ethnic tension if it purports to serve as an instrument of Tutsi power.[87]Timothy Longman(2010) argues that "if regaining social equilibrium is the central

[85] Articles 35 & 36
[86]Urvin, Peter quoted in Jimam
[87] African Studies Quarterly http://www.africa.ufl.edu/asq/v8/v8i1a4.htm
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idea of the Rwandan conception of *utabera*, then all of the judicial processes implemented in response to the 1994 Rwandan violence—including *gacaca*—have mostly failed. While genocide crimes are particularly serious and must be addressed, the complete absence of accountability for crimes committed by the RPF—which may have left as many as 200,000 Rwandans dead in Rwanda and the Democratic Republic of Congo—undermines the potential impact of trials to promote reconciliation. The one-sided nature of all of the trials has contributed to the impression that the government is merely seeking to establish its dominance and exercise power rather than promoting justice[88].

The Tutsis also feel that the Hutus revisionist tendency amounts to genocide denial or better put attempting to equate organised pattern of state-centric violence aimed at annihilation to acts of what Kagame describes as actions of rogue elements of the military arm of the RPF.

The Rwandan government has also attempted to solve this problem with solutions that insist on de-ethicising Rwanda and constructing a national identity above the ethnic allegiance that has defined its historical evolution from colonial rule. By attempting to outlaw ethnicity through formulating laws that criminalise speech perceived as inciting or discriminating[89] and at the same time instituting a remembrance ideology that translates into collective guilt of the Hutus generates conflict and as Hutus argue undermines post conflict reconciliation boat.

Having reviewed the working mechanism of the post genocide justice mechanism, its merit and objective, the next section would focus on the presentation an analysis of both the primary and secondary data with the view of understanding its impact on the objective of the Post genocide justice mechanism.

[88] Tove et al(2006) argue that in very few cases does the winner put representatives of its own party on trial for war crimes, thus increasing our suspicion that winner's justice or political justice is more common than legal justice.It is an assertion supported by the BonningsbØ, Elster and Gates(2005) dataset

[89] See article 2 & 3 of LAW N°18/2008 OF 23/07/2008 RELATING TO THE PUNISHMENT OF THE CRIME OF GENOCIDE IDEOLOGY: Website of the Rwandan Ministry of Justice: http://www.amategeko.net/index.php?Parent_ID=15&Langue_ID=An

CHAPTER 5

5. DATA PRESENTATION AND ANALYSIS:

Dealing with qualitative data can be very trying because of the volume of data one has to handle. To facilitate understanding, this data will be dealt with in four phases. The first phase will be dedicated to setting the scene, research area and subjects. The remaining three phases will follow Wolcott's (1994) triad perspective of dealing with qualitative data. This will involve the descriptive phase which ensures that the data speaks for itself; the analytic phase will be dedicated to expanding and extending data beyond the descriptive phase, identifying key factors and relationships. According to Wolcott, analysis is structured, formal, grounded, methodical and carefully documented. The interpretative phase will involve dealing with the data in a way that 'transcends factual data and cautious analysis and begins to probe into what is to be made of them (Amanda & Atkinson 1996; 9). While analysis usually begins with data collection as to facilitate reorientation during the data collection process, a final and distinct phase of analysis is relevant. This section adopts a dual approach to data analysis. It begins with the conceptualization of the data and ends with its interpretation

5.1. CONCEPTUALISING THE FINDINGS:

Post Conflict Justice Mechanisms viewed from a holistic perspective fits the abstract rule where externality is self-evident to any content which scientific method is necessary to validate or invalidate. The relation between object and method is quite critical to approach such a holistic self-evident object of analysis. That is why an analytic approach that isolates the constituent part of the concept and to examine them separately is crucial. Although this may fragment a perceived unified phenomenon, it remains the only way to disentangle oneself from the self-evident nature of the externality of the object of analysis.

5.1.1. THE GACACA AS AN INSTRUMENT OF 'VICTORS' JUSTICE:

The most compelling case against the Gacaca is its perceived role as an institution designed to prosecute the vanquished. This system of 'victors' justice is discredited by most respondents as biased, partial and based on retribution. This institution of justice dispenser is perceived to hinder reconciliation and foster acrimony between the Hutus and Tutsis

"It is an abomination on all lines established to destroy part of the society Respondent G argues…it's a shame'. It is politicized and has thus made reconciliation a failure…we need to draw lessons from this in order to proceed'.

Respondent D was even blunter.

"It existed under the feudal system under Tutsi rule and judged Hutus/Tutsis and Twas but now it judges only Hutus. Hutu ethnic group is already condemned".

Respondent F negated the status of the ICTR as an institution designed to judge both victor and vanquished and tied the non-cooperation of Kigali to the premise of the ICTR as reminiscence of post genocide justice developed and sustained around the notion of victors' justice.

The Gacaca he laments

"…was meant to arrest arbitrarily the majority of the population. Arusha was a system of justice meant to judge former politicians. Arusha judges one side and not the other which has committed war crimes. Gacaca was organized to destroy those considered as members of old regime. The system of justice is centred around Kagame. He is head of justice".

In situating Gacaca as a system of victors' justice and highlighting its transformation from an institution of restorative local justice to one of retribution without the required competence to discharge justice the respondents went beyond charging it as a Kangaroo court but one of great incompetence.

5.1.2. GACACA AS AN INCOMPENTENT INSTITUTION

One of the main critiques of Gacaca is its role as an institution of retributive justice void of the competence attributed to such an institution. Many respondents argue that the original scope of Gacaca as a local dispute resolution institution was extended to include criminal prosecution without the corresponding legal backup to support fairness and impartiality. Respondent C puts it in historical context and situates its transformation as problematic. He argues that*:*

"…it was a system meant to settle clan disputes between wife and husband, neighbors, not heavy crimes like killing people. People who run the Gacaca system are not really qualified. I can compare the Gacaca to the South African Truth and Reconciliation Commission whose aim was supposed to be to reconcile people".

By attempting to situate the argument in historical context most respondents deliberately struggled to establish the transformative path as politically driven and designed around targeted punitive measures solely against Hutus.

Respondent A contextualized it as follows:

"The Gacaca was a traditional system of justice in Rwanda which equated to conseille de famille. It was not a court but a family assembly design to treat family issues and could only impose penalties of 1000 CFA and below. Anything above goes to the court…It has been transformed into a court with untrained judges. A system in which victims are Tutsis and perpetrators are Hutus. Appearing infront of the Gacaca on your knees without a lawyer but the judges can send you to prison for 30 years. Once a Tutsi sees a Hutu they begin to cry and you can't say no…most Hutus prefer to accept accusations inorder to earn lesser sentences…"

Respondent D argues in the same line as most others had done. Gacaca he argues

"…was not the invention of the present government. The original objective of Gacaca was to regulate conflicts associated with theft and other family feuds. It had no mandate to judge crimes within the power of jurists, especially in imposing penalties' of life imprisonment".

The critique of the Gacaca as an institution goes beyond its one sided nature in the performance of its role as defined by its founding law or its transformation from a customary institution to a criminal one without the pillars to support it but more importantly is its role in fostering what Hutus perceive as mob justice through landed and other property extorting schemes. Respondent B summed the three premises as follows:

"Gacaca is a political instrument use to eliminate and imprison opponents. It has been redesigned from its original form and has been instrumentalised against the Hutus for the purpose of expropriation and pushing Hutus away from the villages…it promotes division because there are persons who have been condemned who are innocent".

It is a position echoed by Respondent G

"it is an abomination on all lines established to destroy part of the society…it is a shame. It is politicized and has thus made reconciliation a failure…we need to draw lessons from this inorder to proceed".

Most respondents view Gacaca as legitimating the expropriation of Hutu property through a system of naming, forced confessions, condemnation and consequently extortion. *Accusers*

Respondent D sums it up this way. Accusers

"accuse base on benefit they will get from accusation. Those who accuse do not accuse spontaneously but they have been prepared by experts who manipulate accusers to accuse Hutus; especially Hutus with properties"

5.1.3. GACACA AS AN INSTITUTION OF EXPROPRIATION:

The conception of justice in Rwanda designed to deal with post genocide cases received a mixed review from scholars and an almost unanimous condemnation from my respondents as

an institution of usurpation and expropriation of the other defined by the victors. Most of the respondents defined the institution of Gacaca as one defined around the naming, exclusion and appropriation of the property of the accused.

Respondent C argues that

"…it has been used by others to steal property. It happened to us…our house was taken over because of claims that soldiers under my father's command stole properties. My father was never given a chance to defend himself. That's how we see the Gacaca, as a system of property expropriation. You cannot judge every crime that happened in Rwanda because there were many crimes. There must be neutral investigators who should ask the Tutsis and Hutus what happened and based on that people can be accused, given a chance to defend themselves. For the moment only one ethnic group is being tried. This creates more problems. For how will they settle the expropriated properties?"

"Accusers accuse base on benefit they will get from accusation. Those who accuse do not accuse spontaneously but they have been prepared by experts who manipulate accusers to accuse Hutus; especially Hutus with properties" (Respondent D)

Most Hutus perceive Gacaca as an institution that legitimates the dispossession of Hutus of their properties through 'false accusations' and acts of vengeance and mob justice. It is Hutus argue a way of pushing them out of the country and causing the repopulation of scarce lands which is important for demographic dynamics in Rwanda.

5.1.4. A SENSE OF SHARED LOSS:

Nuremberg set the basis for modern day transitional form of justice. This victors approach to justice has not seen any paradigm shift since both the military and political leaders of the Nazi regime were arrested and arraigned before the Nuremberg tribunal by the victorious powers of WWII

The recurrent theme during my investigation is an overwhelming feeling by all the respondents that Tutsis as well as Hutus suffered retribution in equal measure.

Respondent B framed it this way:

"What happened in Rwanda cannot be termed as genocide according to the genocide convention…if there was genocide in Rwanda, then there was double genocide…Tutsis being killed because they were Tutsis and Hutus were also killed because they were Hutus. The killing of Habyarimana by the RPF resulted in anarchy because the hierarchy was dictatorial… Each family lost at least a single person but remembrance has been only for Tutsis..."

Respondent C argues as such:

”As the Interehamwe were killing people the RPF was killing people too.”

The sense of shared loss is informed by the way the genocide occurred.

Respondent B again puts it in context:

“If you compare what happened in Germany you will notice there was no war between Germans and Jews…in Rwanda there was a war because Tutsis were bent on taking power since 1990…and during and after 1994 the RPF was bent on killing Hutu refugees”.

The disgust with the post genocide justice mechanism is based on the perception of a system of victor’s justice designed to continue the Tutsi strategy of political domination at both a judicial and pseudo-judicial level. Most respondents argue that the crimes of the RPF have either been ignored or have simply been swept beneath the carpet by a complicit international community and the tyranny of the victor of the civil war. This perceived sense of negation of the suffering of Hutus most respondents argue fuels the sense of frustration which inevitably translate into violence.

5.1.5. ENFORCED BYSTANDER EFFECT:

The responsibility to protect or the dominant approach to circumventing sovereignty known as humanitarian intervention was never invoked to protect Rwandans. This is a feeling expressed both by Hutus as well as Tutsis. The effect of non-intervention is reflected in the way the current Rwandan government perceives the effort of the ICTR in using the retributive justice to ‘foster reconciliation’. The initial non-cooperation approach justified on certain grounds including most importantly the failure of the international community to intervene to save Rwandans strengthen and legitimated the victors approach to post genocide justice adopted by Kigali. During my field work some respondents argued that the lack of intervention was actually caused by Kagame and the RPF’s desire to conquer power.

Respondent C posits that

“he (Kagame) threatened everybody who talked about intervention in 1994…”

He referred me to Colonel Marshall’s testimony. He once more stressed that:

“to start a war you need preparations, logistics, ammunitions; there must be preparation. RPF was in Kigali in December 1993. They occupied the parliament; RPF used their base in Kigali as their platform for something else other than the peace process…”

It is that level of preparation, most argued that re-enforced the RPF's believe that it could seize power and thus any intervention would only come to hamper that move. Respondent A explained this in context in an email to me on 10.11.11 and referred me to a video link right after I arrived back to Norway:

voici le video(sur la site tu vas trouve beaucoup des videos du rwanda post-genocide) qui montre Kagame avec les casque bleues(from Canada-UN) et dans le video il explique qu'il ne veut pas que les etranges intervienes dans l'affaire interne du Rwanda parque il avait peur qu'on l'empeche de prendre le pouvoir! Donc si il dit ques la communaute etrangeres n'a rien fait pour aide le rwanda ou pour stoppe la guerre, c'est du pur cynisme et chantages de Kagame pour qu'on ne continue pas de le demande les crimes commises par ses hommes et lui-meme![90]
(this is the video that shows Kagame with UN monitors from Canada. In the video he explains that he doesn't want foreigners to intervene in the internal affairs of Rwanda because he was afraid that they would impede his drive to conquer power…)

5.1.6. AGENCY EFFECT:

Anthony Giddens (1976) duality of structure underscores the agent structure relationship as an immutable reciprocating feature in shaping agency and structural action. In the same vein Sewell argues that structure shapes peoples practices but it is also people's practices that constitute structures. In this view of things, human agency and structure, far from being oppose, in fact presuppose each other.[91] Presupposing that these articulations are statements of facts, it wouldn't be wrong to conclude why most Hutus perceive Kagame as the principal agent of the post genocide structural changes that Rwanda has experience and how in turn those structural changes have strengthen Kagame and the Tutsi position is determining the future political dynamics of the country. Under Habyarimana it was clear that the structure that held sway on political decisions was the Akazu. Under kagame, Hutus have no doubt that the greatest political force of the country is invested in Paul Kagame. And as the RNC document on 'Pathway to peaceful change' asserts, 'president Paul Kagame has converted both the RPF and the RPA …instruments for sustaining his personal and absolute control of the state. Rwandans have been a tool under successive Rwandan leaders'. Respondent C describes Kagame as

[90] http://www.ina.fr/histoire-et-conflits/autres-conflits/video/CAB94068587/rwanda-nouvel-homme-fort.fr.html
[91] William H. Sewell (1992). A theory of structure: Duality, Agency, and Transformation: The American Journal of Sociology Vol.98, No. 1 (July., 1992), 1-29

"…authoritarian… a dangerous person. He has managed now to soften his image but he has not changed. He can't kill people again and hide it because of social media. So he has devised other methods to eliminate people. His name represents everything bad. With him gone, I can't be sure. But I don't really think he can go peacefully".

While some of the respondents feel that Kagame represents the biggest obstacle to reconciliation and an agent of retributive justice others underscore the structure agent relation

Respondent J explains it as follows:

"Kagame has his power he needs to protect. He eliminates every opponent from the villages right up to the government. Kagame is the singular figure behind the crimes in the country but there is a system built out of deceit. The façade behind this system is Kagame. Putting the two together makes a very dangerous situation…"

5.2 DATA INTERPRETATION:

Post Conflict Justice is such a pervasive notion that any attempt to reach a normative judgement especially in legislating its institutionalisation must take cognizant of the emerging tensions between its constituent groups. The literature on post genocide justice marries with Shontholz formulation on dispute and conflict. One school of thought argues that the nature of the Post genocide justice is politicised and fits squarely into the Nurnberg paradigm. From my interviews with Hutus, almost 95% argue that the system under Gacaca and the national justice system is designed around a political rational aimed at punishing Hutus…On the other hand, the ICTR that revolves around international norms in the administration of justice epitomises what Shontholz describes as the democratic tradition of dispute resolution. But on the whole the transitional justice mechanism in Rwanda has followed a retributive pattern rationalised on the backward looking ground of ending impunity and the forward looking ground of reconciliation. Teitel (2000) argues that the problem with a backward looking approach in achieving a prospective premise is the non-foundational legal underpinning of the entire process. This he argues has the potential of 'risking the wrong message of political justice…'(Teitel 2000;30). Factoring in the reality of the ICTR which has so far failed to indict or arraigned any member of the RPF or RPA and the accusations by Hutus that the Gacaca and national tribunal are institutions of victors' justice, it is easy to see why Teitel's fear is real. This is the effort invested by Shontholz in structuring the nature of transitional justice and its intended outcome.

5.2.1. RETRIBUTION VERSUS RESTORATION:

The literature is rich with arguments about the conditions that determine the choice of a particular post conflict regime. In this section, I examine those conditions with respect to Rwanda.

5.2.1.1. MODE OF CONFLICT TERMINATION AND NATURE OF POST CONFLICT REGIME:

The study would deal with these arguments together because they seem in every regard to be mutually re-enforcing attributes. The literature is quite adamant that an outright victory by an incoming regime ensures a post conflict justice mechanism tailored towards retribution.' Tove et al argues that an outright defeat of the old regime inevitably takes away any impediment for the new regime in establishing a retributive regime of post conflict justice system. Elster (2004) writes extensively on historical cases of dealing with past wrongs. Though he focuses on transition from autocracy to democracy his book is relevant in capturing some essential prerequisites on the choice of post conflict justice system which is the nature of the termination of the conflict. A key literature in this field is the dataset of Binningsbø, Elster & Gates (2005). The key tenet of this dataset confirms the bottom line assertion that making 'transitional justice more likely, if the conflict is terminated by victory by the government or the opposition than if it is terminated by agreements, negotiations or cease-fire. The RPA defeated the FAR and installed a new regime based on its values and political agenda. The new regime argued that a retributive form of justice is designed to end the culture of impunity that had characterised Rwanda's history. Hutus and other critics of the regime do not argue that this culture has existed. What most of my respondents stressed is the fact that this culture has not been masterminded solely by the two Hutu led regimes. Consequently most Hutus argue that the form of termination of the conflict should not entirely on its own determine the form of post conflict justice. Respondent B added that the situation of genocide in Rwanda differed markedly with that of the Jews because in the latter there was no war between the perpetrating group and the victim group while in the former there was a conflict within which both sides violated the customs of war. Contrary to this holistic critic, the ICTR is designed to resolve this tension barring the non-cooperation with Kigali. Consequently one may argue that there is a direct correlation between mode of

termination of a conflict and the nature of the post conflict justice process. For if termination by collapse inevitably leads to a retributive form of justice, under an autocratic regime one would expect Shontholz postulation of political trials to hold true. This argument would be developed for Rwanda later. The nature of the post conflict regime is frequently determined on the nature of the termination of the particular conflict. Most conflicts that end through negotiations see the emergence of a new regime based on a peace accord and a power sharing system. As argued before, in Rwanda the FAR was defeated leading to the installation of an RPF regime.

5.2.1.2 DURATION OF PREVIOUS REGIME:

The same literature advances duration of previous regime as a determinant to the choice of any post conflict justice system. Elster 2004 argues that the longer a regime stays in power the weaker the memory of its crimes and the more likely the possibility of the choice of a restorative form of post conflict justice system. Factoring in Rwanda it wouldn't be wrong to suggest that 30 years of Hutu domination and 'impunity' under Kayabanda and Habyarimana was a long time; on the contrary the apex of impunity of the Hutu reign lasted less than 100 days. This thus brought a thirty year reign to an unforgettable finale that left no one in doubt on the course the victorious powers and the international community would take to ensure accountability. While I didn't set out to investigate the reasons that influence the choice of any particular form of post conflict justice regime, there is an important correlation between the literature and the choice the RPF made in establishing its regime of accountability. Consequently it wouldn't be wrong to argue that the short period of 100 days within which an unforgettable carnage resulted in the death of hundreds of thousands made the call for retributive justice a virtual certainty.

5.3. IMPLICATION ON RECONCILIATION

In the section above, the study has focused on the influence the various concepts under investigation had on the choice of Rwanda's post genocide justice system. Although this remain implied implications, there is no argument with the fact as repeatedly stated during this study that retribution as against restoration was a conscious decision of the victorious powers that now govern Rwanda. Rationalised on the basis of ending a long culture of impunity, this decision was not inconsistent with international mechanism of post conflict justice which usually focuses on retribution. Teitel (2000) has dealt with its limitations. He argues that although trials in this context are intended to serve political purposes…to disavow

predecessor political norms, and to construct a new legal order, these are in tension with conventional understandings of the rule of law (Teitel 2000:30). Rwanda's post genocide justice has received a fair amount of scrutiny. It is thus proper to examine the implications this system has on political order and the process of reconciliation which the systems set out to achieve. To do this will entail explaining my empirics' i.e. both primary and secondary data. Restating my framework of analysis advanced by Shonholtz (2003), disputes occur in transitional and mature democracies while conflicts are assigned to authoritarian regimes. The first premise of this theory is that in democratic societies, there are no conflicts, rather only disputes. The second premise of this theory is that in authoritarian regimes there are only conflicts and politicised systems of settlements. The Third Premise is that in international relations, national states can transform conflicts into disputes. Conflicts are those issues that lack a legitimate, reliable, transparent, non-arbitrary forum for the peaceful settlement of differences. Disputes, conversely, are pre-described as having recognized forums for their expression and resolution that meet the above criteria. In short, conflicts lack a viable "container" for the routine management of differences. What is important here is the form of 'dispute or conflict resolutions'. According to Shonholtz democracies have a recognised forum for resolving disputes which is legitimate, reliable and non- arbitrary. On the other hand, authoritarian states faced with conflicts employ 'politicised systems of settlements. Consequently it will be proper for me to determine what form of state I am dealing with in order to factor out what system of justice application is employed. It might not be straightforward as Shonholtz third premise alludes to the fact that states can actually transform conflict situations into disputes with the outcome of fairness. Since the study was never intended to examine whether Rwanda is actually a democracy or an authoritarian state the study would use other sources to make this determination. Secondly, the study would also engage in some level of presumption on both premises, factoring in my data in both.

5.3.1 RWANDA'S DEMOCRATIC INDEX:

Before dealing with the empirics, it will be necessary to determine where Rwanda stands in the democracy – autocracy index. The Economist Intelligence Unit in its 2010 democracy index ranks Rwanda 134 down from 121 in 2008. In its 2011 report, it classifies four types of regimes; full democracies, flawed democracies, hybrid regimes and authoritarian regimes. Rwanda is ranked 136 down from 134 the previous year and classified as an authoritarian regime. Following the transition from the Civil War in 1992, the government in Rwanda has grown more repressive (Freedom House 2007). While there are regular elections, both choice

and information is limited, leading Freedom House to declare that Rwanda is both "not an electoral democracy" and "not free". Since the military victory in 1994, the RPF is said to maintain careful control over political life. It is in this political context that the conflict frame has emerged. It is a situation expressed by most Rwandans who took part in a demonstration in front of the Rwandan embassy in Brussels in November 2011. During this demonstration, respondent C whose wife, Victoire Ingabire is currently facing charges of terrorism and revisionism and genocide ideology was even more emphatic about the nature of rule under the present Rwandan eadership. He said 'as long as there is a dictator who imposes, there can be no justice'.

Most respondents to the study made the same unequivocal assertion about the nature of the regime in Kigali. The study would therefore work on this correlated presumption that Rwanda is actually an authoritarian regime. There is no doubt that had this study included Tutsis and Rwandan government officials, we would be dealing with an entirely different sets of suppositions. Since this was never included in the scope of the study, a possible comparative account in the future might be able to deal with specific empirical realities to validate or invalidate the claim of both sides and reach a more acceptable conclusion on the nature of the regime.

5.4. DATA DISCUSSION:

Having firmly established that Rwanda is an autocracy it is thus easy to explain the different facets of my findings. Teitel makes a very sweeping statement on the nature of law in situations of transition. He argues that the period of normative shift is commonly thought to be anti-paradigmatic. Such a normative shift in Rwanda was not only characterised by a change in regime type and ideology but a dramatic shift from foundational to transitional form of justice. If this anti-paradigmatic situation created by the very nature of a normative shift is true irrespective of the nature of post conflict regime what then makes trials under autocratic regimes not to fit into Shontholz first and second postulations? If one properly examines the Nuremberg trials it would be easy to conclude on a departure from foundational form of justice dispensation as it was clear that continuity and directionality were replaced by retroactivity and contingency. Due process and substantive law were directed strictly towards the attainment of a certain outcome underpinned by political imperatives. It was designed towards punishing German impunity and to undo the restorative scheme of Versailles and establish a foundational system of rules governing the dealing with regimes like those of

Hitler and Mussolini. Teitel makes this easier through a narrower scope when he argues that which rule of law values ultimately takes precedence in transition is a function of the particular historical and political legacies that is of the primary understanding of the sources of fear, insecurity…consequently presuming this particularism holds true for all situations, it wouldn't be untrue to associate the source of fear and insecurity to the historical reality Tutsis have faced under the first and second republics and the way these vices shaped the structure of the current regime and dictated its accountability regime. This would be a generalizable postulation if it holds true for all autocratic systems. Factoring in Rwanda as an autocratic system and bringing in the responses of my respondents, it would be easy to make such a conclusion without sufficient evidence to the contrary.

Now by picking up the pieces of the empirics and see whether they validate or invalidate my theoretical framework.

On the legitimacy of a mechanism of justice dispensation one would expect the source of authority of that institution to be legitimate and constituted through due process derived through delegated authority. One of the determinants of an autocratic regime is the absence of consent and thus the absence of legitimacy. Before dealing with the Gacaca and the national jurisdiction of justice dispensation it is most essential to determine the authority from which the authorities of Gacaca is derived. As earlier discussed, that system is autocratic. That might not determine the nature of the Gacaca or any other domestic jurisdiction of justice dispensation. But reviewing the statements of my respondents it would be indisputable to conclude that despite the legal positivist foundation upon which the Gacaca is founded, it may as most assert lack the independence to operate and discharge justice based on established rules void of political influence. Respondent G reflects on the Gacaca as follows:

It is an abomination on all lines established to destroy part of the society. It's a shame'. It is politicized and has thus made reconciliation a failure…we need to draw lessons from this in order to proceed'.

Reliability is consistent with foundational systems of justice. As Teitel argues transitional justice is contingent on many factors and consequently reliability is sacrificed. When rules are contingent on historical realities and evolving reality of dealing with a bottom up genocide, they are bound to be arbitrary even if initially grounded on a rule of law basis. The Gacaca functions on some skewed concepts of confessions and forgiveness and naming. As most respondents argue this system of naming has transformed the Gacaca into a system designed to expropriate Hutu lands.

Respondent C argues thus:

"The Gacaca has been used by others to steal property. It happened to us. Our house was taken over because of claims that soldiers under my father's command stole properties. My father was never given the chance to defend himself. That is how we see the Gacaca…"

Under such a system power is arbitrary. It is also clear that the nature of the genocide convention that hinges on 'intent to destroy in whole or in part' inevitably made the killing of Tutsis a genocidal crime while the killing of Hutus as crimes against humanity or other war crimes. Consequently as many of the respondents argued the post genocide justice architecture was thus designed around this premise set by the definition. The weight attributed to intent rather than numbers and to planning and conspiracy translated into a justice mechanism most of my respondents perceived as 'victors justice'. On the contrary genocide is not the only crime under trial by both the international jurisdiction overseen by the ICTR and the domestic jurisdiction overseen by Gacaca and the national courts. Both jurisdictions are also hearing evidence on crimes against humanity and war crimes. Why are then both jurisdictions of justice perceived by Hutus as unfair? Two issues come into play here. The first one is the weight attributed to the crime of genocide. Genocide is perceived as the mother of all crimes and its perpetrators seen according to the admiralty laws as the 'enemies of all mankind' with universal jurisdiction of prosecution. Consequently being attributed with intent to wipe out an indelible group carries a lot of moral significance and leaves an indelible tag on the accused group. This is not what my respondents take lightly. The nature of the Holocaust that prompted the drafting of the convention is yet to be surpassed in its bestiality against a people for simply 'belonging'. The Holocaust also set the bar so high that modern day genocides negate the role 'war' against the victim population plays as a defining role in creating the opportunity for the 'prohibitions' of war to occur. As respondent B suggest and rightly too 'there was no war between the Germans and the Jews but in Rwanda there was a war…". Even though the study may question the implication of his assertion that consequently "what happened in Rwanda cannot be termed as genocide according to the genocide convention" there is no disagreement that the definition of genocide as conceived by Lemkin in describing what the Germans did in a "not a war" context on the group targeted as part of the "final solution" can be very problematic in a war context especially when the perpetrator group also feels a great sense of loss. Consequently by attributing the mother of all crimes just to one side in a conflict situation even when evidence shows that there might have been more Hutus killed than Tutsis questions according to most respondents the 'impartiality' of the justice mechanism. The second issue which is

directly related to the weight of the crime is the role the international community played during the period of the genocide. The role of the international community is quite important in determining which form of post conflict justice system is instituted after a particular conflict. Post Nuremberg saw the emergence of domestic post conflict regimes rationalised on the notion of local ownership of justice contextualised to historical and local realities.

Respondent A accuses Kagame for having been the stumbling block to any humanitarian intervention. On the other hand Kagame accuses France for not only having been a stumbling block to any humanitarian intervention but for supporting and abetting the genocide through direct support and protection of the genocidaires and effecting operation Turquoise to create safe corridors for alleged perpetrators and planners of the genocide. The absence of intervention had far reaching implications in the choice and quality of justice. On the former the non-cooperation of Kigali with Arusha means crimes of the RPF which should mainly be in the realm of war crimes and crimes against humanity are not heard by the tribunal. This adds relevance to the accusation by most respondents that the system of post genocide justice is designed around victors justice premise. On the latter non- intervention means the absence of the principles of human security which underpinned the design of R2P and its cousin of PoC drummed repeatedly by Kofi Annan left a void which was filled by the perpetrators. The consequence of this was the killing of countries intelligentsia, lawyers, judges and other trained professionals important for foundational form of justice grounded in the rule of law that reflect domestic and international norms of fairness and impartiality.

The study began with an unwritten presumed statement of fact which it was sure would be validated. That there was genocide against the Tutsis and that the perpetrators were Hutus who needed to be brought to justice was never in doubt. This thesis did not stand the test of empirical scrutiny at the end of this study. The study narrative of the Rwandan tragedy has been mainly RPF-international Community centric. Three narratives have shaped the discourse about Rwanda. The first narrative is that there was genocide of Tutsis committed by Hutus. The shift from Rwandan genocide to genocide of Tutsis was a deliberate attempt to frame the post genocide political era towards the attainment of certain political imperatives. The second narrative is that the international community failed Rwanda at its greatest moment of need. This has been dealt with above. The third narrative has been that the RPF liberated the Tutsis from near annihilation. The last narrative which this study uncovers is that despite the defeat of FAR by the RPF, the majority of FAR members accompanied by millions of refugees relocated to the DRC and have continuously posed a threat to Rwandas'

security. And because this threat is framed around historical narrative of ethnicity, the respond to such a threat almost takes an ethnic inclination. Consequently the ethnic tension, genuine or strategically framed continuously shapes both the political and justice rationales.

The RPF liberation narrative also seeks to construct a discourse that credits the RPF leadership for ending the genocide and through this process the RPF derives an automatic legitimation to govern. By using ethnicity, the liberation narrative and an external threat the present RPF leadership has projected itself as the most competent to stop the country from sliding back into an era characterised by violence, economic stagnation and insecurity. Consequently the suppression of domestic opposition and the design of the post genocide justice system are justified based on these narratives. The 1994 genocide has become an ideological weapon allowing the RPF to acquire and maintain victim status and, as a perceived form of compensation, to enjoy complete immunity (Reyntjens 2004; 199). Reyntjens goes on to argue that what Rwanda is experiencing is not democracy and reconciliation but dictatorship and exclusion. This seems to coincide with the major findings of this study and it is a finding with far reaching implications on reconciliation efforts and long term political order in the country.

CONCLUSION:

Most intrastate conflicts in Africa are characterised by widespread impunity and the violation of the fundamental human rights of individuals. Rwanda presented itself as everything that was and is still wrong with the permissions and prohibitions of war. After most conflicts the governments and international Community begin the process of nation or state building or both. Accountability for past wrongs have also dominated most post conflict societies with the aim of addressing the legacy of impunity and to address the human rights violations that people have suffered. Most post conflict justice institutions are designed as neutral institutions which should act with impartiality and render justice base on international norms of fairness and impartiality and local understanding of justice. But these institutions Teitel(2000) argues, are a function of the particular historical and political legacies that is of the primary understanding of the source of fear and insecurity and as the study has shown, the role the international community played in terminating the conflict is also a critical factor in shaping post conflict justice institutions. Consequently these institutions have departed from

their altruistic role and have been transformed into particular ideological institutions designed at delivering what Shonholtz alludes to as political justice.

At the onset of this study, I set out to answer a particular research question; what are the implications of post genocide justice on reconciliation efforts in Rwanda? Galtung (2001) defines reconciliation as "the process of healing the traumas of both victims and perpetrators after violence, providing a closure of the bad relations" (Staub 2006;7).[92] Healing strengthens the self, moderates the perception of the world as dangerous, and makes it more likely that positive changes in the other group are perceived.(Ibid;7)

In answering this question, the study used a dual approach of 1) extensive analysis of four thematic areas associated with the Rwandan conflict and post conflict justice institutions II) a qualitative approach of unstructured interview with exile Hutu Rwandans, focus group discussions and participation in exclusive Hutu conclaves and exile political meetings. The study demonstrated that despite the influence of the time tested role of the mode of termination of conflict, post conflict regime type and longevity of past conflict, the particular historical legacy of the Rwandan conflict rooted in ethnic instrumentalisation shaped the post genocide justice system through victor(s) vanquished constructed narratives. The ethnicity /post conflict justice relationship is not a unidirectional one. Ethnicity has been used to influence the post genocide justice mechanism and the post genocide justice mechanism influences ethnic relations and threatens reconciliation. Tiemessen went as far as tagging the post genocide regime a "Tutsi ethnocracy" which she warned that "one of the dangers that the Tutsi ethnocracy poses to the success of Gacaca is that it serves the government's agenda of assigning collective guilt to Hutus." This notion of collective guilt is what most respondents expressed all through the field study and it is a notion also supported by the literature.

These ethnicity narratives framed around historical mythologies have exacerbated mutual fears that have been instrumentalised for political expediencies by both the current RPF led government and the Hutu exile groups. By situating these narratives around the genocide, the RPF led government excluded from the justice frame the suffering of Hutus and created a victors moral rational legitimated by an RPF liberation narrative. It then created the Gacaca as a narrow base post genocide justice institution to legitimate this narrative. According to Hutus this institution is an incompetent RPF centric institution designed to legitimate

[92] Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps toward a General Theory: Political Psychology, Vol. 27, No. 6, 2006

expropriation, dispense partial justice that negate their own suffering. While the study uncovers the discrepancies between the current Gacaca and the former Gacaca that inspired the current form and the presence of this misunderstanding especially in most of my respondents, it is undeniable that the criminal scope of the present system does not in any way tie up with its competence, the demand of due process and presumption of innocence in its adjudicatory role. The struggle between legalism and pragmatism in the post genocide justice architecture is at the heart of the tension between the different narratives of the conflict. It is clear as seen by the study that the government chose the latter and consequently created a sense injustice which the many respondents feels does not help reconciliation efforts

The study also demonstrated that the RPF led government has benefitted from the failure of the international community to have intervened to stop the genocide to garner international sympathy and to exclude itself from the justice mechanism setup in Arusha and in Rwanda. By failing to cooperate with the proceedings in Arusha, it successfully focuses the argument of the conflict period on the genocide which according to the narrow definition of 1948 strengthens the suspicion of Hutus that the government is pursuing a victors justice approach designed to achieve a long term political goal of domination under the long term claim of Tutsis as people 'born to rule'. By also refusing to cooperate with the proceedings in Arusha, the RPF led government has consolidated the rebranding of the genocide from Genocide in Rwanda to Genocide against Tutsis which it has used to suppress domestic opposition with accusations of revisionism and negation of a supposed uncontested objective reality.

The study also showed that the state-centric ontology also framed the abuses. By focusing on the crimes of the state orchestrated by the past regime and not that of the RPF, the current government subscribes to the narrative of state centrism in the orchestration of a crime as massive as genocide. In this it relegates its own crimes within the framework of its 'liberation narrative'. This, the study shows has made the RPF led government to conflate the state to the nation and consequently created a feeling of ethnic tension which further undermines reconciliation. Schabas argues that consequent on this conflation is the fact that the majority of the population appears to fall into the perpetrator camp, where there is less enthusiasm for uncompromising justice (Clarke & Kaufman 2008;227).

The study also demonstrates that while the Gacaca provides the space for public discourse and engagement between the perpetrating and victim groups, this space is defined by law as

one of ‘confessions and forgiveness’ consequently narrowing the scope of engagement towards achieving a narrow objective defined by the conflict narrative of the RPF led government. The rigid nature of this engagement space stifles free communication, constructs ‘truth’ and criminalises alternative narratives which is taken over by the political opposition to construct its own narrative.

The alternating power dynamics in Rwanda that has been marked by pogroms, massacres and genocide has created a phobia between the Hutus and Tutsis. This phobia seems to have taken the form of a ‘speech act’ in which actors of the two main ethnic formations used an the argument of the existence of existential threat to define policies. Wæver argues that “… by labelling something a security issue that it becomes one.”(Wæver 2004a; 13) While the various leaders consequently assuming the role of securitising actors the referent objects have become the Hutu and Tutsi ethnic groups with each policy designed by the securitising actors purportedly with the aim of safeguarding the interest and even survival of the referent objects. The consequence has been a departure from foundational to ad hoc rules that are more backward looking rationalised to achieving a forward looking objective.

In a nutshell the study was able to show that the different thematic considered influenced in some way the structure of the post genocide justice architecture and consequently caused it to be structured to discharge political justice which was detrimental to any post genocide reconciliation enterprise.

Post conflict societies must realise that war in itself as a means of ending tyranny or oppression is consequentialist. The only side that wins in post conflict societies is that of justice. Consequently the realisation that even the vanquished do suffer some form of the prohibitions of war whether by omission or commission is critical in any reconciliation enterprise. Despite the framing of the genocide convention to exclude crimes of the victors of WW II, the subsequent recognition that without such an inclusion even in a symbolic manner justice might not be delivered in its fullest extent. The subsequent recognition of the destruction of Dresden in a small way wrestle control of that remembrance from the extreme right wing neo-Nazis. In the same vein, a recognition that most Rwandans whether Hutu or Tutsi have since the colonial period been victims of constructed mythologies which translated into deprivation, exclusion, pogroms, war crimes and genocide is important to put a halt to the cyclical alteration of power characterised by impunity and then political justice. Such recognition is the foundation upon which proper and genuine reconciliation can be built.

We live in a real world in which the 'general good' is framed along a statist ontology which the world prefers to frame around different notions of security from a bottom up perspective. It is this statist ontology that still frames the discourse of humanitarian intervention. Though the overriding concept of sovereignty that cloaks territorial control is no longer considered a static concept, the legal framing of its pre-eminence as defined by the UN Charter still revolves around the protection of political independence and territorial integrity. While a disputed framing when viewed from the notions of interdependence and multilateral undertakings by states that challenges their sovereignty, it is still albeit relatively a defining concept of interstate relations. Framed as a universal concept that also defined how Rwanda was treated conjures as De Carvalho et al alludes still '…glosses over the Eurocentric and racist foundations of the discipline by providing a Whiggish reading of the discipline's birth on the one hand, while, on the other, providing an empiricist epistemology that is ill-equipped to handle the many-faceted and constantly changing challenges that confront the discipline today…'It is based on this multifaceted framing that shaped my understanding of post genocide Rwanda. Ethnicity alone whether primordial or constructed and then instrumentalised couldn't alone have accounted for the events in Rwanda. The failure to intervene in Rwanda even if it failed as Kuppermann claims to have stopped or mitigated the effect of the genocide could have built a consensus that would have given post genocide justice the legitimacy it badly needs for accountability and reconciliation. On the other hand it may be devil's advocacy to suppose without contest that the Hutu attitude towards post genocide justice is rooted in a mundane codification regime that thrives on the victims premise. Do all of these themes contribute in some way towards understanding the complex situation of an almost innovative African justice mechanism that departs from its traditional 'let's forgive and forget and remain mired in our misery'? It is a question worth pursuing further but only through this multifaceted understanding could one have understood Rwanda and arrive at a normative judgement. These are issues that should be pursued further not as individual themes but as a package that should hopefully produce better empirics that can provide the basis for far reaching conclusions.

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APPENDIX

Communiqué des Familles des Victimes de l'Attentat du 6 Avril 1994

A l'heure où nous nous souvenons de toutes les victimes de la tragédie rwandaise, nous souhaitons réaffirmer notre désir de vérité.
C'était il y a dix huit ans déjà que l'avion qui emportait les nôtres a été lâchement abattu. Le temps qui passe n'efface pas le vide laissé par un père, un fils ou un époux. Mais au-delà d'un drame familial, c'est une vérité historique qui appartient à tout le peuple rwandais et qu'il s'agit d'établir. La mise en lumière des responsabilités dans l'attentat est nécessaire pour la rétablissement de la confiance et la réconciliation du peuple rwandais.
Nous voulons dire notre confiance en la justice française. Nous connaissons son indépendance et sa rigueur. Un long chemin a déjà été parcouru mais des embuches demeurent.
Aussi, nous saluons l'engagement de l'Organisation des Nations Unies et de la Communauté internationale pour faire la lumière sur les assassinats des anciens premiers ministres du Liban et du Pakistan. Ces démarches sont louables pour les familles des victimes et pour l'histoire de leurs pays respectifs.
Par le même souci de rendre justice à nos familles, mais aussi au peuple rwandais tout entier au vu du génocide qui a été déclenché par cet acte, nous faisons appel à ces mêmes instances afin qu'elles soutiennent toute démarche visant à établir la vérité.
Nous ne baisserons pas les bras tant que cette vérité ne sera pas connue.
Nous le devons à tous ceux qui ont péri dans cette tragédie ainsi qu'à la postérité.
Nous avons le droit de savoir, le peuple rwandais a droit à la vérité.

Les familles des victimes

Liste des victimes de l'attentat terroriste du 6 avril 1994
1. Général Major **Juvénal HABYARIMANA**, Président de la République Rwandaise
2. Monsieur **Cyprien NTARYAMIRA**, Président de la République Burundaise
3. Monsieur **Bernard CIZA**, Ministre d'Etat à la Planification, au Développement et à la Reconstruction du Burundi
4. Monsieur **Cyriaque SIMBIZ**I, Ministre de la Communication et porte-parole du gouvernement du Burundi
5. Général Major **Déogratias NSABIMANA**, Chef d'état-major de l' Armée Rwandaise
6. Ambassadeur **Juvénal RENZAHO**, Conseiller diplomatique du Président rwandais
7. Colonel **Elie SAGATWA**, Secrétaire particulier et Chef de la sécurité du Président rwandais
8. Docteur **Emmanuel AKINGENEYE**, Médecin particulier du Président rwandais
9. Major **Thaddée BAGARAGAZA**, Officier d'ordonnance du Président rwandais et Commandant en 2nd du Bataillon Garde présidentielle
10. Major **Jacky HERAUD**, Commandant de bord du Falcon présidentiel
11. Commandant **Jean-Pierre MINABERRY**, Copilote du Falcon présidentiel
12. Adjudant-chef **Jean-Michel PERRINE**, Mécanicien navigant du Falcon présidentiel