

**Justice and reconciliation:
Transitional Justice in Post-1994 Rwanda in the Light of
the South African Experience**

by

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Declaration

I declare that this dissertation, unless stated otherwise in the text, is my own original work.

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Abstract

This study deals with the problem of transitional justice in post-genocide Rwanda in the light of South African experience.

Transitional justice, a kind of justice pertinent to societies in transition from dictatorship to democracy where the new democratic regime faces the challenge of how to redress the abuses of the past, varies according to each case.

While South African transitional justice has taken a form of mixed memory and punishment with the Truth and Reconciliation Commission, the case of Rwanda still presents a number of difficulties. First and foremost, unlike South Africa, Rwanda is a case of genocide and so far there is no agreement about how to think of and understand this genocide. Of the three different sources considered in this study, Adedeji and the Human Rights Watch Report argue that genocide was planned in advance, while Mamdani contends that it was a result of the failure of governmental forces to win the war and the advancement of the rebels, and nothing as such was planned before.

Besides the genocide, the continuation of human rights violations and the lack of will to change, the lack of democracy, the continuation of international support despite the lack of transparency in governance, along with other elements, hold Rwanda in the pre-transition stage. In this study, I examine the close links between transitional justice and Truth and Reconciliation Commission, I raise the question of what it would mean for Rwanda to have a successful Truth and Reconciliation Commission; given the history of genocide, and I discuss the failure of the Commission in Arusha.

For transitional justice to take place in Rwanda, every form of armed struggle must stop so as to allow Rwandans (all conflicting parties involved) to take the genocide seriously and face its entire truth with courage and honesty. The truth of genocide would clarify the misconception of Rwandan history and would allow Rwandans to change their mentality and belief that ethnic majority means necessarily political majority and to embrace a more transethnic political identity. Then the establishment of a judiciary system capable of dealing with the abuses of the past would be possible. This new democratic regime, which would be democratically organized when all these requirements are met, would determine what kind of transitional justice would be pertinent to the Rwandan case.

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Introduction

This study explores the problem of transitional justice in post-1994 Rwanda in the light of its success in the Republic of South Africa. It consists of four chapters.

The aim of the first chapter of this study is the understanding of transitional justice. Transitional justice is a kind of justice relevant to the special needs of countries in transition from non-democratic regimes, which have perpetrated human rights violations, to democratic regimes, where the transitional government is faced with the problem of how to redress the wrongs of the past in order to achieve a stable democracy. This kind of justice is different from the justice required in already stable democracies, for several reasons. These include: the need for stabilizing elements; the need for retributive justice of some acceptable kind against the perpetrators of crimes under the previous regime; and the need for reconciliation in order to build a new society.

A number of models have been worked out to serve the purposes of societies in this situation, though each country may find its own. These models are (a) amnesia¹ [amnesty]; (b) selective punishment; (c) historical clarification, that is to say, clear understanding of what happened and why, and (d) some mixture of memory and punishment. The particulars of the conflict will in each case determine the kind of transitional justice appropriate.

Understanding of the conflict which has occurred is the point of departure for an adequate solution. In the case of Rwanda, the specificity of the conflict is that it is a case of genocide. My usage of the term 'genocide' does not imply that Hutu and Tutsi differ racially, but that they have learnt to see themselves as separate and mutually competitive groups. It follows from this that the mass killings which have taken place have been based on group membership and have no reference to individual merits or demerits.

The second chapter deals with Rwanda itself.

Is this possible? That people who have been engaged as enemies in a protracted civil war and used all kinds of violence against one another could be able to co-operate in a democratic fashion to implement and maintain the democratic institutions...(H.P.P. Lötter 1993: 131).

¹ This special use of 'amnesia' is employed by Stephen A Garrett and will be further explained on p. 6

This question of the possibility of reconciliation and co-operation in the new society after the human rights violations, commented on by Lötter, is the major debate in Rwanda today.

After the events of 1994 there, in which the most serious and widespread human rights violations occurred, the question of how to deal with those events was quickly raised and the future of the Rwandan nation appeared to be in jeopardy. How could people coexist after the groups to which they belonged had massacred each other's members? Was reconciliation even possible, and if it was, on what conditions?

If we are going to move on and build a new kind of world community, there must be a way in which we can deal effectively with the sordid past. The most effective way I can think of is for the perpetrators or their descendants to acknowledge the horror of what happened and the descendants of the victims to respond by granting the forgiveness they ask for, providing something that can be done, even symbolically, to compensate for the anguish experienced, whose consequences are still being lived through today (Archbishop Desmond Tutu 1999: 226).

If, for Tutu, there is no future without forgiveness, is there any future without justice? Is justice one of the requirements for forgiveness and reconciliation to take place? Given the fact that genocide occurred in Rwanda, what are the essential pre-conditions? To answer these questions requires an understanding of the acts of genocide, their origins and consequences, and the impact they have had upon the Rwandan people and their neighboring countries. Once it is clear that genocide has occurred, must be recognized, and can be understood, the next task will be to find a model, if there is one, that might offer a solution in the case of Rwanda.

The aim of the third chapter will be to compare the Rwandan case with the South African experience. The relative success of transition in South Africa was due in part to the will to change that all parties, from right to left, expressed in pre-1990, pre-democratic South Africa. The Truth and Reconciliation Commission (TRC) that was set up to deal with crimes of the past was established by the new democratic regime and was found to be an appropriate approach to the South African case. Tutu (1999) and Paul van Zyl (1999) argue that the TRC offered some measure of satisfaction to all parties. The comparison, however, of Rwanda with South Africa presents difficulties: Rwanda is a non-democratic country, which continues to

suffer human rights violations; as a nation, it is not willing to undertake a radical change of attitudes in the hope of a better and sustainable future – in fact, it is not yet in a transitional phase. The interventions of the international community by means of the International Criminal Tribunal for Rwanda (ICTR) are likely to be more damaging than remedial.

If Rwanda is not yet a transitional regime, what are the possibilities for transition to take place? The exploration of these possibilities is the aim of the fourth chapter of this study. These possibilities for positive action, among others, exist: ending the war in the region of the Great Lakes; admitting that genocide has taken place and facing this terrible fact with honesty and courage; changing the conception of ethnic groups and of the political arena; differentiating between a political majority and an ethnic majority; instituting a judicial system capable of dealing with the problems of the past in order to ensure the rule of law; and devising conditions under which the different groups can coexist. These are some of the requirements for transition to take place from the old regime to a new and less violent one. To bring about some appropriate form of transitional justice and to apply it to the problems of the past and the present situation will be the first task of a new democratic regime.

Would it be a good solution to dissolve the legal identities of Hutu and Tutsi into one single identity of Banyarwanda²? Would a better solution be to recognize these differences and hope to persuade individuals not to regard them as barriers between themselves and their fellow-citizens? Harmony may be made from differences and not from uniformity. Is Rwanda of post-1994 being damaged by competing groups as it was before the revolution of 1959? It may be that the present day offers Rwandans their last opportunity to rethink the role that the outside world may play in Rwanda.

² The term Banyarwanda means 'citizens of Rwanda'.

I

Transitional Justice

Transitional justice is designed to address the questions of the past and to redress human dignity, which has been degraded by dictatorship, in order to prepare a basis on which a democratic society, which respects fundamental human rights and human dignity, may be built. Many scholars argue that transitional justice cannot be identical to the kinds of justice appropriate to societies in a stable democracy. (Geoffrey Robertson 1999/2000, Van Zyl 1999, Garrett 2000)

They offer several reasons:

- a) In a transitional regime, the elements of democracy are not yet stable, nor even, in some cases, present. They have to be created and maintained within the mainstream of justice. The population, often frightened by the officials and military authorities of the recent past and distrustful of authority, has to be accustomed to the new policies which promote the rule of law, democracy and representative government.
- b) There exists a need for retributive justice against perpetrators of crimes in the past. This need may vary or be inhibited according to the conditions in which it is formulated. As Garrett in *Models of Transitional Justice* puts it, "transitional justice has to do with situations in which a previously authoritarian regime has given way to a democratic one, and the new democracy is faced with the problem of how to address the human rights abuses of its predecessor" (<http://www.ciaonet.org/isa/gas02/>). Most of the time the precondition on which old regimes give way to a new democratic regime is that their representatives be granted amnesty. If this is not available to all, it is usually at least be granted to some high-ranking leaders. Presented with this precondition, the new leaders — willing to adhere to a democratic system — are obliged to accept, and as a result, retributive justice is out of question. Moreover, agents of the former regime typically insist on guarantees of immunity in return for their acceptance of a new political order (Ibid). Amnesty as a precondition was the requirement in South Africa (TRC Postamble; Van Zyl 1999: 648). It may be that members of the old authoritarian regime are principal players in the transition to a new democracy. A new regime which incorporates members of the old is unlikely to have a strong desire to punish, compared to that which will be present in situations where the old regime has continued to resist change until the last possible moment (<http://www.ciaonet.org/isa/gas02/>).

- c) There will be a need for reconciliation in the name of healing and nation building. "You cannot live and thrive on hatred, on revenge." (Garrett 2000). "To address the rights of victims and the needs of society as a whole" (Van Zyl 1999: 648) is the goal for new democracies. While reconciliation is the greatest need in the establishment of thriving and sustainable new democracies, there is debate as to how reconciliation can be theoretically conceived and practically brought about. No conditions for reconciliation have been agreed upon as everywhere effective. Some authorities believe that for an authentic reconciliation and a new moral relationship to occur, forgiveness must first be granted. "The process of forgiveness involves an admission on the part of the wrongdoer and an offer of restitution, while at the same time the victim forgoes the taking of vengeance and instead works for a restoration of relations. The ultimate goal is reconciliation and a new moral relationship" (<http://www.ciaonet.org/isa/gas02>). In the case of Spain, Fernando Rodrigo (<http://www.ksg.harvard.edu/justceproject/salzburgreport.htm>) believes that an amnesty law has proved to be a very successful means of achieving national reconciliation. Others like Robert Goldman (Ibid) believe that instead of bringing about reconciliation, amnesty may deeply divide civil society and discredit the rule of law. It appears to be the case that 'Justice must be done' for reconciliation to take place. Wrongdoers must be prosecuted and victims rehabilitated. Others have suggested that "criminal prosecution may also preclude the reconciliation required for a democracy to function." (<http://www.idea.int/publications/democracy>) Nation-building demands trust and partnership, which are based on reconciliation and the sense of national responsibility.

Opinions as to how reconciliation can be achieved may not arrive at consensus. Since it is often the case that direct retribution is impossible, Robertson (1999/2000) has argued that the needs of transitional societies force them in the direction of truth commissions, on account of the inherent instability in the transitional regime. Are truth commissions a solution in all cases, or are there different solutions in different cases? As the *Institute for Justice and Reconciliation* puts it "Deeply divided societies are not always divided for the same reasons. Different types of conflict require different types of transition" (<http://www.ijr.org.za/compjust>). And Jean François Lyotard adds that different types of justice are associated with different language games. (The meaning of different language games of Lyotard will be developed further below). It is because of the variety of circumstances in which reconciliation is desirable that different models are presented. I follow the classification of Garrett in the list below.

1.The Amnesia Model:

Here the emphasis is on forgetting. An emergent democracy may make a conscious decision not only to avoid prosecutions of past human rights offenders, but even to discourage public discussion of such offences having taking place. (<http://www.ciaonet.org>) The private nature of personal tragedies is emphasized. “The point here is that personal tragedies tend to remain in the private domain and don’t become the object of widespread attention in the press, the political process, or even the judiciary” (Ibid). A good example of this case is Spain. As Fernando (<http://www.ksg.harvard.edu/justiceproject/salzreport.html>) explains, to liberate people from their past in order to promote reconciliation and partnership is the motive behind the option for the Amnesia Model. A communist member of parliament in Spain said that “amnesty must be the cornerstone of this policy of national reconciliation. How can we be capable of reconciliation after years of killing each other if we don’t have the capacity to forget our past forever?” (<http://www.ciaonet.org/isa/gas>)

2.The Selective Punishment Model.

“In this instance, the principal political figures from the previous regime, as well as prominent members of the security forces identified with torture and similar conduct, are subject to formal legal action and sanction”(<http://www.ciaonet.org/isa>). The example of this model is Ethiopia. After overthrowing the Mengistu regime, the new government indicted over 3000 members of that regime for criminal acts and instituted what is sometimes described as the “Nuremberg Trials of Africa” (Ibid.). However, Mengistu himself managed to obtain asylum in Zimbabwe under Mugabe’s protection. International human rights organizations failed to pressure Mugabe to extradite him, and even the ANC government – itself so recently a beneficiary of a global international human rights campaign – refused to do so when South Africa was provided with an opportunity (Mengistu was seeking medical treatment on South African soil) to advance the development of international law, as well as to strike a positive blow in regard to Africa’s wretched recent human rights record (*Transformation* 42 [2000] p 93). It is a pity that in this example, the most prominent figure was not extradited.

3.The Historical Clarification Model.

In this model the preoccupation of the new government is “to confront and document the abuses of the past but at the same time the identification of specific individuals responsible for such abuses is eschewed and it follows logically, no formal legal proceedings are instituted against those responsible for human rights violations” (<http://www.cianoet.org/isa/gas02>). Remembering these abuses is the goal. Guatemala is taken as a good example of this model, though the prospects for a more humane Guatemalan society seem uncertain at present (Ibid.). This is mostly because of the degree of public apathy amongst Guatemalans, who do not seem to see the importance of equal rights under the constitution “and in whom there is a lack of political will to punish past human rights abuses or at least to move aggressively to establish institutions and norms that will prevent their reoccurrence”(Ibid).

4.The Mixed Memory and Punishment Model.

South Africa seems to be the best example of this model. “In this instance, there is a combination of truth-telling as well as (potential) prosecution of selected individuals involved in past abuses (<http://www.cia.org>). In South Africa the TRC offered immunity from prosecution to political criminals only when they were prepared to testify frankly, and apply for amnesty (*Transformation* 42[2000]); Robertson 1999, 2000; TRC 1998). But this amnesty based on truth-telling quickly becomes controversial.

“In the case of crimes against humanity [...] it sticks in the craw to allow torturers and assassins to walk entirely free as a reward for talking to a truth commission (Robertson 1999, 2000: 273). For some victims,

it is unacceptable that the state torturers and assassins should go scot-free; confessions, followed by pleas of guilt and evidence against colleagues and supervisors may earn pardons or light sentences but it is absurd to believe that such crimes will be forgiven or that reconciliation with the family of victims is possible (Ibid.).

Many South African victims and anti-apartheid activists would like to see the perpetrators brought to justice and tried. In the case of Craig Williamson, Marius Schoon, anti-apartheid activist, said: “[t]here can be no indemnity, no forgiveness, without remorse. We see no signs of Craig being sorry. I mean, are we going to have a situation where people can qualify for

indemnity just by saying, as if they were reading off a grocery list, “I killed this one and poisoned that one and beat the shit out of the third [?]” It seems untenable to me, morally and philosophically” (Ibid.).

Van Zyl (1999) has argued that prosecution could not have succeeded for a number of reasons. First and foremost, with the absence of the possibility of at least selective amnesty for past crimes, it is virtually certain that the government of President FW de Klerk would simply have refused to proceed with the dismantling of Apartheid (<http://www.ciaonet.org/isa/gas>). Not only was the transition negotiated between the old regime and the ANC liberation forces, but also, even without amnesty, given the dysfunctional³ nature of the South African criminal justice system, the prosecution could not proceed (Van Zyl 1999: 651). Another reason is that political crimes were committed by “highly skilled operatives trained in the art of concealing their crimes and destroying evidence” (Ibid: 652). The prosecution of former state employees would also have cost the South African government billions of rand which it could not afford. And preparations for trial and proceedings are time-consuming. How could the criminal justice system deal with these cases, which might take hundreds of years, along with new crimes? (Ibid: 653) Because of the impracticability of prosecuting, though not only for this reason, Van Zyl has argued, South Africa found it necessary to develop a more creative approach to deal with the past: the Truth and Reconciliation Commission (Ibid: 653). I shall return to the South African case in the third section of this study.

As argued earlier, a transitional regime is concerned to address the wrongs of the past, and redress the human dignity that has been degraded, in order to prepare a basis for a stable and democratic society. For this transition to be successful, there is a need for an understanding of the particular conflict in its context because, although commonalties may emerge between this and other comparable transitions, a resolution directed at this particular conflict will be necessary. Given its specific case of genocide, can transitional justice in Rwanda model itself on South Africa, or does it need a different one? Mahmood Mamdani points to a crucial difference, “if Rwanda was a genocide that happened, then South Africa was the genocide that didn’t” (Mamdani 2001:185). The kind of justice required in Rwanda is not, I shall argue, of the same nature as that required in South Africa. And what makes it different? What is unique in the Rwandan case?

³ The dysfunctional nature expressed here by Van Zyl refers to the confusion of principles between, and the transition from, the old to the new regime.

II

The Rwandan case: Genocide

Regimes which have negotiated transition, though their situations have differed, are nevertheless possessed of similarities. Most of the time, the transition has been from military or civil dictatorship to a democratic regime (Robertson 1999, 2000; Van Zyl 1999). The Rwandan case is special, not only because genocide has occurred, but also because of the large numbers involved in that genocide: rulers, the army and civilians. It is not difficult to dismantle a dictatorship but what follows for the whole community of civilians is more challenging (<http://www.ictj.org>).

Since Rwanda presented to the international community a scenario of 'inhumanity', which it wished to believe was unique, intellectuals have made it a case study. Despite the will to regard the Rwandan case as unique, there has been a search for understanding of such 'barbarism'. Surprisingly enough, a few years before the event, Catharine Newbury had done a thorough study of the history of Rwanda and in particular of the region of Kinyaga and had found that oppression had been, for a long period of time, a main characteristic of relationships among Rwandan people. As time went on, this oppression grew more extensive and more profound. This led her to call her book "*Cohesion of Oppression*" (1989).

In his book "*When Victims Become Killers*" (2001) Mamdani carried out a study of how to understand 'genocide' in a regional sphere and found that it corresponded with a regional crisis. In this chapter I shall consider three investigations and the verdicts at which they arrive: one from Adebayo Adedeji (1999), another from Human Rights Watch Report (HRWR) (1999), and the last from Mamdani (2001).

1. Comprehending and Mastering African Conflicts: Adedeji's version.

According to Adedeji's version, the roots of Human Rights violation in Rwanda, what is called the 'ideology of genocide' goes back to the early associations of pastoralists and agriculturists. The kingdom of Rwanda had its origins in the fourteenth and fifteenth centuries, in a small pastoral principality in the eastern part of the present country. It was expanded to the centre, south and north by military annexations of different principalities and

agricultural kingdoms. With the expansion of the kingdom, the pastoralists became rulers, whilst agriculturists did not suffer oppression, for “Rwandese royalty and its entourage of semi-nomadic pastoralists were more preoccupied with political prestige, military exploits and cattle rustling than the control of agriculturists and their land” (Adedeji, 1999: 143). With this social order, those who felt “the weight of political hierarchy were Tutsi of modest class who were often subject to *ubuhake*, a sort of contract among pastoral people” (Ibid: 143). But also, “Hutu of a certain rank seeking to climb the social ladder” (Ibid) were bound by *ubuhake*. This system of *ubuhake* appears to be the first opportunity for conflicts because it created a kind of ‘patron—client’ relationship which might tend towards that of ‘master – slave’. The patron was the one who had cattle, whereas the client wanted to own cattle. When a contract was concluded among them, the person who wanted to own cattle had to serve his patron (in tasks such as building and repairing houses and fences, caring for the livestock of his patron and so forth). The patron in return had to protect and help his client whenever he was in need. Unfortunately, at any time and for whatever reason, the patron had the right to take back his cattle with all offspring because his ownership was ‘*ad aeternum*’. But in general, pastoralist Tutsi and agriculturalist Hutu co-existed harmoniously. But with the growth in power of the administration which had originated in the small original kingdom and which promoted Tutsi superiority, the harmony was marred. In the nineteenth century, with the increase in the number of cattle, pastureland became a problem. In this situation, the “monarchy and highly placed Tutsi families defined and appropriated particular areas as private land, the *ibikingi*. In order to gain access to that land for agriculture or pasture, the Hutu and Tutsi of middle or lower social rank had henceforth to pay some dues.” (Ibid: 145) With this appropriation by Tutsi of *ibikingi*, Hutu agriculturalists became subject to *uburetwa*, that is, the obligation to pay to the pastureland owner agricultural products and two days of work per week. This *ibikingi* system “profoundly modified the social relationships by giving the Tutsi notable powerful means of pressure on the rest of the population.” (Ibid: 145) When Rwanda became a German protectorate, the Rwandan aristocracy took advantage of “German pacification to grab more lands” (Ibid: 146) because when there were revolts against the system, German troops suppressed them with their modern guns. This also contributed to the deterioration of the relationships between different sections of the Rwandan community, because the superiority of external forces intervening in favour of the aristocracy and highly placed Tutsi families aggravated the anger of lower class Tutsi and Hutu.

When the Belgians took over after the Germans, the Rwandan social structure also changed, because the Belgians were intrusive. Firstly the school of Nyanza, which later

became "*Groupe Scolaire d'Astrida*," was established and "became exclusively frequented by the Tutsi. The ethnic exclusivism for the benefit of the Tutsi became a constant factor in Belgian colonial educational policy for cadres and future chiefs and subchiefs". (Ibid: 148) With this Belgian interventionism, the few Hutu who had till then survived in administration were gradually excluded and replaced by Tutsi. The traditional administrative structure in districts consisted of three chiefs: a land chief (generally a Hutu) in charge of foodstuffs and land cultivation; a pasture chief (a Tutsi) in charge of collecting pasture products and an army chief (a Tutsi) in charge of the pastures used by the army. The Belgian colonial government abolished this structure by establishing one single chief and subchiefs. "In so doing, the administration removed all the Hutu chiefs and the responsibility of subchiefs was also granted almost exclusively to the Tutsi" (Ibid:149). In the educational system there was systematic anti-Hutu discrimination, and all professional training was received in *Groupe Scolaire d'Astrida*, which was attended by Tutsi only. "The graduates of the school constituted themselves into a special social élite group called the Astridians" (Ibid: 151). For the young Hutu, the only avenue towards education was to become seminarists, but this chance was reserved for the brilliant. The graduate seminarists were frustrated by the barrier (lack of professional qualifications) which prevented them from accessing senior positions. However the policy of advancement of Tutsi, supported till then by Belgian politicians and missionaries, was abandoned in the post-World War II (WWII) period because new missionaries, with different views, were appointed at the time. Up to the end of World War II, the missionaries had supported the Tutsi monarchy and the Tutsi of ruling class because they were French speaking Belgians, part of traditional monarchist group in Belgium. This francophone group had oppressed the Flemish population of Belgium until the end of WWII. After WWII, the Flemish missionaries replaced French speakers in Rwanda. The Flemish who constituted an oppressed majority in Belgium naturally tended to sympathize with the oppressed majority in Rwanda.

This change of the Roman Catholic Church's position in Rwanda played a major role in overthrowing the monarchy. On the collapse of the monarchy, political parties were formed: PARMEHUTU (party for Hutu emancipation) and APROSOMA (that combined moderate Hutu and Tutsi), RADER (for intellectual Tutsi and Hutu), and UNAR (for conservative Tutsi). When young Unarists (youth from UNAR) attacked Dominique Mbonyumutwa, "one of the rare Hutu sub-chiefs and a key figure of PARMEHUTU" (Ibid: 153), the Hutu organized revenge by attacking members of the Tutsi élite. To counter-attack, monarchists (mainly Unarists) attempted to recall military reservists, formerly attached to the

monarchy. The colonial administration felt it necessary to bring in troops from the Congo to stop the conflict. Meanwhile, this led to many Tutsi taking refuge elsewhere in the country, or even, occasionally, outside Rwanda. The eviction of Tutsi élite was becoming the major preoccupation of the Hutu. The colonial administration further inflamed the situation by replacing Tutsi chiefs by Hutu. "At the proclamation of independence [in 1962], the number of Tutsi refugees registered by the United Nations High Commission for Refugees [...] run unto several thousands"(Ibid: 155). Soon after independence and during the first Republic (1961 to 1973) Tutsi refugees were trying to return to their country by launching armed attacks. The "attack which had the most disastrous consequences was launched on 21 December 1963 by a group ranging from 200 to 300 *inyenzi* (cockroaches, the name which officials [of the first Republic] had given to the underground forces)" (Ibid: 156). This attack provided an occasion for anti-Tutsi propaganda and was followed by the killing of Tutsi inside the country. From this time a clear-cut division between two blocks, Tutsi and Hutu, with no distinction related to the rank which individuals had occupied, was observed. However, the Hutu did not succeed in maintaining unity among themselves throughout the country. Those from the south and centre managed to marginalize the northerners by practicing nepotism in the administration, leaving those from the north with one option for advancement: that of entering the army. Finally a coup d'état was organized and a regime in which General Juvénal Habyalimana was president took over. According to Adedeji's view, the Habyalimana regime had four distinct phases: first, a period of euphoria from 1973 to 1975; secondly, a period of firm political and social control with considerable economic expansion, from 1975 to 1986; thirdly, a period of economic crisis from 1986 to 1990; and finally a period of war (1990-1994) launched by the Rwandan Patriotic Front (RPF) followed by a democratic regime which allowed the existence of different political parties (Ibid: pp.158-9).

With this new regime, a democratic opposition was permitted, and the Habyalimana regime, with little experience in a democratic process, had to face the war launched by RPF and the opposition. Two blocks were emerging: one, composed of Habyalimana's party, MRND (National Revolutionary Movement for Development), CDR (Coalition for the Defense of the Republic) a purely Hutu ethnic position and the hard-line of MRND; as well as the rest of the "power blocks" of different parties such as MDR (Republican Democratic Movement), and PL (Liberal Party). The second block was composed of the parties then forming the opposition, and associated with RPF *Inkotanyi* (the political wing).

During this time, politically motivated massacres were committed by Hutu or other pro-Hutu elements, targeting Tutsi and their relatives or the leaders of the opposition which was composed of members of both groups. A propaganda “campaign of incitement to ethnic hatred” (Ibid: p. 161) was conducted by MRND and the media sympathetic to it. It was in this period, specifically October 1993, that Melchior Ndadaye, a Hutu Burundian president who had been democratically elected, was assassinated. (The effects of this crime have often been overlooked, but it was in fact a determining factor in the later disasters.) Each party was in the process of giving military training to a considerable number of potential soldiers. Amongst the well known were *Interahamwe* (those who attack together) for MRND, *Impuzamugambi* (those with one objective) for CDR and *Abakombozi* (those who come to liberate) for PL. With all these elements in place, one small detonator was enough to cause an explosion. When the Rwandan “presidential plane was hit by two missiles in the neighborhood of Kigali airport” (Ibid: pp. 162-3) this detonator was found. In less than three months, about one million people were massacred. Presidential guards, members of the army and of the different militia (especially *Interahamwe* and *Impuzamugambi*) were guilty of genocide until RPF stopped them by its victory.

According to this view then, the origin of human rights violations (eventually called genocide) originated in the injustices which occurred before the era of colonization. The first element was *ubuhake*, instituted by the Tutsi élite, the burden of which was suffered by Tutsi of lower or modest class and Hutu wanting to own some cattle. This was the beginning of the belief in Tutsi 'superiority' in the hearts of both Tutsi and Hutu. The second element was the institution of *ibikingi* by the monarchy, supported by highly placed Tutsi families. This supplied a means of oppressing the population, and when Rwanda became a German protectorate, the Germans preferred to maintain existing inequalities by remaining at a distance from monarchic administration, while defending it from attack. The Tutsi belief in their superiority was allowed to grow. The arrival of the Belgians worsened the situation because after supporting the Tutsi élite until after WWII, a reversal of policy (as has been explained) took place, and Hutu began to be favored. This left both groups with grievances.

It was in this post-WWII period that there began an open conflict. A further element was the post-independence attacks. While the Tutsi oppression of the Hutu has been abolished at Independence, the increasing attacks of *Inyenzi* (formerly exiled Tutsi) showed that the danger was still there and a propaganda campaign of hatred for the (Tutsi) ‘enemy’ began. The war between returning Tutsi exiles and Rwandan residents (during the first Republic which lasted from 1963 to 1973) raised further tensions. The decline of the Habyalimana

regime, the growing political opposition, the war with RPF – all added to the atmosphere of hostility between the groups. The assassination of Ndadaye, a democratically elected Burundian Hutu president in October 1993, occurred at the hands of Burundian Tutsi while Habyalimana (in Rwanda) was trying to be more flexible and to accommodate the demands of the opposition and RPF. This event led to questions on both sides as to whether the Habyalimana regime could afford to be open-minded concerning RPF and its intentions. (See Helmut Strizek, pp.41-53, in *Africa International* Nos 322/323, Mars/Avril 1999). The tension amongst the Hutu, who already distrusted the Tutsi, continued to grow. The assassination of Habyalimana, himself a Hutu, who was the ‘father of the nation’, caused a collapse of order, and violations of human rights reached an appalling level

2. The Human Rights Watch Report 1999

The Human Rights Watch Report (HRWR) (1999) advances the theory that the crisis of 1994, which is referred to as ‘genocide’, had been planned mainly by, and under, the Habyalimana regime. However, it recognizes that for a better understanding of the situation we have to look at the past in order to find out why such violations could have occurred.

Like other sources, it recognizes the falsity of the official version of Rwandan history, which claims that racial differences, historically maintained, exist between Hutu and Tutsi, and that present-day dominance of Hutu over Tutsi is an inevitable reversal. It also recognizes that the ‘history’ of Rwanda is rather a history of the Tutsi monarchist and not of Rwandan society as a whole. But it emphasizes that the Hutu had a misconception about who the Tutsi were, their origin and what they had done. This misconception lies not in history, but rather in the early coexistence of Tutsi and Hutu. It is the fruit of a distorted history, written to favour the Tutsi. In the eighteenth century, while the inhabitants of Rwanda were pastoralists and cultivators, cattle became a ‘measure of wealth’. The cattle owner was regarded a rich person, richer than the cultivator whose wealth in agricultural products might have been greater than that of the pastoralist. As cattle became more highly prized, they also became an object of desire. The owner of cattle, usually a member of the Tutsi élite, took the opportunity to assert his superiority over others who lacked cattle but wanted to own them. This was the period when ‘*ubuhake*’, followed by ‘*uburetwa*’ was introduced. “As the Rwandan state grew in strength and sophistication, the governing élite became more clearly defined and its members, like powerful people in most societies, began to think of themselves as superior to ordinary people”

(HRWR 1999: *Leave None to Tell the Story: Genocide in*

Rwanda, (http://www.hrw.org/reports/1999/rwanda/Geno1-3-09.htm#P196_82927).

According to the HRWR, this seems to be the first time when Rwandan society was effectively segregated.

“Both Germans and Belgians sought to rule Rwanda with the least cost and the most profit” (Ibid.). Neither challenged the concept of group superiority; they preferred to strengthen it. Since they had found Tutsi ruling Rwanda and neighbouring principalities, they assumed that Tutsi were superior to Hutu and the rest of the population. It followed that the Tutsi were destined to rule, as were the colonisers, who in their turn were superior to all blacks (Ibid.). Tutsi were considered by the colonisers as closer to them than the Hutu. The Tutsi welcomed this idea, which in fact corresponded to their own belief. This European attitude vis-à-vis Tutsi superiority went further than supporting a belief in group superiority; it reinforced this belief in the Tutsi mind, and the Hutu accepted this as a fact and resented it.

While Germans tended to intervene as little as possible in the administration of the indigenous peoples, “Belgians began to alter the Rwandan state in the name of administrative efficiency” (Ibid.). In this administrative reform, Rwandan Tutsi officials were privileged and took part. The colonizers realized however, that sometimes officials oppressed non-Tutsi peoples, and they therefore instituted European-style courts where protests and appeals could be heard. It was not long, however, before “judges saw themselves as defenders of the élite, not the masses” (Ibid.). Emphasizing Tutsi superiority, Belgians decreed that Tutsi alone should be chiefs and members of the civil service. “By assuring a Tutsi monopoly of power, the Belgians set the stage for the future conflict in Rwanda. Such was not their intention” (Ibid.). People of both groups learned to think of Tutsi as winners and Hutu as losers. Nonetheless, in allowing only Tutsi to be officials, Belgians faced a problem of identification. How could they recognize the Tutsi whom they wanted to make an official? They “decided that the most efficient procedure was simply to register everyone, noting their group affiliation in writing once and for all” (Ibid.). The Habyalimana regime was the first to be accused of officially registering group affiliation, since from this period it appeared on identity cards. It is clear however that it is not Habyalimana’s invention but rather a continuation of a pre-existing situation. This identification that at first served the cause of the Tutsi was to turn against them at the end. Another consequence of this formal, written identification was that it created rigidity amongst groups and limited, if it did not abolish, the possibilities of changing groups. In the past this had been possible, either by ‘ennoblement’ (in the case of upward mobility) or by destitution (in the case of downward mobility).

The first attack motivated by group-defensive feelings occurred in the revolutionary period when “in November 1959, several Tutsi assaulted a Hutu sub-chief” (Ibid). Hutu attacked Tutsi in revenge and Tutsi organized themselves for reprisal. Belgian military intervention was necessary to stop the violence. The Hutu in the beginning attacked powerful people and their relatives “leaving their ordinary neighbours in peace. They usually sought to drive Tutsi away rather than to destroy them” (Ibid). During the first republic (1961-1973), anti-Tutsi propaganda had already started and by the time the second Republic, headed by Habyalimana, replaced it, this propaganda had reached dangerous levels. In 1975, Habyalimana declared a one-party state, only MRND (National Revolutionary Movement for Development) being permitted. With the strong administrative structures in prefectures, sub-prefectures, communes, sectors and cells, he succeeded in controlling whole country. He managed to develop an impressive infrastructure by attracting foreign aid, and in the process took the title of ‘Father of the Nation’. The country became prosperous, peaceful and through *animation* (a kind of publicity) his name was well known in every corner of the country. In the 1980s, however, his popularity lessened and a coup was unsuccessfully attempted. Seeing the danger of losing power, Habyalimana reinforced the system of control, but the people were growing tired of him and the opposition, though not official, was also growing. As democratic movements became influential in surrounding African countries, Habyalimana was challenged nationally and internationally to change the political system. Finally he agreed to allow a multiparty state. It was thought that the existence of several political parties, or democratization as it was called, would help in solving economic problems and political conflicts. Michael D. Lund, however, was right in his apprehensions: “[r]apid democratisation [...] can destabilize societies and increase the chances of violence” (Lund 1996: 36). This democratisation coincided with an RPF attack from Uganda. When this attack occurred, “Rwandans – Tutsi as well as Hutu – were frightened. Tutsi recalled the reprisal killings at the time of invasions by refugee groups in the early 1960s and feared they would be targeted again. Hutu remembered the slaughter of tens of thousands of Hutu by Tutsi in neighboring Burundi in 1972, 1988 and in 1991” (http://www.hrw.org/reports/1999/rwanda/Geno15-8-03.htm#P713_22987). Meanwhile, Rwanda Radio, the only Radio Station, previously controlled by the Habyalimana regime, started to allow ideas from the opposition to be broadcast. RPF established a Radio Station, Muhabura Radio, from ‘*guhabura*,’ meaning ‘helping to find your way’ especially to your home. Conservatives saw this diversity of opinions in the media as a threat inside the country. They then decided to create another Radio Station in response to the Muhabura Radio and the ‘unfaithful Rwanda Radio’. Radio

Télévision Libre des Mille Collines (RTLM) came onto the scene. This Radio station became popular very quickly because of its free style. There was no pre-arranged programme: everything was spontaneous – jokes, news, songs, and commentary. People of all ages started to like it. It nevertheless contributed to the intensification of conflict.

3. Mamdani's account

Mamdani presents us with a richer and more detailed understanding of the Rwandan drama, drawing the elements of his account from regional as well as national conflicts. His regional point of view helps us to understand better that the Rwandan territory alone could not produce a drama of such significance. The crisis involved the whole community of Kinyarwanda-speakers, resident in Rwanda, Uganda, Burundi, Tanzania and the Democratic Republic of Congo at the time. The 'genocide' according to him was not a long-planned affair but rather a result of civil war and political crisis. Mamdani's review of Rwandan history shows that inequalities and oppression had long characterized relationships between Rwandan people, Hutu and Tutsi. Without the long-established separate and competing groups of Hutu and Tutsi, the Rwandan genocide would not have happened. That is why, before any attempt is made to think about genocide and its origins, the understanding of Hutu-Tutsi hostility and its origins are crucial.

According to Mamdani, the "origin of violence is connected to how Hutu and Tutsi were constructed as political identities by different colonial states, Hutu as indigenous and Tutsi as alien" (Mamdani 2000: 34). Who are Hutu and who are Tutsi? There cannot be a single answer to this question. "Not only do the identities of Hutu and Tutsi have a history, they have also changed in the course of this history" (Ibid: 73). Mamdani sees Hutu and Tutsi as *political identities*: "Hutu and Tutsi are best understood, not as market-based or cultural identities, but as *political identities* reproduced first and foremost through a form of state" (Ibid: 59). Having said this, he continues by asserting that "political identities are the consequence of how power is organized" (Ibid: 22). The rise of the state of Rwanda in the fourteenth and fifteenth centuries is marked by the presence in the same nation-state of Hutu and Tutsi. These two identities were not, in the early days, seen as mutually hostile. "A mark of the very circumstances of the Rwandan State's birth was that it associated "Hutu supernatural power with Tutsi military power" (Ibid: 62). "The supernatural powers were said to be the preserve of the *Abiiru* [a Hutu spiritual ritual] (Ibid: 64) who set the rules of governance, but without themselves governing" (Ibid: 63). They were advisers of the King

and held an important role in the royal court. By bringing *Imandwa* (a Tutsi spiritual ritual) into the royal court, the King Rujugira (1756-1765) undermined the spiritual monopoly of *Abiiru* (Ibid: 64). This weakening of Hutu power culminated a century later in King Rwabugiri's (1860-1895) statement to the Hutu that he would "demonstrate publicly how little he cared for their ritual prescription" (Ibid.).

"While we may be able to speak of Tutsi as an ethnic identity preceding the formation of the state of Rwanda, we certainly cannot speak of Hutu with the same historical depth" (Ibid: 73). The Hutu identity was from the beginning trans-ethnic and was the consequence of the formation and growth of the state of Rwanda, which eventually incorporated different kingdoms and principalities. While Hutu, through *Abiiru*, were losing their respected place in the royal court, new "patron-client relationships through which the pastoralist [mainly Tutsi] hierarchy was organized" were formed (Ibid: 6). Then a new form of *corvée* (forced labour) was imposed on the recently subjugated Hutu populations. In the reign of Rwabugiri under which these dramatic changes happened, it was clear that "power was increasingly defined as Tutsi [and] the political and social position of the Hutu was progressively degraded" (ibid.). The new client relationships were made possible by the King's seizure of land control with the power to "assign it as pasture (*ibikingi*) to his closest subjects through the administrative appointment of chiefs" (Ibid: pp. 65-66). The result was that the majority of the population was losing land to the small group around the King. More than ever before, cattle became, with the introduction of *ibikingi*, an object of desire. As a consequence *ubuhake*, a form of clientship that attracted all those with an interest in accessing cattle, was possible (Ibid: 64). However with the loss of land control by Hutu agriculturalists, *ubuhake*, which attracted more Tutsi than Hutu, could not suffice. *Uburetwa*, which gave back to the agriculturalists access to land and which "entailed manual labour for the local chief, performed as "payment" for occupation of the land" (Ibid: 66) was introduced.

While his regime imposed a harsh rule on the formerly semi-autonomous Hutu and Tutsi lineages, Rwabugiri imposed *corvée*-type labour obligations only on the Hutu, thereby polarizing the social difference between Hutu and Tutsi. As a result, more than at any time in its history, the state of Rwanda appeared as a Tutsi power under King Rwabugiri (Ibid.).

In the pre-colonial period, Hutu and Tutsi appeared as ethnic identities with the same ancestral land. With the colonial regime, this changed dramatically. The colonizer had found the Tutsi in power and a subaltern Hutu. With the colonial idea that any civilization is brought from outside, he assumed that the Tutsi (apparently the civilizers of the Hutu) were from the outside. Hutu became under colonialism an indigenous people and Tutsi an alien civilizing people. "Through this distinction between alien and indigenous, the Tutsi came to be defined as a race – the Hamitic race—different from the Hutu who were constructed as indigenous Bantu"(Ibid: 99). So the perception of the Tutsi changed from indigenous ethnicity to a foreign race. This ideology was subscribed to in all institutions: churches, schools and administrations. Tutsi were always privileged, the assumption being that it was their right because of their 'superiority'. For instance "the obsession with Tutsi-focused education was so strong that the White Fathers decided to move the school in Nyanza to Kabgayi on the grounds that "in Nyanza there were many sons of the Hutu being recruited" (Ibid: 89). The creation of the *Groupe Scholaire d'Astrida* was the crowning moment of this Tutsi-focused system. Paradoxically, later on, those Hutu refused admission in public schools, often run by missionaries, found that they were admitted to seminaries controlled by the Catholic Church.

Seeing himself victimized by both Tutsi and colonizer, the Hutu assumed his inferiority to be real. The opposite was the case for Tutsi. While maintaining a Tutsi-focused education system the "same colonial power introduced a money economy and school-based education processes that generated new influences and new opportunities and in time gave rise to a Hutu élite" (Ibid: 106). This frustrated Hutu group later evolved into a political counter-élite. The official distinction between Hutu and Tutsi made by the Belgian administration was not efficient until, after the 1933-34 official census, it was fully documented. This was a significant event for it formalized the Hutu-Tutsi difference and making *kwi hutura* (ennoblement i.e. movement from Hutu to Tutsi because of wealth) and *gucupira* (changing from Tutsi to Hutu) impossible. However, this census also increased the occurrence of trans-ethnicity for "whoever owned ten or more cows was classified as a Tutsi" (Ibid: 98).

The 1959 Revolution was a result of accumulated frustrations experienced from the pre-colonial period through the colonial era and into its decline. Already under the rule of King Rwabugiri, to be a Tutsi was "to be in power, near the power, or simply to be identified with power –just as to be a Hutu was more and more to be a subject" (Ibid: 75). The colonial powers strengthened this difference. Not only did Hutu have to pay a tax of manual labour (*corvée*) or an extra-tax to redeem their labour, to the Tutsi chief, but also Tutsi of lower class were exempted from this *corvée*. In order to improve their circumstances, some Hutu

emigrated to Uganda or Congo to find a paid job, free from forced labour and extra-taxes. This group of emigrants, together with the pre-colonial élite and other educated youth, later joined the political counter-élite, referred to earlier, in the 1959 Revolution. "This counter-élite put forth a programme for the Hutu to seize the power to overcome their identity as subject people". (Ibid: 117) The idea of overcoming "subjecthood" was reinforced when fourteen senior Tutsi notables at the King's court rejected the demand for Hutu participation in public affairs. This group evoked the tradition of conquest: "equal rights were out of the question 'because our Kings conquered the land of Hutu, killed their 'little' kings and thus subjugated the Hutu: how then can they now pretend to be our brothers?'" (Ibid: 118). Not only was the request for participation turned down but also there was an absolute refusal to abolish *'ibikingi'* (the custom of land ownership by notable Tutsi) on the grounds that it was the "custom of the country" (Ibid.). With the external support of European clergy, the colonial government (in this case Belgian) and the UN, a bloodless Hutu revolution took place in 1959, followed by a referendum in 1962: it was the birth of the First Republic. This Republic did nothing to redress the question of Hutu and Tutsi; rather it sought to destroy Tutsi power inside the country. "For the post-revolutionary power that was the First Republic, Rwanda was exclusively a Hutu State" (Ibid: 134). The principle invoked was that the Tutsi were a Hamitic, alien race. It was the turn of Tutsi to face discrimination, not only in political sphere but also in civil society.

"The Second Republic decreed that the day when the coup which began it took place, 5 July 1973, should be regarded as "a day of peace and reconciliation" (Ibid: 140). It was a time for Tutsi to be brought back to the political fold. "When Habyalimana announced the formation of his cabinet on June 1, 1974, it included, for the first time since 1964, a Tutsi: André Katabarwa" (Ibid.). With the idea of 'ethnic reconciliation', Habyalimana's regime sought to redress the question of Tutsi identity, redefining them as an ethnic minority rather than an alien race. "Although the State had yet to work out a policy of reconciliation with the Tutsi in exile, it took several concrete steps towards reconciliation between Hutu and Tutsi within Rwanda. Official vocabulary began to speak of Hutu and Tutsi as "ethnicities", no longer as "races" (Ibid.). This was of great significance within the country, for the Tutsi felt, for the first time since the Revolution of 1959, reintegrated. Recognized as indigenous, they again had rights like every other Rwandan citizen. While the question of Tutsi citizenship was addressed within Rwanda, "the failure to address the citizenship demands of 'external' Tutsi marked the single most important failure of the Habyalimana regime" (Ibid: 17). Most of these 'external' Tutsi were in Uganda. Though those born outside Rwanda were ready to

make their home in the host country, the citizenship crisis in Uganda in late 1980s changed things dramatically. Many Rwandans (Tutsi in exile) had fought alongside National Resistance Army (NRA) and had helped Museveni (the President of Uganda) to seize power in 1986. They had continued to be part of the Ugandan Army. When the Ugandan regime came to redefine citizenship, foreigners from outside Africa were granted citizenship but not those non-indigenous Africans from neighbouring countries. 'Non-indigenous' Africans – particularly the Banyarwanda —saw themselves excluded from citizen entitlement in the post-guerilla political order" (Ibid: 182). As non-citizens, the Banyarwanda were not entitled to own land or other immovable goods. "An earlier parliamentary decision had called for non-citizens to be identified and dismissed from the Army" (Ibid.).

Though Habyalimana was already established as president of Rwanda and was about to address the problem of Rwandans in the diaspora, the citizenship crisis in Uganda influenced the Banyarwanda within NRA to become an even stronger group since they were already organized under leaders. They dismissed the solution offered by Habyalimana that those who chose to remain in Uganda might do so, but returning emigrants would be welcomed. RPF decided to cross the border, a "crossing that needs to be understood as both an invasion of Rwanda and an armed repatriation from Uganda" (Ibid: 17). The civil war launched by RPF "profoundly changed all those who took part in it. The Rwandan Patriotic Front (RPF) involved itself as an army of liberation and came out as an army of occupation. The Habyalimana regime entered the war pledged to a policy of ethnic reconciliation and came out of it pledged to uphold Hutu power" (Ibid: 185).

It was from this crisis of Hutu power that the extremist tendencies which led to genocide were born (Ibid). As the war went on, Hutu and Tutsi of all classes became more hostile to each other. Tutsi inside the country were vulnerable to attack, as they were presumed to be collaborating with the RPF 'enemy.' "So the massacres which had ceased in 1964 – once the question of power had been firmly settled—came back to life as the RPF invasion once again brought the self-appointed custodians of the Hutu revolution face-to-face with the spectre of Tutsi power" (Ibid: 192). In the land newly occupied by the RPF, Hutu were either killed or forced to take refuge elsewhere. "Thus, liberation turned out to be a combination of occupation [...] of land and displacement of the people" (Ibid: 189). It was becoming obvious that "the real aim of the RPF was not rights for all Rwandans, but power for the Tutsi" (Ibid: 191). "This is why one needs to recognize that it was not greed –not even hatred—but *fear* which was the reason why the multitude responded to the call of Hutu Power, the closer the war came to home" (Ibid).

The goal of the RPF was clear: they too wanted power, Tutsi power, at all costs. Inside the country, the Hutu regime was not ready to give up. It intensified hate-propaganda against Tutsi, claiming that once a Tutsi regime was established, the Hutu would lose everything and either be killed or subjugated again. This was confirmed by the assassination of Ndadaye, then President of Burundi by Tutsi. The death of Ndadaye was taken as a prophetic sign that the alternatives for Hutu were power or servitude, and there could be no power sharing between Hutu and Tutsi (Ibid: 215)

The peace talks of Arusha (1993-4) did not stop such propaganda. The population “heard over and over that the Tutsi were out to kill them [...]. They think they have only the choice to kill or be killed” (Ibid: 191). Meanwhile opposition leaders were being assassinated, either by undercover RPF in Rwanda, or as part of a genocidal policy. In order to create an atmosphere of fear and distrust, they were accused of betraying the nation. In this atmosphere of tension, a spark was enough to ignite the whole country. This was to occur with Habyalimana’s death. The population, together with furious presidential guards and MRND militia, convinced that the time had come to choose between killing and being killed, carried out massacres that became more and more organized. This was the reality; genocide was being organized while it was taking place.

"Just as *génocidaires*⁴ were a political tendency born of civil war –and not simply one that had marked time awaited a suitable opportunity— so were none of the instruments used to perpetrate genocide were *created* for that purpose from the outset, but were *turned* to that in the face of defeat in the civil war" (Ibid: 217). The genocide was widespread because it arose from a general conviction that Tutsi power meant Hutu servitude. Mamdani points out that two groups were participating:

- 1) The first [group] were victims of the RPF war and of the massacres that followed Ndadaye’s assassination in Burundi, some displaced from territories that RPF had captured in the northeast of Rwanda and others refugees from Burundi.
- 2) The second were those convinced that they would certainly be victims if the Tutsi came to power (Ibid).

The uniqueness of the Rwandan genocide lay in the fact that the majority of civilians participated fully in the slaughter, using every means they could find.

⁴ ‘Génocidaire’: this term, for which there is no equivalent in English, is applied to people who killed members of the opposing group (Hutu or Tutsi) simply because of their group identity.

If it is the struggle for power that explains the motivation of those who crafted the genocide, then it is a combined fear of a return to servitude and of reprisals thereafter that energized the foot soldiers of genocide. The irony is that—whether in the churches, hospitals, or human rights groups, [...]—the perpetrators of genocide saw themselves as the true victims of an ongoing political drama, victims of yesterday who may yet be victims again. That moral certainty explains the easy transition from yesterday's victims to killers the morning after. (Ibid: 233).

Unfortunately for Hutu power, what they feared happened: RPF won. Its “victory set off a massive exodus of Hutu from Rwanda” (Ibid: 234) to Congo and Tanzania.

In the eastern Congo, just as in Uganda, there had been large-scale immigration of Tutsi from Rwanda since the beginning of the twentieth century, and the Kinyarwanda-speaking community had been struggling to get citizenship which despite promises was never finally extended to them. With the arrival of post-genocide refugees from Rwanda, the crisis grew and tensions worsened. The Kinyarwanda-speaking Congolese community was divided into two groups: a group of North Kivu (mainly Hutu) and a group of Southern Kivu known as Banyamulenge (mainly Tutsi). When the Banyamulenge launched the war against Mobutu, they were joined by their fellows from Rwanda (RPF) who crossed the border for at least two reasons:

- a) The armed refugees' camps in Kivu were a threat to the security and stability of the new regime in Kigali. For this reason, RPF was looking for any chance to evict this major threat.
- b) After seizing power in Rwanda, Tutsi (RPF) felt an obligation toward the whole Tutsi community. They had then to come to help their brothers.

The attitude of the Tutsi soldiers, Rwandese and Banyamulenge, made them more detested, since they were believed to be guilty of killings and torture.

“The Rwandese Tutsi [...] seemed to have generalized their hatred of the *génocidaires*, first to all Hutu and then to the ‘indigenous’ population in Kivu, seeing it as a willing host to armed camps of the *génocidaires*” (Ibid: 260). It is in this respect that many refugees were massacred silently, international aid teams and the governments they represented preferred to ignore these occurrences.

To sum up, according to Mamdani, though the genocide has its real roots in the 1959 Revolution with the establishment of Hutu Power and the exodus of Tutsi into neighbouring countries, the rift between Tutsi and Hutu had started earlier in history. The Rwandan kingdom was formed by the religious power of the Hutu and the military power of the Tutsi. The Tutsi started to distance themselves from the Hutu under King Rwabugiri in nineteenth century, when the administration became exclusively Tutsi, and to be a Tutsi meant to be in power, near the power or to be privileged by the regime.

So far Hutu and Tutsi were both regarded as indigenous. Under colonial power, the Hutu were regarded as the indigenous ethnic group and the Tutsi an alien civilizing race. However, the Tutsi benefited from this understanding of their origins, for not only did the colonial power reinforce the local structure of administration, making the rulers Tutsi and the subjects Hutu, but its new form of administration favoured the Tutsi. Education was Tutsi-focused, posts in administration were for Tutsi only, and only Hutu paid taxes. The eagerness to establish an exclusively Tutsi administration motivated the colonizer to organize the census in 1933. The consequence was that the process of 'kwihutura' (ennoblement) and 'gucupira' (destitution) was no longer possible. Tutsi and Hutu became rigidly and permanently classified.

The Revolution took place in 1959 when a counter-elite, formed by a small group of educated Hutu and some wealthy Hutu from the neighbouring countries (Congo and Uganda), became active. The Tutsi who did not want to be ruled by the new, predominantly Hutu administration went into exile, and Hutu inside the country who worked for the revolution became the beneficiaries. The Hutu organized themselves into oppositional political blocks as the Tutsi in exile tried to come back by force of arms. So the question of Hutu-Tutsi antagonism was not solved under the first Republic, for the Tutsi continued to be regarded as a foreign race and Hutu an indigenous majority.

With the second Republic, Habyalimana introduced the policy of redefining Tutsi as an indigenous minority rather than an alien race. While inside the country the problem of the Tutsi was solved, Habyalimana failed to redress the question of Tutsi in exile. With the citizenship crisis in Uganda, Tutsi in exile realized that the only solution was to come back to their homeland. It was then that RPF crossed the border, discounting Habyalimana's efforts to solve their problems. The RPF attack caused an immediate reversal of government policies, especially the 'reconciling policy' of Habyalimana. In this war against RPF, Hutu power became hard-line. And the RPF purposes shifted from liberation to the occupation of the country. The RPF wanted power, but Hutu power-holders inside the country were unwilling to

give up their power. Propagandists started work to mobilize the mass of the population against the Tutsi invasion. They reminded citizens that if Tutsi came to power, there were only two alternatives for Hutu: death or subjugation. When Habyalimana's plane was shot down on 6th April 1994, a detonator was found and catastrophe followed. The crisis moved, like the spread of a disease, from Uganda through Rwanda to Congo.

When the Rwandan Army vanquished by RPF crossed the border into Congo together with millions of civilian Rwandan refugees, the crisis of Banyamulenge (earlier Rwandan immigrants) in the Congo, then Zaire, intensified. As a way of aiding their Tutsi brothers, the RPF attacked Mobutu, the President of Zaire. They did this because after their victory and seizing of power in Rwanda they felt responsible for the Tutsi community as a whole. They also wanted to eliminate the major threat to their security, the armed camps of mainly Hutu refugees, on the other side of the border. However, their hatred for the Hutu in general led them to maltreat both the Hutu and the local Congolese. This widespread hatred amongst the Tutsi—Banyamulenge and RPF—elicited comparable hatred in the Congolese community. While the massacre of Tutsi ceased with the victory of RPF in Rwanda, the massacre of Hutu has carried on since then, though different motives have been alleged.

Adequacy of Mamdani's account:

Mamdani's study, though rich and thorough, is not entirely satisfactory; some questions remain unanswered.

1. In trying to trace the origin of Hutu and Tutsi, Mamdani speaks of the community of Kinyarwanda-speakers. When was this community formed? If it was after the early period of warfare when the state of Rwanda was being formed, this would mean that as minor kingdoms were being annexed, their inhabitants were compelled to adopt the language of the new authority. But it is obvious that this language community existed before the war, since some regions which were never annexed to Rwanda are part of this Kinyarwanda-speaking community. How then does one explain this common language? Were these communities once closely related, before being dispersed throughout the region? If this is the case, Mamdani's assertion, that Tutsi once existed as an ethnic entity before being transformed into a transethnic group by intermarriage and the ennoblement of some wealthy Hutu, and that Hutu also existed as a transethnic entity, made up from different annexations, is no longer tenable. So far we do not have enough information to deny that the Hutu were in origin transethnic, but the evidence that they are not, and never have been, an ethnic group is equally

inadequate. If the Tutsi existed as an ethnic entity, were they alone in Rwanda? Where were the Hutu in that time?

2. Concerning political identities: given that at least one ethnic group existed from the early days of Rwanda, are these identities political in origin (suggesting that they were conceived and politically polarised) or were they originally simply descriptions of lifestyles (pastoralists, agriculturalists) which have been politicised in the twentieth century?

3. Mamdani recognizes that Habyalimana and his Prime Minister Uwilingiyimana were the last hope for 'reconciliation' and the "*génocidaires*" needed a solution to this crucial problem of relations between Rwandans in order to retain control of power. This point of view is also confusing. Mamdani recognises that both Hutu inside the country and Tutsi led by the RPF wanted power. Now the question is, who were the *génocidaires*? Neither Hutu nor Tutsi power-holders wanted power sharing or believed it was possible. Hutu believed that the death of Ndadaye in Burundi confirmed the intention of RPF to seize power violently and at all costs; they were determined not to give up their power. For the RPF, power sharing would represent the failure of their struggle. Habyalimana's idea of 'reconciliation' was therefore a threat to both sides. Were the Hutu responsible for the death of Habyalimana? He was respected by the Rwandan Army, which in any case did not possess the missiles used to force down his plane. Did the Tutsi, led by RPF, shoot down Habyalimana? This is more likely: some of the ex-RPF soldiers now living in exile have given unofficial testimonies to this effect. For the RPF, Habyalimana's assassination meant the destabilization of the situation inside Rwanda, thus offering a good opportunity for victory. Secondly, RPF was in possession of French missiles, bought by the Ugandan government, which were used to bring down Habyalimana's plane. If it is true then that the Hutu are 'génocidaires' it does not follow that they also killed Habyalimana. If they are not 'génocidaires', the 'génocidaires' must be the Tutsi, led by the RPF, who killed Habyalimana. Did they plan to embark on a programme of genocide themselves? Hitherto had they, as Mamdani suggests, been the victims?

III

Rwanda Compared to South Africa

“If Rwanda was the genocide that happened, then South Africa was the genocide that didn’t” (Mamdani 2000: 185). To what extent can Rwanda’s case be compared to South Africa’s in its need for transitional justice? Is this comparison even possible, given that, as Lyotard has claimed, it would demand the *phronèsis* [understanding] of every case and that “every *phronèsis* is spoken differently” (Lyotard 1979: 95)?

Both the Rwandan and South African societies have experienced oppression in the past. In Rwanda, the minority (Tutsi) oppressed the majority, and this oppression of the majority led finally to the 1959 Revolution. It was the time for the oppression of the minority. It is this cycle of oppression, which was never brought to an end, that led to genocide in Rwanda in 1994. In South Africa, the oppression of the majority by the minority gave place to a negotiated democratic transitional regime. Neither large scale retaliation nor the genocide which happened in Rwanda, where the majority was furious, occurred in South Africa. South Africa has never experienced the mass slaughter which occurred in Rwanda. Nonetheless, we can still compare apartheid in South Africa with the genocide in Rwanda because apartheid was the oppression of the majority by the minority, and though it was never as extreme and as widespread as Rwandan genocide, it endured for much longer.

In *Just Gaming* Lyotard tells us that there are different kinds of justice and to each justice corresponds a specific kind of language game. A language game here means a kind of speculative discourse, an understanding of the situation, in terms of which the problems which confront the state and individuals may be solved. Such a ‘game’ allows for discussion of the problems which have arisen, and for the implementation of the verdict arrived at. Each language game has its own rules because language games are case-specific. Transitional justice, for instance, is a kind of language game pertinent to a society in transition from dictatorship to democracy. Within the framework of *Just Gaming*, transitional justice cannot be the same language game as that required for societies in a stable democracy. In order to solve the problems of a transitional society, the appropriate ‘game’ has particular ‘rules’. Most of the time, these ‘rules’ are in conflict with those appropriate to a different state of society.

Since it is a general condition (I mean, a *norm*) of justice that rights are liable to come into conflict, and since it is a general condition (*norm*) of justice that different persons may negotiate these rights in different ways, it should be expected that the Truth and Reconciliation [Commission] be measured in terms of a coherent, consistent, ideal of justice, against which it will surely fall short in this or that way. (D. Herwitz, forthcoming 2003, *Race, Reconciliation, Renaissance*, University of Minnesota Press)

These different rules are:

- 1) Democratic elements such as political parties must be stabilized to ensure political competitiveness for democratic change. There must be movement towards a constitution which is based on human rights, to ensure the rule of law; and a judicial system to enforce this rule of law. This judicial system needs to be independent and impartial.
- 2) Some degree of retributive justice against human rights violators of the past must take place. This need will depend however on the need for social healing.
- 3) Social healing coming, not from punishment but from public images of reconciliation, must take place. This will allow citizens to re-imagine themselves as united —this is a nation building exercise.
- 4) Specific spectacles of transition must be offered, within the nation, which will build the moral capital of the new regime and garner support.
- 5) Representatives of the old regime must be persuaded to accept the change which is occurring, so that transition will not be derailed by a coup or other means (Ibid).

How should these different needs be addressed, given that they are so often in conflict? Lyotard believes that “the question we face now is that of a plurality, the idea of a justice that would at the same time be that of a plurality, and it would be a plurality of language games” (Lyotard 1979: 95). Within the framework of this plurality, every case or every language game has its own rules and the question of justice is always within the game (Ibid: 99). Because different cases of transition will have different needs, there will be different types of transitional justice. South Africa’s transition, combined with the inability of its criminal justice system to deal successfully with those responsible for human rights violations, made it necessary to develop a more creative approach to deal with the past: the Truth and Reconciliation Commission (Van Zyl 1999: 653).

Lyotard's idea is that justice is always part of the game. Both Van Zyl and Tutu contend that the TRC was an appropriate way of dealing with the past; in other words, an appropriate 'justice' within this game. In the light of Lyotard's idea of different games, why was the TRC appropriate to South Africa? This question can be answered if, and only if, we decide how the TRC was supposed to address the past. It is the appropriateness of the TRC's organisation and methods to the crimes of the apartheid past that renders it effective in the South African case. When the National Party came to power in 1948, it introduced apartheid, a political system based on racial segregation.

Under apartheid, a small white minority monopolised political power, which gave it access to all other kinds of power and privilege. It had its tight control by vicious and immoral means. This white minority used a system of 'pigmentocracy' to claim that what invested in human beings with worth was a particular skin colour, ethnicity and race. Since these attributes were enjoyed by only a few, the pigmentocracy was exclusive to a limited number of all human beings (Tutu 1999: 10).

This pigmentocracy was a driving force in all policies adopted by the South African government. All individuals were classified according to race, with one race having the rights that the others could not have. The black community was considered as inferior and subject to many kinds of illtreatment. Every aspect of life was racialised and the facilities and opportunities offered to blacks were inferior. "Dr Verwoerd [a minister in the first apartheid government and later Prime Minister] introduced the deliberately inferior education for blacks known as Bantu Education"(Tutu 1999: 12). 'Bantu' (black people) were intended to occupy inferior positions in all aspects of life and always to consider whites as their masters. According to Dr Hendrik Verwoerd, the school must equip the 'Bantu' to meet the demands which economic life will impose on him... "What is the use of teaching a Bantu child mathematics when it cannot use it in practice?...Education must train and teach people in accordance with their opportunities in life..." (Quoted in Tutu 1999: 21) He seems to recognise momentarily that 'Bantu' are people, however much "nonentities in the eyes of the law, with the minimum rights of a third-class citizen" (Ibid. p 14). Apartheid succeeded in enforcing ideas of black inferiority and even people claiming to be anti-apartheid were unconsciously but strongly influenced by them.

[...] Even newspapers that might be said to be anti-apartheid, which saw themselves as liberal, saw nothing wrong in persisting for a long time in describing an accident, for instance, as one which ‘one person and four natives were injured’. It did not seem to occur to white journalists and their editors that this was embarrassingly revealing of their attitudes – deep down somewhere in their unconscious, not really articulated except in this fashion, a black person was not a quite person in the way a white person was (Tutu 1999: 173).

If the black community has endured all kinds of ill-treatment, perhaps the most devastating for that community were forced removals from their land. What is dear to a traditional family is the ancestral land. Many people decided to commit suicide because they felt that life away from home (Tutu 1999), without ancestral land was a worthless life. Some of those who hoped that one day they would return to their motherland died prematurely from grief. Tutu gives an example of an old man he visited who had been removed from his home in 1960.

It was now in 1986. He [the old man] had not unpacked the cartons and boxes into which he had stuffed his possessions. The boxes littered the very modest accommodation. When I [Tutu] asked him why the boxes were there, unopened, he replied that he was waiting to return home to District Six. [...] He later died of a broken heart, his boxes still unopened (Ibid: 18).

The allocation of specific areas to different communities was not for purposes of residence only, but went along with the iniquitous pass law system affecting the freedom of movement for blacks. Whites also were not allowed to go to some areas reserved for blacks. “All black people aged sixteen and over had to carry a pass. It was an offence not to have it on your person when a police officer demanded to see it – it was no good saying you had left it in the office in your jacket pocket when you went out to buy a cigarette” (Ibid: 13). Blacks had no right to be in urban areas unless they were legally employed there; special beaches, generally the less attractive ones, were reserved for them. The dehumanizing bitterness of the oppressor finally infected the victim. Black people were getting more and more involved in violations of human rights and human dignity, either through the police service and other governmental

bodies or through liberation movements such as the African National Congress (ANC) or Inkatha. Electric shocks were used in prisons and detention centres by both black and white policemen for torture and interrogation. The 'necklace' system was used by ANC militants, a tyre full of petrol that was put around the neck of the victim, a supposed collaborator or 'sell-out', and then set alight. Many citizens were the victims of bomb attacks such as that which took place in Church Street, Pretoria, on May 20 1983 in which "[t]wenty-one people were killed and 219 injured" (Tutu 1999: 119-20) or one in Durban Beach Front in June 1986. All these were the result of a long-endured burden of suffering. The liberation movements organised demonstrations with other anti-apartheid groups but in some cases they reacted as badly as their oppressors. In Tutu we read:

Those who opposed apartheid could also end up, as Bishop Peter Storey so poignantly described it in the Winnie Madikize-Mandela hearing, becoming like what they most abhorred. Tragically, they themselves frequently become brutalised and descended to the same low levels as those they were opposing. The victims often ended up internalising the definition the top dogs had of them. They began to wonder whether they might not perhaps be somehow as their masters and mistresses defined them. Thus they would frequently accept that the values of the domineering class were worth striving after. And then through the awful demons of self-hate and self-contempt, a hugely negative self-image took place in the centre of the victims' being, corrosive of proper self-love and self-assurance, eating away at their core. This is the pernicious source of the destructive internecine strife to be found, for instance, in the African American community. Society has conspired to fill people with self-hate, which they then project outwards. They hate themselves and destroy themselves by proxy when they destroy those who are like this self they have been conditioned to hate (Ibid: 155).

In the 1980s, while the negotiations between the National Party government and the liberation movements were unofficially underway, South African society was at the height of its suffering. Liberation movements such as the ANC had tried to enforce their anti-apartheid policies through armed struggle, in "particular the strategy of 'people's war' adopted by the

ANC in the 1980s" (Janet Cherry in *Transformation* 42 [2000]: 21), in which civilian casualties were regarded as inevitable. When, in relation to the Magoo's Bar bomb of 1986 preparations,

McBride [in charge of carrying out the mission] raised the possibility of civilian casualties, he was referred to the decision taken at the 1985 ANC policy conference at Kabwe conference where it was decided that the possibility of civilian casualties should no longer stand in the way of executing the struggle against apartheid (Ibid: 16).

South African society had become a society of victims and survivors (Tutu 1999), a society in need of healing. At the moment when the Nationalist Party government declared its intention to enter into negotiations with the ANC about the handover of power, it had to be recognised that this healing was only possible through a new political policy. This led to the concept of 'transition'. The negotiators of 'transition' were victims and oppressors, trying to work out a common future. This demanded sacrifices from both sides. Moreover, as the future depends on the past, a promising future relies on a negotiated past, in which wrongs of the past are dealt with adequately. According to Bishop Tutu, there were two alternative ways in which the new democratic South Africa could deal with the past, namely the Nuremberg mode and the National Amnesty mode. These two were discussed at length but neither of them was opted for. The negotiators opted for a third way: the Truth and Reconciliation Commission. "Our country's negotiators opted for a 'third way' that avoided the two extremes of Nuremberg trials and the blanket amnesty (or national amnesia). This third way was the granting of amnesty to individuals in exchange for a full disclosure relating to the crime for which amnesty was being sought" (Tutu 1999: 33-4).

"The establishment of the TRC is best understood as an attempt to restore moral equilibrium to the amnesty process" (Van Zyl 1999: 653). After the first democratic elections of April 1994, Mandela's Government of National Unity instituted the TRC in 1995. "The Act which established the Truth and Reconciliation Commission exhorted it to be 'victim friendly' in trying to restore the human and civil dignity of the victim" (Tutu 1999: 57). It is in this situation of being 'victim friendly' in the amnesty process that Truth and Reconciliation Commission was mandated to care for the victims so that they might not be victimised again. Nor should they feel abandoned or betrayed by the new regime in which they had placed all their hopes. The commission was given a relatively brief period of two years to finish its task.

Thabo Mbeki, the current president, made a plea to the commission not to leave unfinished business in these words:

It is also important that, within its lifetime, the commission should complete the amnesty process, to ensure that the democratic state is not left with the responsibility of instituting criminal investigations and the possible prosecution of people for actions that took place during the period covered in the mandate of the TRC...We believe that the TRC should conclude its work as quickly as possible so that we do indeed let bygones be bygones and allow the nation to forgive a past it nevertheless dare not forget. (Quoted in Tutu 1999: 79)

The Commission was given leave to examine all alleged cases of human rights violation committed during the period from March 1, 1960 until May 10, 1994 (the date of Nelson Mandela's inauguration as South African President) (http://www.ciaonet.org/isa/gas02_) These dates were indeed significant.

The date of the Sharpeville Massacre, 21 March 1960, was indeed a watershed because significant black political organisations were banned thereafter and thus transformed into liberation movements, which reluctantly jettisoned non-violence and chose to engage in the armed struggle. The end date, 10 May 1994, was also highly significant, for that was the day we celebrated Nelson Mandela's inauguration as President. If any event might be said to mark the advent of the new dispensation, it was that day which demonstrated an irrevocable break with the past of conflict, alienation and domination of the many by the few. (Tutu 1999: 78-9)

It is clear then, for Van Zyl and Tutu, that the goal was amnesty and the TRC was to ensure its feasibility. Why and what kind of amnesty? Those who are against the amnesty approach argue that it is not just to offer immunity from prosecution to a person who has committed serious crimes, simply because s/he has confessed in front of the commission (Van Zyl 1999, Garrett, Anthea Jeffery 2000, Robertson 1999/2000, Tutu 1999). Justice must be done and wrongdoers prosecuted. And as Derrida states

no justice ...seems possible or thinkable without the principle of some *responsibility*, beyond all living present, within that which disjoins the living present, before the ghosts of those who are not yet born or who are already dead, be they victims of wars, political or other kinds of violence, nationalist, racist, colonialist, sexist, or other kinds of exterminations of the oppressions of capitalist imperialism or any forms of totalialism (Derrida 1994 in Lenta 2000: 235-6).

However, as Van Zyl argues, this justice was not be done in the Nuremberg style. "Nuremberg trials were possible [...] because the Allies had militarily defeated the Nazi regime and therefore possessed sufficient power to ensure the prosecution. Tutu explains why the TRC was the most suitable approach to the South African case and not the Nuremberg type or National Amnesia:

After the Second World War, the Allies defeated the Nazis and their allies comprehensively and were thus able to impose what has been described as 'victor's justice'. The accused had no say whatsoever in the matter and because some of those who sat in judgment on the accused, such as Russians, were themselves guilty of similar gross violations [...] the whole process left a simmering resentment in many Germans [...] The Germans accepted Nuremberg because they were down and out and so the victors, as it were, could kick the vanquished even as they lay on the ground. In South Africa neither side could impose victor's justice because neither side won the decisive victory, which would have enabled it to do so. (Tutu 1999: 24-5)

Van Zyl emphasises that "South African Liberation Movements did not succeeded in removing the Apartheid government from the office by military means" (Van Zyl 1999: 649). Needless to say, whereas the Allies could pack up and go home after Nuremberg, South Africans had to live with one another (Tutu 1999:25). It is obvious to Tutu that "there would have been no negotiated settlement and so no new democratic South Africa had the negotiators on one side insisted that all perpetrators would be brought to trial" (Ibid.). Even allowing for the possibility of a new democratic South Africa with a Nuremberg trials

paradigm, Tutu argues that “it would have placed an intolerable burden on an already strained judicial system” (Ibid: 27). He gives the example of the prosecutions of Eugene de Kock and Magnus Malan.

It had taken a whole bevy of Department of Justice and Safety and Security (police) personnel eighteen months to make a case successfully against de Kock, and since he had been a former state employee, the State was obliged to foot his legal bill, which came to R5 million (nearly US \$1 million)--plus the cost of the cost of the prosecution and its bureaucracy, and an expensive witness protection programme. In the case of Malan and his co-accused, the prosecution failed and the costs were astronomical, running to nearly R12 million (US \$2 million) just for the defence, which again had to be borne by the State. In a country strapped for cash and with a whole range of pressing priorities in education, health, housing, and other fields, tough decisions had to be made about what the country could be expected to afford. (Ibid: 27)

When the Nuremberg model was ruled out, some argued for a National Amnesia [Amnesty]: “let bygones be bygones” (Ibid: 30). This general amnesty, mainly supported by the “members of previous government and those in security forces” (Ibid.), was supposed to be along the Chilean style “where General Augusto Pinochet and his cohorts gave themselves amnesty as a precondition to handing over from their military junta to a civilian government” (Ibid.). For the South African case, Tutu argues, the amnesty had not to be general but individually applied for. He contends also that it was strongly felt that this Chilean-style general amnesty was really amnesia, a diseased forgetfulness of the past. (See details about amnesia model above on page 6). And as Tutu argues in quoting Santayana, “those who cannot remember the past are condemned to repeat it” (Ibid: 32) “The past, far from disappearing or lying down and being quiet, is embarrassingly persistent, and will return and haunt us unless it has been dealt with adequately. Unless we look the beast in the eye we will find that it returns to hold us hostage” (Ibid: 31). In South Africa, the better way to go was to know as much as possible about the past, to acknowledge it and deal with it adequately. This was believed to be the only way to ease the future. Another telling factor for rejecting the notion of ‘National Amnesia’ was that it “would have victimised the victims of apartheid a

second time round. It would have meant denying their experience, a vital part of their identity” (Ibid: 32). These victims were marginalised for so long, denied the right to talk and express their feelings; they were subject to suffering in total anonymity and no one could acknowledge their victimisation or offer them emotional support because no one knew what they were going through. They were living in darkness and oblivion, in a mystery of silence, imposed and emptied of any information. Such a denial of information to the victims or to their surviving relatives subverted their personhood—in Tutu’s words, it created a total ambiguity in which everything was possible. It was this kind of denial that South Africa wanted to redress by refusing amnesty. “Our nation sought to rehabilitate and affirm the dignity and humanity of those who were cruelly silenced for so long, turned into anonymous, marginalised victims” (Tutu 1999: 32-3). The two extreme alternatives then, the Nuremberg paradigm and ‘National Amnesia’ were rejected in favour of a third path. It is because this *prima facie* consciousness of the inability to prosecute, and the South African transitional government’s will to avoid a second victimisation of the victims by blanket amnesty to their oppressors that it adopted the qualified amnesty alternative.

To be granted an amnesty, not only had the individual involved to be a member of an acknowledged public institution [...] or a recognized liberation group (such as the ANC) [but] the acts in question had to have been committed in furtherance of the person’s ‘official’ duties and not for essentially private or arbitrary reasons (<http://www.ciaonet.org/isa/gas02/>). S/he also had to be willing to testify, confess and give all the details of his/her wrongdoing. This truth-telling was aiming at redressing the dignity of the victims and healing those against whom trespasses had been committed. As Guatemalan Bishop Juan Gerardi puts it, “knowing the truth may be painful but it is without any doubt highly healthy and liberating.” (<http://www.caonet.org/isa/gas02/>)

Here is an example of a South African woman, Mrs. Anne-Marie MacGregor, who had not come to terms with the fact that her son Wallace had died for she did not have all the truth:

I was told that my son was killed a few kilometres from Oshakati [in northern Namibia]. He was brought home wrapped in a thick, sealed plastic bag. The instruction was that the plastic should not be opened. The only thing I know about the state my son was in is that all his limbs were intact. And this I heard from his uncle, who could only establish this by running his hands over the plastic bag...

I accepted this as a military law. You are not allowed to have the last glimpse of your own child –even as he lay there, lifeless. On the day of Wallace’s funeral, his coffin wasn’t opened. It is ten years since I last laid eyes on my child –nine years he was laid to rest. But in this nine years, I’ve been struggling to complete the process of mourning for Wallace.

A part of me wonders if in fact it was him in that plastic bag. How can I lay him to rest within my heart, if I didn’t see him go? When I lost my mother, whom I loved very much, I saw her, I touched her and therefore I was able to separate from her, release her and move on. But with Wallace, there are so many questions that are still unanswered.

In my struggle with my grief, I would like to know where exactly he died. How it happened. Who was there with him when it happened? Did anybody help him to prevent it from happening? Who was the doctor who attended to him? I’ve never had the opportunity to ask these questions. Nobody has ever explained anything to me about my son’s death...

I sometimes see Wallace in streets. I remember two distinct occasions, when I thought I was seeing him. And it turned out to be somebody who looked like him. My grief becomes more intense on the anniversaries of my son’s death and on his birthday. He would have turned thirty in January. I’ve kept an album of all his photographs, as a way of dealing with the many feeling I have about the loss. But it is very hard, when there are so many things you are not sure about. (Tutu 1999: 148)

When the TRC was able to arrange a meeting between the MacGregor family and someone who knew about their son’s death,

Mrs. Anne-Marie MacGregor kept repeating under her breath ‘*Hy is rerig dood*’ (‘he is really dead’). Once this fact had been established beyond doubt for her, she seemed to be able to come to terms with its trauma and starkness, and to experience closure. She would no longer

suffer the torture of hoping against futile hope that the army had made a mistake and that her son was still alive. (Ibid: 149)

It was only when the truth was known and responsibility assumed that reconciliation could be thought of. "Reconciliation, like justice, is predicted on personal responsibility and transcends what is real and knowable" (Lenta 2000: 235). When in October 1993 the Chilean government decided to solve the situation of women whose husbands had disappeared, one of them, Isabelle Letellier, wrote *"The price of life"*. The text is as follows.

And now they want to kill him by decree. I was supposed to start the process for being declared widow and stop wondering, looking around desperately through the streets, showing his photo to every passerby. Like if he was dead in a remote war, they are advising me to apply for pension. They are advising me to ask for money to buy notebooks for my children. That is what they want: that I put aside his photo calmly beside my parents', that I go out to buy milk, everyday, with the pension money.

But they do not seem to understand. Of course I would like to put his photo aside, calmly. Of course that I want to do it and I will. And one cannot say that we have more than enough notebooks in this house or too much food at every meal. But there is something else that has to be done before putting his photo aside. I do not know if they can understand it.

It is not unimaginable, it is even something normal enough: I simply want to see the face of the man, the man who killed him. Not for vengeance, I do not have the desire for vengeance. No, it will be enough for me to see the face of that man who bought the bullets with which he was shot. It is so simple after all, even a child can understand it. And the notebooks, for no more doubts, the notebooks, it is I who will buy them. This is what I want to tell that man, that man who killed him.

It is not he who will buy milk for my children. It is not he who will buy milk for my children. I want to tell him that, and I want him to try

to understand, in looking into my eyes, face to face, and I, posing my eyes upon his face. Calmly. Upon the face of the man who killed him.

(Translated from French version found on
<http://www.aibf.be/nov/2000/pardon.html>).

The case of the Chilean government is an example of the incapacity to prosecute and the option for amnesty in Latin America, though Letellier's example shows that reconciliation must not be based on forgetfulness but on knowledge and responsibility. However, does this bereaved wife want to see the man who killed her husband in order to forgive him or just to tell him that no matter what happened she will never depend on the killer, she will always manage her household, that she will take up both her responsibilities and her husband's? Is the knowledge of the truth always necessary? Does it always lead to reconciliation?

According to Robertson, "[W]hat the history of 'transitional justice' –or the lack of it—in Latin America demonstrates in the longer term is that the emergence of any measure of truth is not a basis for reconciliation" (Robertson 1999/2000: 271). This was also the dilemma that the South African TRC faced, Knowing the truth does not necessarily lead to reconciliation. What follows knowledge of the truth? Do we forgive and forget? Do we forgive but not forget; meaning that though engaged in the relationship with the ex-wrongdoer, we still refer to the past occasionally? Do we forget but not forgive? Do we seek for legal retribution? Do we seek for revenge in whatever way we can? It is because of these unresolved questions that not everyone welcomed the TRC.

As I have said above, those who opposed the amnesty process believed that it promoted a culture of impunity and encouraged belief that one can get away with all one's wrongdoing simply by being granted amnesty. But Tutu argues that rather than promoting the culture of impunity, the process rather encouraged accountability.

It is also not true that the granting of amnesty encourages impunity in the sense that perpetrators can escape completely the consequences of their actions, because amnesty is granted only to those who plead guilty, and who accept responsibility for what they have done. Amnesty is not given to innocent people or to those who claim to be innocent. Thus the process in fact encourages accountability rather than the opposite. It supports the new culture of respect for human rights and acknowledgement of responsibility and

accountability by which the new democracy wishes to be characterized. (Ibid: 51)

It is also very important to note that

retributive justice [...] is not the only form of justice. I [Tutu] contend that there is another kind of justice, restorative justice, which was characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment but, in the spirit of *Ubuntu*, the healing of breaches, the redressing of imbalances, the restoration of broken relationships. This kind of justice seeks to rehabilitate both the victim and the perpetrator who should be given the opportunity to be reintegrated into the community he or she has injured by his or her offence. (Ibid: 51-2)

Could there be an alternative more appropriate to the South African case? Given the nature of this case, Van Zyl and Tutu believe that the TRC was the appropriate approach because prosecution was unlikely to be helpful. Drawing on the TRC experience, [Van Zyl] argues that new democracies emerging from periods of massive and/or systematic violations of human rights are unable, for a combination of practical and political reasons, to prosecute more than a tiny percentage of those responsible for human rights abuse (Van Zyl 1999 648).

As I have said above, if the ANC had insisted on the prosecution of all human rights violators, not only would the government of FW de Klerk have refused to dismantle Apartheid and allow the African National Congress to come into power (<http://www.ciaonet.org/isa/gas02/>), but also the South African Criminal Justice system was dysfunctional in regard to human rights violations (Van Zyl 1999). Moreover, even if the South African Criminal Justice system were efficient, the prosecution would have cost more than the State could afford given that the majority of crimes were committed by former State employees and as a result the State would have to pay for all the proceedings and trials. The prosecutions would also have been complicated in their proceedings and gathering of information and evidence by the fact that the offenders were highly trained in the art of destroying evidence and concealing their crimes (van Zyl 1999).

Not only was the destruction of evidence carried out immediately after the crimes were committed, but also, as Verne Harris in *Transformation* 42 (2000) argues, tons of documents and archives were destroyed by the Apartheid government before they left their offices to the new democratic government. This was to shape its policy of “forgetfulness, of state-imposed amnesia” (*Transformation* 42: 29).

Under apartheid the terrain of social memory, as with all social space, was a site of struggle. In the crudest sense, this was a struggle of remembering against forgetting, of oppositional memory fighting a life-and-death struggle against a systematic forgetting engineered by the state [...]. The state generated huge information resources, which it secreted jealously from the public view. It routinely destroyed public records in order to keep certain processes secret. [...] And [...] the tools of forgetfulness were also important to the transfer of power – between 1990-94 the state engaged in a large-scale sanitisation of its memory resources designed to keep certain information out of the hands of a future democratic government. (Ibid: 29-30)

This systematic and general destruction of information constituted a major problem for the finding of evidence for making a case. Needless to say, it takes time for preparations and proceedings of trials. Given the numbers of past offenders and the number of current offenders also waiting for trial, the South African judiciary system could not even deal with a tiny percentage; the majority would die without trial. It will not be helpful for the offender because without trial, he or she is neither guilty nor innocent. He or she dies a suspect and this is not the goal of the judicial or correctional system. It is not helpful for the judicial system either, because these delays might lead people to lose trust in the system and they would look for another alternative, such as ‘people’s justice’. It is not helpful for the prisons, for the large number of prisoners awaiting trial would become a burden for the whole society and prisons would risk overcrowding. The result of this overcrowding may be disastrous.

Rwanda

To different types of game, different types of justice, Lyotard would say. To the South African transition, the TRC was an appropriate tool of justice. What could it be for Rwanda?

If transitional justice in South Africa has succeeded, it is because both parties, the Apartheid regime and liberation movements were willing to collaborate and to change (Van Zyl 1999, Cherry in *Transformation* 42[2 000], Robertson 1999, 2000). In Rwanda, there seems to be no similar will to change from dictatorship to democracy. Both the previous and the present regimes, though different, are preoccupied with holding on to power at all costs. Whereas in South Africa, the Apartheid and liberation movements negotiated a transitional government, the present regime in Rwanda has overthrown its predecessor by military means. After seizing power, the Rwandan Patriotic Front regime was and still is preoccupied by the survival of its ‘*rescapés*’ (survivors of the genocide) and ‘*protégés*’ (‘protected’ from being harmed or victim of new slaughter) rather than pursuing the common good and the interests of the Rwandan people at large. They seem convinced that the survival of the Rwandan people depends on victory in an armed struggle rather than democracy. It is because its first consideration is the survival of Tutsi community at large that RPF regime is perpetuating the internal circle of war in the region of the Great Lakes (Mamdani 2001).

When the Rwandan Patriotic Front (RPF) backed the Banyamulenge in their fight against Mobutu in 1996, one journalist observed: “war is the *modus operandi* of RPF. Look yourself! They started in Uganda in backing Museveni and helping him to seize the power and then they came to Rwanda to have the power for themselves and they have got it. Now they want Zaire and they will have it.” Later, this claim was revealed as prophetic, though at the time it was very hard to imagine a big country like Zaire falling into the rebels’ hands after only a few months of fighting.

If the 1990 RPF invasion of Rwanda from Uganda arose from the citizenship crisis on both sides of the Uganda-Rwanda border, the RPF invasion of Congo in 1997 needs to be understood as the outcome of similar influences, except that this time their attacks were an attempt to intervene in the conflicts on the Rwanda and the Congo sides of the border (Mamdani 2000: 234).

As was mentioned above, when refugees crossed the border in 1994, a crisis arising from the refusal of citizenship to Rwandan settlers was already in existence in Kivu, eastern Zaire. The refugees, mixed with many armed militia and members of the vanquished Forces Armées Rwandaises (these troops had served the Habyalimana regime and are known as FAR), further increased tensions. Tutsi from the Congo saw themselves driven to Rwanda by both ‘indigenous’ Congolese and the new refugees. As Mamdani says, “the situation in North Kivu

reached a climax between March and May 1996, when the remaining Tutsi from Masisi and Rutchuru were identified and taken to the border. They were chased out, not killed” (Ibid: 255). The driving of Congolese Tutsi back to Rwanda was justified, the ‘indigenous’ Congolese believed, by their attitude.

The threat of being declared non-citizens by the *1991 Mission d’Identification de Zairois au Kivu* had increased the cross-border movement of the young Congolese Tutsi going to join the RPF for military training. This movement lent credibility to the notion spread by some “indigenous” organisations, including Maghrivi, that the Congolese Tutsi were really Rwandese. (Ibid.)

Although the links already existed, it was “under pressure from armed Hutu in the camps and from soldiers of the Congolese Army, [that] the Banyamulenge began to forge [official] links with RPF to acquire arms” (Ibid: 256). This attitude increased the antagonism between Tutsi and Hutu in Kivu, and Tutsi were threatened by refugee Hutu. “In response, the RPF trained and armed Congolese Tutsi” (Ibid). During the first rebellion, when the Banyamulenge launched the war against the Mobutu regime ‘to vindicate their rights’, they were quickly joined by RPF for at least two reasons: (1) in order to destroy the armed camps on the border, seen as a threat to the security of the new regime in Kigali, and (2) because after winning the war in Rwanda the RPF felt responsible for the survival of all Tutsi in general. This feeling responsible for all Tutsi is one of the characteristics that Mamdani gives to a diasporic state.

The diasporic nature of Tutsi people is in part the result of the genocide in Rwanda. Two beliefs arise from the diasporic character of postgenocide Tutsi power in Rwanda. The first is an overwhelming sense of moral responsibility for the very survival of all remaining Tutsi, wherever they may be. The result is that postgenocide power is defined by a diasporic, rather than a territorial, notion of political obligation and political community. The second – also a direct outcome of the experience of genocide—is the conviction that supreme power in the state is a condition of Tutsi survival (Mamdani 2000: 261).

It is this last conviction that led the RPF to impose its policies on the new government of Laurent Désiré Kabila in Kinshasa. The prophecies of the journalist mentioned earlier have been proven well founded: RPF achieved a measure of power in Kinshasa. However, if Kabila accepted RPF policies, at least for a while, it was in order to get help because he knew that he had no army and no means of controlling or expelling RPF. That is why, later, when he felt more or less secure in Kinshasa, he decided, to the surprise of the international community, to

expel the Rwandans and force them to return to their country. Some analysts believe that Kabila did to the Rwandans what they wished to do to him: to overthrow him. The Rwandans expelled by Kabila included the Banyamulenge and members of the RPF. The Banyamulenge, long-term residents in the Congo, found that Kabila's new regime which they had helped to establish was unwilling to give them citizenship. The RPF refused to give up the benefits it was enjoying from the new power in Kinshasa. Under Kabila's government, Kigali had become an economic centre for the region, since all imports and exports in the region came via Kigali. These were reasons enough for these groups to join together to launch the Second Rebellion (1998), against the government of Kabila.

If it was the refusal of Ugandan citizenship to the Banyarwanda in Uganda that created the immediate motivation for the RPF invasion of Rwanda in 1990, it was a similar threat to the Banyamulenge in the Congo that influenced Rwanda to support the Second Rebellion, this time against the government of Kabila (Ibid: 258). In my opinion, Mamdani is forgetting that the Banyamulenge were not only in the Army but also members of government and civil officials. When Kabila formed a new Congolese army, there was controversy concerning who was to be included, and most importantly, who was to take the command. Though Kabila was President, his Minister of Foreign Affairs was Dr. Bizima Karaha, a Rwandan, and people from Rwanda held several other high offices. This had a big impact on decision making and Kabila always felt that if the army was dominated by Rwandans, it would be a threat to him.

His first tactic, perhaps also his first strategic error, was to recognise and officially denounce the killings of thousands of Hutu refugees in Eastern Congo by RPF soldiers. RPF was not only fighting on his side against Mobutu but also was busy hunting all refugee Hutu and killing them. At the time of Kabila's announcement, the Rwandan government had always denied any involvement in the Congolese crisis. According to the Rwandan government, the Congolese crisis was an internal crisis and no foreign forces were involved. But a little earlier, Kabila had denied any Congolese involvement in the killings of Hutu refugees or Congolese, and even refused international investigations concerning human rights in the Congo under his government.

The First Rebellion (1996) led to indiscriminate slaughter of *Interahamwe* (a Hutu military group), of unarmed Hutu refugees, of the Hutu in Maghrivi in northern Kivu, and other Hutu elsewhere. Those responsible for the slaughter became part of the Kabila government and were part of the forces that opposed a UN inquiry into the matter. Those who

carried out these massacres of Hutu in Kivu are today a part of military forces of the Second Rebellion (Mamdani 2000: 260).

How could Kabila have protected refugees when the first person to be concerned about the refugee question, Sadako Ogata, the representative of United Nations High Commission for Refugees, in her visit to Eastern Congo in 1997, had denied the presence of refugees in the region? Maybe this denial meant that all refugees had been killed or forced to go back to Rwanda, where death was waiting for them. Amnesty International reported in 1997 about Rwanda:

Refugees forcibly repatriated from surrounding countries have been among the victims. Some have been killed, others have “disappeared”. The government has denied access to others, such as scores of refugees forcibly repatriated from Gabon on 12 August, who are still being held incommunicado in military detention and denied visits from humanitarian organizations. (<http://web.amnesty.org/ai.nsf/print/AFR470371997?OpenDocument>).

If the First Rebellion cost many lives, refugees and Congolese as well, the Second Rebellion attempted to kill all of the *Interahamwe*. Some *Interahamwe* nevertheless remain in the Congo and are likely to be there until the conflict is over. But every refugee was *ipso facto* regarded as *Interahamwe*. The term ‘refugee’ here includes every person who fled the Kigali regime, Hutu or Tutsi, and who is seen as an enemy to the current government. According to the RPF policy, an enemy is no longer an enemy when he is no longer alive. The moral difference between the RPF government and the ‘genocidal’ government it replaced is difficult to establish, for both wanted and want to eliminate their enemies.

The Second Rebellion in turn evoked from the Kabila government an exhortation to the ‘indigenous’ (i.e. non-Hutu and non-Tutsi) population in Kivu to slaughter indiscriminately not only invading forces from Rwanda, but also the Congolese *Banyamulenge* in the rebellion and even all Congolese Tutsi civilians. Rwanda armed the Congolese Tutsi in order to make them more effective fighters in the Second Rebellion; the Kabila government armed Hutu as a countermeasure. Rwandans and Tutsi on one side and Congolese and Hutu on the other seemed determined to liquidate each other. (Mamdani 2000: 260-1)

Donald W. Shriver Jr. asks, in *An Ethic for Enemies: Forgiveness in Politics* (1995), when combatants will learn that there is no greater gain than to convince your enemy without wanting to destroy him. To demonstrate that one can confront and oppose enemies without attempting to annihilate them is a political gain in any civil culture. To educate the enemy in the justice of one's cause and to persuade that enemy to consent to that justice is a still greater gain. In that gain a certain forgiveness comes to birth along with beginnings of new social covenants (Shriver 1995: 199-200).

In this slaughter by both sides under the Kabila government in the Democratic Republic of Congo (DRC), the Congolese were subjected to the same ill-treatment. In 1994, Rwanda lost nearly a million lives (though statistics differ in different sources); the war in the eastern DRC doubled the loss. "It is estimated that 2.5 million people have died in the eastern DRC from war-related causes in the last four years. Since August 1998, Rwandese government forces have occupied most of this part of the DRC, an area equivalent to 16 times the size of Rwanda itself". (<http://web.amnesty.org/ai.nsf>)

How can the Rwandan government justify this behaviour in another sovereign state? Can even the security of one's own country be a good enough reason to invade another country, thereby violating the other's sovereignty? Amnesty International published a report in 2001: "*Rwandese-controlled eastern DRC: Devastating human toll*" in which we read:

the killing of thousands of Congolese civilians trapped in the middle ✓
of this destructive fighting cannot be justified by the Rwandese Government and allied *Rassemblement Congolais pour la Démocratie*-Goma (RCD-Goma) authorities on the basis of security threats to Rwanda's borders" Not only killings but also "arbitrary arrests and unlawful detention are also a constant practice in the areas controlled by the Rwandese army and RCD-Goma forces. In many cases, arrests of people on charges of collaboration with armed opponents appear to be politically motivated". (Ibid.)

And in all these abuses they have no respect for the rules for war whatsoever. Not only did the RPF conscript children into its ranks when it was a rebel movement, but the Rwandan government continues to do so.

The report also highlights the increasing recruitment of children into fighting forces, police, and armed civilian paramilitary Local Defense Forces, including many children under 15 years of age, and a substantial number of children less than 12 years old [...]. Children suffer disproportionately from the general rigours of the combatant's life, especially in the bush and are particularly vulnerable to disease and malnutrition. Frequently ill-treated or even killed by the commanders, they have no protectors. (Ibid)

When asked to reflect on possible solutions to conflict, a peace activist in Goma, quoted by Mamdani, mused: "One needs to ask the indigenous people whether they can chase away all the Rwandese and ask the Rwandese whether they can kill all indigenes" (Mamdani 2000: 260). Unwittingly, he had thrown light on the kinds of fears that fed popular stereotypes: the Rwandans fear that they may be chased by the "indigenes", and the "indigenes" fear that they may be killed by the Rwandans (Ibid). Such fears are the reality in the postgenocide period. Despite the official pronouncements of members of government and parliament in Rwanda, which require people to believe that they are committed to respect human rights, national reconciliation and the rule of law, the reality is otherwise. In its report of 1998, Amnesty International said: "we would like to believe the claims of some Rwandese and foreign government representatives that the human rights situation is improving, [...] but the evidence of daily killings and 'disappearances' throughout January and February points to the contrary" (<http://web.amnesty.org/ai.nsf/>).

In these circumstances, is it possible to describe the state of Rwanda at the present time as 'transitional'? The present Rwandan government cannot be called a transitional government for not only did it not abandon the inhuman policies of committing crimes against humanity and violating human rights, but it is not democratic, nor has it expressed the intention of moving towards democracy. Though it has been its policy to conceal its activities since its return from Uganda to Rwanda, human rights activists have been able to track RPF activities. Most of the reports however were not published since they might have endangered Rwandan officials, or implicated other countries. This was still the case in 2001.

It has become increasingly difficult and dangerous for human rights defenders to investigate reports of human rights abuses and to publish the result of their investigations. They are frequently harassed and

prevented from doing their work, and some have been arrested
 arbitrarily and tortured.
 (<http://web.amnesty.org/ai.nsf/print/AFR620152001>)

International motives for denying the occurrence of genocide will be discussed later, as part of the discussion of the international community's role in the Rwandan drama. Secret murders and arrests did not stop with the RPF's victory of July 1994. With the cessation of hostilities, members of the RPF concentrated on eliminating all opposition, even when this involved secret violations of human rights. The first massive human rights violations perpetrated in Rwanda by the newly established regime succeeded, with the complicity of the international community, forcibly to repatriate Hutu refugees from Zaire to Rwanda during the First Rebellion. Many of the refugees died on the return journey, and others were killed on their return. Some refugees in camps started wondering how they were going to survive the deprivations of camp life within the hostile Tanzanian community. Was there any chance of going back? How were they going to be received by RPF, of which they knew so little? The few who knew about RPF had heard of the killings perpetrated in the Byumba and Kibungo prefectures when it occupied this region, along with its behaviour on the battlefield during wartime. This was proof enough for them that they would not be tolerated, since they would be the only target. It must not be forgotten that, in general, refugees were under pressure from those who opposed repatriation. Those who wanted a better life were forced to choose between harassment by Tanzanians and the possibility of death at the hands of the RPF in Rwanda. Meanwhile, the new regime in Rwanda had two preoccupations: (1) to prove to the international community that it was committed to end the problem of Rwandan refugees by returning all of them to their homeland, and (2) most importantly, to avoid any chance of possible reorganisation of the vanquished *Forces Armées Rwandaises* (ex-FAR) and *Interahamwe* within the camps. It is this last motive that pushed RPF to carry out the forced repatriation of refugees from Tanzania, helped by Tanzanian forces and UNHCR (United Nations High Commission for Refugees) which provided transport and goods. Camps were surrounded by Tanzanian forces and RPF soldiers, leaving only a corridor to Rwanda through the border post Rusumo in Kibungo prefecture. People had to walk back by the same route as they had fled. But this time the route was predetermined and narrowed by soldiers on both sides. It is this movement that was described by the media, UNHCR and the Rwandan government as 'the free repatriation of refugees'. From the thousands who left Tanzania, only a few reached their homes and they were mostly children and old women. UNHCR,

despite its claims that it was helping people to return to their country, was unable to control these 'disappearances' of returning refugees. Once they had occurred, UNHCR started wondering whether it had been wise to have obliged those people come back. Amnesty International said "The human rights organisations express their grave concern that neighbouring governments continue to repatriate refugees to Rwanda where many face a dangerous fate."

(<http://web.amnesty.org/ai.nsf/print/AFR470371997?OpenDocument>)

The repatriation from Zaire was more or less the same as from Tanzania. But in Zaire, where there was open warfare in eastern Zaire, the majority who returned to Rwanda were non-combatants. It is likely that some Rwandans wanted to be repatriated. The cholera epidemic of late 1994, in which thousands of lives were lost, had created a nostalgic feeling of wanting to go back and die, at least, in the motherland. For an adult Rwandan, to die on a foreign land is a tragic loss. Many men and women were separated as they entered Rwanda, and the men were never seen again. The '*rescapés*' (returning exiles who survived the journey) were followed and hunted in their communities, often wrongly accused and charged with genocide, and sentenced without trial. Amnesty International in 1997 says: "In the climate of bitterness and suspicion which prevailed after the genocide, many defendants accused of genocide are considered guilty unless proved innocent" (www.amnesty.org). Meanwhile, throughout the country there was what was called '*ingando*', a kind of forced military-training, with the official aim to 're-educate people in washing them of the genocidal ideas and make them good people'. During these '*ingando*' many lives were mysteriously lost, and similar numbers of deaths seem to have occurred in military camps for new recruits. In fact, since Rwanda was at war with Zaire, a massive recruitment was underway. During one of the searches for corpses of victims of the April 1994 genocide, one hole was found with skeletons covered with flesh; it was declared part of the 1994 genocide. This was in 1996. People doubted whether human flesh could survive bacterial decomposition for nearly two years.

Besides killing, other equally fatal strategies were used, where people were intended to believe that victims had died natural deaths. One of the methods was to create famine in Rwanda by ordering the population to cut down all the plantations of bananas in the most fertile region of the country (north and northwest) and then force them to live in controlled camps far from their cultivable land. "Houses are standing empty with their doors hanging open; the fields are deserted; the crops have been cut down or burned," Amnesty International said, describing the countryside surrounding Gisenyi town. "The Army has ordered the

population to cut down their banana plantations to deprive insurgents of their hiding place.” (http://web.amnesty.org/AFR470061998_).

Finally, from camps they were forced into ‘villages,’ thus worsening the situation. Though the government has declared that the programme of ‘villagisation’ was meant to improve the economic situation of the people, it was later noticed that the real aim was to control the opposition forces attacks.

Since 1995, the government had been resettling Rwandans returned from outside the country and the internally displaced in ‘villages’, refusing to allow them to live in the scattered homes near agricultural land customary in Rwanda. Government insisted that ‘villagisation’ would promote economic development and improve delivery services to the population. As applied in the northwest, however, the programme appeared to be meant primarily to reduce the likelihood of a new insurgency. By late 1999, 94 percent of the population of Kibungo and 60 percent of the population of Mutara, both prefectures in the east, had been moved into villages, as had 40 percent of the population of the prefectures surrounding the capital of Kigali. In addition, 94 percent of the population of the northwest who had been in camps had been moved to the new sites, where they were obliged to live in temporary shelters, under plastic sheeting, while building new houses. Persons who resisted these orders were fined or imprisoned. Despite government promises, most sites offered no services (water, schools, clinics) and residents often had to walk much further to cultivate their fields (<http://www.hrw.org/wr2k/Africa—08.htm>).

Though some parts of the country are more vulnerable and more targeted than others, there is no peace of mind in general. The daily reality of thousands of Rwandan men and women is epitomised in the following testimonies. “It is dark here.” “We are waiting to die.” “We breathe a sigh of relief when 24 hours go by then we worry about the next 24 hours. It is like a 24-hours contract.” “We go to sleep knowing from one day to the next that we may not be here...” (http://web.amnesty.org/ai.nsf/print/AFR470371997?_)

This living hell for all ordinary Rwandans is little known.

“They are suffering in silence, their fate largely ignored by the outside world” (Ibid.)

The investigation of human rights abuses in Rwanda is very risky and almost impossible. However, the little that so far has been done by human activists such as Amnesty International and Human Rights Watch shows that post-genocide Rwanda was characterised by a thorough, planned, systematic and accurately carried out killing, targeting unarmed civilians. The majority of victims were Hutu, though the ‘unfaithful and stupid Tutsi’ was also killed. A thorough study of these killings might reveal that Rwanda is experiencing a second

major phase of genocide. These killings of Hutu are inaccurately called executions. Of course when the government is targeting those Hutu, it says that they are *Interahamwe*. And because the 1994 genocide is blamed on *Interahamwe*, the conscious or unconscious thought is that every *Interahamwe*, because he is guilty of genocide, deserves to pay. This payment is nothing less than death. In the current judicial system in Rwanda, the death penalty is applicable to every person found guilty of genocide; and *Interahamwe* is *ipso facto* guilty of genocide. An *Interahamwe* is not conceived of as a normal human, a being with human morality; but rather as an animal, a monster. This reduces moral responsibility. Nevertheless, even if we accepted that all Hutu are *Interahamwe*, following the definition of genocide given by the UN and the actions in relation with genocide which are punishable, we might argue that extermination of the *Interahamwe* as a group would also be an act of genocide. In the UN resolution 955 (1994), in Article 2 of the annex to the Statute of International Tribunal for Rwanda we read:

2. Genocide means any of the following acts committed with the intent to destroy, in whole or in part, national, ethnical, racial or religious group as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children from one group to another.

3. The following shall be punishable:

- a) Genocide
- b) Conspiracy to genocide
- c) Direct and public incitement to commit genocide
- d) Attempt to commit genocide
- e) Complicity in genocide (www.icttr.org/).

The key point here is the intention. If you destroy with the intention to eliminate the group as a whole or a part, then you are guilty of genocide. But to find out the intention is not an easy task and there is a big chance of error. Beyond that, because the law has to be interpreted, it appears that the UN is not clear about what kind of group killing constitutes genocide. Is it

any kind of group? Is it committing genocide, for instance, to try to eliminate a group of terrorists? Perhaps it would be genocide, because hunting terrorists should not aim to destroy them, but to bringing them to justice. If *Interahamwe* are the general enemy, because they are taken to be responsible for the Rwandan genocide, they should not kill but brought to justice. Whether 'justice' might use capital punishment to destroy them is a different question, because one can argue that the intention of justice would not be to destroy but to punish. Nonetheless, even if we agree that capital punishment may be part of the judicial process, is it the final goal, the end of justice? The justice that would end in punishment would no longer be justice. The aim of justice should rather be to redress the moral equilibrium in social interactions. With capital punishment, there is no chance given to the offender to correct him or herself, to correct his or her behaviour. However, the judicial system believes that capital punishment provides an example to the rest of the population with the same inclination, to deter them from committing an offence. This still is an ongoing debate. If in this case of the *Interahamwe*, the group is brought to the justice, any penalty which is inflicted will not constitute genocide. In Rwanda at present, however, the name *Interahamwe* tends to be given to any person or group which the authorities wish to eliminate.

One of the motives that the RPF gave when launching a war against the Habyalimana regime was the wish to achieve democracy. RPF claimed that there was no democracy in Rwanda, though the French Government had succeeded in pressuring Habyalimana to begin the democratization of the political system. However, very soon it was realised that the RPF's policies were not democratic. In the RPF, everything works like in a traditional patriarchal family where the father has a final veto in everything. It is also worthwhile to recall here that RPF conceives itself not as a political organization, but as a family in which every single member, if he or she wants to remain a member of that family, must be faithful to the ruling ideology. The 'elders' in the family are the custodians of this ideology, and this group of elders, (who are not necessarily the 'aged,' but are either founders of RPF or younger members co-opted by these founders) has the last say in every decision. It is this tight control that cannot be challenged that has led many politicians to resign, or be forced to resign and to go into exile, though some of them had embraced enthusiastically the victorious RPF, believing that they were liberated from the Habyalimana dictatorship. Within seven years of coming to power, the Rwandan government has had in succession five Prime Ministers, and several other members of Government and National Assembly have gone into exile. It was the forced resignation of President Pasteur Bizimungu in March 2001, a Hutu president who had

no right of decision and who served as a puppet for the (Tutsi) Vice-president Major General Paul Kagame, that put an end to the illusion that the Rwandan regime was democratic and not group-based. In its report of 2001, Amnesty International said:

Political tension increased following the departure from office of senior political figures perceived as critical of the RPF leadership. Joseph Sebarenzi Kabuye, former speaker of the National Assembly, fled Rwanda in January, in March the RPF, acting with the National Assembly, forced the resignation of President Pasteur Bizimungu, a Hutu who had been included in the inner circle of power since the early days of RPF. The vice-president, Major General Kagame, took over as President in April (www.amnesty.org/).

The Human Rights Watch gives more or less the same information below.

The Speaker of the National Assembly, the Prime Minister and the President all quit their posts under pressure within the first three months of the year [2001], leaving a shrinking circle of power-holders in control of the Rwandan government. The former vice-president, Kagame, was elected president in April by the assembly, and for the first time openly presided over the government he had reputedly run from behind the scenes since 1994. Kagame, from the Tutsi minority, replaced a Hutu president, thus ending the practice of having a member of the majority ethnic group serve as titular head of the republic. A reshuffle of cabinet positions gave ten of the eighteen seats to Kagame's party, the Rwandan Patriotic Front (RPF), violating the arrangements made in the Arusha Accords of 1994. (<http://www.hrw.org/wr2k1/africa/rwanda.html>)

If Pasteur Bizimungu had taken so long to resign, despite all the evidence that Hutu were being used to cover the RPF policy of ethnic segregation, it was either because he believed that he could use political power to pursue his interests or because he was naïve enough to believe that he could effect change from within RPF.

Since RPF came in power in 1994, political parties are nominally allowed but may not recruit or hold public meetings. They are forbidden to oppose the ideology of RPF. This still was so in 2001 when Amnesty International reported:

The RPF-led government retained tight political control of the country. Open political opposition was not tolerated. Despite signs of growing internal dissatisfaction from the genocide survivors and from dissident RPF members, no significant political opposition emerged in the country. Both the RPF and the government were criticized for being dominated by members of the Tutsi ethnic group (Ibid.).

So far allegedly democratic elections were organised at the two lowest levels of administration, the first, in the cities, small divisions corresponding to wards, and in the countryside divisions of about fifty households; the second consisting of larger divisions, constituting about five hundred households. The crowd was to gather and candidates would volunteer or be chosen from the crowd. They then had to stand up, with their supporters lining up behind them. Candidates were not allowed to look at their supporters; in theory a candidate might stand without supporters. Foreign observers believed this was a perfectly free election; they did not notice the strong military presence that influenced all actions. The RPF tolerates no opposition. It prevents any free choice; for example, that between voting and not voting. This makes people believe that there is no alternative to their rule. People were afraid to appear unwilling to co-operate with the new regime. In Human Rights Watch Report 2001 we read:

In early 1999, the government which had been in power since 1994 organized its first elections. Nearly 90 percent of adult Rwandans voted for officials at the two most local levels of government. The elections, carried out by lining up behind candidates, departed from the usual Rwandan practice of voting by secret ballot. In some places, soldiers and civilian authorities used force or threats to try to compel hesitant persons to vote or to stand for office. In a case documented by a local human rights organization, a man was jailed for two days in the northwest after he had declined to serve in a post to which he had been elected against his will. (<http://www.hrw.org/wr2k/Africa-08.htm>)

The first weakness of this electoral system, that of lining up behind the candidate, is the lack of secrecy, which limits freedom of expression. The second weakness is that the system cannot be further extended or applied to regional or national levels of governance. Its feasibility at local levels depends on the presence of candidates and voters in the same place. But this is obviously not applicable when the candidate is at national level and has to be elected by an entire region or country. If an election on a high level of governance were to be made, surely another alternative would have to be chosen? This lack of consistency in the system is the main characteristic of current Rwandan governance and has been so since the new regime came to power in 1994. When it comes to the rule of law in the case of Rwanda, the principles applied have been inconsistent. Every situation has had its own regulatory laws. From the beginning until the present day, the Rwandan government has used three constitutions or laws:

- a) the Arusha Accords of 1994
- b) the Constitution voted by the new National Assembly after its creation
- c) the Internal Constitution to RPF which in most cases becomes a measure for all the others.

The authorities then use one of the three according to their needs.

A typical example is that of the post of vice-presidency. This post was recognised in the Arusha Accords because the RPF could not control the presidency, whose incumbent had the final power of veto. Habyalimana was still in power, and there were other major parties inside the country, like MDR. The agreement negotiated between all parties, including RPF, was to leave the presidency to MRND, represented by Habyalimana. The Prime Minister was to be from the MDR, the second major party after MRND. But RPF still wanted a high post to ensure control, when the president was absent. It was then that the post of vice-president was created. In taking over power by military means in 1994, the RPF maintained this post, for it was an even better cover for its ethnic segregational policies. They tolerated the presence of a Hutu president, who was nevertheless insignificant in decision-making. Kagame, the vice-president, was the real leader of the country. When the Hutu president resigned, Kagame was appointed president by the national assembly. On taking office, he abolished the post of vice-president which, according to the Arusha Accords of 1994, should have been taken by a major party other than RPF. It is still a daily practice in Rwanda government for cabinet members to meet and extend mandates which otherwise would have expired. The example here is of people in detention, which we find in Human Rights Watch Report of 2001:

The government repeatedly extended deadlines permitting the detention of persons without any case files, a practice otherwise forbidden by Rwandan law. In December 1999, a new deadline was set for June 2001. An estimated 18,000 persons were held without files, some of them detained since 1994. (<http://www.hrw.org/wr2k1/Africa/rwanda.html>)

Another telling example is found in Human Rights Watch Report of 1999.

In mid-1999, national political leaders decreed that the current government would not step down at the end of its five-year mandate, as specified in the Arusha Accords of 1994, but would continue to rule for at least another four years. If the government as a whole was to stay, some of its members had already been replaced. In December, the Minister of State for internal affairs fled the country after her brothers were arrested on charges of aiding the insurgents and shortly after, the Minister of Justice also chose exile, apparently after his repeated efforts to curb military interference in judicial decisions had failed. In February, the government was reshuffled, with those dismissed reportedly accused of corruption and incompetence. (<http://www.hrw.org/wr2k/Africa-o8.htm>)

All these cases of manipulation of the law in order to remain in power confirm what Mamdani says, that Tutsi want to hold onto power at all costs for it is in that power that they believe their survival lies.

As the Congolese Tutsi legal adviser to the secretary-general of the Alliance puts it, "In Rwanda, the Tutsi have reached a conclusion that power is the only guarantee for their right to life, otherwise they will be killed by the Hutu." The newly appointed Rwandan commander of the Congolese army echoed that same thought: "The Tutsi are just a scared group, from 1959, 1973, 1994. They will feel no assurance until they are protected by Tutsi themselves. That is natural". (Mamdani 2001: 261)

1. The Unique Case of Rwanda

The specialness of the Rwandan case can not be only that it is a case of genocide, for it is not the first genocide to happen in the world—the attempted extermination of the Jews by the Nazis was the first atrocity in the history of mankind to be recognised and acknowledged as genocide, but others had preceded it. The way in which this genocide was unique was the involvement of the mass of the population, what we may call ‘popular genocide’ as opposed to ‘bureaucratic genocide.’ Under the Nazi regime, the extermination of Jews was carefully planned; every killing followed an explicit order from the competent authority and most of the time this order was written down. Almost everything was documented and the executions – ordered by a competent authority —followed the described and detailed method of killing. This made it possible to find the records of different people that were killed and where they were killed. It is this character that makes the Jewish genocide a ‘bureaucratic genocide’. The Rwandan genocide was not documented. There are no records of those killed, nor any explicit, written authorisation for the killing of such a person in a set manner, on a given date. Though launched by leaders who feared that they had more to lose than the rest of the population, the killings that followed were more or less spontaneous, carried out by groups that sometimes could not be controlled even by those leaders. The genocide happened randomly and with popular support. This is what makes the Rwandan genocide unique and ‘popular’. By unique and ‘popular’ I mean that the killers were not a specially designated group. The mass of the population responded to the invitation to kill and participated massively. This makes it a popular genocide. It is unique because it is the only genocide in which the population was mobilized successfully.

As we have said in the beginning of this chapter, the genocide happened in Rwanda while it did not in South Africa. What is the contrast between the apartheid regime and that which allowed, and indeed encouraged genocide? During the Apartheid era, there were few perpetrators though many people who consented and believed that they benefited from racial murders. The violence was hidden, carried out by the shadowy death squads, which destroyed with great care the evidence of their acts; the victims were part of the majority. During the genocide in Rwanda, there were more perpetrators and fewer beneficiaries and the violence was perpetrated in daylight by the mass of the population with no care to destroy evidence. The victims were the minority and no one came to help (Mamdani 2001).

The UN was silent while the Rwandan situation deteriorated, but eventually, impelled by the 1994 catastrophe, along with the new regime, the Rwandan government centred on Kigali—it helped to establish a judicial system (International Criminal Tribunal for Rwanda) to prosecute the ‘*génocidaires*.’ In order to understand this judicial system, it will be necessary to consider first the responsibility and accountability of the post-genocide Rwandans.

2. Responsibility and Accountability:

From the outset of the crisis, the RPF has successfully managed international opinion by convincing ‘everybody’ that the Tutsi were targeted and became victims, and that the Hutu were responsible for slaughtering them. The result was that every Hutu was responsible and accountable for the genocide and every Tutsi was a victim to whom justice was due. This propaganda has not only hindered any attempt at an impartial analysis, thus making it difficult to know the truth, but also gave to some of those responsible the unjustifiable justification: *tu quoque*. What is meant here is that while some of those responsible were ready to recognize their wrongdoing, they saw themselves carrying a double burden (for themselves and their accomplices in crime) and responded that if they have to be prosecuted, every wrongdoer had to be prosecuted too. While Adedeji and the Human Rights report (considered earlier in this study) concludes that the responsibility lay with the Hutu, Mamdani comes up with a more balanced analysis showing that members of both groups were guilty of genocide.

3. The Question of Blame

Talking about his fellow South Africans vis-à-vis responsibility, Archbishop Desmond Tutu says:

When God accosted Adam and remonstrated with him about contravening the order He had given about eating a certain fruit, Adam was less than forthcoming in accepting responsibility for that disobedience. He shifted the blame to Eve, and when God turned to her she did the same and tried to pass the buck. (We are not told how the serpent responded to the blame pushed on to it.) So we should not have been surprised at how reluctant most people were to acknowledge their responsibility for the atrocities of apartheid. They

were just being true descendants of Adam and Eve when they denied what they had done or blamed everyone and everything except themselves (Tutu 1999: 73).

Rwandans, like South Africans, are unwilling to assume responsibility, and their reluctance is expressed in their culture and daily language. Bad things are always blamed on someone else, especially the weaker. That is why in a household for instance, a man is never wrong. Only a woman and children can be wrong. In social organisations, the holder of authority is never wrong, as he is taken to be the head of the community he administers. If the weak person cannot blame the stronger it does not mean that she acknowledges the blame. She rather accepts it as fate and everybody knows that it is because of the stronger person that she is guilty. If, however, she is really responsible, it is obvious because the stronger would not need to justify himself.

Nonetheless, notwithstanding the fact that Rwandans characteristically refuse publicly to admit their responsibility, they recognize it deep down inside themselves. Perhaps what they fear is not the acknowledgement of their wrongdoing but the humiliation that might result from this knowledge by the public. Humiliation is very strongly felt in Rwandan culture. That is why Rwandans tend to be secretive. Given that this attitude is developed in childhood, keeping secrets becomes almost natural. The first thing that a Rwandan child learns is to hide his emotional state. This is more strongly emphasised for boys especially when it comes to painful feelings, than for girls. A boy, or even more, a man, is expected to remain strong in any circumstances. If, despite their characteristic openness, admitting responsibility was difficult for South Africans, how difficult can it be for Rwandans with this cultural habit of secrecy?

In order to follow this line of thought further, let us recall what has been said so far concerning oppression throughout Rwandan history. According to the case studies offered earlier, throughout Rwandan history, a belief in Tutsi superiority, first held by the elite, and then reinforced by the colonizer, existed in Rwanda.

In the formative days of Rwandan society, the Rwandan state was a small kingdom called "*U Rwanda rwa gasabo*" somewhere around Muhazi Lake in the centre of Rwanda. People whose main activity was pastoralism populated this kingdom. These people later became known as Tutsi. The need for more pastureland led this kingdom to launch attacks on neighbouring kingdoms and principalities. The annexation of new kingdoms and principalities went along with the subjugation of their people. This subjugation however was not severe or

exclusive, but tended to be inclusive. The new inhabitants of the enlarged Rwanda could mix with their conquerors. Slowly cattle, which were mainly owned by the conqueror, became the symbol and general measure of wealth. The person who had more cows than the others was considered to be the richest. This, added to military superiority, made the Tutsi, who had both cattle and military power; believe that they were not like everybody else. Rwandan society was then subdivided into two groups, not a Hutu group and a Tutsi group, but a group of Tutsi élite with rich Hutu and a group of 'petit Tutsi' or poor Tutsi with the majority of Hutu. According to Mamdani (2001), this subdivision, based on economic criteria, existed until the reign of King Rwabugiri (1860-95).

The "Nyiginya" lineage of kings and their entourage succeeded in imposing itself as superior and born-to-rule, and oppressed the rest of the population, the lower class of the Tutsi and Hutu. This was altered, according to Mamdani (2001), by King Rwabugiri, when to be a Tutsi meant to be in power or near power in order to benefit from it. The higher ranking Tutsi therefore appear to have instigated the hostility between the two major population groups. Did they plan this? While some (Human Rights Watch Report 1999) believe that there was prior planning, the reality shows that the belief in Tutsi superiority gradually changed into a will to eliminate the Hutu; this is also Mamdani's point.

However, it can be seen that before and after independence (1961) a general belief arose in the equality of all Rwanda citizens, including Hutu and poorer class Tutsi. This gradually changed into a general hatred of all Tutsi and the will to eradicate them as oppressors. While the idea of 'born-to-rule' was becoming a distant memory after the independence in 1962, the attacks of Inyenzi soon reaffirmed that they were still holding onto their ideology of superiority.

Few Rwandans could have been unaware that when the Tutsi army in neighboring Burundi unleashed terror on the Hutu in 1972 and killed nearly 200,000, it did not go for the lives of ordinary Hutu but for those of school-going youth. The objective was crush the flower from which could come tomorrow's intelligentsia. Anyone who had come out of the colonial period understood that the existence of an intelligentsia was the prerequisite for initiative, independence, and leadership. (Mamdani 2001: 230)

It is likely that the final occurrence that brought to an end the Hutu's uncertainty about whether Tutsi might one day allow Hutu to be power-sharers with them was Ndadaye's assassination in Burundi. If Ndadaye's death was taken as a prophetic lesson that the alternatives for the Hutu lay between power and servitude, that *there could be no power sharing between Hutu and Tutsi* [my italics], Habyalimana's death was a signal that the hour to choose between power and servitude had indeed struck (Ibid: 215). Burundi was a case where the Tutsi had always been in power and the killings of Hutu by Tutsi Burundians had a strong impact on Rwandans.

Despite the fact that Burundian history presented a milder version of Tutsi power and Hutu servitude, Burundi had come to be seen in the second half of the twentieth century by Rwandan Hutu and Tutsi alike as some sort of an accursed Siamese twin. For Hutu in post-1959 Rwanda, Burundi presented a real life portrayal of what it would be like for them to continue to live under Tutsi power. The mass killing of Hutu schoolchildren and intellectuals in 1972 gave the Great Lakes region the first sight of a genocidal wave of killing (Mamdani 2001: 215).

Could any reasonable Rwandan Hutu ignore all these telling facts? Their fears, however, did not prevent Habyalimana, once in power, from adopting policies and perspectives promoting peace and reconciliation among all Rwandans. The Tutsi RPF party, as has been shown, rejected his attempts at reconciliation because they wanted sole power. "The growing appeal of Hutu power propaganda among the Hutu masses was in direct proportion to the spreading conviction that the real aim of the RPF was not rights for all Rwandans, but power for the Tutsi" (Ibid: 191)

Did the noble Tutsi know that his actions might have fatal consequences for himself as his fellows in general? It is likely that he believed that he was simply serving his immediate interests. Ignorance made him believe that things would always be on his side. The Hutu seem to have been pushed into this inflammatory situation, but this cannot justify the violence of their reactions. Even though they did not have a preconceived plan, they deliberately met violence with violence. The Tutsi were determined not to be passive victims, and adopted a course of equally violent action in order, as many of them believed, to 'defend' themselves. It is this policy of 'self-defence' and a more generalized hatred of all Hutu that motivated the RPF to cross the border into the Congo. This crossing cost and has continued to cost many lives from both the Rwandan refugee group and the local Congolese. In terms of Human Rights violations, both Hutu and Tutsi are to blame. In so far as the Tutsi were fighting to retain unjust privilege, they must be regarded as being to responsible. But setting aside

historical factors, we should consider a single action of the RPF government with respect to intended civilian liquidation. This example is of the Kibeho massacres in Gikongoro Prefecture, where the RPF soldiers slaughtered unarmed civilians in 1999 under the UN Blue Helmets⁵.

About 150,000 refugees, standing shoulder to shoulder on a mountain plateau the size of three football fields. When I first see them, they've been standing there for almost three days. Somewhere in this sea of humanity there are supposed to be two small camps of the United Nations 'ZamBat' unit, peacekeepers from Zambia, but I don't see them anywhere.

There's no room to sit down on the plateau. The refugees are squeezed together above their belongings; their legs spread across the bodies of old people and children too tired to stand. Rwandan troops in long raincoats, guns slung over their shoulders, some wearing black berets, are posted every ten metres around the throng they've driven together. [...] The soldiers of the Rwandan government have chased the inhabitants from their huts in the surrounding valleys and herded them on to the plateau. Now they're keeping them covered. With the evacuation of the camp completed, the Rwandan soldiers, all Tutsis, have apparently run out of order. [...] The refugees are paralysed with misery. They don't seem to hear the blue helmets' 'out of the way!' or feel it when they're roughly shoved aside. Step by step we make our way through the masses. I see only faces, dull eyes and lips chapped with thirst. The ground beneath my feet is covered with anonymous personal effects and the occasional human. I can't see the soil itself. [...] Just as the Rwandan Government soldiers surround their Hutu prisoners to keep them from escaping, so the Zambian blue helmets surround their school to keep the Hutus from trampling it. [...] Two nights ago they heard gunshots, the UN soldier tells me. 'We got down behind the sandbags right away; we had no idea who was shooting whom. May be they were even shooting us. The ground was shaking,

⁵ UN troops, from a variety of countries, were distinguished by their blue helmets.

but we thought it was tanks, couldn't believe it was tens of thousands of people running. Not until we saw them climbing out of the valley towards us. They came running in from all sides, screaming, straight at us, with about a thousand government soldiers firing at them. [...] ZamBat was just dragging the last bodies away from the school gates when the government soldiers came up to Captain Francis. 'We are taking over here. The refugees are going home', they announced. They didn't say how the refugees would get home and it still isn't clear. The Hutu aren't allowed to walk home. [...] But United Nations troops aren't allowed to take part in the deportation of prisoners. Voluntary status is a criterion for UN passengers, and the inhabitants of Kibeho haven't volunteered for this [...]. These people haven't had anything to eat or drink since the day before yesterday. They are going out of their minds with thirst. [...] The American says that he thinks he has convinced the Rwandan commander to allow a water tanker through by pointing out to him that water will help move the refugees. [...] 'There is a tanker with 18,000 litres of drinking water. [...] How to distribute this water to 150,000 dehydrated refugees? How to go? By a cup at a time? What about the speed? But let's do it anyway. [...] We watch a group of refugees, about six of them, break away from the crowd and start running into the valley. They are trying to break the siege! Rwandan troops start firing immediately. We see the refugees fall. Dead. Their bodies roll down the rocks to the bottom of the valley, and come to a halt at the trampled huts. [...] I watch the blue helmets watching the killing around them, eyes and mouths wide open in disbeliefs, as if they're screaming without making a sound. I keep watching until the sun's gone down and it's pitch-black on the plateau. [...] We called the masses of people 'IDPs', Internally Displaced Persons; UN jargon for refugees in their own country. Through the brick walls of the mess we can hear IDPs being executed. Each gunshot is followed by the screams of onlookers, fearing for their own lives. [...] 'Here, take it', a Zambian calls as he balances one foot on the gate and the other on the roof. He's holding a baby by one arm. Its eyes have rolled up in its head. 'Come on, take it!' Above me, another

baby is dangling from a soldier's hand. The people outside are trying to rescue their children by throwing them over the gate to us. 'Take it, take it', the blue helmet shouts in desperation.

I grab one baby after another, some screaming, some unconscious, others already dead. The Zambian soldiers, holding on the top of the gate with one hand so they won't fall, catch the children and swing them over to us in one easy movement. [...]

For the first time since my arrival in Kibeho, I can see the other Zambian camp, on the far side of the plateau. Then I realised that refugees are still there, it's just that none of them are standing up. The Hutus and their possessions have merged into one hideous, soaked rubbish dump, reaching to the end of the world.

We peer down the road littered with dead bodies, looking for reinforcement on the horizon. There are none. The reason is obvious: Rwandan troops are busy dragging away all bodies that can be seen from the road. [...] In the parking lot, the Rwandan president, Pasteur Bizimungu asks Captain Francis for his estimate of casualties. Francis cautiously puts it at 4,000. The president is not pleased. 'I think you are exaggerating', he says coolly. He'd rather stick to the 300 his soldiers reported to him". [Text greatly shortened and slightly modified].

(Polman, L., 1999; 'The problem outside', *Granta* 67: 217-240)

This is the testimony of Linda Polman, a journalist from Holland, from her visit to Rwanda in 1995. Some others journalists and Human Rights activists were also present when these massacres occurred but nothing was done to prevent or even to publicly condemn the slaughters. Yet the Rwandan crisis surely affects the world, and is not only internal to Rwanda.

The colonizer has also played a key role in the Rwandan drama. He is the one who politicized and rigidified ethnic differences first by making Tutsi an alien race and Hutu an indigenous ethnic group and rendering this difference in identification documents. However, can it be argued that his intentions were to lay the foundations of future genocide? Though in

some parts of Africa, and the world in general, it may have the case, the intention of the colonizer in Rwanda was not to destroy the population but to maximize his interests.

Whereas the prototype of settler violence in the history of modern colonialism is the near-extermination of Amerindians in the New World, the prototype of settler violence in the African colonies was the German annihilation of over 80 percent of the Herero population in the colony of German South West Africa in a single year, 1904. (Mamdani 2001: 10)

Mamdani points out that “settler colonisation led to land deprivation” (Ibid). The big mistake of the colonizer in German South West Africa and America was to overlook the dignity of humans in favour of his selfish interests. But if the coloniser succeeded in further dividing the Rwandan people, it was because Rwandans already conceived of themselves as two separate groups, Hutu and Tutsi. We have to recall that when the colonial regime proposed that Tutsi supremacy be formalised, through superior education and other privileges, the Tutsi wholeheartedly accepted these privileges, since they corresponded to the group’s ideas about its rights. They were, first and foremost, acceptable because they reinforced their own conception of their proper position as compared to that of the Hutu, which can be traced back in history. Moreover, in accordance with the concept of Tutsi supremacy, Tutsi were given preferential treatment. The Hutu, however, found themselves faced by a situation in which they had no power to alter anything. Furthermore, this double confirmation of Tutsi superiority, first by the Tutsi themselves and then by the colonizer, somehow convinced the Hutu that it must be the case that they were inferior. Both Hutu and Tutsi accepted the policies of the colonizer, though with different feelings. The Tutsi rejoiced because their domination was approved by a third party. The Hutu were more and more subjugated, neglected and victimised. Since they were the favourites of the coloniser, the Tutsi had more chance to change the situation. They were in the middle between Hutu and the colonizer. If, in their position of power, Tutsi were ignorant as to how the rest of the population was suffering, they might well have considered their own subjugation to the colonizer. Though they had power over the Hutu, the colonizer had equal or more power over them. With this double image, the Tutsi were in a good position to do something that could have changed the situation. Their understanding of how it felt to be dominated by another group might well have made them

unwilling to take the risk of allowing the Hutu (who, it must be remembered, were the majority group) equal rights. They feared the loss of their own privileges, and were not ready for that. So both groups, unfortunately, accepted the divisive policies of the colonizer. As a result, Rwandans in general are to blame.

While the Human Rights Watch Report of 1999 believes that the genocide was definitely premeditated and puts all responsibility for planning on the Habyalimana regime, Mamdani believes that the planning came later while the genocide was underway. It was a result of a defeat on the battlefield that led Hutu hardliners to want to eliminate Tutsi inside the country.

Helmut Strizek in his article "Kigali 6 April 1994, le jour où l' Afrique bascula, (*Africa International*, No Double 322/ 323 /April 199 pp 41 – 53) believes that the person most aware of the whole drama was Kagame, who headed the RPF troops. According to Strizek, if Kagame had allowed it, the crisis would have stopped and the conflicts would have been resolved peacefully. His argument is that the crucial moment when genocide began is the death of Habyalimana. He argues that to know the truth about what happened in Rwanda, it is necessary to discover the organizer of his death and the causes. He says:

No one can deny that this attempt (shooting down the presidential plane) is the point of departure of systematic massacres of summer 1994 against the Tutsi minority in the region of Rwanda controlled by a government ad interim. But also – a fact often neglected – at the same time grave massacres against the Hutu population took place in the region under RPF soldiers' control "(*Africa International* No. 322/323. 1999: 42)

As Mamdani says, the struggle for liberation changed into a struggle for occupation. The goal of RPF was clear: it wanted power. What counted for Kagame was the military victory of RPF at all costs, even if it involved the sacrifice of Tutsi inside the country. And Kagame knew that the way to achieve this was to eliminate Habyalimana because his death would cause chaos in Forces Armées Rwandaises (FAR) and in the Hutu militia, probably breaking down their control of the country. "RPF alone could be sure that no one would like to take the power soon after the attempt, and that Hutu militia would react in a murderous manner against Tutsi inside, attracting international opinion onto its [RPF's] side (Ibid: 44). It is clear that everybody knew, even on the international level, that Tutsi were targeted before

and after the murder of Habyalimana, but rather than seeking to prevent the worst, the RPF chose victory at all costs, even provoking massacres of the people it was claiming to come and liberate. Mamdani believes that the shooting down of Habyalimana's aircraft and Ndadaye's assassination are the two turning points which made genocide inevitable.

As violence within Rwanda changed from deaths on the battlefield to the large scale slaughter of civilians – to genocide, in fact - there were two further turning points. The first was the assassination of the first Hutu president, Ndadaye, in the neighbouring Burundi. The second was the assassination of Rwanda's own Hutu president, Habyalimana himself, and the murder of the Prime Minister, Agathe Uwingiyimana (Mamdani 2001: 215)

4. International responsibility

The international community was not unanimous with regard to the problems of Rwanda. States had their own interests to defend. France, for example, was defending francophone interests against the invading anglophone, identified with Uganda. Nonetheless, when it came to any decision to be taken, through the United Nations or any other international organisation, the USA dominated the scene. This USA domination is the reason why its role is of great importance.

In the past the inertia of the international community was justified by the belief that they did not really know what was going on. But since it is now clear that by 1999 it knew about everything, the international community has more than ever some responsibility in the Rwandan drama. Recent discoveries, according to which the international community, especially the superpower countries that have a key role to play in peace-keeping through the Security Council, knew everything that was happening in Rwanda and even—arguably—allowed it to happen, pose serious questions and challenges which may oblige us and the UN to take a new look at the Rwandan drama. Until this point it appears that what was happening in Rwanda was seen as merely a local crisis, or as Mamdani says, a regional crisis. This new look leads us to reconsider the role of UN in Rwandan history especially in periods of crisis. In early 2001, it was discovered that Clinton's government knew about the entire Rwandan situation and possessed all the documents but had chosen to ignore the terrible situation. Yet one of the American officials, interviewed on CNN, said, "We cannot change the past. We have rather to focus on the future in order to prevent the reoccurrence".

The most important shaping force in the Hutu-Tutsi crisis was the influence of the Belgians. Mamdani told us that European racial ideology was applied in Africa in the colonial

period. It was in terms of this ideology that the Tutsi were seen, and encouraged to see themselves, as a foreign civilising race, while the Hutu became the indigenous, and more primitive majority. These divisive Belgian policies were certainly known and even approved by United Nations because "Rwanda was a UN trust territory" (Mamdani 2001: 114). Thus administrated by Belgium, Rwanda was under UN tutelage (Ibid.). As the UN believed that each country had to take its destiny in its own hands, it started the process of decolonization, preparing countries that were its trust territories for independence. In Rwanda this process of decolonisation led to a change in administration and in other social interactions. The Belgian colonizers, who so far had favoured the Tutsi side, doing everything in their power to maintain the Tutsi as superior to the Hutu, began to support the Hutu cause. The irony is that the Belgians made the Hutu more aware than ever of the discrimination they suffered. When Belgians began to support the Hutu majority, it was the time for Tutsi to be discriminated against. With the spread of UN ideas of democracy and independence in the middle of the twentieth century, it became impossible to refuse a majority group its rights. This movement was extended in western countries, particularly in United States of America and Canada in 1980s-1990s, to protect the rights of minority groups. This new ideology of minority rights coincided with the RPF invasion of Rwanda. RPF was a minority seeking for its rights to be addressed. In this move, one can argue, it is quite understandable that the United States, which strongly supported the minority rights movements, could sympathize with the RPF.

It was Belgium, who, it must not be forgotten, had been mandated by the UN to govern Rwanda, that created the first social dilemma in Rwanda. Belgium first promoted the rights of the minority Tutsi, a civilising race, undermining the rights of the majority, an indigenous majority to be civilised.

The sudden change from emphasis on minority rights to majority rights created an imbalance of power in Rwanda. This imbalance was not adjusted into parity and equal rights for all groups because Rwandan society as a whole believed that a minority's rights and a majority's rights could not be addressed at the same time. The Belgians, like the pre-colonial Rwandan groups, failed to conceive of equality for all groups as a solution to the country's problems. It is moreover, in this climate of antagonism and mutual resentment that the 1959 revolution, a revolution called, rightly or mistakenly, a Hutu revolution, but in which the Hutu majority could not have succeeded without the aid of the Belgians and United Nations, took place. Though officially independent, Rwanda, like any other country of the Third World, was always under western economic influence in general and the UN's influence in particular. In order to get aid or a loan from any organisation of the United Nations or Western countries,

the poor countries have to comply with certain conditions or policies, which in most cases, if not always, favour the rich countries. The US has never ceased to show that the democracy it cherishes in every political speech is for the powerful, the rich and not the poor; that human rights are only for privileged humans. Rich people, indeed are more human than poor people, white people more human than black people, Europeans more human than Asians or Africans. As Donald W. Shriver 1995: *An Ethic for Enemies* says, even nowadays policies based on the social inequality of black people and white people in United States still exist. And the minority rights movements we mentioned earlier are there to address these inequalities, to concern themselves with the rights of the black community and the Spanish-speaking community.

Not surprisingly, policies which serve America's interests applied and still apply in the UN. In fact, even though the UN is an organization made up of national governments, and the decisions it has to make must be the outcome of different governmental points of view, it is strongly influenced by countries which contribute heavily to its financial support. A clear example is the US, which contributes about two thirds of the UN budget. No decision taken without the US's consent could be implemented. The US would not contribute the necessary funds, and the resolutions to which it objected would remain on paper. Economic power has an absolute veto and all other benevolent forces only have a secondary voice.

Whilst it is true that there are certain conditions which distinguish all democracies, it is also true that there is no single model which fits all democracies. Certainly, French democracy differs from British democracy and both democracies differ from American democracy. There can be no democracy which can exist unmodified in two or more different cultural communities. In other words, democracy is first theoretical, and when it comes to practice, some features have to change or give place to others. The assumption that a model of democracy could be reproduced elsewhere unmodified was frequently made when the UN wanted its policies to apply to the countries of the Third World, among them Rwanda. Projects were conceived, planned and financed, and experts were sent into a little known environment in order to implement these projects. The scenario turned out to be, in most but not all cases, less of help for local people and more a new experiment for UN experts.

Trapped in a declining financial situation circumstances, post-independence Rwanda had little room to defy the countries on which it depended economically and decide its own destiny. Just as it is very difficult for an individual to make his own absolutely independent decisions, without distancing himself from society, so it is almost impossible for a small country to act independently of opinion in the international community. In every country,

there must be a degree of consideration given to international opinion, as well as a larger degree to the local situation and culture.

It was not by mistake that in his *Social Contract* (1946) Rousseau recognized the influence of society upon every single person. For him, every man or woman is shaped by the society in which s/he was brought up. When the society does not allow different individuals to develop into fully adult, decision-making people, in other words when the senior members of the society do not want the junior members of the same society to grow bigger and join them on the same level, then the full humanity of these individuals is denied.

The same evil occurs when powerful countries do not allow developing countries to become fully autonomous, but want them to remain satellites, in Frank's words. Writing about Dependency Theory, Frank divides the economic world into two parts: the metropolis, which forms the block of the rich and industrialized countries and the satellites, his term for the poor and developing countries. In the works of other authors such as Samir Amin, the terms 'centre' and 'periphery' respectively express the same idea. Frank believes that a satellite nation cannot develop itself because "metropolis exploits satellite, surplus is concentrated in metropolis and the satellite is cut off from the capital investment funds, so its growth is slowed down" (quoted in Brewer 1990, *Marxist Theories of Imperialism*, p 164). According to Frank, satellite countries cannot help themselves, not because they do not want to, but because they are restricted by the activities of the metropolis. Metropolitan countries develop themselves at the expense of the satellite countries. Though this need not be entirely true, it reflects what Amin had called "Africa of the labour reserves" in his article 'Underdevelopment and Dependence in Black Africa: Origins and Contemporary Forms' (*Journal of Modern African Studies*, 10, 4 (1972), pp. 503-24). And Amin believes, perhaps pessimistically, that this labour supply will never dry up. "The development of capitalism in the periphery is blocked by the superior competitive strength of the industries of the centre, manifested in an ability to undercut the industries of the periphery or to establish a price level which prevents new industries emerging at all" (Brewer 1980: 189). This environment, hostile to development outside the metropolis, prevails in the international community and especially in rich western countries, and is sometimes expressed in such a way that prevents understanding of the whole position. Financial aid from a rich country to poor countries becomes the means of further exploitation for the rich country.

In the 1990s, the Rwandan government wanted to improve its agricultural production, for it believed that the economy of the country should rest on this basis. Several western countries and organizations offered to help, including the United States through USAID. The

big mistake was to copy exactly what was happening on American farms and to try to implement it in the mountains of Rwanda. Those experts in agronomy, who returned home with a big part of their investment, failed to reconcile their techniques with the geographical situation of Rwanda. As a result, rather than helping the improvement of agricultural production, the outcome of their techniques and chemical fertilizers encouraged uncontrolled erosion and impoverishment of the soil. The return to natural fertilizers occurred too late. The incident may have furthered the researches of American 'experts' and provided a market for their fertilizers, but it failed to improve agricultural production in Rwanda. What followed showed that the researchers had no sustained interest in the success of the project.

This was also the case when the French government, concerned to force the Belgians to withdraw from Rwanda, offered a significant amount of money to the Rwandan government in order to reform education to meet, as they said, the needs of modern life. When Rwanda was declared politically independent, it had remained highly influenced by and dependent on the Belgian educational system. The result of the French-influenced reform, which took effect in 1979, revealed itself to be rather more dramatic than helpful. More than ten years later the Ministry of Education in Rwanda tried to reconsider its policies but the damage was done.

Nonetheless, once the French came to Rwanda, they remained for a considerable period. They greatly influenced and supported the Habyalimana regime, though the fact that they were serving their own political or economic interests was not well known. And when the war was declared by RPF against the Rwandan government, French troops were occasionally on the battlefield to back the *Forces Armées Rwandaises* (FAR). This war indeed, marked a new period of events in Rwanda where, in the period of peace negotiations, the UN really got involved. At the start of the RPF attack from Uganda, the UN did all it could to maintain at a very low level its involvement in solving the Rwandan conflict. Their idea was that the UN should distance itself from the 'internal conflicts' of Africa. They believed that Africans should take the responsibility for solving their own problems. This situation, however, had been produced, at least in part, by forces outside Rwanda.

The Organization for African Unity (OAU) was the first international organisation to intervene in the Rwandan crisis. (1992) The OAU agreed with the help of different African countries to provide troops for the process of peacekeeping and the UN was to give the military equipment and financial assistance. It was for this purpose that the "Groupe d'Observation Militaire Neutre" (GOMN) was created and sent into Rwanda to facilitate a cease-fire agreement between RPF and Rwandan government forces. GOMN, a small

contingent, little known, and often omitted from the chronological list of events in Rwanda of post-1990, succeeded only in creating an opportunity for the RPF to infiltrate the country. In the meantime, while French troops were busy training the FAR and its new recruits, the US Army was busy training RPF. Most of the RPF officers were trained in US and they had served in Ugandan Army.

In Mamdani we read: "By the end of November 1990, many RPF soldiers had been killed and thousands were scattered by the counterassault of the Rwandan Army. About this time, Major Paul Kagame interrupted his military training course in the United States and took charge of the RPF" (Mamdani: 2001:186). This military training of RPF by US army has continued until the present.

The first official UN intervention in the Rwandan situation was in consequence of the Security Council resolution 872 in October 1993, which authorised the creation of United Nations Assistance Mission for Rwanda (UNAMIR). This was to facilitate the implementation of the Peace Accords of Arusha, signed between RPF and the Rwandan government. The formation of this group however, was weakened by the failure of the USA intervention in Somalia some days in early October 1993. During this intervention, the USA Army lost some of its élite soldiers and several others were wounded. The USA was not going to risk another humiliation again in Africa. In terms of the Arusha Peace Accords, during the establishment and functioning of a transitional government, there had to be power sharing between the different political parties, including RPF, the fusion of the two armies (FAR and RPF) and the demilitarization of the city of Kigali. Besides these conditions, 600 RPF soldiers were to come to Kigali and stay in "Conseil National pour le Développement" (CND) in order to provide protection for their leaders who had to participate in the new transitional government. With the demilitarization of Kigali, the only troops that were allowed to carry arms were the Blue Helmets. Secretly, however, the RPF soldiers brought all their military equipment into Kigali, as was later revealed when the war was re-launched after the assassination of Habyalimana. The demilitarization of Kigali under UNAMIR control did not stop RPF from planting of missile-launchers in the neighbourhood of the Kigali airport, a zone controlled by the Belgian Blue Helmets. Some people, among whom were the Presidential Guards, believed that these Belgian Blue Helmets were involved in planting those missile-launchers or at least that they were complicitous with the RPF. It was this suspicion that prompted the Presidential Guards to attack the Belgians, an attack in which some Belgians were shot dead.

When the Rwandan crisis was at its height, it was proposed by RPF that the number of Blue Helmets and amount of military equipment be increased in order to stop the killing. But the RPF with its supporters convinced UN Security Council that the UN intervention was not necessary to stop the killings, because RPF was handling the situation. The reaction of UN was to reduce the small number of UN troops that was there (Melvern 2000). Only after hundreds of thousands of Rwandans were massacred while the UN contingent stood by, despite its capacity to intervene, and only when the RPF had declared the end of war and the formation of the new government, did President Clinton announced the 'American Aid Plan' for Rwanda. Two weeks later, after the end of the war, the first contingent of US soldiers arrived in Kigali in July 1994. This American Aid plan, called "Operation Hope," was perhaps a response to the French intervention with the "Opération Turquoise" because soon after the arrival of the American soldiers, the French left the security zone they had created in the western part of Rwanda. It was suggested by francophone Rwandans that this was a victory of the English language over the French language. In fact, soon after the RPF came to power, Tutsi French-speakers from Rwanda and Burundi saw themselves ridiculed and disadvantaged. Nepotism was becoming obvious amongst the English-speakers, the majority of whom were from Uganda. The appointment to high positions in government and administration also appeared to depend on the power to speak English. In state offices, English-speakers were first to be served.

Within the same year, 1994, and with the official goodwill of the RPF government, the UN created the International Criminal Tribunal for Rwanda (ICTR) with the mandate to prosecute the perpetrators of genocide.

Did the UN-created judicial system, the ICTR, established after the end of war in Rwanda, to prosecute human rights violators and 'génocidaires,' operate in good faith, or was it also complicitous with the ruling powers? The sole purpose of the ICTR was and is the prosecution of those responsible for genocide and other violations of international law in the period between 1st January to 31st December 1994. (Resolution 955, 1994, (<http://www.icttr.org>))

The resolution which established the ICTR and which was passed on 8th November 1994 was a sign that United Nations was ready to cooperate with the new RPF government. What was going to follow as justice, in Mamdani's words, was a 'victor's justice.' Such 'justice' implies that the victor is never considered as violator or potential violator of human rights, even when there is clear evidence of this. We will come back to the functioning of the ICTR later.

Government officials and party leaders in Rwanda, RPF leaders and UN peace-keeping forces who could have intervened to stop killings from happening, whether by military means or by political strategies, intervened only when it was too late. They arrived together at the same time as the humanitarian organizations that were to provide food for refugees and those left destitute. Since UN is committed to curative rather preventative interventions, the tendency is for such interventions to occur too late to serve the good of the victims, though they may increase the prestige of humanitarian organizations.

The UN and other western countries' support for the new regime in Kigali showed them to be concerned with their own prestige, as well as with the dispensation of 'justice' in Rwanda. The UN seems to have felt that it had fallen short of its obligations in Rwanda and believed that if it repaired the damage already done, it might remove the moral guilt that RPF had succeeded in creating throughout the world. RPF had reproached the international community with ignoring genocide, even though it was also RPF who had assured the UN that intervention was unnecessary. It is possible, of course, that the international community was too pleased to be assured that it need play no role in Rwanda.

The hostility of the new Kigali government to the French Government influenced France to withdraw from Rwanda in 1994. Meanwhile, the British Government took the opportunity, in collaboration with the English-speakers in Rwanda, to strengthen its presence in Rwanda. It provided about eighty percent of school equipment as well as equipment needed to rebuild the educational system. The question was raised as to whether English should totally replace French in the educational system and become the only official language. This replacement was revealed as impossible, given the consequences that would result from such a sudden change. It was decided instead to maintain both languages, English and French, and to make sure that the new graduates were bilingual. In primary schools, English and French were to be taught at an earlier stage, and in secondary schools, those languages were also emphasized, to ensure that student candidates for tertiary studies were capable of following lectures in both English and French. For students who had completed their secondary education and were entering the university with the knowledge of one of the two languages, one year of languages was introduced to prepare students for university studies. The irony is that while French-speakers were obliged to learn English, English-speakers – mainly from Uganda, who were opposed to learning French, preferred to go back to Ugandan Universities. Nowadays the situation has more or less stabilized.

While the British were busy with the educational system, Americans also entered the field, a little late, by building and supporting some tertiary institutions. When other countries

such as South Africa were supplying the Rwandan Government with arms, (this can be proved to have taken place in 1998, during the second DRC rebellion) the US was busy training, supplying and supporting the Rwandan Patriotic Army (RPA).

Several governments such as the USA and South Africa sold military equipment and training to Rwanda during 1996 and 1997, apparently with little regard for the human rights record of the RPF controlled Rwandan security forces. The US army, in particular, has been involved in a training programme for the Rwandan Patriotic Army (RPA). Despite being one of Rwanda's closest political and military allies, capable of exerting pressure for positive changes in the human rights situation, the US government is not known to have publicly condemned or demanded an end to persistent human rights violations in Rwanda.

(<http://web.amnesty.org/ai.nsf/print/AFR470371997?OpenDocument>)

It appears from different sources, nevertheless, that the US government had access to all possible information concerning Rwanda. Why then, as the Amnesty International Report makes clear, is the U.S Government not concerned about the human rights? What American interest is believed to be served by silence on human rights? While preaching respect for human rights and dignity, the "international community has allowed death to become a banality in Rwanda once again". (Ibid) Amnesty International continues to ask the international community and the US in particular to listen to its plea: "The USA and other influential governments must publicly denounce the continuing killings and demand action which will put an end to the violence directed at unarmed civilians". (Ibid) The irony is that while the international community is claiming to end random killings by instituting the ICTR, killing continues unchecked and is even supported by the UN and ICTR. If only the vanquished are to be punished for their misdeeds, as was the case in post-war Germany, then justice is not served. Despite their widely disseminated propaganda, the victors are aware that they cannot be believed by anybody but a fool. When it is revealed that genocide has occurred on both sides, the plea is: because we can do nothing about the past, let us forget it and concentrate on the future. The same mistakes continue to be made: there is no equality between the two groups; and there is no attempt to dispense equal justice to all. "Still burdened by guilt over the genocide, the international community ignored [and still ignores] reports of abuses and supported the Rwandan government generously, hoping to achieve stability in the region". (<http://www.hrw.org/wr2k/Africa-08.htm>)

When massacres were happening in Rwanda in 1994, no one wanted to say a word. Those who were really concerned, and perhaps wanted to intervene, feared that no one was

ready to listen to them; they therefore had very little influence on the situation. Those in power, it seems, had things just the way they wanted them and silence was the most advisable policy. But soon after the genocide of 1994 was over, they were willing to condemn what had happened. It seems likely that they are waiting to condemn the Rwandan Government when the killings which it is perpetrating inside Rwanda, in the DRC and in some other places, is over. The media records progress on the battlefield, ignoring the fact that such progress does not necessarily lead to an end of civilian casualties.

The UN Human Rights Commission showed even less concern than the Security Council for such combat-related abuses (2000). Both the commission and the special representative of the High Commissioner for Human Rights, Michel Moussalli, commended the Rwandan Government for its progress, ignoring its abuses in the DRC and minimized those inside Rwanda. (<http://www.hrw.org/wr2k1/Africa/rwanda3.html>)

The European Union (EU) showed the same indifference to what was happening. "The EU and its member states said little about Rwandan human rights abuses and contributed generously to government funds". (Ibid) While Rwanda is actually viewed as the centre of conflict in the region of the Great Lakes, the Western countries do not withdraw their aid to the Rwandan government, but rather continue to empower it by all means, as if they want to encourage it to do more harm. The US not only supports the Rwandan government by donations but it also does so by cancelling Rwandan debts so as to make the contribution significant.

Generally viewed as strongly supportive of the Rwandan government, the US this year helped it acquire the only advanced military radar system in central Africa and cut the Rwandan debt to the US by 67 percent. It has also signed three grants totaling U.S. \$15.1 million for assistance in establishing the rule of law, transparency in governance, and health and social services. (<http://www.hrw.org/wr2k/africa/rwanda3.html>)

Since in the world at large the strong are justified by their strength alone, human rights can only be respected if the strong are virtuous and self-critical; this does not seem likely to be. Strength always tends to be opposed to humility and virtue. As long as the US continues to support Rwanda in its human rights violations, there will always be victims in the Great Lakes region.

The US was widely seen as a key supporter of the Rwandan government. In July [2001] Assistant Secretary of State for African Affairs, Susan Rice, reacted against this characterization of US policy, insisting that US showed no favour for Rwanda in the DRC war. The

US did attempt to bring all parties to the war to a settlement, but its continued military training programs for Rwandan soldiers, like the absence of firm, explicit condemnation of abuses in the DRC and in Rwanda indicated continued important support for the Rwandan government. (<http://www.hrw.org/wr2k/Africa-08.htm>)

With this US support, and given the influence of the US in the UN, it is quite easy to understand the policies of UN vis-à-vis Rwanda. After all, it is not very different from the US position. It is in this atmosphere that the ICTR was created, an atmosphere of victor and vanquished, similar to that of the period when the US and its allies were victors in the Second World War. With the institution of the ICTR, though one cannot argue that it was not necessary, the UN left little room for Rwandans to consider different ways of achieving justice and reconciliation. Victors' justice was handed out, with no sense of the reality, that Rwandans would have to live with one another. Tutu says about South Africans, "While the Allies could pack up and go home after Nuremberg, we in South Africa had to live with one another" (Tutu 1999: 25). The same words may be said for Rwanda: "We in Rwanda will have to live with one another". But with the victors' justice practiced by ICTR and the judicial system in Rwanda, this 'living together,' if it implies peaceful coexistence, has little chance of taking place. Like the Belgians before the 1959 revolution, the UN has created a division amongst Rwandans by imposing a kind of solution that did not take into account all the factors. (<http://www.ictr.org/>)

As we have said, the UN created the ICTR in response to an official request by the Rwandan Government to the UN Security Council to institute an International Judiciary that would prosecute the perpetrators of genocide. The government at that period was said to represent all parties and to desire national unity. In instituting the ICTR, the aim, the UN wants us to believe, was to contribute to national reconciliation and to the restoration and maintenance of peace. In resolution 1165 (1998) we read that the UN

remain[s] convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of International Humanitarian Law will contribute to the process of National reconciliation and to the restoration and maintenance of peace in Rwanda and in the region [...] (<http://www.ictr.org/>)

The only judicial process that can contribute to national reconciliation and to the restoration and maintenance of peace is prosecution, irrespective of the group affiliations of the accused. In a case like that of Rwanda, this prosecution must be, from its inception, the outcome of a consensus between the parties in conflict. Such prosecution could follow, for instance, the model of the Arusha Accords. The reason why it is necessary to insist on consensus from the inception is that it is unlikely to be fair if it is instituted by one side, especially by the victor. The vanquished are likely to feel that they are accused, not because of their guilt, even when it is the case, but because they have lost the armed struggle.

There might be cases in which the only perpetrator of crime is the vanquished, and as a result members of that group form the only party prosecuted. In this case a fair trial is likely, even if the prosecuted does not believe this. The critical case is when the perpetrators are the victors. Obviously they will not institute a criminal tribunal to prosecute themselves. Neither will the vanquished be able to institute a criminal tribunal to prosecute the victors. In both cases then the victor, though criminal, is not prosecuted. Where is the justice in all this? A third case which combines both sides mentioned above, the case that can be said to be in between, occurs when both victor and vanquished are accused of crime, as in the case of Rwanda. In this case there are five possibilities for instituting the criminal tribunal:

- 1) The criminal tribunal might be instituted only by the UN without any contribution from the parties in conflict. This would be an international commitment to prosecute human rights violators, regardless of their origin or political affiliation or whether they are state officials or not. This case however will encounter difficulties because the UN only has rights to intervene in a country that is one of its members. As Rwanda will be represented in the General Assembly, any attempt to prosecute state officials would certainly be opposed by its representative. Nevertheless the influence of this representative will depend on how close his country is to the most influential countries in the UN.

- 2) The Criminal Tribunal might be instituted by the victor together with the UN, as in the case of Rwanda. If the UN is not really on the victor's side, then a fair hearing is likely to occur, though with difficulties because the investigation of the victor's side would demand a firm commitment from the UN. But when the UN is on the victor's side, it is unlikely that justice will be done. The Rwandan case illustrates very well the situation as we read it in Human Rights Watch Report 2001.

In November 1999, the Appeals Chamber ordered the release of Jean-Bosco Barayagwiza on the grounds of procedural errors by the prosecution. The Rwandan Government immediately suspended cooperation with the court and for a brief period refused a visa to the chief prosecutor. In early 2000, the Appeals Chamber reheard the case. The prosecutor argued for reversal on legal grounds but also stated that *prosecutions for genocide could not continue without cooperation from the Rwandan government*. The Appeals Chamber reversed its decision, allowing Barayagwiza to be tried. In late 1999, the tribunal decided to receive an official and permanent representative of the Rwandan government, and in 2000, judges of the chamber visited Rwanda where they were received by president Kagame. *These developments together with the absence of any prosecutions of RPF members for alleged crimes raised questions about the impartiality of the tribunal.* [My italics] (<http://www.hrw.org/wr2k1/africa/rwanda3.html>)

This example is typical. When the question of understanding genocide was raised, the assassination of Habyalimana was seen as the crucial event that might even be the real cause of genocide. To find out about who was responsible for this assassination would be a point of departure for any impartial understanding and fair justice. Several experts investigated the case and some reports were submitted to some of the UN representatives. Because the missiles used were found to be of French origin, the French also were among the investigators. We can recall here that Habyalimana's pilots were also French. During the French inquiry, evidence emerged that the missiles used in the attack had been confiscated in Iraq by the American military during Persian Gulf War. When evidence was collected in a report submitted to a Canadian ex-prosecutor of ICTR, Judge Louise Arbour, and two ex-RPF soldiers—who were involved in the assassination—were ready to testify, Judge Arbour preferred to cancel the case on the grounds that it was not the mandate of ICTR to investigate RPF. However, whether they want it or not, the article of Steven Edwards in *National Post*, Canada of January the 3rd 2000 has made a point and the credibility of UN and ICTR was since shaken.

(This and other information about Habyalimana's death may be found in Rwanda 2000, on www.geocities.com/iwacu.geo/morthabyara.htm). If then, as Judge Arbour said, the mandate of ICTR is not to investigate the RPF, this seems to imply that any murders committed as a

matter of RPF policy, and in obedience to instructions from authorities are exempt from prosecution. Such a decision seems to render the punishment of genocide, at least on the side of the victors, impossible.

3) The Criminal Tribunal might be instituted by victor and vanquished alone. This case has little chance of happening for it demands that the victor recognize, consider and accept the equal rights of the vanquished. But if ever this happens it is more likely to bring hope for peaceful coexistence because both sides will have made it clear that they are committed to peace and unity.

4) The Criminal Tribunal might be instituted by the victor and the vanquished together with the support of UN. This is also a case that could bring hope of unity, and seems to have more chance than the third case. This is because under the UN's watchful eye, the victor finds it easier to acknowledge and admit his or her responsibility. In this case, the responsibility is left to both victor and vanquished and the UN only intervenes as mediator, facilitator or provider of necessary means in order to bring about justice and reconciliation.

5) The victor alone might institute the Criminal Tribunal. This is more likely to become the justice of dictatorship, for the victor is the only master of the field. The victor has the decision on who is to be tried, how he or she is to be tried and which institution has to try him or her. This is the case of the judiciary system in Rwanda where new judges—all the former judges were either killed during the events of 1994 or removed by the new regime on the grounds of complicity with the old regime of Habyalimana—are formed within the framework of RPF ideology and are appointed and removed by government, according to the way in which they respond to its policies and needs. Because of this, judges in Rwanda are not independent but are controlled by political pressure, and therefore no rule of Law can be said to exist in Rwanda. This is why Lenta says: "The rule of Law requires an independent judiciary isolated from political pressures. This generally means that judges are not removable from their posts" (Lenta 2001: 63). It is partly this lack of independence and proper training of judges that worries observers when it comes to the fairness of the trials inside Rwanda. This is also what we find in Amnesty International Index Report 1997.

The first trials of people charged with genocide and other crimes against humanity in Rwanda have been largely unfair—with most prosecutors and judges having little training, some trials lasting only a

few hours, and an apparent assumption that defendants are guilty unless proven innocent [...]. Most prosecutors and judges have only received up to six months' training, without any prior legal training whatsoever. Despite the significant progress made in recent months to rebuild the judicial system, the use of judicial officials not adequately trained has seriously jeopardised the process and outcome of trials. Furthermore, throughout 1995 and 1996, a number of judicial officials have been removed from their posts, apparently as result of government or military interference with their duties. Because he had apparently denounced the interference of the authorities in the functioning of the judiciary, Celestin Kayibanda, Prosecutor of Butare, was arrested in May 1996, on charges of genocide. Reports of such interference have continued this year. (<http://web.amnesty.org/ai.nsf/print/AFR470131997>)

When it is well known that the charge of genocide can be used by State officials for personal and political ends, the major concern is that innocent people may be tried unfairly and sentenced to death, as capital punishment is accepted by the Rwandan Constitution.

Amnesty International is unconditionally opposed to the use of the death penalty, in all countries, because it is a state-sanctioned violation of the right to life. In Rwanda, the situation is of special concern when people may be sentence to death after unfair trials. (Ibid)

Human Rights Watch expresses the same concern by pointing out that even in cases where innocence was made clear by evidence, witnesses are often harassed and reduced to silence.

In early May, the RPF publicly condemned survivors for falsely accusing others of genocide, but failed to note that RPF leaders themselves also sometimes resorted to false charges for their own ends. In some cases, survivors who spoke out against false accusations or testimonies were harassed by other survivors who wanted the accused persons condemned. A witness at a trial in Butare declared in court that some persons, including judicial personnel, had attempted to persuade him to give false testimony. Threatened immediately after with arrest, the witness went into hiding. (<http://www.hrw.org/wr2k1/Africa-08.htm>) Furthermore, poorly trained prosecutors and judges and their inadequate numbers, together with the

interference of government and the military, do not constitute the only obstacles to Rwandan justice. The overwhelming number of prisoners who are awaiting trial for years and who often are detained without records being kept, is a major threat, given the overcrowding in prisons. This however does not stop security officers from bringing in more prisoners. Overwhelmed by this large number, together with international pressure, and the knowledge that prisoners are dying without trial, the government has instituted a communal justice called “*gacaca*”, which raises even more concern about fairness. This is a form of trial in which the neighbours and acquaintances of an accused person pronounce on his/her innocence or guilt.

Throughout the year 2001, the government promised this alternative form of communal justice, *gacaca*, but late in the year the necessary legislation had not been passed. Although the programme offered some hope of trying the accused more rapidly, it raised concerns about the rights of the accused, particularly because it provided no right to counsel. Although no *gacaca* law existed, authorities implemented a kind of *gacaca* in many prisons, at the direction of the Ministry of Justice. There was no public explanation of how these sessions were conducted or what use would be made of their conclusions. (<http://www.hrw.org/wr2k1/africa/rwanda.htm>)

The judicial dilemma which the current Rwandan government is facing was also a concern raised by Van Zyl: “No criminal justice system can function if as a result of a change in power and policy arising from a political transition, it is suddenly required to prosecute tens of thousands of crimes committed in the past”(Van Zyl 1999: 661). This was well known to the UN when it instituted the ICTR. The UN knew how fast its judicial institutions would go and how large would be the number of Rwandans that could be tried. Because it had all the information, it knew that the Rwandan genocide was not a crime committed by government only but a popular crime, where thousands of people were involved in human rights violations. Nevertheless, it instituted a Criminal Tribunal to try those thousands, an institution that risks being only symbolic, as well as divisive rather than reconciling. When it comes to national reconciliation and peace-keeping, the United Nations also knew that criminal justice must not be seen as the only means to achieve justice, especially when the aim was towards reconciliation and peacekeeping. Maybe it is because it knew that the new RPF regime was no different in terms of policy from the previous regime, and neither was it leading to democracy. Neither the UN nor the Rwandan government sought a more appropriate or efficient approach. Will ICTR be a reconciling organ or a divisive one? This question is worthy of being posed, given the circumstances in which the ICTR was formed. The model of the Nuremberg trials was followed because as in that case, it was the victor who had only to pronounce the verdicts.

The RPF regime had removed its predecessor by military means and asked the UN to put in place a process that would prosecute the vanquished. The assumption was then, as was mentioned above, that only the vanquished are criminals. As Mamdani says, it is this 'victor's justice' that is happening in Rwanda. (Mamdani 2000: 270) What would have happened if the few surviving Jews had decided to remain in Germany and coexist with Nazi Germans just after the Holocaust? Would the vanquished side feel really responsible? Will it not feel itself always victimized by the victor's justice under the UN umbrella? Will reconciliation take place when the "*tu quoque* argument" still has a place? The problem with this argument, as was said above, is that it does not leave room for both victor and vanquished to assume responsibility for their actions. The temptation is always to look at the other, and to say that both sides are equally guilty and should therefore be prosecuted. Even the prosecutor may be conceived of as a potential or obvious violator of human rights, prosecuting others for the crimes she or he has also committed. The only way to avoid this problem, though the '*tu quoque*' argument does not excuse anyone, is to bring to justice all suspected violators of human rights.

It is clear that the ICTR, though officially aiming at reconciliation and peace, cannot achieve its goal, since it was created as a result of the negotiation between the victorious party in the Rwandan conflict together with the UN, but excluded another major party. Though we do not know yet the real intention of the UN in wanting to intervene as a mediator, it was expected to take the places both of mediator and of champion of the vanquished.

The ICTR, unlike the TRC, has taken a side. It represents, in fact, what South Africa has avoided by instituting the TRC. Needless to say, given the Rwandan case, there is no possibility of reproducing a South African-type TRC within the country, partly because Rwanda is a case of genocide on a far larger scale than occurred in South Africa, and partly because Rwanda is still in a pre-transitional period. In this period, there can be no impartial attempt to adopt the South African model before a transitional regime has followed the current regime. Even in that case, it is not obvious that South Africa would be an ideal model. Sooner or later, this transitional regime will be needed because the judicial system, both local and imported from the outside (ICTR), will reveal itself incapable of dealing with all cases. Both the UN and the present Rwandan regime will realize that the possibilities of peace and reconciliation depend heavily on how the various sides in the conflict articulate the terms of a possible solution and define the issues which at present prevent reconciliation. (<http://www.ijr.org.co.za/africpro.htm>) The involvement of all parties in Rwanda is crucial: any solution must be the result of all parties in the conflict being willing to abandon the

antagonisms of the past. If this does not occur, when the victor of today becomes the vanquished of tomorrow, the cycle of murders will begin again.

Given the nature and extent of the Rwandan genocide, it is likely that any judicial process which addresses the wrongs of the past will involve retributive justice. However, peace will be the main target. And this peace will have to relate to Lyotard's definition: a justice of a plurality and a plurality of justice.

Is there any alternative capable of filling the gap created by the UN, which has failed to find the conditions for peace and reconciliation, or even for retributive justice to both sides in Rwanda? What kind of language game does the Rwandan case require?

IV

Possibilities for transitional justice in Rwanda

So far what we have been trying to do is to delineate a clear picture of the Rwandan situation in order to devise an appropriate approach to transitional justice. First we have defined transitional justice as justice that “has to do with a situation in which a previously authoritarian regime has given way to a democratic one, and the new democracy is faced with the problem of how to address the human rights abuses of its predecessor” (<http://www.ciaonet.org/isa/gas02/>).

Transitional justice will differ from one case to another, according to the different needs of each case. The specificity of each case is important, and it may be that the differences are such that no precedents can be used. Possible models are:

- (1) Amnesia, where the main concern is just to forget about the past and to totally concentrate on the future;
- (2) Selective Punishment, where only a few principal figures of the previous and abusive regime are brought to justice;
- (3) Historical clarification, where the main concern is remembering. The problem in each case is to clarify whatever is possible, without identifying prematurely the individuals who can be held responsible. Since these individuals remain unknown, prosecution is impossible.
- (4) Mixed memory and punishment. With this model, remembering alone is not enough; it does not exclude punishment, because here the individuals responsible for human rights abuses are specified. It follows that punishment is possible though it is not the primary objective.

The case of Rwanda requires a different approach. What is special in the case of Rwanda is the extent of the genocide and, as has been indicated, the fact that the nation is not yet in a transitional phase. Any attempt to devise a mode of transitional justice for Rwanda is unlikely to be descriptive of what is happening there, but rather prophetic of what might and should be there in the future.

According to Mamdani, the Rwandan crisis is a political crisis and any attempt to solve the conflict will require a political approach, in that political reform that will take into

account the past genocide, its causes, and its consequences will be necessary. Political reform after the genocide will need to relate to three salient features of the Rwandan situation: first, its starting point, the genocide; second, the consequence of genocide, a tension-ridden polity; and third, the fact that these consequences have overflowed the boundaries of Rwanda, making it the epicentre of the crisis of the Great Lakes area. (Mamdani 2001: 265).

Mamdani believes that with the genocide, Hutu/Tutsi relations have seriously, perhaps fatally, deteriorated. The tensions between these two ethnic groups are volcanic in nature and to “contain these tensions will not only require a drawn-out cooling-off period and an approach that puts reform in Rwanda in the context of a regional reform agenda; it will also require a commitment and a responsibility that is international, not just regional” (Ibid.). However, whatever solution Rwanda opts for, either by following the examples set by Israel or South Africa, or simply by finding a new and particular model, Mamdani contends that Rwanda will have one basic choice to make, the choice “between political union [between its two major groups] and political divorce” (Ibid.).

Recognizing the value of Mamdani’s point, we understand that the Rwanda crisis is not only a political crisis. The genocide has spilled over political boundaries. The crisis has affected any relationship that might exist between Hutu and Tutsi. The healing, which is the great challenge facing the nation and its leaders, must not be forced, but has to happen naturally, however consciously, letting ‘time to take its time’ and taking into account human capabilities. To accept Mamdani’s ideas would be to suppose that at the end of what is known as the 1994 genocide, all armed conflict stopped. But this is far from being the reality. The armed struggle carried on, and remains a threat to any political solution that may be brought forward. Any attempt to address the crisis of Rwanda must start by putting an end to the armed struggle. War must stop in Rwanda and in its neighbouring countries. When the RPF seized power in 1994, the war did not stop inside the country. Not only has the vanquished army continued to launch several attacks but the new government hunts the ‘*génocidaires*’ inside and outside the Rwandan borders. That is one of the reasons why the RPF troops crossed the borders into the DRC, as did the Rwandan refugees, together with the vanquished army, a little earlier. It can be argued that the conflicts of Rwanda have contaminated the DRC and here too war must end. In Burundi, the twin country of Rwanda, problems are more or less the same as in Rwanda. Political and social chaos has lasted for several years and the conflict between Hutu and Tutsi in Burundi has intensified along with the Rwandan conflict. And as long as the war between the rebels and the Burundian government forces does not end and find a peaceful solution, Rwanda is unlikely to achieve stability. Uganda, where the

Rwandan crisis had its origins, does not have peace either. Rebels from the north are still armed, and Rwandans who were deceived by the new regime while they fought for the RPF are going back to Uganda. This situation, together with the conflict in the DRC, where Ugandan and Rwandan troops from time to time confront one another, put the peace of the region in jeopardy.

The end of war would produce a turning point where political power is no longer associated with military power and where the community of the Great Lakes area and of Rwanda in particular would no longer be understood as auto-destructive but rather as an auto-constructive community. The end of warfare would mean that the armed and oppositional forces renounced war and ceased to attack government forces inside Rwanda, and engaged only in political struggle. The end of war in the DRC would mean that the Rwandan government recognized that it has no right to maintain a military presence on Congolese soil. It would mean that the Rwandan government understood and recognized the rights and dignity of the Congolese people, which must not be sacrificed to the interests of Rwandan security. This would mean that Rwandans and Congolese understand that conflicts cannot be solved by arms, but by working together towards a consensus that would serve the common good of all. War offers no solution to these problems, and can only create a vicious circle of victor and vanquished. This was what Tutu implied with his imagery of “top dog” and “underdog”:

It has already been demonstrated that the history of Rwanda is a typical story of “top dog” and “underdog”. The top dog wanted to cling to its privileged position and the underdog strove to topple the top dog. When that happened, the new top dog engaged in an orgy of retribution to pay back the new underdog for all the pain and suffering it had caused when it was top dog. The new underdog fought to topple the new top dog, storing in its memory all the pain and suffering it was enduring, and forgetting that the new top dog was, in its view, only retaliating for all that it remembered it had suffered. It was a sad history of reprisal provoking a counter-reprisal. I reminded the Tutsi that they had waited for thirty years to get their own back for what they perceived to be the injustices that had been heaped on them. I said that extremists among the Hutu were also quite capable of waiting thirty years or more for the day when they could topple the new

government, and in their turn unleash the devastation of revenge and resentment (Tutu 1999: 208).

Another reason why war must end before any solution can be found for the Rwandan crisis is that since the political leaders who would be involved in negotiating are also military leaders, they would find it difficult to concentrate on peace and reconciliation while maintaining their responsibility for the defense of the regime internally and externally. The end of war would mean that the international community, especially those nations involved in the arms trade, has finally understood that the Rwandan crisis cannot contribute to their economic prosperity through the buying and selling of weapons. Rich nations may no longer profit by granting loans, which will be paid back at high interest. The establishment of peace would also imply that everyone has understood that life is so precious that it has to be defended and protected before any other interests, no matter who the person is to be protected. The end of war would mean that the international community is finally willing to break the circle of "top dog" and "underdog" and want to find a more humane manner of dealing with problems.

How this war will be brought to an end depends, not only on the commitment of the parties in the conflict to peace, but also on the international community, and especially on the willingness of the USA to change its policies in Rwanda. To ignore the role that it is playing in Rwanda, either in politics, the economy or military affairs, would be to misunderstand the entire reality. To believe that any problem in which the USA is involved can be solved without the consent of that superpower would be to overestimate the strength of other agents involved in the same problem. This is not to say that the Rwandan crisis is only the responsibility of the Americans, but that any move towards a solution depends crucially on American goodwill. It is worth recalling the role that the international community, especially the UN and the US, has played in the history of the Rwandan crisis; a crisis that was exacerbated, and shaped under colonial rule and which has since appeared the crucial force in Rwandan history. The deterioration of Hutu/Tutsi relationships started when Tutsi, profiting from their position of power, neglected the Hutu, subjugated them and oppressed them till the Hutu started losing even what they had.

The inter-group antagonism of Hutu and Tutsi continued after the revolution of 1959 and increased with the genocide of 1994. Again the UN failed to fulfill its role of peace-keeper around the world, nor did it prevent human rights violations. It has preferred to support a minority group, committed to serving the interests of one warring section of the population,

and to re-emphasise the differences that have not disappeared from the minds of Rwandans. This double victimization of the Rwandan people by the UN, this change of positions, supporting the majority against the minority today, and the minority against the majority tomorrow, seems to have gone unobserved by the historians and analysts who are interested in Rwandan history. It is because the UN has played a vital role in increasing the gravity of the Rwandan crisis that the solution will have to involve the same organ, the UN. The role that the US has played does not need to be debated at length, given the influence that they have in the UN. The US involvement is also dealt with in a previous chapter and can be referred to if needed.

Only when armed conflict has come to an end can the political phase commence. Then Rwandans will have to make the choice outlined by Mamdani: a choice between political union and political divorce. This choice becomes much easier if one considers the options, because political divorce might only bring back armed struggle. The choice of political union would not mean that all political ideologies were transformed and fused into one ideology, reducing diversity to singularity and political uniformity. What is desirable is rather a plurality of opinions, where different political ideologies, through different political parties, are brought together to compete with each other in a peaceful and democratic manner for the good of all the people. This would mean that the Rwandan people were willing to break out of the cycle of injustice that has characterized their history and to make their way into a better world, where the dignity of every person is respected. This change will be a great challenge, demanding that Rwandans face the entire truth without fear of being found guilty or victimised. This facing of the truth is important in order that the country may not again prove the truth of Santayana's words that those who cannot remember the past are condemned to repeat it. Rwandans must not remember the past in any distorted or partial manner, but so that everyone recognizes his/her responsibility. For Rwanda, remembering can only be effective if it admits and faces all the historical injustices of Rwandan history and the Rwandan people, and clarifies all the consequences. Everyone must understand that the problems were not unavoidable and that there is a way of being and living together despite differences. This remembering of the past in facing the truth is what Mamdani calls "reconciliation with history" (Mamdani 2001: 266).

As the overview of the occurrences and reasons for genocide has shown, the conflict between Hutu and Tutsi was a conflict between slave and master, between powerholder and oppressed. Before colonialism formalised and rigidified these relations, the powerholders were unopposed, because what was important for the primitive community was its survival.

Later, when power became increasingly the means of supplying complex economic desires, it was perceived, justly, as increasing the economic distance between groups. At this point, the power struggle became an economic struggle. With colonialism, the relationship between Tutsi and Hutu became the struggle of oppressor and oppressed. In present-day Rwanda this power struggle between the oppressed and the oppressor has finally embraced their entire being, because they believe it to be the only means of survival. Moreover, each side in the conflict believes that the two cannot coexist. Survival equals victory and there cannot be two victors at the same time when there are two opposing parties. Any attempt at reconciliation, including reconciliation with history, must recognize this belief that power equals survival. Mamdani says, "there can be no reconciliation without a reorganization of power" (Ibid: 268).

Once this power struggle is recognized, a new way of opposing each other, without armed struggle, must be found. Another way of reconciling with history will be the recognition that no one was innocent, and everyone was responsible. In fact, for Tutsi to believe that Hutu are monsters who are dedicated to killing Tutsi, or for Hutu to believe that Tutsi cannot be Tutsi without oppressing Hutu will serve nothing except to perpetrate the circle of violence. Tutsi will have to recognize and accept that their ancestors have taken advantage of history to oppress Hutu before and during colonialism. It may be argued that before colonialism the Hutu did not complain, but this cannot be an excuse or a confirmation that it was the right thing to do. The Hutu also will have to recognize and acknowledge that they have made the same mistake after the 1959 revolution by oppressing the Tutsi in their turn. They will have to accept that they started the cycle of revenge, because when they overcame their oppressors they retaliated. They failed to reorganize the society, or Hutu/Tutsi relationships, in a more humane and harmonious manner. If this retaliation had not taken place, the Tutsi might have felt less anger and enmity. Maybe they should have considered that the Hutu did not topple them by revolution in order to exclude them from the political arena and especially from Rwandan history. If this has been the choice, the idea of being 'born-to-rule' that for years was branded in their minds could have been tempered. This would have decreased the post-revolution attacks of *Inyenzi* and neither Hutu and Tutsi would have become extreme and polarised. In the present circumstances, the challenge is to face the consequences in a constructive way, that is, to accept what is real in order to deal with it adequately.

Now that the events of 1994 have made Rwandan history unique, Rwanda is once again at a crossroads of its history. It is because of the uniqueness of the genocide which occurred and its role in current relationships between Rwandans that special attention will be

focused on it, so as to suggest how to deal with its consequences. But before dealing with the consequences, Rwandan people will first have to face it together and to acknowledge its whole truth. This facing the whole truth of genocide, this appreciation of its gravity, will require all groups involved to be honest first with themselves, second, with historical events, and third, with all other parties in the conflict. They have to be honest with themselves because it is here that everything starts. This would mean that they examine their own attitudes and their role in the conflict, and recognize and accept their responsibility; they must have the will to accept the consequences of their actions and to change. This requires them to stop blaming others and considering themselves as innocent or justified. They have to be honest about historical events, so as to put “the truth of genocide, the truth of mass killings, in a historical context” (Mamdani 2001: 268), in order to understand why and how this genocide happened. Just as genocide has consequences, it was itself also a consequence of other events. This chain of events must be freely discussed, otherwise the genocide will never be understood and the truth will remain partially known.

If ever the mistake is made of letting the truth remain hidden, sooner or later it will reveal itself and it may then be too late to prevent disaster. Rwandans must be willing to reveal things as they are, without defending their own side, but acknowledging their own wrongdoing. Given the cultural characteristic of fear of being publicly humiliated that we have pointed out earlier, the acknowledgement of one’s own wrongdoing is likely to be a tough challenge, especially for the victors. Nevertheless, without this acknowledgement, there is nothing that can be done to ensure a sustainable and peaceful coexistence. This being honest with oneself, with the history and with the other parties involved in genocide, is similar to the truth telling in South Africa in the processes of the TRC. It is only when the truth about genocide is known that the Rwandan people as a whole can decide what to do next.

The next step will be to explore all the consequences of genocide. Genocide and its consequences have in fact contaminated all the different facets of Rwandan life, social, economical, emotional, and psychological. The most complicated dimension is perhaps the psychological one. This dimension if neglected or dealt with carelessly might, unperceived, influence the rest of the process. This would also add to the lack or loss of trust amongst people from different ethnic groups, a trust that needs to be recovered, otherwise “co-operation and a thriving life become difficult, if not impossible” (Daryl Koehn 1998: 81). Because Rwandan people of different ethnic groups are condemned to live together, they have to find a way to rebuild this trust for, according to Koehn, “trust is the unperceived ground of many of our perceptions and actions” (Ibid.). Trust is a necessary condition for any social

interaction, economic growth or prosperity, to be possible. Trust implies honesty. If people trust it is because first and foremost they are honest with themselves and with others in their social relations and believe that others are also honest. Honesty with oneself and with others implies admission of the truth. This value for truth implies what we have said above about honesty with historical events. It is a kind of faithfulness to the events. Trust also implies a kind of social justice or a justice in different social interactions. When people trust each other, and, especially, each other's judgment, it is because they believe they will be treated fairly. If belief in this social justice is one day revealed as mistaken, the trust is likely to cease to exist. The assumption would be that because genocide happened once, it can happen again. This is the case of Rwanda: the belief in social justice has been destroyed.

No one trusts the 'other' of another group; there is always a feeling that there might be a hidden interest in the 'other' person especially when he or she is from another ethnic group. Even people who take the risk of trusting again those who have deceived them do so with reservations and reserves; there can be no absolute trust. That is why people who have never been deceived are more disposed to trust than those who are deceived daily. Trust has deteriorated in Rwandan people's relations with each other, especially during the killings where an individual's special friend was the first to reveal to enemies where he was hiding. However, the few that remained faithful to their friends from other groups were sometimes judged on the grounds that if others from the same group could deceive, they were capable of doing the same thing. They were not offered the opportunity to prove their behavioral uniqueness. To reconstruct trust—which is necessary for the success of any society—in Rwandan society will take a long time, maybe generations. That is why trust cannot be considered an absolute or necessary condition for movement to the next step in the transitional justice process. The commitment to movement towards trust is the minimum requirement before entering any relationship.

Some may argue that contracts can replace trust. But the truth is that there is no contract that can be agreed upon without a minimum of trust. Parties to a contract must believe that what is written is really what is meant, and that there is no necessary information that is being hidden by one partner before signing the contract, knowledge of which would have hindered or prevented the agreement. This minimum belief in the other partner is the minimum requirement of trust for any relationship or any contract to take place. When the commitment to trust one another is there, Rwandans will be ready to move to the next step, which, despite the example of Burundi, remains a big challenge. This step is the divorce between group identity and political identity. This means that Rwandans will have to stop

confusing political parties with other kinds of groups. The basis of a political party is its ideology, its vision of how the country should be administered in order to prosper, for the sake of all its citizens, and also for all mankind. To believe that this political ideology, this vision of the country's administration, is shared only by members of one group, would be to disbelieve in the rational humanity of the other group. Such a belief is a sign of intellectual immaturity, which fails to distinguish between the material and spiritual, or a misconception of a democratic system, where ideas and their authors are taken as identical. This is where democracy changes into nepotism, where the ideas of the person known are always preferred to the stranger's, even if they are not brilliant or better. If the idea remains that ethnic majority means political majority and ethnic minority political minority, little progress is likely to be made towards democracy. A clear example is that of Burundi. This country has more or less the same problems as those in Rwanda and the idea that ethnic majority means political majority, present in Rwanda, is also present in Burundi. When democratic elections were organized in Burundi in 1993, the Front for Development of Burundi (FRODEBU), the political majority, which was also an ethnic majority, won and Ndadaye, a Hutu, was to become President. But the Tutsi, the political and ethnic minority, who, unfortunately for the new democratic regime, held more than 90% of the posts in the National Army, did not see the victory as a political but an ethnic one. And because they did not want their group to lose power, their solution was to assassinate the new President. After the assassination, political chaos ensued, which finally resulted in a coup. The former President, Major Pierre Buyoya, who had lost the election, came back into power, claiming that he was the only guarantee for the unity and stability of the country. So far nothing much has been done to improve the situation. It makes sense to believe, with Mamdani (2001), that the solution to the crisis in Burundi may serve as example to Rwandans. But if the recent attempt of the Arusha Agreement between Burundians was to bring them together in order to overcome the impediments to the solution of their crisis, this is unlikely to happen. No one seems to have learnt from history or appears to know where the real problem lies. The solution proposed by Nelson Mandela—the former South African President who was the facilitator of the talks—which was to consider a transitional period, in which a Hutu Vice-President would be elected, with a Tutsi President, for the first period of eighteen months, and then the two are to exchange roles for the following eighteen months period, was also based on the same mistake. It too confused politics and ethnicity, and ethnic group with political party. Will this transition lead to a sustainable democracy in Burundi? Let us hope so, for the sake of all Burundian people.

The main reason why the same mistake was repeated appears to be the lack of goodwill and trust that has characterized the leadership of Burundi, and the lack of information about the ethnic crisis in the Great Lakes countries that characterized Mandela's suggestions in the Arusha peace talks amongst the Burundian people. This is why, given the similarities between Rwandan and Burundian problems, it is not advisable for Rwanda to follow the same path that Burundi has taken. Rwanda should first abandon the ideology of ethnic majority or minority to embrace and "forge a political majority" (Mamdani 2001: 287). This could mean that "a way ha[s] to be found to put together a *transitional* majority" (Ibid.) which would transcend all the different ethnic groupings to give place to political groupings or political parties in which all ethnic groups are represented. If this ideology of inclusion succeeds in replacing the old, exclusive one, the transitional regime is likely to follow. As soon as a political majority that transcends ethnic groups is formed, it will be perceived that the requirements for transitional justice are still to be met. The next step will be the drafting of a constitution, together with a judiciary system that will be capable of dealing with the transitional regime with its problems of coping with past, present and future. This constitution must keep alive in a humane manner the prospect of continuous social reform leading to sustainable democracy.

It must ensure that in the new democracy the rule of law is a national concern. This rule of law "requires an independent judiciary isolated from political pressures. This generally means that judges are not removable from their posts. Even if judges were easily purged, it might take years to train a qualified class of new lawyers and judges to replace them on the bench". (Kritz 1995: xxv-xxvi in Lenta p 63) Given the case of Rwanda, where human rights violations have become a reference point for all innovation, judges will have a key role to play in the new democracy. That is why their training must be formalised and devised to meet all the requirements. Robertson (1999/2000) contends that justice delayed is justice denied: it should be added that justice denied is reconciliation rejected. This is not to say that justice, in the sense of the prosecution of wrongdoers, is the necessary requirement for any reconciliation to take place. Rather the decision of what must be done must be taken by the people, with the interests of the whole nation in mind. It is an elected, majority government, together with all other parties, joining together to develop a constitution that will have to decide what kind of transitional justice to follow. In societies willing to move forwards, knowing the truth might be enough and the acknowledgement of the offences by the wrongdoers might be conclusive for social justice to take place. It is here that justice becomes 'contingent and particular'. According to Lenta (2000) "rules must be followed, but they are

too general to provide justice, which is contingent and particular” (2000: 73). This will require judges empowered to interpret and capable of interpreting every specific case in the light of the constitution. If

in order to come to a just decision, the judge, for example, must not only follow a rule of law or a particular law relevant to this case, but must also assume it, approve it, confirm its value, by a reinstituting act of interpretation, as if nothing previously existed of the law, as if the judge himself invented the law in every case, ...each decision is different and requires an absolutely unique interpretation (Derrida 1992a: 23, in Lenta 2000: 73)

The constitution, which will ensure the rule of law in the new democracy, is the key element in the final step of the preparation for the transitional regime. Without agreement from all sides upon this constitution, which will guarantee the protection of every individual regardless of his or her political affiliation, the transition is unlikely to happen and if it does, there is no guarantee of its sustainability. It is here that the words of Judge Mohammed can find their place:

For a successfully negotiated transition, the terms of the transition required not only the agreement of those victimized by abuse but also those threatened by the transition to a ‘democratic society based on freedom and equality’ (from the Constitution). If the Constitution kept alive the prospect of continuous retaliation and revenge, the agreement of those threatened by its implementation might never have been forthcoming. (Quoted in Tutu 1999: 26)

Judge Mohammed was of course talking about the South African case, but this can also apply to Rwanda. If any side still feels threatened by any forthcoming institution, it will be reluctant to agree to its implementation, and may well be vigorously opposed to it. Once all these prerequisites are met, a transitional regime can be established through democratic elections, and the first task of this new regime will be to institute an organ that will deal with the question of transitional justice.

Conclusion

A conclusion to this dissertation could give the impression that the solution to the question of how to deal with the situation in post-1994 Rwanda has been found. It must be emphasised that though international organisations like UN have a role to play, without the full participation of all the different parties involved in the conflict, there is no hope that any solution is going to last. My conviction is that the conflicting parties within Rwanda itself are the key holders for any attempt to find a sustainable solution.

I have focused on the specific case of post-genocide Rwanda with regard to transitional justice. Transitional justice is understood as a kind of justice that has to deal, in the new democracy, with human rights violations of the past. Because Rwanda is a specific case of genocide, our first concern has been to understand this genocide and see to what extent it has deformed Rwandans' relationships with each other.

The three different sources we have considered indicated that conflicts between Hutu and Tutsi are not of yesterday, but are not as old as these groups in conflicts either. Even though the Tutsi succeeded in subjugating the Hutu long before, relationships between them suffered dramatically in the nineteenth century when—according to Mamdani—King Rwabugiri reformed society so as to emphasise Hutu/Tutsi difference. At this stage there were still possibilities of intermarriage and of changing from one group to another. The Belgian colonial authorities finalized and rigidified the difference, thus putting an end to any movement between the Hutu and Tutsi groups. Believing in their superiority and civilization, the Belgians then defined Tutsi as a foreign race that took up residence within Rwanda to civilize the indigenous Hutu. The problem of citizenship was thus created for the first time in the history of Rwanda. When the UN wanted its Trust Territories to become independent, Belgians began to support the oppressed side, the Hutu, introducing the first strong and permanent difference between majority and minority. From this point the fusion of the concepts of ethnic majority and political majority took place. When the majority Hutu group came into power, a similar mistake was made and Tutsi had to suffer what Hutu had previously suffered. This discrimination against Tutsi led those who had not fled the country during and after the 1959 Revolution and who could not endure the situation inside Rwanda to join others in exile.

The Second Republic of Habyalimana did a little better, by deracialising Tutsi identity and conceding that they too were an indigenous people; the problem of exiled Tutsi remained. Wanting to end the problem of their refugee status in Uganda, the exiled Tutsi organized

themselves into an armed group—the RPF—and came back to their home country to reclaim their citizenship and their lost power. The bloody civil war, which cost so many lives, started on the 1st October 1990 and when Habyalimana was assassinated, there followed the 1994 genocide. This genocide however, far from being an end to civil war, has spread and overflowed the borders of Rwanda. Human rights violations have been since then a recurring phenomenon in the region of Great Lakes. Genocide spread from Rwanda into the DRC, since Tutsi from inside Rwanda felt responsible for the survival of their relatives. Since then, the armed struggle has not ceased.

Taking into account current conflicting information about Rwanda and all the parties involved in the conflict, can one not question the events and ask whether Rwandans are not being victimized and manipulated again, so that they will suffer the consequences later? Were not the 1994 human rights violations the result of an old conflict that lingered on throughout history?

The next question is: is Rwanda being victimized again by the UN? The first victimization of Rwandan people by the UN occurred during colonialism when the Belgians implemented policies that defined the Tutsi as aliens and gave 'indigenous' status to the Hutu. Tutsi and Hutu existed in Rwanda before the arrival of colonialism but both considered themselves as indigenous. While the Hutu were victimised by being considered as inferior though indigenous, the Tutsi were defined as immigrants in their own country. Even though the Tutsi first benefited from these divisive policies of racialisation, they suffered soon after because of the same policies.

With the events of 1994, this phenomenon of racialism risks repeating itself. Whereas racialisation first benefited the Tutsi, now those in power remind citizens of past genocide, and themselves condone present-day killings, which must in the long run lead to retribution by the opposing group. As no one knew that racialisation and indigenisation would one day give birth to the horrifying massacres of 1994, we cannot know what will present-day killings result in. The word 'genocide' carries a great weight of meaning and if the events which have been labeled in this way are not scrutinised and their perpetrators punished, the retribution which follows may be even more serious than if the events of 1994 were called otherwise. Perhaps they were worthy of being so called. But what if it was a misconception or a misjudgment that has led to exaggeration? Mistake or no mistake, history has taken shape because that term has been used. The challenge is to know how to deal with the consequences before it is too late. "Is it possible for people who have been engaged as enemies in a protracted civil war and who have used all kinds of violence against one another to co-operate

in a democratic fashion? Can they implement and maintain the democratic institutions that Nielsen mentions?" (H.P.P Lötter 1993: 131).

To say that this is not possible would be to neglect the fact that problems as well as answers are all made by people. The will is all that is needed for change. In the case of Rwanda, the authors of the problems may already be dead, but those who have inherited these problems are also capable of finding a solution to the conflict they have inherited.

When it comes to the question of transitional justice in Rwanda, I have argued that Rwanda is not yet a transitional regime, because transition supposes that progress towards democracy, and not only is the actual Rwandan regime not democratic but it is opposed to democracy. I have argued that transition may lie ahead, but this requires some preconditions that the Rwandan people will have to first fulfill. These preconditions include an end to any armed struggle; facing the truth of genocide and its consequences; being honest with oneself, with history and with one another; changing the ideology that has fused politics with ethnicity, and ceasing to believe that political majority equals ethnic majority; sitting together and working out a constitution that would ensure the rule of law in the new democratic regime; and establishing a judicial system to deal with transitional justice adequately. Once all these requirements, along with others, are met, a transitional regime may be brought about through democratic elections.

Mamdani's proposition that the identities of Hutu and Tutsi should be dissolved in a crucible of the larger Banyarwanda identity (Mamdani 2001: 281) does not seem to be a good solution. To be a Munyarwanda (the singular of Banyarwanda) does not exclude the possibility of remaining Tutsi or Hutu or even Twa, a third ethnic group in Rwanda. Mamdani's idea is that because the crisis of Rwanda is a political crisis, the solution has to start by political reform. Dissolving Hutu and Tutsi identities in one Banyarwanda identity is understood as essential to national political reform, which needs support from both regional and international communities. This is to say that while regional and international communities are granting their help to Rwandans for national political reform, Rwandans have to re-imagine themselves, to reinvent themselves, not as different groups, but as citizens of one country. This is the idea of classical liberal democracy, where people of one country have to think of themselves less as members of cultural entities such as ethnic groups, and more as citizens. Liberal democracy, a form of representative democracy or an indirect form of majority rule, rests on the basis of traditional values of civil and natural rights (Robertson, D. 1984, 1993). These rights, pointed out by Immanuel Kant as *a priori* freedom, equality between rational beings, independence as citizens, constitute the basis of modern society (Schwarzmantel, J.

1998) and present a dilemma in the modernising political community. What should be the relationships between citizens of the “political community [which is] seen as an association of rational citizens, deliberating together and each forming their plan of life within the framework of the neutral state”? (Ibid: 84) Eatwell (1993) claims that “the state, like society as a whole, came to be seen as a voluntary association held together by mutual consent of its members”. (Eatwell R. and Wright A. 1993: 27) Is this mutual consent enough to solve the dilemma between the rights of citizens as members of an association of rational beings and the rights of citizens as individuals planning their lives privately? Not wanting to go deeper into this discussion, Mamdani says that to avoid more disaster, the minority must not monopolize power. This is also what Ray (1995) believes: “In states where governmental power is exercised autocratically, struggles for control of the government are likely to be more desperate and violent. If the struggles pit ethnic groups against each other, massive violence between them is a logical outcome [and] democratic governance is one logical solution to the ethnic conflict”(Ray 1995: 119-21). If the democratic solution is adopted, minorities’ interests will be accommodated rather than forcibly subordinated or incorporated (Ibid.). This means that Ray (and I am in agreement with him) is advocating political pluralism, which does not have to undermine the moral pluralism of a multiplicity of ethnical values (Heywood 1992, 1998), in the way Mamdani’s proposition would suppose. If the mainstream of national political reform moves towards political democratic pluralism, this idea of Banyarwanda identity would be an irrelevance, that, if it ever happened, might or might not occur within the same political framework. Mamdani believes that if a transethnic identity is found to eradicate all ethnic differences, it could help Hutu and Tutsi to forget their differences and emerge into the political arena. But this can also be achieved without undermining or forgetting these differences.

Rather than wanting to dissolve and forget Hutu and Tutsi identities, the challenge is to accept those identities, but go beyond the barrier that they have so far imposed. This is to say that being a Tutsi does not have to mean that one is an enemy of Hutu or vice versa. In a democratic society towards which the transitional regime would lead, dissolving different identities into one single Banyarwanda identity in order to solve ethnic conflict might involve an artificial homogenisation similar to that of destroying political differences. Anyone who believes that the solution to conflict between those who differ lies in the reduction of their differences to uniformity rather than their uniting in their diversity is likely to commit the same mistake in politics. To reduce political parties with different or even opposing ideas to one single political party would be to change multiparty democracy into a one-party regime.

With a one-party regime, democratic competition is no longer possible because there is only one competitor. This will not solve the problem, because the single Banyarwanda identity will ignore the particularities of loyalties which nevertheless continue to exist (Hutu, Tutsi and Twa) and sooner or later those particularities will reclaim recognition. The solution therefore, is to make all those different groups understand that harmony is possible in difference and that being different does not necessarily mean being enemies or opposing one another. Diversity, rather than being a barrier, is richness for those who want to develop further, because it is a chance offered to them to complete one another. All the different ethnic groups will learn to be themselves in associating with other different ethnic groups, first in politics and later in other areas of social life. This is what I have called moving from ethnical affiliation to political affiliation, or the creation of a transethnic political identity. It is a crucial challenge and the only likely guarantee for sustainable relationships amongst Rwandans.

Bibliography

Adedeji A. (ed) 1999. *Comprehending and Mastering African Conflicts: The Search for Sustainable Peace and Good Governance*. Zed Books. London & New York.

Amir, S., 1972. Underdevelopment and Dependence in Black Africa:--Origins and Contemporary Forms: *The Journal of Modern African Studies*, 10,4.

Amnesty International 08/04/1997. *Rwanda: Grave doubts about the fairness of the first trials*

<http://web.amnesty.org/ai.nsf/print/AFR470131997?OpenDocument/>

_____. 25/09/1997. *Rwanda: Thousands killed while the world remains silent*

<http://web.amnesty.org/ai.nsf/print/AFR470371997?OpenDocument>

_____. 12/03/1998. *Rwanda: "Disappearances" reach alarming proportions, say Amnesty International Delegates.*

<http://web.amnesty.org/ai.nsf/print/AFR470081998?OpenDocument>

_____. 22/04/1998. *Rwanda: 23 public executions will harm hope of reconciliation.*

<http://web.amnesty.org/ai.nsf/print/AFR470121998?OpenDocument>

_____. 13/081998. *Democratic Republic of Congo: Fuelling ethnic hatred escalates human rights crisis*

<http://web.amnesty.org/ai.nsf/print/AFR620311998?OpenDocument>

Amnesty International Report 1999: *Rwanda*.

<http://www.amnestyusa.org/ailib/aireport/99/afr47.htm>

Amnesty International 19/06/2001. *Rwandese-Controlled eastern DRC: Devastating*

Human toll.

<http://web.amnesty.org/ai.nsf/print/AFR620152001?OpenDocument>

Amnesty International Report 2001: *Rwanda*.

<http://web.amnesty.org/web/ar2001.nsf/webafricountries/RWANDA?OpenDocument>

Brewer, A., 1980. *Marxist Theories of Imperialism: A critical survey*. London: Routledge & Kegan Paul

Eatwell, R. and Wright, A. (ed.) 1993. *Contemporary Political Ideologies*. Printer Publishers, London.

Garrett, A.S. *Models of Transitional Justice: A Comparative Analysis*.
International Studies Association, 41st Annual Convention, Los Angeles,
CA March 14-18, 2000.
<http://www.ciaonet.org/isa/gas02>

Harvard University, The Project on Justice in Times of Transition, *The Inaugural Meeting*,
Salzburg, Austria, March 7-10, 1992
<http://www.ksg.harvard.edu/justiceproject/salzburgreport.htm>

Henkin, L., 1981 *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York Columbia University Press.

Herwitz, D., forthcoming 2003. *Race, Reconciliation, Renaissance*. Minneapolis:
University of Minnesota Press.

Heywood, A., 1992, 1998. *Political Ideologies, An Introduction*. 2d edition. Macmillan
Press Ltd. Houndmills, Basingstoke, Hampshire RG21 6XS and London.

Human Rights Watch World Report 1999. *Leave None to Tell the Story: A Genocide in Rwanda.*

<http://www.hrw.org/reports/1999/rwanda/geno->

_____. 1999. *Rwanda: Human Rights Developments.*

<http://www.hrw.org/wr2k/Africa-08.htm>

_____. 2001. *Rwanda: Human Rights Developments.*

<http://www.hrw.org/wr2k1/africa/rwanda.html>

_____. 2001. *Rwanda: The Role of the International Community.*

<http://www.hrw.org/wr2k1/africa/rwanda3.html>

Institute for Democracy and Electoral Assistance: *Democracy and Deep-Rooted Conflict, Chapter 4: Transitional Justice*

<http://www.idea.int/publications/democracy>

Institute for Justice and Reconciliation: *Building Peace, Transitional Justice and Reconciliation: African conflict profile* (undated)

<http://www.ijr.org.za/africpro.html>

International Criminal Tribunal for Rwanda.

<http://www.icttr.org/>

Koehn, D. 1998. *Rethinking Feminist Ethics: Care, trust and empathy.* London: Routledge.

Kritz, N.J. 1995 "The Dilemmas of Transitional Justice", in *Transitional Justice*, ed. Neil J. Kritz, (Washington, D.C.: United States Institute of Peace Press, 1995) pp. xix-xxx

<http://www.colorado.edu/conflict/peace/example/krit3285.htm>

Lenta, P. 2000 *Deconstituting Transition: Law and Justice in post-apartheid South Africa.* University of Natal, Durban. (Unpublished)

Lötter H.P.P, 1993. *Justice for Unjust Society*. Amsterdam: Rodopi.

Lund, M. S. 1996 *Preventing Violent Conflicts: A strategy for Preventive Diplomacy*.

United States Institute of Peace press, Washington.

Lyotard, J-F and Thebaud, J-L., 1979: *Just Gaming*. Godzich, W. (trans). Minneapolis: University of Minnesota Press.

Lyotard, J-F 1988. *The Differend: Phrases in Dispute*. Van Den Abbeele, G. (trans). Minneapolis: University of Minnesota Press

Mamdani, M. "From Conquest to Consent Is the Basis of State Formation: Reflections on Rwanda." *New Left Review*, no. 216 (March/April 1996).

_____. 2001. *When Victims Become Killers*. Colonialism, Nativism, Ethnicity and Genocide in Rwanda. Princeton University Press.
New Jersey 08540.

Melvern, L.R., 2000. *A people betrayed: The role of the West in Rwanda's genocide*. Zed Books. London – New York.

Middle East Watch, 1990 *Human Rights in Iraq*. Human Rights Books, Yale University Press, New Haven and London.

M. Tutu D. 1999, *No Future Without Forgiveness*. Rider, London. Sydney. Auckland. Johannesburg.

Newbury C. 1989. *The Cohesion of Oppression: Clientship and Ethnicity in Rwanda, 1860-1960*. New York. Columbia University Press

Polman, L. 1999; The Problem outside. *Granta* 67.

Ray, J. L, 1995. *Global Politics*. 6th edition, Florida State University.

Robertson, D. 1984, 1993. *The Penguin Dictionary of Politics*. Penguin

Robertson R. 1999/2000. *Crimes against Humanity: A Struggle for Global Justice*
Penguin Books Ltd, 27 Wrights Lane, London W8 5TZ.

Rwanda 2000 : Les articles sur la mort du président rwandais, Juvénal Habyarimana
<http://www.geocities.com/iwacu.geo/morthabyara.htm>

Schwarzmantel J. 1998. *The Age of Ideology*. Political ideologies from the American
Revolution to post-modern times. Macmillan Press Ltd
Houndmills, Basingstoke, Hampshire. RG21 2X5 and London

Shriver, D. W. 1995. *An Ethic for Enemies: forgiveness in politics*. New York: Oxford
University Press.

Strizek, H. 1999 Le Jour où l'Afrique bascula: *Africa International*, No Double 322/323,
Mars/Avril 1999.

Transformation 42 (2000). University of Natal, Durban 4041, RSA.

Truth and Reconciliation Commission :1998. *Truth and Reconciliation Commission of
South Africa Report*. 5 vols. Cape Town:
Truth and Reconciliation Commission

UN Commission on Human Rights, 2/04/1996. *Report of the High Commissioner for Human
Rights on the activities of the Human Rights Field Operation in
Rwanda*

Submitted pursuant to General Assembly resolution 50/200
http://www.unhcr.ch/refworld/un/chr/chr96/country/1996_111.htm

Van Zyl P. 1999. "Dilemmas of Transitional Justice: The case of South Africa's Truth

and Reconciliation Commission". *Journal of International Affairs*.
52:647

Le Pardon ou la Vengeance? (Author unknown)

<http://www.aibf.be/nov/2000/pardon.html>