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Problematizing 'Victim's Justice': Political Reform in Post-genocide Rwanda

Student: Nivrata Bachu
Student Number: 3161573
Degree: M.A Full Master's Thesis
Department: Political Studies
Faculty: Economic Management Science
Supervisor: Suren Pillay

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Declaration

I declare that this dissertation (Problematizing 'Victim's Justice': Political Reform in Post-genocide Rwanda) is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Nivrata Bachu, Date: 19 September 2016

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Title:

Problematising: 'Victim's Justice: Political Reform in Postgenocide Rwanda

Research Question:

Can "Victims Justice" pursued by Transitional Justice in Rwanda, allow for the political reform required to break the cycle of violence?

Key words:

Postgenocide Rwanda, victims' justice, colonialism, race, institutions of rule, political identity, citizenship, political reform, national reconciliation, survivor's justice

Abstract

In this dissertation, I problematize 'victim's justice' in post-genocide Rwanda. I argue that the kind of justice that was meted out in post-genocide Rwanda, namely *victors' justice* and complementary to it – *victims' justice*, does not allow for the political reform required to break the cycle of violence in Rwanda. In the aftermath of the 1994-Rwandan Genocide, both state and society were faced with a moral and political dilemma, because the popular agency or mass participation of perpetrators derived from the Hutu majority, who targeted the Tutsi minority, with intent to annihilate them. There were massacres of both Hutus and Tutsis, but Hutus were targeted as individuals, whereas Tutsis were targeted as a group. It is the specific 'intent to annihilate' Tutsis as group, that makes this a Genocide against Tutsis. I draw and develop arguments made by Mahmood Mamdani, elaborating on the specific question of 'victims justice' for political reform in Rwanda. Both kinds of justice were outcomes of the logic of the Nuremburg Trials. Since its inception, the legacy of the Nuremburg Trial is demonstrated in how it was idealized at the end of the Cold-War by international law and human rights regime. In essence, the historical and political context of the Nuremburg trial has been removed, as it has been produced into a template- the 'Nuremburg-styled criminal trial'. 'Criminal justice' has come to define how we think of justice after mass violence, as the most morally acceptable form of justice for the victims, and the most politically viable response for constituting a 'new political order' after mass violence. This dissertation addresses the argument made, that *victors' justice* and *victims' justice* in Rwanda, has constituted two categories, which collectivise Tutsis as victims and Hutus as perpetrators. In the context of a genocide, where the perpetrators are derived from the Hutu majority and the victims from the Tutsi minority, this present both a moral and political dilemma for Rwanda's state-building and national reconciliation project. Criminal justice also frames mass violence as being criminal, rather than addressing it as political violence. This has troubling consequences for intervening into the cycle of violence in Rwanda. The 'cycle of violence' in Rwanda, refers to the continuation of political violence, in which 'every round of perpetrators has justified the use of violence as the only effective guarantee against being

victimised yet again. Thus, intervention into the cycle of violence would mean thinking out of the logic of victimhood and pursuing an alternative kind of justice. To think of the genocide as political violence, redirects the attention to the issues that made the genocide possible. I establish the importance and necessity of critically interrogating 'victims justice' in Rwanda, by placing the 1994-Genocide in its historical and political context, with a particular focus on the legacy of colonialism. The post-colonial regimes in Rwanda, inherited the colonial institutions of rule; and the politicisation of Hutu and Tutsi into racial categories, which have shaped particular meanings for power, justice and citizenship. I demonstrate in this dissertation that critical issues found in post-genocide Rwanda today, are symptomatic of the inherited colonial legacy. I address the prevailing political crisis through an analysis on post-genocide governance; national reconciliation; the 'land question'; and the Great Lakes refugee crisis. Furthermore, I found that it was critically important for my research question, to also adopt a regional perspective, because Rwanda lies at the epicentre of the Great Lakes regional crisis. This dissertation concludes with returning to the question of political reform, and breaking the 'cycle of violence'. My suggestion is that we need to think of Mamdani's concept of *survivor's justice*, rather than *victims' justice* or *victors' justice*, which assist in confronting the needs of political reform that address colonial legacies.

Table of Contents:

Maps:
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☐ Republic of Rwanda:

☐ African Great Lakes Region:

List of Abbreviations:

ADRN- Igihango	The Alliance for Democracy and National Reconcilliation
AFDL/ADLC	The Alliance of Democratic Forces for the Liberation of Congo-Zaire
AMAHORO-PC	Amahoro People's Congress
ANC	African Natioanl Congress
APROSOMA	L'Association pour la Promotion Scoiale de la Masse
ARAMET	l'Association Rwandaise de Recherche et d'Appui en Amenagement du Territoire
BBC	The British Broadcasting Corporation
CAR	Central African Republic
CDR	Coalition pour la Defense de la Republique
CNDP	Congre National pour la Defense du Peuple
CLRK	Conseil de la Resistance et de la Liberation du Kivu
CS	Civil Society
DDR	Demobilisation, Disarmament and Reintegration
DRC	Democratic Republic of Congo
DGPR	Democratic Green Party of Rwanda
DDR	Disarmament, Demobilisation and Reintergration
FARG	Fonds d'Assistance aux Rescapes du Genocide
FAO	Food and Agriculture Organisation of the United Nations
FAR	Forces Armees Rwandaise
FDLR	Democratic Forces for the Liberation of Rwanda
FDU-Inkingi	Forces Democratique Unifiees/ United Democratic Forces
FRD	Forces of Resistance
FRF	Forces Republicaines Federalistes
MHC	Media High Council
ICC	International Criminal Court
ICG	International Crisis Group
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoalsavia
IDP	Internally Displaced Populations
IJR	Institute of Justice and Reconcilliation (South Africa)
MDR	Mouvement Democratique Republicain
MINITERE	Ministry of Lands, Environment, Forestry, Water and Mines
MRND	Mouvement Revolutionnaire National Pour le Developpement (et la Democratie)
MSF	Medecin Sans Frontiere
MSM	Mouvement Sociale Muhutu
NRA	National Resistance Army
NRM	National Resistance Movement
NSS	National Security Services

NTA	National Assembly of Transition
NUR	National University of Rwanda
NURC	National Unity and Reconcilliation Commission
OAU	Organisation of African Unity
PARAMEHUTU	Parti du Mouvement de l'Emancipation Hutu
PDP- Imanzi	Pacte Democratique du Peuple
PDR- Ihumure	Party for Democracy in Rwanda
PL	Parti Liberal
PSD	Social Democratic Party
PS-Imbekuri	Social Party-Imberkuri
RADER	Rwandese Democratic Union
RANU	Rwandese Alliance for National Unity
RCD	Rally for Congolese Democracy
RDR	Republican Rally for Democracy
RDF	Rwandan Defence Force
RGF	Rwandan Government Forces
RIMEG	Rwanda Independent Media Group
RPA	Rwanda Patriotic Army
RPF	Rwanda Patriotic Front
RNC	Rwandan National Congress
SPLM	Sudan People's Liberation Movement
TRC	South African Truth and Reconciliaiton Commission
UN	United Nations
UNAR	United Nationale Rwandaise
UNHCR	United Nations High Commissioner for Reguees
UNLA	Uganda National Liberation Army
UNSC	United Nations Security Council
UNGA	United Nations General Assembly
UNHCR	United Nations High Commisioner for Refugees
UNITA	The National Union for Total Independence of Angola
USAID	United States of America Agency for International Development
WWI/II	World War I/II

Introduction

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"Many Hutu families have returned to the hills, even though their men are in prison. Some completely disagreed with what happened, others fully supported it.

These families work their plots amongst themselves; they hardly speak to us, they do not return anything that they looted, they do not ask for pardon. Their silence makes me feel very uncomfortable.

I am sure I have recognized some criminals' faces amongst these families working in the fields. They have kept muscular arms fit for cultivating. My sister and I have only slender arms to feed the orphans. I do not think it's realistic to only entrust time and silence with the difficult mission of reconciliation."

- Angelique Mukamanzi, 25-year-old Rwandan farmer [1]

In those hundred days of slaughter, beginning on the 7th of April 1994, Hutus were summoned on a "national duty" to exterminate the Tutsi population in Rwanda. The national call came after the presidential plane carrying President Juvenal Habyarimana and Burundian President Cyprien Ntaryamira was shot down, leading to a coup d'état. The government did not carry out the killings, rather, the agenda was imposed from above and became a gruesome reality carried out on the ground by 'ordinary Rwandans'. We know now that the killers were derived primarily from the Hutu population, and that women and children, religious leaders, teachers and friends or married partners, turned on one another and participated in the horrific violence. One of those killers, Adalbert, describes their targets as cockroaches, and later as 'dogs', 'snakes', or 'zeroes'.[2] As the massacres swept through the Provinces/Secteurs of Rwanda, taunts were used to trick and lure victims out of the marshes and hills, and were accompanied with insults, that as Adalbert remembers as being "invigorating… made the job easier. The perpetrators felt more comfortable…because they seemed less like us in that position."[3] The perpetrators used weapons, such as machetes, that were familiar to Rwandan culture and identity. Killing was an exhausting act, often involving several killers for every single victim. Sexual violence targeted Tutsi women, for their gender and ethnicity, with propaganda calls to 'dehumanise and subjugate' all Tutsi, but particularly Tutsi women who were accused of 'infiltrating the Hutu community' through intermarriages.[4] Unlike the typified example of the Nazi German-Holocaust, the Rwandan genocide was an intimate affair.[5] People were killed openly on the streets, often witnessed by hundreds and thousands of Rwandans. Estimates of those killed range between: 500, 000 - 1 million Tutsis, and between ten to fifty thousand Hutus.[6] Absent from the official narrative of the genocide, is that many Hutu political opposition, wealthy Hutu property owners, and 'moderate Hutus' (who refused to participate) were killed. Hutus were killed as individuals; Tutsis were targeted as a group. It was the explicit goal to eliminate Tutsis between March and July that make this genocide.

The genocide began to wind down as quickly as it has begun. In part, this owes to the perpetrators becoming exhausted from killing, but the genocide also dissipated through the advancement of the armed wing of the Rwandan Patriotic Front (RPF), which was securing

areas as they made their way to Kigali. The RPA consisted of the exiled Tutsi diaspora from Uganda, as well as some Hutu dissidents and political opposition to the Rwandan regime. Four years earlier, in October 1990, the RPF organised an armed repatriation from Uganda and invaded Rwanda, triggering a civil war between 1990-1993. The civil war was interrupted by a ceasefire agreement, and the political negotiations began through the Arusha Peace Accords. President Habyarimana made little effort to implement the stipulations of the Arusha Accords. Against the backdrop of increasing anti-Tutsi violence taking place in the countryside and the RPF's obsession with providing security to the Tutsi population, thus they broke the ceasefire agreement and the civil war resumed. The escalation of massacres evolved into a full-blown genocide by April 1994. The RPF claimed military victory in July 1994; it also meant a political victory, in light of the terms of the Arusha agreement.

In the aftermath of the genocide, there was a great sense of guilt felt by the international community, for failing to intervene. The only offering deemed fit for the victims; and the most morally acceptable and politically viable response to mass violence, was to seek retributive justice (criminal justice). The aim was to hold every perpetrator, and military and political leader, criminally accountable for the crimes they committed under international law. Therefore, the International Criminal Tribunal of Rwanda was conceived and operated in Arish, Tanzania. Belgium and Switzerland also lent their support by pursuing prosecutions in their national courts (third-party courts). The Rwandan government embarked on an ambitious judicial pursuit of its own, through its 'policy of mass accountability'. The Rwandan state made use of the national judicial system and resurrected a 'traditional' mechanism- the Modernised Gacaca court. The Modernised Gacaca Court combines both retributive and restorative justice, argued to be necessary for reconciliation in post-genocide Rwanda

Statement of the research problem:

Two decades later, and the sheer magnitude of the violence during the 1994-genocide, as well as its popular agency, and the socially binding gruesome act of killing, continues to capture the imagination of the world. The genocide attracted a great deal of attention and writings from various kinds, such as from the international humanitarian community, transitional justice scholars, diplomats to journalists. Little was known about Rwanda before the genocide, which led to an obsession with the case, and it being looked at through a 'genocide lens'. The genocide also took place during a period of significant developments being made in the human rights regime discourse and international law, which drew a host of post-conflict analysis and particularly transitional justice policy suggestions. Much of the initial work on the genocide lacked historical background, political context, and understanding of the social dynamics, because most of the literature on African conflict was focused on macro-explanations that mirrored the rise of liberal-democratic agendas. There was also limited quality research and empirical data. Initially, most of the information came from humanitarian aid workers/agencies and journalist that were in Rwanda. Moreover, the literature was constrained by epistemic hierarchies and boundaries of knowledge that reflect the colonial and neo-colonial experiences on the continent.

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Today, Rwanda is still predominantly thought through the 'genocide lens', but there has been a significant developments in the scholarship, and in more recent years, we have seen a growth of 'Rwandan scholars', that are also specialising in the geo-political region- the Great Lakes region. These scholars are conducting invaluable fieldwork research and producing empirical data that is acutely necessary for the current debates on Rwanda. They have assisted the shift from simple-explanations and bias interpretations by providing evidence on the specificities of the Rwandan case study. Rwanda has a complex historical and political context that requires the support from these kinds of research studies that can break away from meta-narratives and explanations. The 'genocide lens' emerged out of the international guilt- the outright failure of the international community to respond, and act timelessly on the initial reports that genocide was fully on its way. The post-genocide ruling party, the RPF, has been vociferous about the international community's indifference to the on-going massacres of Tutsis, especially in the context of Yugoslavia and the envisioned principle "Never Again". 'International guilt' plays a crucial role in Rwanda today, as the post-genocide regime has garnered support in its nation-building project, from s important international actors ("Friends of Rwanda": U.S, U.K, Netherlands…etc.). However, these highly influential 'Friends of Rwanda' that have embraced the current regime, have also contributed to obscuring historical background and the perception of current political and social dynamics. Lastly, transitional justice in Rwanda has had a powerful impact on the interpretation of the genocide and its explanation.

The type of justice that was meted out in response to the genocide was born from the logic and legacy of the Nuremburg Tribunal. A central critique of the justice dispensed was that it was essentially a 'victors justice'. 'Victors justice' is an outcome of a historical tradition, which argues: after the war has ended, there is clear victor who has the power to determine justice and administrate it. This victor is most often referred to as the 'military victor'. Complimentary to 'victors justice' is 'victims justice', which operates on the logic, that only the 'victor' can determine and secure justice for the victims. Rwanda is argued to be the more recent example of 'victor's justice' and operating on a 'victims justice' rationale. This dissertation draws on arguments made by Mahmood Mamdani. I develop points made by him, whilst elaborating on the specific question of 'victims justice'. Mamdani's argument has informed my discussion on political reform in Rwanda, in the wake of the genocide. This dissertation addresses the argument made, that 'victors justice' and 'victims justice' in Rwanda, has constituted two categories, which collectivise Tutsis as victims and Hutus as perpetrators. In the context of a genocide, where the perpetrators are derived from the Hutu majority and the victims from the Tutsi minority, this present both a moral and political dilemma for Rwanda's nation building project. It also has troubling consequences for intervening into the cycle of violence. The 'cycle of violence' in Rwanda, refers to the continuation of political violence, in which 'every round of perpetrators has justified the use of violence as the only effective guarantee against being victimised yet again. Thus, intervention into the cycle of violence would mean thinking out of the logic of victimhood and pursuing an alternative kind of justice.

Elaborating on arguments made by Mamdani and in the literature, my research investigates the political crisis that made the genocide possible. I depart by exploring the relationship between history and politics, particularly problematizing the legacy of colonialism by critically interrogating Rwanda's political record. The post-colonial regimes inherited the colonial institutions of rule; and the politicisation of Hutu and Tutsi into racial categories, which have shaped particular meanings for power, justice and citizenship. I demonstrate in this dissertation that critical issues found in post-genocide Rwanda today, are symptomatic of the inherited colonial legacy. I address the prevailing political crisis through an analysis on post-genocide governance; national reconciliation; the 'land question'; and the Great Lakes refugee crisis. Furthermore, I found that it was critically important for my research question, to also adopt a regional perspective, because Rwanda lies at the epicentre of the Great Lakes regional crisis.

This dissertation comprehensively ties together these various themes to produce a political explanation for the Rwandan genocide and a more complete picture of the political crisis. My specific contribution is to look at these areas and the dimensions of the problem. This is with the hope of contributing to the current debate on Rwanda, and to the discourse on post-conflict political reform, transitional justice (national reconciliation and justice) and resolutions addressing the Great Lakes refugee crisis. A broader aim of this dissertation is to also participate in the critical discussions and discourse that are seeking alternative and more suitable theoretical frameworks for approaching political questions in relation to political violence in Africa.

Organisation and scope:

This dissertation is divided into six chapters. As a primarily literature-based study, and because this is a complex research problem, I provide a literature review in each chapter, that contributes to the overall argument that I make.

Chapter one elaborates on the specific question of justice. I am specifically addressing how we have come to think of justice and how it is meted out, in response to mass violence. Our contemporary understanding of 'justice' has been framed by contemporary legal, political and an ethical vocabulary. Thus, through a literature review, I trace the genealogy of the origins of 'justice' and explore how previous practices of 'successor justice' have become the most appropriate response to mass violence. This allows the chapter to critically interrogates the 'logic of Nuremburg' by thinking about the historical and political context that shaped the justice debate amongst the victorious allies (World War II). This chapter addresses the central critiques of Nuremburg, particularly 'victors justice' and 'victims justice.'
The second part of this chapter explores the legacy of Nuremburg, particularly its contribution to the field of transitional justice. I also address the dilemmas born of the practice of criminal justice and its limits for political reform and nation building.
The third, and final part of this chapter, introduces Rwanda's transitional justice project. This chapter situates the dissertation's research question and provides a foundation for the following chapters.

Chapter two focuses on the genocide, and places it in its historical and political context. I depart with a discussion on the interpretation of the genocide, particularly questions around mass participation or popular agency. I address this through the 'official narrative' sanctioned by the post-genocide state. The Rwandan government has pieced together a historical record that is derived from the judicial record. I will problematize the limitations of this approach to historical inquiry. I also introduce the current debates and interpretations provided by key Rwandan scholars, who have conducted extensive fieldwork and make invaluable contributions to the literature on the Rwandan genocide. This chapter will provide a critical review of Mahmood Mamdani's theoretical framework and interpretation of the genocide. I will also present my justification for drawing on arguments made by Mamdani and his theoretical framework. To situate my research question and argument, I critically interrogate the post-colonial political record. This discussion includes the argument that the political crisis is an outcome of the failure for post-colonial Rwandan regimes, to disinherit the colonial legacy. The colonial legacy has shaped particular meanings for power, justice and citizenship (rights and belonging) premised on the politics of indigeneity. Through this discussion, I demonstrate how law, politics and history are inextricably linked and contribute to the political crisis. Finally, I address the Arusha Accords (1993), and the negotiated agreement. The Arusha Accords interrupted the civil-war (1990-1993). I argue that due to its failures to include all constituencies in the negotiated agreement, it paved the way for the resumption of war, which evolved into the 1994-Genocide. A central critique made by 'Hutu Power', the government and other radical Hutu parties was that they it was a 'victors deal' for the RPF. This is an important discussion, because the final agreement was institutionalised in the post-genocide government.

Chapter three investigates the post-genocide political record and governance. I depart this chapter by exploring the post-genocide gains, and the two radically different perceptions of Rwanda today. I approach post-genocide governance by addressing the RPF's experience of exile; its ideological influences; and the Rwandan perceptions born from the RPF's October 1990 invasion, which triggered a civil war. As the military-victory of the genocide, the RPF were seen as being primarily an outsider to Rwanda's social and political relations, and it was representative of an even smaller community than the Tutsi minority- it came from the Tutsi diaspora in Uganda. The RPF recognised that it would have to strategically address these perceptions in order to gain legitimacy. This chapter investigates how the ruling-party (the RPF) has taken up political reform in Rwanda, specifically through the following indicators: transitional government; policy prioritisations; election processes; internal and external political opposition; the media and civil society. I look at two periods: 1994-2000 and 2000-present. I elaborate on the argument that post-genocide Rwanda has seen a 'Tutsification of the state'; closing of the social and political space; the RPF has monopolised power by using law as a political tool. Finally, I explore the political opposition, which today primarily operates in exile due to state-repression and violence. However, both Hutu and Tutsis political personalities are engaging in an inter-ethnic dialogue in exile, which has had an impact on internal debates.

Chapter four looks at the national reconciliation and unity project in post-genocide Rwanda. Rwanda's reconciliation project is premised on justice, socio-economic development, and re-education of the population and eradication of ethnicity. The state has also centred 'traditional' mechanisms (Gacaca courts and Ingando re-education camps) to guide and implement the reconciliation project. I address reconciliation through the three main instruments that the state uses: politics, law and history. I also situate the experiences of 'ordinary Rwandans' with the state-sanctioned reconciliation project. I make the argument, that the post-genocide state has politicised reconciliation; ethnic-discrimination; and disciplines 'truth', 'memory' and 'history'.

Chapter five addresses the 'Land Question' in Rwanda. Land reform in Rwanda demonstrates the failure of political reform in post-genocide Rwanda, through the 'land question'. Land has played a central role in state formation in pre-colonial, colonial and post-colonial Rwanda to today. In a predominantly agrarian society, and in the political historical context of Rwanda, who governs the land determines who has rights, who belongs, and who will develop from it. Land is the most important material benefit that gives meaning to citizenship and rights in Rwanda. Thus, I explore political and social relations in Rwanda, which has evolved with state-formation. I also describe how the colonial intervention used pre-colonial land systems and activities, to add claim to their 'ideology on race', which would be used to reconstruct Hutu, Tutsi and Twa into political identities. The political identities gained meaning through the separate institutions of rule that governed them. The colonial intervention has had a devastating impact. Land association became markers that further shaped the different political identities, and produced a hierarchical system amongst the races, which saw the degradation of Hutus and genesis of Tutsi privilege. This chapter discusses the colonial legacy and the implications it has for rights and citizenship in post-colonial Rwanda, and in post-genocide Rwanda. The argument I make is that the institutions of rule continue to retain political identities. Finally, I discuss the confluence of the post-colonial political crisis in Uganda, and its own one in Rwanda, that led to the armed repatriation of the RPF in October 1990. The political argument made by the Tutsi diaspora was based on a 'right of return'. This argument continues to be made today, as the post-genocide state encourages 'Rwandans' to return from the diaspora. The manner in which the RPF has addressed the returning population is telling of the political crisis.

Chapter 6 explores the implications of 'victims justice' for the Great Lakes region. I address the logic of the post-genocide power, which sees a moral obligation to protect Tutsis within Rwanda and the diaspora. The logic is an outcome 'victors justice' and 'victims justice' rationale, and has driven the RPF to seek justice for Tutsis beyond Rwanda's borders. The RPF has relentlessly targeted Hutus in the region, and as a result Tutsis in the diaspora have been victimised in Congo. Both Hutus and Tutsis have become victims caught up in the political crises, which has displaced millions of people. Thus, the cycle of violence in Rwanda has taken on a regional dynamic. Central to the political violence, is the politics of indigeneity, which contributes to communities being excluded from making a claim on rights and citizenship. I approach the Great Lakes refugee crisis, by returning to the unresolved

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political crisis in Rwanda. Specifically, I address the limitations that 'victims justice' have placed on political reform, democratisation and is an obstacle to inclusive-citizenship.

Chapter One:

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1.1 Introduction

This chapter will elaborate on the question of justice. I am specifically addressing how we have come to think of justice and how it is meted out, in response to mass violence. Our contemporary understanding of 'justice' has been framed by contemporary legal, political and an ethical vocabulary. Thus, through a literature review, I trace the genealogy of the origins of 'justice' and explore how previous practices of 'successor justice' have become the most appropriate response to mass violence. This allows the chapter to critically interrogate the 'logic of Nuremburg' by thinking about the historical and political context that shaped the justice debate amongst the victorious allies (World War II). I address the critiques of Nuremburg, particularly the kind of justice that was dispensed was seen to be 'victors justice' and complementary to it was a 'victims justice' rationale. The second part of this chapter explores the legacy of Nuremburg, and its contribution to the field of transitional justice. Stripped of its historical and political context, the Nuremburg Tribunal has since its conception, been shaped by international criminal law and international humanitarian law, into a popularised legal standard. Criminal justice is considered within the transitional justice field, to the most morally acceptable and politically viable response to mass violence.[1] I will also address the dilemmas born of the practice of criminal justice and its limits for political reform and nation building. The third, and final part of this chapter, introduces Rwanda's transitional justice project. This chapter situates the dissertation's research question and provides a foundation for the following chapters.

1.2 Just War and Justice: A Brief History of Justice

The Nuremburg Tribunal has become a 'template' through which we have come to define mass violence in the post-Cold war period.[2] One of its central critiques is that it serves as a significant example of 'victors justice' and since WWII, the "vision of successor justice is dominated by the legacy of Nuremburg."[3] However, both 'victors justice' and the logic that led to the formulation of Nuremburg, is rooted in a long established tradition of how we have come to think of justice and how it has been meted.

There is a historical presumption, that after a military victory (either from a war between states or a revolution between classes) there is a clear victor, under whose power justice is administrated.[4] This is understood as 'victor's justice- a term coined by Richard Minnear in 1971 as a political critique of the justice dispenced at Nuremburg and Tokyo, but which is derived from an age-old practice of 'successors justice'. The term is closely linked to 'vae victis', which is is latin for "woe or suffering to the conquered".[5] Historically, the victor has based their punishment on "what is right or wrong for their own forces and for those of the (former) enemy".[6] In the cases of 'successor justice', seeking punishment trumped the rights of the defeated enemy.

All ancient cultures have dealt with the question of 'justice' and whether to prosecute (punish) or to grant amnesty (impunity). In todays normative expectation of justice, which frames much of our "contemporary legal, political and ethical vocabulary", our understanding of 'justice' is derived from Christianity and Western modernity.[7] Determining the 'proper response to a wrong' or justice, is traced to the latin term *lex tallions*, which relates to the biblical notion of "an eye for an eye".[8]Wheras today, most of the world does not literally comply with the principle of an "eye for eye", as Suren Pillay asserts, it has been 'intergrated into the secular rationality of modern juridical discourse.'[9] Pillay argues that "Today the concept of lex tallions has a wider meaning in that it is more often used to refer to a set of legal categories of punishments proportionate to a crime committed, an approach described as 'retributive justice'."[10]

It is necessary to mention in the discussion on 'criminal justice' as the preferred mechanism for justice, that the application of amnesty has also been practiced for as long as 'humankind has existed'. Amnesty derives from the greek term amnestia, which means "forgetting", and choses to rather restore the political and civil rights of the former enemy.[11] Through either 'unconditional or conditional amnesty', the state effectively wipes the slate clean of past criminal injustices, with the hopes that it will prevent revenge, consitute national unity, and enable political order.[12]Thus, amnesty 'obliterates the crime itself'. The suggestion that it is an act of 'forgetting' has stigmatised the historical practice, and has left practices of amnesty to exist in the shadows of retributive justice. It also goes against our 'human nature' and the rich historical influences of religion and philosophy, that has determined what is 'wrong or unjust behaviour'. Kingsley Chiedu Moghalu argues that "the popular fixation with the idea of justice actually springs from a certain duality in human nature."[13] There exists a "strong instict towards injustice", and although unjust acts may provide temporary value or benefits for the perpetrator who commits unjust acts, the suffering of the victims and the injustice, far outweigh those temporary benefits.[14] Moghalu asserts that "the instinct to be unjust has come to be checked by law and moral precepts."[15] This rationale has been adopted at the level of the state, where there is a tendency to view war crime trials as "somewhat romantically, as mechanisms for neutral impartial justice meted out to the really nasty fellows who commit egregrious violations of human rights."[16] The problem is that war crime justice is framed and carried on in a political context of sovereign state, "War crimes are frequently committed to advance political agendas" and thus the response to them is different than 'justice applied to ordinary times' but rather war crime justice is a deeply political act.[17]

The argument that war crime justice is political holds for all expressions justice, whether they be to prosecute in the form of a criminal trial or to grant amnesty or padon. However, the 'victors justice' critique, is concerned with the whether criminal justice is an effective response to state wrongdoing, and secondly, there is a suspicion that criminal justice is merely a "function of power" that is disgusied by its persuasive argument that advocates for justice and liberalising the repressive regime.[18]

William A. Schabas argues that prosecutions of the war criminals has taken place since even

prior to the Ancient Greek era, and the early laws and cutoms of wars can be found in the writings of classical authors and historians.[19]Formerly, prosecutions of war criminals were entrusted to the state and would only take place through the national courts. However, over time in the context of the states wrongdoing in the international realm, the 'national justice systems' proved to be "incapable of being balanced and impartial in such cases", and concerns were raised over the fact that victims remained subjugated to their powers and impunity prevailed.[20]

Since the Middle Ages, international legal norms have related justice to unlawful political violence, and successor trials have long been used to express condemnation of unjust behavior. Ruti G. Teitel asserts "the attribution of criminal responsibility to prior political leadership for waging unlawful war, or other similar bad state rule, is the thread running through the ancient successor trials of the tyrants of the city-states described by Aristotle and the trials of Kings Charles I and Louis XVI, to the trials in the contemporary period: the Nuremburg trials, the Tokyo war crimes trials…".[21] In each case the logic to pursue punishment through retributive justice, has been formulated in a counterfactual response to the questions "*what result if not punishment?*" and "*To what extent are broader rule-of-law values jeapordised without punishment?*"[22] Furthermore, as Teitel asserts "this early understanding of the relation of law to justice yields yet another formulation at Nuremburg, where trials were used to express a much broader normative message, going beyond the judgement of a defeated foreign regime, to distinguish 'just' from 'unjust" violence.[23]This has attracted a long-established critique in the practices of justice, which argues that the 'war criminal is that who happens to have lost the war', a determination that is made by the 'victors'.This is where the 'political circumstances of the transition play a role' because the dilemma of whether to seek 'punishment or impunity' is framed within its liberalising prospects for the state, and the counterfactual arguments posed have historically made it difficult to undermine the foundational arguments for criminal justice.[24]

'Modern legality' was formally introduced at the end of the era of feudal rule or 'monarchical state'. It also introduced the early remnants of 'transitional justice'- which is "commonly linked with punishment and trials of ancien regimes."[25] The 'ancien regime' was characterised by its 'unpredictable violence and executive preroragative', which demonstrated a weak 'rule of law', where the principles of "equality before the law" and "equally subect to it" were not upheld.[26] The trials of the *ancien* regime centralised the argument that it is acutely necessary to (re)establish the rule of law, and to use the trial to delegitmise the former violent identity of the repressive regime and transition the state to a more democratic order. The French Revolution bore a "human rights movement' that looked at the 'human rights of man, the citizen-it sought to empower the victim and to focus on issues."[27]The idea that even the 'King' was not above law, and the shift from the monarchical state to Republican rule, where equality before and subject to the law was a core principle of the state, became symbolic of modern legality.[28]It also introduced the idea of the 'civilised state', that would become part of an international "horizontally organised system of sovereign states" and contribute to the universalising notion of justice.[29]

In 1648 the Treaty of Westphalia was introduced as a desperate solution for peace in a period characterised by the 'religious wars being fought' and worrying escalation of wars because of foreign inteventions.[30] The Westphalia Treaty affirmed: "the right of rulers to determine the confessional allegiance of their states and subject…and the corresponding secular supremacy of territorial rulers over their dominions."[31] This raised an important scholarly debate between advocates for natural law and those opposing them- advocates for positivist law. It also raised questions concerning the practice of 'successor justice' and the historical experiments with international justice. With the sanctitiy of state re-affirmed, there was shift that had to recognise national trial policy and respect that 'national justice' can determine who is rightfully accountable and what is considered a crime within the territory of the sovereign state. Despite the Westphalia Principles, there were encouraging developments that took place in international law which also introduced the beginnings of international humanitarian law. Lastly, it lent to much political theorizing about the 'laws of war' (jus ad bellum and jus in bello), as well as the jus post bellum.

The 'just war tradition' has historically tried to create a set a mutually agreed rules of combat, and this often takes place between two culturally similar enemies.[32]
The 'just war'' is divded by two principles; 'Jus ad bellum' which refers to "when we may justly resort to war", meaning the rules that govern the justice of war; and there is 'Jus in bello' which describes "how the war may legitmately be fought".[33] The aphorism- 'War should always be the last resort', provides the very basic premise of 'just war', and can be advocated from a military, ethical, political or philospophical view. Secondly war should not be excessive. Just war theorist' argue that there are three possibilities that emerge after the cessation of war: "either the army has been defeated, has been victorious, or it has agreed to a ceasefire."[34] Thus, sometimes a third dimension is discussed- "Jus post bellum" which refers to the responsibility and accountability of warring parties after the war.[35] ' "Jus post bellum" recognises that discrimination and punishment against the civilian population or non-combatants should be avoided at all cost, and that the 'victors' must respect the rights of the defeated, and apply justice proportionally to the 'war's charcter'.[36]

The Hague Conventions of 1899 and 1907 represented the first codifications of the 'laws of war' in an international treaty, and it centred the 'protection of civilian populations'.[37]The intention of the Hague Conventions was to influence states through obligations and duties, by establishing certain acts as illegal, but not necessarilly though of as criminal.[38]It did not intend to seek criminal liability from individuals and was wary of aggressively meddling in the 'internal affairs of the sovereign state'. In the aftermath of WWI, it became distinctly apparent that idea of 'obligations and duties' had failed to comprehend the interests of the state and prevent violations of 'unjust war behaviour'. This coincided with the brith of the Humanist tradition, which was responsding to the discourse by religions, the Pagans, the Greeks…etc, and expanded on the arguments made Marcus Tulius Cicero (106-43BC), who wrote "no war is just, unless it is centered upon after an official demand for satisfaction has been submitted or warning has been given and a formal declaration made."[39]Humanist make an appeal to 'reasoning' that centres an ethical philosophy of humankind and human nature, and values agency of the individual and collective in its understanding of settling disputes

and living under the ocndition of the rule of law'.[40] There has been a critical theorising of the inter-war period concerning the relationsip between the state and the international system, by the schools of Liberalism and Realism, and other key scholars as that of Hedley Bull.

Karl von Clausewitz, who is a 'realist' to some degree, wrote a key response to the common belief in the early 20th Century, that war represented a "breakdown" or "malfunctioning" of the state and its people, instead he argues war is a "normal feature of international relations" and "is not the end of political activity, is is conducted for political purposes."[41] In one of Clausewitz's key texts, *Politik*, he writes that, "*War is simply the continuation of political intercourse with the addition of other means, We deliberately use the phrase 'with the addition of other means', because we want to make it clear that war in itself does not suspend political intercourse or change it into something entirely different. In essentials that intercourse continues, irrespective of the means it employs . The main lines along which military events progress, and to which they are restricted, are political lines that continue throughout war into subsequent peace.*" [42] Filip Reyntjens paraphrases Clausewitzs notion ("War is the contiuation of politics by other means") into " "lawfare" though less conspicuous, than warfare, can be a continuation of politics by other means."[43] 'Lawfare' is a controversial term, because it is in some cases used as a political critique of the unversalism normativity of law and assumption that law it neutral/impartial. However, it can also provide an inwards that justifies the violations of law and continutaion of political violence. It is an important debate, that is central to the discussion in this chapter, because it explores the relationships between domestic and international law, and the limitations for political and social reform.

WWI placed immense pressure "to go beyond violations of the laws and customs of war and to prosecute…".[44] However, the political and strategic considerations that go into the processes of establishing an international criminal tribunal and following through with prosecutions processes, failed to capture the commitment of the so-called international community to would hold Germany accountable. Instead they left Germany's transitional justice in the hands of national trial policy, with the hope that it would hold its leaders accountable to national justice and transiton Germany towards a long-lasting democratic order.[45] Finally, despite the theorising on minority-rights and the protection of human rights, the German-Holocaust took place, which exposed a crisis for state-sovereignty and internaitional law.

1.3 The Logic of The Nuremburg Trials:

In the aftermath of World War II there was a strong conviction that the Germans must be punished for war crimes committed, and the extensive loss of civilian lives. The Allies feared that the post-WWI treaties failed to restrain Germany's aggression and vision for establishing itself as the superpower (political, military and industrial strength), which was formulated through a racialised identity based on a belief in a 'superior Aryan race'. Joseph Stalin had proposed the execution of 50,000 German leaders as a "suitable deterrent".[46] Winston Churchill thought the execution of 5000 leaders would suffice. In the end the Allies decided

to pursue a criminal judicial mechanism, as espoused by the Declaration of St James: "the punishment, through the organised justice, of those guilty and responsible for these crimes, whether they ordered them, perpetrated them or in any way participated in them, [and to] determine in a spirit of international solidarity to see that (a) those guilty and responsible, whatever their nationality, are sought for, handed over to justice and judged, (b) and the sentences carried out."[47] Guenael Mettraux argues that the decision to implement a tribunal was based on a lack of an alternative option that could appease the Allies, as well as out of urgency for peace and justice.[48] The Nuremburg trials must be understood in its 'full historical and political contexts, of how the understanding of 'justice' has been shaped, and by returning to Post-World War I, where the failure of accountability and liberalising Germany subsequently led to the failure to prevent German aggression.'[49] Furthermore, the national justice system proved to be hopelessly political. American statesman Henry Stimson expressed, "We gave to Nazis what they denied to their opponents-the protection of the law", thus arguing that Nuremburg would not be a case of vengeance, "but the reverse".[50]

The Nuremburg trials codified existing and new war crimes. The accused were charged with, "1. Conspiracy to wage aggressive war; 2. Waging aggressive war (together these charges were referred to as 'crimes against peace'); 3. War crimes (violations of the rules and customs of war, such as mistreatment of prisoners or war, abuse of enemy civilians) and 4. Crimes against humanity (the torture and slaughter of millions on racial grounds).[51] For the Allies, the crime of aggression was considered to be the major crime. Leila Nadya Sadat argues that when the tribunal established the wrongfulness of aggression, "In this way, not only the jus in bello was criminalised, but the jus ad bellum too, which represents a quantum leap forward from the steps taken at the Hague Convention half a century earlier."[52] The latter crimes gained significance once violations of international humanitarian law were made punishable, and once the human rights regime and international criminal law united to express its loud abhorrence towards political and military leaders who commit such crimes. Today, these crimes remain contentious because of the relationship between national and international law and the rise in 'humanitarian intervention', but what has changed is that they are now recognised as being crimes that can be committed during both war and peacetime.

1.4 Critique of Nuremburg: Victor's Justice and Victims' Justice:

Nuremburg re-established the legacy of 'successor trials', but the Allies were determined to prove that 'the trial' was the only- 'most suitable' response for achieving accountability for the principle crime of aggression. They argued that the punishment of the accused would be regulated by the core principles of international law, which are to provide 'free and fair trials', uphold 'due process', and that formal international justice is strictly impartial. As articulated by Supreme Court Judge Robert Jackson, the principle that "you must put no man on trial under forms of a judicial proceeding if you are not willing to see him freed if not proven guilty…the world yields no respect for courts that are organised to convict."[53] Despite its ambitious vision to establish once and for all an international justice forum, it was apparent that from the onset, the technicalities of the Tribunals was beset with problems. The

outcome is that it has compromised the legal process and justice, and garnered the critique this was simply a political opportunity for 'victors justice'.

One of the first critiques of the Tribunals was that it replaced 'national justice' in order to administrate international justice.[54] Premised on a moral and legal justification, the sovereignty of the defeated regime was suspended. It was designed to re-introduce and maintain international peace. Moghalu argues, "In this sense law is brought into the service of what it essentially a political goal."[55] Eyebrows were raised concerning the political intentions, when the 'victorious powers'- the Allies established the rule of law under which alleged perpetrators were tried. They also appointed the judges and prosecutors who would establish the charge-sheet and criminal responsibility for these crimes.[56] Thus, it is difficult to contest, the argument that 'war crime justice' is described as "political justice."[57]

The second critique, relates to a core principle in transitional justice. Nuremburg marked the shift in 'successor justice' from national justice to international justice, but also from 'collective responsibility' to 'individual responsibility. The argument made, is that by holding individuals accountable to international criminal law, these trials can hold the higher echelons of the state accountable, diffuse the defence that they acted under "superior orders" or 'state immunity', and to support the (re)establishment of the 'rule of law'.[58] It also argued that it would prevent further aggression by avoiding a world of 'winners' and 'losers'. The trials hoped to prosecute as many individuals as possible, so that in that way the transitional process can delegitimise the former regimes political identity, without burdening the state by categorising a 'group or nation' as criminally responsible.[59] In 2003 the UN affirmed that individuating crimes "can save whole communities from being held collectively guilty…It is the notion of collective guilt which is the true enemy of peace, since it encourages communities to nurture hatred against each other from one generation to the next."[60] In response to this principle, the Realist school of thought argues that punishment problematically "looks backward towards past action of the enemy" and instead what is perhaps more useful is "Politics and negotiation looks forward to constructing international order."[61] Realists also argue, "turning international politics into moral ethics and legal processes simply complicates matters and gets in the way of a genuine (and practical) political solution for peace."[62]

The third critique, is that only the 'losers' were placed on trial, which as discussed, comes from a historical tradition of how justice has been conceptualised and administrated. Tojo Hideki (General in the Imperial Army and Prime Minister of Japan) stated in a critique of the international Tokyo military tribunal: "In the last analysis, this trial was a political trial. It was only victor's justice."[63] Hermann Goering (leading member of the Nazi Party) shared Hideki sentiments when he stated that "The victor will always be the judge and the vanquished the accused."[64] Moreover, the Allies received complete prosecutorial immunity, and their crimes such as atomic bombings of Hiroshima and Nagasaki, rape...etc, became known as the 'forgotten crimes' that were not prosecuted.[65] It re-affirmed the argument that justice can be very selective, because the "winning side" is never placed on trial, and because the 'victors' continue to determine the process and outcomes. Moghalu asserts, the tribunal

administers 'external selectivity' and it "puts limits on where and to whom accountability for violations of international humanitarian law can apply."[66]

The fourth critique was raised by Indian Jurist for the United Nations International Law Commission- Justice Radhabinod Pal, who argues that the "rules of evidence were biased in favour of the prosecution; aggressive war was not a crime; and the judgments were illegal because they were based on post facto ground" thus in Pal's view they were "sham employment of the legal process."[67] In international law this is referred to as retroactivity. Retroactivity relates to the principle of "nulla poena sine lege (no punishment of a crime without a pre-existing law on which punishment is based)", which was disregarded in the Nuremburg trials when Nazi-Germany was charged and tried for crimes, that although were atrocious and morally repulsive, they could not effectively be tried because no domestic or international law had existed prior.[68] Moghalu argues that the Allies were aware of this conundrum, and ignored the principles of positive law by adopting a course of action that was premised on international morality and indignation.[69] The Allies had to search for creative solutions in positivist law to charge individuals who were part of the larger Nazi machine. Such legal exceptionalism was made tolerable by the forceful nature of seeking international criminal accountability, but as already discussed was greatly indefensible and in many cases illegal.

The final critique, which has shaped transitional justice, and justice in Rwanda's adaptation of the Nuremburg-styled criminal trials, is birth of 'victim's justice'. Justice at Nuremburg was shaped by two pre-requisites; the political requisite: the "military victory", and the second requisite: which is the "distinct political logic that shaped the thinking of the Allies."[70] Mahmood Mamdani proposes the notion of 'victims justice' which complements 'victors justice'. 'Victim's justice emerged from the assumption that "there would be no need for winners and losers (or perpetrators and victims) to live together in the aftermath of the victory."[71] Mamdani asserts that "there was very little justice for victims at Nuremburg. When it came it was political and it was obtained outside of the court."[72] He continues "the Allies carried out the most far-reaching ethnic-cleansing in the history of Europe, not only redrawing political boundaries but also moving millions across state boundaries. The overriding assumption was that there must be an Israel for survivors…"[73] Thus, the post-Nuremburg state of Israel was constituted as the homeland for the Genocide-Holocaust victims, a sovereign territory that the 'survivors' are entitled to, and whereby the state governs in the name of protecting the 'victims'.[74] Furthermore, the term 'survivors' is a category that is itself an innovation of "post-Holocaust language" because it reserves the identity of 'survivors' as being "yesterday's victims".[75]

1.5 The Legacy of Nuremburg:
'The Nuremburg-styled criminal trial': Criminalising the Political

Nuremburg became the template in which "we have come to define responsibility for mass violence in the post-Cold War period" and 'criminal justice' became the 'gold-standard for

transitional justice'.[76] Nuremburg set the precedent that "violence must be criminalised without exception, its perpetrators identified and tried in a court of law" if justice is to be achieved.[77] Its redeeming argument is that criminal justice is different to ordinary justice, and can transcend politics during the transition. Thus, 'justice' became to be understood as being 'criminal justice', and accountability for the mass violence is pursued by individualising responsibility (identifying the perpetrator based on the 'crime' and prosecution). The problem is that criminal trials operate on a 'zero-sum logic', and whereby one is with the loser/victor or the victim/perpetrator, and is it driven by the preoccupation that one is either innocent or guilty.[78] The tendency is also to think of the perpetrator (the psychology, the culture of the perpetrator) as having agency, but not the victim.[79]

This practice ultimately 'demonises the other' and denies both victims and perpetrators the opportunity to reconcile and conceive a new single political community together.[80] Moreover, the consequence of seeing the violence in terms of criminals and crimes, is that 'criminal justice' obscures the focus on social justice and political justice. It does this by focusing on individuals rather than constituencies and the actual state, which would allow one to trace the context that made the violence possible. Nuremburg also produced a single formulaic response to mass violence, which is after the military victory; justice and accountability must take place through a 'criminal justice forum' and that multi-party elections would signal the establishment of a democratised state (quipped with 'law and order'/'rule-of-law).Thus, it poses critical limitations on reconciliation and political reform.

The period immediately following WWII was the heyday for international criminal justice.[81] However, international law lay dormant until the end of the Cold War period, which saw the human rights regime emerge and forcefully impose "the duty to prosecute human rights violations of a prior regime."[82] There was a shift from the old human rights movement born of the French revolution, towards a 'new human rights movement' that sought to "empower saviours and salvage the helpless victims."[83] Moreover, the post Cold-War period breathed life into 'victor's justice and 'victims justice'. The moral, political and legal vocabulary that accompanied these 'regimes', universalised and normalised the traditional presumption that justice for the victims can only be realised by the victor who will determine that 'justice'. The 'new ethical language' had also produced new categories of victims which further supported their desire to protect them. It was a significant step for the long-established foundational argument for criminal justice. It is important to note that this development in criminal justice, this took place in the midst of a rise in intra-state civil wars, where attention was drawn to the cyclic nature of civil war, and the way war was being fought was having troubling consequences for human right and civilian life. Therefore, both regimes returned to the case of Nuremburg as the success story, which demonstrated that the only politically and morally viable response to mass violence is the Nuremburg-styled criminal trial.[84]Together with increased humanitarian intervention, it also re-surfaced the debate on state sovereignty, because surrendering state sovereignty became normalised based on moral and legal justifications. There was a marked shift from national policy response to mass violence to an international response, introducing a virtual universalism that allows "the "international community" claimed authority to suspend state sovereignty to protect individuals or to

impose norms, thereby holding individuals directly accountable to this same "international community"."[85] This would later serve to legitimise the capitalist prospects in the transitional justice discourse after the Cold-War.

By the early 1990s international law was focused on human rights and fighting the 'culture of impunity', a scourge that had led to many more inter and intra-state wars, and affirmed the urgency for an international legal standard.[86] Constructivist scholars argue that as a norm, 'accountability' underwent the processes of "emergence, broad acceptance and internalisation"- the latter of which asserts that the executive power of the state must justify their actions, face the consequences, and be held accountable to its people.[87] Lars Waldorf shares that 'accountability as a norm' was legalised through "domestic law, regional courts, international law and soft law (such as UN Principles on Combating Impunity)".[88] Through this legalising process, Nuremburg was stripped of its historical and political context, and became the international legal standard and a prototype for 'victims justice'. Criticism of 'victors justice' and 'victims justice' had fallen way and was temporarily forgotten. Instead, Nuremburg led to the creation of the ad hoc tribunals of Yugoslavia (ICTY) and Rwanda (ICTR), which have become temporary expressions of international law, and they have paved the way for the signing of the Rome Statute (1998) and the establishment of the International Criminal Court (2002), which is a permanent expression of international criminal justice.

In the post Cold-War context, the 'Global South' responded to the predominance of Western visions of 'justice, security, sovereignty and rights'. The 1955 Bandung Conference has come to signal the critique of the 'Western-imperial project' as the various African and Asian nations situated the discussion on their demands for self-determination from colonials; rights to equal sovereignty; and en end to racialism and imperial industrialisation.[89] African and Asian states were navigating through the turbulence of the Cold War, and the principles of the 'West'. Richard Nathaniel-Wright (American Poet and anti-racialism author) wrote "the Bandung Conference had introduced something new, something beyond Left and Right…there were extra-political, extra-social, and almost extra-human aspects to the Conference."[90] The Bandung Conference was a critique on international order as well as formulating their own understanding of areas such as 'fundamental human rights'; recognition of nations/groups and minorities; territorial intervention and sovereignty; international dispute settlement and resolutions; and a revival of South-South internationalism: a mutual understanding and cooperation for justice and peace in conformity with U.N principles.[91] This was very much a political discussion that challenged the process of 'norm-making' which by this time, had begun to produce a particular quantitative understanding of justice, transition, state-formation and what are the 'norm', deviations from the 'norm' and how those deviations are responded to. This has important consequences for the field of transitional justice.

1.6 Transitional Justice: 'A Second Opportunity'

The legacy of Nuremburg has raised fundamental questions about 'justice', and its relationship to law and politics during times of political transitions. Historically speaking,

punishment and 'criminal justice' has had a close relationship to transitions or political changes. In the traditional sense, transitions can take on two paradigmatic forms, "transitions from war to peace and transitions from authoritarianism to democracy."[92] The contemporary filed of transitional justice emerged as a response to the historical tradition of legal absolutism or retributive justice, and the dilemmas it poses.[93] Whilst transitional justice has a focused view on justice and finding solutions for 'wrongs' committed, the field has undergone significant changes and led to it being open to both legal and non-legal mechanisms.

Teitel refers to three events or 'phases' that have contributed to the development of transitional justice as a theorised field of study. These are; Phase I: Post-War II Transitional justice (primarily legal responses premised on international law); Phase II- Post-Cold War transitional justice (addressing political fragmentation and acceleration of the 'Third Democratic Wave' and reflect the globalising of politics); and Phase III: Contemporary transitional justice (as persistent, and which reflects the normalisation of law in a period of post-conflict, despite supposed peacetime).[94]

Phase III is associated with the universal rights discourse which has heightened the call for transitions towards a now-predestined goal of establishing a liberal democratic state.[95] This current phase has centralised 'nation-building' and has acknowledged that the Western model of justice can at times be abstract, therefore it now includes local or indigenous justice mechanisms that best suit the unique circumstances of each case. Today we have "truth commissions, war crime tribunals, special courts, amnesties, reparations and indigenous or traditional processes" that are available to us.[96] The 'ideal types' are prosecution, amnesty and truth and reconciliation commissions. The South African Truth and Reconciliation Commission has a similar status to Nuremburg. 'Truth commissions assert that they are different because they "do not ignore the past, but instead grant amnesty selectively."[97] In contemporary practices of transitional justice, these three ideal types are not fixed, and more than one variation for justice can be pursued.[98] Moghalu asserts that "political considerations condition the choices that states make when confronted with two possibilities, that of prosecuting or supporting prosecutions pardons or political responses that do not invoke criminal trials, such as amnesties and truth commissions…tensions, in primarily domestic contexts, between order in its most basic sense as a pattern of social activity that guarantees the provision of the primary goals of social life (in this context, stability) and justice."[99]

The central question in transitional justice literature is 'how can a new government address the atrocities and human rights violations of the previous period?'[100] Responding to this dilemma requires reconciling two needs; "the need to look backward so as not to allow human rights violations to go unnoticed; and the need to look forward, enabling all sides to participate in the new peace process or the new democracy."[101] Yasmin Louise Sooka argues that the type of questions states should be asking themselves in the search for finding the most suitable solution, are: "Where is the transition leading? When does the transition begin and when does it end?; and 'Is an end to the conflict enough?'."[102] Thus, the transition must consider the goal, the sequencing of events, and the time frame. For example, when conflict resolution practitioners address the goal of the transition, they prefer to speak of 'negative

peace' (the transition secures end of conflict, but does not necessarily address root causes, and seeks solutions to prevent further conflict) or 'positive peace' (which addresses root causes, and advocates for democracy in order to intervene in the cycle of conflict).[103] In contemporary 'western visions', there is a common pre-destined goal and that is to establish a liberal democratic order, because it espouses principles of 'rule of law', constitution making, and nation building. The imposition of 'globalisation' after the Cold-War added a liberal-economic goal for transitions to incorporate.

The experimental and evolving nature of transitional justice has attracted various disciplines, resulting in an explosion in the literature. The shift from traditional schools of thought to more nuanced readings by 'non-traditional' scholars and inter-disciplinary approaches in the last two decades has led to what is commonly referred to as 'the new inquiries in transitional justice'. In the following section of this chapter, I will explore two central dilemmas that are reflected in the debates in transitional justice and are important to the investigation into Rwanda's transitional justice. These are the 'rule of law' dilemma and the 'Peace versus Justice' dilemma. It must be noted that these two dilemmas are not mutually exclusive, but both dilemmas are said to be mutually re-enforcing.

1.7 The Dilemmas of Transitional Justice

The redeeming quality of transitional justice is that it poses itself as a 'second opportunity' for the state to establish order and long–lasting peace through functioning institutions. The most important foundation is universally argued to be the restoration of the rule of law. The rule of law can be an ambiguous term that varies by context, and can mean different things according to different political agendas.[104] Broadly speaking, the 'rule of law' can imply a variety of goals and require measures that ensure: "adherence to principles of the supremacy of law, equality before the law, accountability to the law, the impartiality of justice, the separation of powers, participation in decision-making, legal certainty, the protection of human rights, and procedural and legal transparency."[105] The 'rule of law' must also regulate the arbitrary abuse of power and contribute to constitution making that institutionalises social value for the law by re-instating that "no one is above the law" and that everyone is 'equally subject to it'. The "defining feature of the rule of law in periods of political change is that it preserves some degree of continuity in the legal form, while it enables normative change."[106] Thus, the 'rule of law' can be socially constructive and transcend the past politicisation of the law. This has led to the assumption in contemporary transitional justice discourse that during transitions the (re)establishment of the 'rule of law' is imperative for transitional goals, and that law is independent of politics, which is why the 'rule of law' gains primacy.[107]

The role and meaning of the 'rule of law' in times of transition, continues to return to a well-known Anglo-American debate between Lon Fuller and H.L.A Hart, which provides a suitable departure point for critically interrogating the role of the 'rule of law' in transition towards the liberal state. The debate took place in 1958, as a response to the prosecutions of Nazi-Germany laws, but in the context of a "new moment of world transition".[108]

Hart, an advocate for legal positivism, argues "adherence to the rule of law included recognition of the antecedent of the law as valid. Prior written law, even when immoral should retain legal force and be followed by the successor courts until such times as it is replaced."[109] Therefore, in times of political transition, written law should proceed as it would in ordinary times and not be radically altered or revolutionary. Only when the "rules have pernicious content, the adherence to the rule of law amounts to enforcing those rules."[110] Hart does not focus on the link between morality and law, but rather on the "Rule of Recognition, Rules of Change and Rules of Adjudication." The arguments of positivist law, are premised on a. having certain assumptions about the legality of the law in the predecessors totalitarian regime, b. believing that adherence to the prior law is necessary for transition, and c. "The response to past tyranny is thought not to lie in the domain of law at all but in the domain of politics."[111]

In response to Hart, Fuller argues that "law meant breaking with the prior regime" and that moral right can override putative prior law.[112] Fuller is an advocate for natural law, which proposes legal discontinuity because the nature of the prior regime is understood by its past, which is authoritative or tyrannical, and violates the 'customs of war' and morality through criminal acts.[113] Natural law "highlights the 'transformative role of law in the shift to a liberal regime" and brings morality into the consideration of law in the prior regime and its value for the new regime.[114] For Natural law advocates, violations of moral content "may later be judged illegal."[115] The importance of the Hart-Fuller debate for contemporary transitional justice and 'the rule of law' dilemma lies in the prevailing debate over the relationship between the predecessor regime and successor regime- the "degree of legal exceptionalism that is tolerable to transitional justice", and for its contribution to thinking about the consequences of retroactive justice. [116] Both natural law and positivist are concerned with the illiberal nature of the prior regime, and differ on their view as to the degree of legal (dis)continuity for the purpose of establishing legality in the new regime.

In spite of the Hart-Fuller debate's contemporary significance, both sides fail to respond to the failures of post-WWI, which framed the logic of Nuremburg.[117] Secondly, the Hart-Fuller debate negated a major objective of implementing Nuremburg, which was to establish and further the developments of international law and create a permanent international judicial forum. The Hart-Fuller debate also neglects to incorporate in its discussion alternatives or acknowledge that since Nuremburg there has been considerations for "full continuity with the prior regime, discontinuity, selective discontinuities and moving outside of the law altogether."[118] Since the debate, in modern Western-legality, the cases of Nuremburg/Tokyo (Phase I); East Germany and Hungary (Phase II); and South Africa (Phase III) have become key reference points in the discussion on the role of the rule of law during transitions.

After the Cold-War (Phase II) there was a wave of political transitions, and particularly a "proliferation of political democratisation and modernisation" which ushered in principles of

liberalisation.[119]Within this phase, the rule of law was seen to be central to the development of the 'nation-state' and its liberal democratic identity.

The 'rule of law dilemma' distinctly emerged during Phase II in the development of transitional justice, and out of the debate concerning the 'human rights regime' and the 'transitional justice field'. The 'human rights regime' argues that in response to the proliferation of 'civil-wars' and intra-state wars resulting in mass human rights violations, the only way forward is to hold 'perpetrators' accountable through some kind of justice forum, and particularly by seeking criminal accountability. This argument was bolstered by the integration and prioritisation of international criminal law and international humanitarian law.

However, the post-Cold War period proved that despite a 'Third Democratisation Wave' and a demand to protect and centre 'human right values', intra-state and civil wars continued to erupt in part because the 'rule of law' failed to transcend domestic politics. This was poignant in cases of post-colonial states, which were gaining their independence but failed to disinherit the colonial systems of rule. Moreover, the appeal to political will and a united front against the 'culture of impunity' had failed to materialise. This rendered calls for 'justice'- as the vehicle for restoring the rule of law as being problematic, and it became clear that Western-liberal principles were somewhat abstract to the nations political process and were not translating in the local context of the state.[120]

Within the 'New Inquiries into the field of transitional justice' political and legal scholars began to rethink the role of justice for the purpose of the rule of law gaining legitimacy (meaning) and adherence. Advocates for 'legal absolutism' in transitional justice, were confronted by the arguments made, that in some contexts, justice might have to be set aside in order to achieve either a short-term goal (to end the immediate violence, political settlement, cease-fire) or for the long-term goals (advancing political transformation and national reconciliation). Laury L. Ocen argues that "There is a sense in which the rule of law can be retranslated in a non-conformist trajectory that allows former rebels, losers and perpetrators, to have a voice in the postconflict processes of trial, restitution and transition."[121]This demonstrates the 'Peace versus Justice' dilemma. Thus, the 'rule of law dilemma' is inextricably linked to the 'Peace versus Justice dilemma'.

The 'Peace versus Justice dilemma' emerges in the aftermath of violent conflict, in which 'victims and their families are entitled to demand justice.'[122] Victims are wary of 'national reconciliation' or 'calls for unity' replacing justice in the form of punishment and seeking responsibility. As already discussed, this supported the foundational argument for criminal justice, and the criminal trial, which are seen as the most suitable justice forum for victims. Moreover, the rise of local and international NGO's in recent decades, has seen an increase in support and centring of victims voices in transitional processes.[123] The 'Peace versus Justice dilemma' deals with the "critical policy decisions made about accountability in the context of peacemaking and peacebuilding."[124]It looks at the relationship between 'political settlement and justice'. The transitional government has to be mindful of the risks that prosecutorial justice may have. 'Justice, peace and democracy' are mutually reinforcing imperatives that rely on "strategic

planning, careful integration and a sensible sequencing of events" in order to advance in fragile post-conflict societies.[125]There are various dimensions that facilitate the

implementation processes of 'integration, settlement and reconstruction of postwar societies'.[126]Furthermore, within this context, 'societies emerging from war go through their own processes that interrogate the logic of transitions, peace and justice'; and this process will change depending on where the state is on its timeline between war and peace.[127]These considerations impact the political settlement and will determine the nature of peace and justice. For example, in some contexts the government may have achieved political power but may not have control of "either security forces of certain perpetrators of gross human rights violations" and attempting to hold them accountable may have a destabilising effect for the society.[128]This doesn't mean that accountability is not a significant goal, but peace-building advocates are concerned with whether the "pursuit of peace is compatible with the pursuit of justice" and can they intervene into the cycle of violence, and secure a political settlement that will sustain peace.[129] This is the 'Peace versus Justice dilemma' that states are faced with. Chandra Lekha Sriram argues that "the dichotomous dilemma is often overstated. In reality the choice is seldom simply 'justice' or 'peace' but rather a complex mixture of both."[130]

1.8 Justice Politicised?

I argue, that one can approach both dilemmas by returning to the 'intersection' between law and politics during transitions, and re-evaluating the formulations and limitations of universalised norms and practices. Transitional justice argues that the rule of law can operate independently because it can effectively mediate politicisation of the transitional process through the 'judicialisation of politics'.[131]There are however a few problems with conflating 'justice' with the 'rule of law', in the context of the political transition of the state.

To begin with; the very (re)establishment of the 'rule of law' is motivated by politics, and takes place in a highly politicised context, where national sovereignty is suspended by transitional jurisprudence, and the 'line of legitimacy' is drawn between the prior and new regime. Teitel states, "In periods of substantial political change, a dilemma arises over the adherence to the rule of law that relates to the problem of successor justice."[132] The state in transition needs to ask itself- to what extent is bringing the 'ancien regime' to trial imply an inherent conflict between predecessor and successor visions of justice?[133] And is criminal justice compatible with the political goal of the state? The process of establishing the rule of law can be an exclusionary one, and it is important that divided societies think critically about the 'rule of law' in relation to integration in the post-conflict processes.

The second concern, which is a feature that both the human rights regime and transitional justice share, is that it constitutes the violence as an event that is read through a moral and legal lens. It 'freezes the violence' and essentially removes its historical and political context. Then it attends to the mass violence as a criminal problem, as David Luban argues international criminal law works to "reconceptualise political violence…as mere crime."[134]Moreover, 'criminal justice' inscribes the categories of 'victims' and 'perpetrators' whilst it legitimises the one and delegitmises the other. These are all deeply political acts. Bronwyn Leebaw argues that 'criminal trials' are "inherently depoliticising to the extent that

they condemn politically authorised violence and actions in accordance to legal criteria, and evaluate the systematic patterns of violence by isolating the guilt of the individual perpetrators."[135] Leebaw continues by stating that when a trial deviates from this in an effort to teach a history lesson or stage a political drama, then it sacrifices its integrity and it becomes a show trial.[136] Depoliticising trials, may fail to reveal that the violence is in fact political.[137] In opposition Gerry Simpson states, "when we treat our enemies as criminals, when world-historical evils are proceduralised…we end up with political trials."[138] In this case, politicising the trials may mitigate the atrocity of the actual crimes. Mamdani has framed the problem by posing the question "is the question of justice to political violence, criminal or political?"[139]

For Hannah Arendt, her response to Nuremburg and the question of punishment is: "We are simply not equipped to deal, on a human, political level with a guilt that is beyond crime…"[140] This is an important consideration to make, especially in the case of Rwanda's genocide. Despite this, international law continues to make its case that the "the worst political crimes are subject to law".[141] It returns to the age-old question of *what result if not punishment?* and *To what extent are broader rule-of-law values jeopardised without punishment?*[142]

The third consideration is whether the new regime should replace or retain the former personnel from the old regime. A dilemma arises over the state having to remain immune to political pressure and it being considered to be undemocratic to politically exclude the former regime in the transition. In the Rwandan case, there was an urgent need to "rebuild human capital" at a rudimentary level and to administer the rule of law principles, but its transitional justice process has legitimised the marginalisation and mostly exclusion of Hutus in the post-genocide transitional process state.[143] A central problem to inscribing the categories of 'victim/victor' and 'perpetrators/loser', is demonstrated in African case studies, whereby in addition to the problem of dictatorships and authoritarian regimes, some states have experienced 'protracted, recurrent and regional conflict' whereby perpetrators and victims have traded places.[144] Thus, by sanctioning one side as 'good' and therefore legitimised as being included, and the other as 'evil' who should be excluded, inscribes a practice of 'othering', which may lead to the transitional process as being seen to be exclusionary and as benefitting one locale over another. This can reconstitute the old political problem that fuels further violence and renders questions about "who exactly bears responsibility for past repression?"[145] Transitional justice argues that equality (including marginalised groups: social, economic, political and gender-based) is a condition for state building and reconciliation, and inclusion will be the first test to the rule of law.[146] However, there are conditions upon which perpetrators/the defeated are included in participation of the new regime.

The fourth consideration for the regime to make, is that the "wheels of justice turn slowly".[147] As discussed, a central problem of 'victors justice' is that it operates on the presumption that only the 'victors' can realise and administer justice for the 'victims'. Charles Villa- Vicencio emphasizes that the judicial infrastructure of countries in transition is

invariably such that not all alleged perpetrators can be prosecuted in the wake of conflict and it is frequently essential to ask whether it politically wise to attempt to do so."[148]This relates to both dilemmas. In some cases the judicial structure has to be reconstructed, and it has to adhere to liberal-democratic principles whilst dealing with the former regime, and forging the new regimes political identity.[149]This slow, complex process can also be constrained by factors such as resource restrictions, and as Neil Kritz argues, may seem "to leave the old regime unpunished, and injustices unaddressed. The new government will not seem to have brought about much change."[150]There is also the significant issue of 'ill-gotten gains'. Finally, it is important to think critically about what justice means for the specific society, some have asked 'Is justice only related to human rights abuse? or Can justice extend itself to other areas, such as social and economic inequality'? This dissertation is concerned less with criminal justice, and more with social and political justice.

In After Evil, Robert Meister critiques the human rights discourse in transitional justice, arguing that "a new discourse of global power that supersedes the cruelties perpetrated…this discourse creates false temporal divided between historical periods of "evil" on which gross violations of human rights are committed and post-conflict periods of justice during which parties are presumed to move beyond evil through various mechanisms of transitional justice."[151]For Meister the contemporary human rights discourse fails to implicate the beneficiaries of oppression in the former regime, which does not dismantle structural inequalities and injustice (instead "evil still exists") and thus genuine justice is unattainable in response to political, social and economically violent systems of the state.[152] Meister argues that 'victims' are forced to accept a minimal definition of justice, and those former beneficiaries continue to strive in the so-called 'new regime' where they can rationalise their 'on-going privileges in the transition.[153]Kritz agrees, and points out that in the cases in which states are reconstructing their role in the market economy, the new regime is going to have to consider the demands for restitution and compensation for the victims, and redistribution of material resources as a form of justice for the victims.

Transitional justice can have a variety of goals, such as "creating a reliable record of human rights abuses; setting up functional, professional bureaucracy and civil services; helping victims restructure and repair their lives; and stopping violence and consolidating stability".[154] These are all politically important goals, but it isn't difficult to see that tensions may arise between law and politics and impact the long-term restoration of the rule of law. Finally, if the rule of law is understood in transitional justice as being a combination of 'institutions and cultural norms' derived from a strictly western-style of the rule of law, then what risks and limits does this present for states which do not have a rich historical pedigree of the rule of law to draw from? The lack of interrogation regarding this conflation only further places pressure on reconciling the political, during regime transitions in post-colonial societies.

1.9 Transitional Justice in Rwanda

This chapter has thus far explored the logic and legacy of Nuremburg, and its contribution to the developments in international law, human rights and the shaping of transitional justice as a field. The following section will address the Rwandan transitional justice case study.

The Rwandan case study has become a landmark 'test case' for legal and peace policy-makers addressing genocide for the first time; for transitional justice practitioners; and has prompted a rethinking around 'theories and practices of accountability- as universally understood. [155] Rwanda serves as the first real case whereby genocide was adjudicated and it has led to a growth in 'genocide studies' as well as the realisation that each "genocide is unique" which has complex ramifications for transitional justice.[156] The Rwandan genocide shares all the important characteristics of recent mass atrocities such as; "civil war, malleable identities, intimate violence, high levels of complicity, and hazy lines of command responsibility."[157] It has resurrected the historical tradition of 'successor justice', because the post-genocide power, which is held by "extraterritorially based Tutsis", came into power through a military victory, and pursued a 'criminal trial' process to place the former regime on trial and seek 'mass accountability'.[158] Finally, Rwanda's civil war and genocide, as well as its policy for mass accountability, has had terrible consequences for the Great Lakes region that has led to a devastating regional war, which has killed more people than the genocide and led to the Great Lakes refugee crisis. Therefore, Rwanda's peace is critically important for the regions peace and for the intervention into the cycle of violence.

In response to the mass scale brutality of the violence and determined by the logic of genocide, Rwanda embarked on a 'policy of mass accountability' as its foundation for establishing the rule of law and reconstructing the statehood. The judicial response consists of the ICTR (based in Arusha, Tanzania), third-party national courts (Belgium and Switzerland), the National Judicial system, and the Modernised Gacaca Courts.[159] As a result, Alison des Forges and Timothy Longman argue that Rwanda has received the "greatest judicial attention than any other case of mass atrocity in recent history."[160] This section in the chapter will address the question: does the solution fit the problem? I will depart by exploring the context, which led to institutionalising a 'policy of mass accountability for mass atrocity'. Addressing the 'solution' provides the foundation for this dissertations central investigation, and frames the discussion relating to the problem of 'victors justice' and 'victims' justice', as well as the 'genocide lens', which Rwanda's reconstruction project has come to be viewed through.

1.10 Genocide against the Tutsis: Failing to Intervene

The mass slaughter of Tutsis, that commenced after President Habyarimana's plane was shot down (6 April 1994), was an organised intended act aimed at eliminating the maximum numbers of Tutsis in order to gain political power. Des Forges et al argue "while often portrayed as a spontaneous mass slaughter by machete-wielding peasants, the genocide was, in fact highly planned and remarkably modern in its organisation, making extensive use of

the administrative structure of the state."[161]Hutu Power depicted the 'killers' as being the legitimate owners of the state and this was merely a political "programme of civilian self-defence."[162]The logic of Hutu Power is shaped by the view that Hutus have eternally been the victims of Rwanda's politics since the conception of the modern Rwandan state.

The genocide was able to commence for 100-days because it was fuelled by the failure of the UN, key signatories as the UK and US; and the OAU to respond. In fact during the genocide, the delegates of the Rwandan regime who were present at both the UNSC meetings and OAU conferences, together with their supporters (Djibouti, China, Nigeria...) were denying that the violence that was taking place, amounts to genocide, and that it was being wrongly "sensationalised".[163]From the beginning, the U.S urged officials not to intervene, and completely avoided using the term 'genocide' in policy documentation, because of the previous years disastrous military intervention into Somalia (1993). They also recognised the Hutu regime as a valid interlocutor that would not surrender unless the RPA/RPF put down its arms first.[164] Philip Gourevitch argues that the "desertion of Rwanda by the UN force was Hutu Power's greatest diplomatic victory to date, and it can be accredited single-handedly to the United States."[165]On 21 April, despite irrefutable evidence of genocide or at least mass slaughter, UNAMIR 'slashed its forces by 90%'.[166]This removed 1700 personnel that were needed to enforce the 1993 Arusha Peace Agreement, and bring an end to the civil war that evolved into a full-blown genocide.

On the ground in Rwanda, the head of UNAMIR, General Romeo Dellaire was witnessing the massacres first hand and was fortunate to have a strategic advantage because he was in communication with both sides. General Dellaire warned "Unless the international community acts, it may find it is unable to defend itself against accusations of doing nothing to stop genocide".[167] By early May, General Paul Kagame (who commanded the RPF force) had voiced his sentiments towards the international community, when he boldly stated that the "time of UN intervention is long past. The genocide is almost completed…Consequentially the [RPF] hereby declares that it is categorically opposed to the proposed UN intervention force and will not under any circumstances cooperate in its setting up and operation."[168]A key player during the genocide was France, whose relationship with the Hutu regime in Rwanda remained "constant, cordial and downright conspiratory" throughout the genocide, because France had political and military interests in the Hutu regime remaining in power.[169]Initially, the French blamed the RPF for the mass slaughter of Tutsis, because it was as a result of the RPF's October 1990 invasion that sparked the civil war.[170] Thus, the French were interested in restoring order to the Hutus and claimed that the RPF were the "greater defender".[171]However, by mid-June, the French government 'changed' its foreign policy and volunteered to lead a "humanitarian mission" into Rwanda under the UN flag and with the support of Senegalese troops.[172]Through a military operation the forces could strategically 'sweep' across Rwanda gaining military control of the state and create "safe zones" or 'Zone Turquoise' for protecting Rwandan civilians, which would also provide a more feasible avenue for humanitarian aid and security.

There is also the critique on the ground, that the RPF did not let "humanitarian considerations or humanitarian law stand in the way of achieving its military and political goals."[173]Local and international humanitarian organisation convened to find creative solutions (e.g. block RTLM) to intervene and stop the genocide machine. Dellaire reported that he had asked Kagame for more help in saving Tutsi to which Kagame responded, "If the [Tutsi] refugees have to be killed for the cause, they will be considered as having being part of the sacrifice."[174]Lars Waldorf argues that the RPF publicly opposed any efforts by the UN-Peacekeeping forces to assist in saving Tutsi civilians.[175]Alison des Forges who was also on the ground working on behalf of HRW, expressed being "shocked by the RPF opposition to a force that could save Tutsi lives" and blames the RPF, US and UN member states for failing to galvanize an effective military response. [176]

By the time the international community properly responded, the genocide was coming to end. In early July the RPF had entered Butare and Kigali, and driven out Hutu's (civilians/non-combatants and the Interhamwe), which lead to the "largest and speediest mass flight across an international border in modern history."[177] The RTLM was forced to shut down its studios in Kigali, but a popular Radio-host, the Italian-born Belgian citizen Georges Ruggiu- who had worked for the Hutu propagandist, found ways to encourage Hutus to start fleeing Rwanda, blaring that "Hutus that even those without blood on their hands that staying was not an option."[178]Hutus were warned that if they stayed they will by killed, the regime and paramilitary could no longer protect them and there was a real sense of fear that the RPF would do to them what they had done to the Tutsis. The logic of Hutu Power operates on a fear and rationale that claims Hutus have been the eternal victims of Rwandan politics.

The RPF were incensed by the 'safe zones', which they viewed as failing to demilitarise the Interhamwe and essentially providing refuge, food, and arms to an estimated 1.2 million, including Hutu genocidaires that were using the camps as 'armed zones' to re-organise themselves.[179] These 'armed camps', particularly Kibeho camp, demonstrated to the RPF that the international community deserved little to no recognition for ending the genocide, that it was the RPA who single-handedly defeated the genocidaires, and that only they could guarantee Tutsi survival and Rwanda's peace in the future. The failure to intervene and its accompanying guilt has been a key to shaping and legitimising Rwanda's transition that is monopolised by the RPF.

1.11 Debating Justice: "what result if not punishment?"

The civil war and genocide, radically re-inscribed the division between the Hutu majority and Tutsi minority.[180] Once the RPF claimed outright military victory in 1994, they outlawed all ethnic references. This would be reflected in the constitution writing of the state and in all practices. The second urgent problem, is the risk that political liberalisation poses for the protection of Rwanda's Tutsi minority.[181] By coming to power militarily, the RPF was in a position to compromise on its promise of upholding all the mandates of the Arusha Accords, specifically by denying "political accommodation with the prior regime".[182]Filip Reyntjens argues that their position allowed them to impose their view on how to deal with the past.

Furthermore, with immediacy the RPF pushed to place the former regime- the "defeated opponents" on trial. The RPF logic operated on the historical tradition of 'successor trials'- "*what result if not punishment*? *To what extent are broader rule-of-law values jeopardised without punishment*?"[183] Thus, the transitional government enacted a 'policy of mass accountability for mass atrocity', which would be the foundation for (re)establishing the rule of law, reconciling the Rwandan society, and reconstructing the political infrastructure. This eliminated the 'third possibility' in the Arusha Accords which would have been to re-negotiate a more inclusive political settlement, that did not exclude major stake-holders, who clearly felt left out and sought political power through violence (genocide).

1.12 National Judicial System: A Policy of Mass Accountability

Violence against Tutsis has been a 'recurring theme' since Rwanda's decolonisation, and the Hutu dominated regimes have always used the law to sanction it.[184]To the RPF-led government, this historical fact, together with the breached Arusha Peace agreement, said that the Rwanda state (and Hutus in particular) have long enjoyed prosecutorial immunity for their violence, despite there being 'humanitarian laws in place'. The first impulse after the RPF captured Kigali (July, 1994) was for military and local RPF cadres (abakada) to begin arresting suspected Hutu perpetrators without any lawful procedures or even creating case files. [185] By 1996, 87 000 people were in custody and the government had to work towards establishing the crime of genocide, so that these perpetrators would "never benefit from any prosecutorial status, even under existing humanitarian law."[186]The Rwandan government was determined to adjudicate them according to ordinary criminal law. The transitional regime ambitiously set out to prosecute 30 000 of the accused by the end of July 1994.[187] The then-Rwandan Prime Minister, Faustin Twagiramungu confidently affirmed that "Our laws cover this type of crime, and we cannot wait for the international court…we can start by creating our own tribunals."[188]

Lars Waldorf argues that Rwanda "is a clear outlier in the Great Lakes region and Sub-Saharan Africa, where amnesties and truth commissions are the norm, and trials are the exception."[189] For purposes as mentioned above, and in the name of national reconciliation, amnesty was viewed as an injustice to the victims, and downright inappropriate given the 'magnitude of the crimes and the scale upon which they were committed.'[190]The interim governments Prime Minister Faustin Twagiramungu, began visiting 'western capitals' making appeals for financial aid assistance to see the Rwandan judicial project through. Schabas argues that between 1994-January 1995, "very little of the promised bilateral and multilateral aid for the judicial system had been delivered" and the Rwandan government made the decision that "it did not want foreign jurist to work within its judicial system as judges or other officers of the court."[191]Thus, in November 1995 the government organised the "Genocide, Impunity and Accountability" conference to wrestle the manifold problems of prosecuting the perpetrators of the 1994 genocide.[192] However, the interim governments' enthusiasm to adjudicate the genocide was interrupted by realities that faced the daunting judicial task.

The pre-genocide judiciary delayed the process of adjudicating the genocide. Nicholas Jones states, "The History of Rwandan judiciary tells a story that is antithetical to the promotion of the rule of law and justice."[193] The pre-genocide 'judicial system' lacked concepts of fair treatment, impartiality; justice as independent to executive power; and it was riddled with accusations of corruption and political tampering.[194] Jones claims that proximately 80% of the judges were politically appointed and had no legal qualification or formal training.[195] Schabas states that "even well-meaning lawyers and judges within the system were powerless to prosecute numerous atrocities during the years that foreshadowed the genocide."[196] Also, there isn't a physical judicial infrastructure to speak of because of a lack of resource investment, and whatever there was the genocide ended up completely destroying it. Of those former judicial personnel, most of them were either murdered or fled the genocide. In July 1995, the Rwandan government 'refused a loan of foreign judges, arguing the it is "unconstitutional and a breach of the sovereignty of Rwandese people."[197]

Another significant hurdle to overcome for the judiciary is that the former regimes judiciary was 'complicit' in the political violence, in creating a 'culture of impunity' and "created an environment in which the concept of individual accountability did not exist."[198] Instead those who supported the regime enjoyed 'judicial immunity' (violence with no punishment) under the sporadic re-institutionalising of "Amnesty Laws", which had a role to play in the mass participation of Hutus in violence. Jones states, "If crimes of this magnitude can proceed without attracting any form of judicial intervention, the entire system is called into question."[199]

Arguably, very few national judiciary systems could withstand and remain immune to a genocide, and in the case of Rwanda, it didn't exactly have a historically rich legal pedigree to inherit. Schabas asserts that "[T]he term rebuilding is often used to describe the challenge facing Rwandan justice, but it is not well chosen".[200] Instead, Rwanda would have to overcome inherited practices and completely reconstruct an independently run judicial system, that is separate to the executive power, and gain legitimacy under the exceptional circumstances that the genocide presented.[201] Thus, it chose to legally discontinue with the prior regime, in order to eradicate the 'culture of impunity' and establish the rule of law based on a 'new political identity'.

The immediate concern after the genocide was the establishment of order and prevention of further political violence. The Rwandan government did not have the luxury of time on their hands, and their solution was to arrest as many suspected perpetrators and get them off the streets.[202] After two years, local and international human rights groups starting focusing on the Government of Rwanda, because of its unlawful arrests procedures, detention conditions (some detentions were merely containers), lack of nutrition and health services to the prisoners, and documented reports of torture and killings.[203] Peter Uvin estimated in 2000, that "currently more people die in prison every year than were judged."[204] Interestingly, Rwanda had already ratified International Covenant on Civil and Political Rights, as well the Punishment of the Crime of Genocide (in 1975).[205]

The Government argued that:*"[They] could not respond to the crisis by ordering the release of all the genocide suspects in detention. We were, and still are, of the view that the failure to respect procedural requirements for the arrest and detention of the suspects was the result of a very grave and unprecedented national crisis which could not, and had not, been foreseen. We took the view that the legislation should be passed to extend the period within which prosecutors could complete formalities legalizing the detention of these suspects."* [206]

Until trials could proceed, the Government would alter existing laws that would "retroactively regularise detention on remand" which extended the time of imprisonment without be brought before a judge.[207]Reyntjens argues that this has set a dangerous precedent for Rwanda's judicial reform. Lastly, despite Rwanda's signatory status in 1976 to the Convention on the Prevention and Punishment of the Crime of Genocide, the Rwandan government hadn't "established the requisite legislation regarding crimes of genocide or crimes against humanity."[208]Without this foundation to prosecute, Rwanda ignored the doctrine of *nullum crimen sine lege* (no crime without law) that has haunted the Nuremburg Tribunal, and chose to proceed with the trials.[209]

After many consultations, the law that would provide the foundation for adjudicating the genocide was the Organic Law (August, 1996), which underwent changes in 2003/2004. The new judicial structure would include elements of Anglo-American judicial law along with the existing remnants of the Belgian-judicial system. The Organic Law assisted in developing the judicial infrastructure, by creating a Supreme Court, a High Court and for the purpose of adjudicating genocide crimes, it created a Special Court, with four Chambers. Head of Rwanda's Genocide Fugitives Tracking Unit, John Bosco Mutangana stated, "The eyes of the world are all focused on Rwanda; to see how justice is developing and to see how the personnel working in justice are really developing".[210]

There were four crimes on the charge sheet: 'Category 1: includes the leaders of the genocide, those who planned/organised and supervised the killings at a national to a local level, and with particular cruelty (Category 1 would later be amended to include the crime of rape defines as being used to further the goals of genocide); Category 2: includes people who killed or intended to kill under the orders or direction of others; Category 3: involves those who caused serious bodily harm; and Category 4: are individuals who committed property crimes.'[211]

Even after establishing these four categories, the national trial process was very slow. The RPF feared political and security consequences if large numbers of Hutus were found falsely accused, acquitted and released, which would destabilise their Tutsi support base, and they were also concerned about alienating the Hutu majority, which may incite Hutu revenge.[212]The latter was a numerical concern because Hutus posed a threat to Tutsis in positions of power.

<u>1.13 International Criminal Tribunal for Rwanda</u>

A main feature of Rwanda's postgenocide transition is the inception of a "liberal-legalistic model" that would support the judicial process, constitution making and rule of law. From the very beginning, the rule of law and constitution made an implicit case for "creating conditions that are conducive to the principle of justice."[213] It is important to note here that the constitution reflects Rwanda's state of transition, and has always stipulated that regardless of ethnicity or position of power, one will be held accountable for violating the law.[214] The problem with this, and is of key concern to the transition and creating a culture that adheres to the rule of law, is that the judicial system has failed to prosecute the crimes of the RPF. The RPF has tested the limits of tolerance and unfortunately one of the greatest critiques of the ICTR is that it paved the way for 'victor's justice'.

The debate on whether to establish the Tribunal took place under extraordinary circumstances despite it also being after genocide. Premised on its public disdain for the international community, the Government of Rwanda initially rejected the establishment of a Tribunal. However, this needed to be reconciled. If the government wished to pursue a "policy of mass accountability for mass atrocity" it would need the support of the international community, but on Rwandan terms. There was also the fact that the ICTY was in existence, and as des Forges et al argue, "failure to create a mechanism comparable to the ICTY would almost certainly have led to accusations of racism."[215] Although 'fed by their sense of guilt', the international community was reluctant to establish a second ad-hoc tribunal because of the very failures and expenditure waste of the ICTY, thus there were many signatories in favour of a "less expensive forum for prosecutions."[216]Respectively, the UNSC could not deny Rwanda and its victims the legal obligation and moral duty to at least investigate the crime of genocide and the crimes against humanity. In the meantime, victim groups were adding pressure by seeking justice abroad from third-party courts in Belgium and Switzerland.

Two major UNSC members reiterated the logic of the Allies convening on Nuremburg- the UK and US argued "a tribunal would fix the responsibility on those who have directed these acts of violence. In doing so, we can transform revenge into justice, affirm the rule of law and, hopefully, bring the horrible cycle of violence to a merciful close."[217] In late-September 1994, the U.S and New Zealand, through the UNSC, provided a proposal for the establishment of the Tribunal. Shortly afterwards in October 1994, before the Government of Rwanda could respond to the proposed mandate, the UN Commission of Experts for Rwanda released its reported findings, which outlined its investigation into the crime of genocide.

The report established that; "(1) ..Individuals from both sides to the armed conflict…have perpetrated serious breaches of the international humanitarian law…; (2) …crimes against humanity in Rwanda; and (3) that there exists overwhelming evidence to prove that acts of genocide against the Tutsi group were perpetrated by Hutu elements in a concerted, planned, systematic and methodical way."[218] The report also proposed, "*to enhance the fair and consistent interpretation, application of international law on individual responsibility for serious human rights violations…the jurisdiction of the International Criminal Tribunal for*

the former Yugoslavia should be expanded to permit the cases concerning the situation in Rwanda to be brought under it."[219]

The consequence of labelling the conflict as a genocide, is that genocide is universally acknowledged as the 'crime of all crimes', and as condemned by the UN and 'the civilised world', genocide must ignite 'international co-operation that will punish the perpetrators in order to "liberate mankind from such odious scourge".[220] There is a great sense of urgency that is shaped by a moral indignation and a legal obligation to pursue universal criminalisation in order for the lesson to be learnt- "Never Again".[221]

Thus, for the international community, the ICTR would mark a new development in international law by establishing a court which could try the 'crime of genocide'. This would be distinctly different to the ICTY.[222] Rwanda would prove that 'genocide' could be investigated/proven, and thereafter set a legal standard for adjudicating genocide. However, the ICTR would represent a difference in focus regarding responsibility. Former Chief of Appeals and Legal Advisory Division to the ICTR, Alex Obote-Odora states, "there will be a differential examination on the concept of 'superior responsibility' as opposed to 'command responsibility' as outlined in various conventions depending on the case."[223] This will allow further investigation on 'mass participation' and their relationship to 'superior responsibility'. The third distinction, and which contributes greatly towards the conceptualisation of the ICC, is that unlike the ICTY (group trials), the ICTR will focus on 'single-accused trials'.[224]

The release of the UN commission of Experts on Rwanda report challenged the RPF's vision for Rwanda and it used its political leverage to challenge the dominant liberal conception of accountability. Before the UN Resolution 955 could be adopted which would establish the Tribunal, the Rwandan government strongly contested most of its mandates.

Briefly: A) The Rwandan government wanted the Tribunal to take place in Rwanda as opposed to the Hague, and later rejected Arusha, Tanzania, arguing that the judicial process should take place in "the country where they committed their crimes."[225] B) The RPF proposed that the Tribunals 'temporal jurisdiction' should be from October 1990 (rather than 7 April 1994) so that crimes committed by the prior regime during the civil war would be prosecuted. They also wanted the 'final-date for the temporal jurisdiction' to be on 15th July 1994, when the RPF defeated the genocidal regime.[226] The Tribunal kept to the dates of 7 April 1994- 31 December 1994, significantly so that it could hold RPA soldiers accountable for 'crimes against humanity'. The RPF were forceful in prioritising the 'crime of genocide' because they did not want it to be compared to the other crimes. C). The postgenocide government wanted convicted perpetrators to be publicly executed, which the government argued that it would send a message of deterrence to those organising to exact revenge, and the act of witnessing public execution will contribute to Rwanda's healing process. This was denied because capital punishment goes against international humanitarian law principles. D) The 'Tutsi-led' Rwandan government emphasised that Rwanda must remain the authoritative figure in these processes, and that Rwandan citizens and state will not allow the Tribunal to

hijack and dictate 'their transition', nor will they be 'second-class' citizens to the construction of the legal and political identity of the new regime.

After many delays and postponements in November 1994, the S.C Legal Counsel met with the Vice-President and defence Minister- General Paul Kagame, who refused to accept the Tribunals final mandate.[227] Acknowledging that an impasse had been reached, Kagame reluctantly indicated that Rwanda would cooperate if the Tribunal "were to set up over Rwanda's objections."[228] Thus, with this 'somewhat promise to co-operate', the ICTR was finally established for the "*Prosecution of Person's Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 31 December 1994.*"[229]

In the final voting (8 November 1994) on Resolution 955, 13 states voted in favour of the ICTR, and 1 (Rwanda) voted in opposition.[230]

1.14 Modernised Gacaca Courts: 'Justice on the Grass'

In 1999 President Pasteur Bizimungu organised a series of meetings (referred to in Kinyarwanda as Urugwiro) to discuss the grievances regarding the ICTR. Eugenia Zorbas states it is "nearly impossible to overstate" the failure of the will for the tribunal to deliver justice.[231] The RPF's central critique concerns the 'question of ownership of the Tribunal', and the resources that were ploughed into the Tribunal instead of the national Rwandan judicial system. The RPF has also publicly ridiculed the failure to expedite the adjudication of the genocide, and has felt that the Tribunal lacked a core objective to seeing justice for Tutsi survivors. Of the 93 accused who were indicted only 61 sentences were handed down over 20 years.[232] Rwanda was also struggling to meet its own expectations and succeed in its 'policy of maximum accountability', and thus began for an alternative transitional justice mechanism. The RPF strongly opposed the suggestion for a South-African styled truth commission.[233] For the RPF, they were searching for a 'Rwandan solution to Rwandan problems' where Rwandans could take back ownership and have a more participatory role in their post-genocide reconstruction.

Within this context the post-genocide regime embarked on an "extraordinary experiment in transitional justice" and the result was the 're-birth' of the traditional Rwandan conflict resolution mechanism- The Modernised Gacaca system (2003). 'Gacaca' is Kinyarwanda for "lawn- justice" or 'justice on the grass'.[234] It is a pre-colonial practice, whereby an elected male elder/honourable person (Inyangamugayo) would reside over community disputes and provide a resolution.[235] Helen Scanlon and Nompumelelo Motlafi argue, "the much-extolled gacaca court system is considered to be a positive resurrection of the use of indigenous African understanding of justice and reconciliation."[236] Waldorf argues that "what actually made gacaca so radical was not its re-invented "traditionalism" but rather its challenge to the Nuremburg paradigm which has dominated international criminal law, and its principles of "liberal-legalism, individual criminal responsibility, and cosmopolitan values."[237]

The Gacaca court would be very different to the Tribunal; it would be more 'local, participatory and promised to be more restorative.'[238]The "Rwandan government outlined five ambitious objectives for the gacaca system: to enable truth-telling about the genocide; to promote reconciliation amongst Rwandans; to eradicate the culture of impunity; to speed up the trial of genocide suspects; and to demonstrate Rwanda's own problem- solving capacity."[239] It was compulsory for Rwandans to gather weekly to participate by listening to both the accuser/ victims and to the accused, hearing confessions and trying cases, with the hope that this process of 'truth –telling' and public forgiveness could somehow lead to Rwandans becoming better neighbours.[240] Even though it deviated from the liberal legalism model of accountability, the Gacaca courts incorporated the "central nostums of transitional justice: truth would lead to justice, in turn, justice would lead to reconciliation."[241]

From its conception, there were 9000 Courts installed and 100 000 judges employed, who had only received four days of training.[242] As a direct challenge to universal notion of accountability, this modernised mechanism was originally designed to try 120,000 accused perpetrators but in the end (2012), the courts had tried close to 1.8 million people.[243]Waldorf argues that the gacaca court "put much of the nation on trial".[244] Delivering mass-justice that was not individualised, disobeyed fairness and due process, which unleashed both a "tsunami of accusations" that led to more and more trials, and replaced 'legal quality with quantity'.[245]The Gacaca court had also re-conceptualised 'genocide' in some ways by "removing the special intent requirement" in order for prosecutions to move more quickly. Furthermore, by introducing the practice of confessions, which was linked to 'forgiveness', perpetrators could either receive lesser sentences, community service or return to their communities.[246] Of the perpetrators of Category 1 crimes, 37% of them confessed, which essentially diminishes the crime of genocide from being considered the "crime of all crimes". [247] Lastly, collective guilt was placed on the Hutu majority, whilst the RPF and Tutsis as a whole received immunity for their war crimes, this ultimately led to the Gacaca court being seen as impartial and a court created for the purpose of prosecuting and criminalising Hutus. Thus in the end the Gacaca Court undermined genuine 'truth-telling, justice and civic trust'.[248]

1.15 Judicial Pursuit of Hutus: 'Victors Justice' and 'Victims Justice' in Rwanda

It is evident that there is a need for justice in Rwanda that can have meaning for individuals and permeate all aspects of Rwandan society and state. This is complex task because the scale and gravity of the crimes were gigantic, and the number of victims and perpetrators were enormous.[249] The regime's decision to exclusively pursue a judicial approach has complex ramifications for how the regime deals with the 'past' especially since "the past is not the past, that Rwanda was not a post-conflict state, and that gross human rights abuses continued after the regime seized power."[250] Stef Vandegintse argues that dealing with the past and violence committed "cannot solely be a judicial issue, it is a political challenge and challenge for society as a whole."[251] In order to advance the 'rule of law' the established doctrines of liberal-legalism must be protected. Principles of 'due process, respect of

individual rights, and 'equality under the law and subject to it' are all important for creating a culture that adheres to the rule of law, and for preventing the politicisation of justice. Also, as Jones asserts that "For there to be a realisation of justice, there must be accountability on the part of all who were involved in the violation of law regardless of their position, ethnicity, or the other factors."[252]Rwanda has reached an impasse in its establishment of the rule of law, because the courts of genocide have been perceived as being impartial and unfair towards Hutus and granted immunity to Tutsis as a whole but to the RPF in particular. I will now address the judicial solution and particularly focus on the critique of 'victors justice'.

Similar to the case of Nuremburg, the architecture of the Rwandan Tribunal was configured in its historical and political context, together with high expectations for it to have a cultural and normative impact on Rwanda, and international law. Moghalu argues that the Tribunal gave life to the Genocide Convention, and the idea that the "crime of all crimes" can be prosecuted.[253] It did have significant impact on international law (inclusion of rape as a crime and contributed to the creation of the ICC) but it struggled from the beginning to overcome the political tensions it had with the RPF-led government. Its core function was to prosecute crime of both genocide and crimes against humanity, but failed in that it created a hierarchy of the crimes for the practical reason of resources prioritisation and because morally and legally there was an obligation to adjudicate genocide crimes. The overall credibility of the Tribunal, from a political justice point of view, is based on whether it can hold the RPF/RPA soldiers accountable for crimes against Hutus and Tutsis that they have committed.

The political and legal factors greatly effected the decisions and outcomes of the Tribunal. Victor Peskin argues that it is important to look at the relationship between the Tribunals prosecutors and the RPF-led government.[254] Peskin writes that the first Prosecutor, Richard Goldstone (1994-1996), was focused on "securing the cooperation of a testy Rwandan government and avoided opening the volatile issue of investigating the RPF."[255]The tenure (1993-2003) of the second Prosecutor Carla Del Ponte, was marked by her "vocal and ultimately unsuccessful confrontation with Kigali over the bid to investigate RPF crimes."[256]

In 2002, the former ICTR prosecutor Carla Del Ponte met with President Kagame, to discuss the investigation into RPF crimes, and requested Kagame's 'co-operation.'[257]Kagame initially pledged his cooperation but once there was pressure emanating from Rwandan military hardliners, he had to retract.[258] After the genocide, the RPF had incorporated several Hutu soldiers from the former RGF into the post-genocide national army. [259]Moghalu argues that if they had to now start prosecuting the RPF than they would have to prosecute the Hutu leaders in the national army, and this would threaten the order.[260]Moghalu also makes an important point by arguing "In the continental political context, a coup by disgruntled Tutsi soldiers who felt threatened by ICTR indictments could not be ruled out. And such a scenario would be profoundly destabilising to the RPF's hard-won victory- and the country itself. Kagame had to keep his troops pacified by not giving into the chief prosecutor's demand."[261] In the BBC documentary 'Rwanda's Untold Story' (2014)', Del Ponte shares that when she met Kagame again in 2001 with a list RPF massacres, Kagame was completely

incensed.[262]The tensions had peaked in 2002, with Rwanda temporarily ending the Tribunals jurisdiction and preventing trial witnesses from travelling to Arusha thus effectively hindering trials to continue. Moreover, the states disdain for the Tribunal reverberated to 'grassroots level' organisation, such as the 'genocide survivors organisation'- Ibuka ('Remembrance') who the RPF appealed to in 2002, calling on the "genocide survivors to boycott the tribunal."[263]Finally, in 2003 Madame Del Ponte was removed from the ICTR, for her rigorous commitment to seeking RPF war crimes, both within Rwanda and across the borders particularly in Congo, where she has argued that the lobby against her was greatly supported by the US- an ally to the RPF who aided the 'cover up' of RPF crimes. [264]

When the third Prosecutor Hassan Jallow begun his tenure in 2003, his focus was on working towards a 'conciliatory' relationship with the Rwandan government, and ultimately he remained largely silent on RPF crimes, refusing to address the issue of RPF indictments.[265] In 2008 Jallow reached a "understanding" with the government, "to forgo tribunal indictments if it conduced a fair trial of RPF suspects who ha been under the ICTR investigation."[266] Pesking would allow four of the main RPF leaders indicted to be tried in the Rwandan military court. Peskin argues that in seeking to find an arrangement with the government, it initially looked as though Jallow was giving the Rwandan government a fair chance to follow its own prosecutions through the domestic legal system (a notion that is principle in the ICC).[267] However, in the end Jallow proved that he was merely 'avoiding becoming a target of Kigali's wrath' and by averting the political crisis that may rise if he tried to prosecute the RPF.[268]Jallow had abdicated the ICTR's responsibility to ensure that individuals from both sides of the Rwandan conflict face international trial for violations of humanitarian law, and together with the strategic opposition of Rwandan government, it made it very difficult for the Tribunal to move pass the 'victor's justice paradigm'.[269]This 'strategic opposition' is bolstered by three factors; 1. "the Tutsi-led RPF government has garnered significant international backing for its self-declared status as representative and rescuer of Tutsi victims"; 2. "the government has likened calls for RPF prosecutions to genocide denial and genocide ideology"; and 3. "the government has intimidated the tribunal by blocking prosecutions of witnesses from testifying in genocide trials."[270]

Technically-speaking the Arusha Tribunal's mandate was re-enforced by the UNSC through Resolution 1503, which would allow the UNSC to forcefully hold the RPF accountable. But as ICTR registrar Dr Agwu U. Okali argues "it is a little optimistic to think that the world is ready yet for international criminal adjudication of the conduct of victorious forces in armed conflict."[271]Former deputy Chief Prosecutor Bernard A. Muna, argues that "Prosecutions cannot happen in a vacuum" meaning that the political construction of the Tribunal, doesn't allow for it to just establish a force (like NATO's SFOR in Yugoslavia) that can go into Rwandan territory and just hand over RPF soldiers.[272] Moghalu argues that in the end the Tribunal activities are limited as they reflect the political support of Rwanda, and its "political master-The Security Council" who provides that muscle to pursue cases.[273] Arguably the security, and socio-economic terrain as well as political instability that is founded on decades of Hutu regime rule, challenges the outright critique of 'victor's justice', but there is also overwhelming evidence that demonstrates 'victors justice' and the

politicisation of the judicial system. What transpired in the Del Ponte controversy, demonstrates this as well as the various unlawful practices by the court.

Charles T. Taku, who was appointed as counsel in the ICTR, raises some interesting points in response to what he refers to as the Tribunal as being nothing short of a "victors court".[274]To begin with, Taku critiques the compromise of 'Article 1' (equality before the law), which has been replaced with a policy that criminalises Hutus collectively as "genocidaires".[275]Taku asserts that the policy of adjudicating the Genocide against the Tutsi has "eternalizes the "Judicial Genocide of the Hutus" on the basis of their Hutu ethnic identity" and which has become a forum for 'shaming and humiliating the Hutus'.[276]This has allowed the RPF to settle its political scores. Secondly, Article 11 stipulates the policy for selecting prosecutors and judges and their responsibilities as representatives of the court. What has instead transpired are question regarding the 'transparency' of their appointments, and the critique that "there is a real possibility of many finding themselves nominated and appointed as a result of political rather than judicial process."[277]Arguably this doesn't question the bias/impartiality of the prosecutors and judges, but the political voting does shape the composition of the courts and influences which cases they will prosecute. From the beginning the prosecutor framed the violence by characterising two categories of crime, Hutus crimes and RPF crimes (which broadly encapsulates any Tutsi crimes), and since their has been no prosecution of RPF (and Tutsi) crimes, the Tribunal has become a "victors court" or as Taku states resulted in the "Judicial Genocide of the Hutus."[278] There isn't recourse in the judicial system for Hutus and thus this has allowed for the preservation of 'victims justice'. Prosecutors of all the courts are well aware of RPF war crimes due to the testimony of witnesses and investigations for the trials.

A commonly used motto is, "Justice must not only be done, but seen to be done" and this includes the impartiality of the courts.[279] The tribunal has deflected efforts to exact individual responsibility by only prosecuting Hutus.[280]This has re-enforced the regimes imposed view that seeks justice for Tutsis, and denies it to Hutus based on an impartial rationale. The RPF's view can be summed up Kagame's statement:

"Whilst some RPF elements committed crimes against civilians during the civil war after 1990, and during the anti-genocidal campaign, individuals were punished severely…To try to construct a case of moral equivalency between genocide crimes and isolated crimes committed by rogue RPF members is morally bankrupt and an insult to all Rwandans, especially survivors of the genocide. Objective history illustrates the degeneracy of emerging revisionism"[281]

Thus, the RPF-states way of addressing the political injustice is to minimise the crimes, blame it on individual 'rogue elements' and to threaten those as being genocide deniers for equating their crimes to the Hutu genocidaires and former regime, or downplaying the genocide for political exploitations.[282]The UNHCR estimates between 25 to 45 000 Hutus killed by the RPF between April and August, a report that has never been officially released.[283] There is also the infamous 'Gersony Report' which I will discuss in later

chapters. One of the most damning sources of evidence comes from former RPF members, who have detailed witnessing and in most cases participated in the 'disappearances, assassinations and mass killings of various political and civilian Rwandans who have gotten in the way of the RPF's political project. Seth Sendashonga (former high-ranking RPF official who now lives in exile) claims that Paul Kagame knew about some of the killings taking place and did nothing to stop it.[284] This is supported by the now exiled Theogene Rudasinga (former General Secretary of the RPF) and General Faustin Kayumba Nyamwasa (former Chief of Staff to the Rwandan Army, and former Intelligence head for Rwanda) who claim that for Kagame- "who was dying was not an issue", whether it were Tutsis or Hutus because they were considered collateral damage in the war to seek power for the RPF.[285] The HRW reported that

"The killings were wide-spread, systematic and involved large number of participants and victims. They were too many and too much alike to have been unconnected crimes executed by individual soldiers or low-ranking officers. Given the disciplined nature of the RPF forces and extent of communication up and down the hierarchy, commanders of this army must have known of an at least tolerated these practices."[286]

Visible signs of 'government-sponsored violence' began to re-emerge in 1995, after the well-documented RPA killings of a UNAMIR estimate of 4000 internally displaced people in Kibeho camp.[287] Lastly the Rwandan government has even refused to sign the 1998 Rome Statute and has supported the US in its efforts to weaken the ICC and universal jurisdiction so that it can avoid prosecution for crimes committed both within Rwanda and abroad.[288] In her seminal book (*Leave None to Tell the Story: Genocide in Rwanda*, 1999) Alison des Forges states that "Revenge killings by soldiers-or other crimes of passion- as well as unintentional killings of civilians in combat situations could never account for the thousands of persons killed by the RPF between April and late July 1994"[289] And this was because accounting for the RPF's crimes was a politically volatile act. I will discuss the RPF crimes in other chapters of this dissertation.

The impact of failing to move pass the 'victor's justice paradigm' complemented the long-held advocated position of the Rwandan government, to have most prosecution take place through the domestic judicial system. Peskin argues that the government was supported by the most 'powerful allies', the US and Britain.[290] Again, I must emphasise that this was taking place in the context of the construction of the ICC and its formulations to map out the relationship between international law and domestic courts.

Kagame has always argued that the Gacaca Court was resurrected for the purpose of "uprooting the culture of impunity" and through active participation it would 'ensure justice is visible'.[291] Rwandans must feel like they are holding people accountable for crimes, and are taking ownership of their healing processes. The Gacaca Law stipulates that it has jurisdiction to try crimes of genocide and crimes against humanity that took place between 1 October 1990-31 December 1994. However, in response to national pressure to prosecute RPF crimes, the government amended the Organic Law in 2004, and deleted all references to

war crimes.[292] Similar to the National Courts, the government only appointed Tutsi judges and prosecutors, thus Hutus felt they were being prosecuted by Tutsis and sentenced by Tutsi judges.[293]In preparation for the Gacaca Courts, judicial personnel were taught that they would not handle RPF crimes. In one 'pilot session', the Gacaca president clarified "who would be inscribed on the list of victim"… "these are the victims of genocide only. That is to say, the list does not concern those killed by the inkontanyi [the RPF]. Do not confuse things".[294] The RPF made it clear from the beginning that it does not want to be considered morally equivalent to Hutus.

This raises the question- what exactly then does the RPF mean by 'combatting the culture of impunity'. Waldorf argues that the RPF understands it to be that which allowed the anti-Tutsi violence to take place since 1959, and does not apply to 'Hutu victims'.[295] For the government it is enough that the Rwandan military court has prosecuted 32 soldiers for 21 crimes committed against 91 civilians during 1994.[296]There were no RPA crimes prosecuted during 1998-2008 (during the two Great African Wars), and since only 2 high ranking officials have been tried, and later acquitted, and 2 low-ranking officials were sentenced to 6 years in prison.[297] In other chapters I will discuss the social ramifications of both the 'Tutsification of the judicial system' and the 'judicial pursuit of only Hutus'. For here it is important to note that these practices have a detrimental impact on the 'rule of law', because of impartiality, continuation of the culture of impunity, complete exclusion of Hutus from being apart of the infrastructure, and calls into question the states idea of justice and its legitimacy. The heroic Rwandan Priest and human rights activist Andre Sibomana poignantly articulated that "Impunity is always in the interest of the state, and the current state in Rwanda is no exception."[298] Waldorf asserts that the "Gacaca court was an expression of victor's justice- that is, accountability for the losing side and impunity for the winning side…victor's crimes are dwarfed by the loser's crimes."[299]

Reyntjens argues that the genocide credit afforded to the RPF-government, has led to "victim turned bully" and a "conspiracy of silence", induced in part by an international feeling of guilt that has allowed the RPF to continue committing crimes with impunity.[300]The 'genocide credit' has also supported the constitution of a good guys-bad guys dichotomy", which started out premised on the fact that everyone knew the Hutu militia and its mass Hutu support were the "bad guys" of the genocide, and then of course the 'good guys' had to be the RPF.[301] Furthermore, 'victor's justice' in Rwanda has led to the presumption made by the post-genocide power that only the RPF-victors can secure justice and the survival of Tutsi victims.[302]The genocide-experience demonstrates the consequences if they don't.

Mamdani makes a few interesting distinctions, which are consequences of 'victor's justice and 'victims justice' in Rwanda. Mamdani states "The victims are said to be both Tutsi and Hutu- the latter victims of the massacres of the internal political opposition."[303]The genocide was aimed at Tutsis; therefore only Tutsis are "survivors". The consuming judiciary process, which provides the foundation for reconciliation and practices of remembrance/ 'official history', has further associated "living victims" to be only "Tutsi genocide survivors".[304]Based on this view, Hutus that are alive today are looked at with suspicion for

either 'getting away with perpetration of crimes' or were onlookers during the genocide, the postgenocide regime rejects the notion of 'Hutu moderates' or 'Hutus who helped Tutsi'. Thus, the final distinction to be made is that Hutus today are "presumed perpetrators".[305] These categories have framed the political violence by strictly judicial terms, and has taken the focus away from the historical and political context that made the genocide possible. This dissertation research question is informed by an alternative argument to 'victor's justice and victims justice', that Mamdani proposes "Rather than arguing that no one be held responsible for violence, I suggest we suspend the question of criminal responsibility to arrive at a new political imagination, a new state for, a more inclusive political space for reform so as to re-establish the sovereignty of a reformed political order and an associated criminal law."[306]

1.16 Conclusion

The Rwandan transitional justice case study, demonstrates a long established tradition of how we think of justice and how it should follow after political conflict. This being, after the military victory, a 'clear victor' is identified, whose power allows for it to administer justice. Rwanda also serves as a lesson to be learnt from, because of the acute challenges that it faced from not having a rich historical pedigree of the rule of law, to inherit. Similar to Nuremburg, the logic that has formulated Rwanda's transitional justice instruments is shaped by legacy of a historical and political context, and a mixture of 'norms' and 'politics'. There is an overarching universalising impulse that has redirected the focus from the historical and political context/reality of the Rwandan genocide. Whereas there have been marked shifts in the analysis on transitional processes, the specificities of the case study can often be overshadowed by the goal to develop international law and a universal culture that adheres to human right values and the ideals of peace and justice. These challenges have been theorised through such debates as those on the 'rule of law dilemma' and the 'Peace versus Justice dilemma', and it is refreshing to see a growth in inter-disciplinary and alternative approaches that are addressing processes and institutional designs. The challenges that Rwanda faces, have urged key Rwandan scholars to rethink Rwanda's 'policy of mass accountability', and in more recent studies, the historical intersection between law and politics is being critically interrogated. This chapter has demonstrated that by framing the genocide as an 'event' that is read within the framework of contemporary legal, political and moral vocabulary, has stood in the way of Rwanda pursuing a more inclusive transitional process that could achieve a post-ethnic society. Unfortunately, the guilt felt by the international community over its failure to intervene and prevent the genocide, has granted the RPF-led government a 'genocide credit' that has significant political purchase. In this chapter, I addressed the failure to move pass the 'victor's justice paradigm', which has called into question the state of the 'rule of law' and the impartiality of justice because it has failed to hold both sides of the conflict responsible. This compromise on justice is more damning because it was further bolstered by the legal and political factors that effected the decisions and outcomes of the Tribunal, which allowed the RPF-led government to strategically oppose and opportunity for *real* justice for both Hutus and Tutsis. Finally, the Tribunal, national courts and Modernised Gacaca court system, have constituted the post-genocide Rwandan society into categories of 'Tutsi victims' and 'Hutu perpetrators', and has legitimised the 'military victor'- the RPF

political vision for Rwanda's transition and post-genocide statehood. The purpose of this chapter is to set the foundation for the following chapter's discussion on the research question, which is 'Can "victims justice" pursued by Transitional Justice in Rwanda, allow for the political reform required to break the cycle of violence?' This dissertation frames the genoicde as political violence, that requires political and social justice, rather than a stirct preoccupation with criminal justice.

Chapter two:

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2.1 Introduction

This chapter critically interrogates Rwanda's political record, anti-colonial project to the Arusha Accords (1993). My objective is to place the genocide in its political and historical context, and problematise the post-colonial institutions of rule; mode of power and citizenship, that retained political identities, and which made the genocide possible. As a departure point, I address the historical record pieced together from the justice process.The legacy of Nuremburg has led to the presumption that when violence is committed on such a large-scale as in the Rwandan genocide, the violence must be criminalised in order to seek responsibility and justice, and also provide a historical record which reflects the victims suffering, the human rights violations, and severs the past political identity from the 'new regime'. In the transitional form, 'criminal trials' are deployed to frame a broad understanding of responsibility. It mediates between individual and collective responsibility, as it works towards establishing a historical record of the past evil legacy, which we can learn from. The problem is that this then frames responsibility as criminal responsibilty and individual responsibility. It also individualises and isolates the violent acts into crimes that can be prosecuted. Furthermore, the logic of victor's justice gives the victor power to not only determine and administer justice, but to This is further complicated by 'victors juctice' and a 'victims justice' rationale, which works hand-in-hand to demonise one side, the perpetrators, and exclude them from participating in the new political order. Furthermore, it allows the 'victor' to shape the historical inquiry based on Tutsi 'victimhood', and exlcudes both victor and victim from responsibilty. This chapter puts forth the argument, that responsibilty for the genocide needs to thought of as primarily being political. This shifts the preoccupation with seeking responsibilty from perpetrators, to addressing the issues that drive the conflict. It will also allow all constiutencies to be included in the new political order. In order to do so, I place the genocide in its historical and political context. Secondly, I address the popular agency or mass participation of Hutus during the genocide. I particularly focus on the contributions made by Rwandan scholars: Omar McDoom, Lee-Ann Fujii and Scott Strauss, who all attend to the 'why/how' question regarding participation. This dissertation has made use of Mahmood Mamdani's critique of 'victims justice' and his theoretical framework for thinking about Rwanda's political crisis, which is the post-colonial citizenship crisis (institutions of rule). The political crisis in Rwanda has led to cycles of violence, fuelled by calls for justice to correct past injustice, and marked by the struggle for power. Thus, I will also present a critical review of Mamdani's theory, and provide my justification for adopting his theoretical framework in this dissertation.

2.2 The Judicial Record: Seeking Justice and Writing History

There is an assumption made in transitional justice that the 'judicial record' will provide the most accurate account of the political violence. It mediates between individual and collective responsibility, as it also works towards establishing a historical record of the past evil legacy, which we can learn from. Hopefully, the 'historical record' will also "pierce the distortions generated by official propaganda, before the guilt could reinvent the truth" and prevent the cycle of revenge killings or future acts of aggression.[1] The logic that underpins the criminal trial derives from the Enlightenment Period, whereby theorists Karl Marx and Immanuel Kant wrote that "history is teacher and judge, and historical truth in and of itself is justice."[2] Thus 'history' is seen as having the potential to be liberalising whilst serving the justice project. Moreover, 'historical record' assists the new regime in making a 'clean break' or to discontinue with the past immorality of the predecessor regime, and to delegitimise it as it constituted the new regime's identity.

In Rwanda, the judicial record has been pieced together through the testimonies and narratives of Tutsi witnesses, and particularly Tutsi victims. Moreover, the process is focused on "cataloguing atrocities", by 'identifying perpetrators and demanding that they be held criminally accountable.'[3] Legal scholar, Dr Regina E. Rauxloh, argues that neither judges, nor prosecutors, nor defence counsels are trained in historical research and rarely are historians invited to give expert testimony.[4] Instead, the courts use strict evidential rules and apply a forensic approach to investigating 'historical facts'.[5] Thus, establishing the historical record is contingent on the criminal trial process.

The problem is that the capacity of the courts to create a comprehensive picture of the past, where the violence is placed in its historical and political context, is compromised by both logic that underpins criminal justice and practical or resource limitations. In the Rwandan case, the failure to move past the 'victor's justice paradigm' has had crucial implications for how the 'past' has been recorded and how we understand the political violence. Briefly, a few factors that compromise the impartiality of the record are: a. temporal/and or territorial jurisdiction of the courts which has excluded RPF crimes; b. limited resources which lead to prioritising prosecution of the 'most responsible', that concentrates on certain events and locations; c. only individuals are put on trial and not the political project of the predecessor regime, and all evidence is related to the relevant charges rather than the general historical background; and finally d. the prosecution is dependent on the co-operation of the state.[6] Thus, the trial process selectively decides what is valuable and what is not for the historical record. Unfortunately, the process also tends to think about agency and motivation as either owing to 'individuals psychology of the culture of the perpetrator'.[7] In an ideal world, the criminal trials can add value to the work of historians by validating their findings with thoroughly investigated evidence and through expert witnesses.[8]

Between 1994-1995, the transitional government recognised all Hutu and Tutsi as being victims, but once the judicial system began to develop and take on a directive position in the transition, the historical discourse became more "accusatory" towards Hutus.[9] The Hutu-

identity has since been linked to criminal guilt. There are two important points in the narrative that the post-genocide power subscribes to. First, the 'official narrative' represents Hutu Power in an exclusively negative way, that has de-contextualised their historical ideals and agency, and provided a superficial account for why Hutu Power chose genocide as the most viable option for their political project.[10] The second narrative is characterised by a curious paradox in its treatment of the genocide itself, "both privileging it as the central event in Rwandan history but at the same time removing it from historical scrutiny."[11] The post-genocide government has also purged and illegalised 'ethnic references', operating on the logic that "if awareness of ethnic differences can be learned, so too can the idea that ethnicity does not exist" and that " "divisionism"-ethnic, regional, and political- has been the bane of Rwanda and indeed the root causes of the genocide."[12]The government expresses a fear that opening up the 'memory' of the genocide will strip it of its prime evil character and allow for re-interpretations by Hutu ideologues that will invariably be an injustice to Tutsi victims. Lemarchand argues that "The imposition of an official memory purged of ethnic references, is not just a convenient ploy to mask the brutal realities of ethnic discrimination; it institutionalises a mode of thought control profoundly antithetical to any kind of interethnic dialogue aimed at a rethinking of the atrocities of mass murder."[13]

In thinking about the relationship between 'criminal justice' and historical inquiry, it is important to ask questions about the particular role that the 'historical record' will play. In the Rwandan transition, history making has taken place in a highly charged political context- where the past is not exactly the past because political violence continued. I focus on its implications for reconciliation in Chapter 4, but for here I want to focus on the political purchase that 'history-writing' has in Rwanda. Ruti G. Teitel makes an interesting argument, that the "assumption that "truth" and "history" are one and the same evinces a belief in the possibility of an autonomous objective history of the past belying the significance of the present political context in shaping the historical inquiry…When history takes a "interpretative turn" there is no single, clear, and determinate understanding or 'lessons' to draw from the past, but instead, recognition of the degree to which historical understanding depends on political and social contingency."[14]

Primo Levi has written a penetrating commentary on what he calls "the memory of the offense", where he responds to the selective process that produces a 'convenient reality'.[15] There is also Paul Ricoeur's work, which has greatly contributed to the work on the 'politics of memory' through his categories of "Thwarted Memory, Manipulated Memory and Enforced Memory."[16] '

'Thwarted Memory' responds to the repression of memory that takes place in Rwanda, and what Lemarchand refers to as the "many blind spots" in Rwanda's official memory, which has become 'formulaic'.[17]By attaching criminal guilt to the Hutu identity, the memory of those generally referred to as Hutu "moderates" has been 'thwarted' by what Nigel Eltringham refers to as the "ubiquitous, undefined phase."[18] Eltringham argues, "These Hutu, both those who killed and those who survived, demonstrate that the genocide perpetrator's binary construction of Rwanda ('the Hutu vs. the Tutsi') was not natural, but had to be

imposed. While one must recognise the opportunism and personal politicking were prevalent among the political class in 1990-1994…the acknowledgment of Hutu who resisted 'Hutu Power' remains a powerful rejection of the vision of Rwandan society proclaimed by the perpetrators of the genocide."[19]Eltringham makes an important argument that challenges the term 'Hutu moderates', arguing that it does not do justice to many Hutus who showed "proactive resistance" (negates their agency).[20] As one Tutsi escapee explains, "Anybody who was against Habyarimana and his regime was targeted as an enemy of the Hutu."[21]Lemarchand asserts "Summoning a de-ethnicised, victims-centred memory is not enough; what has to be given proper recognition is that Hutu and Tutsi were victims of a calamity for which responsibility is shared by elements of both communities. This sharing of responsibility is what Rwanda's official ideologues refuse to acknowledge. Instead, every effort is made to manipulate memory so as to exonerate the ruling elites of all responsibility in the circumstances that led to the abyss."[22]By excluding evidence, the 'official memory' fails to make an important distinction between 'Hutu Power' as a political ideology and the Hutu civilian population.

'Manipulated Memory' has taken place by establishing the genocide as 'the event' in Rwanda's history'. This leads to what Ricoeur refers to as "culpable indifference" and in Rwanda responds to how the RPF has received 'historical immunity' for the crimes they have committed and for their responsibility in invading Rwanda, which triggered a civil war that evolved into a genocide.[23] Lemarchand argues, "there would be no genocide had Kagame not decided to unleash his refugee warriors on October 1, 1990, in violation of the most elementary principle of international law."[24] Furthermore, Lemarchand clarifies that he does not deny the very obvious culpability, organisation and pre-meditation of the genocide, but that nothing is officially said about the "climate of fear and paranoia created by the civil war [which] did at least as much as Radio des Milles Collines to heighten the receptivity of Hutu extremist to a 'final solution'."[25] He continues by stating that during the civil war, over one million Hutu were forced out of their villages when the RPA arrived, and into inhumane conditions within the makeshift refugee camps, provoking many Hutu men to join the killing spree.[26] Fanie du Toit argues that this does not mean that one needs to 'dissolve' the genocide into the war itself…Yet the implication for the agenda of transitional justice is that while the 'official narrative' posits the genocide as 'prime evil', it has ensured that the underlying causes…have been inadequately investigated and addressed with important consequences for the post-genocide reconciliation."[27]

The third of Ricouer's category – 'Enforced Memory', importantly discusses the 'ritualistic' practices of remembrance through annual genocide commemorations. These 'rituals' re-enforce 'Tutsis as victims" and Hutus as guilty" which not only nurtures ethnic enmities, but gives "ideological legitimacy to the consolidation of Tutsi power."[28]This relates back to Reyntjens' notion of 'genocide credit'. The canonical work of Friedrich Nietzsche and Michael Foucault has explored the "intimate relationship between the imposition of power and the control of knowledge".[29]

The mode of Rwanda's historical inquiry presents acute challenges for post-genocide Rwanda. The 'judicial record' has not sufficiently addressed the sets of troubling question that the genocide poses. In Chapter 4, I will address the historical limitations that this has for reconciling a common understanding of the past for Hutus and Tutsis. The following section of this chapter examines the complicity of history making with the organisation of power. Therefore, I will explore Rwanda's political record and place the logic of the genocide in its historical and political context. As Mamdani asserts "political violence is seldom a standalone incident, it is part of the cycle of violence."[30]

2.3 Making Genocide Thinkable

The scholarship on the genocide tends to focus on three broad explanations for the genocide, these are: (i) a focus on external influences, both colonial and neo-colonial (macro-economic/macro-political trends); (ii) a focus on domestic causes including demographic and 'ethnic' conflict (tribal-hatred argument); (iii) role played by important individuals and the elites acting within key institutions of the state (military and civilian); and (iiii) a psychosocial account based on the presumed social conformism and obedience of Rwandans.[31] Helen Hintjens argues that each explanation tries to draw comparative parallels with other cases of mass slaughter (particularly the German-Holocaust), or from existing theoretical paradigms, and although they may have a basis in reality, they also have blind spots that cannot successfully explain the mass participation of 'ordinary Rwandans'.[32] Thus, in order to explore the political violence, I have turned to the theoretical work of Mahmood Mamdani, as well as other key Rwandan scholars.

2.3.2 Mahmood Mamdani: A Theoretical Framework for the Genocide in Rwanda

Mamdani asserts that Rwanda has became a "metaphor for postcolonial political violence", which provides a vantage point from which to think through the African post-colonial political crisis, and specifically the 'post-colonial citizenship crisis' which fuels cycles of political violence.[33] He makes the following argument: "History in Rwanda comes in two versions: Hutu and Tutsi. Ever since the colonial period, the cycle of violence has been fed by a victim psychology on both sides. Every round of perpetrators has justified the use of violence as the only effective guarantee against being victimized yet again. For the un-reconciled victim of yesterday's violence, the struggle continues. The continued tragedy of Rwanda is that each round of violence gives us yet another set of victims-turned perpetrators."[34]

At the time of writing, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda*, the initial scholarship on Rwanda's genocide, had shied away from the most troubling questions. Together with the current research conducted by key Rwandan scholars, Mamdani has chosen to frame the discussion on Rwanda by attending to the questions concerning the 'mass participation' or 'popular agency' of 'ordinary' Rwandans. The 'gruesome reality is that the genocide "was a result of both planning and participation", and the agenda that was imposed from above had to resonate with the perspectives of

below.[35] This presents Rwanda with both a moral dilemma and political crisis that needs to be thoroughly investigated.[36] For Mamdani, the genocide has posed a set of troubling questions, such as: '*Why did hundreds of thousands of Hutu, who had never before killed, take part in the slaughter?* ; *Why did such a disproportionate number of the educated—civil leaders, doctors, nurses, judges, human rights activists, etc.—play a leading role in the genocide?*'; and '*Why did places of shelter—hospitals, churches, and schools—turn into slaughterhouses?*'[37]These 'how' and 'why' questions aggregate several other questions, such as, "*why did Rwanda's hardliners choose genocide as a strategy for power?*"[38]

Mamdani's stated objective for writing this book is to "make the popular agency of the genocide thinkable."[39] Mamdani rethinks existing suppositions and separates himself from existing methodological and theoretical frameworks used in the analysis on the genocide. In critique of 'Western scholars' (which he does not specify) Mamdani aims to generate a theory that can attend to the logic of the genocide, which he believes requires a political explanation. It must be noted that the objective of his analysis is to contribute towards developing his main pertinent theoretical point, which is what he calls 'the post-colonial citizenship crisis in Africa.'[40]Thus, Mamdani casts the Rwandan genocide as being a 'Native's genocide', attributing the logic of the genocide to the logic of colonialism, whose perverted historical legacy was inherited in the politics of the post-colonial regimes. Saskia Van Hoywegen argues, "Whilst most of the analysis of violence in the post-colonial period has focused on the concepts of ethnicity, Mamdani brings race back into the picture."[41]

It is important to acknowledge Mamdani's intellectual development that shaped his preoccupation with finding a political explanation and generating a theory. The rationale for developing a theory that could apply to Rwanda emerged from a growing discontent Mamdani had with the methodological underpinnings of 'Area Studies'. Mamdani argues that 'Area Studies' sees "state boundaries as boundaries of knowledge therefore restricting the political with epistemological boundaries.[42] Furthermore, 'Area Studies' sees 'knowledge as being about the production of facts coupled with a stubborn resistance to theory.'[43]Thus, Rwanda needed a coherent explanation and a theoretical framework in order to understand the genocide and its political and historical context. This would also allow us to think differently about political violence.

Mamdani departs his discussion on Rwanda by asserting that misinterpretations of the genocide are generated by three silences in the literature on Rwanda, which represent salient features that have contributed powerfully to the logic of the genocide. These are: 1. The history of genocide (he pushes back on the temptation to view the genocide with no history); 2.The agency of the genocide (which sees the genocide as a 'state-project' but also the agency of the 'subaltern'); and 3.The geography of the genocide (Mamdani attributes the timing of the genocide as owing to the post-colonial citizenship crisis in Uganda.).[44]He also asserts that the genocide is complex, and there isn't a "one size fits all" explanation that captures the regional differences in Rwanda.

The second concern Mamdani addresses, responds to the 'defined enemy', the genocide target, arguing that before one can eliminate the enemy, one must first define it.[45] Urasora Alice Karekezi asserts, "There is a widely held perception that African civil wars are simply modern manifestations of age-old tribal animosities."[46] This has led to a preoccupation in search of 'ethnic differences' and popularizing 'tribal-based arguments', as well as focus on origins. The tribalism argument tends to focus on forces from below. The other popular explanation looks at 'external forces' and how they generate violence. In response to these explanations, Mamdani argues that the "preoccupation with origins, reflects how colonial power sketched the boundaries of colonial and postcolonial scholarship."[47] Furthermore, the discussion on 'ethnicity' tends to swing from one extreme to another. There is the colonial view that sees the ethnic groups as being static and primordial; which has given way to an instrumentalist notion that views Hutu and Tutsis as being easily manipulated by special interests or elites seeking political power.[48] He also rejects the post-genocide regimes historical narrative, which says that prior to colonialism, Rwanda was a "centralised monarchy ruled under the succession of Tutsi kings from one clan" and although the Tutsi king was 'supreme', "the rest of the population, Bahutu, Batutsi and Batwa lived in symbiotic harmony."[49] Mamdani argues that this then sees state formation and ethnic differences as beginning with the colonial intervention, which he rejects. Instead, Mamdani argues that the colonialist (Belgian power) used the pre-existing socio-political distinctions between Hutus and Tutsis and racialised them into political identities in order to serve their political project and hold on power.[50]

The other viewpoint sees Hutu and Tutsis as 'market-based identities' or 'cultural - identities'. Mamdani argues, "In the decade that followed African political independence, militant nationalist intellectuals focused on the expropriation of the native as the great crime of colonialism."[51] This led to a host of 'underdevelopment theorist' historicizing the 'construction of colonial markets, and, thereby market-based identities.'[52] 'Political Economy theorist' emerged with a popular explanation that understands political violence as result of a clash between market-based identities (either class or division of labour) and as being revolutionary or counter-revolutionary.[53] In the instances where violence was purely non-revolutionary, their explanations failed to account for clashes that cut across social classes. This provided an opening for the resurrection of Cultural Theorists (conflict emerges because of cultural differences- "The Clash of Civilisations") and their explanations on violence in Africa.[54]

Mamdani asserts that the studies conducted on the African colonial and post-colonial experience, have been relatively silent on the question of race, and the relationship between identities and state-formation. In Central and East Africa, the 'politics of indigineity' has become a powerful factor in political developments, and in many counties the need to identify who is 'alien', 'non-citizen' and who is a 'migrant' is conducted with significant fervour, encouraging marked levels of violence.'[55] As a follow up to his canonical work- Citizen and Subject (1996), Mamdani re-introduces and centralizes 'race' and 'ethnicity' in the political discussion on Rwanda and within the context of the colonial experiences in the African Great Lakes region. He clarifies that this method does not deny that identities can be

also economic or cultural, but allows one to understand that political identities are as a direct consequence of state formation.[56] He conceptualizes political identities as being "historical rather than primordial, and institutionally durable as opposed to being available to instant manipulation by those who are seeking power."[57] As political identities, Hutu and Tutsi have changed over time with each marked shift in the institutional development of the Rwandan state. Thus, Mamdani prefers to focus on the political institutions that breathe life into political identities and have 'naturalised' them, rather than focusing on political agency per se.

In his critique on the colonial intervention and state formation, Mamdani explains that the colonials used the Hamitic myth to constitute Hutus as a native group, and Tutsis as a foreign settler race. Furthermore, the "Belgian colonialist not only racialised the Tutsi into a politically privileged settler class but also "victimized" the Hutu by consigning them to a life of political inferiority."[58]Mamdani thus argues that the origins of violence, is connected to how Hutu and Tutsi were constructed as political identities by the colonial state."[59]Moreover, he asserts that "the great crime of colonialism went beyond expropriating the native, the name given to the indigenous population…The greater crime was to politicize indigeneity in the first place; first negatively, as a settler libel of the native; but then positively, as a native response, as a self-assertion."[60]

The problem in Rwanda is that the dialectic of the native and the settler did not just end with colonialism.[61]The 1959 Social Revolution inherited the racial categories, failing to deconstruct them, which enabled Hutu leadership in both post-colonial Republics to operate on the logic of colonialism. The President of the First Republic- Gregoire Kayibanda breathed life into the racial categories, as he argued that justice for the indigenous Hutu majoritarian, means establishing a 'Hutu state' and preserving rights, privileges and citizenship for Hutus. Thus, the politicized racial identities continued to have political relevance, and the political institutions reflected that it merely turned the logic of colonialism on its head.[62] For the Tutsi, the violence leading up to Rwanda's Independence, marked the first 'genocide' against the Tutsis and an 'anti-Tutsi sentiments' that has since seen them excluded from all spheres of state and society. Whereas the colonial intervention and its role in identity formations has been exhausted in the literature, Mamdani's work is merited for his analysis on the post-colonial institutional state development, which has reproduced the political identities and contributes to the post-colonial citizenship crises.

For Mamdani, there wouldn't have been a genocide had it not been for the legacy of colonialism and post-colonial politics. Essentially, he makes two important arguments in his theory. First, the 'logic of the genocide' must be thought through the 'logic of colonialism', which set into motion a particular political world. He argues that the "horror of colonialism led to two types of genocidal impulses. The first was the genocide of the native by the settler; the second was the native impulse to eliminate the settler."[63]In order to deconstruct the genocidal ideology, one must explore the historical dynamic, which led to Hutu being synonymous with 'native' and Tutsi with 'settler', and he argues that the 'truth' lies in Rwanda's political record and political institutions. The second argument he makes is that the

Rwandan genocide must be understood as a "Native's genocide', because "It was a genocide by those who saw themselves as sons-and daughters- of the soil, and their mission as one of clearing the soil of the threatening alien presence.[64] This was "not "ethnic" but a "racial" cleansing, not of violence against the one who is seen as a neighbour, but against one who is seen as a foreigner; not a violence that targets a transgression across a boundary into home but one seeks to eliminate a foreign presence from home soil, literally and physically."[65] To support his political explanation, Mamdani describes three types of killings that took place during the genocide. These are: 'the killing of combatants (and civilians) on both sides which was a direct outcome of the civil war; the killing of Hutu by Hutu (whether for political reasons, for example 'moderate' Hutus killed by nationalist Hutus); and the killing of Tutsi civilians by the Hutu mobs- this last category of killings is what precisely makes it a genocide.[66] He argues that whereas Hutus were killed as individuals, between March-July 1994, Tutsis were killed as a group. [67] By introducing the logic of the genocide through his theory of race, Mamdani exposes the principle nature of Rwanda's violence, which is its political dimension.

2.3.3 A Critical Review of Mahmood Mamdani

The following section of this chapter will address the critical engagements with Mamdani's theoretical framework. Mamdani situates his book, 'When Victims become Killers…' by departing with a critique on 'Area Studies', arguing for it to be decolonised, and delineates himself by pointing out the predominant practices of "history by analogy."[68] Where as he is lauded for interrogating the empirical with the theoretical, his deductive approach ("whereby he takes the theory from his previous book on post-colonial citizenship in Africa and applies it to Rwanda") has led him into conflict with the specificity of Rwanda's empirical record. [69]There are two concerns specific to this commentary. Firstly, Mamdani's methodology can sometimes lead to him being narrowly committed to generating his theory. Secondly, as Karekezi highlights in his final chapter, which offers many suggestions for the post-genocide regime, Mamdani neglects to acknowledge the 'real world experiences' and acute challenges that the post-genocide regime and transitional justice process has encountered, some of which I addressed in chapter 1.[70]Mamdani "tends to evaluate deductively Rwandan efforts according to the extent to which they mirror abstract models or other historical manifestations thereof (whether they are analogous to the Rwandan context or not).[71] Karekezi thus argues that the "number of conceptual, empirical and methodological elements of Mamdani's work merit closer scrutiny."[72]

Pal Aluwhalia and Francis B. Nyamnjoh share similar critiques of Mamdani's mode of inquiry. Both argue that in as much as Mamdani attempts to break free of the predominant modes of inquiry, as Nyamnjoh asserts, "Although critical of simplistic dichotomies and 'history of analogy', he fails to remain consistent to the idea that sees 'history as a process'.[73]By pointing out Mamdani's over-reliance on the structure of the state rather than the social realities on the ground, he produces this world of neat 'dichotomies', whereby one is either 'citizen' or 'subject', and cannot be something in between.[74]Instead, as Nyamnjoh states, "we find individuals…who are both citizens and subjects (who straddle the 'ethnic'

and 'civic' citizenship highlighted by Mamdani, but who would not accept sacrificing either permanently); sometimes they are more citizen than subject and sometimes more subject than citizens, but certainly not reducible to either"[75] Nyamnjoh further argues that it is important to look at the sociology and anthropology of living Africans, which is quite something else.[76]

For Aluwhalia, his issue is that whereas Mamdani successfully demonstrates that during decolonisation, revolutionary and nationalist movements successfully attacked the system of rule, and that in this emancipatory or liberated exercise decolonisation of the mind took place, however, he does not demonstrate how 'recolonisation of the mind has taken place'.[77] I do not completely agree with Aluwhalia's point, because the objective of Mamdani's argument is to demonstrate how colonisation created a political world, which was inherited by the post-colonial political institutions of rule and governance. The 1959 'Social Revolution' in Rwanda failed to deconstruct Hutu and Tutsi as political identities, and instead inherited them into the political project for what would come after independence, thus maintaining the logic of colonialism. I do agree that it is not always clear as to how the 'political identities' continued to have life over time in order for it to have a causal relationship to the genocide. I will explore this point later. Lemarchand argues that it is difficult to follow Mamdani's theory if one looks to the fifties in Rwanda, a marked point in Rwanda's history, where Lemarchand describes the 1959 'great nativist revolution' as being better described as a 'revolution teleguide', owing more to the 'tutelle authorities than to Hutu nativism'.[78] Lemarchand continues by stating the 'Hutu jacquerie were not directed against the Tutsi monarchy, much less the Tutsi as a group, but against the chiefs and sub-chiefs, who were seen by the Hutu masses as the principle source of their misery, thus to speak of 'nativism' in this context is singularly inappropriate.'[79]Lemarchand also argues it was 'regionalism' rather than 'nativism', which placed power firmly in the hands of the south-central region (the Banyanduga) which paved the way of revenge of the northerners (Bakiga) and provided the platform for the North-South Hutu divide that led to the 1973 coup.[80]

Karenzi argues that whilst Mamdani has privileged the political dimensions of the genocide, which is certainly the strong point of his contribution, it has come at the "expense of an adequate consideration of other factors and the interconnected nature of these factors with the political."[81]Whereas Mamdani presents 'economic, social historical, and cultural realities, he assumes that they were 'co-opted and manipulated for political purposes.'[82] In response, Karekezi argues that this is a "simplistic assumption" to make, and owes it to Mamdani being conceptually biased rather than being open to Rwandan realities.[83]This view is reflected in many of the engaged critiques with Mamdani's thesis, where it is expressed that Mamdani makes certain leaps between 'facts' on the past and present in order to make his argument, whilst relegating other contributing factors in to the genocide as insufficient causes. Such as, the RPF invasion took place after the crash in coffee prices (late-1980's), which had a devastating impact for the Rwandan peasantry, and coincided with the start of World Bank/IMF "structural adjustment policies".[84]

Saskia van Hoyweghen has posed an important question, which is inextricably linked to the queries and critics above, and has troubled my own inquiry. Hoywegen articulates, "the flaw of the book lies in the weak link made between the elaborate (race) theory which is presented in it and the actual research question which it begins (namely, why so many ordinary people participated in the genocide).[85]Karekezi argues that this is due to the conceptual shortcomings in the way Mamdani equates correlation with causation, and contribution with determinism.[86] Both Karekezi and Lemarchand agree that, where Mamdani is on solid-ground when it comes to his analysis on the contributions of the colonial administration to politicisation of identity, and how the native/settler dialectic takes root, it does not complete the causal link, by devoting equal analytical attention to the related question of how the native/settler dialectic was subsequently transformed into individual decisions to kill or not to kill.[87] Mamdani asserts that "for the Hutu who killed, the Tutsi was a settler, not a neighbour", but Mamdani does not offer empirical evidence to suggest that in the minds of the 'ordinary Rwandans', this was the case.[88] Thus, Mamdani merely assumes, rather than proves that the 'native/settler' narrative is ingrained in the consciousness of ordinary Rwandans.[89] Lemarchand expresses, "But where the settler metaphor applies to the case at hand, either at a conceptual derivative of the Hamitic myth, or as an overarching explanatory framework to account for the killings of Tutsi, is where the questions are likely to rise."[90]

Lemarchand argues that "It is one thing to try and make sense of the strategies pursued by the organiser of the killings, but it is quite another to grasp the motives of the grass-roots killers."[91]Furthermore, Lemarchand points out that Mamdani's frame of the murderous logic neglects the fact that "The killing of the Tutsi did not happen at one fell swoop, as the sudden explosion of the native's Fanonesque rage against the settler, but as a series of calculated mass murders by a small group of Hutu extremist (of Hutu power obedience) that steadily increased in scope and intensity….The turning point came on 6 April 1994…It was at this point that the decision was made to apply the full force of genocidal violence against every Tutsi in sight as well as every Hutu whose political affiliation or physical appearance made them suspected of Tutsi sympathisers."[92]Lemerchand frames the motive as a "security dilemma", and that the straightforward rationale was forcefully articulated by Radio Mille Collines; "either we kill the first, or else be killed ourselves."[93]

Paul Magnarella has similar concerns, as he reiterates, "In response to Mamdani, one might add that there is no necessary connection between racial differences, immigration and genocide", and by his own rationale, "humans shape their world based on human consciousness and capacity", meaning "political identities should not be given much weight as the cause of genocide in Rwanda."[94] Magnarella also poses the following question to Mamdani- "why did Hutus then kill Hutus?". In agreement, Lemarchand argues that Mamdani hasn't systematically dealt with critically important questions regarding the variations in agency, such as "Why did some Hutu choose to protect their Tutsi neighbours, while others turned against them?"[95] Magnarella argues Mamdani's racial hypothesis is too narrow when it cannot account for mass killings on both sides. Lemarchands asserts that the dramatic 'north-south split' brought to light a "wholesale massacre of southern opposition politicians during the genocide."[96]

<u>2.3.4 Why did so many 'Ordinary Rwandans' kill?</u>

In response, to the above critiques, and my own queries, I chose to supplement the arguments made by Mamdani, with more recent empirical research conducted by key Rwandan scholars. In response to the political violence, and the questions raised around mass participation of 'ordinary' Rwandans, I explored the work of Omar McDoom, Lee Ann Fujii and Scott Strauss. Similar to Mamdani, these scholars have centralised the question of mass participation and used it as a departure point for their individual inquiries.

All three scholars have made seminal contributions to the study of genocide and mass killings, the study on political violence in Africa (and specifically the Great Lakes region) and have put to rest many of the tropes that have troubled the Rwandan genocide. Omar McDoom conducted empirical research (2002-2001) at both a meso-level (Ruhengeri and Butare prefectures) and at micro-level (in four communities) using survey-research, oral testimonies and semi-structured interviews, involving 296 participants. [97] McDoom chose these northern and southern prefectures to capture both the Hutu/Tutsi divide and the Hutu North/South divide. Lee Ann Fujii's work has provided a framework for social theorising the Rwandan genocide. Fujii has used the theoretical framework of "social embeddedness" which understands 'human action as being embedded in networks of social relations.'[98] Through this methodology Fujii found that the categories (victims, perpetrators, bystanders…) are not remotely distinguishable, but that 'ordinary Rwandans' frequently moved between all of them in the span of the genocide. Over nine months, Fujii conducted 231 individual interviews with 82 participants, and two group-interviews in each of her sites (Ngali and Kimanzi). Scott Strauss has used his English and French proficiency to pour over both primary and secondary source collections. With a background in journalism, Strauss demonstrates a methodological conscientiousness in his findings from the interviews he conducted with 210 confessed killers. His journalistic instinct to be sceptical, has led him to triangulate his data, for example he "compares periods in Rwandan political history for common dynamics driving episodes of past violence at Tutsis; he situates the testimony of the confessed killers within the that of the other witnesses and survivors to probe the veracity of the killers' words."[99] And Strauss doesn't just stop there, he probes his own argument with precise attention to methodological detail each step of the way. Strauss interestingly found that although Rwanda was the most "mass-participatory of genocide" 'only' 14-17% (175,000 to 200,000) of the Hutu male population participated.[100] This statistic challenges the account and narratives drawn by the post-genocide Rwandan government.

McDoom, Strauss, and Fujii share the belief that people who participated in the genocide did not reveal a "higher degree of ethnic hatred, did not subscribe to racist values more strongly, and indeed, in general did not particularly consider the Hutu-Tutsi divide a crucial part of daily life."[101] These scholars however differ in their discussion on what led 'ordinary Rwandans' down the pathway to participate in the violence.

McDoom asserts that it is important to think out of the popular assumption that the Rwandan genocide was this "widespread state affair". Rather, through empirical data collection (the

most appropriate methodology), he found that in different parts of the country, different routes to the genocide were taken, and local contexts produced different 'conducive conditions'. [102]'From his findings, Mcdoom argues that mass mobilisation, including collective violence, was contingent on two main conditions.

The first condition is that mass mobilisation "required a mind-set: the prior internalization within the Hutu population of a particular set of historical-ideological beliefs".[103] By historical component, he refers to a Hutu collective memory of Hutu oppression in the hands of Tutsi that the 1959 Hutu Revolution had ended.[104] The 'ideological beliefs component' is defined by the "external threat, the on-going war, in historical and ethnic/racial terms and rested on twin beliefs."[105]The war was ethnic/racial because Hutus saw the collaboration between the Tutsi 'within Rwanda' and 'Tutsi enemy outside of Rwanda', as forming an alliance against the Hutu indigenous majority, with the specific intent to return Hutus to a past position of inferiority and subordination.[106]Thus, Mcdoom rejects the 'instrumentalist view of 'ethnicity', and subscribes to Mamdani's conceptualisation of 'race' (Tutsi as alien/foreign) and when Tutsi were briefly redefined as an ethnic group in the Second Republic.

The second condition is the "commitment of state institutions, which still had authority and/or power in the eyes of the population, to the genocidal project."[107] McDoom rejects the 'pure statist, elitist argument' and the argument that 'unquestioning obedience' led to mass participation in the genocide.[108] In the North, there had to be a pre-existing ethnic prejudice, which wad reinforced by the war, and which facilitated the "co-optation of the population into anti-Tutsi violence.[109]However this wasn't the case in the South, where there was a "gap in the State's authority at the micro-level that allowed pro-violent elements to come to the fore."[110] This 'commitment' provided the initial trigger and initial legitimacy for genocidal violence, and the culture of impunity fuelled this further. However, McDoom clarifies that once the genocide was on its way, and its subsequent degeneration, participation came about more through "complex interaction of the individual motives, and not only the consequence of the state's continuing authority and power."[111]

McDoom's research has debunked many 'myths' and assumptions made about the relationships and perceptions between Hutu and Tutsis. I found that his methodology is transparent and not constrained by predestined goals, which allows McDoom to successfully capture the complexity of the Rwandan case study. For example, his findings demonstrated that there is a crucial difference between Hutus in the North and South, which is an outcome of the socio-political North/South divide. In the North, for the genocidal message to ring true, there had to be a "deeply embedded, of historical, essentialist differences", but McDoom clarifies that this Hutu collective memory is not a 'racist or prejudicial one.[112] He rejects the assumption that all Hutus were racist or ethnic chauvinist towards Tutsis. This was confirmed by Hutus in the South who had a recent 'Hutu collective memory' in which Tutsis and Hutus had relationships (friendships and marriages) and cohabited together.[113] With regards to "perceived ethnic inequality" Hutus in the North and South felt that Tutsis were more successful (owned more land or cows) but differed when asked about the 'legitimacy of

Tutsis success'.[114] Hutus in the North viewed Tutsi success as being due to historical socio-economic privileges rather than due to their own hard work.[115]Furthermore, the data also shows that Hutus in the North were more likely to feel aggrieved by 'perceived Tutsi socio-economic superiority', which contributed to some participating in the violence.[116]

Lee Ann Fujii has offered a distinctly different approach to understanding the 'popular agency of ordinary Rwandans.' In her book, 'Killing Neighbours: Webs of Violence in Rwanda', Fujii departs by pointing out an interesting dynamic of the genocide, which frames her discussion. She states that "many Tutsi who did survive did so only because of the help of a Hutu friend, family member, neighbour, or stranger", thus it is important to look at why some of the Interhamwe were helping the very people they were meant to target.[117] Fujii clarifies that her objective in the study is to 'fill in the gaps' left by 'ethnic-based theories', that have the tendency to focus on mass participation through a narrow 'ethnic-lens', and occludes the variation that takes place within groups.[118] Fujii argues mass violence such as genocide needs to be investigated through empirical research, because arguments of 'ethnic-hatred' and 'ethnic-fear' tend to overlook the 'agency of the ordinary killers'[119]. In her findings, Fujii argues that ethnicity is only a partial explanation, whilst people may kill under the pretext of ethnic ideologies ("ethnic- loyalties, ideologies, animosities, or fears…") to essentialise the 'ethnic-argument' is a mistake, rather the "real motive and interest are often rooted in local relations and power structures"- other more immediate logics are at work.[120]Similar to McDoom, Fujii demonstrates that Rwandans had different motives and levels of involvement that led them into and away from the genocide.[121]Fujii clarifies that this does not mean 'ethnicity' is unimportant, but that it "operates as an organising principle during genocide, not as an automatic trigger for mass participation in violence."[122]

Fujii presents the process that led people to become complicit (whether fully or partially) through the concept of a "script". The 'script' refers to the "rule of expectations for behaviour", that was enacted by 'scriptwriters' or the 'genocidal masterminds'.[123] The 'scriptwriters' had a desire to hold onto power, and presented the civil war as an ethnic war, that all Tutsis are the "enemy within" and "mass murder under their leadership as the only solution."[124] Leading up to the genocide, there was a long-accepted historical 'truth' being taught in schools, to wit: "Tutsis were foreign invaders from Ethiopia who had stolen Rwanda from its rightful inhabitants: as Hamites, they shared no natural kinship with the Hutu majority, who were of Bantu origin and were therefore Hutu's "natural enemy"."[125]The 'scriptwriters' further argue that the 1990 October RPF invasion, was proof that "the Tutsis long-held plan to re-instate a feudal way of life and to re-enslave all Hutu, but worse, it revealed their ultimate plan to annihilate Hutu completely and regain absolute power."[126]Moreover, during the civil war, Fuji argues that there was a shift in the rhetoric. Rwandans were taught that in every way possible way (social, political, etc.) Hutus and Tutsis were fundamentally different. Fujii also argues that the genocidal message had to be normalized in order for it to resonate, and she identifies four key components- "repetition, reach, monopoly of the discursive space, and skillful use of evidence that lent credibility to the story."[127]She states that in Kigali, by 1993 "genocide talk" had become common.[128] The 'scriptwriters' had created this polarized world of "kill or be killed."[129]Fur Fujii, local power

holders also played a significant role. She argues that for local power holders "the script does not represent a set of instructions they must follow to the letter, but rather an opportunity to apply their own interpretations to the text".[130] Her findings from the interviews, demonstrated that local power leaders had different interpretations and their agency was determined by their local political needs, local circumstances, and local social dynamics.[131]

Fujii focuses her analysis on what she calls the 'joiners' or 'low-level participants' (ordinary Rwandans) in the genocide. She makes an interesting argument, that 'joiners' joined the genocide one way or another, with the awareness of the objective ('extermination of Tutsis'), but their logic was not always or even primarily shaped by ethnic imperatives, such as fear of the Tutsi-led RPF or of Tutsi hatred in general but by social dynamics that sometimes took precedence over ethnic considerations."[132] She focuses on 'social ties' and found examples in which; family ties served as conduits for recruitment (Hutu male relatives); or ties also formed among members of the killing groups through group activities and interactions that often took place before any killing began; or where in come instances friendship ties attenuated murderous actions, leading killers to help save Tutsis in specific contexts.'[133] In the presence of authorities, low-level participants tended to go along with the violence.[134] Therefore "which ties became salient depended on the context."[135]

Strauss has also focused on the local politics or local power holders, rather than the national politics as a driver for spread of the genocide.[136] Moreover, similar to Mamdani, Strauss has approached the genocide with an intention of providing a political explanation. In addition to addressing the question of mass participation by 'ordinary Rwandans', Strauss is also interested in "why did the hardliners choose genocide as their preferred strategy for staying in power?" In response to these questions, Strauss identifies three variables that made the genocide possible.

Strauss argues that the logic of the genocide was "predicated on eliminating a threat, on self-protection and the reestablishment of order."[137] The first variable he attributes to the genocide is the 'war'. Strauss argues that "without a civil war, the genocide would not have happened"– the war was a consequentialist factor, that "legitimised killing and justified extreme measures", thus providing the logic of the genocide.[138] Strauss challenges the 'state-centric' view, and instead argues that the genocide was not "meticulously planned", nor was it the first strategy, rather it was the 'hardliners' response to an increasingly threatening and dynamic situation.[139] The 'hardliners' felt a security threat that was shaped by the defeat of the civil war (which they perceived the armed enemy as not playing by the 'rules'); the assassination of Habyarimana (which produced a rupture in state authority- that led to disorder and a temporary gap of authority); and an erosion of power.[140] War created a threat that was also felt at the individual level, renewal of the war in April 1994 was perceived as securing themselves in a time of physical insecurity. Furthermore, local power struggles were able to exploit the temporary gap in state authority.[141] Strauss argues, "war alone did not cause genocide. Rather, genocide happened because Hutu hardliners decided to foment violence against Tutsis and because hardliners had control of the state."[142] The Hutu hardliners attacked international peacekeepers forcing them to withdraw from Rwanda, and

consolidated "their loyal institutions, including the elite military units, paramilitary forces, political party networks, and broadcast media"- all of which were not yet seized by the Tutsi rebel forces and allowed them to gain dominance in a war that they were losing.[143] The Hutu hardliners projected their plan as being "eliminating a threat, on self protection and the reestablishment of order."[144] Thus, Strauss argues that the "war underpinned the logic of genocide, war legitimised killing, war empowered hardliners, and war led specialist in violence to engage in the domestic political arena."[145]

The second variable refers to the design of state power in Rwanda. Strauss argues, "Rwanda's state was unusually strong in sub-Saharan Africa…it had historically enduring institutions that had influence outside of the capital. The state could mobilise the rural population."[146] Moreover, the geography of Rwanda aided the state-power because the "The small, cultivated territory offered little 'exit' opportunities for individuals."[147] Strauss argues that the Hutu hardliners who controlled the state are responsible for the genocide, when the 'Hutu hardliners gained control of the state it became a "powerful tool for executing decisions and mobilizing citizens".[148] This allowed 'Hutu hardliners' coercive means to enforce their decisions countrywide, and also allowed them to associate killing Tutsis with authority, thus "equating violence with a de facto policy."[149] He states, "killing took on the force of law, and disobedience became synonymous with treason."[150] Strauss also does not find evidence of a 'culture of obedience, but he does mention that his participants do say that they were following the orders to kill, that 'Hutu-intimidation' was a real problem, and in some participants cases it was easier to comply with the violence than to disobey.[151] There is sufficient evidence to show that ethnic violence is the result of 'intra-ethnic' rather than 'inter-ethnic' struggles. Strauss is able to link national-level events to local outcomes (macro-level to micro-level) and demonstrates that the 'top-down argument' misrepresents the complexity of the reality.[152] His findings showed that the "balance of power in these local communities tipped in favour of violence only if Hutu extremist prevailed over Hutu moderates in these places" thus sub-national variations are important.[153]

The third variable that Strauss includes as a key factor concerns categorizing Tutsis as "unitary ethnic or racial group".[154] Strauss argues that Hutus did not kill Tutsis because they believed Tutsis were no longer human or because they were committed to a Hutu nationalism- "ethnic utopia", but because the hardliners had conflated the entire Tutsi population to be categorized collectively with the armed Tutsi enemy- the RPF. This, rather than historical ethnic differences was important for the motive to eliminate 'the enemy'.[155] From his interviews, Strauss shares that whereas there is a tendency to focus on the "dehumanizing language" (inyenzi, snakes, rats) used before and during the genocide to describe Tutsis, most of his participants in the interviews used language of "threat, danger and war" and equated the Tutsis with the "enemy" (umwanzi) or with "accomplices" (ibiyitso) of "the enemy".[156] Strauss argues, "ethnicity mattered, but…mechanisms driving individuals to kill were not primarily about ethnic prejudice, pre-existing ethnic antipathy, manipulation from racist propaganda, or nationalist commitments."[157]

Similar to McDoom's finding, Strauss asserts that he found strong evidence of interethnic cooperation before the genocide. He states "Rwanda is a highly integrated country in ethnic terms, far more than most other countries in Africa. Hutu and Tutsi speak the same language, frequently intermarry, and live side by side, among other commonalities. Perpetrators cooperated on a daily basis with Tutsi before the genocide, and most perpetrators expressed generally good relations with Tutsi neighbours- even if many believed that Hutu and Tutsi were members of different ethnic categories and had different physical attributes."[158] He also emphasizes that past violence did not take across time in Rwanda, but that it took place in particular episodes and this has led to some switching from seeing people as a "racial category" and neighbours seeing each other as "enemies" but it isn't a constant.[159] In the aggregate of his study, Strauss explains that what underpinned the logic of the genocide, is what he refers to as "collective ethnic categorisation" that relied on the a. wartime uncertainty and fear; b. social pressure; and c. opportunity (obtain power or property)."[160]The category of "Tutsi" came to represent all individual Tutsi- it was not invented in the genocide but relied on pre-existing 'ethnic' and 'racial' categories and "awareness that those categories were widespread and resonant in Rwandan society."[161]Many central political idioms, such as the 'national identity cards' had normalized these ethnic/racial categories, but what allowed the 'switch' for many 'ordinary Rwandans' was the re-categorisation of Tutsis as the 'enemies, and Strauss emphasizes that this only took place during the war, and was only a state claim rather than a pre-existing hatred.[162] Finally, Strauss asserts that these three key variables were primary mechanisms for the genocide, but it is important to bear in mind that they varied in each participant's experience.[163]

<u>2.3.5 My justification for making use of Mamdani's theoretical framework</u>

The Rwandan genocide continues to capture the imagination of so many, which has led to a rapid growth in the scholarship and a marked shift from the initial accounts given on the genocide. Several popular theories and explanations, that the genocide was the outcome of the 'failed-African state', ancient-tribal hatreds, population pressure or ecological scarcity, propaganda/media indoctrination, pure ethno-ideology, etc., have been systematically rejected by the more recent empirical research being conducted by Rwandan scholars.[164] A significant development has taken place in critique of the post-genocide political governance and its involvement in the on-going conflict in the Great Lakes region. For practical purposes, I have synthesised arguments made by key Rwandan scholars that are acutely necessary to include in the discussion on 'why ordinary Rwandans participated in the violence'. This dissertation develops arguments made by Mamdani, whilst elaborating on the specific question on 'victims justice'.

This dissertation is drawn to the methodological claim that Mamdani makes, which allows for useful links to be made between the theoretical and empirical. His work provides an analytical framework and has generated a theory towards thinking about genocide violence (broadly mass political violence in Africa), which shifts away from universalising 'grand theories' or comparative research. Due to his focus on generating a theory, it was important for this dissertation to critically interrogate the arguments he makes and supplement them

with the contributions of other key Rwandan scholars. Arguably, although they have successfully provided evidence to support their explanations, they have not sufficiently undermined Mamdani's political explanation and have chosen to read them alongside Mamdani's thesis.

By challenging the popular perception of ethnicity and it being a principle cause of violence, Mamdani has re-introduced 'race' and exposes the 'highly political nature of the violence in the form of state action'.[165]This has comparative value for how we think of violence in Africa, and based on his argument, this suggests that this type of violence can take place elsewhere, especially in the context of the colonial experience. In an interesting twist, as much as Mamdani seeks to critique and decolonise 'Area Studies', he has in fact contributed significantly to its development.

As this dissertation demonstrates, his 'theory on race' is refreshing and provides an analytical framework that can deconstruct many tropes that have troubled questions on the logic of the genocide and on its 'popular agency'. Mamdani's analysis redirects the preoccupation with the 'extreme violence', that has sensationalized the violence accompanied with provocative legal and moral vocabulary, and which renders the violence as an 'event'. This has enabled me to investigate the limitations of the 'justice paradigm' (policy of mass accountability) and to think through the post-genocide political project, which I believe has reached an impasse. I also appreciate that his analytical framework, has redirected and centralised the historical, political and regional context of the Rwandan genocide.

One of the most important and original contributions he makes is through his rich descriptions and analysis on the regional political context. By making the link between Uganda's post-colonial citizenship crisis and Rwanda's, which led to the RPF political programme/strategy which saw them invade Rwanda (October 1990), Mamdani importantly highlights the 'politics of indigeneity' that has long troubled the politics in the region. As Lemarchand argues, this has filled a major gap in the literature on Uganda and Zaire/Congo.[166] Arguably, it is unfortunate that Mamdani left out a more thorough investigation (a chapter on its own) on Burundi, whose politics is inextricably linked to Rwandan politics. Despite this, I find that Mamdani's empirical contribution through a regional analysis provides a suitable analytical framework that can address the 'shared' and unique differences of each states colonial experience, in the region. This provides an inroad for thinking about the post-colonial citizenship crisis in the Great Lakes region. This has great practical value for thinking about a sustainable solution that will finally attend to the political crisis in Rwanda, and the on-going Great Lakes refugee (citizenship) crisis.

Finally, in spite of Mamdani's dim view of Rwanda's post-genocide governance, his offering provides a powerful resolution for breaking Rwanda's politics free of the stranglehold of Hutu and Tutsi politics. The critique of 'victor's justice' and 'victims justice' has supported my work towards re-thinking Rwanda within a framework that attends to its long established political crisis. This is an important methodological step in this dissertation, to transcend the transitional justice paradigm which has a hold and re-enforces the categories of the 'victor'/

'victim' and 'loser'/ 'perpetrator', and to re-centralise the political problem as being the heart of Rwanda's crisis. This does 'justice' for all 'survivors' of the genocide, and dissolves the chasm that separates the 'Tutsi political minority' and the 'Hutu political majority', and has constrained the political landscape in post-genocide Rwanda.

2.4 Contextualising the Genocide: The Historical and Political Record of Rwanda

The following section in this chapter investigates Rwanda's political record, and the political world that was set in motion by the bifurcated colonial state. Mamdani argues that Rwanda's colonial experience was a 'Halfway House' between indirect rule and direct rule.[167] The Belgian Power had created 'customary law' and the 'Native Authorities', which existed alongside 'civic law' and 'civic authorities'. Neither authorities were ethnicised, but racialised. Between 1826-1936 the Belgian colonials administered reforms, which were institutionalised and would prove to cast a political crisis for Rwanda's post-colonial regimes.[168] The reforms led to two outcomes, 1. Tutsis were redefined as their own race: the Hamitic race; and 2. Hutus were identified as the Bantu- indigenous race, and would be governed by Tutsi chiefs through the system of 'Native Authorities'.[169] This created Hutus as native and Tutsis as non-native, and forms the basis for institutional changes that have "fixed the Tutsi as a race in relation to the colonial state."[170] 'Race' has been central to the logic of colonialism, the 1959 'Social Revolution', the First and Second Republic, and the logic of the genocide. In each of these moments there was a missed opportunity to transcend the 'politics of race.'

2.4.2 Decolonisation and the 'fiction of race'

Rwanda had an interesting mode of decolonisation, which failed to disinherit the colonial political crisis, particularly the racialised political identities. Leading up to the decolonisation process, the 1950's had marked a shift in colonial control of its two subjects, as Hutus and Tutsis were organising themselves in preparation for independence. Three types of groups amongst the Hutus started to converge and form an alliance: 'the intellectuals', local level Hutu leadership (workers alliances) and the 'peasants'.[171] The alliance formed around there shared grievances that came with colonial oppression, the question of race, and gaining political power for Hutus. Although, the co-ordination of an 'inter-class' alliance was important for a revolution, in Rwanda it placed the peasantries power in the hands of a small-group of educated elites, which has set a political practice ever since. The Hutus in the north were independent until "militarily defeated by German and Tutsi-led southern German Schutztruppe between 1910-1912 to subdue them".[172] In spite of being incorporated into the early Rwandan state, the northern Hutus formed a distinct Hutu culture, and were 'representative of an independent Hutu tradition.'[173] Melvern argues that this led to 'considerable bitterness towards both the Tutsi and southern Hutu concerning subjugation.'[174] The first Hutu and Tutsi political parties that emerged based their political ideologies on justice for their group. They are UNAR, which were Tutsi pro-Monarchist and anti-Belgian; and PARMEHUTU, a Hutu party who called for ending Tutsi colonisation before freedom from Belgium.[175]

By February 1957, the Mwami (King) Mutara III Rudahigwa, who was the first Rwandan king to convert to Catholicism, together with Mwami's High Council (Conseil Superieur du Pays) released a document called Mise au Point, which detailed an emancipation programme and for a "rapid transfer of power to the king and his council."[176]This occurred during heightened expectations among Hutu intellectuals who at the time were beginning to formulate there political and economical grievances in explicitly political terms[177]The 'Hutu elite' who were educated and now supported by the Roman Catholic Church, interpreted this call as an attempt to institutionalise an 'elite Tutsi' hegemony (Mwami, chiefs and sub-chiefs) in preparation for a Tutsi state after independence.[178]

To prevent Tutsi power, the Hutu elites published a text, Notes on the Social Aspect of the Racial Native Problem in Rwanda, also known as the Bahutu Manifesto (March, 1957), as a counter-argument to Mise au Point. The Bahutu Manifesto strongly opposed the 'nationalist position of the Mwami' and the "double-colonialism" that Hutus experienced by the Belgian Colonials and 'Hamites' (Tutsis). [179]The Hutu intellectuals took the political opportunity to publish the Bahutu Manifesto, shortly before the arrival of the UN Trusteeship Visiting Mission to Rwanda.[180] The UN visiting mission is designed to facilitate the process of decolonisation, and to report its findings on the colonial experience.

The UN visiting mission was very critical of the Belgian colonials, pointing to the "subservient status of the Hutu masses who were subject to forced labour and discrimination in all walks of life."[181]Between 1948-1962, the UN sent five visiting mission to Rwanda, and each time they reported that the political situation was worsening. They critiqued Belgium for neglecting to address the growing nationalism, for failing to create a democracy and not educating the Rwandan people, in preparation for the transfer of power.[182] The UN mission also recognised that there was an established Hutu elite in Northern Rwanda, which formed a distinct Hutu culture and felt considerably bitter towards all Tutsis and Southern Hutus regarding historical subjugation.[183] Furthermore on its 1957 visiting mission, the mission recognised the Bahutu Manifesto represented a serious political challenge to the Tutsi oligarchy, and with great pessimism the mission stated that it had found "little hope for rapprochement between the races" and called on Belgium to accelerate its efforts to emancipate the Hutu, gesturing towards the creation of a democracy.[184] Even, the OAU recognised that the demands of the Hutu elites were not particularly 'unjust'.

The Bahutu Manifesto challenged every conceivable feature of the feudal system.[185] The central critique argues that: "The political monopoly of one race, the Mututsi. In the present circumstances, the political monopoly is turned into an economic and social monopoly…and given the de facto selection in school, the political, economic and social monopolies turn into a cultural monopoly, which condemns the desperate Bahutu to be for ever subaltern workers, even after an Independence that they will have contributed to gain without realising what is in store for them. The ubukhake has been legislated away, but the monopolies have replaced it with an even stronger oppression."[186] Gerard Prunier argues that the word 'race' used in this social context was an alarm-bell, even though it was constructed over years by the

Europeans, it showed that "the ideology had been swallowed whole and that a socio-political problem was now dealt with in 'racial' terms."[187] Lemarchand asserts "Never before had such a devastating critique of the ancien regime been publicly set forth by its opponents."[188] Deborah Mayersen found that "the issues raised in the Manifesto became a staple news item in the local press and a prime subject of discussion on the hills."[189]

Both documents (Mise au Point and Bahutu Manifesto) dramatized a growing 'ideological polarisation between Hutu and Tutsi.'[190] Each document also rationalised their claim for power as doing justice for their group. The Tutsi elite made their claim based on a "traditional" (pre-colonial) prerogative, that power should be restored rightfully in the hands of the Tutsis.[191] The 'subaltern'- the Hutu demanded for power to be based on their claim that 'they represented the indigenous majority'- that they were the natives, and they mobilised a popular nationalist support base from below to counter the Tutsi elite from above.[192]

Mamdani argues that the "Tutsi identity had long preceded the Hutu identity…Tutsi consciousness was a consciousness of power, while Hutu consciousness would come to be one of lack of power and of a struggle for power."[193] Colonialism and colonial power had just added to the pre-colonial realities and by the late nineteenth century it had sharpened contrast between Tutsi power and the Hutu absence of power, which accentuated it as a 'one-dimensional reality' and "stigmatised Tutsi power as alien rule."[194]

2.4.3 The '1959 Social Revolution'

The Rwandan political landscape is often viewed as solely being a struggle between the Hutu elite and Tutsi elite. However, there were different cross-cutting political tendencies within each group, there was a healthy portion of moderate Tutsis and Hutus who were prepared to enter independence with a 'power-sharing agreement'.[195] An example of this was the reformist party- RADER, which was led by two moderate Tutsis seeking the economic and cultural development of both Tutsis and Hutus.[196] APROSOMA was a Hutu-led party, that initially pursued improvements for both Hutu and Tutsis, but once tensions started to arise with the militarised Hutu party- PARMEHUTU who was broadening its constituency base that came to define the arena of Hutu politics, APROSOMA became an anti-Tutsi party.[197] However, as with many other colonies, the poisoned colonial legacy made a political settlement amongst moderates unattainable, it could not appease the popular and emerging 'radical Hutu elite,' who sought justice for past brutality by the Tutsis.[198] Historical justice would be sought after through political rights reserved for Hutus. Mamdani argues that "the development of a Hutu counter-elite and its growing self-assertiveness brought Tutsi under immense pressure. Those who questioned the basis of this unity took initiatives to go beyond its narrow and short-term orientation. In doing so they both crystallised the plurality of views within the Tutsi elite and gave it organisational expression."[199] In the end, the 1959 revolution presented a "limited menu" of political choices for the Rwandan people.[200]

It took a very small spark to ignite the violence that erupted after November 1959. The spark that fuelled this was a rumour that a prominent PARMEHUTU activist/and Hutu sub-chief

was murdered brutally by young members of UNAR. [201] Melvern argues that the Hutus acted on their 'numerical predominance' and a deep sense of injustice and inferiority.[202]

The Belgian colonials viewed the violence as a clash between the races- Hutu and Tutsi, and placed Rwanda under Belgian military rule, led by Colonel Guy Logeist.[203] Prunier argues that from the beginning the Belgians switched sides and showed extreme partiality towards the Hutus, even witnessing violence without intervening.[204] Hutus began burning houses, and attacking Tutsi authorities, which urged hundreds and thousands of Tutsis to flee. Some of those who fled infiltrated border guerrilla armed groups preparing for raids into Rwanda; the Hutus called them 'inyenzi' (cockroaches). The violence committed during the 'Social Revolution' serves as a significant point in the post-genocide narrative, which 'confirms' to the current government that Hutus have a deep-seated hatred towards Tutsis. But in actual fact it was hardly a 'bloodbath', the highest estimate of deaths is around 200-300.[205] Secondly, it is clear that what touted as a 'Social Revolution' to restore socio-economic justice to the peasants, and to the broadly for Hutus, was far from it, and what actually took place as Prunier argues, was less about economic and social gains, but rather resembled more of a power-struggle fought amongst the ethnic elites.[206]

Belgium had very quickly realised that it had lost complete control of the situation. Colonel Logiest articulated, "Because of the force of circumstances, we have to take sides. We cannot remain neutral and passive" and thus by early 1960, the Belgians began to replace the Tutsi chiefs with Hutu ones.[207] To add to the 'political crisis' and critical problems a 'democracy' would incur in the midst of majoritarian nationalisms, the colonial authorities held elections between June-July 1960, which PARMEHUTU had won by a long shot.[208] The new authorities were called 'burgomasters' based on the Belgian model, which ruled over 229 communes.[209] Colonel Logeist declared, "The revolution is over", and in 1961 the new President Gregoire Kayibanda, declared Rwanda as being an autonomous Republic.[210] The Hutus now found themselves being warmly embraced by the colonials who only just recently had scorned them.[211]

Lemarchand argues that the Belgian administration had decided that the peasant uprisings of 1959 was a revolution (which it was not) and effectively the "real revolution could no longer be averted."[212] Prunier agrees and argues that this was a "Belgian-sponsored administratively-controlled phenomenon" and effectively allowed the new Hutu burgomaster to resume with the 'old habits' of feudal rule, only now the Hutus were the chiefs and the Tutsis were being oppressed.[213] Thus, the logic of the colonial world was merely turned on its head- 'yesterday's victims' became todays perpetrators'.

The 1959 Social Revolution failed to repudiate the 'native/settler' dynamic' that was the institutional premise, and instead narrowly only focused on the consequences of colonial rule.[214] Mamdani argues that "Instead of pioneering a way beyond colonially shaped identities and destinies, 1959 locked Rwanda's fate within the world of political identities constructed by colonialism…1959 turned into a final act desperately trying to breath life into racialised identities born of the colonial state."[215] Secondly, the events of 1959 ushered in a

pursuit for justice so focused that it turned into revenge.[216]Lastly, 1959 had led to an enormous wave of refugees- mainly exiled Tutsis that presented a troubling new reality in the Great Lakes region. In the OAU report 'Rwanda: The Preventable Genocide', it is argued that "Not all refugees remain passive victims; some turn into warriors. It was these guerrilla fighters who were famously called the "inyenzi" or cockroaches, by the Hutu, a label that would be resurrected with a vengeance 30 years later.[217] Between 1961-1967, Tutsi commandos operating outside the country launched a dozen raids on Rwanda."[218]The impact would be devastating for Tutsis in years to come, not only in Rwanda but also in neighbouring states.

2.4.4 The First Republic: Justice and Power for the native Hutu majority

The mode of decolonisation in Rwanda saw the country transition from Belgian colonial rule to a Tutsi Monarchy and into a Hutu Republic. This signalled the first of many failed opportunities to transition Rwanda into a post-ethnic society that could transcend Hutu and Tutsi as political identities.

In the First Republic (1964) under the leadership of Gregoire Kayibanda (PARMEHUTU leader and key author of the Bahutu Manifesto) state formation operated on the logic that Hutu and Tutsi must be segregated as they were two separate nations, and that Rwanda belonged to the Hutu nation as it is the indigenous demographic majoritarian. Kayibanda's ideology is understood as being "exclusionist" and faced tensions amongst Hutus and Tutsis who were "accomodationist". [219] Prunier states that "In many ways the President was in fact the mwami of the Hutu. The same style of leadership applied, and his deliberate remoteness, authoritarianism and secretiveness…"[220] Prunier also argues that Kayibanda instilled this principle of 'unquestioning obedience' that would play a tragic role in 1994, but as demonstrated by Mcdoom, Fujii and Strauss this argument is questionable.

Tutsis presence was forcibly removed from the political arena, and thus Tutsi politics shifted from Rwanda- their 'home' into exile.[221] Politics would be confined to Hutus and to serve the Hutu nation. This led to Tutsis being treated as "politically illegitimate" in the Hutu nation, and continued to be understood as the 'alien/settler race'. Kayibanda had directed its 'political ammunition' towards APROSOMA- who had once considered integrating Tutsi into its political project. [222]Hutu consciousness transcended politics and economics, and reflected in the social consciousness of the state, through the Church, newspapers (1955/56), and in social cultural movements for Hutus (Mouvement Social Muhutu). [223]Mamdani argues that the crucial difference between being defined as an 'ethnic group' and 'race' is that an 'ethnic group' would be received as being separate but still indigenous, whereas Tutsis as a race had no grounds to make political claims as they were explicitly foreign to Rwanda.[224] Moreover, the Hamitic hypothesis was able to retain political potency in Rwanda, was the notion that the "Tutsi as a race apart from the majority turned into a rationale for a set of institutions that reproduced Tutsi as racialised minority".[225] The 'racial ideology' had inspired institutional reform. The other significance, is that the Tutsis in exile were seen as a 'political diaspora' and not a 'cultural diaspora' and with each raid conducted by the Tutsi

diaspora (the inyenzi) Kayibanda used it to confirm that Tutsis were 'the enemy'-seeking to overthrow power and establish Tutsi power in Rwanda. These two outcomes are the foundations for 'Hutu Power' and their permanently constructed security threat- Tutsi Power.

In the late sixties an interesting dynamic began to take place, which threatened Kayibanda's tight-grip on power. Kayibanda's policy had isolated Rwanda from the rest of the world, and educated Hutus became increasingly critical of the 'absolutism' of his policies. The Hutu critique focused on Kayibanda's policies on education and employment, where Hutus felt that not enough had been done to advance Hutu representation.[226] Hutu school-leavers who couldn't find employment formed an alliance with university students, which appealed to the Hutu 'middle-class'.[227] This re-ignited the 'racial tensions' within the middle class, and political violence targeted both Tutsis and the 'rich'.[228] Kayibanda had introduced a quota stipulating 9% Tutsis representation in the economy and education.[229] To keep the quota in check, students in Butare would conduct bloodline tests on all university students, which became a popular anti-Tutsi practice and which 'blacklisted' Tutsis scholars.[230] This soon started to take place in places of employment. The early remnants of "Hutu Power" used Radio Rwanda to call upon Hutus to rise up and avenge themselves- framing the discussion as the 'the Final Solution' to the Tutsi question.[231]

'Racial tensions' had a ripple effect throughout the country, between the 'rich and poor', but also brought to the surface, the tensions between the Hutus in the north and south which caused a major rift in the pursuit for power.[232] In 1973 Northern Hutu, Major General Habyarimana led a bloodless coup that toppled the First Republic, killing Kayibanda, and installed the Second Republic of Rwanda under his presidency.

<u>2.4.5 The Second Republic: Reconciliation based on Justice for Hutus</u>

Many Rwandans received the coup as a great relief for Rwandan politics. General Habyarimana asserted that he was "the custodian of the revolution and the protector of all its children, Hutu as well as Tutsi."[233] There are three significant changes that took place that signalled differences between the two Republics Firstly, there was a shift in political identities, as the Second Republic reconstructed the Tutsi from 'race' to an 'ethnic group', which is considered a 'indigenous' group to Rwanda.[234] This would allow Tutsis to 'enter' the civic sphere, and participate in the 'political sphere'. However, the Second Republic also viewed Tutsis as being a "historically privileged group" as well as being a minority, and this allowed for them to be continuously discriminated against in the civic, political and economic spheres.[235] Mamdani argues "The political distinction between a majority and a minority had little relevance within the domain of "race."[236] Habyarimana had also introduced two state policies that would regulate Tutsis in Rwanda's political life and hoped to correct the historical injustice, which led to Hutus being the 'eternal victims of Rwanda's history and politics'. These policies are; a. "to redistribute through affirmative state action", and b. "to limit political participation."[237] This introduces the second significant change.

The Second Republic promoted the idea that it would ignite a 'moral' and 'national' revolution.[238] It spoke of both 'reconciliation' and 'justice', meaning reconciliation with the Tutsis, so long as it was in the 'context of justice for the Hutu'.[239] This logic has alarming similarities with the post-genocide logic, where reconciliation with Hutus is formulated through the context of justice for Tutsis who are seen as the 'eternal victims of Rwanda's history and politics.'

The third significant change came in the late eighties-early nineties, were Habyarimana began considering the prospects of transitioning the Rwandan Hutu nation towards becoming a multi-party democratic system. General Habyarimana had initiated the transitional process towards a 'multi-party' democracy. In September 1990, Habyarimana established the Commission Nationale de Synthse, which was a charter that would direct the democratic process over two years.[240] Political parties became legalised in 1991 during a time of great political tension. When democratic political reforms were taking place after 1991, it must be noted that "political divisions in Rwanda did not coalesce along ethnic lines", it was only after the dismantling of the 'one-party state' that the tensions between the North/South Hutu elites had resurfaced.[241] Hintjens argues that the "myth of an on-going 'racial struggle' was revitalised with a vengeance during election campaigns. Ordinary Bahutus who lived peacefully next to ordinary Batutsi were now expected to realise how dangerous their neighbours could be."[242] Thus it is important to note that even prior to the October 1990 RPF invasion, there were internal reforms taking place. Secondly, as Mamdani notes, "the immediate impact of the invasion was to accelerate the reform process" and Habyarimana tried to remain committed to establishing a 'multi-party' system for as long as he could withstand the internal pressure.[243] Habyarimana also was beginning to have discussion with Uganda, concerning the return of Rwandan refugees, including the Tutsi diaspora.

In response to these three significant changes, there was a growing internal and external critique of the central government. The policies of 'affirmative action' and "justice for Hutus' led to an internal critique from Tutsis (because of appropriation and redistribution as well as civic and political exclusion) and an internal critique from the Hutus based on 'regional affiliations'.

Habyarimana rejected the First Republics' policy to exclude internal Tutsis, and instead argued that it was bringing Tutsis back into the political fold. Between the late 1970's and 1980's, Rwanda experienced relative calmness and stability, and only a few massacres had taken place on both sides. Hutus and Tutsis started to socially and economically engage with one another, there was also an increase in inter-ethnic marriages, strong relationships forming and cohabitation. Several projects (such as Umuganda and 'animation sessions') were institutionalised and made compulsory, in order to reconcile communities.[244] Tutsis were allowed to prosper in the Church and private sector (due to international business investments) but not in education, civic or political sphere. Habyarimana had expressed that "hatred cannot dissolve overnight" and arguably he possessed qualities that were far more politically productive than his predecessor.[245] Habyarimana clarified what he means by 'reconciliation', he asserts, "It is not a question of bringing Tutsis back to power, which

would be the equivalent to re-establishing the pre-1959 situation; but each ethnic group has its place in the national fold. There is a Tutsi minister in my government; there are Tutsi senior civil-servants in the administration and Tutsi officers in the army."[246]In reality, Tutsis felt that they were being legally discriminated against, they could have rights but had to give up all possible thoughts of having meaningful participation in power.[247]As the majoritarian, power must remain Hutu. Amiable Twagilimanga argues that the central message to Tutsis was to "avoid politics" and this made them feel like they were strangers in their own country.[248] Surprisingly, in Lemarchand's analysis of the Second Republic, he articulates "If power in Rwanda is still the monopoly of a specific ethnic segment, identified with the Hutu sub-culture, the prospects of a Hutu-Tutsi rapprochement, both within and outside Rwanda, have never been brighter since independence."[249]

The policies of 'affirmative action' had also led to a regional redistribution along Hutu affiliation lines, which produced an internal critique from Hutus. Habyarimana had organised politically to topple the concentration of power that was held by Kayibanda who was a southern Hutu. Habyarimana was from Gisenyi and neighbouring Ruhengeri, which are both in the north. Tutsis and Hutus in the south central argued that northern-Hutu were strongly 'overrepresented' in "resource allocation, positions of leadership and power, and access to goods and services" and were covered by the majority of the state-budget.[250]Moreover, northern Hutus occupied all senior positions in the security forces and military. In 1979 the former security chief, Theonaste Lizinde attempted to overthrow the government. Although it failed, it signalled that the common enemy (the monarchy) of the 1959-Social Revolution was long gone, and the long-standing struggle between the northern and southern Hutu elites had re-surfaced to take centre stage in Rwandan politics.[251] The northern Hutus saw themselves as 'ethnically purer' than the 'mixed' southern Hutus.[252]In this context, the akazu (small house) of senior military and civilian officials emerged, centred on the powerful clan of Agathe, the president's wife.'[253]By the early 1990's the akazu, who made a claim for power based on a historical legitimacy of their line of kinship, started to infiltrate the central government and regional base through patronage networks.[254]

The greatest problem that dogged the Second Republic was that Habyarimana was contradictory in his politics on race and ethnicity, which provided room for an internal and external critique. Moreover, he failed to redefine the Tutsi diaspora as being a 'political diaspora', which would allow for the Tutsi diaspora to be seen as a security threat- the external 'enemy' (inyenzi). Eltringham argues that the "inyenzi raids" and subsequent anti-Tutsi violence (massacres) were used by Hutu politicians as a pretext to launch violence against the Tutsi in Rwanda and to defend the Hutu majority.[255] Thus, the Southern Hutu elites and a majority peasantry were reminded again and again, that 'class, region and politics' were superficial problems, compared to the profound difference of 'race' between the Hutu and Tutsi.[256] During the civil war, Habyarimana's hopes for 'ethnic reconciliation' had completely eroded.[257]

<u>2.5 Arusha Peace Accords: A Failed Political Agreement</u>

The "great paradox in Rwanda" is whilst democratic reforms were being introduced in 1991; a civil war was being waged.[258] Central to the dramatic political events, was the question of power. The civil war brought this question to a critical juncture- a place in which the Arusha Accords had the opportunity to remedy, but instead it had weakened the central governments bargaining power, and was seen as a 'victor's deal' for the RPF. This only served to fuel the internal and external opposition.

The Arusha talks took place between the government (MRND), the government opposition parties- MDR, PSD and PL, and the RPF. It was impossible for the government coalition to be cohesive because each political party was representing their "different centres of power".[259] The CDR ('far right-wing' party) saw the negotiations as making a deal with the devil (the RPF), and they opposed most of the process. The other parties were more moderate and were interested in a new political order. The RPF entered the negotiations from a position in which it was still willing to continue the war in order to have their demands met by Habyarimana. This is a key objective that the Arusha Accords neglected. As expressed by Paul Kagame in 1992- "the best way to fight is protracted war, because the ultimate solution is political. War is to create pressure to force the government to break down completely or realize the need for a negotiated settlement."[260] The RPF had gained confidence through its raids into Rwanda and as Lindsey Scorgie argues, they "decided to use that strength in fighting to demonstrate that they had an alternative to the negotiations- an alternative so strong, in face, that at times it was more advantageous to fight than bargain."[261]

The Arusha Accords/Peace talks began in July 1992, and can be viewed as having undergone six key phases before it was signed on the 4 August 1993. The initial phase of the Accords was arguably successful, which hastened the progression of the second phase. In the beginning there was very little consensus between each stakeholder, but the Accords managed to open up the dialogue between the RPF and Government of Rwanda during a stalemate in the midst of a civil war (1990-1993), and to have both stakeholders agree on a ceasefire.[262] Formally, the two parties agreed on "the principles of law, power-sharing, the repatriations of refugees and the integration of the military" as well as end the culture of impunity.[263] Further provisions included centralising a 'human rights agenda', which included the 'right of return for refugees', the removal of ethnic identity cards and the stipulation that there would be no amnesty granted for "previous wrong-doing or human rights abuses" and anyone including the President could be investigated and charged.[264] During the fifth state of the processes, the RPF demanded that the CDR party be excluded from the negotiations and the future political government[265] The Arusha Accords conceded to the RPF's demands, and by excluding the CDR, it "severely weakened" the Government's leverage in negotiations.[266]Scorgie argues that this further reduced numbers in voting power, and marginalised them from the 'new order'.[267]From the onset, the Arusha Accords was about 'state ownership'- political power. Hutu Power portrayed the negotiations as a complete national betrayal, and that essentially it became an internal discussion between the

RPF and the internal opposition- who were 'sympathetic towards the RPF'.[268]The exclusion and silencing of constituencies in Rwanda would prove to have grave consequences.

The negotiations concluded in the midst of public protest, organised by the CDR. [269]The agreement stipulated that: 1.) The two armies would merge and the RPF would provide 40% of the soldiers in the new national army, thus 35, 000 of Habyarimana's soldier plus 20 000 RPA soldiers would be reduced to a single force of about 19,000 soldiers; 2.) The power-sharing agreement stipulated that the RPF was in charge of the Ministry of the Interior and would have decisive control of all forces of coercion in the new state; 3.) The RPF would hold 11 of 70 seats in parliament and 5 of the 21 ministries; 4) the agreement recognised the 'right of return' of all refugees.[270]Under the terms of the Arusha Accords, Rwanda's political landscape was finally means to be democratised.[271] However, the Accords also stipulated that all parties in the new regime couldn't be representative of an 'ethnic identity'. This would effectively exclude most of Rwanda's political parties.

The final agreement that was signed in August 1993 was viewed as a 'victors deal' that legitimised the RPF as the 'victors'- "The RPF had won at the conference table what it had yet to win on the battlefield…Arusha sealed the political fate of the opposition."[272] The RPF themselves were quite dissatisfied by the final settlement. [273] The government expressed that in the end they were the 'losers', and two weeks after signing the Accords, Habyarimana with the support of CDR and smaller political parties, collectively "disavowed" the agreement ("a scrap of paper), calling it "plan for treason" which "we must prepare to defeat."[274]

Habyarimana showed a lack of decisiveness when he stated that he was still open to re-negotiations, but he was also still supporting the MNRD and CDR's mobilisation in protest of the Accords. This allowed political parties and soldiers to demonstrate their political leanings, especially in the north where many soldiers with northern-Hutu origins expressed their loyalty to the President above all else.[275] Publicly, officials of the army and Habyarimana-loyalist began fostering fear and threats by condemning against Tutsis and Hutu soldiers and civilians who opposed the President. Hintjens states that there were 'moves to include the political opposition parties in the interim government, but no steps were taken to incorporate RPF forces into the army', which was a major condition of the peace settlement.[276] Des Forges indicates that during the peace talks and immediately afterwards, the Rwandan army was preparing (buying armed weapons and military training) for the resumption of war.[277] For 'Hutu Power'- who was completely excluded from the future make-up of Rwanda, the Accords confirmed their suspicions that Hutu control of power and the state was in imminent danger, and that the current government had sold out the Rwandan (Hutu) nation.[278] Mamdani argues, "When the first and second coalition government failed, moderate fractions in the opposition, who opposed the coalition government's leaders, were absorbed into a rapidly expanding Hutu Power base.[279]It is important to note that the "devastating economic consequences of falling commodity prices and IMF and World Bank policies were not confronted" and instead the "woes of the country were blamed squarely on

the RPF and their allies, the Batutsi 'enemy within', who together were charged with full responsibility for Rwanda's woeful condition."[280]

The political landscape in Rwanda was progressively defining 'the enemy', through the formulations of 'historical injustices committed against the Hutu majority' and thus taking action was framed within the framework of 'justice'. In September 1992, Colonel Deogratias Nsabimana sent a 'top-secret memorandum' to his commanders that identified the 'the enemy' (the ENI), and how to defeat the enemy.[281] The document also recommended that former posts, which were held in the akazu by virtue of connections to the President, be replaced with those who possessed military abilities. This marked the shift from engaging and counting on political negotiations towards being militarily vigilant of 'the enemy'. Des Forges asserts that the document divided the enemy into two categories: the "principle enemy" and the "partisans of the enemy"- which was "anyone who supported the principle enemy".[282] The 'principle enemy' was described as "the Tutsi inside or outside the country, extremist and nostalgic for power, who *never* recognised and will never recognise the realities of the 1959 social revolution and who wish to reconquer power by all means necessary, including taking up arms…"[283] Tutsi hegemony was seen as the single political ideology and political will. Des forges argues that the document did not caution against confusing 'the RPF as political group with Tutsi as an ethnic group.'[284] Although ambiguous, the document did recognise the transition towards 'democratic openness' as it states, "Political opponents who want power or the peaceful democratic change of the current political regime of Rwanda are NOT to be confused with the ENI [enemy] or with the partisans of the ENI."[285]However, it listed the "establishment of multiple political parties as an advantage for the enemy and warned that infiltrators had convinced these parties to support the RPF", it was even accused of infiltrating and corrupting government officials the government and businesses. It blamed the loss of Hutu solidarity on the enemy, rather than the 'corruption and repression of the Habyarimana regime.[286]In the end 'enemy list' expanded to include "Tutsi refugees, the NRA (Ugandan Army), Tutsi inside the country, Hutu dissatisfied with the regime in power, unemployed people inside and outside the country, foreigners married to Tutsi wives, the Nilo-Hamitic people of the region, criminals in flight (from the law)."[287]

There were other important documents (The 'Ten Commandments of the Hutu', the Bahima Conspiracy, '17 Rules of the Tutsi'…etc.), which further contributed to Tutsis being reconstructed back into being a 'racial identity'. In one of the 'Ten Commandments of the Hutu', it encouraged "Bahutu to stop feeling pity for Batutsi" and advised them to 'seek support from all "fellow Bantu" people in the Great Lakes region for their racial emancipation.'[288]In '17 Rules of the Tutsi' there were references made that Uganda is the Tutsi Homeland, and it points to the 'Bahima plot' as proof of Tutsi intent to annihilate Hutus.[289] This sophisticated type of disinformation fed the propaganda machine and to shift all blame for why Rwanda's was not flourishing, onto the Tutsi scapegoat.

In early February 1993, the RPF violated the ceasefire agreement, and were rapidly advancing across northern Rwanda towards Kigali.[290]It is important to note that when the

RPF had invaded Rwanda in October 1990, it has created a great sense of fear amongst Hutus as well as Tutsis; in particular Hutus were reminded of the Hutu massacres by Tutsis in Burundi (1972, 1988 and 1991), which fuelled their fears of the RPF.[291] Mamdani argues that the genocide must be seen as an outcome of the civil war. Secondly, that the Arusha Accords failed as a political settlement because it failed to recognise Hutu and Tutsis as political identities, and that the problem of Rwanda is first and foremost one of political power.[292]Therefore, when the RPF invaded Rwanda, Hutu Power could exploit the opportunity and as they argued "power sharing was just another name for political suicide. History had ruled out political coexistence."[293]The more successful the RPF was on the battlefield, the more this view resonated and came to define the political centre stage, thus "bringing Hutu Power back from a fringe preoccupation to the mainstream respectable politics."[294]Mamdani argues that, *"At the core of Hutu Power ideology was the conviction that the Tutsi were a race alien to Rwanda, and not an ethnic indigenous group…For Hutu Propagandist, the Tutsi question was not one of rights, but of 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. This is why one needs to recognise 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."[295]* Seeing Hutus, as just the ethnic majority did not drive the ideology and political will of Hutu Power, it was that Hutu were *the* nation.[296]The war had fundamentally shaped the daily lives of all Rwandans, and it was propagated that the RPF would take their land and rights, and return Rwanda to the former Tutsi Feudal state of Hutu oppression.[297] In this dynamic, Tutsis and moderate Hutus became hostages in Rwanda's political crisis.

2.6 Conclusion

Part of the legacy of Nuremburg is that has depoliticised mass violence, it sees the violence as a catalogue of crimes committed by perpetrators, who should be identified and criminally prosecuted for the purpose of justice. Secondly it became the prototype of 'victors justice' and 'victims justice', contributing to the presumption that justice for the victims can only be secured by the victor who also determines the 'rule of law'. In Rwanda, the critique of 'victors justice' is more troubling because of Rwanda's political record, and the failed political settlement (Arusha Accords) that preceded the genocide, and which had excluded major stakeholders in the political settlement. As it was back then, today there remains a popular view that the Arusha Accords was a 'victors deal'. The historical investigation of Rwanda's political record, demonstrates Rwanda's political crisis, and illustrated that 'justice' and 'history-writing' have historically been tools for political power, and their conceptualisations are formulated by the 'politics of indigeneity'. The 1959 'Social Revolution' propelled the logic of colonialism, which had established Tutsis as a 'race'- thus 'non-indigenous', and Hutus as the 'native'-'indigenous'. The anti-colonial struggle was never about democratisation, it was about Hutu emancipation and liberation from 'double-colonialism'; it targeted Tutsi privilege and defined 'justice' as a native prerogative for Hutus. The same ideology underlined state-formation and the national identity of the First

Republic, and provided a pre-text that justified anti-Tutsi violence. When Habyarimana reconstituted Tutsis as an 'indigenous ethnic group', it threatened the notion of 'justice' and meaning of 'rights' and privileges (citizenship) that has come to define Rwandan politics. Met with an internal Hutu and Tutsi critique and an external critique from the Tutsi diaspora, the Rwandan state was reminded that *race* continues to have a political purchase for power and rights. It is within this historical and political context, that one realises the critical failure of the Arusha Accords. The resumption of the civil war that evolved into genocide, demonstrated that once again Rwanda's attempt at a transition or regime change had miscarried because of a failure to address the epicentre of Rwanda's political crisis. Political power and rights continue to be framed by the 'politics of indigeneity'. By selectively piecing a narrative of Rwanda's past, the post-genocide power is denying Rwanda the opportunity to reconcile with its past, and to understand the genocide as being a linked a historical cycle of political violence, which keeps returning to the question of indigeneity. The empirical research conducted by key Rwandan scholars have contributed significantly to theorising 'why ordinary Rwandans participated in the genocide', and how the question of 'race' features in relationships, interactions, collection of memories, and importantly how it differs in different locales, regions and at the level of the state. I have used the work of these scholars to read alongside Mamdani's 'theory on race' (post-colonial citizenship crisis) and his suggestion to rethink Rwanda's political crisis as being embedded in its political institutions. I argue that this is productive for redirecting the preoccupation with political agency and criminal responsibility back to the question of the political. Finally, it cautions the transitional project to be more careful with how it deploys certain terms (justice, history, reconciliation and political identity) that have different the conceptual meanings in contemporary transitional discourse to that of the historical and political discourse of the Rwandan state.

Chapter Three

3.1 Introduction

Post-genocide governance in Rwanda is confronted with a moral and political dilemma that haunts Rwanda's political record. The perverse popular character of the genocide, presents a critical challenge for building a democracy that can reconcile the 'guilty Hutu majority' with the 'fearful Tutsi minority' into a single political community. The categories of the 'guilty Hutu majority' and 'fearful Tutsi minority', have been constituted by the 'policy of mass accountability'; the 'genocide lens' that shapes the narrative of Rwanda's past and future; and the genocide-credit afforded to the RPF by the international community. The stated goal for the post-genocide state is to evolve towards a post-ethnic society and eventually have a multi-party democracy devoid of sectarianism. However, the state has shaped its political priorities and governance-strategy, based on a 'genocide-framework'. This chapter analyses the post-genocide political record, focusing on governance and the outcomes of the political priorities. I address two distinct periods: 1994- 2000 (interim government) and post-2000. I am concerned that the current political settlement demonstrates a failure to disinherit the past struggles for political power and the institutions that re-enforce Hutu and Tutsi as political identities, in order to make a purchase for power. I will also address the independence of the media and press, civil society, and the experiences of the opposition, which today primarily exists in exile. My argument is that this is a direct consequence of 'victors justice' and a 'victims justice' rationale that informs politics today. Lastly, this chapter will explore the two radically opposed perceptions of post-genocide governance in Rwanda, held by external observers.

3.2 Inheriting Genocide: Prioritising Policies

When the RPF took power in 1994, it "inherited a country it hardly knew".[1] Rwandans view the armed group as being representative of an even smaller constituency (the Tutsi diaspora) and as an outsider to the social and political relations of Rwanda. After 18 July 1994, Kagame and his troops- who are mostly Tutsi and had grown up in exile in Uganda, were occupying "a mostly hostile, mostly Hutu country".[2] However, the 'lukewarm welcome' they received, didn't seem to distract the RPF, whose experience in exile has shaped a determined hierarchical organisation that is both self-reliant and can thrive in isolated conditions. With the 'genocide-credit' afforded to them by the international community and their military victory, the RPF projects itself as having a superior political acumen. They pride themselves as being a disciplined organisation, driven by an ambitious vision, and perfectly suited for the task of Rwanda's nation building and to lead the country into a post-ethnic society.

The RPF inherited a monumental task, that should not be underestimated, but it also should not hinder critical engagement. In the aftermath of the genocide, the interim government had to face the realities, that the military and police could not be trusted because they participated

in the genocide; the treasury was looted; national infrastructure and service delivery systems was destroyed; economic productivity had ceased and adherence to the rule of law was virtually non-existent.[3] Moreover, most of the personnel required to run a country, were either murdered, fled Rwanda or had participated in the genocide.[4] The activities civil-society organisations, political parties and religious organisations were devastated by the genocide, and the RPF treated with suspicion and distrust.[5] Thus, the RPF project had little internal opposition. A long-history of corruption in governance, and the absence of the rule of law, and a strong culture of impunity, meant that there weren't any independent institutions to speak of, let alone salvage. The RPF also had to centre the reality that those who survived the genocide were incredibly traumatised (psychological, physical, and extensive rape-trauma). Survivors were feeling vulnerable and fearful of revenge attacks and the resumption of war. Distrust amongst Rwandans and towards the state had reached its peak, and in the midst of their fragility as individuals and communities, Rwandans yearned for strong leadership, to be acknowledged and have their dignity restored.

The RPF used these challenges to shape its main political priorities. An interviewer once asked Paul Kagame about his 'political philosophy', his response was "*Pragmatic, doing what is doable…Even with all the hardship and hunger, war is straightforward and clear-cut, but building a nation from nothing? A nation that has just experienced genocide? There is no strategy manual for this. There is nothing that is not a priority, and the priorities are always conflicting…*"[6] Arguably, post-genocide state's policy domain, has always contained a hierarchy of priorities. The priorities are shaped by the following factors:

To begin with, by achieving an overwhelming military victory after the civil war and genocide, the RPF gained "moral authority, political power and the military means to refashion Rwanda" according to its vision.[7] As I have mentioned above, the devastating impact of the war on civil society and political parties, meant that the RPF didn't have a unified internal opposition that in the beginning could effectively block their policy proposals. Moreover, the international communities failure to stop the genocide and the view held by the RPF that it did nothing to contribute to its victory, meant that the RPF were not prepared to appease them. Secondly, as Lars Waldorf asserts "Kagame could not possibly hope to win support from the Hutu majority in free and fair elections, particularly not after killing tens of thousands of Hutu civilians both in Rwanda and in neighbouring Congo."[8] This would prove to be highly influential in prioritising securitisation of the state and society, and pursuing extensive judicial mass-accountability. It was also a significant factor that shaped a particular politics, law and institutions. Thirdly, the foundational ideology that has shaped the RPF's vision is derived from their experience in Yoweri Museveni's National Resistance Movement (NRM) and the Ugandan-revolution. I will discuss this in chapter 5, but what the experience has shaped, is a notion that power rests on an "informal intelligence network, then the intelligence services, next the army, and only then the party" thus a mixture of military and revolutionary influences, which as I will discuss later has born a "coercive, security state and nation-building."[9]

It is within these dynamics, that the hierachy of political priorities were proposed. They are: 1. The extreme political, military and social situation meant securitisation of the state was top-priority (goal: durability of long-term peace); 'policy of mass accountability (justice); 3. Re-building (in this order) judicial institutions, political institutions, economic institutions, and national infrastructure; and 4. Social engineering using socio-economic development to achieve 'national reconciliation and unity'.[10]

The interim-government asserts a strong-political will to transform the economy, through taking strong action against corruption, liberalising the economy, lowering taxes, attracting foreign investment, stabilising inflation, enhancing international and regional trade, impressive environmental policies, modernisation of the agricultural sector, as well as education and skills development.[11] The strategy is to shift Rwanda from being a "low-income, agricultural based economy, to a middle-income, knowledge-based economy by the year 2020."[12] These goals are envisioned through the "Vision 2020" project, which is an ambitious pro-growth and developmental programme that is seeking to re-structure Rwanda.[13]

The post-genocide government has also embarked on a bold experiment in social engineering, through eliminating ethnic-identity and the re-education of the entire population. The latter is discussed in depth in Chapter 4. The logic of the state it to eradicate ethnic references, and to completely move pass 'thinking, acting and voting' along ethnic lines.[14]Thus, the government has legally eradicated Hutu, Tutsi and Twa as political identities, and now only speaks of Rwandans. There are two prongs to the governments approach: 1. It has a paternalistic view of 'ordinary Rwandan' (one politician referred to them as "babies") that need to be re-educated and guided with rules and ordering, and a strong-leadership; and 2. It bases the notion of the Rwandan identity and relations, on its pre-colonial narrative of 'national unity and social harmony.[15]To accompany these views, it has introduced laws which criminalise and prohibit discussion on the ethnic discourse, these laws include prohibit "genocide ideology", "genocide denialism", and "divisionism".[16] These laws and Rwanda's 'official narrative' of history is taught in primary and secondary schools, universities, itorero programme (civic education training) and adults are required to attend the Ingando re-education programme.[17] In 2013, the government also introduced a public education campaign called Ndi Umuyawanda ("I Am Rwandan").[18] This campaign works in conjunction with Paul Kagame's conceptualisation of the term "Rwandicity", a term that features in policies and institutions that work towards creating a unified nationalism/ national identity. The pronounced goal is to achieve a post-ethnic society, and the logic of the state argues that security and development are the foundation upon which to achieve this goal.

In 1997 the government introduced the National Habitat Policy and Human Settlement Policy, which would implement the 'villagisation project- Imidugundu'. The mission for both policies is to change the traditional layout of the Rwandan landscape, and construct 'villages' that would decentralise governance, provide security (7000 police patrolman and military protection against genocidaires activity and reprisal attacks) and a redirect humanitarian assistance, social services, infrastructure, co-ordinate socio-economic projects, all towards a

central hub that would become urbanised. These villages would also provide land and housing to Rwandan survivors and the returning populations. By 1999, 40% of Rwandans in Kibungo, and 60% in Butare, 94% of the populations in the north/north-west (predominantly Hutu areas) were relocated closer to Kigali.[19] Lastly, the 'constructed village' were to also shift the associations that Rwandans had with the landscape- a site of trauma due to protracted historical political violence.

3.3 "Never Again"

An initial glance of the 'Rwandan-story' one is struck by the paradox between positions and opinions in the media, literature and reports on Rwanda. It is apparent that there exist two radically different positions. The first perception was prevalent in the first few years of Rwanda's transition from the genocide. Shaped particularly by international-guilt and the overwhelming shock that the 'Genocide of the Tutsis' symbolised an outright failure to prevent another genocide, as enshrined by the proclamation- "Never Again". As Reyntjens asserts, the "genocide credit" has informed this view.[20]

The first position views Rwanda as a 'success story' within the African Great Lakes Region. The RPF's military victory and its ability to prevent the resumption of a civil war another genocide can be seen as a serious achievement. Furthermore, the post-genocide state is viewed to have kept the spirit of the Arusha Agreement, and has reintegrated former combatants and refugees through an "extensive demobilisation scheme."[21] It also presumably showed courage and leadership to enter into a power-sharing agreement with Hutus. This perception also focuses on the political will and visionary leadership that has implemented 'technocratic/bureaucratic governance'. By creating 'villages and housing' through the imidugundu project; providing agricultural assistance across ethnic lines, improved health-care services and education; and in response to land scarcity, and being the most-densely populated country in the world, the government is lauded for its "substantial economic growth in the last two decades."[22] By 2010, Rwanda had achieved an average poverty reduction rates of 12%, and has over 90% of Rwandans have access to health care, as well as one of the worlds highest health-insurance access to ordinary citizens that aren't employed in the formal sector.[23]This has doubled former life expectancy rates. Economist Paul Collier argues that Paul Kagame has pulled off an economic "hat trick" by implementing a policy agenda, which can reduce poverty and promote high growth and equality.[24] The government places a great deal of pressure on the youth, to educate themselves, take responsibility for Rwanda's development, and acquire technical and entrepreneurial skills.[25] Rwanda has achieved "the highest school enrolment rates in Africa as 95% for boys and 98% for girls, with overall completion rates as 72.7%."[26]

Its vision to achieve a self-sufficient and robust economy through modernisation, and by prioritising transport networks, roads, internet cables, electricity, and adopting a globalised and regional trade approach, are some of the reason that have attracted foreign investment. Major trading partners include China, America and the U.K. Richard Grant reported "the coffee business is booming, thanks in no small part to Starbucks, and tourism, unimaginable

after the genocide, has grown into a $200million a year business."[27]The World Bank named Rwanda as "top business reformer of the world, and the region's most-friendly business country."[28]

Since the late-eighties, and particularly during the post-genocide Congolese-Wars, there has been illegal trafficking of Congo's raw materials (gold, coltan, diamonds) to Kigali, as well as formal trade routes between Congo to Kigali and Kampala and onto the global market. I discuss this dimension in greater detail in Chapter 6, but what I would like to highlight here, is that this has attracted great foreign and regional interests to Kigali. Analysis on Rwanda in comparison to its neighbours, and as one British think-tank- Legatum Institute describes, "Rwanda's neighbours are "less than ideal"…Uganda is a corrupt; Burundi a basket-case; Congo worse."[29] However, Kagame's vision is funded largely by mineral wealth accumulated from Congo, which has also been funnelled into the government and military budget. The UN HDI still ranks Rwanda relatively low (November 2013), but compared to neighbouring states Rwanda has stabilised its socio-economic growth plans in order to make improvements.[30] The Tutsi diaspora has slowly been trickling back into Rwanda, and today there is quite a prosperous business elite found in Kigali. Moreover, Rwanda's environmental policies have been successfully adopted throughout the country, such as outlawing of plastics, and monthly compulsory national 'clean-ups' by Rwandan citizens.[31] In reference to his vision for Rwanda's future, Kagame has often referred to Rwanda as the "Singapore of Africa."[32] The praise Rwanda has received is understandable because in many ways you can physically see the growth in infrastructure and Kigali is clean and safe.[33] Grant notes, "No one is watching the Rwandan experiment more closely than other Africans on the continent. Kagame is widely admired and respected on the continent, and considered a shoo-in for presidency of the African Union if he ever wants the job."[34]

Across the globe, and within Rwanda, the Rwandan government holds annual commemorations of the genocide, where it is known to invite various foreign-dignitaries and the foreign press, and in addition to honouring the victims the government uses the platform to re-iterate its progress.[35] One such area noted, is that of women and children, both within the formal sphere of the Rwandan state, and with regards to land ownership. Rwanda is the only country in the world where women make up the majority of parliament.[36] Women occupy 64% of seats in Parliament.[37]VIP's such as Bono, Pastor Rick Warren, Bill Clinton, and Tony Blair…all "Friends of the New Rwanda" have demonstrated a moral compulsion to use their influence to attract aid and donor investments for the re-making of a new Rwanda.[38] In 2009 President Kagame received a Global Citizen Award, the statement read by the Clinton Foundation reads as follows; "From crisis, President Kagame has forged a strong, unified and growing nation with a potential to become a model for the rest of Africa and the World."[39]Johan Pottier asserts, "the rewriting project, a high priority in Kigali, has benefitted from empathy and services not only of journalist unfamiliar with the region, but also newcomer academics, diplomats and aid-workers. All have helped, although to varying degrees, to popularise and spread an RPF-friendly but empirically questionable narrative."[40]

Recovering from war and a looted treasury, Rwanda's national budget is hugely dependent on financial and technical resources from outsiders and donor agencies. Rachel Hayman asserts this "means that donors are inherently and intricately entwined in the policy process, a situation which has deepened with moves to improve aid effectiveness by aligning around the government poverty agenda, harmonising donor procedures, and providing more aid in the form of direct budget support."[41] Interestingly, due to its extensive prevalence, one can gain a picture of the shift in policy priorities, democracy and governance through the different phases of donor funding. Within the first phase of Rwanda's democracy (1994-1998), Rwanda was preoccupied with establishing an interim 'emergency' government that was focused on security and response to the refugee, IDP and returnee migration crisis. This meant funding was pumped into the "institutional infrastructure, justice, and security sector."[42] The interim government was to also prepare Rwanda for the first local elections (1999), a constitutional referendum, and the first national elections (2002-2003). This led into the second phase of donor funding, although donors did not fund the local election process the elections were closely watched by foreign observers. Rwanda's democracy entered into a third phase in 2010, when Rwanda was preparing for national elections (2010). Within this third phase, the international community focused on "strengthening accountability between citizens and government at all levels" and "strengthening the capacity of civil society to demand this accountability."[43]

Rwandan political scientist, David Kiwuwa argues that the international community calculates the prognosis of Rwanda's transition and reform, by its liberal-democratic sums and deficits.[44] Within transitional justice, the prescribed end-goal is 'liberal-democracy', and the problem is that it operates on a single formula where elections become the markers of 'true-democratic form' and signals the end of the transition. However, as Kiwuwa notes "rapid liberalisation and political reforms" can sometimes instigate political violence especially in societies that are deeply divided.[45] Again, because of international-guilt, the international funders are still reluctant to critique Rwanda's progress, and its democratic deficit, and there are still many donors who are still reluctant to "apply conditionality on Rwanda's democratic change…" which tends to then undermine those who are challenging the post-genocide state.[46] With this being said, between 2012-2015, Germany and the UK have chosen to suspend aid, whilst the Netherlands is held back on paying out in 2015.[47]

At the Meles Zenawi Foundation Symposium on Development, Kagame shared his views on democratic- conditionality. Kagame asserts *"…The orthodoxy of shrinking the state to the bare minimum, and replacing it with externally-funded-non-state actors (NGOs), left Africa with no viable path out of poverty…While there may be some examples of developmental states, they should not be the example for Africa, will all its diversity…Yet lately, the word 'democracy' has been twisted to bring developing countries, our own, to some kind of order, especially, which have sought to liberate themselves from these prejudices, Our democratic advances are constantly negated, and in fact subverted…Ours is the true democracy of citizens, not the false ones of institutionalised corruption and divisions. We cannot be bullied into accepting policies that misrepresent us and do us harm in the end, as we have seen over many years."*[48]

The Rwandan government needs external support, and as Hayman notes, this often leaves them having to play to two audiences: the people of Rwanda and the donor agencies and NGO community.[49] However, from the onset, the government has also been very vocal about its own priorities and agenda and asserting its national-sovereignty to safeguard its independence in decision-making. The post-genocide government has emphasised that in order for Rwanda's reconstruction policies to succeed, Rwandan citizens have to feel a sense of ownership, pride, be consulted with, and participate in the processes. The meaning of 'ownership' is debatable, and I will explore this later. Secondly, the government is invested in embracing grass-roots level and home grown traditional practices, as opposed to imposed 'Western-values and practices'.

In December 2012, the Government hosted the 10th National Dialogue, or Umushyikirano in Kinyrwanda.[50] The Umushyikirano "brings together close to 1000 participants including representatives of local government and grass roots organisations, cabinet members, members of both chambers of Parliament, the judiciary, army, police, members of diplomatic corps and representatives from the private sector."[51] The theme that year was "Agaciro: Aiming for self-reliance", and on the agenda was moving away from aid, and developing Rwanda by Rwandans.[52] As mentioned, throughout Rwanda there is a strong foreign aid and NGO presence, an estimate 200 international NGO's descended on Rwanda in the aftermath of the genocide.[53]In response, Kagame has since 'kicked out' 80 of those organisations because they refused to register and abide by government regulations.[54] He states, "*Of the rest, you would be lucky to find five in 100 that are doing it altruistically. The others will choose for you where you should put their money, and try to control what you do in other areas. They come here knowing almost nothing, understanding almost nothing, and they judge and criticize and tell you what you should do. A big part of the misunderstanding is that they expect us to be a normal country, like the ones where they are from. They do not understand that we are operating in a very different context.*"[55] Speaking at Meles Zenawi Foundation Symposium on Development Kagame stated that he 'likes governments but does not like non-government organisation.'[56]

This kind of outspoken rhetoric has earned Kagame enemies but interestingly has also bolstered his support-base on the continent, internationally, and amongst Rwandans themselves. In the beginning analysis of Rwanda was thought through a genocide-framework. One cannot overstate the preoccupation with 'justice and accountability' and 'security' in the first decade. The foundation for support, was also laid during a time where the international humanitarian community and state-leaders were reflecting on their failure to prevent, intervene and stop the genocide and the subsequent humanitarian crisis that was also a security crisis. The international community met in April 2015 to discuss their role in the 1994-Genocide, looking at causality and the Arusha Peace Accords, particularly the synchronisation between policies and implementation. The report reiterated Kagame's critique of the international community's late response to the genocide and in devising a common policy plan for going forward. The RPF-led government has used the international communities recognition of its failures to establish relations with the U.S., U.K., and

Netherlands ('Friends of Rwanda'), specifically over 'aid, intelligence, and diplomatic relations.'

Hintjens argues that the state has succeeded in gaining the respect and support of the U.K. and U.S. because the RPF speaks the 'common language', which the Anglo-Saxon community can appreciate and both sympathise with.[57] The scale of violence, and the targeting by one group against the other, allows "Kagame and RPF to present themselves as fighting an invisible enemy, which means that peoples attitude towards race and ethnicity must be policed and some civil and political rights sacrificed if genocide is not to reoccur."[58] Furthermore, since the tribunal and Modernised Gacaca Court do not equate the crimes of the RPF to genocide, the RPF can overshadow them with the argument that it was acting out of "self defence", and that it single-handedly was "battling its genocidal legacies, trying to grapple with lawless killers across the border, whilst fighting backwardness and poverty back home."[59] This narrative appeals to its alliances and aids Rwanda's Anglo-Saxon business and foreign policy relations, and Rwanda is exactly where it wants to be, which is in opposition to the Francophone world.

Rwanda's relations with France have been very strained since Kagame has accused France of facilitating the genocide by providing military support and financial aid to both the then-Rwandan government army and Hutu militia, and for its continued military operations in the Congolese-wars. France has been very accusatory towards the RPF, blaming them for the 1990 October invasion that triggered the civil war; suggesting the RPF is responsible for shooting down General Habyarimana and Burundian President Cyprien Ntarymira's plane; and for committing major atrocities during the genocide and afterwards in the two Congolese-wars. Rwandans have pleaded with France to reveal information recovered from the black box of that plane, and politically the RPF has used this to gain leverage by arguing that it will not cooperate with France. In April 2015, the French government said it would begin to declassify documents regarding the genocide, and make them publicly available in order to assist Rwanda's reconciliation.[60] This comes at the peak of the post-genocide disassociation with the Francophone identity, as the state promotes an Anglophone culture and the English language as part of the new identity. This is reflective in education, business, the media, as well as the genocide memorials and museums, which present a harsh critique of Belgian colonial influence on the genocide ideology and French involvement in the 1990s.[61] An oppositional party, the Democratic Green Party of Rwanda (DGPR), filed a lawsuit against the state, citing that by eliminating French as an official language, the RPF is further marginalising the majority of the population who speak French in addition to Kinyarwanda, which effects national reconciliation and unity.[62] Moreover, when state institutions are solely in English and Kinyarwanda, the population cannot hold these institutions accountable if there is a language barrier.[63] DGPR argues the RPF emerged from English-speaking Uganda, and uses English as a means to continue ties with fellow East African countries.

The opposed perception of Rwanda is highly-critical of 'post-genocide governance (which denounces autocratic-rule), the type of polity that has emerged after the genocide, repression and closing of the political space, compromised civil and political rights, gross human rights

abuse, growing inequality and rural poverty, structural violence, and the victimisation of the Hutu majority.[64] These critiques are largely made by academics and especially Rwandan scholars- a 'reserve' that is expanding. There has also been a significant shift in critique from the French-speaking world to the English-speaking world. Little was known about Rwanda until to the genocide, drew enormous attention from 'journalist, aid workers, diplomats, academic researchers, the media…etc. Hintjens writes in the immediate aftermath of the genocide, "the RPF was given the full benefit of the doubt by many scholars, journalists and human rights organisations", some of which would be now blamed as being optimistic and naïve.[65] Phil Clark asserts that scholars and researchers from the international community, tend to "overstate the case" of Rwanda, or exaggerate the difficulties in partaking in the dialogue because it adds claim to the important contribution of their work.[66]

As an outcome of the dominance of international law and human rights regime, the initial analysis on the genocide and Rwanda's political history, was hindered by the 'genocide-lens' and caught up in the hierarchies and power that determines production of knowledge. There are also vested interests, which shape research, reports and policies. This led to reductionist and redundant conclusions being drawn in the initial analysis. Reyntjens argues, "While many initial publications suffered from lack of historical background, fell into the trap of simple answers, or even showed outright bias, the quality of research dramatically improved over the years."[67] The huge presence of outsiders in Rwanda has been culpable in its contribution to epistemological hierarchies of knowledge, and this had an impact on the work of domestic thinkers, regional scholars or the contributions from the 'Global-South'. There is a presumption made, that sees 'local views' as being bias, politicised, and 'too close to the problem'. Rather, I would argue that all work produced on Rwanda is political and should not be cause for being dismissed or silenced. There are many Rwandans operating in different spaces, who are contributing productively with their insights into the historical and political context of Rwanda, and whose intimate knowledge/experiences of the complexities have included invaluable information of both the positives and negatives found in Rwandan landscape.

The following section of this chapter will proceed with a discussion on Rwanda's post-genocide governance and political record. I am particularly interested in how the 'victor's deal' achieved at the Arusha Accords, and military and political victory after the genocide, has shaped political practices today.

3.4 'Rwandicity': Engineering a 'New Rwanda'

The Government of Rwanda's notion of 'Rwandicity' underlines the spirit of governance and national reconciliation. The logic of the government is that imported models of democracy will not work for Rwanda; the new leadership of Rwanda has to formulate a model of 'democracy' that adapts to the inherited socio-political history of Rwanda.[68] Moreover, before Rwanda can speak of 'democracy', pluralism, and multi-party elections, it needs to construct a unified single national identity that will hold both political agents of the state and Rwandans, accountable to Rwanda's vision for a shared common future, that is a post-ethnic

state and society. The civil war and genocide "powerfully re-inscribed the division between Rwanda's ethnic Hutu majority and ethnic minority. It was a divide that had been activated on several other occasions in Rwanda's history to violent effect…"[69] Thus, the current regime relies greatly on the lessons of history, as an instrument that accompanies law and politics. Prime Minister of Rwanda, Dr Pierre-Damien Habumuryemi, asserts, "*In Rwanda, political pluralism has ceased to be an ethnic and regional pluralism to become a framework of participation and integration of all Rwandan children…Rwanda needs adequate political and social cohesion.*"[70] 'Rwandicity' provides that foundation for the new nation-state, and will facilitate the cohesion of socio-political and economic classes under the government's principles for building a Rwandan national-identity. Habumuryemi states that 'Rwandicity' came about through consultations, participation and a lively debate held by the government in the Urugwiro village (May-June 1999).

As Habmuryemi shares "*These debates which were chaired by the then Head of State included a panel of actors of political life during the crucial period of 1957-1961, leaders and high officials of the first and second republics, personalities involved in the management of the State after the genocide of 1994 and representatives of scientific and academic society. The results of these debates played a big role in determining the fate of Rwandan society and provided guidance on the political management of the country. Two key political orientations emerged from the debates held in Urugwiro Village: the reshaping of the Rwandan national identity instead of secular identities of Hutu, Tutsi and Twa and the consolidation of a pluralistic democracy of consensus and integration.*"[71]

An important part of achieving a collective 'Rwandan national identity' and to promote the narrative of a single national identity was the eradication of ethnicity. Omar McDoom argues "The remarkable character of this strategy becomes apparent when one remembers that the paradigm usually favoured by international mediators is to explicitly balance the interest of ethnic and sectarian groups on the constitutional re-design of the nation."[72] Rather, the government sees eradication of identities, as a short-term solution for 'inter-ethnic healing' and in the long-term for 'minimising ethnicity as force in public life.'[73] It acknowledges that Rwandans may still identify themselves as Hutu, Tutsi and Twa, but the purpose of the prohibition it states is "…to remove ethnic labelling as the basis for discrimination, denial of service and policy-making...to calm down ethnic passion and to silence ethnic identification and promote a narrative of national identity in order to nurture an environment for inter-communal peace and dialogue...'[74] From his research, Mcdoom asserts that this prohibition has extended to the private sphere, noting that Rwandans consciously avoid using the terms Hutu, Tutsi, and Twa. [75]

It is apparent in the Constitution, that the 'Rwandan identity' is thought through the 'genocide framework'. For Example, it is stated in various points in the Preamble of the Constitution:
"…We the people of Rwanda,
- ☐ In the wake of the genocide against the Tutsi that was organised and supervised by unworthy leaders and other perpetrators and that decimated more than a million sons and daughters of Rwanda;

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□ Resolved to fight the ideology of genocide and all its manifestations and to eradicate ethnic, regional and any other forms of division…

□ Emphasizing on the necessity to strengthen and promote national unity and reconciliation, which were seriously shaken by the genocide against the Tutsi and its consequences."[76]

The RPF presents itself as a 'bulwark against the forces of genocide, including tribalism, ethnicity and race ideology.'[77]The 2003 Organic Law introduced new "thought and speech crimes".[78] These include "divisionism", "ethnic ideology", and "genocide mentality".[79]This ties in with the significant emphasis throughout the Constitution on 'Genocide Laws', which seeks to fight genocide ideology and prevent genocide.[80] Furthermore, in the Constitution: Chapter I: Fundamental Human Rights Article 13 stipulates: "Revisionism, negationism, and trivialisation of genocide are punishable by the law."[81] "Discrimination and sectarianism" both imply "divisionism" and are criminal offences. Article 1 defines discrimination as "any speech, writing, or actions based on ethnicity, region or country of origin, the colour of the skin, physical features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights…"[82] Sectarianism "means the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination mentioned in Article 1."[83]

Rene Lemarchand argues, "Exactly how the 'freedom of thought and opinion' guaranteed by the same article is to be reconciled with the prohibition of discrimination, as defined by the law, remains unclear."[84] The penalties for violating such constitutional provisions are enshrined in the law of December 2001. Article 5 states, "Any person guilty of the crime of discrimination or sectarianism... is sentenced to between three months and two years imprisonment and fined between 50,000 and 300,000 Rwandan francs or only one of these sanctions."[85] Moreover, if the offender happens to be a "government official, former official, a political party official, an official in the private sector or an official in a non-governmental organization, he/she is sentenced to between one year and five years of imprisonment and fined between 500,000 to 2,000,000 Francs or one of those two sanctions."[86]Another piece of legislation relevant to the discussion in the chapter is the stipulations of Article 6: "any association, political party, or non-profit making organization found guilty of offences of discrimination, in which case penalties are raised to a fine of between five and ten million Rwandan francs and a suspension of between six months and a year… the seriousness of the consequences of that act of discrimination on the population, the court may double the penalty, or decide to dissolve the concerned association, political party or non-profit making organizations."[87]In this chapter, I discuss the implications of these laws for open-dialogue and having a competitive, democratic political space.

3.5 The Political Record of Post-Genocide Rwanda

Analysis on Rwanda's post-genocide political record distinguishes between two crucial phases, between 1994-2000 (which formally concluded the transitional process) and from

2000 – present, where the cracks in the logic that drove the transition have become pronounced.

In order to understand post-genocide governance, I argue it is important to return to the agreement at the Arusha Accords, and to review which stipulations were salvaged and which were excluded in the aftermath of the genocide, and what that might tell us. Frederick Golooba-Mutebi and David Booth put forth an interesting argument in relation to the type of governance after 2003, which can be traced to the RPF's political vision at the Arusha Accords negotiation. They argue in the aftermath of a historical bloodletting, "a crucial step was the decision of the winning forces in the 1990-1994 Rwandan civil war to share power with other national political forces considered to be opposed to ethnic sectarianism."[88] They go on to note, "The RPF and the Rwandan Patriotic Army (RPA) did have overwhelming military power at the end of the war in 1994. To this extent, the RPF's rejection of the principle of "winner takes all" was a choice and not inevitable. Inclusiveness was also wise and pragmatic in the circumstances. The victorious military forces were also taking charge of a country and an economy in ruins. In diplomatic terms, they were also bound by the terms of the internationally brokered Arusha Peace Agreement, which visualised the immediate formation of a Government of National Unity."[89]

In their study "Bilateral Cooperation and Local Power Dynamics: The Case of Rwanda", Golooba-Mutebi et al, have based their arguments on 'confidential interviews with members of the ruling party and other parties.' From these interviews they found that the ideas of anti-sectarianism and power sharing have deeper roots in the RPF's experiences in the Tutsi diaspora network, influenced by the debates and struggles on the ideology of Rwandese Alliance for National Unity (RANU).[90] Golooba-Mutebi et al state that the "majority view decisively rejected the establishment of either a purely Tutsi organisation or an ideologically exclusive 'vanguard party' " and this was reflected when the RPF invaded Rwanda, where the RPF developed "friendly relations" with political parties (such as predominantly southern-Hutu party, the Social Democratic Party).[91] This was on the basis that they shared a similar vision for Rwanda, which is a "ethnically and politically inclusive political project"[92] The authors then critique made by 'external observers' that the ban on ethnic identities is restricting the political space and freedom of speech.[93] I will come back to this point later on.

Proceeding from the discussion in Chapter 2, it is clear that the Arusha Agreement compromised the transition, because it failed to incorporate all political constituencies, and prevent a sentiment amongst Hutus that viewed it as a 'victors deal' for the RPF. Reyntjens argues "in addition to being a peace accord, it was a fundamental shuffle of political cards…from the executive, the presidency became ceremonial. The transitional government and assembly were to be put in place by main political parties including the RPF, along consociatonal lines…"[94] This meant that decisions made by the "broad-based transitional government" needed a two-thirds majority vote, and the support of at least four parties was needed to attain a majority in the "Transitional National Assembly."[95] The new national army must be made up of 60% government army and 40% RPF army. When the RPF broke the

ceasefire agreement in 1993, the political landscape quickly dwindled from being "tripolar (the former single-party- the unarmed opposition- the RPF)" to a bipolar system (MNRD an allies versus the RPF), which both destroyed the balance and increased political organisation along ethnic lines.[96]The October 1993 coup d'etat in Burundi which led to the assassination of the Hutu president by a predominantly Tutsi army, also had a compounding effect on the polarisation of the political struggle in Rwanda and demonstrated to Hutus that the RPF "would never accept genuine democracy."[97] Thus, rendering the Arusha Accords a failed dead process.

<u>3.5.2 Transitional Government: Power-Sharing or Consolidating Power?</u>

After declaring military victory on 18 July 1994, the RPF installed a transitional government, as envisioned by the Arusha Peace Agreement. The interim government is referred to as the 'Broad-Based Government of National Unity', which was put in place for a five-year transitional period (but extended to nine-years) that would conclude the transition by holding national democratic elections. At a second glance, it is apparent that the new interim government was considerably different to what was proposed by the Accords. Through the Declaration of the RPF, a consensus was reached that decided to install a Hutu President Pasteur Bizimungu, and Vice President Paul Kagame. As Vice-President, Kagame was the 'minister of defence, general of the army, and represented Rwanda in important meetings with foreign heads of state.'[98]This allowed Kagame to have influence on Rwanda's domestic policies and also its foreign policies. Faustin Twagiramungu (of the Mouvement Democratique Republican- MDR) was made the Prime Minister. In accordance with the Arusha Agreement minister positions were held by four ministers from the MDR, three from the PL (Parti Liberal), three from PSD, and eight from RPF, with one other from an independent party.[99] This meant twelve ministers were Hutu and nine were Tutsi.

There were a few significant modifications made to original Arusha Agreement, and were informed by the Declaration of the RPF. To begin with, the President shifted from having a 'ceremonial role' to having an 'executive' one, thus the President gained significant power and dominance in his/her position, because it stipulated that the President be consulted with and have to approve the composition of the government, and if decisions by the government can not be reached than the "President of the Republic decides in a sovereign way."[100]This becomes critically important. Moreover, as Reyntjens notes "the RPF took three of the five seats previously allotted to the former ruling party MRNDD, thus ensuring a blocking of one-third plus", the RPF also took eight of the twenty-one portfolio, which would placed the RPF in a position to prevent decisions from being taken.[101] Finally, the RPF secured a majority in Parliament. The final arrangement of the transitional state was in direct violations of the proposals for "power-sharing" and "national unity" and instead allowed the RPF to exercise complete monopoly of power.[102]

Given the colossal task to reconstruct Rwanda from the perspective of genocide and from a historical point of view of the political inheritance meant that early analysis on Rwanda's progress was relatively positive, even though there were red flags. For example, in 2000,

President Bizimungu resigned, and was charged and sentenced to 15 years for 'embezzlement, inciting violence and associating with criminals'- crimes of "divisionism".[103] He was also charged with a very serious crime- 'endangering the state', where Bizimungu was charged based on an interview he had given, where he "predicted Hutu violence and civil war unless the RPF started sharing power in a genuine way".[104]This charge would later be dropped, but the damage was done. Bizimungu was very critical of the governments 'growing and unnecessary crackdown on dissent.'[105]As a 'moderate Hutu' (married to Tutsi) who came from Gisenyi, the 'home of Northern Hutu politics and Hutu extremism', Bizimungu joined the RPF in 1990 after Hutu radicals assassinated his brother.[106] His resignation and criminal charges came in a sensitive time in Rwandan politics, because although seen as a 'peripheral figure' he represented a 'different' kind of politician who strongly opposed ethnic-politics and authoritarianism. In 2001 Bizimungu started his own party (Party for Democracy Renewal- PDR also known in Kinyarwanda as Ubuyanja) but with immediate effect the government banned the party, citing that it 'preached ethnic hatred' and he was stripped of all former-heads of state privileges and placed under house arrest.[107] After his resignation, Kagame became the president of Rwanda's transitional government, and as discussed the position of the president was designed in a way that allows him/her to hold great power and control of the state.

I would like to also note a few other examples that support Bizimungu's claim. Reyntjens asserts that driven by the guilt of the international community and the outcome of the judicial influence, the "Friends of the New Rwanda" has constituted this idea of the "bad guys" and the "good guys", the latter is naturally understood to be the RPF.[108] The consequence is that it fuels the governing-party's suspicions, and supports accusatory claims against anyone or organisation it deems as being against the 'new Rwanda' ("divisionism"). In January 1995, Colonel Kayumba Nyamwasa informed Kagame that there is a "lack of contentment among opposition politicians especially those from the MDR and naturally from other extremist who have taken hiding in other political parties…These MDR politicians are, like always, making it a tribal issue and are holding secret consultations…"[109]In 1995 (January-March), the Internal reports of the Intelligence and Security Department of the National Gendarmerie produced a report on the "Enemy internal activity".[110] The report pointed to 'non-RPF' and particularly MDR politicians, civil servants and diplomats as being "subversive" and "enemy agents" that were meeting in secret which were considered "clandestine".[111]Furthermore, the report emphasised that it has evidence of the MDR being "pro and anti-Tutsi" and were increasing its strength at the grassroots level, which the report stated, "will affect the RPF hold on the local population."[112]The report also signalled out six parliamentarians and two prominent Hutu RPF Ministers- Seth Sendashonga and Alexis Kanyarengwa, arguing that they were organising meetings with the aim of "fighting a way for the rights of the (Hutu) majority."[113]

These sentiments are particularly worrying for the 'national unity' project, but also because it revealing of the political strategy of the RPF. In 1992, a report surfaced which challenged the claim that the RPF invasion was a 'liberation struggle', as it provided a record of Kagame claiming, "Since there was no possibility of winning local support the population was to be

viewed as a security risk and so areas need to be cleared."[114] This has been supported by well-documented evidence of mass killings between 1991-1993. It also raises questions about the RPF treatment of local electoral processes. An internal RPF document that was produced in February 1994, had re-surfaced, it stated "The strong foundations put in place during the transitional period must allow the Front to organize the timely departure of Habyarimana Juvénal, with or without elections (these need to be organized at the moment of the RPF's choosing, in the light of the situation in the country)."[115]This document is most revealing for the argument that the RPF's overall goal has been to secure monopoly of power in Rwanda.

By 2001, the transitional government had decentralised the state, creating 11 provinces and 106 districts that would be governed by the Ministry of Local Government. The first 'local elections were held in 1999, and district elections in 2001.'[116] The RPF asserts that decentralisation is important because it allows Rwandans to elect their leaders, and be able to monitor and hold their leaders accountable.[117] In addition to re-arranging the traditional landscape of Rwanda by relocating citizens into the district-communities, there was also a military strategy that would serve state-security by interrupting and monitoring armed mobilisation networks.[118] The Local Government was given the task of introducing order through a functioning bureaucratic-system, and to educate the population on political processes (e.g. civil-society, workings of the judiciary, legislative and executive, consultations, constitution, rule of law, and electoral processes), which would inspire a participatory citizenry. However, mostly Tutsi RPF-loyalists were placed in the leadership of the Local Government, and these districts were strictly monitored by the policy and in some places the military. David Himbara, former Chairman of the Rwandan Development Board who worked closely with Kagame and has spurred Rwandan's economic growth, asserts, "penetration of the administration to the village level facilitates a comprehensive surveillance system whereby local functionaries are enlisters as watchers, and almost everyone in Rwanda is watched."[119]

The RPF also took the opportunity to use the district communities to expand and employ a "new RPF "cadre" in the countryside, to build the party's base ahead of presidential and parliamentary elections in 2003."[120]

It was also in 2001, that proceedings of a Constitutional Commission got on its way. The new constitution proposed to ensure the balance between central and local government.[121]In its report, End of a Transition in Rwanda: A Necessary Political Liberalisation, International Crisis Group (ICG) stated that the drafting of the constitution "should ensure a balance between central and local government... It should also provide an institutional framework to consolidate the RPF's political platform.[122] Moreover, it noted that the draft "does not envisage the immediate arrival of democracy, but proposes the framework in which this would be achievable."[123] This is premised on the view that the interim government does not see Rwanda as being 'ready' for a democracy, and requires the 're-education of politicians and population on the respect for political liberties.'[124]In the meantime, it asserts that a "strong" and "enlightened" leadership is required to maintain the country's unity.[125]

The Constitutional Commission would be the first process of consultations with the Rwandan population in the constitution making, and provides an open debate on Rwanda's future, by combining "popular consultation" with the governments "participatory approach".[126] However, where as it was meant to be consultation process, ICG reported that it "…has not really opened up the debate on the future of Rwanda" and has "highly supervised popular participation."[127] Furthermore, the president of the Commission, Tito Rutamera was appointed by the National Assembly of Transition (NTA), who was also a significant "RPF's ideologist" and previous president of the 'Forum of parties', head of the RPF group at the National Assembly, as well as being s first deputy in the RPF in 1993. [128] This is deeply concerning because the Commission is charged with drafting the constitution and the president of the Commission selects the members, which as ICG reports, "exactly mirrors the political make-up of the NTA."[129] Technically the electorate in Rwanda does not elect the parliament and legislators, which means it cannot hold the Commission accountable. Moreover, the RPF have shown to have a paternalistic attitude towards the population, as demonstrated by one of the Commission members, Jacques Kabale "the Commission has the merit of asking opinions of an uneducated population."[130]

After '590 meetings' that were attended by 2000 people, the first draft of the constitution was adopted by parliament and published in 2002. New versions followed in 2003. A referendum was held that year, and the results showed that 87% of voters participated, and 93% voted in favour of the new constitution.[131] Whereas, it strongly negates Hutu and Tutsi power, and calls for strict adherence to the rule of law, President Kagame took as decisive step by declaring that the "presidential and legislative elections would be held by direct universal suffrage and secret ballot" which his opponents accused the government of wanting to impose 'indirect elections' that would allow the "control of the selection of local representatives and be assured of their support."[132] ICG also reported "soldiers and certain RPF politicians (including Tito Rutaremara) also advocated a mode of indirect elections, fearing the "Buyoya" syndrome and the RPF's inability to find popular support among Hutus."[133] The International Federation of Human Rights found that "the constitution offers the image of a virtuous façade, opposed to the reality of strong restriction on freedom and democratic principles."[134]

The constitution was published and adopted in time for the 2003 national elections, which would mark the end of the transition, and the first election since the civil war began, and the first multi-party elections in Rwandan history. Its vision for 'political liberalisation' is questionable, given that the government has used the constitutional laws- "prohibiting genocide ideology" and "sectarianism" to crush competitive democracy practices and 'constrain its political opponents.'[135] The government has effectively 'limited the range of allowable ideas among politicians.'[136] Omar McDoom argues "the regime equates competitive politics with ethnic violence in Rwanda, and does not know how resistant Rwandan society would be to extremists' appeals to mobilize along ethnic lines."[137]

In May 1998, President Bizimungu, President of the interim government, held the "Forum for National Orientations". This seminar brought members of different political parties together

to discuss unity, reconciliation, justice, policies, the economy…etc.[138] Some parties mentioned that the seminars were "serious and useful". [139]However, most telling was an incident occurring with the (MDR).

The MDR formed in 1998 with the objective of being an independent opposition. At the seminar meetings the MDR presented its mandate, which differed in its account of history to that of the RPF's 'official narrative'. Succinctly, the text stated there was no pre-colonial unity, the 1959 'social revolution' was the true revolution aimed at achieving democracy, and that it was the Tutsi monarchy that posed a threat to this democracy.[140] Furthermore, it stated that the "allegation considering all Hutus as genocidaires, contributes to the insecurity." [141] The RPF expressed complete outrage by the MDR's proposal, and ordered the party to "rewrite its homework" and submit a new manifesto. [142]Shockingly, the re-submission was devoid of all former critique, and marked the beginning of fallout with the RPF, that successfully led to the MDR's marginalisation and later political ban from operating. The same fate befell on the PDR. In 2002, the government was pressured into following up on the ban of PDR in 2001, which it did, and pressured prominent Tutsi members to resign, which allowed the government to then label the PDR as a "radical Hutu Party".[143]Following their ban, other parties were also banned, including main opposition (CDR) and political leaders were increasingly harassed, placed on house arrest or put on 'show trials'.[144]In May 2003, Amnesty International criticised the government for banning the two main opposition parties.[145]

Reyntjens asserts, "despite having control of all instruments of local, provincial and national management, and the reinforcement offered by its constitutional engineering" the decision was abruptly made by Kagame to prematurely close the poll-count.[146]In a bold unconstitutional move the RPF declared itself the winner, and rationalised its decision based on the argument that was based on a security concern of the consequences of political liberalisation and competitive politics where the ethnic demographic is drastically uneven.

In March 2003, President Kagame addressed the opposition in a post-election, a telling sign of a radical move to close the political space. Kagame stated "if they come with the objective of hindering our programmes, they will be injured…Our clemency decreases…To whoever prides himself of having harvested sorghum or maize, we will say that we have mills to crush them..."[147] He then goes onto to assert "I can tell you that the result of the elections is known…I can tell you for 100 percent that the elected will be those who follow the policy of reconstructing the country.…those who want to bring divisionism…have no place in this country." One of the RPF supports declared "Rwandans are reconciling, the vast majority of Hutus voted for a Tutsi."[148]Whilst cheering at Kagame's victory parade, another youth supporter of the RPF complained, "There's no freedom of speech".[149]

Kagame is said to have won 95% of the votes, and his main opponent, Prime-Minister Twagiramungu received 3.7%. On the eve of the elections, Twagiramungu admitted that "he had no chance of winning the presidency", his party (MDR) had been banned, his campaign leaflets seized, and his supporters were terrified.[150]Moreover, some of his provincial

campaign managers were arrested, and twelve of them were "paraded on television, denouncing their former leader."[151]Twagiramungu shared a letter that he received form one of his campaign members. In it, the member stated, "*I'm sorry, but I have to stay alive.*"[152]Soon after the elections, Twagiramungu fled into exile (Belgium) citing that the RPF was "*too dominant and undemocratic.*"[153]

Former chief-of-staff to Kagame, and former general-secretary of the RPF, Dr Theogene Rudasingwa gave a 'post-mortem' analysis of the 2003 elections. Rudasingwa asserts, "*Since 1995, the trend has been towards progressive consolidation of RPF's monopolistic control of the machinery of the state…since, then, striven for unrivalled political supremacy. The organization exercises absolute control over all organs of the state…and it has achieved political supremacy not through open and free process of competition with other political forces, but through repressive laws, administrative practices and the use of the security services to frustrate the exercise of the civil and political rights of its opponents…Rwanda is far less free now than it was prior to 1994.*"[154] In response to Rudasingwa, I will briefly reflect on the 'government' that was installed after the 2003 elections. Rwandans still carried extensive trauma; physically, psychologically, and materially, and therefore there were different expectations on the served objective of the national elections, which allowed for little contestation from Rwandans themselves.

3.5.3 "Winner Takes All": The Tutsification and RPF-ization of the Rwandan State

The 2003 national elections were viewed as a "political milestone for the RPF," having secured the leadership of Rwanda at the end of the transition, and by all technocratic accounts it had delivered the first 'multi-party' elections that were efficiently run.[155] Constitutionally speaking, the party that wins elections has "an obligation" to involve other parties in the 'management of the country'.[156]This is understood through 'power sharing'. Dr Habumureymi argues "the opposition in the manner of established democracies was not deemed appropriate in the post-genocide Rwanda and the selected option was a 'consensual democracy' through the forum of political parties with a rotating leadership for all political parties that compose it."[157]This is a strategy that makes use of mediation (conciliation and dispute resolution), which addresses past practices of ethnic exclusion, as well as interethnic negotiation. Furthermore, the ruling party argues that the system proposes a proportional system to avoid a majoritarian democracy and "winner takes all" effect. In theory this "Rwandan democracy" would seek to secure the rights of all groups, and safeguard the rights of minority groups like the Tutsi. Paradoxically, Rwanda is also a Presidential Republic; meaning President Kagame is the 'head of state', 'head of government', and head of the 'multi-party system'.[158] Bernard Makuza (ex-MDR) was appointed as Prime Minister.

The parliament has a consociative arrangement, for the purpose of avoiding ethnic-violence, operates on a system of proportionality. This also guarantees seats to women (24 seats), the youth (2 seats) and disability (1) representatives, who are appointed by the senate.[159] One of the widely lauded developments in the constitution is the inclusion of women in parliament,

as mentioned Rwanda has the highest representation of women in the world (64%).[160] The presidency and bicameral are selected through a system of both direct and indirect elections, wherein 53 of 80 parliamentary seats, as well as the presidency is elected through a popular vote.[161] Will Jones argues whereas this appears to abide by principles of pluralism, 'ordinary Rwandans' cannot effectively monitor the government. [162] As demonstrated in the elections, the ruling party has repressed competitive democratic practices. Rwandan political analyst, Kiwuwa, asserts, "The ability to manipulate the electoral college directly or indirectly, using political and social shrewdness coupled with government political 'godfathering', ensured that the right candidates obtained desired results."[163]Furthermore, in order to be considered for parliament representation, a party has to get a minimum of 5% of the votes, which compromises small parties.[164]The EU electoral monitor and Umuseso news agent both reported that the small parties Parti Liberal (PL) and PSD (Social Democratic Party) did not win more than 5% of the votes but were both given positions in parliament, which garnered the critique that the RPF had manipulated the votes in the elections.[165]

At a first glance, there seems to have been a higher representation of Hutus in parliament than the previous transitional government. Kagame appointed thirteen out of the eighteen positions to Hutu minister, and five of them came from the RPF, and two of the eleven state secretaries. [166]On face value this seems that the government has been ethnically inclusive, however these positions are merely a symbolic administrative act, because they hold little to no influence directly on power. Sixteen of the twenty-nine member of government were from the RPF, which was a constitutional violation of Article 116.[167]Of the non-RPF Hutus and other representatives who were given positions in parliament, they came from parties who "either joined the RPF list or supported the RPF candidate during presidential elections" such as from the PL and PSD. [168]Reyntjens notes "the Hutu recently incorporated in the RPF were from a new generation, whereas the old one, that was politically active in 1994, was evicted, in prison, killed or in exile."[169]This was an attempt to broaden its base but also indicated to dissident Tutsis that they were no longer needed. The 'modernization of the economy' and pro-growth policies also attracted a new generation of Tutsis who were keen to show their loyalty and expertise to the RPF.[170] Within Local Government, "80% of mayors were Tutsis".[171] Both the justice sector and the intelligence unit is "100% Tutsi."[172] Thus, it is apparent that the "regime claiming to fight ethnicity, is actually spearheading ethnic policies."[173]Minister Chief Murigande states "there must be no Tutsi and Hutu call, but like in the past there is a constant danger that in the new Rwanda, as in the old "instruments of power and enrichment are concentrated in small networks based on a shared past."[174] Reyntjens writes "when, in the past, Hutu were a majority in public institutions, this was called "ethnic discrimination"; however, now that Tutsi were a majority, this became "meritocracy".[175]

In order to address the historical North-South political divide, which has led to violence and undermined the capital Kigali, the constitution stipulates that the legislator is not allowed to represent a region, thus ridding Rwanda of geographical constituencies.[176]Whereas this contributes to dissolving ethnic-based politics/sectarianism, it also hinders smaller parties that rely on regional support from their constituency. Furthermore, because legislators do not

have specific constituencies, they are not accountable to electorates and representative of serving the interest of 'ordinary Rwandan voters'.[177] Rudasingwa argues that they are appointed by corrupt ways, and act as party functionaries for fear of being dismissed- 'rubber stamping decisions made by cabinets', and there is a real fear amongst parliamentarians to expose ineffective government practices or hold them accountable.[178] Moreover, the high of legislators renders institutions ineffective, because legislators are often recalled before the end of their terms.[179]

These shrewd administrative practices have set a dangerous precedent in Rwanda, which has been reflective in each election since. Rudasingwa asserts every election "*has been preceded with worrying patterns of intimidation, harassment and other abuses- ranging from killings to restrictive administrative measures-against opposition parties, journalist, members of civil society and other critics, with results confirming RPF's monopoly of political power*."[180]

I would like address an interesting debate that has taken place in the literature on post-genocide governance, two opposing views, one held by Golooba-Mutebi et al, and the other position which seems to be held by the majority of Rwandan scholars. The latter argues that Rwanda has effectively seen a 'Tutsification of the state' and they have come to be critical of the façade of pluralism and power sharing.

Golooba-Mutebi et al position their argument in response to critiques of the governing-party and repressive administrative practices that have closed the political space. They also attend to the development of elements in the post-genocide 'political settlement'. 'Political settlement' is a term used by political economist and political scientist, who argue "a) institutions matter, and also b) that the way institutions work is shaped by non-institutional factors, especially the power distribution among major elements of a national elite, including its military, civil, economic and political wings."[181] These institutions are compatible and mutually supportive. The authors assert that the current political settlement was arrived at through a. commitment to power sharing; b. the pursuit of development, not negotiation, as the principal path to national reconciliation; and c. a search for an alternative to clientalistic political competition.[182]

I discussed the first element of the political settlement in the beginning of this section, which contextualised the RPFs view on 'power-sharing'. To begin with, the authors argue that what is widely unappreciated, is the way in which the constitution ("the product of a national consultation process") has posed limits on the power of the RPF, and "even caters to the needs of microscopic parties that are not members of the governing coalition."[183] Larger parties who hold cabinet position are able to reject RPF proposals even on security issues. The RPF is also not constitutionally allowed to hold more than 50% of cabinet posts. Furthermore, from their interviews, Golooba-Mutebi et al note that "Both RPF and non-RPF ministers insisted to us that this is the outcome of a natural evolution that started in the 1980s, when the genocide had not yet happened but the cost of ethnic power monopolies were already clear enough."[184] Moreover, the bicameral parliament strictly observes and ensures

that there won't be a "winner takes all" effect. The authors also seem to place blame on 'smaller-parties' as being "lazy" if they don't "develop new ideas to offer voters."[185]

The second element (development for national reconciliation) sees the inclusion of former Habyarimana's regimes FAR, the RPA, and some forces from Congo, into the Rwandan Defence Froce as being indicative of both a commitment to power sharing and reconciliation. Secondly, Golooba-Mutebi et al argue that the current state is committed to including all parties in the bargaining, and "reconciliation has to come from the joint participation in a development and nation-building process, it cannot come from a political process in which ethnic supremacist are allowed once again to promote their point of view"- the later which is proven by history to put the country at great risk of conflict continuing.[186]The authors applaud the constitution and strategy that uses development for reconciliation, arguing that this importantly signals to the Hutu middle class, who previously had a historical 'anti-Tutsi' view and promoted anti-RPF propaganda (which the argue continues to circulate), that the ruling party is determined to and 'very deliberately' pursue a "non-discriminatory approach" and a "non-political approach" for inclusion and development.[187]

The third element, responds to the critique of a 'prevailing Rwandan elite' today, specifically a new RPF 'akazu'. Golooba-Mutebi et al argue, "the current elite bargain was fully defined between 2000 and 2003 and not before", an important distinction, which can reconcile current 'misinterpretations on the Rwandan reality'.[188]The authors point out that around 2000, the "majority view became that the nation-building project and wager on reconciling former enemies through a process of economic and social development would not be achieved if public affairs were allowed to revert back to type-that is, if the political system were to evolve back to the patron-client pattern, with the attendant tolerance for cronyism and corruption."[189] Thus, the authors assert critiques about "descent into tyranny"- Rwanda is a dictatorship, the constitutional checks and balances and tolerance of liberal freedoms have been eroded, are "naïve of politics in poor African countries."[190]Furthermore, the view the dispute between the MDR and RPF, as owing to the MDR leaders being found to be "unreliable both on anti-sectarianism" and on the rising issue of "competitive clientelism" and individuals and parties were extracting personal gains from the public office.[191] Golooba-Mutebi et al argue there are various ways in which the RPF are using their own finances and institutions to fight competitive clientalism (RPF holding company Crystal Ventures Ltd.).[192]Also, they point to the 'many' significant Hutu elites (government, military, business community) who support anti-sectarianism and abide by the spirit of the constitution, which has centred the ban on ethnic politics.[193]

In order to make their argument, Golooba-Mutebi et al have separate the political from political policies and institutions, arguing that the current institutions are enforced by formal and informal rules (checks and balances). Secondly, they place a great deal of faith in these institutions and the constitution, which as I have demonstrated in this chapter are riddled with monopolistic administrative practices, the constitution is used to repress 'competitive politics' (through laws such as "divisionism" and "sectarianism") and also there have been outright violations of the constitution. I disagree with the authors argument that "political and

policy differences exist" and are facilitated by institutional rules, are indicative of a healthy political landscape. Moreover, Golooba-Mutebi et al assert that the notion of a 'elite convergence' owes to commitments by various parties in the political settlement to power-sharing, development, and anti-sectarianism, a commitment that includes Hutus and Tutsi, because of its "robust inclusiveness" and 'broad-based' rules which appeal to many different people from different sectors. Finally, I find it problematic that the authors have been quick to dismiss internal and external critique of the Rwandan state ('naïve' about the nature of politics in poor African countries') but in their own rationale, they oversimplify and grossly overlook critical political practices. Arguably, one cannot speak of 'robust inclusiveness' when it premised on various practices of exclusion and intolerance to alternative views and critical engagement, this only serves to further the governments stranglehold on the political space that prevents open and lively debates. The closure of the political space indicates a crisis in the political institutions that these authors seem to negate and justify given the history and specifically the genocide. Whereas as they give the ruling-party the benefit of the doubt (given the circumstances) they rob Rwanda of the opportunity to disinherit prevailing practices of the past, and contribute to the strict governing of what is considered 'politically correct'. The following section of this chapter will continue exploring the political record, and engages with some of the flaws of Golooba-Mutebi et al's argument.

3.5.4 Closing the Political Space: Silencing Critical Voices

Since 2003, the political climate in Rwanda has significantly deteriorated. Contrary to the perception that the RPF 'enjoys relatively high' legitimacy and Kagame's 95% win demonstrates that he is the 'elected peoples leader', all other viable opposition parties have been 'eliminated' through false accusations sectarian politics. Hintjens states "The regime claims it stands for the very antithesis of racialised mentality of the past."[194]However the use of the law to violently repress debate and competitive-politics is counter-productive for national reconciliation and achieving 'Rwandicity', a post-ethnic society that is politically reconciled into a single political community. There has been a sharp rise in 'criminalising politics' through house arrests, imprisonment, forced disappearances and of grave concern, a rise in assassinations.

The 2003 Organic Law stipulates that political parties will be 'allowed' to practice, once they have registered, which means they must "…reflect the unity of the Rwandan people" also "all parties are prohibited from disseminating information (of) a denigrating and divisive nature about elected and appointed leaders" and are forbidden from using "words and acts that intend to denigrate and disparage a person in order to unlawfully remove him or her from leadership positions."[195]These laws are interchangeable with "Negationism" or "Trivilisation" of the genocide. What is meant by 'unity' is demonstrated in the complete absence of political opposition, and the latter law, has safeguarded RPF positions in governance. Hintjens asserts "This hotchpotch of political correctness and political convenience highlight how law and politics merge, and are designed in combination to prevent open criticism of the current regime."[196]

The 2003 elections presents a watershed in Rwandan politics, because since then every parliamentary elections (2003, 2008, 2013) and presidential election (2010) have seen the ruling-party use the law to exhaust the civil and political rights of Rwandans.[197] Rwanda has yet to see a true multi-party election or a competitive political space. Formally, there are only the RPF's coalition-partners, who bare little significance and only serve the RPF's stranglehold on power. Despite the odds stacked against them, the opposition did resurface in time for the 2010 presidential elections. The leader of the PL asserts, "We are not here to oppose President Kagame but to build the nation. Rwanda does not need a European-type opposition."[198] The debate amongst the opposition challenged the monopoly of the RPF's power, and "introduced inside the country, a debate that contested the ruling party's discourse."[199] However, reminiscent of how it addressed the MDR (in 2003), the regime used administrative practices, the law, and its security agencies to repress the discourse debate, and thus further excluding constituencies by criminalising their politics.

Various leaders have been arrested, such as FDU-Inkingi (Victoire Ingabire Umohoza), PS-Imberakuri (Bernard Ntaganda), and PDB- Imanzi (Deo Mushaidi), who have all sentenced with imprisonment.[200] Deo Mushidi, who was a former (Tutsi) journalist and leader of PDB-Imanzi, was arrested together with Kayumba Nyamwasa and Patrick Karegeye (2 former RPF officers living in exile in South Africa), and in addition to the 'usual criminal laws' they were charged with "terrorism", "attempt against the security of the state" and for having ties to FDLR.[201] The DGPR leader Andre Kagwa Rwisereka was "beheaded by state agents in 2010", and the new leader, formerly living in exile, returned to Rwanda and has since been unable to register the party.[202] Similarly this has been the case for the AMAHORO People's Congress and Rwandan National Congress (RNC).[203] The AMAHORO People's Congress, RNC, PS-Imberakuri, and FDU-Inkingi, have joined forces since 2013, extending its reach to Rwandans both in the diaspora and within Rwanda. It has also extended an invitation to civil society, calling upon them to unite in the demand to "speed up change" in Rwanda, and address the plight of political prisoners.[204] They all seek to address what they describe as the central state's neglect of the poor rural communities and the closing of the political space. Their meetings often take place in Brussels due to fear of imprisonment or violent attacks on members.

The experience of political prisoner and leader of opposition party FDU-Inkingi, Victoire Ingabire Umohoza, is a troubling case in which the state chose to criminalise a political leader rather than engage in political mediation and face the opposition through political processes like elections. Her case marked intensified repression after 2010. Ingabire returned to Rwanda (2010) after spending 16 years in exile in the Netherlands, with the aim of running for president as the leader of the Rwandan Diaspora's opposition. Marceline Nduwamungu (Rwandan exiled in Belgium) noted Ingabire's courage- "many Rwandans in the diaspora speak and write about the regime" and some agreed to return with Ingabire, but out of fear they couldn't, and she was left to return and take on Kagame alone.[205] Compared in the media to Nelson Mandela, Patrice Lumumba, and Aung San Suu Kyii, Ingabire has inspired the opposition that live in exile to confront "the existing belief and power structures that has led to the death and disinheritance of millions in the Great Lakes Region, most of all in

Rwanda and Democratic Republic of Congo."[206] Upon her arrival, Ingabire spoke at a genocide memorial site (April 2010), where she stated, "*We are here honouring at this memorial the Tutsi victims of the Genocide. There were also Hutu who were victims of crimes against humanity and war crimes, not remembered or honoured here. Hutu are also suffering. They are wondering when their time will come to remember their people. In order for us to give that desirable reconciliation, we must be fair and compassionate towards every Rwandan. It is imperative that for Tutsi survivors, Hutu who killed their relatives understand the crimes they committed and accept the legal consequences. It is also crucial that those who may have killed Hutu understand that they must be equally punished by the laws*."[207]

Challenging the notion that only Tutsis were victims, and including Hutus in the narrative in thinking about reconciliation, was a provocative move by Ingabire. Ingabire also boldly suggested that both Hutus and Tutsis could be capable of extremism. Ingabire was arrested at the memorial site, and later released. However, two months later she was re-arrested and accused of 'genocide ideology', "suspicion of threatening national security and public order", and "buying and distributing arms and ammunitions to the terrorist organisation" the FDLR.[208] President Kagame used the opportunity to publicly state that Ingabire was guilty, saying that she confessed to him.[209] This was before the trial began, which alerted international human rights organisations and the international media to the case, bringing the case under scrutiny for possible human rights violations and concern that she would not receive a fair trial and due-process. Ingabire's defence had actually raised the issue "of the constitutionality of the 2008 genocide ideology law" however the Supreme Court refused to allow it, saying it was inadmissible in court.[210] In October 2012 Ingabire was sentenced to 8 years in prison, which was later changed to 15 years house arrest.

Ingabire's criminal trial came to demonstrate the political crisis in post-genocide Rwanda. Local Government Minister, James Musoni, was instructed by Racepoint (U.K. PR firm for Rwanda) to address the banning of political opposition member- Ingabire. Musoni made a clear statement in his concluding remark for the article, stating that "*The government is determined to ensure these elections go ahead peacefully and fairly – without interference from those inside and outside the country who stand to gain from stirring up instability*."[211] In response to the critique of a closed political space, President Kagame stated to a Belgian journalist, that his opponents were *'ignorant', 'misguided' or 'disgruntled'… "Anyway, they were just a minority: The majority of people in Rwanda are engaged in these processes (of building the country) and are happy. The idea that those who do not adhere to the RPF view have no place in the political dispensation is quite old*."[212] As the ICG notes, "When the regime's viewpoint is not respected, accepted or understood, it is simply imposed. In this context political parties that exist today are only tolerated if they agree not to question the definition of political life drawn up by the RPF."[213]

In 2015, Freedom House interviewed David Himbara, who fled to South Africa in 2010, due to death-threats, and had to flee again in 2013 to Canada. In response to 'Rwanda opening up and democratisation' Himbara stated, "*I do not see any hope of democratization in the near future*."[214] Himbara was responding in the context of the 2015 referendum for an amendment

to the constitution, which has since allowed Kagame to run for a third-term (Kagame's term expires in 2017). Article 101 in the Constitution stipulates that a 'president can only be elected for a term of seven years' and "under no circumstances shall a person hold the office of President of Republic for more than two terms."[215] The 'referendum vote' was widely-covered by state-owned newspaper, The New Times, who encouraged Rwandans that a three-quarter majority was needed, and informed them repeatedly of Article 2 in the Constitution, which states the "power to govern the country is derived from its people".[216]3.7 million Rwandans voted in favour of a third-term.[217] The BBC has reported that the opposition was prevented from engaging with the referendum elections, and people were hired to vote in the petition. Moreover, the newspaper reported that voters were physically assaulted and coerced. Other than the state-owned media, the press was also prevented from reporting.[218] Rwandan news website, 'Ighie', stated that smaller parties close to the RPF were pushing towards "abolishing a cap on presidential term."[219] The opposition and even some members of the RPF rejected the new constitutional amendment. RPF member Connie Bwiza Sekamana was fired for her opposition to the amendment.[220]DGPR filed a Supreme Court lawsuit also opposing the change, with the leader, Frank Habineza, remarking that "*Changing the constitution will not only undermine the democratic process but also the peaceful transfer of power.*"[221] Himbara argues "*Kagame is playing a clever game, on the one hand, he publicly says that he doesn't support a constitutional amendment, quickly adding however, that if Rwandans wish him to continue to serve, it is their right to do so, On the other hands, he has unleashed the Rwandan police state to intimidate the population into "demanding" that he stay in power...It is game over.*"[222]

Many critics of the regime note that the international community, particularly the donor countries, can play a bigger role in Rwanda. Himbara argues that the U.S has provided Kagame with unaccountable political leverage, which sends the message that the government can get away with anything.[223]An anonymous writer for Hiragana wrote a scathing critique of the support of 'donor countries' that have stood by the Rwandan government during these political events. The writer states, "The Rwandan president has to fool the donors that his government and institutions are somehow representatives of the will of the people. He needs badly such image because without it he cannot collect external aid from partner countries. The irony of the election masquerade is that these countries take it as a reflection of an acceptable democracy, then pledge their taxpayers' money to the Kagame's regime. If the citizens in these donor countries were well informed, they would surely make their governments change their minds about Rwanda and it's system of leadership."[224] This was the demonstrated during the first elections, where the international community took Twagiramungu's defeat as just that, and not indicative of administrative repression. Instead the international community has largely been distracted and bought into the image that Kigali projects.

The government has hired a world-renowned British PR firm, Racepoint, that has worked to comprehensively re-construct and shift the image of Rwanda in the world, from genocide and Hutu/Tutsi conflict, to one that focuses on projects culture, the economy, natural assets such as the gorillas, attractive for foreign-investment, and boasts "zero-corruption".[225]Rwandan

Foreign Minister, Louise Mushikiwabo worked closely with Kagame to selectively invite the international media and certain foreign stakeholders to 'events' that promote this idea of a "reinvented Rwandan". In London, Mushikiwabo asserted "We are at a time in our post-genocide history where we have to move on."[226] This was followed by Kagame's remarks that "*The people of Rwanda, their psychology and politics have completely changed," he said. "We have been investing in all this time we have been here and by building institutions and by making sure that Rwandans are more educated about not just their issues but global issues, they understand better what life means, their own life and what generally life means. They have also interest in being like others we see elsewhere in this world. In the past we were such a closed society that these things could easily happen.*"[227]

Rwanda's excellent public relations machinery has also effectively masked the repression of the domestic press. The media, civil-society and 'ordinary Rwandans' are excluded from the 'new dispensation'. In a thriving democracy, 'elections' attract a flurry of debates and analysis, but not in Rwanda. Lars Waldorf asserts "In the aftermath of the genocide, in which… RTLM and Kangura played a notoriously galvanising role, Rwanda's new government faced the task of ensuring that a resurrected press would not voice hate speech again."[228] Thus, it has used this experience to justify censorship and propaganda as a necessary safeguard against the recrudescence of genocide.[229] 'Reporters without borders' produced an index (World Press Index-2014) which ranked Rwanda 167 out of 180 countries based on its assessments on freedom of the press and media.[230] The RPF has imposed a 'legal regime' that greatly restricts press freedom.[231] The 2002 criminal law punishes "public incitement to discrimination or divisionism."[232] It stipulates that "Any person who makes public any speech, writing, pictures, or images, or any symbols over radio airwaves, television, in a meeting in public place, with the aim of discriminating against people or sowing sectarianism…" will be imprisoned or punished.[233] The maximum sentence (5 years) can be handed down to press and media personnel who are found to "publish false news, hold the president in contempt and defame or abuse public authorities."[234] This has greatly removed the independence of journalist and with already very little resources it has forced most press operations to close due to losses incurred by suspensions, imprisonment and fines.

Editor of Catholic Newspaper: Kinyamateka, Andre Sibomana states "*a real censorship has gradually settled in. It started at the grassroots, within the editorial teams of public and private newspapers, and rose to the top: even the Minister of Information ended up fleeing the country…One event marked the turning point: the attack of Edouard Mutsinzi, the director of the independent weekly Le Messager. Towards the end of the day, in a café in the centre of Kigali, as group of Tutsi extremist beat him for a long time without anyone intervening…the message got through: from then on, anyone criticising the government knew what to expect.*"[235] Since 1999 there has been little to no opposition or critique from the press and the state has fuelled suspicions and speculation because of it controls the dissemination of the 'truth'. Sibomana asserts, "*Rwandans realise perfectly well that there is significant discrepancy between what they see with their own eyes every day and what they hear through the official media or private newspapers, which support the government line.*"[236]

Umuseso and Umuvigizi, which are Kinyarwanda newspapers and which hold the largest readerships, have been targeted relentlessly.[237] These two newspapers are not shy to report on controversial issues and challenge the 'favourable government propaganda.' The government has set up the Media High Council (MHC) a "constitutional body that is nominally independent, but whose chief executives are appointed by the government and which is "supervised" by the Ministry of Information."[238] In the last few years, the MHC has worked tirelessly to discredit the work of these two newspapers through suspensions and court action. The MHC describes their errors as "publishing false news", "insulting, slandering, defaming innocent individuals", "publishing biased information", and "abusing and insulting the president of the Republic of Rwanda", demanding that they correct their reporting and information and issue apologies.[239] After refusing to do so, and in the run up to the 2010 national elections, the MHC suspended Umuseso and Umuvugizi for six months. Umuvugizi now operates online, but since 2014 has been blocked by the Rwandan government. HRW reported that most independent journalists are silenced, especially around elections.[240] After the release of BBC documentary, *Rwanda: The Untold Story*, BBC Kinyarwanda was cancelled, with the MHC accusing the BBC of "genocide denialism".[241]

In 2010, Umuseso editor Didas Gasana, oppositional journalist Deogratias Mushayidi, and Umuvigizi editor Jean-Bosco Gasasira, all fled Rwanda because they received death threats.[242] Agnes Nkusi Uwimana, editor of newspaper Umurabyo, was arrested alongside other journalists for the newspaper. Journalist Charles Ingbire was a writer for Umuvugizi and editor in chief of Inyenyeri. Ingabire was very critical of the government in his writing, that lead him being assassinated (2011) in Kampala, Uganda, after several failed attempts.[243] The Ugandan government has publicly blamed the Rwandan government for the assassination.[244] The same fate befell on journalist Jean-Leonard Rugambage, who was killed on the day the Umuvugizi published an article online in which Rugambage had uncovered evidence to support the allegation of the involvement by RPF members in an attempted assassination of former RPF General Kayumba Nyamwasa, who had dissented.[245]

Civil society (CS) has also been completely eliminated as an "autonomous force."[246] After the 1990's human rights advocates, advocates for rural development and NGO's (both domestic and international) have been targeted and threatened with arrests. The role of the church in the genocide has meant that religious groups are also being targeted. CS has an important role to play because they highlight issues such as to do with women/gender inequality, labour relations, service delivery, rural-agricultural policy reforms…etc. and bridge the gap between citizens and state. The International Civil Society Index shows that the government has lacked transparency and has not followed due process with regards to its relationships with the private and social sector, and is responsible for breaking up rural-networks.[247] The government has also issued a decree law, which gives them the authority to control finances, administration, and the projects that NGO's pursue. Moreover, similar to its crushing assault on political opposition, a 'Parliamentary Commission of Inquiry on Genocide Ideology' was released which recommended the banning of a number of CS associations and organisations, citing there is evidence that shows they are "preaching the ideology of genocide and ethnic hatred."[248] Ibuka, a Tutsi 'survivors' organisation, began to articulate criticism of the regime

"for failing to adequately address the needs of survivors."[249]Its main leaders have all fled the country, and one leader was assassinated. The RPF has since replaced its leadership with RPF members, and the president is now Antoine Mugesera, a strong RPF-loyalist.[250] The government is also very wary of criticism of their own human rights record and the crimes committed before and after the genocide. Liprodhor is an independent Rwandans human rights organisation that partners with international groups/organisations. It has been very critical of the government, and thus has been relentlessly targeted and accused of being a 'wing' of MDR.[251] After the banning by the Parliamentary Commission of Inquiry on Genocidal Ideology, Amnesty International protested stating "the Rwandese National Assembly is inappropriately manipulating the concept of genocide to silence not only organisations and individuals critical of the government but organisations who have a close relationship with the Rwandese people and whose loyalty the government questions."[252] The organisation African Rights, who is usually sympathetic to the RPF also asserted "a flagrant misunderstanding of the exact meaning of the expression 'genocide ideology'…The accusations seems to reside in the fact that these organisations are allegedly involved in anti-government political activities…But this should not be the equivalent of muzzling every criticism of the government."[253]In 2007, the government introduced the Civil Society Platform, which has been viewed as being exclusionary and hardly represents the variety of Rwandan CS. Christiane Adamcyzk observes a "widening gap between the grassroots level and a distant leadership with political aspirations."[254]

3.5.5 A 'New Rwanda' for who? The exiled opposition

Golooba-Mutebi et al critiqued the assumption that the "RPF-led government and its armed forces are Tutsi-dominated, and more particularly a tool of Anglophone 'Ugandan Tutsis'."[255]Rather, the authors argue one needs to look 'beneath the surface', which shows that there is a new generation of men and women that are being promoted and preparing to take over top positions.[256]For Golooba-Mutebi et al this demonstrates that as the years have passed the 'political settlement' has become more 'solid, consistent and inclusive.' The authors also argue that yes disagreements tend to happen behind closed doors, but it is 'misleading' to have the impression that this is indicative of "enforced consensus and RPF domination."[257] However, rather than 'robust inclusiveness' that Golooba-Mutebi et al speak of, most political decision are not taken in the cabinet or parliament, but within a small inner circle.[258]I will now address this argument, with evidence that indicates that in addition to the exclusion of oppositional parties, there is internal split in the RPF, that have become frustrated with the Tutsi-domination in governance and increasing militarisation of the state. Shyaka Kanuma, editor of a internet journal (Rwandan Focus) that is close to the RPF, stated there "*is an over-reliance on a few, powerful "godfathers" to make major decisions…A few of these godfathers have been advancing their own interests above those of the collective Rwandan populace…the main godfather, the chief manipulator, the master of intrigue, the boss of machinations, is the one whom I will not name…He-who-must-not-be-named has for years built a formidable network of political minions in important institutions.*"[259] "He-who-must-not –be –named" is powerful minister of Local Administration James Musoni, who is the closest ally to the 'boss'- Kagame.[260]

The RPF has had the difficult but common task that faces former rebel movements (e.g. ANC and SPLM) who become the ruling party, and that is to transform itself into a civil party fit to lead the state and maintain dialogue with all constituencies. It also has to integrate the stalwarts of the former armed struggle who may still hold onto the ideology of the struggle. As Phil Clark states it is the "pressure to absorb opposing factions into a cohesive whole."[261] It is important to place the RPF in the context that drove them to Rwanda in October 1990, and contextualise the post-1994 vision based on the RPF's formative experiences. Clark asserts "The fervour and discipline of the RPF in reconstructing the nation after the genocide stem from important elements of the party's backstory: its formation in exile and the long refugee experiences of its founding members, many of whose parents fled waves of anti-Tutsi violence in the early 1960s; the direct experiences of many RPF leaders (including Kagame) of conflict… as part of Yoweri Museveni's National Resistance Army (NRA) in Uganda; the RPF's military campaign against the Hutu-dominated government… which the RPF framed as the rightful return of Tutsi refugees to their homeland…"[262] I address this further in Chapter 5. These experiences have instilled "a deep sense of purpose and resolve, a collective identity forged through conflict, and an ethos of self-reliance that remains one of the RPF's defining features."[263] The devastating impact of the genocide also dominated the policies of the post-genocide governance, together with the 'genocide credit' afforded to them; external financial support and assistance placed the RPF in a position to pursue their vision for nation building. As I have demonstrated thus far, in order for the regime to achieve Rwandicity, a post-ethnic socially and politically cohesive state, it has operated on the logic that it must be vigilant of an environment that may lead Rwanda into another genocide. The outcome has been to remain suspicious of not only outsiders but of any internal critique, even within the RPF.

The splits within the RPF began to show in the late-1990s. In the context of a 'looted state' and to establish itself as a political party, the RPF relied on financial assistance and intellectual resources/expertise from the diaspora. Within the RPF there are 'hardliners' and 'moderate' voices that have developed, the latter consists of returnees from the Tutsi diaspora who possess "vital resources for the reconstruction of a nation."[264] The 'moderate' voices are a diverse group, consisting of some who have had different experiences, such as having lived in 'relative comfort' exiled in Europe, North America and the Great Lakes region; English-speaking; they may not have experienced the genocide and have different histories; and some of which are highly-educated and hold a different political view for the direction Rwanda should be going in.[265] They are bolstered by the support of the Anglophone international community. By the mid-2000s the RPF has integrated these highly educated Tutsis who have the type of international networks, skills and motivation to assist the RPF's program (especially pro-growth modernisation policies). The socio-economic growth rates appeased Rwandans and were internally cohesive for the RPF. However, after the first military invasion into eastern-Congo, which led to an increased military budget, and which also led to the militarisation of Rwanda. This marked an increasingly growing discontentment with the closure of the political state, and criminalising any critique through new speech and thought crimes. Clark notes that factions began to appear, through the government debates on "justice

processes for genocide crimes…laws against 'genocide ideology' and ethnic 'divisionism', freedom of the press, the switch of the national language from French to English, and the presidential succession plan."[266] Golooba-Mutebi et al argue that the current political settlement has come about through an elite bargain between those who are committed to anti-sectarianism and reconciliation through development, that will eventually secure the state in order to have multi-party democracy and further power sharing. However, by the late-1990s, key players in the RPF were becoming considered enemies of Kagame and 'opponents' because they were critical of the anti-democratic direction the state is going in and are more tolerant of inter-ethnic dialogue.[267]

Seth Sendashonga (former Minister of Interior), Alexis Kanyarengwe (former Head of Intelligence) and Pasteur Bizimungu, were all former Hutus incorporated into the post-genocide state and became disillusioned by Tutsi domination in the state-apparatus, and were critical of the "crimes committed against their ethnic kind."[268]Sendashonga had joined the RPF in 1992, and together with Bizimungu became the most powerful Hutu leaders in the RPF-led government. After being fired from his position in 1995, Sendashonga at the time had agreed to testify at the ICTR in defence of two of the accused. He sought exile in Kenya in 1995, and started a small party of Hutu moderates that opposed the "increasing oppression of the ethnic majority by the RPF and mainly Tutsi army."[269]In 1996 there was an attempt on his life, which the Kigali-government was blamed for, and which led to the expulsion of Rwandan diplomats in Nairobi.[270] Once Sendashonga was seen as a dissident, there was a lifetime target on him, and in 1998 he was assassinated in Kenya. Prominent Tutsis too began to abandon ship soon after this. In 2001, Chief of Army Staff Faustin Kayumba Nyamwasa, left to the U.K after having a "violent verbal exchange" with Kagame concerning the military campaign in Congo.[271] This sparked suspicions that Nyamwasa was planning a coup to overthrow Kagame. Nyamwasa who is currently living in exile in South Africa, shared with Susan Thomsan (Rwandan researcher) in a telephone interview that it was an "open secret known to everyone in the army at the time" that Kagame ordered for Habyarimana's plane to be shot down.[272]Moreover, in those 100 days, the assumption was replaced with a "conspiracy theory laying the blame on Hutu extremists" which determined that the genocide got underway.[273]

Nyamwasa, Patrick Karegeya, Gerhard Gahima (Prosecutor) and Theogene Rudasingwa, all had damning evidence on Kagame's military campaign in Rwanda and in the region. They were all sacked by 2004 (including their close allies) but Nyamwasa was re-assigned to the intelligence agency the National Security Service (NSS), where after a brief stay was then placed in New Delhi as the Ambassador. Patrick Karegeya was arrested in 2006. Reyntjens writes "In 2006, he was condemned to eighteen months in jail for "insubordination" and "desertion". However the real reason of his disgrace was that Kagame suspected him of being an opponent with excellent ties in Uganda and of aiming to overthrow him in cahoots with Kayumba Nyamwasa."[274]

Exiled journalist, Sweden Gasasira reported that the head of the NSS, General Karenzi Karake, has created a list called "The Exposer" which aims to discredit any opponents of the

regime, inside and outside the country.[275]This list has become a 'hit-list'. In 2001, editorial
Rwanda Newsline had reported on the "disappearance" of retired Major Alex Ruzinda who
was later found dead, stating that it as "possible attempt to discourage new
defections."[276]The list of RPF members being fired, sent abroad by the state (on "study
leave"), or seeking exile out of fear, has been growing steadily. Chief of Police, General
Frank Rugambage left on "study leave"; Gahima, Karegeya and Rudasingwa sought exile.
Ex-RPF defector, Lieutenant Abdul Ruzibiza sought exile in Norway, where he published a
book, *Rwanda: L'histoire Secrete* (2005) in which he presents a body of evidence and
testimony to support his claim that he witnessed the RPF shoot down Habyarimana's plane;
he points out a well-founded fear of Kagame's that elections would mean "Hutu would most
certainly come out the winning side"; and he exposes Kagame's human rights record.[277]
Patrick Karegeya was assassinated in South Africa in 2014; prompting a stern warning from
the government that it will not tolerate South Africa becoming "a battleground to settle
political scores by foreign nations" it also expelled Rwandan diplomats accusing them of
"masterminding the attacks on dissidents."[278] Karegeya's fall-out with Kagame and
subsequent assassination have demonstrated a crisis with the 'old-guard', stalwarts such as
Tharcisse Karuguarama and Protais Musoni 'highlight critical divisions' and as Clark asserts
"Today, the greater challenge to the RPF comes from within the party, not from everyday
Rwandans."[279] Himbaras has produced a critical assessment of Rwanda today, he sees
Rwanda as a 'totalitarian regime' accompanied with propaganda, mass surveillance of its
citizens, restriction on speech, intimidation of the electorate and oppositional parties, and
terror that isn't just limited by its borders but assassination campaigns and military
interventions going on internationally.[280]

With every election, since 2003, the opposition in exile continues to grow. In addition to
trying to create an "inter-Rwandese dialogue" with Kigali (which it rejects as being 'uncalled
for'), the opposition is also engaging in a dialogue with representatives from political
society, civil society and rural-organisations.[281]The aim is to inspire and develop better
institutions that can properly secure a consensual democracy, and provide security to internal
and external opposition members and challenge the RPF's stranglehold on power. Kigali
rejects dialogue with the exiled opposition because it associates them with the genocidaires
in the Great Lakes region and the only way it addresses them is through the prism of security
(military and intelligence) and suspicions. Carina Tertsakian states, "There isn't really a
democracy that one can speak of in Rwanda", and the states repression has come at the cost
of political freedom.[282] Rudasingwa articulates "*I do not agree that to be able to develop
you've got to sacrifice people's rights…In fact, all literature and human experience shows
that for there to be prosperity for people, for a country to build, you've got to enrich people's
rights.*"[283]

Marina Rafti illustrates two 'waves of defections' that has taken place. The first wave began
in 1995, consisting of mainly Hutu personalities in the diaspora that were trying to form a
viable opposition.[284] Among them were elements of genocidaires, which added claim to the
government who saw them as an "invalid interlocutor" and scheming to overthrow the post-
genocide government and install a Hutu state.[285]However organisations such as the

Democratic Forces of Resistance consisted of Hutus and Tutsi that are internationally recognised for taking a stand against the genocide and seeking justice.[286] Other examples of such organisations, is the 'Republican Rally for Democracy' (RDR). The RDR formerly included members of the old regime, ex-FAR, and Interhamwe, with the goal of invading Rwanda. However, after 1998 RDR "disassociated itself from the genocide" and "shifted its political trajectory".[287] Similarly, the 'Forces of Resistance' (FRD), made up of 'moderate Hutus' or the post-genocide political class, included Tutsis in their movement, as did the 'Alliance for Democracy and National Reconciliation' (ADRN-Igihango), a Tutsi party that included former Hutu extremists.[288]

The second wave of defections began in 2000 and consists of mainly Tutsi personalities, among them genocide survivors who had begun to flee Rwanda.[289] This wave of defections introduced 'inter-ethnic cooperation'. Because it was organised by Tutsis it challenged the continuing accusation that all opposition are genocide-denialists or trying to sow divisions and sectarianism. Rafti argues that they are 're-defining the Rwandan problem as political and not ethnic' and are pursuing an alternative path to militarisation.[290] This group has instead pursued pressure politics with the assistance of the international community. Genocide Tutsi-survivor and RPF veteran Jean-Pierre Mugabe wrote in *Le Tribun du Peuple*, "*There are many Tutsi extremists. They are everywhere in the civil service and we have been decided to denounce them. They have arbitrarily arrested many Hutu, as if all Hutu were Interhamwe. For these extremists even the Tutsi survivors of the genocide are Interhamwe. Today many Tutsi are just as vulnerable as the Hutu.*"[291] Amongst this second wave of defections, are some who feel betrayed by the regime, there are increasing tensions between the Ugandan returnees and genocide survivors, the latter of who feel they have become "second-class citizens", sacrificed by what they suspect to be main goal of the RPF- military victory and retaining power of Rwanda, rather than saving Tutsis.[292]

3.6 Conclusion

The political governance of the post-genocide regime poses critical questions for Rwanda's future, it particularly begs the question 'which unity is it striving towards?' and 'who is included in this national identity 'Rwandicity'? The regime deserves credit for its rapid developmental strategy. However, the current regime places 'Tutsi nationalism' above democratisation. Today, the political opposition has been purged from formal politics, primarily operating in exile; the independence and political liberties of the media, press and civil society has been restricted; and most Rwandans fear the deteriorating political climate. Most Rwandan's vote for the RPF out of fear, which empty's the meaning of citizenship. The militarisation and surveillance of the regime to the local districts, have lent to the closing of the socio-political space. Moreover, the law has become a powerful political tool, which compromises the political liberties of Rwandans, and which inscribes political violence by criminalising any critique and open-dialogue on RPF and regime. Today, almost anyone can become an 'enemy' of the state. I have demonstrated this in the discussion on the political record, which saw the repression and Hutu dissent and then later Tutsi dissent- some of which are survivors of the genocide and political history of Rwanda. It is important to think

about the implications of the alternative inter-ethnic dialogues taking place, and to return to the internal (and external) debates that contest the monopoly of the RPF's power. Unfortunately, we have to pay attention to the symbolism of a Tutsi-opposition, which shows that the political problem is not necessarily ethnic but political. I say 'not necessarily' because both anti-sectarian and sectarian politics should be addressed through a healthy debate in an open political space. The tendency in Rwanda's politics is to delegitimise political demands and opposition as being sectarian and to see it vying to overthrow political power. These debates are introducing a different kind of discourse that challenges the ruling party's discourse, which can productively redirect attention back to the political institutions, which arguably is where the political crisis lies. As in the past, the political institutions in post-genocide Rwanda today, continue to characterise and enforce the categories of a Hutu majority and Tutsi minority. Moreover, the genocide gives credence to logic that if we are to prevent the recurrence of genocide; rights and liberties might have to be temporarily sacrificed. This logic has been shaped by victor's justice and victim's justice and bolstered by the genocide credit afforded to the RPF, who were given the benefit of the doubt. Whereas, this may have been 'forgivable' in the aftermath of the genocide, and in the context of an insurmountable task (nation-building), it has set a dangerous precedent for Rwanda's future. I argue that in order for the post-genocide regime to transcend the political crisis, it need to return to Rwanda's historical and political context, which demonstrates the crisis in political institutions that has allowed for the 'Tutsification of power' today.
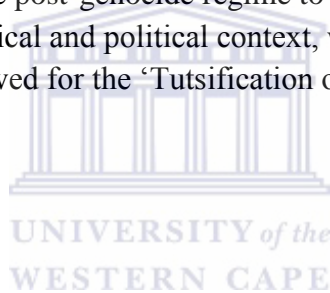
Chapter Four

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"There is no ethnicity here. We are all Rwandan."[1]

4.1 Introduction

This chapter explores the impact of 'victims justice' on reconciliation in post-genocide Rwanda. The government has used law, politics and history as tools for their ambitious social-engineering project for reconciliation. Immediately after the genocide, the government legally eradicated ethnic identification, and conceived a singular national identity, understood by 'Rwandicity'. The regime identifies justice, economic development and the re-education of Rwandans on their past, as the foundation for reconciliation and unity. It focused on using modernised 'traditional' mechanisms such as the gacaca court for restorative justice, and ingando camps for re-education. In the short-term the social-engineering projects seeks to refashion political identities, restore social and economic ties, intervene feelings of ethnic-hatred and vengeance, and encourage healing and forgiveness. The end-goal is a post-ethnic society, where race and ethnicity no longer exist in the hearts and minds of Rwandans. Unfortunately, reconciliation in Rwanda has been frequently politicised, strictly disciplined and prohibits open debates on the imposed, state-sanctioned 'official narrative of history'. The RPF has created a 'victors truth and history'. Therefore, I explore the politicisation of reconciliation, the consequences of criminal justice for reconciliation, and the 'official narrative' on the past. Both Hutus and Tutsis express that the constructed truth of the past, does not demonstrate the experience of the entire Rwandan population. Thus, I argue that it is important to situate the various ways in which 'ordinary Rwandans' are personally addressing reconciliation, as they struggle to rebuild their lives.

4.2 A Path to Reconciliation

In its more general sense, reconciliation can be conceptually defined as "a condition of nonviolent mutually acceptable coexistence where former enemies come to re-envision one another as fellow citizens."[2] Reconciliation should seek to intervene where former or new political loyalties may try to mobilise and capture the collective space. It can also extend to reconcile political, social, and economic relations between states. This is an important suggestion for thinking about the Great Lakes regional crisis. Ernesto Verdeja shares, the reconciliation debate will look at the appropriateness of 'trials, truth commissions, lustrations (purges), official apologies, memorials, reparations, amnestied, and other institutions and policies, which seek to address the past.'[3] As I demonstrated in Chapter 1, reconciliation also implores us to think about the relationship between the predecessor and successor regimes, and prior morality and social-political relations that characterises the identity of the former regime. It is at this intersection, that reconciliation becomes a political act. As Nuremberg became the template to define responsibility for mass violence, the South African Truth and Reconciliation Commission (TRC) was exemplified as a case in which justice combined with

truth telling and amnesty, were thought to serve reconciliation and responsibility. Charles Villa-Vicencio states that the TRC is a template against which transitional justice mechanism should "measure, adjust and improve". [4]

I have addressed reconciliation in the 'general sense', but there are a broad-spectrum of what it could mean for each state, and what purpose it serves or how the end-goal is defined. Verdeja argues, "Minimalist accounts identify reconciliation with the cessation of overt political violence, respect for the formal rule of law, and a commitment to remain part of the same political community."[5] By the 'same political community', this perspective sees shared values and normative orientations as a basic condition, and disagreements in state and society are seen as productive and an important part of political and social life.[6] Moreover, because achieving a 'political community' is the baseline for this perspective, other reconciliatory practices such as 'truth-telling' or 'processes of mutual forgiveness' are thought within the framework of how they serve the end-goal (same political community). Criticism of this perspective may focus on how this then serves 'victims needs' or marginalised groups, does it address their needs, and perhaps that this baseline is too low as a standard, failing to hold human rights violators accountable (justice) and to address power or the culture of impunity. On the other side of the spectrum, there is the perspective of what is commonly referred to as the "deliberative democratic"- who often pick up from where minimalists leave off.[7]

The 'deliberative democratic' perspective will address more robust concerns such as 'institutional reform and deliberation over responsibility, collective identity, and justice and reparations' as the basis for reconciliation.[8] Central to their concerns are victim needs and inclusion of victims and other marginalised group in consultations and public debates, as an important link in reconciliation. Moreover, reintegrating survivors and former perpetrators are argued to be acutely necessary in the public discussion on 'historical memory', the ideology that formulated the violence, forging the 'collective identity', and reaffirming basic rights which create "moral and political equals."[9] The 'deliberative democratic' perception may be have a pre-condition to achieve a liberal democracy, which can be problematic (as I discussed in Chapter 1), but it can also be a more suitable fit for the case-study because it is concerned with each step of the process of 're-integration'. Rather than trying to salvage whatever former 'social harmony' was in place, it seeks to dismantle and reconstruct a new reconciled state and society. Speaking shortly before his passing, Govan Mbeki stated, "For political renewal to endure, the economy needs to be restructured in such a way that the poor and socially excluded begin to share in the benefits of the nations wealth…People-all people, both black and white, Hutus and Tutsi, Shona and Ndebele- also need to feel they part of the new nation. If some do not feel welcome or at home in their respective countries they will not only be reluctant to work for the common good, they can also cause considerable trouble."[10]

In relations to Rwanda, Eugenia Zorbas defines 'reconciliation' as a "restoration of the ways of the past, giving citizens the ability to life as they did before colonialism."[11] Phil Clark describes it as "an act of forgiveness and a willingness to live together peacefully for the sake of society."[12] In the case of Rwanda, because justice has been a foundation which has informed all major process in Rwanda's transition, I am interested in how reconciliation

creates political and social equality, as well as how the meaning of 'victims' and 'survivors' has been centralised, and, as this chapter demonstrates, how it has shaped a particular kind of reconciliation in Rwanda.

4.3 National Reconciliation and Unity in Rwanda

In 1999, the Government of Rwanda created the National Unity and Reconciliation Commission (NURC) as an instrument whose goal is to achieve reconciliation and unity in Rwanda by combatting "discrimination and to erase the negative consequences of the genocide on the Rwandan people."[13] Although reconciliation has different meanings to individuals, the community, and the state, the government strives to meet this definition:

"A consensus practice of citizens who have common nationality, who share the same culture and have equal rights;
citizens characterized by trust, tolerance, mutual respect, equality, complementary roles/interdependence, truth, and healing or one another's wounds inflicted by our history, with the objectives of laying a foundation for sustainable development"[14]

NURC operates together with the National Human Right Commission, the Organic Law, and Rwandan Constitution. NURC argues that the great emphasis of the reconciliation process should be at a grass-root level, where the success is dependent on the agency and will of Rwandans to determine the outcomes through the facilitation of the state.[15] It excludes a truth-finding component because that was to be fulfilled by the legal mechanisms. This is an instrument designed to address the outlined causes of the genocide and ethnic tensions. Its projects are specifically aimed at the Rwandan population through educational programmes, discourse, community and national compulsory events, and socio-economic development as strategic policy for reconciliation. To assist the decree on eradication and "divisions among Rwandans", Article 178 of the Rwandan Constitution works with NURC by illegalising 'sectarianism, division and repression' in Rwandan society.[16] Moreover, the aim of NURC is to re-educate and mobilise the population towards becoming socially cohesive and active participation in Rwanda's conflict prevention and shaping a 'common shared future'. In Rwandan there is mandatory community service (for all abled bodied persons over the age of 18 and under 65) on the last Sunday of every month, called Umuganda. The day is called "umunis w'umugandu" which translates into "contribution made by the community."[17] The community service is designed to "be a day of contribution and building the country by citizens."[18] Another historical practice is the Itorero ry'Igihugu, which was a "Rwandan school and the channel through which the nation could convey the message to the people regarding national culture in areas such as language, patriotism, social relations, sports, dancing and songs, defence of the nation…etc."[19] Itorero was also used to formatively train national leaders, and the participants saw it as educating the populations on cultural values that "could help them develop their judgement, psychology, work and mutual aid, life and collaboration."[20] Other popular reconciliation mechanisms at the regional level include institutional practices such as Abunzi (dispute mediation community), Abakangurambaga (peace volunteers that mediate in conflict situations), and Ingando (built to develop co-

existence and reflection on national challenges).[21] The government has also used the integration of former FAR members and the RPA into the RDF to demonstrate reconciliation in security apparatus.

As part of the Vision 2020 development goals, as well as modernisation and implementation of pro-growth policies, the post-genocide regime centralises national development because through 'non-discriminatory and inclusive public policies/civil services' it hopes to combat "recurrence of violent ethnic extremism."[22] As a socio-economic policy, President Kagame has initiated Girinka (one cow per one family) which is a programme aimed at "ending malnutrition, poverty and strengthening social cohesion".[23] As part of a reintegration programme of returnees and the resettlement of displaced people, the Human Settlement policy 'Imidugundu' was implemented in 1997. This policy would resettle and centralise socio-economic development services, as well as "create an environment of social integration of different strata in Rwandan society".[24]

In Kagame's official vision statement, he states "My vision of Rwanda is a united country that feels itself as an integrated into the sub region Family of nations, a country that is developed and has eradicated poverty, a country that is democratic, and above all, a stable country at peace with itself as well as with its neighbours."[25] Therefore, there is a regional mission within Rwanda's official national reconciliation objective.

NURC acknowledges that reconciliation is not a 'fixed process', therefore using the Rwandan Reconciliation Barometer, the government conduct qualitative and quantitative studies to monitor and assess how Rwandans perceive and understand the efforts of NURC, and where Rwanda is in the 'reconciliation' process.[26] Moreover, NURC uses the Barometer to address "societal friction", "social fault lines" and use it as a tool for early warning signs of conflict.[27] If NURC's principle objectives were to initiate programmes of peace-building and reconciliation, and to support community based projects nationwide as well as hold a annual National Summit, than the barometer is there to evaluate how these initiatives are being received, digested and what role are they taking on politically, socially and economically in local contexts, as Rwanda transforms.[28]The Barometer is overseen by international observers and the surveys interview 12 000 Rwandan-participants (from 450 villages across 30 districts).[29]

The 2010 Barometer, candidly expressed challenges in eliciting "forthright responses from research participants, noting that that the presence of local leaders may have influenced the data collection process and research findings."[30] Moreover, it states "citizens were generally reluctant to participate in interviews related to very sensitive topics" and many participants re-iterated that "referring to Hutu, Tutsi and Twa, is currently forbidden by the government", which led to a reluctance in answering certain questions.[31]Despite this, the Barometer argues that 95.2% of the participants expressed that 'reconciliation is going in the right direction, and 91.7% expressed that 'democratic governance is going in the right direction.'[32]

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The most recent Barometer -survey (2015) looks specifically at "how Rwandans understood the past and present and how they envision the future; their own status of citizenship and identity; their views on political culture, security; justice and social cohesion."[33] It must be noted that the findings of the studies were published (2016) in the state-owned Newspaper: New Times. Up to "92.5% of Rwandans feel that unity and reconciliation had been achieved and citizens are living in harmony"; "95% of Rwandans feel proud of being Rwandan and the same percentage would do what it takes to protect and defend the sovereignty of the country"; the government emphasises that it has not coerced anyone into any kind of reconciliation and "97% believed in reconciliation as it fosters relationships"; "83,4% believe in reconciliation between genocide, perpetrators and survivors."[34] Regarding 'causes of divisionism' and 'genocide ideology', findings show that "There is an improvement with regard to the level of understanding on the major issues since the 2010 report rated the same variable at 87% as opposed to 92.2% in 2015."[35] Interestingly, 22.5% of Rwandans strongly believe that "there are people who would still commit genocide if conditions favoured, a percentage that decreased from 40% in 2010."[36] Additionally, "27.9% of Rwandans view themselves through the lenses of ethnic groups, which 25% still see divisions and genocide ideology among their compatriots."[37] In some districts (Burera, Kayonzi, Kamonyi, Musanze, Nyamagabe, Rubavu and Rutsiro) those participants believe that "genocide can never happen again".[38] Regarding 'justice'- "95% believe that genocide perpetrators have been punished and 88.2% agreed to effected compensations for properties that were looted and destroyed during the Genocide."[39] And Finally, regarding how political culture influences reconciliation, the findings showed that "the level of trust is higher with respect to the central government than that of local government mainly due to the interventions by Paul Kagame" and "92.1% believe they have a say in how they are governed, while 83% think they have a right to hold their leaders accountable, and 92.1 say they have the power to decide their own future."[40]

By invitation of NURC, the South African based institution, Institute of Justice and Reconciliation (IJR) evaluated NURC, which with the experience of South Africa, South Sudan, Northern Uganda and Burundi, could serve to describe Rwanda's experience from an external apolitical institution.[41] Interestingly, IJR chose to assess not only NURC and its activities carried out by government officials, community leaders and citizens, but also the prevalent donor community and international development partners.[42] IJR found that NURC was unique in its collaborative efforts and in its effort to place the responsibility of reconciliation in the hands of communities and individuals.[43] Furthermore, with 71% of the population aware of NURC and its activities, 93% have a comprehensive understanding of reconciliation as a concept.[44] For the younger participants in the survey, reconciliation means "living together and moving forward".[45] For older participants who have experiences in pre-genocide and the genocide, there is a greater centring on truth telling and truth seeking, where memory and remembrance are imperative, along with forgiveness of perpetrators and prisoners.[46]

At a first glance, the statistics presented in both the Barometer-surveys and IJR's report are incredibly high and present a seemingly positive picture of Rwanda's reconciliation. Hintjens argues that the problem with asking Rwandans about the past, and whether they find

it easier to be living side-by-side today, especially for the rural poor (majority of Rwandans) is "unlikely to produce reliable results."[47]Closely tied in with the discussion in Chapter 3, is a fear to engage with 'ethnicity/race' (political identities), 'the genocide narrative' and especially a fear of attracting unwanted attention from the authorities, which may incur punishment. The introduction of the new 'though and speech crimes' have added a political and criminalised dimension to reconciliation. This chapter explores the processes, policies and experiences of 'ordinary Rwandans'.

4.4 Engineering Reconciliation: Law, Politics and History

Rwanda' post-genocide reconstruction has seen the merging of law and politics, which increasingly has closed the public and political space. For reconciliation, in addition to the law, political policies and governance, history has come to play a central role for the 'Rwandicity' project. Whilst the state looks forward to a shared common future and post-ethnic society, it also looks to the past, which has embedded particular meanings in citizenship, political identity- the national identity, and has imposed on reconciliation. At the intersection between the past and present, lies the genocide framework, which has provides the foundation that formulates the logic behind reconciliation. It is important to note, that politics, law and history are not mutually exclusive, it is their combined efforts have been most impressionable on post-genocide Rwanda.

4.5 Reconciling political identities

As the military and political victor, the RPF distinguishes itself by its political acumen and vision for Rwanda. The logic of the government is that it is unwilling to "sanction democracy until they are closer to their stated aim of creating a society with no Hutus or Tutsis, only Rwandans."[48]The government looks at ethnic-divisions as both a Rwandan and regional problem, and it portrays themselves as being the "liberators"- the "good guys".[49] Reyntjens' argues, "by successfully demonizing the Habyarimana regime and pointing at its indisputable faults, it secured the support of influential but ill-informed political circles abroad and some NGOs, human rights organisations, and press outlets influenced by RPF supporters."[50]Moreover, it uses the human rights discourse together with its diaspora network to include some Hutus, but projecting reconciliation project that collectively demonises the Hutu identity. Thus, there can be no democracy until the government has socially-engineered Rwandans into a 'new way of thinking' and a 'new way of doing things'. Former Agriculture Minister, Habamenshi, shares that he was summoned by Kagame "to explain to him how the Hutus think."[51]

As part of its project to 'de-ethnicise' Rwanda and the region, the first priority was to legally eradicate ethnic categories of identity, thus the 2003 Organic Law illegalised references to Hutu, Tutsi and Twa in the public and private domain, as well as on identity cards. This would also dissolve the numerical value that supports majoritarian politics and secures minorities and marginalised groups in the new collective identity. As mentioned before, the government acknowledges that these identities were the central ingredient that caused the

genocide. In response, the government introduced into the law, a new set of 'thought and speech crimes', such as "divisionism", "ethnic ideology", "genocide denialism" and "genocide mentality."[52] Hintjens notes "all are seen as atavistic and backward looking…and Rwanda's see themselves as steering the country towards an enlightened, progressive future free of colonial and racial mental maps."[53] The official policy of the government can be understood by the popular proclamation made by Paul Kagame in 2003 "There is no ethnicity here. We are all Rwandan."[54] As a Hutu student in the re-education class, Ernest Twahara states, "They're trying to change what we think… There have been many changes in this country. I need to change too. I need to be a new person."[55] Central to the logic of governance in post-genocide Rwanda, is this idea of 'educating the population'.

There is an interesting paradox in Rwanda, on one hand, the government preaches that it practices strains of liberal democracy particularly in its understanding of 'citizenship and national identity'. However, on the other hand, 'victor's justice is certainly at work, as the government enforces laws, such as "divisionism", "genocide ideology" and "negationism" which prohibits Hutus from vocalising their suffering.[56] The logic of the state is that it must eradicate the ethnic differences that colonialism introduced. Thus, it asserts a repressive governance that aggressively pursues "eradication of ethnic, regional and other divisions" whilst promoting a unifying notion of national unity.[57] This hinders the opportunity to allow reconciliation from being openly debated and for honest engagement with the past and present. As, one Hutu woman expresses "Rwandans have become liars. We can't say anything because they'll imprison or kill us."[58] Hintjens asserts, "*Whilst public expression of political identities has been largely 'de-racialised', this has been done in a very top-down and authoritarian manner. Governance is distinctly paternalistic. The result has prevented the emergence from below a potentially more complex forms political identification, which could form the basis for more inclusive forms of Rwandan citizenship in the future.*"[59] Thirdly, similar to its other practices of engineering a 'new Rwanda', the government has used the intelligence unit, military, and police to exercise tight control over public expression of political identities. Furthermore, the absence of 'free and fair" elections threatens national reconciliation and unity. By excluding the opposition, independence of the press, civil-society organisations, the post-genocide power has removed the avenues of representation 'ordinary Rwandans' who are seeking to engage the state. As I have discussed in chapter 2, 'obedience and top-down' governance has a long-history in Rwandan state-society relations.

Whilst the government has 'eradicated' and delegitimised ethnic-identities, there are new categories of identity that have emerged through law and politics (policy-making). Today, policies have legally introduced five categories of identity that have re-ordered society hierarchically rather than horizontally- singular political community. In addition to victims (living Tutsi-genocide survivors), perpetrators (Hutu), there are also the categories of 'returnees' which are "mainly Tutsi", and refugees, which are divided into "old caseload" (Tutsi pre-genocide refugees) and "new caseload" (wholly Hutu post genocide refugees).[60]

The five new categories are reconstructed through the judicial mechanism, legal institutions, policy-making, rhetoric of the government, and through new inter-ethnic political groups.

These 'facilitators' have embedded new meanings for the 'former' racial categories of identity. Mamdani notes that the UN and NGO circles also use the terminology.[61]Moreover, in reports and research studies it is legally prohibited to speak of Hutu and Tutsi and the former has been replaced with "perpetrators, (former prisoners, French speakers, and new caseload".[62][63]The latter, can be referred to as "victims, survivors, English speakers, and old caseload."[64] Wielenge argues "those that returned from the diaspora in 1994 and those that returned in the late 1990's may not subscribe exclusively to Hutu and Tutsi, but to identities formulated by their lived experiences in the diaspora, she refers to these as 'lived identities'.[65]From her own research, Wielenge found that time and time again "Rwandans have reiterated that they feel most comfortable with those who come from a similar background."[66]Thus, identities are far more complex than what is determined and imposed on people through state-policy definitions. The commemorations and memorials held annually reduce the complexity of lived identities to a "simple model of ethnic antagonism" because they remind Rwandans that there are Hutus and Tutsis.[67]

Reyntjens argues, "paradoxically although officially denied, ethnic identity was thus indirectly reintroduced, and an ethnic hierarchy (victims are better than perpetrators) was established."[68] Theses identities have come to matter in Rwanda, as one observes in the 'Tutsification' of the state and in businesses. Former bodyguards to Kagame, have since accused him of 'running the country' along ethnic lines. One stated, "All of the soldiers in his bodyguard were Tutsi. If you married a Hutu woman, you were kicked out."[69]Persistent ethnic-discrimination also exists in organisations, such as in the genocide-compensation fund, FARG (Fonds d'Assistance aux Rescapes du Genocide) and 'survivor' organisation Ibuka. Human Rights Watch reported that Ibuka does not provide assistance to Tutsi women married to Hutu.[70]Moreover, as Rombouts asserts, "the government encouraged Tutsi victim completion and incomprehension on both sides by recognising Tutsi genocide victims and refusing to Hutu victims of RPF crimes while at the same time proclaiming a reconciled and united Rwanda where there is no room for different ethnic groups."[71] This isn't just a sentiment felt amongst Hutu Rwandans, as I will demonstrate in Chapter 6, Rwandans from the diaspora are refusing to return home because the 'ethnic question' continues to polarise Rwanda, and the on-going repression on the basis of ethnicity continues to feed localised ethnic divisions and create further polarisation.[72] A reporter for the New York Times, found that at the National University, "ethnicity remains an inescapable part of growing up for the young people" and that government "so far succeeded only in burying ethnic tensions just beneath the surface…So the students live in a surreal world of imposed silence, never talking about the only thing on their minds: each other."[73]

Finally, the government places a great deal of emphasis on socio-economic development as being a foundation of reconciliation. In a study conducted by Peter Uvin and Charles Mironko, they found that economic hardship is "one of the major social problems in Rwanda by 81.9% of the country."[74] Referring to the lack of attention by the government on the rural-poor, As Jeanne, a Tutsi widow expresses "there can be no peace in the heart if there is no peace in the stomach."[75]Uvin et al argue, that the programme under the reconciliation project "offer no real way out of poverty" and only seem to further alienate the rural Rwandans from

reconciliation.[76]Debari argues that the government has focused too much on impressing the international community than listening to the 'needs' of its citizens, which only serves to further "amplify the failure of the current reconciliation programmes created by the government."[77]

4.6 There Can be No Reconciliation Without Justice

Post genocide reconciliation has utilised two mechanisms in its project, these being the Modernised Gacaca Court and the 'Ingando' or 're-education programme (within the National Unity and Reconciliation Commission). The government operates on a notion of reconciliation that places 'social needs' and the 'needs of the state' above individual needs. It argues, "Individuals will prosper, if the society is functioning well."[78]These 'traditional' 'home-grown' mechanisms are seen to be 'organic-social' mechanisms that have an important function for society. Kagame asserted that gacaca "is the only remedy that can help us become human beings again."[79]

'Reconciliation' was only introduced into Rwanda in 1998, prior to that reconciliation was considered to be 'taboo,' as it was understood to mean 'forgiving and forgetting'.[80] Today 'justice' and 'reconciliation' feature together on the official Government of Rwanda's website.[81]The logic of the post genocide state is that only through accountability, eradicating the culture of impunity, and establishing adherence to the rule of law, can reconciliation and unity then be possible. As stated on the government website, "In order to expedite the delivery of justice, the Rwandan Government has returned to the traditional Gacaca Court system. The local Gacaca courts…combine traditional local justice with modern jurisprudence, with the aim of achieving truth, justice and reconciliation".[82] In much of the literature on Rwanda, reconciliation is often connected to justice, with an emphasis on addressing "injustices" or "righting wrongs", thus justice is seen as introducing reconciliation processes. [83] As the government repeatedly affirms, "justice must be seen to be done" in order 'to provide catharsis for those physically and psychologically scarred by violations of international humanitarian law.[84]Gacaca courts seek to provide 'reunification, emotional reparations and restorative justice.'[85]The restorative component of the Gacaca court, seek to repair the "social fabric" of Rwanda, and remove feelings of revenge, resentment and any obstacles to reconciliation. [86]As a means of achieving reconciliation, the government focuses on acknowledgment of the "other's suffering, which will ignite 'collective trust' amongst one another.[87]

It is estimated, that around 2 million individuals were tried in the Gacaca Court.[88]Therefore, it is important to take a brief look at if this legal-reconciliation mechanism is working to provide reconciliation, and as Laura Sealy poses, has it built "accountability between government and citizens, and heal some of the sharp social divides created by the genocide?"[89]Debari notes "although restorative justice may not be the type of justice all Rwandans are happy with, it is supported by the majority, particularly because of the lack of alternatives and the dissociation with other approaches towards reconciliation such as the ICTR: which has left Rwandans "unaffected and unreconciled" by its failure to deliver

justice.[90] Gacaca is seen to be an "African solution to African problems" and allows Rwandans to solve their own conflict. The Gacaca system would also allow the state to show that it can manage post-genocide society and maintain order whilst doing so. By 2001, the government and local populations, chose "respected leaders" of their communities, resulting in the employment and two-year training of 250 000 Gacaca officials, deployed in 11 000 jurisdictions.[91] Phil Clark states that the mechanism has involved most of Rwandan adults through testimony or as judges.[92] Coming from the 'community' is important because it is understood that these leaders would understand local-community dynamics and the nature of the trauma from the genocide experience. The majority of these community leaders are Tutsi survivors themselves. This is deeply troubling with regards to 'impartial justice', if Gacaca court members are facilitating justice whilst dealing and healing their own trauma. However, Belgian specialist on Rwanda, Peter Urvin, seems to argue that "Politically [gacaca is] a brilliant piece of work. It offers something to all groups- prisoners, survivors, it offers them all and reason to participate."[93]

The Gacaca court seeks to establish the 'truth'. Thus, the court places value on 'confessions' and 'confronting complicity' in the genocide, and questions why it happened and how it attracted such mass participation that turned one group against the other. This 'social-legal' instrument, proposed to establish 'who committed crimes', and push through the cloud of suspicion, in order to begin the process of integration. The court also went into prisons to encourage and educate the 'accused' and 'perpetrators' on the importance of 'confession'. 'Confession' in the public space, would give them the opportunity to take responsibility, repent, and be acknowledged by the 'victims' who are encouraged to forgive.[94] The perpetrator would have the opportunity to meet the 'victim', who are centred through their account and expression of the violence inflicted upon them or that which they may have witnessed. The government encourages the 'perpetrator' to publicly apologise and acknowledge his or her crime, and in some cases their sentences were then reduced.[95] However, in most cases, the Gacaca court 'rejects these confessions as being incomplete or blatantly untrue' even after the accused has been dismissed, which stigmatises the perpetrator or accused. Part of confessing, also requires identifying other perpetrators. In some communities and prisons there is a 'code of silence', known in Kinyarwanda as "*ceceke*", which is an agreement made to not testify against one another.[96] Debari argues that in this way "underprivileged and oppressed survivors are denied reconciliation" and even if a perpetrator is charged and serves his/her sentence, they will be released and reintegrated into their communities, which can be traumatic for the survivors.[97] The suffering of Hutu victims of RPF crimes or Tutsi reprisal attacks are also not acknowledged or allowed to be spoken about, so they too are excluded from this 'reconciliation'.

There is also the issue of impunity afforded to the RPF's crimes, which exempts them from reconciliation, and has impacted on state-society and Hutu-Tutsi relations. The RPF have stated repeatedly "…these courts may not hear accusations of such crimes by soldiers of the RDF [Rwandan Defence Force; the successor of the RPA], which must be taken to regular courts"; a position that continues to be critiqued by Rwandans and outside observers.[98] As Ingabire demonstrated in her speech at the genocide memorial site, Hutu victims of crimes

against humanity, need to be acknowledged, have the opportunity to mourn, and have access to justice, in order for Rwandan break the stranglehold of Hutu-Tutsi and to reconcile. Hintjens asserts "Hierarchical leadership, passive acceptance of the status quo and a culture of silence, rumours and mistrust, none of which help to promote either a shared sense of citizenship or even trust, let alone reconciliation."[99] It becomes difficult for the RPF to not be viewed as an ethno-political elite who is securing its own interests, and may serve to incentivise 'justice through indigeneity and revenge', if the governing Tutsi-power is absolved from be held accountable to the very principles that they promote.

One needs to take a critical view of the growing estimates of the 'pool of perpetrators', because it has political implications, as well as limitations for reconciliation. As I have discussed in Chapter 1 and 3, to be accused in Rwanda, or be suspicious of a crime, suspends your civil and political rights. It would take an estimated one hundred years for it the Gacaca court to complete all the trials.[100] Therefore, arguably, "Rwandan traditional criminal justice systems are not designed to manage mass atrocities or genocide".[101] Reconciliation has been difficult, when 'justice for the accused in gacaca has been a haphazard affair.'[102] Hintjens argues "without any defence for the accused, serious miscarriages of justice can result; as with the formal court system, innocent people can be imprisoned, for instance, for having witnessed RPA war crimes, or for being involved in a land dispute."[103] Moreover, the Gacaca court encourages the arrests of Hutus based on their 'collective guilt' and not a formal-investigation.[104] Taken from her ethnographic research-study in Rwanda, Wielenge shares that "Amongst those I interviewed, some felt they had been collectively labelled as being part of the group that perpetrated the genocide even though they were too young to have participated. Related to this, new identity labels that are emerging in Rwanda are 'TIGiste' and 'relatives of perpetrator'."[105] 'TIGiste' (TIG: Trauvau d'Interet General) is used to describe those who participate in the genocide and are now serving part of their sentences doing community service. One interviewee shared that this has made some "feel 'out of place' in today's Rwanda."[106] Hintjens notes, "the contribution of gacaca to reconciliation and national unity is thus not self-evident; dangers of retribution and false accusations are real enough; witnesses and suspected genocidaires, as well as their relatives, have been attacked and even killed."[107] Based on her research-study in Rwanda, Susan Thomson found, for many Rwandans "the gacaca court represents a form of state control in their lives, which promotes fear and insecurity as opposed to unity and reconciliation."[108] Reyntjens argues that forced compliance with state-imposed rituals does not always correspond with reality. As one of Thomson respondents asserts "the gacaca courts are a site of everyday resistance to policies of the RPF-led government, not one of national unity and reconciliation."[109]

Finally, the politicisation of the Gacaca court has taken place by the explicit goal of the state to collectivise Hutu guilt and politicise Tutsi victimhood. A document was handed out to prison all inmates, which stated "3…the genocide is the responsibility of all Hutu, wherever they come from, whether they have killed or not…4. You must accept that, as the genocide targeted all Tutsis (because the aim was to exterminate them), it also concerns all Hutu. Here is why: all Tutsi are survivors, all Hutu are Interhamwe…"[110] This kind of logic, supports and

recognises Tutsi victims, which Rombouts argues that because of state-sanctioned victim-competition, it has led to a Tutsi 'victim-hierarchy' and the outcome is that Hutu (victims) go unsupported and unrecognised by the state and society.[111] A Hutu woman who was able to speak out, after Tutsi women left a 'focus group' stated that the gacaca is "profoundly dividing" the population along ethnic lines.[112] Another individual articulated "Maybe there can only be reconciliation when gacaca finishes."[113]

4.7 Ingando: 'planting the seeds for reconciliation'[114]

The civil war and genocide triggered a mass migration of both outflows and influx's into Rwanda. Prompted by the RPF defeat, an estimated 500 000 Tutsis returned in 1994-1995, and with the aggressive pursuit for justice and accountability, many Hutus fled Rwanda.[115] Rwanda's geographical location and historical political context, has led to porous borders with neighbouring states. Migrations include unarmed civilians and armed groups, and there is a risk that the situation may become further exasperated, when returnees start to migrate, especially in such large volumes.[116] Furthermore, participants in the genocide, the Interhamwe, and ex-FAR members, had infiltrated into Zaire, between 1994-1996, and began armed incursions from eastern-Zaire.[117] This brought the crises to the Great Lakes Region, and led the RPF to indiscriminately target Hutus, base on the presumption that they were guilty of the genocide, and now supported radical militias. Chapter Three demonstrated how this has led to a preoccupation in Rwanda with securitisation that has led to the post genocide state operating on a rationale of repression of social and political rights, as the state 'rids Rwanda of genoicidaires and elements it 'finds' against 'Rwandicity'. Accompanying its military and political strategy is the re-establishment of the Ingando mechanisms, aimed at ensuring security and peace.

'Ingando "stems from the verb kuganika", which historically refers to an event in which the village elders remove themselves to an isolated place to discuss solutions to issues within the village (i.e. famine, poverty, land etc.).[118] In the past, the Ingando mechanism has been deployed in cases such as military integration. Before, the military was characterised as being an "ethnically homogenous" entity, while today the government has used the ingando mechanism to create a 'homogenous society and state'. Initially, the RPF chose to use the Ingando mechanism in response to a clause in the Arusha Peace Accord, which stipulated that the post-1994 military had to be made up of 60% of Habyarimana's FAR and 40% of the RPA.[119] Therefore, the post genocide RPF-state called upon the Ingando mechanism, as "traditional" and a legitimate cultural practice that could aid its political priorities and reconciliation.

The Ingando program began in 1996, originally under the administration by the Ministry of Youth, Culture, and Sports.[120] It was also designed to address returning Tutsis, particularly the Banyrwanda from Congo, who were encouraged to re-integrate into communities and feel a "sense of nationalism" and safe in post genocide Rwanda.[121] Program Officer of Advocacy (NURC)- Alex Rusagara, shared " we thought that if we could remove these people from their daily lives and bring them together to share from a common dish-to eat and sleep

together- this would build confidence in the diverse population of repatriated Rwandans, confidence that we could in fact live together."[122] Very quickly, the RPF modified the mechanism to be used to educate all echelons of Rwanda- from civil, public and state and establish a synchronisation in the vision for national unity and nationalism.

4.8 History: 'Twigire ku mateka twubaka ejo hazaza'
(English translation: which 'Let us learn from our history to build a bright future')[123]

Prior to the implementation of programs such as the Ingando, the post genocide powers argue that it is of strategic importance for reconciliation, that the past is 'dealt with'.[124] Moreover, only through acknowledgment of the past, can ethnicity be enunciated from post genocide Rwanda. In 1994, one of Kagame's first tasks was to order 'emergency revision' of the inherited narrative.[125] In 1995, the conference, 'La politiqueet la planification de l'education au Rwanda' was held, placing history as a central component to reconciliation.[126] Then, in 1998 there was a conference held in Kigali, Valeurs partage´es pour la promotion d'une culture de paix au Rwanda, which "recommended that the teaching of civic education should return to traditional Rwandan values and "to create a formal forum for the restitution of the scientific truth of Rwanda's history."[127] There was an international conference held in Kigali (2008) which stated aim was "to observe the failure of the human and social sciences to that have led to genocide"[128]Thus, the government were seeking a "new methodology, a new literature, a new history."[129]This was seen as urgent, particularly for the history curricula taught in primary and secondary school. History was therefore suspended in schools until 2005.

The state hired a team of historians to work towards producing an "official history" of Rwanda, completed with data, facts and tabulations of protracted violence perpetrated against Tutsi victims. In 1998, the government together with the National University of Rwanda and Rwandan Ministry of Education, Science, Technology and Scientific Research, began discussing the politics of certain eras (e.g. 1959-1962). Although it attracted a heated debate, it remained an internal discussion. The approach to (re)writing Rwanda's history was based on "scientific analysis of the past and the establishment of "the truth".[130]The issue of history was raised at the Dialogue, Consensus and Peace 'consultation' between Kigali based 'Institute of Research and Dialogue for Peace" and Rwandan politicians, civil society and intellectuals.[131] One participant stated, "History…is a social field, but it is also scientific. We have been divided because we are not scientific. We therefore need archaeology and not only oral sources. Oral sources can be transformed."[132] In the same vein another participant stated that "history is a fact, and there are some things you cannot change. We need to talk the truth."[133]Suzanne Buckley-Zistel argues that 'despite such debates the government had already settled on its version of the past'.[134]The debate reflected the language of the colonial discourse (scientific', 'history', 'origins').

The National Curriculum Development Centre was devised to work with the Rwanda Education Board, to train the new batches of teachers who could teach the new history curriculum. Teachers who were not found to be competent, lost their jobs, and the state

elected more suitable candidates, the state claimed that surviving teachers were not capable of teaching the state-sanctioned history. [135]Opposition and alternative views were sidelined in what was meant to be an inclusive participatory process, and it has been critiqued for deploying a politically charged curriculum that many feel should not be taught in schools. Case studies that accompanied the curriculum contain themes such as "politics", "rumours", "genocide denialism", "negation" and "Tutsi victimhood". [136]

According to the Government of Rwanda's website, the 'official history' is:

☐ "*For centuries Rwanda existed as a centralised monarchy under the successions of Tutsi kings from one clan, who ruled through cattle, chiefs, land chiefs and military chiefs. The king was supreme but the rest of the population, Bahutu, Batutsi and Batwa, live in symbiotic harmony.*"[137]

Thus, there was social harmony, until the colonial intervention, which institutionalised a system of "indirect rule". [138]

☐ "*From 1959, Batutsi were targeted, causing hundreds and thousands of deaths and sending almost two million of them into exile…*"[139]

☐ "*…The First Republic, under Gregoire Kayibanda, and the second, under President Juvenal Habyarimana, institutionalised discrimination against the Batutsi and subjected them to period massacres*"[140]

A more comprehensive interrogation of Rwanda's history will take place in Chapter 5, working closely with Chapter 2.

In order to eradicate or "unmake" the divisions of the past, the state asserts its interpretation of history, arguing was no ethnicity prior to colonialism. In the preamble of the 2003 Constitution, is states that "*…we enjoy the privilege of having one country, a common language, a common culture and a long shared history which ought to lead to a common vision of our destiny.*"[141]It also describes the symbiotic harmony in social relations in pre-colonial Rwanda, positing more or less a complete pre-colonial unity between Hutu, Tutsi and Twa.[142] The only difference that existed was that of an "occupational difference".[143]The state then argues, that it was the colonial intervention, that violently inscribed ethnic distinctions, for strategies of 'divide and rule', thus "the evils of the genocide can be traced back directly to these European colonials"[144] As part of its aim to delegitimise the past, the 'official narrative' then describes the failures of the First and Second Republic, which imported these racialised identities for power and anti-Tutsi violence. Moreover, the 'official narrative' reads the genocide as the 'main event' in Rwanda's history, both "privileging" the genocide but also "removing it from historical scrutiny."[145]The consequence is that the state draws upon the genocide as the site upon which the "political correct categories of identification and guidelines" can be derived from, and to demonstrate as a lesson upon which the post genocide state must learn from.[146]Based on this narrative, the post-genocide's logic is that history explains why "the RPF wants to remove ethnic and race markers from politics altogether."[147]Furthermore, these markers are incompatible with 'modernity and decolonisation.'[148]

The 'official narrative' is problematic for many reasons; I would like to briefly just touch on a few because I go into greater detail in Chapters 5 and 6. Firstly, it invokes the work of 'origins', but selectively subscribes to history in order to make the claim that validates Tutsis as an indigenous group of Rwanda. Secondly, it fails to interrogate the colonial construction of political identities. Related to this point, and the state's selectivity in 'history-writing', is a failure to include how identities came to be politicised through state-formation, and how law and politics have given shape and meaning to these institutionally-embedded political identities. Instead it chooses to pursue the argument that shames Hutus collectively for their version of history that had violent consequences for Tutsis, which have also excluded them from having political rights as citizens of Rwanda. Thirdly, similar to how 'Hutu Power' associated Tutsis to the 'RPF political diaspora', the RPF today associates Hutu Power with all Hutu politics and 'ordinary' Hutus in the Rwanda and Great Lakes region'. Finally, using Wielenge's reading of "lived identities", arguably, identities are more complex than being solely about 'ethnic-identity'. 'Ethnic-identity' plays an important role, but if one looks from a regionalism perspective, there is a distinct north/ south divide between Hutus. There are also differences in the Great Lakes region, which I discuss in later chapters.

A leading historian, Jan Vansina, finds that "a whole set of false propositions and assertions" exist in this narrative.[149]Vansina continues "The linguistic and cultural unity of Rwanda is not a 'natural' nation…Rwanda really became a nation in the twentieth century…There is a projection of nostalgic utopia into the past, a past that contrasts with a painful present."[150] "The problem…is that the narrative is-from a scholarly perspective- inaccurate…the effect of these particularised versions are both to suppress discussion in the population and to perform a certain narrative for the internationals who involve themselves with Rwanda."[151]

The notion of a "common shared vision for the future" is understood in conflict resolution and transitional justice as a conflict transformation process that takes the "root causes of the violence" as a point of engagement with what they represent in the state and society.[152] This is a deeply social and political process. However, the 'history' of Rwanda does not suit the regime, hence why it has re-constructed the truth of the history and takes all necessary measures to protect that 'truth'. At a 'scholarly debate in Kigali' a historian remarked on the "value of different truths" and was met with a response by a high-ranking official, who asserted, "There is only one truth, we know it."[153] Kagame re-iterated a similar argument, stating, "Those who have divergent interpretations of how and why the genocide occurred are revisionist and/or proponents of the theory of double genocide. This, as we know, is another phase of genocide."[154]

In post genocide Rwanda, the 'genocide laws', prohibit engagement and participation with the work of "history and historiography."[155] The rural-poor are especially conditioned into swallowing this historical narrative and maintain strict obedience and loyalty to it. Post genocide Rwanda 'constructs and utilises' the "myths of difference" as the damaging impact of colonialism, and continues with the "myths of the oppressors", the "myths of oppression" and the "myths of ethnicity", to make a purchase in its reconciliation project, and resolve the ethnic question.[156] It raises the "ethnic question" but also governs and represses a discussion

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on it, thus avoiding it. The debate is further silenced by the re-enforcement that "There is no Hutu and Tutsi, there are only Rwandans".[157] Moreover, not "all issues" are taught and narrated in the Ingando programme. This is acknowledged by history lecturer at National University of Rwanda, Charles Kabwete Mulinda, who admits there is "much debate" about history, but the 'official history' does present the "major events" and in the context of the genocide, which as Mulinda shares, it is difficult to have "frank and open debates" about.[158]This "bares critically on the prospects of reconciliation."[159] Suzanne Buckley-Zistel poses an important question: 'does narrating the nation as founded on ethnic harmony lead to unity in Rwanda?'[160]Arguably it doesn't, because of the repressive top-down approach, censorship of alternative historical accounts, as well as the reality that the genocide violently inscribed the divisions between Hutu and Tutsi, and has left deep scars and resentment. It also allows the RPF to govern "what is remembered and what is forgotten" and narrate a story that advances their own personal objectives.[161]

The following section, will present experiences of the Ingando programme. It must be noted that by no means, do the anecdotal accounts represent a shared experience by all. The purpose of mentioning them is as discussed in Chapter 3, the shared and lived experiences of Rwandans are often side-lined by repressive laws and the hegemonic debates which legitimise certain truths and knowledge. Arguably by giving these individual accounts a platform, it incorporates them into the complex reconstruction project and supports the dismantling of the hierarchy that governs knowledge production and to read alternative narratives, parallel to the post-genocide dissemination of truth and narratives.

4.9 Disciplining Reconciliation

The goal of the Government of Rwanda, is to have all Rwandans go through the 'Ingando' programme.' The Ingando practice has a curriculum, but adapts the lessons depending on what group is participating. This is based on the Government determinations of the individuals understanding of 'Rwandicity', and to what extent they can discern the wrong in history.

The Ingando serves two types of participants, and arguably Rwandan society is well aware of the difference between the Ingando solidarity programmes and the Ingando re-education programmes. The former are for those who are identified as being aligned to the 'new Rwandan identity' and who are being trained for leadership positions that could be taken up as "politicians, civil society, and church leaders, Gacaca judges and incoming university students."[162] The latter is for 'returning refugees, ex-combatants and soldiers, confessed genocidaires, perpetrators and prisoners.' This group is almost entirely made up of Hutus, but also consists of ex-FAR, ex-RPF and any armed individuals who didn't flee to Zaire but are accused of having 'anti-sectarianism views'. There are many cases, since 1996 where people volunteer to go the Ingando because they do not want to further engage in the conflict. It is compulsory for these combatants to undergo "pre-demobilisation, pre-discharge" orientation programs.[163]This works is in line with the invitation for all Rwandans to return to Rwanda, and the state asserts that it does distinguish between non-genocidaires and genocidaires.[164]

However, anyone found not to be in line with the 'official narrative' or compliant to the Rwandan national identity, are 'forced' to enrol into these programmes, which vary from a few daily lessons or which could take place over months, depending on the government.

The Ingando programme for ex-RPF, ex-Far and other armed groups, have seen an estimate of 48 000 participants since 2004.[165] The programme is about two weeks long, and in addition to reconciliation and the 'official history', it addresses "psychological demilitarisation, reintegration, civilian life and HIV/Aids".[166] The ex-soldiers are given a 'basic needs kit' worth $100 (provides transport, food stipend and basic household appliances) and then after 6 months they receive a 'once off reintegration package' worth $181.00.[167] The RPF funds 53% of the costs.[168] Chi Mgbako conducted an interview with the Kigali Veterans Association, where one representative maintains that the "ingando has been used . . . to change the ideologies of ex-FAR . . . who would be integrated into RDF . . . so ingando has not just been used for demobilization purposes."[169] In another interview with an ex-FAR soldier who returned from Congo, he shared, "I went to a previous ingando. . . . At Maryohe, they gave us a choice of whether to join RDF or demobilize. I chose to de-mobilize at the time because I had a wife. If not, I would have wanted to join RDF. This was in 1998. There were only ex-FAR at Maryohe Ingando and some later became RDF."[170] Mgbako also interviewed a prominent Rwandan journalist (anonymous) who claimed the military has both 'encouraged' and "in some cases forced ex-FAR who were participating in the ingando into the RDF" further emphasising that "this practice has kept the most talented soldiers of the former opposition in the current government's military, thereby guaranteeing government control over the soldiers' activities and neutralizing their potential opposition."[171]

In a study produced by IJR, they found that very little is known about the Ingando, it is greatly understudied because it difficult to gain access and the co-operation of the authorities. This is particularly worrying, when 64% of the Rwanda population under 25 years of age has to undergo the Ingando. Students who finish secondary school undergo a two-month re-education through the Ingando. In addition to the official narrative, the curriculum contains lessons on "Achievements of the Government", "The dignity of Banyarwanda" and the "the ethnicity question" (which is selective), and Western and Eastern philosophy, together with "economic and technological concerns facing the country".[172] The government outlines that they encourage students to develop critical analytical skills and to participate in developing solutions for the future of Rwanda, especially through attending Rwandan universities. However from her findings, Mgbako shares that the Ingando provides the government with the opportunity "to mould opinions of young students and orient them toward the RPF-led government, helping to create a generation of RPF loyalist."[173] One such participant in the Mutabo Ingando programme stated "Our teachers characterized the past government as solely wanting to hold onto power, and this was contrasted with the current government…characterised as primarily about reconciliation…this government held parliamentary, presidential, and local elections and that refugees were returning. We were given the right to criticize the government, but I found nothing to criticize…"[174] Mgbako further shares that when asked to propose or recommend government improvements, students

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were "unable" to do so.[175]This is in line with the governments' encouragement to engage, as long as individuals or groups do not possess 'genocide ideologies'.[176]

A former journalist and ex-Ingando participant, stated "Ingando . . . is about RPF political ideology and indoctrination."[177]Susan Thomson was conducting ethnographic research in Rwanda, when in the midst of her research was ordered by the Local Government to participate in the Ingando, as well handed a manual outlining selected civil-society organisations, private sector and high-ranking government officials, to whom she should speak to, in order to find the 'truth' about Rwanda's national reconciliation and unity project. [178] At the beginning of the 26 hours of history lessons she received over three days, the government official stated "You will not be able to return to your communities without understanding the real causes of the genocide. We will test you on history to make sure you understand. Remember also that you are former Hutu. We are all Rwandans now and this is the basis of our history lessons". [179] Thomson, states that the re-education was conducted by 'well-learned historians and intellectuals', which with six heavily armed military men, would detail the "root causes of genocide…the Hutu hatred for Tutsi… that ordinary Hutu men caused the genocide because they acted on their hatred for Tutsi". [180] Therefore, the genocide is explained in a simplified manner, which trivialises the experiences of victims, perpetrators, bystanders and saviours.

Some Hutus assert that they cannot share their experience. Their role is to acknowledge their guilt as an ethnic group, a group guilty of perpetrating violence against Tutsi's. The extensive coercive practices in the genocide are formally not acknowledged and banned from speaking about. Through including lessons on "how to be a good citizen" which are about obeying officials and acknowledging Tutsi trauma, according to Thomson's account of speaking with a Professor (participant), it also reminds Hutu's of their relationship to citizenship, that their status as a 'first class citizen' is not a given if they do not abide and acknowledge Hutu guilt.[181] One such participant, Gaston explains "Even if I am innocent, I am a former Hutu. In the new Rwanda, this means I must be guilty of killing."[182]

The modification of the Ingando mechanism to correct history and re-educate, meant that the mechanism would re-educate prisoners, returnees and allow "participants, soldiers or civilians, to go beyond the feelings of fear and mutual suspicion and 'speak freely' about the conflict which opposes them, to heal wounds, to accept responsibilities in case harm was done, to demystify the negative perceptions of one towards the other, to assume collectively the common tragedy and agree on the common future."[183] Thomson recalls her experience by stating, the Ingando "does little to re-educate confessed genocidaires on how to reconcile…it teaches these men, the majority of who are ethnic Hutu, to remain silent and not question the RPF's vision for creating peace and security for all Rwandans".[184]Lastly, Thomson expresses that the participants that she had interviewed, see the approach to history as a "re-imagined past" essential for the 're-engineering of the future', but without open discussion, is understood as "an exercise social control over adult Hutu men".[185] In an interview with a elderly Tutsi woman, Amiable, who is 'cynical' about the process, she state "Whoever has power are the ones that shape our national history."[186]Thus, it is apparent that the 'naming

and shaming' that accompanies the judicial practices, is prevalent in the re-education programme too. Filip Reyntjens writes "The evocation of an Eden-like past is also practical, as it allows the RPF to legitimize actions in the name of 'tradition', even if such tradition does not exist. Gacaca, ingando, imihigo, itorero, ubudehe, umuganda and other concepts with a positive "traditional" overtone were helpful in allowing the RPF to sell their story."[187]

It is understood, that 'both men and women participated in the Genocide through agency, coercion, or necessity to survive. Family and friends turned on one another, and as Vijayan explains, within that dynamic, where does reconciliation and forgiveness begin whilst people are still mourning? Where the past is not quite the past- "What are the Rwandans to reconcile to?"[188] Moreover, the post genocide state does not recognise moderate Hutus, Hutu loss (family and friends) nor does it acknowledge the many Hutus who protected Tutsis and did not participate during the violence. In 'From Classrooms to Conflict in Rwanda' Elizabeth King argues, that the implications of the re-education programme, is that it 'stigmatises and devalues Hutu suffering', as shared by a Hutu woman "I lost three-quarters of my family during the war…But we [Hutu] don't have any right to say that we lost people."[189] Paul Rusesabagina, the well-known Kigali Hotel manager of 'Hotel des Mille Collines' who saved many lives, stated that "We have victims of the genocide who are commemorated, and we have crimes against humanity who are silenced."[190] As shared by another participant, it is there to "keep Hutus out of public life"- a mechanism of keeping Rwandan's in check and governing information.[191] These Hutus have a contemporary irrelevance in post genocide Rwanda, because to be Hutu "is to be presumed a perpetrator".[192]

Mamdani raises the concern about the growing pool of suspects and perpetrators. As mentioned, the state uses tabulations as facts to accompany its version of history and events. "Growing estimates" that ascribes Hutus as the "guilty majority" and Tutsis as the "fearful minority" or 'victims', has social, economical and moral implications, and of course political implications for post genocide Rwanda.[193] How can Rwanda transition into a post-ethnic society and live in mutual-coexistence, when majority of the population has had their citizenship suspended, by waiting for the criminal justice to determine their faith? And this does not only affect Hutus, but Tutsis as well, because if one has to critically interrogate the outcomes of the judicial approach, it is apparent that justice is not a certainty. Lucie Niyigena- a survivor of the genocide shares in her experience "trauma and fear that permeated her home in the early years, are now mixed with flickers of hope, suspicion and resentment".[194]

Nina Illiza, founder of the NGO, 'Heart of Thousand Hills', and genocide-survivor, troubles the practice of trivializing the genocide. Illiza states that the commemoration that takes place in April, are merely a time when people "sympathise with what I go through all year."[195] Illiza expresses that during the month of April, Hollywood movies like "Hotel Rwanda" and "Sometimes in April" will be viewed and spoken about, and Rwanda will be Googled more often, all serving to remind to "never forget" and to which she feels envy towards, because she never has forgotten.[196] Illiza laments that the idea of reminding us to 'never forget' is "preposterous" because "remembering is so agonizing" that one could never forget.[197]

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The post-genocide government emphasises this notion of that Rwandans must 'confront the past' in order to move forward- asserting that it is the "only way to go about it."[198]Confessing and exploring the truth, recollecting the past and processing ones understanding of it, is a difficult, intrusive, traumatic and a deeply-private process to go through, and in Rwanda, Rwandans are burdened by the idea that it is acutely necessary for political, social and economic reasons. Survivors mention a sense of shame in having survived when others didn't survive, some blame themselves for not doing more to protect loved ones. As Josephine, a Rwandan Healing and Reconciliation worker states, "these are things most people don't want to talk about. Why should you have to deal with it? After all, you're the victim."[199] In other instances, sharing ones story in the Ingando, assisted others in opening up to their healing and reconciliation processes. Illiza has chosen to reclaim her process, sharing "… I have come to learn that acknowledging the truth is the first step to accepting it. Hiding my suffering for the past 20 years has gotten me nowhere. I cannot let the pain of my history be the pain of my future. I found it imperative to create a way to rewrite my history so that my present self can begin to heal. I decided to rewrite the loss of my mother as the discovery of hope for myself and my country."[200] For Vianney, a Tutsi survivor, she explains "The Hutu who killed, they know who they are but are they able to tell their truth? No, and I understand why not. If they say anything, they go straight to prison. I understand their problems; I blame this government for its lack of fairness. If we could all just get along in our own way and at our own time, I know we could find some way to co-exist. Reconciliation is never going to happen under this government..."[201] This works together with the discussion in Chapter 2, on Ricouer's notions of 'Thwarted Memory, Manipulated Memory, and Enforced Memory, which addressed the states regulation and repression of critical memory.

4.10 The Politicisation of Reconciliation

'Remembering' and 'memory' must be thought of as two different practices. Jenny Edkins articulates 'remembering' is a negotiated activity that combines social and individual aspects.[202] As demonstrated, 'remembering' can be a composed and traumatic practice, and is often formulated through the purpose and context and how one navigates complex/intertwined and fluidity of the emotions it triggers.

The notion of 'memory' is used as a post-conflict strategy has attracted various disciplines from neuroscience to psychoanalysis, to history, social, cultural, literary studies, performing arts and political science. The University of Cambridge Post-Conflict and Post-Crisis research, defines memory as "a label for a diverse set of cognitive capacities with which human beings retain information about and reconstruct the past in (and for) the present. It is related but distinct to perception, imagination, or knowledge, as well as significantly connected to emotion, trauma, reasoning and morality."[203]Memories are not necessarily 'truths' of the past, individuals may use them in order to re-imagine themselves as human-and as an individual, one may also be affected by 'flashbacks of trauma' or engage in borrowing memories from another persons past.[204] In Rwanda, people accumulated personal photographs that they have held on since the genocide, photos of which aren't even of their

loved ones. There are also the commemorations (billboard announcements, centres for remembrance, events throughout the year), as well as flowerbeds covering the mass graves, and every now and then new bones are discovered. These all add to formulating one's memory, which can be different in the private and public realm. They also contribute to one's identity and collective identities, "by sharing, constructing, and transmitting memories within a society or group."[205] In Allesandro Portelli's work, Portelli argues that in the aftermath of mass-atrocity, "dominant memory practices play a crucial role in defining historical narrative(s)- and the positions which different groups occupy within that narrative- allocating judgment and defining justice, reconstituting a national identity and legitimising or delegitimising the current regime and its policies"[206] All of this dimensions bare consequences for reconciliation.

Memory can perform as a prism of reconstructing the narrative of the past, which has a bearing on the construction of the identity, the individuals experience and place in society. Therefore, it "may" or may not relate to healing and reconciliation. Pierre Nora, describes the role of memory in France in the 1970's and '80s, where memory became replaced by 'history' and its narrative, that de-connected memory, as a process about the past, from the present.[207] Maurice Halbwachs' canonical work for 'modern memory studies' introduced the psychological and sociological practice of memory. Briefly, Halbachs argues "It is in society that people normally acquire their memories. It is also in society that they recall, recognize, and localize their memories."[208] Individuals and societies, "re-create narratives of the past" which demonstrates that it is a practice formulated through the social and political context or reality of the present. In Rwanda, 'memory' has become a primary consideration by 'government, civil society and reconciling towards a notion of 'Rwandicity'. It has also meant that at times memory operates on the nexus between 'politics and power'.[209] Katherine Conoway asserts "the consideration of a healthy memory environment is crucial in creating the space for individuals and society to heal".[210] Conoway points that the word "may" should be used here, because it is not only "the element required for healing; however, it may set the stage for the possibility."[211] Secondly, Conoway notes that where there is a variety of definitions and strategies within post-conflict societies that address 'memory', there isn't a 'common understanding' regarding memory or how it is used to make a 'healthy environment' where healing is possible for the individual and society.[212].

Rene Lemarchand writes about the 'Hi-jacking of Hutu Memory", and looks at a central aspect of 'post-conflict strategies' which raises the question "How are we going to handle the future" but more the more important question is "how are we going to handle the past?"[213] The approach of the Rwandan government is to combine an 'emphasis on the memory of the past conflict, to conceal it, and to also engage in the work of memory.'[214] Lemarchand asserts there is a conscious effort to 'obliterate the past by erasing ethnic identities' (unconvincingly) whilst leaving no doubt that the roles of perpetrators and victims are assigned respectively to Hutu and Tutsi and are by no means interchangeable.[215] In addition, as I mentioned, the work of commemorations re-iterate that Hutus cannot be victims, and they have been kept in a continuous position of culpability. The second consequences of the state, has led Rwandans to make a 'rational choice' which is to

'conceal one's feelings about the past conflict' in order to live in peace with each other.[216] Moreover, the 'official memory' and narrative of history relies on exclusion of Hutu memory in order for there to be a 'unifying official memory that can bring Rwandans together. However, the question that Lemarchand asks 'can this actually bring Rwandans any closer to national reconciliation, or at the very least, peaceful cohabitation?'[217]

The work of Stephen Cohen, who introduced the term "social amnesia", has been used in thinking about remembrance and truth as components for reconciliation in post-genocide Rwanda. Cohen defines 'social amnesia' as a "mode of forgetting by which a whole society separates itself from its discreditable past record. This might happen at an organisational, official or conscious level-the deliberate cover up, the rewriting of history-or through the type of cultural slippage that occurs when information disappears."[218]

Suzanne Buckley-Zistel, has written about memory in her article "Remembering to Forget: Chosen Amnesia as a strategy for Local Coexistence in Post-Genocide Rwanda. From her fieldwork conducted in Gikongoro and Nyatarama, she found that memory of the genocide and past, was more a case of "chosen amnesia" because of the essential need for cohesion, as part of day-to-day living.[219] Re-iterating Lemarchand's argument, Buckley-Zistel states that the 'reluctance of her respondents to remember their tragic past can best be seen as a "chosen amnesia" which is the "cumulative pressures from the government coercion, fear of the other, pragmatism combine to make amnesia the preferred choice."[220]She describes that most respondents found remembering as being important to education and eradicating ethnic ideology, and the role of forgetting as part of preventing another genocide. Moreover, she asserts that "memory of the genocide…is not a unifying factor, as disagreement prevails over the clear demarcation of victims and perpetrator."[221]Buckley-Zistel also notes that none of the respondents deny the Genocide of the Tutsi, but "large parts of the Hutu population consider themselves to be victims of war, refugee camps or revenge killings post-genocide."[222] The wife of a Hutu prisoner, explains that in the commemorations, only Tutsis are remembered, but that the RPF had also murdered- Hutus, and secondly that there is no way of telling whose bones lies in the mass graves (Tutsi or Hutus).[223] Lastly, as important as the respondents found the need to not forget, one suggested that the memorial sites be removed, as she articulates that they "generate trauma and hate…Survivors remember what happened and it makes them angry".[224] Buckley-Zistel concludes "pretending peace…is common, and widely accepted practices in Rwanda."[225]In response to Buckley-Zistel's analysis, Lemarchand asserts that what is missing from her argument is a "critical discussion on whether amnesia in this case is 'chosen' or imposed, or, in Ricoeur's terms, whether the behind this 'chosen amnesia' does not lie something more fundamental, i.e. thwarted memory: one is indeed impelled to wonder whether the phrase "chosen amnesia" is appropriate to describe a context in which the Hutu masses have no other choices if they want to survive but to keep their thoughts and frustrations to themselves. As Peter Novick reminds us 'people often think of 'choice' as implying *free* choice, but the sort of choices we're speaking of are shaped and constrained by circumstance."[226]

It is important to think of how these practices (memory and history) can be similar to the past-violence, in that it produces a form of subjectivity or a 'subject' that says in order to exist in social or political order, one must formulate his/her process through the requirements or 'elements', the language and social order or structural order, even though we might not know what that space specifically is. Edkins argues that the "Survivors of events that we now label as traumatic have something to tell us. Specifically, they have something to tell us about how we organize ourselves with respect to power and political community in the contemporary western world."[227]

Although Edkins work is based on analysis of the western world, her articulations bare substance for the case of Rwanda. Edkins, argues that it is through violence, that the state comes into being, and in order for it to unite all individuals of the state, it has to keep that violence "hidden", the very violence that "continues to underpin the state."[228] The implications for its survivors and their trauma, is that memory has to be kept under control, or what Edkins calls "disciplined", which is governed by the victorious power.[229] Moreover, the diagnosis and 'medicalization' of trauma and memory in Rwanda, renders survivors politically powerless, and legitimizes state-sanctioned 'remedies', which are argued to be depoliticized activities, but as observed in Rwanda is a very political practice. This conjures the work of Michael Foucault, particularly the dispersion of power, which is diffused and embodied in 'truth regimes'('Power/Knowledge').

Foucault argues that 'power' has been shifted from its traditional readings of the monarchy to sovereignty, but it now exists "diffused" in the state, whereby it takes on a more 'discursive, rather than purely coercive' form, and constitutes agents rather than being deployed by them'.[230] Furthermore, the judicial 'code/theory' legitimized the democratization of the state, which assumingly collectivised sovereignty, but which masked the disciplining and exercise of power.[231] Foucault states, "from the nineteenth century until this present day, we have then in modern societies, on one hand, legislation, a discourse, and an organisation of public right articulated around the principle of the sovereignty of the social body and the delegation of the individual sovereignty to the State; and we also have tight grid of disciplinary coercions that actually guarantees the cohesion of the social body. That grid cannot in anyway be transcribed in right, even though the two necessarily go together. A right of sovereignty and a mechanism of discipline. It is, I think, between these two limits that power exists."[232]

Power produces its own discourse that Foucault argues as being separate from that of law and rights.[233] Which lends to thinking about the use of law in post-genocide Rwanda that has come to support policies of repression through the Constitutional criminalizing ('divisionism', negation', 'genocide denialism') of open debate and public expression. Furthermore, it challenges the traditional pursuit for overt authoritative practices that must be recovered through liberal democratic principles. In fact, Foucault's work calls for the critical interrogation of the liberal democratic state. The discourse of power, furthermore normalizes its disciplining, through the "regimes of truth" that pervades society because of its heterogenic nature.[234] Power is produced and produces social relations that did not exist prior.[235]The 'regime of truth' and knowledge are discursive practices of the discourse that

power produces. For Foucault, 'truth' is in a 'circular relation' with systems of power that "produce and sustain it".[236]

In Rwanda, 'the truth' is formulated through a scientific methodology, which is said to legitimise the narrative. This was demonstrated in the debates at the Kigali 'Dialogue, Consensus and Peace'. Moreover, the 're-invention of traditions' as Mgbako refers to also serves social and political control, particularly as the Rwandan government has 'modernised these traditions' (Gacaca and Ingando) and thus altering them to suit their post-genocide project. Foucault further argues that "there are manifold relations of power which permeate, characterize and constitute the social body, these relations of power cannot themselves be established, consolidated or implemented without the production, accumulation, circulation and functioning of a discourse'."[237] The 'social body' is thus subjected to the discourse of power, through scientific methods and productions of 'truth' and 'knowledge'.

To delegitimise the practices of 'truth regimes', according to Foucault's logic, would mean to detach the political and social power relations, which as Edkins argues is where the work of 'genealogy' is so productive. Foucault, states that investigation and challenging power and truth/knowledge, as well as through local and specific interrogations that aren't reliant on the 'hegemonic regime', is where 'truth' ('erudite knowledge') can be found and most productive.[238] The productions of knowledge on the fringe of power, is what Foucault would refer to as 'subjugated knowledge'.[239] In Rwanda, the category of 'subjugated knowledge' seems to be growing, both through the repression and exclusion of participation, and as individuals and groups begin to independently explore 'memories of the past'.

Foucault's analysis also challenges political power in Rwanda that is shaping reconciliation through discipline and inscribing the victimisation of Tutsis as a means of accountability and legitimacy. There is a long-established tradition in Rwanda, where the struggle for power has relied on historical narratives of victimhood and political persecution of one group by the other, which also serves the claims for justice. Thus, the project of 'memory' and 'history' are deeply political and have a political purchase for power, particularly as it gets taken up through 'official narratives', commemorations, national mourning and as the backbone of the 'new society'. Mamdani argues that in post-genocide Rwanda today, there is a 'Hutu version of history' and a 'Tutsi version of history, which will not reconcile until the post-genocide state transcends 'victims justice' and the reproduction of Hutu and Tutsi as political identities.[240]

In 'Silences in African History: Between the syndromes of discovery and abolition', Jacques Depelchin calls upon a "relentless application of an ethical framework aimed at promoting a ethic of truth."[241] Depelchin makes this call, out of a critique he makes on the looking lens- Africanisation (in the sense of being reduced to less than a human being) that has come to determine a reading of Africa, with an indifference to the "land of spectacles."[242] Furthermore, he makes the indictment that "Given histories of colonisation, decolonisation/neocolonisation, and now so called democratisation…" are no less responsible than the perpetrators involved in the Rwandan genocide.[243] Thus, Depelchin calls to suspend

the obsession of these stakeholders, and for a preoccupation to be placed in the "reality, and let the horror of the event guide us towards discovering the truth."[244]

The process that he proposes, has perhaps been pursued but never completed because it may 'implicate them' in the horror- in the crimes. This has engendered a political and legal 'loophole' that secures post genocide power. Depelchin puts forth the discretion that this work needs to take place beyond the traditional moral and legal frameworks, which the post genocide power has relied upon.[245] The resistance to mono-ethnic nation-states, presented in both chapters 2 and 3, demonstrate the existence of domestic ethics within Rwanda that operate and are pursuing a 'different kind of Rwanda'. These kind of social and political engagements add to the type of ethics regarding truth and engagement that Depelchin offers, and is in line with Foucault. Depelchin draws upon Badiou's formulation of ethic relating to 'event'. This is similar to the questions that Mamdani poses in his address on the 'Politics of Naming: Genocide, Civil War and Insurgency', which challenges the kind of knowledge/narrative productions by the international human rights regime, that accompanies the 'event'. Mamdani argues the post genocide would have to dismantle the "genocide framework" as its lens, and critically interrogate 'truth'. Mamdani goes on to further state, "This exercise requires putting the truth of the genocide, the truth of the mass killings, in a historical context…it is necessary to link political outcomes more to political institutions and less to political agency."[246] This would bring the 1990-1993 civil war into discussion, not to negate the genocide, but to read political violence as an outcome of political power struggles between Hutu and Tutsi and to see it as part of a cycle of violence.[247] Chapter 5 will expand on the 'history' of Rwanda that is excluded in the 'official narrative', and further continue the work of contextualising the many truths that the post genocide state neglects. Badiou's notion of recognising the 'event' means that it would "force us to decide on a new way of being".[248] This project is not just for Rwanda, but also to place the question and process of ethics on the African continent, and African history as a matter of acute importance. Badiou's s formulation of 'truth' is that it is a by-product, produced in the grounding of the 'event', which requires what he terms as "faithfulness", and in this process 'truth' then emerges.[249] Depelchin's formulations, with the assistance of Badiou, cannot be ignored in the Rwandan case, and as he rightfully recognises, it takes courage to pursue an ethical history that will produce the 'truth'.

4.11 Conclusion

It is difficult to separate reconciliation from being a political act, especially under the traumatic circumstances that genocide incurs. The post-genocide power inherited a population where one group- the majority, turned on the other- the minority. Moreover, it inherited a population that has been historically governed by radically different narratives of the past, and naturalised into thinking justice, rights, citizenship, and power is the prerogative of the native Rwandan. Thus, the logic of post-genocide Rwanda is that it is acutely necessary to eradicate ethnicity and race, and through disciplining the hearts and minds of Rwandans, Rwanda can transition into a post-ethnic society. The paradox is that whereas as it practices ethnic amnesia, the Rwandan post-genocide power has institutionalised ethnic

discrimination, through law, politics and history. Its top-down strict governing of reconciliation, erodes public debate, and robs both Hutus and Tutsis of the opportunity to come together and engage their common tragic past. Whereas it criminalises thought and speech deemed as "divisionism" and "genocide denialism", it has trivialised the genocide experience, and inscribed 'guilt', 'perpetrator', 'prisoner', 'immorality' and 'genocidaire' into the Hutu identity. To some extent, the Tutsi victim can affirm their identity through the acceptable 'official narrative' of their historical victimhood. They can try to use it to influence and make gains for citizenship and material benefits, which arguably the state encourages through 'victims justice'. The contemporary relevance of Hutus is assigned to the private space. It is deeply concerning to see evidence from research studies, which provide records of imprisonment, economic conditions applied to their obedience, and acceptance of their 'guilt', as well as social shaming at commemorations, gacaca processes, and the re-education programmes. These processes do little to make Hutus feel part of the unity project, and compromises their rights as citizens. What the regime fails to recognise, is that the imposed reconciliation project is devoid of being personally meaningful for the daily struggles that Rwandans face in rebuilding their lives. As in many post-conflict circumstances, Rwandans have been forced to live side by side with one another, and to make matters worse, the regime has burdened them by attaching social, economic, and political conditions to reconciliation. Rwandans are finding ways to interrogate the 'victors truth' (on the genocide and history) that has been sanctioned, and are exploring ways or making attempts to reconcile and live peacefully together, questioning the historical naturalisation of violence and meanings of Hutu and Tutsi. The work of Foucault and Depelchin put forth productive contributions for how we think about individual and community based reconciliation practices, and the role of power that governs knowledge and history writing. Their work also contributes to the broader problem that this dissertation problematizes, and that is the limitations and implications of 'victors justice' and 'victims justice'. Finally, I would like to conclude that limitations of Rwanda's reconciliation experience demonstrate the dilemmas of addressing narratives of the past, history, truth, political identities, justice, and power where there is long-established history of theses dilemmas being politicised. Thus, it is an incredibly difficult task, which Rwanda needs to think critically about what would be the significance of addressing, because they will bare uncomfortable truths, and how can individuals, society and the state go about placing these dilemmas in their historical contexts, and still be able to co-exist in an open space where their civil and political liberties are protected.

Chapter Five

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5.1 Introduction

This chapter explores the challenges facing land reform in post-genocide Rwanda. A critical challenge for the prospects of democratisation and resolving the politicisation of identities is an improvement in the situation of 'ordinary poor Rwandans'. In Rwanda, the 'Land Question' has played a central role in the political landscape. How it is framed and resolved will have an influence on food security, socio-economic stability, and on reconciliation and unity. In Rwanda, land has come to symbolise citizenship, justice, and who shall have the right to govern. Therefore, Rwanda's land reform policy needs to be placed in its historical and political context. I trace land relations from pre-colonial to the colonial and post-colonial periods. I am particularly addressing the historical relationship between land, race (political identity), and the mode of power that has resulted in cycles of political violence. Important to the discussion, is how the colonial intervention reconstructed pre-colonial relations to pursue territorial conquests and exploitation of colonies. In order to govern the inhabitants of the territory, the Belgian colonialist inscribed race to constitute the population into a hierarchical system that would serve their mode of power, and maintain rule and order. For the 'race ideology' to be naturalised in the colonies, the colonialist used pre-colonial relations as a foundation to reconstruct the political identities. Hutu and Twa were seen as the indigenous groups that were characterised as being primarily agriculturalist and lacking 'civilised' traits. As primarily pastoralists, Tutsis were seen as being far more evolved and civilised 'African Caucasians', having migrated from elsewhere into 'modern-day Rwanda' and possessing traits of rule and governance. The cornerstone of colonial rule was to crystallize and legally enforce race onto the bodies of its subjects. Thus, it introduced a dual system of rule, 'customary law' for Hutus and 'civic law' for Tutsis. The introduction of race marked the degradation of Hutu as an identity, and the genesis of Tutsi privilege. In the post-independence regimes, politics and ethnicity continued to be racialised and were expressed in law as well as violence. With each round of violence, a new group was exiled, and their land and property would be taken over by those left behind. This repossession was facilitated by the state's failure to transcend Hutu and Tutsi as political identities, and to pursue a mode of power that secured justice, citizenship, and rights for one group over another. In the aftermath of the genocide, the post-genocide regimes pledged to address the 'land question' through a comprehensive land reform policy, by eradicating ethnic identities, and addressing the rights and needs of all surviving Rwandans through non-discriminatory and anti-sectarian policies. With each period of state formation in Rwanda, land, identity, and power has been shaped by the politics of indigeneity. As I demonstrate in this chapter, land reform in Rwanda today continues to be tied to power, rights and citizenship, and as elites continue to secure their gains the regime expresses an obligation to the 'old-caseload refugees' and 'returnees', and institutions and practices mark out 'victims' and 'perpetrators'.

5.2 Contextualising the 'Land Question'

Rwanda is situated on the Albertine Rift, which means it is part of one of the most richly diverse bio-diversity systems in Africa. Rwanda itself is a very small territory that consists of water in abundance, marshes, and steep hilly slopes, which has earned it the name- 'Land of a Thousands Hills'.[1] Although there is an abundance of water, only half of Rwandans have access to clean and safe drinking water.[2] Rwanda does not have any raw natural materials and relies on cattle farming and agriculture, specifically tea and coffee production, which has been a staple contributor to the economy. The vast majority (80%) of Rwandans are subsistence farmers, therefore land and agricultural policies are the most crucial policy in this agrarian society.[3] At the "World Bank Conference on Land and Poverty", Musahara et al, of the University of Rwanda, stated, "Land is related to poverty in many societies that depend on agriculture."[4] Rwandans have also relied on their farmed goods to provide for securing education fees, health care, food and water and various basic needs. Thus, for the 'landless' it means deprivation of human security, particularly food security.[5] Land scarcity is also a crucial problem that informs policies in Rwanda. The National Institute of Statistics of Rwanda estimates that of the 23.338 square km's of land available, only 1.4 million hectares (52%) is arable, but due to population density, 1.6 million hectares is being used.[6] National Authorities and 'foreign observers' have focused on environmental capacity for accommodating a 25% population growth by 2050. Rwanda has always been troubled by over-population, over-cultivation and land scarcity, which is why the 'land question' (access, rights and ownership) is critically important for Rwandans and those who hold state-power. In predominantly agrarian societies, "land constitutes the territory of political entities" and "control of land is seen by many governments as critical to the influence they exercise over their populations and control of their nation's economic development and security."[7] Therefore, in agrarian societies, land becomes a 'political resource' and determines who remains in poverty and who develops from it.[8]

In the recent literature on 'post-conflict reconstruction as conflict prevention' and in transitional justice, land has been thought about within the framework of sustainable reconciliation and social justice through economic equality.[9] This is central to the approach of the current post-genocide regime, which has pursued a robust pro-growth development policy as a foundation for reconciliation. A visit to Kigali, or to the Virunga National Park, can leave one with the impression that Rwanda is an "orderly calm country that is doing quite well", but as Helen Hintjens points out, "appearances can be deceptive in this respect."[10] In 1998, there was a dominant shift from reliance on coffee and tea agricultural production to an economy and public sector "increasingly reliant on cross-border 'rent-seeking' economic activities, especially in the DRC, and development aid."[11] Since the genocide, this has shifted the foundations of wealth, which may have an impact on "efforts to tackle chronic and worsening rural poverty" which have become less urgent for those in power, and as Hintjens argues, "who depend on a much more extraverted pattern of resources accumulation than their predecessors."[12] I discuss this in greater detail in Chapter 6. A critical problem today has been the shift to modernisation and urbanisation strategies, and the relocation of rural Rwandans to urban areas, which offer little job opportunities and has instead contributed

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significantly to a rising 'landless' population. The benefits of growth (8% poverty reduction between 1995-2000) have effectively 'bypassed' the rural poor', where food and asset vulnerabilities remain a widespread crisis in rural areas.[13]

Land is also an important part of the Rwandan identities, and is central to social and cultural traditions in Rwanda. In a predominantly agrarian society, land is greatly linked to notions of 'territory, people, ancestors', and remains a material reminder about the contested memories and experiences of the past, where land disputes, dispossession, and political violence play into the politics of indigeneity: who belongs and does not belong: who is citizen and who can be heard by the state.[14] Addressing the 'land question' also offers a way of acknowledging the past, is a means for healing, but also rendering some form of justice t one part of the population and re-affirming their citizenship.[15] As I will demonstrate; in Rwanda, land is inextricably linked to state-formation, the emergence of national consciousness; political identity; and the relations between the ethnic groups, state-citizen and urban-rural. Land gives meaning to citizenship. Today the government seeks to address the historical divisions of labour and land rights that are marked by gender, and have successfully worked to secure women's land rights and change exclusionary patriarchal practices in land rights.

The relationship between land and conflict has been hotly debated in the literature on Rwanda. Alison des Forges articulates "Rwandan authorities and foreign observers all agree that there has been and remains a strong correlation between issues of land use and conflict: the present precarious situation poses the risk of potentially widespread violence."[16]

In the literature on the Rwandan genocide, a predominant explanation for why 'ordinary Rwandans' were driven to participate in eliminating Tutsi is the economic explanation- the 'resource crunch'.[17] The 'resource crunch' is said to be an outcome of rapid population growth, detrimental agricultural policy-changes, crash of coffee prices in late 1980s, severely diminished food production and the imposed Structural Adjustment programme. The rise in land scarcity is then understood to have antagonised the old-ethnic rivalry, which had been building-up over a decade long economic crisis, until the situation exploded due to manipulation by Hutu Power.[18] The economic situation was dire, and was quickly escalating, during the time that President Habyarimana was pushing for internal political reforms (promoting multi-partyism and negotiating the return of refugees since 1959). Within this context, the question that became pertinent was "Who rules Rwanda?" And although there was an economic crisis, the response to this question was formulated by the politics of indigeneity, which has come to determine the mode of power, institutional rule (policies) citizenship rights and belonging. Haydee Bangerezako asserts "land and people become central in genealogy of power relations."[19]

The following section addresses the formulation of the 'land question' in Rwanda and how 'land reform' has been shaped by the historical and political context of Rwanda. Thus, I will begin with the logic of colonialism, territorial conquests and the ideology of race.

5.3 Territory, Conquest and Colonialism: 'The Ideology of Race'

In the Great Lakes region, the contemporary mode of power, governance and policies continue to reproduce the notion of 'indigeneity' as a basis for claims on rights. This demonstrates the profound living memory and prolific political crisis engendered by the colonial regime. Pre-colonial social, economic, and political relations were drastically changed by the territorial conquests and economic imperial projects of the colonialist. The colonials used the pre-colonial social and economic relations and activities, as a foundation upon which to re-construct identities into 'crystalized legally-enforced political identities' which would enable them to govern.[20]This became the cornerstone of colonial rule. It had violently disrupted existing social links and traditional structures of African societies.[21] Moreover, European philosophical underpinnings concerning race were exported into the colonies, and institutionalised distinctions between the native ('primitive', 'colonised', 'indigenous') populations pitted them against the 'civilised' "settlers", "colonizers" of "European descent".[22]

It is important to address the ethnographic work of the colonialist, because land use and land tenure are inextricably linked to political identities and state-formation. Two popular views of Rwanda's pre-colonial ethnic orientations have dominated analysis. These are: a. the view that sees "the people of Rwanda have common ancestors" and b. the primordialist view that operates along the Hamitic Hypothesis[23]

The pre-colonial European explorers were fascinated by Rwanda, and wished to investigate the level of sophistication in the Rwandan kingdom and its three groups of inhabitants.[24] Colonial scholars wanted to document the "centralised, stratified, ethnicised and "feudal" systems, which may or may not have been practicing exclusion.[25] Felix Mukwiza Ndahinda argues that the work on physiology and anthropology, and their associated stereotypes and 'supremacy myths', became the "guiding hypotheses upon which the history of the country was reconstructed."[26] In Rwanda, the central argument made by the European missionaries and explorers was shaped by the Hamitic Hypothesis.

The Hamitic Hypothesis inscribed myths which lent to the racialization of Hutu and Tutsi, and the Twa as political identities. Premised on a "biblical myth" the Hamitic Hypothesis asserts "descendants of Ham were Negro Africans. Though part of humanity-as descended from Noah-they were considered an accursed part, having descended from a cursed son of Noah."[27]Colonial rivalries, such as the British, German, and Belgians, convinced themselves that "wherever in Africa there was evidence of organised state life, there the ruling groups must have come from elsewhere. These mobile groups were known as the Hamite, and the notion that they were the hidden hand behind every bit of civilisation on the continent was known as the Hamitic Hypothesis."[28]

Charles Gabriel Seligman wrote the key text on the Hamitic Hypothesis, called the Races of Africa. Seligman argues, Hamites are " "Europeans" for they belong to the great branch of

mankind as the whites."[29]British explorer, John Hanning Speke wrote, "I profess to describe naked Africa- Africa in those places where it has not received the slightest impulse, whether for good or evil, from European civilisation."[30]Mamdani notes, it is in Speke's writings that the Hamite became known as an African Caucasian, and colonialists worked to reconstruct them through a cultural identity, language, and the idea that unlike the 'Negroes' who were seen as agriculturalist, Hamites were regarded as pastoralist.[31] Ndahinda notes that it is interesting that the first German explorer (and Governor of East Africa) Count Gustav Adolf von Goetzen could gather physical descriptions and a history of Rwanda and Burundi after an expedition that lasted only a few weeks.[32]However, Ndahinda does argue that this isn't particularly surprising given that his predecessors has shared similar view of the 'inferior tribe' and 'superior tribes', who although hadn't visited Rwanda and Burundi, has made assumptions based on their expeditions in East and Central Africa.[33]

The primordial view was therefore that "Hutu and Tutsi are different people that originate from different parts of Africa…"[34] This introduced the work of migrations and origins. The Tutsi were seen as predominantly pastoralist (tended to keep cattle), who as late-comers to the country (Tutsis) had gradually taken control from the Hutu through military force as well as a system of loaning cattle in return for labour."[35] Hutu and Twa were seen as being already present- indigenous groups, and primarily agriculturalist.[36]The Hutu and Twa were understood as having remained 'stateless' until the arrival of the Tutsi. This belief was taken up by colonial authorities and a number of colonial-era scholars which also wrote about the "physical differences between the Hutu and Tutsi (especially in terms of height, as well as the size and shape of noses and lips)."[37]

Prolific Rwandan writer, Alexis Kagame "is seen as the source of the popularisation of the separate origins of Rwandans."[38] Kagame subscribed to the "long-lasting Hamitic interpretation of Rwanda's ancient history."[39]He wrote extensively on the pre-colonial uburetwa land-contract system, and has greatly influenced the RPF's notion of 'pre-colonial social harmony and Rwanda being a socially progressive nation.' Kagame's argument features in the justification of the RPF's post-genocide military invasion into eastern-Congo, because Kagame's map of 'Tutsis expansive territorial influence' includes parts of the Congo. Ndahinda asserts "His reconstruction of the history of Rwanda and reflections of Hutu, Tutsi and Twa identities in historical perspective are and amalgam of appropriated theories on African migrations-en vogue at the time-an esoteric code of the dynasty to which he had access to since he was born into a family of royal court historians."[40]His work on theology (translated Bible into Kinyarwanda), linguistics (French and Kinyarwanda), philosophy and history, garnered him a great deal of respect from the European colonials, who considered Kagame to be the 'intellectual leader on Tutsi culture and rights under the colonial system.

The second dominant view tracing ethnic orientations, argues that Rwandans have "common ancestors" and "speak the same language, have lived together in the same communities, and had the same customary religious beliefs. The differences in height and physiology, according to this view, may be explained primarily through differentiated access to foods,

which came about through the specialisation of labour."[41] The RPF subscribes to this view in the 'official narrative', that pre-colonial Rwanda was 'socially harmonious', but does make a 'class-based' differentiation between Hutu and Tutsi. Hutu is associated to 'client' or 'servant', whereby Tutsi is 'patron' and 'master'.[42] This pre-colonial notion also describes the "exchange of cattle for labour-ubuhake" as both parts of the patronage system, but which also allowed "people to cross class boundaries."[43] Colonial intervention thus becomes the tragic instigator of violence.

The problem with this second view is that it understands state-formation as being a colonial construct. Secondly, it fails to respond to how prior to colonisation, Tutsis became associated with privilege, and for example in Kinyanga, 'lineages that were wealthy in cattle and had connections with chiefs became known to be Tutsi.'[44] Thus, there were socio-economic and 'partial ethnic' constructions in identities, which were exploited during the colonial-intervention and which re-constructed them into political identities.

Musahara et al argue that both views tend to be overly simplistic, and problematically maintain the 'search for origins'.[45] Both views fail to account for the complex picture of migrations. Briefly; a. "migrations may not be a single massive movement of people and may not be associated with conquest- it may be a protracted affair"; b. "any presumed migration of people may not necessarily be the only or the primary source of pastoralist livelihood strategies and not the only model of 'statehood' (Livestock keeping, perhaps on a small scale, may have been part of a basket of options employed by primarily agricultural people in the region for centuries); c. 'an exchange of ideas and practices between communities is possible without migration or conquest'; and d. "many contemporary Rwandans man be the descendants of marriages between Hutu and Tutsi, although the idea of Hutu or Tutsi identity was maintained through patriarchal transmission of cultural identity."[46]

The following section of this chapter will investigate the historical process of state-formation in Rwanda, and how race became institutionally embedded, which cast a political crisis for rights and citizenship in post-colonial Rwanda. The "land question' demonstrates the profound effect of the 'native (indigenous)/non-native' dynamic.

5.4 Tracing the Logic of Colonialism back to Europe

To understand the insidious logic of the colonial imperial project, one needs to return to the political and historical context of politics in Europe, which shaped the policies in the colonies. I will turn briefly towards the work of Hannah Arendt. Arendt's work is merited for reflecting on the 'internal history of Europe' and its wider history of global conquest and expansion.[47] Importantly, Arendt demonstrates how "scientific racism" conceived 'racist ideologies' that constructed racial political identities and which underpinned institutions at home and in the colonies. Although Arendt focuses on German bureaucracy and the nation-state, her contribution is useful for thinking about European expansion and the devastating political crisis it has had for the colonies and their 'state-formation'. Furthermore, Arendt provides a descriptive analysis on the 'decline of the European nation-states' that led to

political crises which bore devastating impacts on its 'citizens', and which led to the final political outcome- the Nazi Holocaust.

Hannah Arendt's work in 'Origins and Totalitarianism' has re-examined the limitation, and what Arendt describes as the decline of the nation-state. Arendt argues that politics shifted from "the terms of established national territory" and the nation-state which was "based upon a homogenous population's active consent to its government" towards patriotism that was founded on "money-making" and expansionist goals.[48] 'Conquest' became the new political tool.[49] Arendt uses the rise in 'Anti-Semitism' in Europe and 'Imperialism' or colonial conquests through the South African case study of the Boers, to re-examine tyranny and totalitarianism, which bore the crisis that resulted in the German Holocaust. Through imperial conquests, the 'bourgeoisie' brought the economic structure and desired material accumulation, back to the nation-state in Europe for economic growth. However the 'nation-state as a political structure could not effectively "be expanded indefinitely, because it is based on the productivity of man, which is indeed unlimited. Of all forms of government and organisation of people, the nation-state is less suited for unlimited growth because the genuine consent at its base cannot be stretched indefinitely, and is only rarely, and with difficulty, won from conquered peoples."[50]

In the second part of 'Origins of Totalitarianism', Arendt discusses the effect WW1 had on the nation-state, particularly once the Austro-Hungarian, Ottoman and Russian Empires were collapsing, rendering their heterogeneous populations into categories of "minorities" or the "stateless". Arendt refers to these two groups as 'victim groups'. The 'minorities were addressed through the League of Nations Peace Treaties under the Minorities Treaties that worked with the pre-war definition of 'nation-states' and criteria for being a national. This treaty conferred that only post-war "nationals could be citizens, only people of the same national origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin."[51] Arendt thus argues that this shifted "the transformation of the state from an instrument of the law into an instrument of the nation."[52]

In the second part, 'The decline of the Nation-state and End of the Rights of Man', Arendt discusses the failure of Human Rights and Peace Treaties to protect the minorities and stateless, and a realisation of the nation-states inability to integrate or accept these stateless populations into the nation-state. This contributed to the formulation of the "Jewish Question" and what to do with the populations of refugees in Europe- "to get rid of the refugees".[53] Initially there were solutions through repatriations and naturalisation. Both conjured a 'fear of the minorities and stateless', for both the state, and the modernising economies, and the legislation that demarcates the nation-state prevented naturalisation. Moreover, states began to produce impressive administrative systems to regulate naturalisation, thus effectively even denaturalising some. This has been observed in the cases of Rwanda, Uganda and Congo. Arendt is interested in that which precedes the final act, in this case genocide, therefore, the "abolition of civil and political rights, the exclusion from public life, confiscation of property…"[54]

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It is important for this chapter to address Arendt's second part, on Imperialism. Arendt argues that, "Two new devices for the political organisation and rule over foreign peoples were discovered during the first decades of imperialism. One was race as a principle of the body politics, and the other bureaucracy as a principle of foreign domination."[55] Arendt argues that without race the "scramble of Africa…might well have remained purposeless" and without "bureaucracy as a substitute for government, the British possession of India might well have been left to the recklessness of the 'breakers of law'".[56] Thus, Arendt reads racism as a consequence of imperialism.

Arendt reviews the imperial approaches of the French and British. The French attempted to "develop the body politic into an imperial political structure, "the French nation (was) marching…to spread the benefits of French civilisation", they wanted to incorporate overseas possessions into the national body, by treating the conquered people as "both…brothers and subjects- brothers in the fraternity of a common French civilisation, and subjects in that they are the disciple of French light and followers of French leading."[57] The British opted not to incorporate the colonies into the British nation- "refraining from spreading British culture and law", and instead, "…strengthened tremendously the new imperialist consciousness of a fundamental, and not just temporary, superiority of man over man, of the "higher" over the "lower breeds."[58] Arendt further writes that "despite their genuine respect for the natives as people, and in some cases even their love for them…almost to a man, do not believe that they are or ever will be capable of governing themselves without supervision…the natives could not but conclude that they were being excluded and separated from the rest of mankind."[59] Genocide, such as the case of the Herero population in the German colony of South West Africa, has been overlooked as the grounds of "colonial warfare", which served as an experimental ground for 'race' and power.[60] Arendt's use of "savages" to describe the South African Boer encounter, has rightfully earned her widespread critique.

Arendt writes, before there is 'racism' there is 'race-branding'. The colonial project shifted 'race' from a "marginalised" preoccupation to "widespread expression in nineteenth-century European thought, from natural sciences and philosophy to anthropology and politics."[61] Therefore, race is utilised in organising power and asserting it on the defined subject and enemy. Race branding was "nurtured in the colonies"[62] through 'bureaucratic administration', which introduced second-class citizens and the 'enemy', and for Arendt, the constitution of the Jewish people, amongst other minorities, as a race that were set apart from the 'Europeans'.[63] Mamdani argues "To identify the link between biology and culture, between the language of race and civilisation, is to fill the shaded transition from Republicanism as home to a full-bodied imperialism abroad. Born of internal class crisis, the race idea took full form in the context of an external imperial crisis. Race spread from marginal to a mainstream doctrine…Race became the marker dividing humanity into a few subhuman and the rest less human, the former civilised, the latter putty for a civilizational project.[64]Moreover, Mamdani argues that the centuries-long trans-Atlantic slave trade further racialised the African continent, fuelling the Hamitic Hypothesis. The trans-Atlantic slave trade divided Africa as 'above the Sahara' from 'the below', and as Georg Wilhelm Friedrich Hegel asserts the

'North Africa' was understood as "Africa Proper" ("European Africa") which attached the 'land of the Nile' to Eurasia.[65] Arendt demonstrates that "Although the race idea found free reign in the colonies, Europe was the land of its conception, its prehistory, as it was of its culmination."[66] By locating the 'racialising policies' of the European colonials in their historical political context, Arendt's contribution supports Mamdani's argument that the 'Rwandan genocide must be thought through within the logic of colonialism'; and the politics of indigeneity that has had a violent impact on Rwanda since the colonial intervention.

5.5 State- Formation in Rwanda: Land, Race and Power.

Catherine Newbury asserts "Studies of Rwanda often assume that before the arrival of Europeans, Rwandan state power extended uniformly to most (or all) regions of the kingdom."[67]However, upon closer investigation, it is apparent that there were diverse socio-economic and political relationships that require exploration of how centralisation came about, as well as the rise of Tutsi power.

The 'social order' that describes Rwanda and Burundi from the 15th Century, is called Ubukhake, and it often compared to European feudalism. A chief historical distinction is made, which notes Hutus have been primarily agriculturalists and Tutsis have been cattle farmers/pastoralist. There was a "quasi-feudal contract", which produced a "pastoral servitude", whereby the local patron was usually a Tutsi who would make the usage of cattle and land available to a client, usually a Hutu.[68]The Tutsi monarchy used the Uburetwa system for land distribution, but it was the igikingi system (central, southern and eastern part of 'modern-day Rwanda') that came to centralise control of land.[69] Land could be granted through 'cattle-owning lineage' or by a "political authority".[70] Hutus in the northwest of Rwanda refused to submit to the igikingi system. Chris Huggins notes, in the northwest, "heads of customary 'landowning' lineages" dominated rural rights and "enjoyed considerable power over farmland rights of those local people who were not members of their lineages."[71] The other important system is the ubukonde, which referred to land that had been kept in family lineages (passed on from father to son) and was the status of abakonde and abagererwa. This land was not given by a political authority.[72]

Prior to colonialism, there was both a political connection to the land and an important network of personal relationships in respect to land management. People of one kin shared the land, but held in high respect the one who cleared the land (abakonde), and those who could authorise members who do not belong to the kin (abagererwa) to make use of the land. [73] Land served as binding in kinship, and provided an opportunity to move between lineages through marriage and patronage systems. [74] The patron-client relationships regarding land have become a prototype through which "political authorities" have assumed their roles in the evolution of the modern Rwanda state.

Hutu and Tutsi, as identities, arose from "state formation and changes in control over land and livestock."[75] The system of patronage introduced pre-colonial classism and privileges, which has led to the Tutsi identity being more advanced conceptually, than Hutu. A 'Tutsi

identity' began to emerge by the fifteenth century, as "microstates" governed by Hutu and Tutsi chiefs began to be incorporated into a larger Tutsi kingdom.[76] Towards the seventeenth century, traditional practices began to change, as rulers of land (umwami) started to assert the "use of force, persuasion and an apparent control over spiritual power to establish his right to rule over increasingly large areas."[77] Umwamis developed a system of power-relations, which considered inclusion based on adherence to the umwami. As the role of the umwami grew in Rwandan society through the nineteenth century, both Hutus and Tutsis "contested" the control of land by the umwami, as well as his claim to land and coercive governance.[78] The umwami was always a Tutsi, and through cattle ownership, so were many of his 'subordinates', but both Hutus and Tutsis served in his armies.[79] The umwami's 'subordinates' could be required to also serve in his 'courts', guard his cattle or cultivate his crops.[80] In Rwanda today, there are two versions of history that narrate this period. The Tutsi version narrates that "Tutsi privilege was exclusively a colonial creation" and that they too were victims of the Umwami's despotic system. The Hutu narrative argues "Tutsi privilege is as old as the presence of Tutsi on Rwandan soil."[81]

King Rwabugiri was a Tutsi King who institutionalised a feudal system in the nineteenth century, in which Tutsis were semi-autonomous and Hutus had to "exchange labour for land owned mainly by Tutsis".[82] This refers to the uburetwa system. If one did not perform their 'uburetwa' they could risk losing land. Only Hutus had to provide unpaid labour.[83] This set the foundation for Hutus to be regarded as second-class citizens that produced a mass peasantry population, and which became a system of the 'powerful and powerless'. In describing the effect of Rwabugiri's reforms, Mamdani argues that at the turn of the century, this marked "the starting point of a process with two related outcomes, the degradation of the Hutu and genesis of Tutsi privilege."[84]

When King Rwabugiri died, many of his supporters had broken away from the monarchy, and against the wishes of the royal court, had formed their own constituencies. This led to a tenuous relationship between society and the role of the 'kingdom', through which colonial intervention could take advantage of. Yuhi V. Musinga acceded King Rwabugiri. The legitimacy of Musinga's monarchy and kinship was called into question upon the arrival of the German colonial conquest, which lasted 18 years. The Germans relied on the pre-colonial system of governance in Rwanda, and did very little for modernisation of the state or centralisation of the regime. It did have profound effect, in that it provided 'military assistance' to Musinga who was fighting a northern-uprising.[85] Des Forges states, "The northerners were resisting demands that they provide labour service to the umwami's representatives in return for the right to cultivate land that they regarded as their own."[86] It is important to note that it was in this period, that Europeans became 'obsessed' with race, which encouraged Germans to assert that Tutsi were a "superior ruling class" that owes to their Hamitic origins.

Belgian Colonials were entrusted with the state in 1945. With the introduction of the Belgian colonial rule came the expansion of Tutsi authority over predominantly Hutu areas. Des Forges asserts, "the colonial administration, were hoping to make what they regarded as an

admirable political system more responsive to their direction" and "eliminated competing political authorities, leaving ordinary Rwandans increasingly obliged to heed the orders of the officials imposed by the umwami with colonial approval."[87]

Whilst the Belgian colonials continued to make use of umwami's they also encouraged Tutsi chiefs to take over areas that were self-governed, thus challenging local Hutu Chiefs who attempted to remain independent, particularly in the northwest.[88] The "colonial regime consciously attempted to integrate the political authorities and 'customary' practices into the colonial economy" which changed the pre-colonial meaning of the uburetwa and ubuhake system.[89] For example, prior to colonialism there were instances where Tutsi were clients in the ubuhake system, but with colonial intervention the colonisers turned the institution into one of complete Tutsi domination of Hutu.[90] Using Tutsi chiefs, the colonial administration exploited the system of forced labour to meet their quota, which fulfilled their gains through economic production of agriculture (i.e. coffee).[91] Legally, only Hutus were made to provide labour. Secondly, the colonial administration 'codified certain practices having to do with land and cattle, transferring customary practices- or what they took to be customary practices- into written law'.[92] Colonials governed the dual land system and together with foreigners had the greatest opportunity to access and own land. There was opportunity for some "politically-powerful Tutsi" to take advantage of Belgian laws and acquire large tracts of land that previously belonged to Hutus.[93]

It is through these practices that the colonial administration corrupted the former political and socio-economic relations to the territory, where personal relationships played a role in the politics of land. Moreover, we begin to see the Hamitic Hypothesis used to both racialise and naturalise a hierarchy of identities.

Pamphile Sebahara argues it was the coloniser who first introduced the term "ethnie" to refer to Hutus, Tutsi and Twa.[94] Etymologically speaking, the term 'ethnic' derives from the Greek term- 'ethnos', which means people or nation.[95] Once it entered the French language in 1896, its popular definition postulates "a language, an area, customs, values, a name, a shared lineage and an awareness on the part of its members that it belongs to the same group."[96] The Belgian administration used the differing uses of land and social relations to inform their understanding of these ethnic groups, and to shape their policies in order to assert their power and exploitation of resources. They legally were formalised as racial categories through the introduction of reforms between 1926-1936. In Kinyarwanda Rubanda Nyamwinshu became the translation of the Hamitic Hypothesis; it means 'the majority of the population- the ordinary folk' (Hutus).[97] This term provides the basis upon which the Belgian colonials turned the "Hamitic racial supremacy from an ideology into an institutional fact by making it the basis of changes in political, social, and cultural relations."[98] The administrative reforms of institutions were comprehensive, and made use of 'taxation, education and the Church' to breath life into these constructed political identities. Sebahara argues that the colonials made use of writings and reports from missionaries and explorers, who described the Tutsi with characteristics of superiority.[99] Jean-Pierre Chretien asserts 'the "social manipulation" enacted by colonisers, who were informed by missionaries, was "based on the axes:

feudalism, racial policy and cultural segregation."[100]Tutsis were defined within the 'civilising mission of the colonial state', thus the Belgians saw the Tutsis as a racial category, and not ethnic. [101]

European racial prejudices observed and managed to convince themselves that "Tutsi ruled Rwanda because of some genetic superiority associated with race."[102] Thus, Tutsis became the settler race, which carried a connotation of being "civilised", and was therefore "written into civil law, enforced by the central state".[103] Through this perception of being 'civilised' by the colonial state, Tutsis gained a 'civic identity' and became citizens (members of the central state). The colonial administration set up the 'Native Authorities', which would govern the 'natives' (the indigenous populations- Hutu and Twa) through 'customary law'. The difference, to other colonial experiences, is that Hutus 'were not ruled by their own chiefs but by Tutsi chiefs', thus producing "bipolar racial identities, and not plural ethnic identities."[104] This also produced a 'Tutsi administration' and "governing class".[105]Bangerezako argues that Belgian governance "led to a thorough elimination of Bahutu leaders during that period. Tutsi rule was naturalised."[106]

At the moment of independence, all 'chefs de chefferies' of land were Tutsis, and of the 559 sub-chiefs, 544 were Tutsis.[107] These chiefs were also only derived from two Tutsi clans. Moreover, despite segregation, Hutus and Tutsi were not territorially segregated, but they continued to live within the same space under racially segregated institutions.[108]Bangerezako notes, "Instead of a decentralised despotism (or indirect rule), with tribalised identities of Hutu and Tutsi having different ethnic homelands with their own native authorities and customary laws, it was rather a racialised, centralised despotism within a single political and legal space."[109]

Tutsi became local adjuncts or instruments of indirect colonial rule. Umwamis, unknowingly or not, were the messengers for colonial power, as they had the 'power' to violently distribute and "dispossess" land from the 'disobedient'- which included Tutsis, but predominantly Hutus. [110] This set a precedent in later land reforms, were dispossession was legalised. Over time, small farmers began to be taxed and Hutus became the labourers for both the colonialist and Tutsi.[111]Thus the monetization of the economy, taxation and labour becomes the first colonial reform. The second reform was to make use of the Catholic Church, which was complicit in racialising the identities. Clark notes that the mission schools run by the Catholic authorities "recruited almost exclusively the sons of Tutsi notables for education, which was the main vehicle for maintaining social superiority."[112] The colonial administration would invest into skills development and education of Tutsis, which developed Tutsi leaders for the administration and lent to a rising Tutsi consciousness. Moreover, history books that were written at the time "scientifically" confirmed the differences between races, and were foundational to the subject matter of textbooks (migration and origins, physiological differences…) used in schools, which also contributed to "ethnic consciousness".[113] The final administrative act (third reform) to 'crystalize' these political identities, was to introduce racial identification cards in 1933. In addition to genealogy and physiognomy, the identity

cards introduced a 'wealth differentiation', because it classified 'anyone with 10 cows or more' as a Tutsi.[114]This administrative census classified the entire population.

John F. Clark refers to Rwanda as the 'land of two nationalisms', that of Rwandan Hutu nationalism and Rwandan Tutsi nationalism.[115]Clark argues that the colonial project, created a political crisis, whereby Hutu and Tutsi became two dual-nations within Rwanda "communities of people organised around the idea of self-determination", by nationalism, Clark defines it as "the pursuit-through argument of other activity-of a set of rights and privileges for the self-defined members of the nation, including minimum, territorial autonomy or independence.[116]The fundamentals of the Tutsi identity "have included the groups distinctive ethnic origins, economic role, and political institutions, including the mwamiship and the chieftaincy."[117]Clark asserts, as important as these socio-political distinctions are, it is the myths and stereotypes that have given them depth- further meaning.[118]Although a 'Tutsi consciousness' only emerged around Independence, there was an established Tutsi association to power and the monarchy. In response to the physiological difference, Clark asserts that by the time the European fanaticism around race arrived in Rwanda (20th Century) it had largely been obliterated through "intermarriages, "caste changing" and other forms of ethnic mixing."[119]Similarly, cultural practices and beliefs have been blended over time. Therefore, it is the political function of the Tutsi in Rwanda, which formulates the emergence of a Tutsi identity.[120]The ubuhake was an important socio-economic institution that introduced "pastoral servitude" and a Tutsi patron-Hutu client relationship. Socio-economic functions and institutions shaped political control and ethnic differences. As already discussed, it is also in this moment that Hutus were constructed as a "subject identity alongside Tutsi as an identity of power."[121] Mamdani argues "The colonial reforms of 1926-1936 racialised the Tutsi identity and "hardened Tutsi privilege into a crust, giving it an apartheid-like quality."[122] It would symbolise the degradation of Hutu identity, and the genesis of Tutsi privilege, and later serve to formulate justice for Hutus as being a native prerogative. Tutsi was underlined by its privileged relationship to power and its preferential treatments "whether as part of power, in proximity to power, or simply to be identified with power."[123] These colonial reforms would prove to have a profound impact on the post-colonial state.

Since the introduction of the colonial-economy, Hutus have seen themselves as the "original inhabitants of the Rwandan territory, as opposed to immigrants from a different past; in economic terms; their lives have been more associated to clientage and agricultural work, rather than patronage and cattle herding."[124]Clark argues that because of their overall subordination in society, Hutus have had little opportunity to develop any sense of collective Hutu consciousness, even as victims, until late in Rwanda's colonial history.[125] However there is an important exception, which is that in the peripheral regions of Rwanda, there are cases where Hutu chiefs maintained their independence well into the colonial period.[126]It is also important to note that there was a large sect of the Tutsi population that was excluded from the superior-Tutsi socialisation but were seen as the "oppressors of the majority", which would later serve anti-Tutsi violence because of this association.[127]The disenfranchisement

and exploitation of the Hutu majority, led to Hutus seeing themselves as victims of 'dual colonialism' by the Belgian Colonials and the Tutsi foreigners.

The 'dual nationalist identities' converged in the anti-colonial debate that preceded the 1959 Social Revolution. Between 1953-1962, Tutsi continued to dominate in the higher levels of chiefdoms and a small group of Tutsi elites became advisors to the colonial administration. Clark argues that during this time "as in every other case in colonial Africa, a small taste of power only whetted the appetites of those selected for more significant roles in their state governments…By the end of the decade, the Tutsi elites had developed in classical anticolonial fashion, a sense of entitlement to power, and pressures for immediate independence began."[128] In Chapter Two I discussed in length the shift in colonial support of Tutsi power to come after Independence, towards Hutu sympathy (based on Hutu being the indigenous majority), which allowed the Hutu national consciousness to advance. Furthermore, whereas the Second World War was impressionable in constituting racist ideologies and the notion of the 'superior/master race', its devastating impact (German-Holocaust) served as a hard-lesson that demonstrated the disastrous effects of such a political doctrine. [129]

Hutu consciousness could only emerge, once it raised "consciousness of Hutu oppression among the literate class of new Hutu elites," which began by taking over the leading Kinyarwanda language paper, the Kimanyateka.[130] Secondly, a consciousness emerged through the philosophical mapping of the Bahutu Manifesto. The Bahutu Manifesto highlighted the "Social aspects of the Racial Problem", and demanded "reforms in favour of the Mahutu population subjected to the 'Hamite monopoly on other races which had inhabited the country earlier and in greater numbers."[131] The manifesto was a direct assault on the "feudal" economic system, and served to formulate the idea that justice would mean establishing the state as a Hutu republic, and securing rights for the majoritarian as a means of correcting the subjugation of Hutus and widespread inequality.[132] This signalled that the Hutu elite had bought into the fiction of race, which was naturalised through colonial law.

5.6 The Inherited Colonial Legacy: *Who Shall Govern the Land?*

The '1959 Social Revolution', or 'Muyaga' as it is known in Kinyarwanda, was about overthrowing the colonial administration and the Tutsi Monarchy, and seeking justice from the Tutsis as a 'alien race'.[133] It would demonstrate the affect that colonialism had by racialising political identities; legalising them; and naturalising them. Secondly, as Mamdani asserts, "This had a crucial social effect: neither kwihutura (the social rise of an individual Hutu to the status of a Tutsi) nor gucupira (the social fall from a Tutsi to a Hutu status) was any longer possible."[134] Thirdly, it would mark the rise of a nationalist Hutu debate that rejected the status of Hutu subjectivity and the association of Tutsi identity with power, and assert the indigeneity of Hutus as a means to address past injustices and victimisation under colonial and Tutsi rule.

The 'Revolution' lasted less than two years. Hutu nationalism was enunciated by the ideology of 'democratic-majoritarianism'. President Gregoire Kayibanda made little attempt to develop a unified civic identity- a 'Banyarwanda national identity', and instead he focused on defending the interests of the Hutu nation (or as he referred to as "nation-protecting"), as well as protecting the "sovereignty" of the territory by quashing any internal or external threat to the Hutu-territory.[135]The conceptualisation of Kayibanda's nationalism was demonstrated in 1972, when a genocidal massacre of Hutus in Burundi, led Kayibanda to extend a welcome to Hutu refugees, and he openly proposed his ambition to support Burundian Hutus in seizing control and power of Burundi.[136]

The top priority of Kayibanda's regime was to abolish the Tutsi monarchy and replace it with a Hutu Republic (the Hutu Nation). This drastically altered the "ethnic composition of the ruling group…as Hutu leaders, members of the majority (but formerly subordinate) group, replaced earlier Tutsi rulers."[137]Interestingly, Kayibanda maintained the land distinction held "under customary laws and that held under written laws."[138]The first Rwandan Constitution (1962) also demonstrated that Kayibanda maintained the centralisation of land regulation. The Constitution stated; "codified land regulations, declaring that occupied lands would remain in the occupants' possession; that possession of all presently unoccupied land would vest in the state; that the state claimed ownership of all land, occupied and unoccupied…"[139]Most noticeable in the constitution was the sentiment behind dismantling the system of 'igikingi', which had governed land that was reserved for Tutsi chiefs and the monarchy for cattle pastures.[140] The regime also eradicated forced labour of Hutus. Gerard Prunier notes that by the 1960s "…the new burgomaster were quickly picking up the old habits of 'feudal' rule and were creating their own Hutu clienteles on the Tutsi model."[141]

An attempt at land reform that would benefit the Hutu peasantry was thwarted by a rapidly developing Hutu elite, which introduced new forms of patronage. Patronage corrupted systems of local administration and maintained land in a centralised system, which was misused for socio-economic and political gains.[142] Jamie Crook argues, "The 1962 Constitution laid the foundation for Rwanda's present parallel system of formal and local-customary land regulation. Unlike a common law system, in which judges look to prior case law to fill gaps in existing statutory and constitutional law, under Rwanda's parallel legal system, adjudicators are not bound by prior judicial interpretations of local customary law." [143]Majority of land was governed through 'local customary law rather than formal law.'[144] The 'flexibility' of the parallel-legal system, allowed for the arbitrary application of local customary land law, especially during the pogroms of anti-Tutsi violence between 1959-1994.[145] It also effected some Hutus, as Clark notes, the Hutu chiefs in the north who were previously independent, now found themselves 'disempowered' by the "modern" nationalism of Kayibanda and other educated Hutu elites in Rwanda's central regions.[146] Hutus in the north were more connected to peasant populations, and it is in the north were as Lemarchand argues "the earliest and strongest reaction" against Tutsi supremacy emerged.[147]

When Habyarimana overthrew Kayibanda in 1973, there was a marked shift in the political terrain, because the Second Republic had to address both Tutsi nationalism and competing

Hutu political clans vying for power. Habyarimana had relative control of the political situation until the mid-198-s. Jamie Crooke describes Habyarimana's reign as the "abuse of discretionary power in land allocation…and actively promoted inter-ethnic hostility and the withholding of land and other vital resources from Tutsis."[148]Moreover, Habyarimana also consolidated power, at the expense of southern Hutus and Hutus from other clans, which further disrupted land use patterns and social cohesion.[149] To expand on Crookes observation, Habyarimana also continued to retain the identity cards, which together with the quota system encouraged Hutus to believe that the republic still favoured them at the expense of the Tutsi.

Since Independence, both Republics have emphasised that Rwanda was a territory belonging to the Hutu nation. State-sponsored violence against Tutsis, has taken place since 1959, which has led to hundreds and thousands of Tutsis fleeing Rwanda. The government took possession of that land property and distributed it amongst Hutu local residents, encouraging them to use it towards building a political base for Hutu politics.[150] This land and property is commonly referred to in Kinyarwanda as "amasambu ya demokrasi" – "plots of democracy", and has remained a stain on the memory of those Tutsi victims who lost their land.[151]Des Forges states, "Those who benefited from this distribution of property counted their new holdings as part of 'the gains of the revolution' (les acquis de la revolution)."[152]

Mr Claude Rubeka is the son of Francois Rubeka, the chairman of the outlawed political party, Union Nationale Rwandaise (UNAR).[153] When Francoise Rubeka passed away in exile, Claude Rubeka, who lives in exile in Canada, took over the interim management of the party, which was negotiating a return for refugees and political participation in Rwanda. In response to the quota system of the Second Republic (discussed in Chapter two), Claude Rubeka states:

"Today, the country is governed according to the laws of ethnic percentages…. it is high time old ethnic rivalries were set aside and everyone worked together for national reconciliation. Mr Habyarimana's regime is a real apartheid system…the government has imposed a 5% quota on Tutsis serving in the civil service. Aside from a single officer, the Army has no Tutsis. Moreover, every Rwandan citizen has to carry an identity card on which the ethnicity of the bearer must be mentioned. We strongly object to this idea of identity cards, as they are used for repression."[154] Rubeka continues to share the experience of Tutsi citizens, by stating, "[a] Tutsi citizen has no political right, no freedom of expression. He does not even have the right to read the newspapers published by his compatriots in exile. Nor does he have the right to receive visits from family members coming from abroad. The government has repeatedly said that there is no place in Rwanda for the two million Rwandans in exile."[155]

The Rwandan Ambassador to Canada, Mr Joseph Nsengiyumva, responded to Rubeka's statement, by stating, "The demographic pressure makes it difficult to find any solutions to the refugee problem…." He continues, by pointing out the grim statistics of Rwanda's poverty levels, lack of growth in agriculture and land scarcity. Ambassador Nsengiyumva also stated that UNAR is viewed with 'suspicion', it is "an offspring of the Rwandan feudal

system, which is remembered with fear…although the minority won and established a political system based on the monarchy, the exclusive preserve of important Tutsi families, the majority of Hutu harvesters were completely politically and economically enslaved…".[156] This conversation took place in 1989, as Habyarimana was proposing internal reforms (multi-party democracy and against the critique of Tutsis being reconstructed as an ethnic group) and was negotiating the return of refugees and naturalisation, with the government of Uganda.

Between 1973 to the late-1980s Habyarimana did introduce progressive economic policies and maintain relevant political stability, with few incidences of anti-Tutsi violence. During the first decade of rule Habyariman made significant improvements "in the development of infrastructure (roads in particular), in the expansion of schools and health centres, in reforestation programs, and in an attempt to promote increased agricultural production."[157] This led to increased economic growth in the 1960's/1970s, which was acutely necessary given that the population grew from 1 million in the colonial era to 8 million in the 1970's. Habyarimana also introduced 'compulsory labour every Sunday' which entailed tilling the land to eradicate soil degradation, but also to initiate reconciliation between Hutu and Tutsi. This was called "umuganda".[158] A second policy was "paysannat", which was a forced villagisation programme that resettled Rwandans.[159] By 1978, more than 800 000 people were resettled in 'arable areas', thus providing land for peasants and the landless.[160] On the contrary, Habyarimana's policies also contributed to the plight of the rural population and compromised land ownership rights.

In 1976 the state introduced a decree-law, which recognised "state power over land in its first articles: it stipulated that all land not appropriated according to written law belonged to the state, whether occupied or not and whether encumbered or not by customary rights."[161] This centralisation of control over land led to many Rwandans (both Hutu and Tutsi) having to sell land off in order for money for basic expenses such as health care or education.[162] By the 1980s it became clear that the process of land concentration had accelerated through unregistered sales, and most of the land was owned by the government, commerce, or aid industry, and was not being used for full-time agriculture.[163] The rise in aid and development from the international community bore little benefits for the rural poor, whose private land was dispossessed, with the promise that it would be used for development.[164] The 1979 law on expropriation continued the distinction between land held under written law and that held under customary rules.[165] Elites who originated from the northwest, who were connected to Habyarimana, were illegally acquiring land and distributing it to locals to reduce poverty, which resulted in social exclusion and animosity, particularly from southern-Hutus who viewed the regime and northern-Hutu elites with suspicion.[166]

Rwanda's history of land occupation and dwindling land entitlements has been greatly affected by population pressure and continuous migration, before, during and after colonialism. Johan Pottier argues, "Throughout the twentieth century, family farms in Rwanda decreased, a process accompanied by deepening poverty."[167] Whereas, after Independence an estimated 110-120 inhabitants lived per km ², and by 1970 that same hill

was supporting 280-290 inhabitants, which had a profound impact on food production.[168]By the 1990s there was virtually no arable land left to claim. 1988 marked the rapid deterioration of the economy. In addition there was an influx of refugees from Burundi, and an 'official ban placed on food imports'.[169]By the 1990s the economy was in a dire state due to the imposed structural adjustment program (compromised Rwanda's sovereignty), increased taxes, devaluation of the currency, and most importantly, the 1990 October invasion led to an estimated 40% of the national budget being diverted to military resources to fight the RPF.[170] In the context of this chronic crisis, the question of "who rules Rwanda?" became pertinent, and gave way to the rise of 'Hutu Power', who would redefine Tutsis back to being an 'ethnic category- the settler race and 'enemy' in Rwanda.

Central to the claims of 'Hutu Power' was that Rwanda was Hutu-territory, and they threatened Tutsis to return to 'their homeland' in Ethiopia.[171] Once 're-ethnicised' the threat to kill was demonstrated in Bugesera, where "landless Hutu from the north-west had resettled."[172]Hutu Power encouraged the landless Hutus to massacre 300 Tutsis, and any members of opposition. In November 1992, following Bugesera and leading up to further Tutsi massacres in Gisenyi prefecture, Vice-President Leon Mugesera incited the Hutu majority to "eliminate all Tutsi and everyone opposed to Habyarimana…Your country is Ethiopia…and we shall soon send you back via the Nyaborongo river on an express journey."[173] During the civil war, there was a widely held view that the RPF's invasion facilitated the return of the Tutsi diaspora (since 1959) ready to overthrow the state, and that they were "overstaying their stay."[174] Politics returned to a preoccupation with justice for the Hutu indigenous majority, but as it has since the Revolution, it evolved into seeking revenge for past injustices and victimisation of Hutus by foreigners.

5.7 The Politics of Indigeneity and the 'Right of Return' to Rwanda

The emergence of 'Hutu Power' and Habyarimana's reversal in policies to maintain power reached a feverish intensity, and it must be thought within the crisis that was taking place within Rwanda and Uganda. Secondly, the October 1990 RPF invasion "needs to be understood as a confluence of a dual crisis of postcolonial citizenship, in both Rwanda and Uganda."[175]

Indigeneity has become a central issue in Uganda, as it has in Rwanda since 1959. Both regimes shared the colonial experience, where the non-indigenous was privileged over the indigenous, and similarly both post-colonial regimes, pursued to turn this logic on its head, by privileging the indigenous over the non-indigenous[176]

Since 1959, Tutsi Rwandans have fled Rwanda, seeking refuge in Burundi, Uganda, Zaire, and Tanzania due to the anti-Tutsi pogroms and exclusion of political rights. By the 1980s the Great Lakes Region had a bulging refugee crisis, of which the Banyarwanda were caught up as a non-indigenous minority. The Great Lakes region shared the political inheritance of the colonial state, but each state differs in how it takes up the post-colonial task of deracialising civil law and de-ethnicising customary rights and law. Whereas the post-

colonial states in the region recognised the settler and eradicated it by deracialising civic citizenship, the failure has been to transcend the 'native' identity by seeing it as a colonial construct. Thus the 'native' category continues to be reproduced in post-colonial states.[177]

The term 'Banyarwanda' in the Great Lakes Region applies to a cultural identity, because the group speaks Kinyarwanda. Within Uganda, the Banyarwanda are sub-divided into nationals (those who came prior to 1910 western borders); migrants (cultural diaspora, mainly Rwandan labour); and refugees (fled post-colonial Rwanda due to the "political crisis").[178] Hutus and Tutsis are socially differentiated because refugees are predominantly Tutsi and migrants are predominantly Hutus. The Banyarwanda refugees in Uganda mainly consist of those that left in '1959-1961, 1963-1964, and 1973'. Since Uganda gained its Independence (1962), the Banyarwanda have felt 'the wrath' of former President Milton Obote's regime. In the context of their experiences, a "political intelligentsia" derived from the cultural diaspora, had organised the first political group around the return of exiles and refugees to Rwanda. The political organisation was called the Rwandese Alliance for National Unity (RANU). RANU would later become the Rwandan Patriotic Army (RPA) in 1986.

The Banyarwanda had different experiences in Zaire and Tanzania. In Tanzania they assimilated both socially and culturally and could apply as citizens, whereas in Zaire citizenship was at times offered and then withdrawn.[179] In Uganda, Tutsis experienced great "anti-refugee prejudice" that was promoted by the Ugandan state, but which also served in the shaping of the refugee experience and yearning for a Tutsi belonging to return home-Rwanda.[180] Mamdani articulates the experience of the Banyarwanda in Uganda, stating "once a refugee always a refugee".[181]

The era of Idi Amin's leadership introduced a sharp focus on indigeneity within politics. A noticeable outcome of the political crisis was the violent expulsions of Asians in 1972.[182] But Amin's approach to the Banyarwanda was different. For the Banyarwanda refugees there was a popular belief that Amin was supportive of the re-establishment of the "deposed Tutsi King, Mwami Kigeri", as he had "promised to help re-establish the monarchy in Rwanda...and ensure the return of refugees."[183] Amin had in actual fact invited King Mwami Kigeri to live in Uganda and provided him with property.[184] Some of the Banyarwanda politically supported Amin, whereas others supported the oppositional guerrilla movement, the National Resistance Army (NRA). This fuelled suspicion in Rwanda, and a fear that Amin would support the return of the Tutsi monarchy.

In 1986 the NRA, led by Yoweri Museveni, overthrew Amin in Uganda. A quarter of his army was constituted of Banyarwanda soldiers. Among them were Paul Kagame and his closest friend Fred Rugyema, founding father and later head of the RPA during the 1990 October invasion into Rwanda. Initially the NRA was motivated by an alternative politics to that which was based on indigeneity, however once in power, the post-colonial political crisis proved to have had a stranglehold on Museveni's mode of power.

Whilst in Museveni's army (NRA), the Banyarwanda were perceived by both Amin and the Obote II regime as providing the "backbone of Museveni's guerrillas".[185] Thus, the state resettled the Banyarwanda into old refugee camps, and also violently attacked them, leading many to return to Rwanda or flee into Tanzania. When Museveni overthrew Amin, he initially granted Ugandan citizenship to the Banyarwanda from 1959 out of sympathy for their support to the National Resistance Movement (NRM). At this point the Banyarwanda had already began to infiltrate the military, leadership and civic life in Uganda, which led to Ugandans being suspicions of the Banyarwanda. Thus, under immense pressure, Museveni redefined citizenship in Uganda. Lodged in a Pan-African view, Museveni made the distinction between Ugandans and European foreigners, but also African foreigners from neighbouring states.[186] This dissolved the citizenship and branded Banyarwanda as "non-Ugandan" and African foreigners.[187] Mamdani argues that this "confirmed the colonial inheritance" and reformed citizenship back to being based on indigeneity.[188] Furthermore, the implication was that only Ugandans could access and own land, and citizenship rights and benefits.

The politics in the region suggested to the RPF that the broad-based approach of the NRA was ineffective for achieving its own political goals, and specifically for the Tutsi diaspora. Furthermore, once in power, Museveni had to broaden its base in order to gain political support. This meant excluding the once confident political and military Tutsi elite from the generation of the 1959 expelled Rwandan Tutsis. Tutsi refugees now centred their political and military ambitions on the notion of the 'right of return' to Rwanda. The RPA organised itself along two focal points in its struggle; 1. "The leader of the refugee struggle would come from Banyarwanda" and 2. "The return home could only be an armed struggle."[189] Although the RPF claimed to be a 'broad-based front', representative of the 'right of return' for all refugees, the RPF was comprised mainly of Banyarwanda Tutsis.[190]

Remigius Kintu, presented a paper to the U.N Tribunal on Rwanda (Arusha,Tanzania 2005) in which he deliberated on why things had gone so wrong for Tutsis in Uganda.[191] Kintu presents a sharp critique of the intentions of the RPA invasion in 1990. In reference to pre-colonial and colonial social and political relations, Kintu states that in addition to 'land belonging to Tutsis and Hutus merely being labour,' Hutus were 'dehumanised' by the treatment and perception by Tutsis.[192] Similarly, Hutus were excluded from education and political organisation, thus creating a "mass of ignorant and uneducated population" that were left vulnerable to the "brutal injustices" because Tutsis did not equate themselves with the "moral/spiritual value" of Hutus.[193] Kintu argues that as soon as Tutsis had fled Rwanda, they "made no secret of their intentions to return to Rwanda as rulers."[194] From the beginning, there were five attempts to overthrow Kayibanda, as they declared, "We cannot accept to be ruled by Hutus who are supposed to be our slaves."[195] Kintu further continues to state that Uganda "has always been a country founded on an unwritten policy of inclusion, not exclusion", which he states that the Tutsi political class has used as opportunities 'to expand Tutsi power within the Great Lakes Region'.[196] His evidence is based on military campaigns/invasions into Rwanda, and evidence given to the tribunal, of violent killings in attempt to numerically get rid of a Hutu presence in the region.[197] Kintu further supports his

argument by noting the wealthy, well-adjusted Banyarwanda in the region were not affected by the Ugandan Land Law, and had in fact continued to refer to themselves as Rwandans and not Ugandans, regardless of having lived there for most of their lives.[198] The same, he argues, can be said for generations of Banyarwanda. Many intellectuals from the Tutsi diaspora had assisted the RPF with financial, logistical, and political resources, towards the return of Tutsis. Kintu states that after many unsuccessful plans to take over Rwanda, a small political elite devised a committee to discuss the end-goal; to invade and overthrow the Hutu political powers in Rwanda.[199]

The challenge to Kintu's argument that collectivises the Banyarwanda sights on Rwanda, as 'their ethnic home', is demonstrated by the 'guerrilla war in the Luwero Triangle of Uganda between 1981-1986.' The generations born from Banyarwanda exiles in the seventies and later, were in fact trying to make Uganda their home.[200] This was despite being read as 'ethnic strangers' and then an 'ethnic group' prior to the political reversal of the NRM. The irony was that the Banyarwanda were participating in the guerrilla war convincingly showed "the limits to which ethnic strangers could make themselves at home in a state defined 'home' as an ancestral-indigenous-abode for "native", keeping at bay all those considered non-indigenous, no matter their commitment or predicament, as "settlers."[201] The confluence of Rwanda and Uganda's citizenship crisis, was impressionable on the RPA political vision because they felt that the Banyarwanda did not have an 'ethnic home' through which rights could be claimed.[202] This may have changed at different periods in the post-colonial state, but they were always excluded from having political rights and thus a claim to the territory (land).

The plan was that once the NRM/NRA overthrew Amin in Uganda, they would assist the RPF in overthrowing Habyarimana. As discussed, the assistance never materialised, but in a meeting between Museveni and General Habyarimana, Museveni suggested that Fred Rwiygema, Paul Kagame, and Mugisha Muntu be allowed to join the Rwandan Army.[203] After declining this suggestion and another to allow low-ranking soldiers to join, Habyarimana finally agreed to slowly start allowing the Banyarwanda to return to Rwanda.[204] At the same time, Uganda's citizenship reform, reflected in the 1990 Land Law, "denied non-citizens the right to own land" therefore, rendering an estimated 450 000 Banyarwanda landless and "ethnic strangers".[205]

The October 1990 RPF invasion took place whilst Rwanda was undergoing internal-political reforms, and not during a period of repression.[206] Furthermore, "Uganda-Rwanda negotiations on the right of refugees to claim Rwandan nationality reached an advanced stage by then."[207] In fact only days prior to the 1990 invasion into Rwanda, General Habyarimana declared at the U.N General Assembly that he would grant naturalisation and travel documents to those wishing to return.[208] This reflects a context that differs from the account given by the RPF.

<u>5.8 Post-Genocide 'Land Reform'</u>

Central to the challenges that post-genocide political, social and economic development faces, is the issue of land. In the decade leading up to the genocide, poverty levels were on a steady incline as people were forced off their land and due to state corruption. Millions of Rwandans (80% of the population) depend directly on access to land for subsistence needs. The 'fabric of Rwandan society has been torn' and society is under extreme stress.[209]Both Republics have produced laws in favour of power and violence, and with a complete disregard for equity and equality. How the current regime responds to land and agrarian reform is under scrutiny, especially in a context where previous reform has benefitted some and disadvantaged others in a racially fragmented society. Furthermore, land hasn't just weakened bonds, but it has also been used to violently dispossess one group by another premised on justice and indigeneity.

Today, competing property and land claims, are wrapped in an inherited complex legal system. As Saskia Hoyweghen asserts, the land question will have to be approached with two considerations: 1. by situating its socio-economic dimension in a deeper political and historical context; and 2. by considering its specific contemporary socio-political problem.[210]Moreover, as the previous and following chapter demonstrates, both the national and regional political climate continues to challenge the Rwandan government's political strength to overcome its critical issues particularly the inherited colonial institutions of rule.

Pottier states that the discourse on land reform "acts as a instrument which, through its representation of the past, helps legitimate the present."[211]Thus, I would like to return to the propositions that were made at the Arusha Accords, which as previous chapters have shown, has been impressionable on the reconstruction of post-genocide Rwanda.

The RPF arrived at the Accords, emphasising in their agenda, both the 'right of return'; securing naturalisations (citizenship) and political rights for the Tutsi diaspora. It also demanded land access for the returning Tutsis.[212] John W. Bruce argues "The Tutsi-led RPF recognised that displacing those Hutu occupants on any large scale would only lead to further conflict, and agreed that returnees who had been out of the country for more than ten years would have to be accommodated on state-owned lands."[213] However, after the genocide the situation was drastically different from what the negotiators at Arusha had envisioned.

During the genocide, government officials and the propaganda-filled 'Hate Radio' incited fear in the Hutu peasantry, by arguing that Tutsis would dispossess them of their land if they did not kill the 'enemy' first.[214]Furthermore, killers were often rewarded with their Tutsi victims' 'livestock, crops, houses, land and personal belongings.'[215]However, as discussed in chapter two, Scott Strauss pointed out that few were motivated by greed, the looting mostly took place after the genocide had dissipated.[216]

In this context, the post-genocide regime has embarked on a formidable project of 'political, economic, social and cultural engineering'.[217] Within the agricultural sector, the government

has combined a "green-revolution" policy and sophisticated technology. Reyntjens notes that the ambitious project is aimed at the domestic scene, but it also applied to the region and the world.[218] Similar to the transitional justice mechanisms, the land and agricultural reform has involved bold experimentation, which is framed within the logic of 'victims justice' and 'Rwandicity'. Land reform in post-genocide Rwanda is rationalised to correct past injustices and boost production through modernisation.[219] The Tutsi-led government also had to reconcile with the fact that Tutsis made up 14% of the population, and it therefore had to strictly abide by the 'ten-year rule' in order to gain political legitimacy and maintain 'peace'.

Since the genocide, Rwanda has 'experienced the most dramatic refugee returns of any country in Africa'.[220] Waldorf states "massive population displacement has led to further property conflicts."[221] Inequity in land access has increased with each successive migration wave returning from different historical and present periods thus leading to overlapping land claims. As discussed, most land was occupied by Hutus, who "claimed to own the land because, they said the had occupied Rwanda before the arrival of Tutsis."[222] During the Civil War between 1990-1993, the RPF invasion encouraged and influx of Tutsi refugees. 'Returnees' are mainly considered to be Tutsis who returned with the RPF. These refugees together with refugee migrations into Rwanda several years after the genocide, returned with the hope of reclaiming land and houses that were abandoned in the 1950's, 1960's and 1970's during the different periods of anti-Tutsi violence.[223] Refugees and exiles are divided into 'old-caseload refugees' (which are pre-genocide Tutsi refugees) and 'new-caseload refugees' (which are post-genocide Hutu refugees). After the post-genocide regime invaded Zaire (Congo) in 1996, many Hutu refugees who had left Rwanda during and after the genocide, returned. They returned to land that was now being occupied by Tutsi repatriates who for the past two years, had "worked the land, enriched the soil and importantly had built alliances with the new authorities…themselves repatriates."[224] Prior to the Gacaca Court and Land Laws, Waldorf argues "competing property claims were sometimes resolved on an ad hoc basis by local officials or through revived customary mechanisms."[225] Almost all of the new Local Authorities in the decentralised system are repatriates themselves and are Tutsi, thus dispute channels are viewed to be ethnically bias towards Tutsis.

Due to the post-genocide transitional 'policy of mass accountability', a budget that relies on external international donors, as well as its large numbers of victims, the government was unable to provide individual compensation to its victims. Between 1997-2008, there were various compensation bills drafted, but none have been enacted.[226] Waldorf notes, the closest to a compensation fund is the introduction of Fonds d'Assistance aux Rescapes du Genocide (FARG), which provides medical aid and education scholarships to 'survivors of the genocide', stating that 'survivors' are those who survived the genocide regardless of ethnicity.[227] However, leaders of FARG are all Tutsis and closely connected to the RPF; and it has a reputation for discriminating against Hutu-survivors and favouring Tutsi-Survivors.[228] Face with being unable to provide financial compensation, the Government has instead embarked on a complete restructuring or Rwanda as a means to address victim needs, accommodate the returning populations and part of its modernisation drive (new agrarian policies and commercialisation).[229] A central problem for the current administration is that it

rests on fragile legitimacy and is characterised by its "increasingly narrow ethnic composition."[230]As Des Forges argues in addition to security concerns "In trying to resolve the current crisis over land, the government must be constantly aware that decisions will have-or in any case will be seen to have-ethnic connotations."[231]

5.9 Modernising Rwanda and Rwandans

The Arusha Accords 'affirmed the inviolability of property' thus it proposed a ten-year limitation to reclaim land/property lost, and a thirty-year period to make that claim.[232] In the meantime, the Rwandan government initiated the National Habitat Policy, which would resolve the housing crisis, land scarcity problem by encouraging redistribution, and implement the 'villagisation project'. The post-genocide regime has adopted two policies, in response to its political priorities, which have greatly changed the traditional landscape of Rwanda (agricultural and social networks). They are; a. 1996 villagisation policy or 'Imidugundu'; and b. to modernise the economy by completely reforming the agricultural sector. These institutions work closely with the pro-growth 'Vision2020 development goals.' By 1998 there was a severe food-shortage, which led to the creation of the state-led NGO-l'Association Rwandaise de Recherche et d'Appui en Amenagement du Territoire (ARAMET). ARAMET works in conjunction with National Habitat Commission and proposed the development of cities as a source of diversifying the economy and providing employment, by drawing people towards urban cities and off rural land away from subsistence agricultural activities.[233] Furthermore, the villagisation policy makes the following proposals, that it would: a. "bring the population closer to roads, facilitate provisions of water and other services, improve access to schools and health clinics; b. "villagisation permits more rational use of land since housing can be constructed on less fertile land, and the broad enclosures typical of rural Rwanda households can be reduced in size"; c. "villagisation can encourage income-earning activities for residents"; and d. "villagisation will provide better security for people and property."[234]By 1999 the Ministry of Land (MINITERE) announced: "the ultimate objective of the government is to enable the entire rural population to live in group settlements."[235]However, what began as a development project has today over-extended itself as a (failed) housing project, which has been greatly supported by the international development community.[236] The villagisation project has been intrusive and disruptive for the majority of Rwandans, especially the rural population.

'Villagisation programmes' have a long political history in Africa, implemented in various states such as Tanzania and Mozambique.[237]Newbury argues that in the African experience and beyond, the policy has had disastrous consequences.[238]The imidugundu policy was conceived by the state and its agents, without any true consultations with the population. Newbury asserts, in a highly charged political terrain "Rwanda's leaders might have been expected to take a gradualist, consultative approach to changing land policy…giving real voice to the concerns of diverse constituencies, including rural producers" and especially because it completely replaced the traditional residence patterns (previously dispersed homesteads).[239]This is particularly pernicious in a state with a long-established tradition of

top-down, state-centred governance, and which historically laws are seen to be anti-rural that approaches the rural poor with a standardised approach. It has also contributed significantly to the Tutsi-Hutu, urban-rural, and the state-society divide.

In order to understand the policy attitude that generated these policies, it is important to look at the post-1994 Government, majority of which have been recruited from the diaspora and former guerrilla movement.[240] Hoyweghen asserts that the "brains behind the orchestrated return have not only brought with them different experiences but most all a vision of what their home country ought to be like and strong will to re-shape it to fit the mould."[241] The RPF leadership is made up of soldiers and intellectuals.[242] The soldiers mainly value 'cattle-raising' due to a long historical association with the military and cattle, and few had close links to cultivating crops.[243] Moreover, following the RPF's military victory, generations of Tutsi elite from Uganda and Congo returned, and settled in Kigali or in the cities, because they no longer had ties with the "hill of origin"- and had little incentive to return to the rural areas.[244] As they took up positions in upper echelons of state institutions, it became clear that many of them were detached from rural-life. A European donor representative articulated that "Many of the government officials have never known the Rwandan countryside. They came from refugee camps, and when they took over power, they often left their parents behind in Umutura [a province in the north-east with many large cattle farms]. Moreover, in the past, there was still a lot of insecurity in the countryside, so people preferred to live in the city of Kigali. That is where they concentrated now and have limited knowledge and understanding of how peasants live."[245] Des Forges notes "a small number of intellectuals returning from the diaspora had been educated in rural and land specialities, but most were urban-based members of the elite more experienced in commerce, education or law than in cultivating crops."[246] It is also important to note the Anglo-influence on development and economic policies. During the consultation phase of designing the 2005 Land Law, influential RPF members described the inherited land tenure system as "archaic", "backwards", "anarchic" and "lacking in specialisation".[247] There is also a language barrier, as one representative from civil-society asserts "The government really adopts a policy to exit 'Francophony' and to enter 'Anglophony'…Those who speak French and have the right competences are not taken into consideration…It is nonetheless mostly the French-speaking who master the rural setting."[248] There was also a prevalent animosity felt towards Hutu returnees, because of the association with the genocide-propaganda, which would 'glorify' "Hutus –as-cultivators" and Hutus being the indigenous people of the soil.[249] The new political elite's socio-economic discourse stands in stark contrast to Habyarimana's administration, which "relentlessly championed the culture of an agrarian society."[250] Often Habyarimana's speeches "glorified the peasantry and he pictured himself as a peasant."[251] Musahara et al argue that the "current vision and ambition of the Rwandan elite go much farther than previous attempts at reform, and are all the more problematic, given that they see no role for small scale peasants."[252] Instead the government is pushing for consolidation of small-plots to produce 50ha plots of land for cattle farming and cash crops, and to improve agriculture using "modern professional farmers."[253]

The RPF prejudices towards farming led to the government to neglect the many ways in which rural Rwandans and micro-plots are successful in crop-cultivation. It also refuses to consult and ignores data and recent studies being conducted. The Rwandan Poverty Reduction Strategy Paper shows that cash-crop farmers have been the most productive agricultural contributors to the economy in post-genocide Rwanda.[254] Despite overwhelming evidence from other African case studies that resettlement schemes rarely work, the government pushed on with the imidugundu policy, and handled it in a very bureaucratic manner, using coercive practices.

By 1996, the government began relocating rural dwellers into villages. Rwandans were informed through national-radio broadcasts, but the details of its implementation were left up to the interpretations of local administration.[255] Due to the de-centralised system of administration, this meant that local administration were less answerable to local Rwandans than they were to National Authorities. Des Forges argues that those who refused to relocate to the new sites were met with "coercion and outright force, even making people destroy their own homes."[256]There is a widespread perception that the National Authorities, who often defend the abuse of local authorities approve of the harsh measures, which has led to some international donors pulling out funding for villagisation project.[257]The other cause for concern, is that the government promised those that it relocated to villages, that they would be compensated; or if they exchanged land they would be given new land- but few received land and if they did, it was often land of poor quality and far from their actual homes.[258] One cultivator in Ruhengeri shared that he was forced to give up his land for the imidugundu, and relocated, but now two Tutsi families reside on his land and are not putting it to agricultural use.[259] In the case of villages created in eastern Rwanda, due to land shortages, lack of food and resources (to pay educational and medical expenses), some have had to seek day-labour work on their formerly owned land, which has since been taken over by the military.[260]In such cases, Rwandans are earning a third of what they use to earn before relocating to the villages, and recent research conducted at the National University of Butare confirms the perception that today Rwandans are poorer than before.[261] Hintjens argues that "Rwanda is more class divided and polarised than ever before", pointing to the gini-coefficient as an indicator, and to the industrial infrastructural development is only taking place in the cities, which have offered few job opportunities.[262]Similar to the previous regimes, is the critique that expropriated land has been given to wealthy businessman, military and political officials living in Kigali, and is not being used for agricultural purposes.

Newbury argues that because the government defined the 'villagisation policy' as a security issue, it made it very difficult to debate the 'merits and advantages' of such a policy.[263] 'Security' touches on "psychological perceptions as well as empirical realities- and was the monopoly of the states. Rwandans hesitated to question the villagisation openly, for such opposition could be-and often was- interpreted as unwillingness to recognise the loss, trauma and fears of genocide survivors."[264] Chris Huggins argues "different areas are effected by different kinds of challenges, depending on the dates of people's flights and return to/from the area, and the circumstances under which they left."[265]I will briefly give two examples of different local-variations:

The Kibungo prefecture lost two-thirds of its population during the genocide, which had led to thousands of mostly Hutus fleeing to neighbouring states. After the genocide, mainly Tutsi (old-caseload refugees returned) and moved into the abandoned homes, but after 1996, 'new-caseload refugees' began to return seeking their formerly abandoned plots/properties.[266]Newbury argues "rather than requiring refugees to cede houses to their former owners, the local authorities required everyone to move into villages".[267]Furthermore, the Rwandan authorities forced local residents to share their land with returnees, without guiding legislation or with payment/ compensation. The Centre for Conflict Management (National University of Rwanda) found that over half the conflicts in Kibungo prefecture are related to land sharing.[268]Human Rights Watch reported that 'a significant number of Rwandans applying for refugee status in neighbouring countries, expressed "continuing anger at having to sacrifice some of their land at official order some seven eight years before."[269]

In the northwestern parts of the former prefectures of Gisenyi and Ruhengeri, villagisation has been a violent affair. During 1997/1998 this area was "a war zone, where Hutu abacengezi (insurgents or rebels) made sporadic attacks on army installations, killed local officials, and attacked Tutsi refugees who had fled from ethnic violence in the Congo."[270]Newbury notes, whereas the abacengezi claimed to be fighting to liberate the Hutus form Tutsi oppression, it was in fact Hutus who fell victim to the RPF's mercilessly retaliated attacks against the Hutu civilian population, "who were suspected of providing succour and support to the guerrillas."[271]This not only severely affected their crops, but forced 40 000 Hutus into 'temporary shelters', which subjected inhabitants to horrific and inhumane conditions.[272]

Depending on the dispute, whether they are due to customary or statutory legal aspects, will determine dispute mechanism to pursue. Huggins, argues typically the first option is to approach the widely respected "gacaca" family council (which is different to the Gacaca Court system).[273] The 'gacaca family council' involves all relative family members and "wise" community leaders, as well as witnesses. Therefore, the gacaca family council does not use statutory law, and often relies on the "relationship between the participants" for enforcement of the gacaca's decisions.[274] If one of the parties does not feel satisfied, they can then approach the local authorities for legal redress, from local level (Nyumbakumi) to the mayor at commune level.[275] Huggins notes that decisions are based on "their ability to command respect at the local level as well as their knowledge of the communities involved".[276]Furthermore, there is certainly ethnic-favouritism, ad-hoc and various local-arrangements being made, and bribes taking place. There is very little information (government or independent research studies) addressing the dispute-resolution mechanisms.

5.10   Land Ownership: Legalising Dispossession in Rwanda

I will now address the contentious of land ownership and access to land tenure. Post-genocide Rwanda has inherited a 'complex land matrix' whose layered contours have been formed over many decades.[277]It attends to the crisis through the new 2005 Land Law. The Ministries

of Lands, Environment, Forestry, Water, and Mines' assert that its aim is to "establish a land tenure system that guarantees tenure security for all Rwandans."[278]

Whereas recent land reform in African countries have incorporated or taken into account, customary land tenure system, by contrast, the post-genocide 2005 Land Law has casts the customary tenure system in a negative light and sees rights as being "individual by nature".[279] The policy document states that "the definition of land…carries the mark of the socio-political history of the country."[280] Musahara et al argue that "the new policy is somewhat contradictory regarding the influence of customary tenure…it characterises current written law as "very restrictive and confining" and the customary system as "widely practised, but with a tendency to cause insecurity, instability and precariousness of land tenure, in general."[281]The ubukonde system was officially abolished. The policy avoids making references to the political nature of land tenure, and the fact that different systems served different ethnic groups, but how it narrates the past is deeply political. For example the governments states "one should try avoid being trapped by cultural considerations…", but then it in its historical narrative on pre-colonial tenure it states "Facilitated economic production, stability and harmony in production…The profits were thus based on the liberty to occupy any territory as well as the complementary links among types of production…"[282] Thus, it completely ignores the experiences of forced labour, taxation and brutality experienced by the Tutsi monarchy.

The question of 'who owns the land' is complicated in Rwanda by the ambiguities and contradictions in the 2005 Land Law policy document. For example, the policy stipulates that "Rwandan farmers, like city dwellers, believe that they own their land" it also recognises "Rwandans believe that once land has been recognised as theirs it cannot be taken away from them", moreover it stipulates that "the Rwandan state regards itself as the owner of the land."[283]Rwandan small-farmers are very concerned about the overlapping in meanings between land-ownership and land-leases. Furthermore, the 2005 Land Law stipulated that "land holders enjoy full rights of ownership if their land is used for commercial, industrial or a series of other enumerated uses, but the list does not mention agriculture…"[284]Thus, suggesting that full land-rights were not granted to smaller farmers. The government argues that in order to guarantee land rights, one needs to have a land title/ title-deed but the registration document continues to refer to land as being leased on behalf of the state to the leaseholder. Moreover, in order to register, one must own 1ha of land (majority of Rwandans own less than 1ha), and the registration requires a business plan (demonstrating how one intends to use the land and how it fits within the national economic reform project).[285]This requires formal skill-education and financial resources, which the government has not taken into consideration, and has proven to be both an obstacle for owning land and is a source of insecurity for small farmers/ land owners.

Hintjens argues "the law starts from the false premise that in the Rwandan context, larger-scale farms would be more efficient than the small family-farmed plots."[286]However, the distress sales of land and the increasing land scarcity within larger families, has meant that the rural poor now need food supply aid simply in order to survive.[287] The state ignores this

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reality, and has instead pushed for 'consolidation' of land-holdings, and relocation to the imidugundu, rather than engaging in the expertise and knowledge that most rural-Rwandans have about agriculture. Moreover, as Hintjens argues "the problem of small-scale producers in Rwanda is not a Malthusian one" but is an outcome of the growing elite land-grabbing that is taking place.[288]The modifications of land reform has been small but "significant in showing both movement towards increasing support for the elite and wealthy landholders as opposed to the poorer Rwandans and increasingly clear commitment to providing land for the returnees who fled Rwanda in the 1960's."[289] Particularly, RPF-linked people were provided plots of up to 100 hectares and more (e.g. General Kayumba Nyamwasa- 207ha; Patrick Ngoga 384h).[290]The question Reyntjens asks 'how did people who arrived in Rwanda in 1994 were able to amass such land holdings in a country experiencing acute land shortage?[291]In response Huggins indicates that these practices have "cast serious doubt on Rwanda's commitment to following the laws and procedures for registering land claims and thus improving security of land tenure."[292] Authoritarian practices, elite-resource capture and high aid dependency have resulted in structural and social violence, but also direct physical violence due to the coercive practices but the local administration to get Rwandans to obey their orders.

5.11 'Victims justice' and the growing 'landless population'

In the aftermath of the genocide, the government had greatly publicised the 'agricultural disaster' at the end of the war, which added to their claim that socio-economic pro-growth policies and modernisation were acutely necessary as a solution. The government has also used 'development' as tool for reconciliation by demonstrating to Hutus and Tutsis that it is pursuing non-discriminatory and non-ethnic policies. However, as Ann Ansoms notes "so-called pro poor policies can introduce or reinforce institutional barriers for many, while facilitating access and enhancing the opportunities for few."[293] A critical failure of the state, has been that it downplays the crisis of land rights (wrapped up in a complex land-tenure legal system) and the prevalence of illegal repossession by returning populations. This has led to an expansion of the 'landless population.' USAID released a report assessment, stating "[The new land policy] could increase inequality and exacerbate class divisions, which if politicised, could lead to conflict…[i]f the dispossessed subsistence farmers are mostly Hutu and the commercial farmers are mostly the Ugandan Tutsi elite, there is a risk of recreating ethnically-based, patron-client relations that characterised the Tutsi monarchy and colonial period."[294]The land-market is also viewed as being ethnically biased, because majority of buyers are Tutsi and majority of sellers are Hutu. It also prevents 'genocidaires' or even the accused from purchasing land. [295]Moreover as Peter Uvin notes the regime's engineering "has led to a dramatic rise in income inequality, mainly between the city and countryside, which de facto means between Tutus and Hutu. This may be politically very dangerous and it may well be one of the reasons the RPF intends to maintain tight control over all the reigns of power."[296]

The 2005 Land Law Policy contains a historical section that describes reasons for being landless pre-1994. These are, "people who have become landless through the distress sales of

the land, or sheer land scarcity within a family…people depending on renting or sharecropping…women, particularly widowed, divorced or single women."[297] In today's context, the 2005 Land Law also narrowly defines the 'landless' as being specifically "'old case' refugees who have returned: Rwandans who fled the country in 1959 or later and stayed outside the country for more than ten years."[298] Musahara et al note that it is true that the old-caseload category has been the major victims of land problems in Rwanda, but "No other type of landless person is mentioned."[299]

The Rwandan government has repeatedly emphasised their "obligation to provide for those who have lost land and property when they fled the country after the 1959 revolution."[300]The Minister of Local Government Protais Musoni (close ally to Kagame) had reiterated this commitment in his speech addressing the return of 60, 000 Rwandans. Musoni states "Every Rwandan who happens to return home has a right to own a plot of land in any part of the country. It is your (mayors') role to secure such land, even if it means redistributing it among natives."[301]He then went on to speak of "amasambu ya demokrasi" – "plots of democracy", and addressed the returnees who are "feeling cheated."[302]Musoni indicated "land may be taken from other Rwandans if needed to provide for the returnees." [303]Des Forges argues that the only resolution for the returnee populations land claims, rests on the Arusha Accords recommendation (ten-year limit) but that in many cases the old-caseload refugees and returnees have been able obtain land without much difficulty.[304]In some cases this has been to go to court, but in most cases they have used other channels of influence to have their land restored to them. Moreover, as des Forges points out, no where in the Land Law does it prohibit anyone from just taking land by other means, and in fact stipulates "Land taken by force may be exempt from the usual thirty year limit of legal action."[305]This allows the old-caseload refugees and returnees to make the claim that their land was unjustly taken by force between 1959-1994, and should thus be rightfully returned to them.

Land provisions by the state have also been viewed by the Hutu population as being ethnically biased. To begin with, mainly Hutus have been made to give up their land, enter into land sharing, or have been relocated to the imidugundu settlements without compensation. Innocent Gahigana states that since 1996, 'The Akagera National Park', has been set aside to provide land for the 1959 returnees, which has become an area of great tensions and land dispute because it is a national reserve.[306] Other public land, such as the Gishwati Mountain Forest and Mutara Game Reserve, has also been allocated to the 1959 returnees. Furthermore, they have been settled on "fertile land, pastures and areas near shallow sections of marshlands", which has been viewed as showing favouritism towards the 'old caseload refugees' and returnees by granting them the most 'agriculturally-productive' land.[307] Recent survey research shows that 'herders' have been receiving "large swathes of land" for cattle grazing, and are more organised through 'Herders associations'.[308]

The domestic politics in Rwanda has also influenced the return of refugees. A research study, A Dangerous Impasse: Rwandan Refugees in Rwanda, conducted interviews with Rwandan refugees in Nakivale settlement in Uganda, asking why the refugees are reluctant to repatriate back to Rwanda. The study seeks to gain a deeper understanding of the linkages between

conflicts over citizenship and belonging in the Great Lakes region, and how identity contributes to displacement. The overwhelming responses related to "the fact that they believe that if they return to Rwanda, they will not be safe, let alone have equal access to their rights as citizens of the country."[309] The findings from the respondents have also expressed the deeper problems due to the political and legal system currently in place. Inextricably linked to refugee returns, is the view that the "gacaca process is unjust" which has led to the "stigmatisation of Hutus and collective attribution of guilt" that directly impacts their ability to 're-access land and other related property.'[310] Moreover, the respondents shared that "old caseload refugees are able to exercise claims on land for which they did not have a case."[311] The refugees also expressed that mostly Hutus are made to live in the 'imidugundu'.[312] They also pointed out that there is gap in the Land Law that protects provisions for land previously owned by refugees, and by "virtue of their status are unable to contest any claims…"[313] Finally, the refugees expressed fear to return because of state-repression, and how ethnicity continues to function as an instrument for control and polarises communities. The respondents stated that the control of the state impacts "almost all aspects of its citizens lives."[314] One respondent described "being forced to grow red peppers and flowers despite the fact that they are not profitable", and another stated "you are told what to grow and are imprisoned if you refuse."[315]

5.12 Conclusion:

The current land reform policy was responding to the immediate crisis of the genocide, and has taken on an incredibly complex task of addressing historical land practices. The state acknowledges that it does not have the financial and resource capacity to compensate 'victims of the genocide', and thus has pursued pro-growth development policies, the 'villagisation programme' and reconciliation as a dimension to development, as an alternative solution to meet the problems Rwanda's reconstruction faces. Unfortunately, as a consequence of being the military and political victor that has inherited Rwanda's post-genocide reconstruction project, means that land reform today is distinctly shaped by the RPF's vision. This vision is formulated by their experiences in exile; by 'victims justice'; and a particular narrative of the past, from pre-colonial to the colonial and post-colonial regimes. Thus, their policy-vision asserts an obligation to Tutsi within Rwanda and in the diaspora. This is demonstrated in its commitment to compensate and provide for 'old-caseload refugees' and returnees who are viewed as historical victims of political violence, exclusion of rights and citizenship, and dispossession of land and property. As in the past, Rwanda's land law relies on the power of the state to have established control over land and to govern the debates on the 'land question'. This has impacted land access; land ownership; and land disputes, and has allowed for the ruling political elite to abuse their power through elite-capture of resources, bribes and corruption and ethnic favouritism. The current political elite has also discriminated against Hutus because of their association as an identity to agricultural farming; but they also contribute to marginalisation of the rural poor because of their modernisation-policies. Historically, in Rwanda it has been the rural poor (both Hutus and Tutsis) who have reaped few material benefits because of the elites influences on policies and patron-client relationships. Thus, it is important to critically investigate the historical role that

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the political elite has played in the relationship between land, identity and political violence. The international community also has a role to play, in that they provide donor assistance to policies that are contributing to the growing inequality between the rural poor and urban middle class, and the expanding 'landless population'. The international community has also supported the 'forced' repatriation of refugees, who as the study in Uganda demonstrated, there are many who are reluctant because they fear the current situation in Rwanda, and don't feel that they will be treated equally and gain meaningful citizenship rights and benefits. Owning land is crucially important for their survival (livelihoods, food security, cultural identity). Therefore, the current regime needs to think carefully about their approach to land reform, specifically if it serves as a foundation to transcend historical relations between land, political identities and political violence. Or is it merely the latest stage in historical practices of land dispossession, land alienation, and reproducing a mode of power and notion of citizenship that determines one groups belonging and another group's exclusion?

Chapter Six

"Everything is yours, everything is not yours"[1]
(Quote by Clemantine Wamariya, Rwandan seeker residing in the U.S)

6.1 Introduction

This chapter explores the consequences of 'victims justice' in the Great Lakes region. The close geopolitical proximity and porous borders between the states in the region have meant that each state's political and social dynamics tend to spill over, and take on a regional dynamic. The Rwandan genocide has had a devastating and widespread impact on the region, which has contributed to one of the most destructive wars in modern history, the two DR Congolese wars. This is in turn has led to a complex Great Lakes refugee crisis. In the immediate aftermath of the genocide, the RPF's central concern was the securitising the Rwandan territory from possible retaliation and invasions by Hutu militias, and protecting surviving Tutsis within Rwanda and in the diaspora. With the support of major western superpower, President Kagame has always maintained that the genocidaires and former members of General Habyarimana's forces, have infiltrated the Kivu-regions in Democratic Republic of Congo, and pose a real security threat. This is the 'pretext' for Rwanda's military campaigns in DR Congo since 1996. Much of the fighting has taken place in the mineral-rich areas of DR Congo, which has garnered the critique that Rwanda's 'moral argument' is a mask for its economic interests. This chapter departs by addressing this explanation. I argue that although it does have a basis in reality, it does not sufficiently address the crisis in the region. Thus, I redirect focus to the fact, that what began as 'morally simple' motive to seek justice and security for Tutsis, has quickly evolved into revenge attacks ordered by Kagame. These attacks specifically targeted Hutus in the diaspora, however both Hutu and Tutsi are victims caught up in the political violence. Hutus and Tutsis have a long history of migration into DR Congo, over different periods of time. They are referred to as 'Kinyarwanda-speakers' or the Banyarwanda. After the genocide, the regional dynamic was such that it shaped Hutu and Tutsi into two separate politicised diaspora communities, marked by violent overtones. This chapter will address the politicisation of these two diasporic communities. I do so by tracing DR Congo's inherited colonial legacy, which has produced a post-colonial citizenship crisis, that merged with Rwanda's own crisis, which had explosive repercussion after the genocide. This has born the Great Lakes refugee crisis where citizenship and belonging have become the most critically important question for the millions of people displaced in the regions. Attending to the crises in the region, requires returning to the political crisis in Rwanda, because Rwanda lies at the epicentre. Thus, I conclude this chapter with a discussion on Rwanda's inherited colonial legacy, specifically the institutions of rule which continue to retain political identities and determines the modes of power, citizenship, and justice.

6.2 African Great Lakes Region: A 'Hotbed' for instability

The Great Lakes region consists of countries in East and Central Africa, a complex network of states that are inextricably linked politically and economically, which is why implications for peace, security and governance require a regional response.[2] Patrick Kanyangara argues "it is also a region with interlinked conflicts and common fundamental problems that emanate from post-colonial challenges to state-building and nation-building."[3] The Rwandan genocide and post-genocide Congolese-Wars challenged the classic theorisation of 'interstate' and 'intrastate' conflicts.[4] There is a tendency to overlook the specificities of each country, and lean towards macro-explanations for understanding the on-going regional conflict because they are seen to share common dimensions such as; 'multi-ethnic identity divisions, poor governance, structural violence and the role of natural resources.'[5] In addition, since the Cold-War, we have seen an imposition of liberal-democratic notions ('rule-of-law', elections and inclusive politics), and neo-liberal philosophy, which has unfairly surrendered state sovereignty through structural adjustment programmes and conditions applied to aid/donor-funding.[6] Although many of these conditions were later abandoned, they had a long-lasting impact on the "position of incumbent regimes and engendered instability."[7] Critiques on 'national sovereignty, austerity and privatisation' led to many African-states returning to the 'national question'. This was seen in the late-1990s in Rwanda, and held true for Congo as well. Rene Lemarchand notes in DR Congo "as the delivery of political rewards (…) became increasingly problematic, the control of state shrank correspondingly…just as Mobuto owed his rise of power to penetration of East-West rivalries on the continent, in the last analysis the collapse of the Zairian state must be seen as a casualty of the cold war's end…"[8] It became apparent that some states were more sovereign than others, and the moral and legal justification were masking a global imperial project. As a broader critique of the 'neo-colonial conditions' of the 'West' was made, it was Africans who were made to bear the consequences.

There is a popular interpretation and trend in thought that attributes the instability and inability of failed African states to fulfil the most basic roles of government towards citizens as owing to the "arbitrary establishment of borders by colonial powers."[9] The geopolitical crises in the Great Lakes region were taking place in the midst of a debate (1996-1997) that was responding to other significant African conflicts, such as the Second Sudanese Civil-War (1983-2005) and the Angolan Civil-War. These wars are intrinsically linked, in that the geographical proximity has produced "hotbeds of instability and the play of objective alliances (where all actors reason in terms of "*the enemy of my enemy is my friend*") have imbricated these conflicts."[10] The Angolan civil-wars demonstrate that politics is only settled with violence, whilst the cyclical civil-wars in Sudan and the 2011 secession of South Sudan, marked a crisis of the 'nation-state'. South-Sudan's secession is troubling for many reasons, one of which is that it became an example for other secession movements, and re-surfaced the debate on 'territorial borders' and the criterion for citizenship, as well as whether states should be dismantled and broken up into smaller nation-states. To make matters worst, international actors have also aligned themselves with domestic political actors, which in

some instances have re-enforced polarised perspectives in political consciousness and influenced the frameworks of transitions and resolutions.

DR Congo 'constituted the juncture of two war zones' but it also has its own unique crisis.[11]By 1997, the porous borders of DR Congo, together with the lack of an effective national army or administration, 'very poor communication between the peripherals and centre', and an informal economy, led to the perception that the state had "virtually disappeared."[12]Secondly, the then-President Mobutu was implicated in supporting the Khartoum government against the South Sudanese rebellion, who were in turn supported by the U.S, Uganda, Ethiopia and Eritrea.[13]Thirdly, and as I will discuss later, the implication of Mobuto support, provided a base for an armed attack on Congo in 1997, by Uganda, Rwanda and Burundi. Mobuto in turn was supported by the Angolan rebel movement-UNITA.[14] These factors eventually contributed to the downfall of Mobuto.

Uganda and Rwanda, to a lesser extent Burundi, intervened into Congo, for reasons relating to their security.[15] Rwanda believed that there is a threat to their security, because after the genocide, the former government's armed forces- FAR and the *Interhamwe*, along with thousands of Hutus fled to Congo to seek refuge. Since 1995, Kigali has organised armed assaults on 'Hutu refugee camps' in Congo, with two particular invasions that contributed to the two Congolese-wars. In the first invasion, its stated objective was security. However, in the second invasion, the RPF "funnelled Congo's remarkable mineral-wealth to Kigali."[16]I would like to acknowledge and briefly address a popular argument made, regarding the recent wars in the region. Particularly, that Rwanda's central objective in Congo is an economic one, vying for the Congolese mineral-rich resources and territorial expansion.

6.3 D.R Congo and the 'Predation' Argument

In 2009 US Scholar Jeffrey Herbst and South African scholar Greg Mills posed a crude resolution to the crisis in DR Congo. They wrote "the international community needs to recognise a simple, albeit brutal fact: The Democratic Republic of the Congo does not exist. All of the peacekeeping mission, special envoys, interagency processes, and diplomatic initiatives are predicated on the Congo myth- that one sovereign power is present in this vast country-are doomed to fail."[17] Herbst et al continue their analysis by arguing that "Congo has none of the things that make a nation-state: interconnectedness, a government that it able to exert authority consistently in a territory beyond the capital, a shared culture that promotes national unity, or a common language. Instead Congo has become a collection of peoples, groups, interests, and pillage who coexist at best."[18] Whereas the authors have noted that "Congo is a product of its history" particularly the 'predation' of colonialism and foreign powers, the authors chose to merely "write Congo off" and propose that this country of 67 million people be 'split amongst its surrounding countries'- to 'dissolve' the borders.[19]

Disturbed by their analysis, Jacques Depelchin has written a poignant response to Herbst et al. Depelchin, points out that the authors, as well as former US State Secretary for African Affairs Herman J. Cohen (who is an outspoken diplomat on Congo-affairs) have a "central

idea to promote the interest of Rwanda, which has been anointed as the best manager/protector of global corporate mining/predatory ventures in Central Africa."[20]Rwanda is a land-locked country, that has little to offer economically, and is surrounded by resource-rich neighbour-states, especially Congo. Much has been written in the literature about the shift in Rwanda's interest in Congo after 1994 and more recently its post-genocide economic and territorial expansionist goals. Congo is an incredibly mineral-rich country that unfortunately has never been able to have complete control over its resources.[21]

In the late nineties, Kigali and Kampala became primary delivery points for Congo to sell their minerals on the world-market.[22] Rwanda's economy/national budget and the lifestyles of its military and political elite, all are greatly dependent on Congo's export minerals. The more Congo disintegrates, the more its minerals are re-orientated towards Kigali and Kampala. Between 1996-1997 and then from 1998-2002, the Congolese-Wars developed a state of 'permanent impunity'; 'a culture of devastating and increased violence'; and an extensive "informal economy run through parallel networks making use of state's weaknesses developed in a totally militarised economy run by warlords."[23]

In 2000, it estimated that the Rwandan army generated between $50-$100 million through the exploitation of coltan, in the same year its military defence budget was $86 million.[24] Kris Bewouts asserts "The official Rwandan budget not only provided the invisible part of Rwanda's defence budget, they also bought the loyalty of the political, military and economic elite in favour of a regime that was never as monolithic or coherent as it wanted to be."[25] Filip Reyntjens writes that Rwanda's motives in Congo have changed over time from "a combination…of genuine security concerns, economic interests, ethnic solidarity and even (selective) humanitarian concerns, the need to 'buy' internal elite solidarity, (military) institution building and a feeling of entitlement coupled with a sense of invincibility against the background of the comfort offered by the collapse of its rich neighbour."[26] In 2013 the Enough Project produced a report on Rwanda-Congo's relations ("*Rwanda's Stake in Congo: Understanding Interest to Achieve Peace*"), which stated, "The key to unlocking peace is to expand the economic pie for Congo, Rwanda and the region by bringing in a much more robust private sector that practices responsible investment in conflict-free minerals…If the U.N. and U.S envoys build the right incentives for cooperation in the peace process, this investment will benefit all parties…Rwanda, Congo and the region will then be financially invested in peace instead of war."[27] In review of Gerard Prunier, Rene Lemarchand and Thomas Turner's seminal work examining the region's dynamics, Howard W. French writes "In all three, the Kagame regime, and its allies in Central Africa, are portrayed not as heroes but rather as opportunist who use moral arguments to advance economic interests. And their supporters in the United States and Western Europe emerge as alternately complicit, gullible, or simply confused. For their part in bringing intractable conflict to a region that had known very little armed violence for nearly thirty years, all the parties-so these books argue deserve blame, including the United States."[28] Bewouts argues that while it is true that DR Congo is increasingly important to Rwanda's economy, it would be a "terrible simplification to reduce the problem in eastern Congo to its Rwandan dimension."[29] Defending Rwanda's economic

interest is only one layer of the conflicts dimension. Depelchin offers a different approach for thinking about the Congolese-wars and the role of Rwanda.

Firstly, Depelchin redirects attention to functions of regional and global economic stakeholders in the DR Congolese territory. The international alliances with post-genocide Rwanda have perpetuated the image that Rwanda stands for 'order and development' (anti-corruption and development goals: Vision 2020), which has seen it garner support/cooperation from its allies during the intervention in DR Congo, premised on the argument it will increase security, as well as 'order and development'.[30] Depelchin argues that the author's 'mind-set' is a typical product "which draws inspiration from European-US based perception that their interventionism in African and world affairs has always been for the good of everybody. At least that is the pretension."[31] As they look through the lens of 'order and development' they get rid of segments of humanity, which they view as the source of 'dysfunction', and who no longer serve the 'order and development project'.[32] As the "so-called financial crisis" unfolds, there is an authority or entitlement amongst the major powers that are tempted to push for solutions that will remove or discount whoever they feel are dispensable.[33] In DR Congo this has led to a narrow account of the political violence, and together with the international community's 'genocide-guilt' that has allowed Rwanda to acquire "regional superpower status" and be entrusted to intervene in DR Congo with promises of peace, security, order and development.[34] Depelchin argues that the logic of the authors is so fixated on the negation of the Congolese people and their history; they seem unaware of the consequences of getting rid of the Congolese entity.[35]

The 'mind-set' can be traced historically to the process of conquest since the Berlin Conference and subsequent colonial projects, in which there is a tendency to "determine the conditions under which Africa and Africans must exists or not exist" operating on a 'tabula rasa'.[36] This has led to 'Congo's history having not meant anything' and negates the history and experiences of Congolese people, which allows for one to in 'one bold stroke erase them off the map'-to pretend that 'Congolese' have never existed.[37]

Depelchin also troubles over the treatment of the DR Congo within the framework of the 'nation-state'. By their account, Herbst et al, have completely dismissed the Congolese state. In response Depelchin argues that the "entity is much more that its name-the nation-state."[38] There are historical limitations of the 'nation-state' because of the historical and political context of DR Congo. This is part of a broader crisis in writing about the post-colonial state, where there is a tendency to 'ignore and recount only parts of the story', and as Depelchin argues, in DR Congo the history of 'predation' ("through Leopoldian, colonial and neo-colonial regimes") have largely been written out in the current narrative on the conflict.[39]

Cheikh Anta Diop has written about the "elimination of colonial borders", but from the perspective of "uniting against the predators, not for the purpose of carrying out their wishes."[40] Rather than proposing a solution in the form of 'dissolving borders', democracy itself has not been critically interrogated, perhaps as some argue that is has become obsolete. Moreover, Depelchin calls for an investigation into the 'motives' or the 'unstated logic'

which he refers to as the 'rationalisation for increased predation on those who have endured it most' and to think of DR Congo within a history of predation that has taken place since the "Belgian Congo has been treated by its owners and managers as a vast plantation."[41]Departing from Depelchin's framework, I will continue the discussion by exploring the colonial legacy that has produced a citizenship crisis in DR Congo, and which merged with the political crisis in Rwanda, after the genocide. I argue that the 'predation argument', framed as a economic conquest is a significant problem, but it does not sufficiently explain the Great Lakes regional conflict (and the refugee crisis). At the heart of the problem is the crisis of political power and the institutions of rule, which is determined by the politics of indigeneity, and which has a profound impact on the meaning of citizenship and belonging.

6.4 Migrating Violence, Citizenship and Political Identities in the Region

In the late 1980s it became apparent that there was a profound geopolitical crisis at the heart of the Great Lakes Region. Reyntjens articulates "the seeds of instability were sown in the beginning of the 1960s: the massive exile of the Rwandan Tutsi who fled neighbouring countries during and after the revolution of 1959-1961, and the virtual exclusion of Tutsi from public life in Rwanda, the radicalisation of the Burundian Tutsi who monopolised power and wealth and the insecure status of the Kinyarwanda-speakers in the Kivu province."[42] The convergence of the post-colonial citizenship crisis in Uganda and Rwanda resulted in an armed repatriation (the RPF), which triggered the 1990 October invasion. After the military victory of the RPF in the Rwandan genocide, an estimated 2 million Rwandans fled to Tanzania but predominantly into DR Congo. Reyntjens states, "a unique combination of circumstance explains unravelling of the successive wars. The main circumstances can be found in the recent history of Rwanda. Although it is the smallest country in the region, the epicentre of the crisis lies in Rwanda."[43] Mamdani argues, as the RPF had crossed into Rwanda in 1990, it made another crossing into DR Congo in 1997.[44]Furthermore, the refugee migration from Rwanda's genocide, and the subsequent invasion by Kigali, has exported a "double tension" in the Kivu regions (Congo), one being an external tension between Kivu and the power in Rwanda, and a tension within society in the two Kivu-regions.[45]This tension grew as the refugee population grew, which blurred the distinctions within the Kinyarwanda-speaking community, and exposed a long-established post-colonial citizenship crisis, producing a volatile crisis.

6.4.2 The Banyarwanda in DR Congo: The ethnic and civic dimensions of post-colonial citizenship

The Hutu and Tutsi population in Rwanda is different to that of in DR Congo, where they are called the Banyarwanda, or Kinyarwanda-speakers. The differences emerge from different colonial experiences and inherited legacies. In Rwanda, Hutu and Tutsi are the "salient political identities" but in Uganda and DR Congo they were a "single political identity", which are known as the Banyarwanda.[46] Secondly, in Rwanda, Tutsi (Hamitic origins) and Hutu (Bantu) were constituted in the colonial era as racial categories. Tutsi were ruled

through civic law and Hutus through customary law. However, in the cases of Uganda and DR Congo, they had experienced indirect colonial rule that "distinguished between the indigenous (natives) and nonindigenous (non-natives).[47] Thus, identities are both racialised and ethnicised. With Independence, civil law was deracialised, but the customary law that ruled ethnic groups remained.[48] The majority in DR Congo were divided further into ethnic groups, each with its own "customary home", "customary law", and a "customary" authority to enforce it.[49]

The migration of Hutus and Tutsis into DR Congo, reaches back to pre-colonial times, and has staggered over centuries.[50] Mamdani proposes three categories of the Banyarwanda in DR Congo, which assist in illustrating the citizenship crisis. These are; 'nationals' (those who entered the Congolese territory prior to the colonial era), 'migrants' (those who crossed borders at different times during colonial era), and 'refugees' (post-independence).[51] 'Refugees' were part of a political diaspora, whereas migrants and nationals were considered a cultural diaspora.[52] The Belgian colonials in DR Congo referred to the Banyarwanda nationals as ethnically indigenous (natives), but those that came after the arrival of the colonials were seen as non-indigenous (non-native).[53] After Independence, this 'ethnic distinction' produced an acute dilemma for citizenship.

Similar to Uganda, DR Congo's decolonisation saw the de-racialising of the civic identity, but not the de-ethnicising of the 'native/indigenous' identity.[54] The rationale was to get rid of the stigma that racial categories produced by colonial rule, but the 'native' was naturalised. Mamdani states, "civic citizenship is the consequences of the membership to the central state. Both qualifications for citizenship and the rights are its entitlement and are specified by the constitution. Under de-racialised civic law, these rights are mainly individual and are located in the political and civil domain."[55]

The idea that the 'native' is a natural identity meant that it continued to be reproduced in the post-colonial state. The implication for the Banyarwanda is that they became considered "ethnic strangers."[56] Over time, the Banyarwanda may have had access to civic law and citizenship, but they were never allowed to have their own "ethnic home"- governed by an ethnic administration (Native Authority).[57] The purchase to be made in post-colonial DR Congo is that to be considered ethnic and have a 'Native Authority' would allow one to then have access to important rights such as land ownership, which is the greatest socio-economic material inheritance.[58] An ethnic identity is also considered to be more of a social identity, accompanied with a sense of belonging, because it has more meaningful socio-economic rights and a customary claim to land.

There are important distinctions to be made about the Banyarwanda that explain the political dynamism that has evolved. To begin with, although the Hutu and Tutsi in DR Congo were lumped together (as Kinyarwanda-speakers) between 1963-1994, they have historically been very different communities in North-Kivu and South-Kivu.[59] In Northern-Kivu, one finds that the Banyarwanda are mainly Hutus, and in South-Kivu they are mainly Tutsis. Reyntjens writes that the Hutu Banyarwanda "often aligned themselves with 'autochthonous' ethnic

groups".[60] The perception amongst 'autochthonous' leaders was that the Tutsi Banyarwanda privileged their ethnic ties to the Rwandan state, over national ties, which cast doubt over their loyalties to DR Congo.[61] This perception was re-enforced after the 1990's when the RPF aligned and self-identified themselves with the Banyarwanda in South-Kivu, and made and appeal for them to return to Rwanda. The RPF were operating on a homogenous understanding of the Tutsi diaspora. They presented themselves as being both 'revolutionary' and a political power that could represent Tutsis and break the association made that sees Rwanda as a Hutu nation. The importance of historicising political identities is demonstrated in the irony of this 'self-identification' because there are two influxes of Tutsis in South-Kivu that were prompted by Tutsis-related historical events. [62] Firstly, as an outcome of the centralising of power by King Rwabugiri, many aristocratic Tutsi families left Rwanda in the late-nineteenth century.[63] Secondly, there was a "bitter factional struggle in the Tutsi elite after the death of Rwabugiri."[64] Therefore, there are Tutsis who voluntarily left Rwanda and who don't have a 'romantic view of Rwanda as their home'. Rene Lemarchand notes "many Kinyarwanda-speakers, Hutu and Tutsi, trace their family origin to pre-colonial times and have every right to claim the status of Congolese citizens."[65] This is true of the Banyamulenge and the Hutu of Bwisha, many of whom have lived in the area long before the colonial era.[66] Furthermore, the post-colonial volatile conflicts over power encouraged many of the Banyarwanda, to distance themselves from the "explosive world of Hutu and Tutsi in Rwanda and Burundi, instead seeking to define their place in the ethnic kaleidoscope called Congo."[67]

The colonial predicament had a profound impact on the imaginaries of political and social order and related modes of subjectivity. [68] By failing to disinherit the Native Authorities, customary law was able to reproduce subjectivity and mark the continuation of the colonial history of rule. Judith Verweijen and Koen Vlassenroot argue, "the effects of processes of ethnic and territorial reification were very powerful, as ethnic communities came to be represented as existing since times immemorial and as having 'natural right' to their 'homeland' that was justified by their 'having arrived their first'. Thus, a dichotomy was created between communities identifying themselves as 'born from the soil itself'."[69] These 'autochthones' further demonstrated to the 'ethnic strangers'- the Banyarwanda, that they lacked having a 'tribal home' and increasingly they became viewed as 'recent arrivals', as 'immigrants' or 'foreigners' which influenced the debates on rights and citizenship, and further shaped political identities.[70] The salient outcome is demonstrated through the Banyamulenge group.

Lemarchand articulates; "the Banyamulenge are a perfect example of how geography, history and politics combine to create a new set of identities within the larger Banyarwanda cultural frame."[71] Verweijen et al argue "The growing political emancipation of the Banyarwanda was also manifested in their effort to change their name to 'Banyamulenge', or 'those from Mulenge', referring to the hill in the Moyens Plateaux where a part of their ancestors had temporarily lived."[72] Most historians state that the group is predominantly made up of Tutsi pastoralist, who had migrated to the area prior to colonialism.[73] Lemarchand notes that they are "culturally and socially distinct from the long-established Tutsi in North Kivu and the

Tutsi refugees from the 1959-1962 Rwanda revolution. Many do not speak Kinyarwanda, and those who do, speak it differently."[74]The group experienced a political awakening between 1964-1965, when some of the Banyamulenge had joined the DR Congo-rebellion, and supported the insurgency only to later switch sides when they saw that their cattle were being slaughtered.[75]Lemarchand notes that their efforts did not go unnoticed by Kinshasa, and many were rewarded with 'lucrative positions', their children were well educated and they became self-aware that they could be an influential political force.[76]In a context where the politics of indigeneity is rife, and preoccupied with 'origins' and migration, the political emancipation of the Banyamulenge became a highly contentious issue after the 1970s.[77] 'Hardliners' from other communities refused the name-change linked to a place South Kivu, they saw it a "…a ploy from the Banyarwanda to 'mask their real origins', and therefore unjustly claim citizenship."[78]The 'name-change' would politically and socially mean that they could then be considered to be an 'original Congolese tribe'. In 1972, an influx of Burundian Hutus destabilized the region, and as the "indigenous majority" began to feel insecure, it created a sense of vulnerability for the Kinyarwanda-speaking minority.[79] All groups sought protection from the central state in this brewing citizenship crisis. In response, President Mobuto Sese Seko issued a decree law that granted citizenship to Banyarwanda refugees who entered Zaire between 1959-1963.[80] Fofana argues "by granting citizenship to all those present on Congolese territory at the time of independence, the decree erased distinction between the groups considered to be indigenous, later settlers, and refugees from 1959."[81]

The 1972 Citizenship Law threatened the livelihoods of the 'indigenous majority', who now felt that Mobuto was creating a 'free for all' environment for refugees from Burundi and Rwanda. There was also the perception that Mobuto was greatly influenced by Bisengimana, who was a 1959 Tutsi refugee from Rwanda.[82] The consequence was similar to the case of Uganda, where citizenship reform meant a return to indigeneity for political leverage and the preservation of rights. In 1973, Mobuto also passed a "General Property Law" which like Idi Amin's regime meant that all land was nationalized "including both the land under control of "traditional" authorities in the rural areas and land controlled by white settlers."[83] Mamdani argues that the law was "unable to implement the provision with regard to rural land under "customary control" but it did transfer land to a new Congolese capitalist class.[84] The 1972 law, benefited some of the Kinyarwanda-speaking population, who could now access land and property rights through gaining civic citizenship.[85] By 1991, in Masisi, 502 of the 512 families living in the area were Tutsi Banyarwanda who owned land.[86]Thus, the 1972 Citizenship Law opened up civic rights to those both from Rwanda and Burundi, which threatened the politics of power and rights, and re-surfaced nationalist politics that was aimed to oust the Banyarwanda influence. Fofana notes that the outcome of civic citizenship being granted to the Banyarwanda, led to it being vulnerable to political manipulation, and controversy that triggered a "nativist sentiment."[87]The 'indigenous Conogolese groups' feared that it allowed the Banyarwanda to use their influence over Mobuto for means of gaining power.[88]

In response to the political turmoil that was heightened by the1972 Law, there was a reform of the law that introduced the 1981 Citizenship Law. The new law repealed the former citizenship criterion, "persons originating from Rwanda-Urundi who were residents of the Kivu before January 1, 1950"[89] and stipulated that citizenship conferred to those who could "demonstrate an ancestral connection to the population residing in 1885 in the territory then demarcated as Congo would qualify to be citizens of Congo."[90]Much of the pressure for this repeal came from North-Kivu. The 1981 Citizenship Law placed emphasis on the 'Nationality Question', and as Lemarchand asserts, it marked "A turning point in relations between immigrant and indigenous communities."[91] The law was indiscriminate and de-historicized the different narratives and different migration periods of the Banyarwanda. Furthermore, to negate their numerical value at the ballot box during the elections, the Banyarwanda were allowed to vote in the 1985 provincial elections, but Kinyarwanda-speaking people were not allowed to run for office.[92] Thus, compounding "all Kinyarwanda speakers…into a single group, regardless of how long different sections had been together on Congolese soil."[93]This had a political impact that excluded both North and South Kivu. Stephen Jackson documents that after 1973, "some local authorities sought to deny national identity cards to Banyarwanda despite the law granting them citizenship."[94] Which meant that although the Banyarwanda became citizens, there was a prolific difference between "civic and lived citizenship" which "fostered a Banyarwanda identity based on the sentiment of exclusion from Congolese society."[95]

The Banyamulenge were especially resentful of such exclusionary measures.[96]The situation would prove to worsen as events unfolded in Rwanda from 1990, and then after 1994. After the RPF's military victory, the parliamentary 'Vangu-commission' took place, which was charged with "investigating the identity of the refugee populations".[97] The commission declared the Banyamulenge "foreign migrants" ("immigres estrangers").[98]It also advised the then 'transitional parliament' in April 1995 to swiftly adopt a resolution that demanded the repatriation of the Banyamulenge to their countries of origin, it stated "all Rwanda and Burundi refugees and immigrants without condition and without delay."[99]By 1996, the Banyamulenge in DR Congo, were referred to socially and politically as 'ethnic Tutsi Rwandans'.

6.4.3 Two Diasporic Communities: 'Victims Justice' exported into the Region'

The domestic social and political upheavals within each country in the region, became interconnected by the nature of the close geographical proximity. Between Burundi, Rwanda and the Kivu provinces, there is a combined population of 20 million that were migrating across the porous borders, which brought major security risks, and also demographic pressure that placed considerable pressure on land.[100]Secondly, Hutu and Tutsi had by the 1990s taken on an 'extra-territorial' regional dynamic that was exploited by the alliances between Mobuto-Habyarimana and Kagame-Museveni, which coalesced at the local level.[101] This was demonstrated in the violent 'cross-border tit-for-tat' due to the ethnic crisis between Burundi and Rwanda in 1972.[102] The Social Revolution in Rwanda had "generated a powerful backlash in Burundi, steadily raising the ethnic temperature until some 200,000 Hutu were

killed by Tutsi in 1972, in what can legitimately be called partial genocide."[103] This had a catalyst effect in Rwanda and DR Congo, as it led to anti-Tutsi pogroms and paved the way for Habyarimana's rise to power, but it also triggered a brutal retaliation in DR Congo against the Banyamulenge civilians.[104]However, none of the above, had carried consequences as 'devastating and wide-ranging as the 1994 Genocide.'[105]

There are two pivotal moments that are significant to note, which contributed to the polarisation of Hutu and Tutsi as two diaspora communities in the region. Both were an outcome of Rwanda's internal political struggle over power, which resonated with the political crisis within DR Congo.

To begin with, the citizenship crisis in Uganda and the negotiations of the 'right of return' for the Tutsi diaspora, exerted internal and external pressure on Habyarimana's regime. Habyarimana had exported the logic of 'nativism' in his approach to the Kivu-region, he saw the Banyamulenge as 'settlers' in the region. Mamdani notes, in the early 1980's Habyarimana "backed the creation of an organisation called Maghrivi in Goma, Ruchuru and Musisi in Kivu Province… he made two demands in return for his material and political support: one, that all Tutsi be defined as non-indigenous, no matter where they lived; and two, that all questions of citizenship be settled democratically, by majority vote."[106]Thus, attending to the question of Tutsis in Rwanda, expanded to include a debate of Tutsis in the diaspora. By the 1990s, Hutu nationalism spoke of 'Hutu victimisation' in the political, social and economic realm, and recalled the memory of Tutsi privilege, since the pre-colonial and colonial era.[107]This kind of rhetoric was a response to the RPF invasion, but it also coincided with tensions in North- Kivu.

In 1993, a 'land-conflict' erupted in North-Kivu. Encouraged by the Rwandan regime, and the Hutu-led organisation, Maghrivi, the Hutu Banyarwanda in North-Kivu formed a coalition between the rich and poor. Central to their demand to the indigenous authorities, was the Hutu Banyarwanda wanted their own chief derive from their group, a privilege reserved only to indigenous groups.[108] The local indigenous authorities refused, which led to a conflict that "evolved into a confrontation between the Banyarwanda and the recognised indigenous groups."[109] The growing scarcity of land triggered anti- Banyarwanda violence, carried out by the youth of the armed groups, from Nande, Hunde and Nyanga.[110] This demonstrated to Habyarimana that he was the 'protector of Hutus', he considered himself the "the President of all [Hutus], globally", and justified his claim to "intervene on behalf of the Congolese Hutu."[111] Habyarimana's administration had also been financing and advising Hutu organisations in North-Kivu, such as Maghrivi.[112] Moreover, Mobuto was considered a close-ally of Habyarimana, and whenever the Mobuto-army would intervene, Mobuto extended his protection over Hutus, and the army often would terrorise and kill Tutsis.[113] The collusion between the central Congolese state with the Hutu in North-Kivu, heightened fears among the indigenous groups that the state was assisting Hutus in taking over their land and possessions. This was coupled by the fact that wholesale expropriation of the land by the state, had not only dispossessed many of the 'indigenous Congolese' but also repeatedly violated customary land rights, broke up patron-client relations and eroded the power of the

chief authority.[114] Fofana argues "this provoked a rebellion that would soon find support in South Kivu and Rwanda."[115]

The 'citizenship crisis' has effected the Banyarwanda in North-Kivu since the 1970s, as they became more and more disenfranchised. Mamdani asserts, "North-Kivu had been home to a long-simmering citizenship crisis, stemming from the fact that the Banyarwanda of Masisi, previously recognised as indigenous, had been systematically disenfranchised over three decades beginning on the eve of Independence."[116] As tensions grow within society and with the central state, the more it tends to blur the distinction between 'immigrants' and 'non-immigrants' amongst the Banyarwanda, who had come at different periods. It also pitted the 'indigenous- majority' against the 'Kinyarwanda-speaking minority', and as tensions amongst the Hutu and Tutsi increased in Rwanda, it did so particularly in North-Kivu, where the Hutus were trying desperately to be seen as 'indigenous' and disassociated themselves with the Tutsi Banyarwanda.[117] In South-Kivu, the citizenship crisis only arrived in the early nineties, which surfaced because of the expectations of elections in early 1990s and later as a consequence of the Rwandan-genocide.[118] Meanwhile, there was also a "growing number of Congolese Tutsi who were returning to Rwanda, to join the ranks of the RPF's army."[119]

The second pivotal moment for the Hutu/Tutsi diaspora divide, came during and after the genocide, where the numbers of the Kinyarwanda-speakers had exploded, particularly in North-Kivu.[120] The 1981 Citizenship law led to a growing discrimination and victimisation of the Banyamulenge, which worsened considerably after the presidential plane was shot down in Rwanda, and then in 1995 when the Banyamulenge were ordered to repatriate back to Rwanda and Burundi. The anti-Tutsi violence had increased considerably, as Banyamulenge were dragged out on to the streets and stoned to death, or forced to leave their land and possessions behind and flee. Fofana notes; "the sense of victimisation that developed among Congolese Tutsi was pivotal to their rapprochement with Rwandan Tutsis."[121]

Rwanda's intervention into DR Congo began in 1996, but since the RPF's invasion in October 1990, there have been flows of people seeking refuge in the UN-run camps in DR Congo. Between 1993-1994, an estimated 500, 000 unarmed Hutus fled Rwanda into primarily South-Kivu.[122] Lemarchand notes that during the genocide "the litany of cataclysm is all too familiar: over 1 million Hutu refugees pouring across the border into Rwanda, creating chaos and penury in many parts of North and South Kivu; repeated cross-border raids into Rwanda by remnants of the…FAR and *interhamwe*, accompanied by wholesale massacre of ethnic Tutsi, causing many to seek refuge in Rwanda; growing evidence of humanitarian aid diverted to extremist hands and of Mobuto's military assistance to the Hutu refugee leaders."[123] When the RPF claimed military victory, an estimated 2 million Hutus fled Rwanda into DR Congo, and were settled in refugee camps that were ruled by ex-FAR and the *Interhamwe* (estimated 20 000 in Bukavu and 30-40 000 in Goma), thus the general population was being mixed in with the armed militia.[124] Strauss et al argue "In 1994 the rump genocidal regime had relocated to the DRC with more than a million Hutu refugees and from there prepared to reinvade Rwanda…"[125]

Mobuto did not have an effective army to control the situation, thus leaving intervention up to the U.N and France.[126]Responsibility of the refugees was left in the hands of the UNHCR, which would later prove to be a political disaster for Mobuto. As mentioned, the RPF projects a strong distrust and hatred towards the French government. Mamdani argues, "*the setting up of armed camps of Hutu refugees made life hell for the Tutsi in North and South Kivu…already the threat of being declared non-citizens by the Mission d'Identification de Zaios au Kivu had increased cross-border movement of young Tutsi returning to join the RPF for military training.*"[127]This gave credence to the spread of "indigenous" organisations such as Maghrivi to argue that Tutsis were indeed Rwandan and not Congolese and had political allegiance to the RPF. In the beginning Tutsis tried to remain in DR Congo, in spite of the bloody ethnic conflict in Masisi in North Kivu, because Congolese Tutsis had "everything to lose and little to gain if they moved".[128] However, after 1994 they "felt physically endangered by the influx of over a million Hutu in armed camps; on the other, they felt a vacuum in Rwanda to which they could retreat in safety."[129] Some had left with the hope of returning to their old land and property but mostly because they were no longer welcomed.[130]Congolese weekly newspaper *Munanira*, published in Uvira, responded enthusiastically to the outflow of Banyamulenge refugees, by stating "*Finally, the foul has been unmasked, The Rwandan of Tutsis ethnicity who has migrated to Zaire since a certain time and presents himself as 'Zai-Rwa' after intelligently inventing an ethnicity (tribe or clan) unknown in the history of Zaire, the Munyamulenge, has been identified and exposed, this trickster Zairwa of yesterday is but a Rwandan of a morphology and ideology similar to Paul Kagame…*"[131]

After the genocide in 1995, the former youth combatants that supported the RPF returned to the 'Mulenge' region in South-Kivu, which triggered two major anti-Tutsi protest marches in Uvira and Bukavu.[132]The protestors chanted "*Mututsi na imbwa wote ni sawa*" (Tutsis and dogs are all the same".[133]Verweijen et al argues that this accelerated the "cycle of tit-for-tat massacres that had been generated by the infiltration of Banyamulenge recruits, which drew local militias and the Zairian army."[134]Reyntjens notes "By early 1996, the Tutsi in North-Kivu were victims of pogroms, and some degree ethnic cleansing. By mid-1996 a similar campaign started in South-Kivu, in particular against the Banyamulenge…"[135]

The victimisation of Tutsis by Hutus, 'indigenous' Congolese and the central government, instilled a conviction in the Rwandan post-genocide power, and confirmed to them that they had to extend their protection over Rwandan Tutsis into the Great Lakes region.[136]This is a consequence of the logic of justice in post-genocide Rwanda, specifically 'victor's justice and victims justice'. Similar to Habyarimana, the RPF indeed saw themselves as the "liberator of Tutsi people across the Great Lakes region."[137] They claimed that this would be a liberating mission into the DR Congo, having seized power in Rwanda, they had to "eliminate the Hutu soldiers because they were preparing to launch an assault in Rwanda."[138]

During 1995-1996, armed groups from the refugee camps in DR Congo, attacked the Rwandan provinces in Geisenyi, Ruhengeri, Kibuye and Cyangugu.[139]Kigali had also claimed that they had gathered significant intelligence that proved more 'wide-scale

operations' were being planned, and "possibly an all-out invasion were being prepared."[140]At the 2010 Oppenheimer Lecture: *The Challenges of Nation-Building in Africa*, Paul Kagame re-iterated the first priority and precondition for nation-building, is stabilisation and security.[141] Kagame, along with the support of some Congolese groups and the international community, pointed out that the Democratic Forces for the Liberation of Rwanda (FDLR)-which included Hutu militia, remnants of the former Rwandan army and genocidaires, continued to pose a threat to Rwanda, particularly Tutsis.[142] Operating on this logic, Kagame justifies the incursions in DR Congo as eliminating the threat.[143] Moreover, it is important to note that there is a significant amount of Congolese Tutsi in the ranks of the RPF, who as Fofana argues "certainly has the intention of pursuing their liberating mission into the Congo, having seized power in Rwanda."[144] The outcome was an extension of the RPF's policy from being a territorial conception of the state to a "privileged a notion of a political community that extended to the entire Tutsi diaspora."[145]

Very soon after consolidating power in Rwanda, Kagame started shipping arms and ammunition to the Banyamulenge in South-Kivu, who had already began training to fight Hutu militias in both of the Kivu-regions.[146] 'Behind the ADFL coalition' (Rwandan, Ugandan, Burundian and some Congolese) Kigali engineered a 'Banyamulenge-led rebellion' that successfully overthrew President Mobuto Sese Seko in 1997, which brought Laurent Kabila in to power.[147]

Johan Pottier writes about the role of the media and press, who 'morally legitimised' Kagame's motives stating "journalist were also actively involved, *albeit most unwittingly and on for a short period of time*, in helping legitimate the ADFL campaign."[148]Pottier continues "*they did through arguing, or implying strongly, that the Alliance was homogenous and representative of all in eastern Zaire, and by ignoring or underestimating Rwanda's role in the Banyamulenge uprising. Like that new generation of instant academics who viewed Rwanda's pre-colonial past as harmoniously balanced…manipulated journalist ignored evidence about society and history that could cast doubt on the self-image the alliance projected. The ethnic turmoil in North Kivu just before the Rwandan Hutu refugees arrived, which could have been used better to pinpoint potential rifts within the ADFL, was especially ignored, as were the relationships that had developed in the 1960s between Kabila, Banyamulenge Tutsi, Rwandan Tutsi refugees and autochthonous groups.*"[149] The 'moral simplification' that had become perfected in the rhetoric in post-genocide Rwanda, was projected in the stated logic of the ADFL, which pieced together its 'liberating' claim premised on selected events in history. The ADFL relied on "highlighting the persecution of Zaire's Tutsi population (1981, 1994-1996)" but was silent on events such as "1964-1965, 1992-1993" or the 1993 land conflict that pitted the Hutu and Tutsi Banyarwanda against the indigenous groups.[150]Instead, the ADFL spoke of 1964-1965, as a departure point in Kabila's long struggle for justice. Journalist also fed into Kagame's argument, which narrowly focused on 'the role that refugees had played in racialising anti-Banyamulenge sentiment' which not only obscured an inquiry into the real motive behind the ADFL, but also failed to see the Alliance as a political movement.[151]

Lemarchand asserts that a critical turning point for the ADFL, came in 1996, after the destruction of refugee camps in October 1996, followed by the "killings of tens and thousands of civilian refugees" by units of the RPF- the Rwandan Defence Force (RDF).[152]This was the first stage of the "grand politico military strategy aimed at the overthrow of the Mobutist dictatorship and its replacement by a Tutsi-led protectorate."[153]The Banyamulenge formed the bulk of the ADFL, and after overthrowing Mobuto, they 'filled most of the administrative positions that were vacated by the Congolese, particularly those who were ardent Mobutist supporters.'[154]However, the Banyamulenge also suffered the greatest losses, with Lemarchand arguing that "Bukavu claimed a larger number of Banyamulenge widows than any other town in the region."[155]

Kabila had proven that he was unable to attend to two central problems that plagued DR Congo and which were the origins of the 1996-1997 war. These were a. "the security of the Eastern neighbours" and b. "the status of the Congolese Tutsi."[156] Local militias within DR Congo, such as the mai-mai and Bembe, launched attacks on Uganda, Rwanda and Burundi, and even supported rebel groups within these countries.[157]Reyntjens notes that by late-1998, this became the major concern for these neighbouring states, and they encouraged Kabila to pour more military resources into Eastern Zaire or to "allow the neighbouring forces 'to do their job'."[158]The former U.S Assistant Secretary of State for African Affairs, Herman Cohen, stated that it was very clear that "*Rwanda is saying eastern Kivu must be in friendly hands and the only friendly hands are Tutsi…the others wont stand for Tutsi hegemony in their area, so they will therefore give safe haven to… those who will help their case, including defeated Rwandan Hutus and Zairean soldiers.*"[159]A Rwandan commander of the Congolese Army made a similar point, re-iterating that "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."[160]

Reyntjens notes that a contributing factor to the increasing anti-Tutsi sentiment, owes to the attitude of a number of Rwandan and Congolese Tutsi, civilians and military alike- "who behaved as if they were operating in occupied territory."[161]This led to local populations being harassed, insulted and humiliated by the "liberators" who were looting, killing and demoting traditional chiefs, whilst also taking up positions in the new administration.[162] Thousands of civilians were also killed by the Alliance and Banywarwanda, which lent to the rise of new organisations who were organising themselves with a stated objective to "fight against Tutsi hegemonism" and which used "violent anti-Tutsi language."[163]One such organisation was the Conseil de la Resistance et de la Liberation du Kivu (CLRK) announced that they would "totally refuse cohabitation with the Tutsi refugees and any negotiation whatsoever with the enemy, the Tutsi, and to chase the Hima from the territory of Eastern-Zaire."[164]The politics of indigeneity and pre-occupation with 'origins' was even taken up by other leaders, such as Zimbabwe's President- Robert Mugabe. President Mugabe justified Zimbabwe's involvement in DR Congo arguing that "the rebirth of a 19th century Tutsi-Hima Empire' should by combatted."[165] Some Angolan leaders had also bought into this idea, as they sought to re-discover their own "Bantuness" and expressed concern over the "Nilotic hegmonism."[166]Increasingly the Banymulenge became viewed as the "fifth-columnist for

expansionist tendencies of Rwanda, suspected of wanting to annex the Kivu to an enlarge 'Hima-Tutsi empire' in Central Africa and in this manner 'balkanise' the Congo…This balkanisation plot became an important lens through which the Banyamulenge's territorial claims were viewed, intensifying the efforts to resist their aspirations."[167]

Many of the Banyamulenge sought protection under the AFDL, which proved to both a curse and a blessing.[168] There was a growing resentment amongst the Banyamluenge who blamed Kigali for their plight, and many families resisted the RPF's call for them to return to Rwanda. This testifies to Kigali's limited knowledge of the dynamics within the Banyamulenge community. Furthermore, the more Kagame spoke of his protection of the Tutsi population, the more it confirmed to their opposition that the Banyamulenge are 'immigrants' who had no right to seek Congolese citizenship or have an 'ethnic-home'.[169] By 1998, a political movement had formed- the FRF, fuelled by their distrust and frustrations towards Kigali, which they saw as contributing to their current their current predicament.

The FRF were seeking political and military independence from Rwanda, as well as the "most visible route for Banyamulenge emancipation, believing their precarious position in the Congo could only be resolved by creating an autonomous state on the Plateaux as part of the Congo."[170] Although there was widespread support, the outbreak of the Second-Congolese War in 1998 prevented the FRF from mobilising itself as major political force, and thus forcing them underground, which reluctantly drove the Banyamulenge towards seeking protection from Rwanda.[171] The FRF represents a radical confrontation to the RPF's logic but also demonstrates that their own logic failed to transcend the politics of indigeneity. Fofana notes, many of the indigenous Congolese regarded the Rwandan army as "an occupation force promoting the interest of Tutsis" which led to; a. Tutsis endangered by retaliation attacks from 'indigenous' Congolese; and b. Kabila firing his Rwandan chief of staff and ordered all Rwandan officials to return home, which severely complicated Rwanda-Congo relations.[172] By the late 1990s, supporters of Kabila had also turned their back on the Banyamulenge, and went on a murderous campaign targeting them.

Once in Power, Kabila refused to be dictated by the Rwandan and Ugandan foreign powers, which led to the Second-Congolese War, beginning in 1998. The presence of both Uganda and Rwanda had significantly undermined Kabila's domestic legitimacy, and Kagame was bold in stating that he played a significant role in the war, which proved to be a 'major embarrassment for Kabila'.[173] French argues "Kabila's hold on power was saved at this point by Angola and Zimbabwe, which rushed troops into Congo to repel the Rwandan invaders."[174] The regime in Kinshasa wanted to 'liberate' itself from what was widely viewed as a "Rwandan overrule."[175] Moreover, during the First-Congolese War, former RPF army leaders were found to have participated in the "widespread looting of the eastern DRC's mineral riches and organised murders of powerful Hutus".[176] Lemarchand notes "Ironically, Rwanda was the first to feel threatened by the presence of armed Hutu refugees in eastern Congo; its security concerns made it mandatory to "neutralise" the camps from which it originated the raids against national territory. Expansion quickly followed pre-emption and with the power vacuum created by fall of the Mobutist state, the needs to fill it with more

trustworthy allies backed by the effective military force became all the more urgent. This is where the radical shift occurred in Rwanda's policy goals…Security meant, in essence, continuing access to mineral resources, not only to reward local allies but to strengthen its military establishment."[177]UN investigators reported that the RPF was "directly operating mining businesses in Congo" and "more recently, Rwanda has attempted to maintain control of regions of eastern Congo through various proxy armies."[178]

A terrifying example is that of "Congo's most notorious warlord" Laurent Nkunda, who is a Congolese Tutsi that fought in the Rwandan civil-war and subsequent war against Mobuto's regime.[179]In 2002, Nkunda was dispatched by the Rwandan government to Kisangani (inland city in eastern DR Congo) which is nearby gold-rich mines that have been fought over by Rwandan and Ugandan forces.[180]In 2004, Nkunda declined a 'military appointment in the Congolese transitional government' and instead chose to back a Tutsi-led insurgency in North-Kivu, claiming that his objective were aimed at "preventing the impending genocide of Tutsi in Congo."[181]Many observers have noted that these claims are groundless.[182]Thus, the RPF has gone from war to war and from one military victory to the next.[183] Reyntjens paraphrases the late 19th Century case of Prussia, and asserts comparatively "Rwanda became and army with a state, rather than a state with an army, and it emerged as a major factor for regional instability."[184]

It is during the Second-Congolese War, that the Alliance and specifically Kagame's motives, were called into question. There was growing critique, that what started out as a policy to seek justice for the genocide victims and a policy to protect Rwanda's borders but particularly the surviving Tutsi population, had now turned into full-blown revenge attacks on the Hutu population in DR Congo. Reyntjens writes "The pretext, or the fig-leaf so to speak, for an operation that was so obviously prohibited under international law was another outstanding problem in the Zairean-Kivu region…"[185]

In 1998, a UN report was submitted to the UNSC that documented the RPF crimes committed in DR Congo, stating, *"the systematic massacres of those [Hutu refugees] remaining in Zaire was an abhorrent crime against humanity, but the underlying rationale for the decision is material to whether the killings constituted genocide, that, is a decision to eliminate, in part, the whole Hutu ethnic group."*[186] The findings are supported by the UNHCR, earlier UN panels, national and international NGOs, and investigative journalist. The report concluded *"[s]everal incidents listed in this report, if investigated and judicially proven, point to circumstances and facts from which a court could infer the intention to destroy the Hutu ethnic group in the DRC in part, it these were established beyond all reasonable doubt."*[187] In a 1997 UN report, UN special rapporteur Roberto Garreton found that RPA "Commander Jackson" admitted that it was "his job to kill Hutu refugees", adding that "all the male refugees were members of the interhamwe militia responsible for the 1994 genocide of the Tutsi."[188] Reyntjens states that the ADFL had a habit of separating men from women and children for the purposes of committing massacres.[189] However, MSF reported in 1997, that gender distinctions were no longer made and "women and children were exterminated too."[190]The ADFL forces and Rwandan allies had also made it impossible for

humanitarian assistance to gain access to the "starving, exhausted, and sick refugees" by either setting up military blockades (such as from Kisangani to Biaro, Kasese and Ubundu), or by relocating them out of reach of humanitarian assistance and security.[191] In a press conference in November 1996, UN Secretary-General, General Boutros Boutros-Ghali stated "two years ago, the international community was confronted with the genocide of the Tutsi by weapons. Today we are faced with the genocide of the Hutu by starvation."[192] Six months later, Secretary General Boutros-Ghali's successor, Kofi Anan, argued that the rebels had organised a "slow extermination" of refugees.[193]

The DR Congo filed a case against Rwanda before the ICC, but by Rwanda refusing its jurisdiction, the ICC could not take the case further.[194] Reyntjens argues that although this served as a serious "moral warning" Rwanda escaped formal judicial condemnation and gained immunity through the ICTR.[195] Between 1997-1998, the massacres continued on a large scale, and the Rwandan's government's response has always been to minimise the death toll by debating the numbers, and deny the victimhood of innocent lives by conflating the victims as being "genocide perpetrators, criminal elements and sympathisers with their targets".[196] After 1998, the US, a major supporter of the RPF, publicly critiqued the RPF's human rights record. Although the international community has becoming increasingly critical of the post-genocide regime, the legacy of their genocide-guilt has allowed the RPF to act with impunity and they have shied away from demanding and imposing accountability.[197] This sentiment is best captured by a former British Diplomat (remains anonymous) - *we had invested so much in rebuilding Rwanda – did we want to give it all up on the basis of rumours?*[198] This statement was made despite Rwanda's application to join the Commonwealth being denied, on the basis of not meeting the Commonwealth's values. The Commonwealth responded with *There are considerable doubts about the commitment of the current regime to human rights and democracy. It has not hesitated to use violence at home or abroad when it has suited it.*[199]

In December 2002, a peace accord formally announced the end of the Congolese-Wars, and a transitional period was to follow from 2003-2006. The transitional arrangement stipulated that there had to be power sharing and reconciliation between the political, military and "ex-belligerents".[200] Fofana argues, the UN has focused more on negotiations and compromises with 'ex-belligerents' rather than within communities.[201] Similar to Rwanda's transition and the Arusha Peace negotiations, constituencies have been excluded from participating in negotiating the new political order. They are also viewed narrowly as instigators and as having few legitimate political demands, because they are seen to be simply vying for power. This has only served to further confirm power for President Joseph Kabila.[202] The international community has displayed a certain fear of upsetting the fragile balance in eastern DR Congo, and instead has spoken only about 'power-sharing' and 'consensus' building, without addressing the Kivu regions.[203]

Regarding, citizenship, there was a crucial step made, where the new 2006 Constitution stipulated that 'all members of ethnic groups within Congo, at the time of independence, will be granted citizenship.[204] However, the law does little to address problems concerning "ethnic

citizenship" and "lived citizenship."[205]Finally, because Rwanda continues to see Tutsis in DR Congo as an extension of the Rwandan political community, they continue to abuse the weak central authority, and the fact that the new president hasn't addressed a. security for eastern neighbours, or b. security/protection of Tutsi Congolese, Rwanda continues to play an undermining role in Congo till today.

Berwouts argues that this was the start of a second phase in Rwanda's policy, one which, "did not have a open and visible presence in Congo, but where it gave military support to the rebel movement to protect its interest and to maintain its impact on Congolese politics."[206]In 2008, Nkunda (apparently encouraged by Kagame) led a new offensive of Tutsi rebels, seeking to capture the city Goma, which displaced 200, 000 civilians.[207]A UN report detailed "Rwanda's close ties to the warlord, and concluding that he was being used to advance Rwanda's economic interest in Congo's eastern hinterlands."[208]Following this report, and increased pressure from the international community, Kagame made a surprising decision to move to arrest Nkunda. [209]After Nkunda's arrest, President Joseph Kabila agreed to allow a joint-military operation in eastern Congo against Hutu rebels, which has allowed for both Hutu and Tutsi militias to remain active, making long-lasting peace an elusive goal.[210]

6.5 The Crisis of Citizenship and Belonging

The following part of this chapter will briefly explore the implications of the political crisis, namely the post-colonial citizenship crisis. I will introduce two research-studies that have collected valuable information on the experiences refugees are faced with. It highlights the continuation of the unresolved political crisis.

The Second-Congolese War had claimed an estimated 2 million lives, which is more than that of the Rwandan Genocide and Darfur combined.[211]In 2015 'World Without Genocide' estimated that after the war, a further 6 million people have since died, with 45 000 dying a month.[212] Moreover, 3.4 million people are said to be displaced within DR Congo and 2 million refugees are living within Tanzania, Uganda, Burundi and Rwanda. [213]Resolving the refugee crisis involves attending to the major security issue for each country in the region, developing an inclusive participatory economy that contributes to local economies, humanitarian and social welfare (health-care) support, addressing the environmental impact it will have, the 'land question', and crucially important is citizenship.[214]Kitenge Fabrice Tunda, asserts that 'voluntary repatriation', 'community integration', and 'permanent residency' are resolutions that can support the return.[215]The 2006 International Conference of the Great Lakes Region Pact (ICGLR) addressed the issues on 'Security, Stability and Development.' The Conference centralised discussions on democracy, peace building, and security.[216] Arguably, it is important to dissect the universalism of these notions. Therefore, I will discuss citizenship the theoretical and practical implications of the citizenship law in Rwanda, and briefly address DR Congo.

Citizenship in Rwanda is determined by the Organic Law (no. 30/2008 of 25/07/2007) relating to Rwandan Nationality. Briefly, the Rwandan citizenship law states that it

recognises dual citizenship (Article 3), and grants nationality to returnees who have been deprived of their nationality between 1 November 1959-December 1994.[217] Therefore, this 'protects' Rwandan 'nationals' living in the diaspora, and hints towards a prioritisation of old caseload refugees and returnees. The citizenship laws also stipulates that nationality can be deprived if the person has the "intention of betraying the country" (Article 19/2).[218] In Article 24, the section regarding 'Prohibition to recover nationality' stipulates that if the person is a "security threat whom it had been decided to expel from the country" serves as grounds for denying citizenship.[219] This has been problematic because of the post-genocide regime's obsession with security, and the 'genocide laws' have been used to exclude some from gaining citizenship.

The Citizenship Rights in Africa Initiative states that Rwanda's citizenship law has been generous in allowing dual-citizenship, and naturalisation of Rwandans by origin or children with Rwandan parents.[220] In 2010, the governments of Rwanda, DR Congo and Uganda, under the facilitation of the UNHCR, signed a tripartite agreement that would end those seeking exile and the status of refugees. As a follow up, in 2013 the UNHCR recommended that Rwanda should invoke the Cessation Clauses, which "are built into the 1951 Refugee Convention and the 1969 Organization of African Unity Refugee Convention". [221] This clause recommends that Rwandan refugees between 1998-2011 would no longer qualify for refugee status in their host countries, premised on the assessment that Rwanda is safe to return to regarding human rights protection.[222] By July 2013, 100,000 Rwandan refugees had lost their refugee status and were faced with becoming stateless.[223]

A Ugandan research-study report: *'A Dangerous Impasse: Rwandan Refugees in Uganda,'* has produced insightful information about why Rwandan refugees in Uganda, are reluctant to return. The Rwandan newspaper, The New Times, which is state-owned, responded to the report by refuting its findings and wrote a scathing review stating "Whereas researchers were interested in gathering information from refugees, the inclusion of falsehoods and blatant lies defies the idea of their impartiality… it instead became a channel for the old propaganda propagated by the same groups that held captive Rwandans in the former Zaire in the 1990s."[224]

The refugee respondent that were interviewed for this research-study are from Nakivale refugee camp, Uganda. The research notes that these refugees have come under increasing pressure to return to Rwanda, and "they are an on-going reminder of ethnic tensions that are supposed to have been addressed, but the Government of Rwanda has strongly pursued the return of all citizens accordingly."[225] The Rwandan government cites stability and economic growth as the reason for those in exile to return, yet many continue to resist return. The respondents listed a number of reasons, which broadly relate to "if they return they will not be safe in Rwanda, let alone have access to their rights as citizens of the country."[226] Succinctly, the research found that "the refugees overwhelmingly view the regime as repressive. There was frequent referencing to the fact that dissent in many aspects of public life and economic life is not tolerated, and those who question the regime are subjected to human rights violations ranging from discrimination in employment to

imprisonment and forced disappearances."[227] They stated that "Specifically, ethnicity is being used as a basis for repression."[228] Moreover, the research findings suggest that "…the genocide – and the legacy of guilt, heart-searching and recriminations that have surrounded it – is being used by the Government of Rwanda as a smokescreen for political repression, particularly through the association of Hutu identity with the genocide. Images of Hutu brutality during the genocide are evoked to mute criticism."[229]

The respondents demonstrate that "the accusation of participation has become one of the most feared instruments of repression…and most refugees who had previously tried to return home form Rwanda…recounted having had a negative experience of the gacaca process and bodies linked to it."[230] They shared stories of torture, imprisonment and having family members killed. Finally, the refugees have revealed since the announcement of a repatriation 'deadline' that many have had their land confiscated and given to the new Congolese refugees, their rations reduced, and they have been cut off from some social services as a means to force them to return.[231] The study notes that Rwanda is not only preventing refugees from returning, but its domestic and foreign policies are in fact generating new refugees. A quarter of those interviewed were refugees that have been in Uganda since 2001, some of which had fled into exile for the second or third time.[232] This is a very different reality than what the Rwandan government projected to the international community. Macro-level recommendations from the report entail improvement of the political climate in Rwanda. The report argues that it is critical that "Rwanda engage with the genuine concerns expressed by its refugees, open up its political space, and allow for full and equal civic and political participation of all its citizens."[233] A second recommendation is that the "promulgation and reinforcement of singular versions of history…create ethnically aligned divisions between victims and perpetrators."[234] Durable solutions for refugees require looking at them as individuals and not groups. Lastly, the report urges both Rwanda and Uganda to ensure refugee rights upon return, and must not enforce return.[235]

Rwandan-born journalist Yoletta Nyange, states that the new invoked cessation clause leaves refugees with three options; "voluntarily repatriate to Rwanda, appeal to challenge the cessation clause to stay in their host country, or apply for asylum again in a third country."[236] Nyange points to the Institute for Economics and Peace's 2013 Global Peace Index, to indicate that Rwanda is the least 'peaceful' nation in the world (ranking 135 out of 162 states) and is not conducive for return.[237] Furthermore, the majority of the population 'living inside and outside of Rwanda are overwhelmingly Hutu', thus engendering a problem if the state regards those who do not wish to return as harbouring a "dark, ugly past to hide and are running away form prosecution."[238] At 'Rwanda Day' in the Netherlands, Kagame addressed the Rwandan diaspora, stating "*Our coming here is a way of inviting you to repatriate. Even if you would have something that makes you detest your country, we can forgive you because you are one of us...*"[239] Kagame further 'assured' them by continuing, "*no worries as of the size of Rwanda, where old regimes denied some people a home because Rwanda was too small to accommodate its returnees, We are not like the previous regimes.*"[240] In response, Manzi Mutuyimana, a Rwandan refugee in Uganda, expressed that "[Since May 2009], no Rwandan refugee of any profile, either urban or rural, has expressed [a] willingness to return

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back home…"[241] Another refugee interviewed by IRIN news agency, shared that, "If things change in Rwanda, there will [be] no need of declarations of... cessation clause... We shall be willing to go to our country without their help".[242]

An additional issue that Rwanda faces, concerns the situation of the Kinyarwanda-Speakers who live "outside" of Rwanda, and are considered "Rwandans" due to their language and ancestry.[243] Citizenship Rights in Africa Initiative, notes that this has often been to the "detriment of their rights" and there is perception that this would lead these people to seek 'naturalisation' in Rwanda.[244] However, the research-study '*Shadows of Return: The Dilemma of Congolese Refugees in Rwanda*', reported that refugees in Rwanda "felt that in practice this option was not open to them and that they felt excluded in Rwanda".[245] The respondents noted that they haven't been able to integrate locally in Rwanda, and that they "see returning to Congo as offering the best opportunity to shed their refugee status and re-establish livelihoods."[246] However, following the 2010 UNHCR Tripartite agreement, local communities within DR Congo have expressed that they strongly oppose the repatriation of the Banyarwanda refugees.

Lucy Hovil, who is one of the researchers in the study (*Shadow of Return…*' states) asserts "Rumour and speculation are rife in eastern Democratic Republic of Congo's (DRC) North Kivu province regarding the anticipated return of Congolese (Tutsi) refugees in Rwanda…feelings of hostility towards the idea of their "return" are widespread."[247] Central to the study are questions addressing citizenship, belonging, and land access. The reasons for "suspicions" regarding the return of these refugees, is because they are perceived to "not really be Congolese", and some have argued that their "repatriation is, in fact, part of a broader scheme by Rwanda to appropriate land in North Kivu."[248] Some also accuse the UN agencies operating in North-Kivu, as having a 'hidden agenda' and promoting Rwandan encroachment on Congolese territory by facilitating the return of 'Rwandan' refugees.[249]

Hovil argues, that in part, 'suspicions' have been shaped by "the way in which individuals and groups are seen to be included and excluded in the messy geopolitical context of eastern Congo, where violence, sustained by an insidious war economy, has become the main currency of power, and where the pursuit of land is heavily laden with economic and symbolic importance…ethnic categories remain a potent mechanism for mobilising people, including the creation of ethnic-aligned militias."[250] The study shows that there are three reasons that have created this 'impasse' for repatriation. These are: 1. "the fact that these refugees speak Kinyarwanda identifies them with Rwanda and leads some, intolerant of cross border identities, to label them as Rwandan and not true Congolese", 2. "the fact that the majority of this group is Tutsi identifies them with the current regime in Rwanda", and 3. "the fact that this group fled to Rwanda is seen as confirmation of their sympathies."[251] These arguments lead to an overall assumption that is being made, which is "if they were never really Congolese, then they are not really refugees."[252] These factors have conspired to work against the refugee's legitimacy as Congolese citizens, and as the study notes the "very basis on which they are looking forward to repatriation is seen as fraudulent."[253] Many of these refugees stated that even though they are recognized legally as 'Congolese refugees' their

return has extremely fraught with problems, and they never imagined that 14 years later they would still be living as refugees in camps, without the possibility of returning safely to Congo. The respondents stated "Most importantly, repatriation offers the prospects of (re)instating their Congolese identity and proving their legitimacy to belong."[254]

The study argues that "The government needs to be unequivocal in stating that these refugees are not only legitimately entitled to return home, but are welcome as a genuine component of the rebuilding of a country that has been thoroughly torn apart by divisions and polarisation."[255] The respondents expressed that they "need to return as recognised Congolese citizens and not as Tutsi or Kinyarwanda speakers."[256] Secondly, they recognise that "their acceptance as citizens by the national government, though critical, will have limited salience if they are not accepted in the local areas from which they fled, and where they would try to reclaim land and property."[257] The study proposes that a durable solution would require repatriations and citizenship to be reconceptualised as essentially being a 'political process' rather than simply a humanitarian one.[258] Repatriation needs to be thought about as 'restoring the political contract between the state and citizen that was broken by their exile.'[259] Moreover, repatriation needs to be "constantly linked to the broader process of post-conflict (or post-authoritarian) reconstruction: the ability for individuals and groups to secure citizenship, therefore, becomes not only an indicator that exile has ended, but that broader issues of instability have been, or are being, addressed—that there is a functioning state to which people can attach themselves."[260] Finally, the study recognizes that "the local context in which repatriation takes place is of huge importance…The predicament of this group of Congolese refugees provides a prism through which to view the multiple dynamics and tensions that remain fundamentally unresolved in North Kivu—tensions that are both highly localized and yet interact with the broader national and regional context. These tensions revolve around polarized constructions of identity, mobilized and manipulated by those seeking to gain power."[261]

6.6 Rethinking 'Citizenship'

This final section in the chapter troubles 'citizenship in theory', as a means to think through the post-colonial citizenship crisis that has been inherited through the colonial legacy. As the above section demonstrates, questions of citizenship beyond the legal realm, continue to hinder the return or repatriation of refugees.

This dissertation has chosen to shift away from the kind of 'identity-based' arguments that have come to present metanarratives and over-simplified explanations concerning post-colonial African states, which also subjects the continent to criterion of modernity, particularly liberal democracy. Samuel Huntington's seminal piece, *Clash of Civilisations*, which considers people's cultural and religious identities as sources of the new conflict, and Francis Fukuyama's argument that the "post-cold war would signal the end of history", have been noticeable.[262] Whereas Huntington's work has gained significance because of the 'identity-driven nature of his analysis', it cannot account for how "group identities have assumed not only primary means of social expression, but also of rights and privileges in the

polity."[263] Moreover, tenuous relationships between the governed and those who govern have revealed the juxtapositions between civil law and customary law, or the continuation of a bifurcated state. Thus, universalised notions such as 'democracy', 'nation-states' and 'citizenship criterion' need to be problematized for who it considers citizens, and by its very composition, can it allow all residents to be encompassed under a singular political community, as active members of the central state?

The relationship between citizenship and the state has evolved since the beginning of western political theory. Traditional conceptualisations emerged from Aristotle, who argue, "a state is nothing but a compound made up of citizens, and this compels us to consider who should properly be called a citizen and what a citizen really is."[264] 'Social Contract' theorist such as Hobbes, Locke, and Rousseau, recognised citizenship as "those in the political community" which thus meant problematizing the notion of 'nation-state.[265] For both Aristotle and Rousseau, their work on citizenship was limited to "small city-states" and saw citizens as necessary active political agents in order to maintain the notion of a state.[266] With the problematizing of the nation-state, particularly as the idea of 'the state' began to evolve, the meaning of citizenship was further shaped by the introduction of territory, conquest and sovereignty. Thus through exclusion and exploitation it produced the subject. These formulations also produced identity and notions of legitimacy that are exploited by their relationship to power.

T.H. Marshall thought about the relationship of the state and the individual, through civil, political, and social rights.[267] These include "the right to free speech, association, due process and equality before the law, franchise and social welfare."[268] This further added duties and privileges to the meaning of the state and the rights of the individual. From a different prescriptive, Charles Tilly argues that citizenship includes the categories of "role", "tie" and "identity".[269] Moreover, as a category, citizenship designates a set of actors-citizens-distinguished by their shared privileged position vis-à-vis a particular state."[270] As a "tie" citizenship identifies "a continuing series of transactions between person's and agents of a given state in which each has enforceable rights and obligations uniquely by virtue of (1) The person's membership in an exclusive category, the native born plus naturalised and (2) the agent's relationship to the rather than any other national authority the agent may enjoy."[271] There is a sense of reciprocity in the relationship/contract between citizen and state. Who has access to citizenship has varied depending on the state, and may be dependent on 'birth right', descent/ancestral, or naturalisation. Although the concept of citizenship and state has changed, their relationship to one another remains closely connected.[272]

It isn't difficult to see how 'western theorising and the criterion for state and citizens', poses critical challenges for questions on citizenship for the post-colonial African state. Moreover, if (broadly) the modern-state is a territory and collective of citizens, than the nation-state "identifies a particular set of persons as its citizens and defines others as non-citizens, as aliens."[273] Thus, the nation-state is defined by its 'sovereignty; authority; legitimacy; and identity'. Basil Davidson describes the emergence of the nation-state in Europe in the nineteenth century, "it appeared obvious that the continents manifest of supremacy of power

derived from the God-directed work of forming nations from cultures, and nation-states from nations."[274] Nationalism drew from a consciousness, or as historian and philosopher Hans Kohn articulates, "Nationalism is first and foremost a state of mind…an act of consciousness" which became further refined through ridding the nation of 'impurities', and thus the symbiotic relationship is produced, where the "nation-state strengthens nationalism."[275] Therefore, the "idea of the state or nation-state cannot be meaningful without citizenship."[276] The institution of citizenship is what reinvents the state and gives meaning to. Basil Davidson might be wrong in thinking that the 'nation-state' was inherited from colonialism. Instead, the colonial state ruled through territorial associations and federations and did not impose 'nation-states'. Secondly, one needs to think critically about whether the demand for nation-states, was actually a demand for anti-colonial nationalism. Thirdly, we need to trouble the notion of 'democracy' and the demands made by liberal human rights solutions that overlook the troubling practices or criterion for citizenship in post-colonial states.[277]

In Rwanda, the logic of the state is that in order to 'build and modernise the nation-state'; it must pursue a particular kind of identity, namely citizenship, which must be prioritised above all other identities.[278] This is understood as 'Rwandicity'. Cori Wielenge argues that the citizenship discourse in Rwanda echoes the discourse of liberal-democracies.[279] However, in reality, as I have demonstrated in previous chapters, abiding by liberal democratic principles has been a haphazard affair in post-genocide Rwanda, and the government hasn't exactly practiced what it preaches. Moreover, as Wielenge notes, the paternalistic attitude of the state tends to look at 'ordinary Rwandans' as being this "primordial public", which informs the way it interacts with Rwandans, specifically in a disciplining manner and top-down approach.[280] Said Adejumobi notes that many African states still follow patterns of state-governance established during colonialism, in which "rights, privileges and entitlements were institutionally divided along ethnic lines, creating a sense of inequality."[281] Furthermore, Adejumobi asserts that the issue at stake is "not whether multiple groups exist, but whether the state through citizenship, can create a sense of equality."[282] Adejumobi thus argues, "The way forward with regards to resolving ethnic conflict for African states is to take 'liberal democracy' very seriously." However, the problem with this, is that it takes the conceptualisation of citizenship by liberal-democracy as the 'cornerstone', and problematically implies that identities can be reconstructed ("to result in a particular kind of citizenship and citizen participation") in the post-colonial context, whilst ignoring identity conceptions that have "existed beyond the pre-colonial, colonial and post-colonial divides and that are currently emerging."[283] Also, Adejumobi doesn't address how liberal democracy has been an accomplice in political violence born from political identities and the institutions of rule.

The evidence and discussion in this chapter, demonstrate that to democratise the post-colonial state and re-think citizenship in post-colonial African states, would mean to attend to the crisis embedded in institutions of rule that were inherited from colonialism. Mamdani argues that when the post-colonial state is confronted with a crisis, the first impulse is to "turn the colonial world upside down again" and to return to the question of who is the native and who

is the settler- the 'politics of indigeneity'.[284] Instead Mamdani offers an alternative solution, which would seek to "reform the very structure which has institutionally underwritten the distinction between indigenous and the non-indigenous, the Settler and the Native, into the division between the civic and the customary."[285]

The insidious nature of colonialism, was that it constituted identities into political identities, in Rwanda 'race' underscores the salient political identities, and in DR Congo and Uganda, it was a combination of both race and ethnicity that came to politicise identities. Thus, if the settler identity was racialised, then the native identity was ethnicised.[286] Secondly, the post-colonial regimes mistakenly retained and have long preserved this idea, that 'customary law' and the 'customary home' are symbols of "African tradition", and particularly a tradition indigenous to Africa.[287] In the aftermath of the 1994 genocide, the RPF had declared Rwanda "liberated".[288] By 'liberated', the RPF meant, "liberation from the colonial mind set, true de-colonisation."[289] Emerging from a Marxist ideology (mass organisation and popular mobilisation) the RPF's ostensible ideological underpinnings was in line with the "Second Liberation" guerrilla movements of the 1980s/90s, such as that of Yoweri Museveni and the National Resistant Movement (NRM).[290]Museveni maintains that "anticolonial struggles of the 1960s had failed their people and had sustained (mainly ethnic) division."[291]Marina Rafti argues the 'Second-Liberation armed struggles "waged wars against the regimes in their countries with the aim of "liberating" Africans from western domination and of preparing their populations through "indigenous" institution for a distinct type of "African democracy"."[292] Within this logic, the post-genocide regime constructed the notion of 'Rwandicity' that would serve as the basis of citizenship and reconciliation and defines state-society relationship.[293]

However, whereas as the 'independent governments' vowed to end the 'perversion of colonialism' by restoring the rights and political prerogative of the indigenous over the 'foreigners'/ the strangers, which merely reproduced the bifurcated state of two type of citizens.[294]There are two types of citizenship; ethnic citizenship and civic citizenship. For the poor, ethnic citizenship is far more important than civic citizenship, because it is the only means of gaining land, one can claim land customarily.[295] It would also provide one with a sense of belonging to the territory. The post-colonial Congolese state, has socialised the Banyamulenge to understand that the idea that having a customary territory is a precondition for being recognised as an 'authentic Congolese group', and is the only form of redress exclusion and being deprived of access to a local authority and land of their own.[296]The problem with this is whenever there is a crisis such as land scarcity, economic downfall, political competition or conflict, ethnic distinctions are sharpened. It also gives more power to the agents of 'customary law' who reproduce and reshape subjectivity in the post-colonial state. Interestingly, it is movements such as the Tutsi Banyarwanda in Congo, who have challenged the notion of rights and ethnic strangers.

Attending to the 'institutions of rule' is an incredibly difficult task. In societies which are divided by political majorities and political minorities, democracy is often equated with "unqualified majoritarian rule", a political set-up where the winner take all and has the power

and "unchecked possession of the majority."[297] It would also challenge the modes of power, citizenship and justice that have come to preserve benefits for some groups over others. However, it is arguably an acutely necessary for political reform to take place, and to intervene into the cycle of violence, which can also respond to the refugee crisis.

There are important lessons that the region can draw from Rwanda's colonial experience and post-colonial political crisis. To begin with, historically, the post-colonial leadership ignores that both Hutu and Tutsi are victims of colonial institutions of rule, and both were colonised subjects. Tutsis were defined as a race, but didn't gain civic rights, and were victims in the civic sphere.[298] Hutus were defined as an indigenous 'ethnic' group, but were ruled by Tutsi chiefs under the Native Authority, thus they became victims in the ethnic sphere.[299] Both developed a "victim consciousness" that is observed in the 1959 Social Revolution and October 1990 Invasion. Both relied on history- to never forget the past, in order to secure 'power, citizenship, and justice' for their group, who they perceive as being the 'eternal victims of politics.' The dilemma of post-genocide Rwanda today is that the genocide "retrenched Hutu and Tutsi as salient identities" and in post-genocide Rwanda what continues to thrive is a "chasm that divides Hutu as a political majority from Tutsi as a political minority. While the minority demands justice, the majority calls for democracy."[300] Within this predicament, the Tutsi minority will always fear democracy as it sees it as a mask for the unfinished genocide, and the Hutu majority will always fear justice, as it sees it as a ploy to achieve power.

Helen Hintjens argues, the approach of the post-genocide government "resembles the projection of Jewish victimhood into the past by the official history commemorated by the Israeli authorities."[301] In a sub-section of the 'official History' on the Government of Rwanda's website, it refers to the "killings of Tutsi in 1959" as the beginning of 'a habit' of anti-Tutsi killing under the two previous Hutu-dominated regimes, and the "precursor of the genocide."[302] Hintjens, argues that the implications is that the post-genocide regime sees the past two regimes as "implicitly genocidal through and through", which is a highly contentious and divisive position.[303] This allows for the assumption to be made that "a social grouping with some identifiable common origins has been victimised continuously over a long period of times" and "members of this group have been forced into a diaspora, into exile, and have a right to return-in this case to Rwanda- to reclaim their promised land denied to them by a history of persecution."[304] Robin Cohen best describes the post-genocide leadership as operating on 'victim diasporic nationalism'.[305] For the RPF, they have a personal experience of exile that adds claim to this argument. Similar to the 1959 Social Revolution, the RPF also sees themselves as being 'revolutionary' for Rwanda's politics, and the 'liberators'. However, as it has been in the past, the RPF's logic of victimhood continues to entrap them in the history they argue to be trying to transcend. Post-genocide nationalism is based on the myth of a diasporic Tutsi victimhood, which compounds the lived realities of the diaspora, and which it uses to morally justify its incursions in DR Congo. Hintjens argues this "cannot form the basis for unifying Rwandan nationalism", and also "simplifies the whole experience into goodies versus baddies", which cannot open up a more democratic future or more inclusive ways of constructing citizenship for the future.[306]

The Congolese-wars had pitted the "indigenous" majority against the divided "nonindigenous minority", and has forced the Congolese Tutsis to ally with the post-genocide Rwandan state, whilst the Congolese Hutu become strongly opposed to it.[307]Thus, the war has "crystallised two volatile regional diaspora- one Hutu, the other Tutsi-each determined to set the region on fire if the demands it considered legitimate were not met."[308]The 'moral responsibility' that the RPF feels for the survival of Tutsis has taken on a 'diasporic' character, which requires returning to the critique of 'victors justice and victims justice', which has informed the mode of power and citizenship in Rwanda. As I have demonstrated in this chapter, what began as a 'policy of justice and security for Tutsis' has now turned into revenge. To understand Hutus and Tutsis as both being victims, would enable breaking out of the cycle of violence, where the victims of yesterday become the perpetrators today. This is crucially important also for the regional refugee crisis and on-going conflict. Mamdani asserts that the "internal pressure in Rwanda is now joined to a regional dynamic as two diasporas- one Hutu, the other Tutsi-confront each other in a life-and-death encounter. Both diasporas are animated, not simply by the cycle of revenge in Rwanda but also by the common regional inheritance that has been translated into a mode of citizenship that denies full citizenship to residents it brands ethnic strangers."[309]

Mamdani proposes that "Political justice for the Tutsi cannot mean simply identifying and holding perpetrators of massacres accountable."[310]It would mean for the institutions of rule, as well as the judicial system, to think out of the trap that reproduces two kinds of citizens: one indigenous, the other not.[311]Thus, indigeneity as the test for rights and citizenship, has to be deconstructed and left behind, as a prerequisite for re-thinking citizenship in post-genocide Rwanda. In response to the post-colonial citizenship crisis in the Great Lakes region, which has produced Tutsi as the 'proto-type settler' and Hutu as the 'proto-type native', Mamdani argues it "would require making a clear distinction between the cultural and political identities, and thereby to depoliticise historical facts of migration…"[312]To get rid of the politics of indigeneity, is to remove race and ethnicity, as well as 'native' and 'settler', as political identities in the post-colonial state. Hutu and Tutsi can no longer be understood as 'natural identities', it is the historical state formation that through politicisation has 'naturalised', thus producing them to be political identities. Furthermore, to reform the state and its institutions, that define citizenship, would mean power would have to recognise equal citizenship rights for all based on "a single criterion: residence."[313]Finally, to differentiate between political and cultural identities, is to "accent the commitment to live under a common roof over the recognition of a common history-no matter what the overlap between them-as the basis for a shared future."[314]

6.7 Conclusion:

The crisis of citizenship and belonging in the region are a result of the confluence of Rwanda's post-genocide political crisis and the post-colonial citizenship crisis in the region. Shaped by 'victors justice' and a 'victims justice' rationale, the post-genocide power has asserted a Tutsi nationalism that has taken on a diasporic character. The preoccupation with

justice and security provided the post-genocide power the pretext for military intervention into DR Congo. Central to the regime's concern was safeguarding the survival of Tutsis, and through the 'genocide credit' afforded Tutsis, the RPF asserts a moral obligation to protect all surviving Tutsis against Hutu militias in the region. This isn't to deny the real security threat that the Hutu militia posed, but arguably the logic of the post-genocide power has created new security threats, for Rwanda and Hutus and Tutsis in the diaspora, that needs to critically interrogated. Furthermore, this chapter demonstrated that Hutu and Tutsi were able to evolve into diasporic communities, because of the failure of DR Congo to disinherit its own colonial legacy. As the genocide crisis spilled over into DR Congo, the historical limitations of the post-colonial state were exposed through the way in which local politics and the central government chose to address the crisis, which is by returning to the politics of indigeneity. Every time it does so, it redefines and shapes new subjectivity that become victims of the political crisis. The location of the Congolese political crisis lies in the 'customary home', which has characterised the Banyamulenge as 'non-indigenous' and descendants of Rwanda, rather than seeing their lived identities as resident in Congo. Until the institutions of rule are de-ethnicised and reformed, the mode of citizenship will continue to determine rights, material benefits (such as land), and belonging based on indigeneity. Today, the Tutsi diaspora has come to be seen globally as settlers; reluctantly forced to seek protection from the post-genocide power. The consequence is that the 'indigenous/native' groups of Congo are afraid that 'Tutsi nationalism' is seeking territorial expansion and power for DR Congo, thus they violently oppose rights and citizenship to be granted to the Banyamulenge. This has fuelled the cycles of war, and power and justice are politicised into being a 'native's prerogative'. The politics of the post-genocide power (and its 'victims justice' rationale) has contributed directly to the plight of Hutus in the diaspora, which some have referred to in the literature as being a 'genocide of the Hutus targeted through violence and as an outcome of the humanitarian crisis'. Thus, both communities are victims of the violent political crisis. The case of two different influxes of Tutsis into DR Congo due to Tutsi-related political problems, is significant for (re)thinking out of the politicisation of Hutu and Tutsi and redirecting a critical interrogation of the institutions of rule. It also means that in thinking about justice, we have to examine identities at different points of state-formation, thus to historicise them. I returned to Rwanda's political crisis because it lies at the epicentre of the regional crisis. The extensive human loss and complex web of the Great Lakes refugee crisis requires a commitment from each regime to attend to their inherited colonial legacy, and it requires a regional perspective in thinking towards a resolution to the citizenship crises. This chapter argues that lies in deconstructing the political identities that have become 'naturalised' through state-formation, because the colonial institutions of rule have been retained. This presents two types of citizens: one ethnic and one civic. This chapter proposed Mamdani's contribution, which is to re-think citizenship based on a singular criterion: residence.

The legacy of Nuremburg has shaped the understanding of justice to be criminal justice and defines responsibility for mass violence as criminal responsibility. The logic of Nuremburg can be traced to a well-established tradition in which the victors of inter-state war have the power to decide on justice for the losers. 'Criminal justice' became a universalised principle through the rise of the human rights regime, which has come to determine 'human wrongs' that gain legal recognition through international law. Particularly in cases of mass violence, criminal justice is understood as being the most morally acceptable and politically viable option to ignite a new political and social order. A central argument made by these regimes and practices, is that they are apolitical, and can effectively prohibit justice from being politicised. Complicit to this logic and the legacy of Nuremburg is the 'Holocaust effect'. The Holocaust has become the standard-reference for human suffering experienced in genocide, and Nuremburg became the template as the response. Comparisons are often drawn between the German-Holocaust and Rwanda, particularly relating to the purposeful manner of the annihilation of the Tutsis and Jews. This dissertation has shifted away from this comparative analogy, because both cases have experienced their own catastrophic atrocities, born from distinctly different political and historical contexts. What these cases do share is that the 'victor' decided on the human suffering experienced in their genocides, and determined the justice meted out for the victims.

The Rwandan-genocide violently re-inscribed the political distinction between Hutu and Tutsi, and tore the social fabric of Rwandan society, as distrust, fear, horrific sexual and psychological violence took place. As in the case of the German-Holocaust, international law and the human rights regime provided the initial framework for making sense of the genocide violence, particularly the popular agency of participation by 'ordinary Rwandans'. The obsession and with the nature of the violence, quickly led to sensationalised simple generalisations, and explanations that lacked historical background. This is also a consequence of criminal justice, where the trials provide a judicial record that becomes the historical record, and obscures interpretations of the genocide and the historical inquiry. Those '100-days of massacres' have been shaped into the event of Rwanda's history, which is looked at through a 'genocide lens'. It has also produced a 'genocide framework' that has led to a pre-occupation with preventing another genocide, and the resumption of war.

My objective has been to critically interrogate 'victims justice', as a means to redirect attention to the historical and political context, which made the genocide possible. It is a call for an alternative historical inquiry and interpretation of the genocide, to that which was produced through the judicial record. This has since become the 'official narrative'. I also wanted to demonstrate that Rwanda's historical political record reveals some hard 'truths', and exposes the limitations of both kinds of justice, for political reform and the intervention into the cycle of violence in post-genocide Rwanda. Moreover, I departed from a critique of

'victors justice' and 'victims justice' rationale because the response to the genocide has been exclusively judicial, and has became the foundation for re-engineering a 'new Rwanda'. Rwanda's transition justice experiment has been one of the boldest in the world, and since the genocide has consumed state, society, and the lived realities of all Rwandans.

As the 'military victor' of the genocide the RPF did not have to negotiate a compromise. It had the power to pursue its 'policy of mass accountability' and was placed in a position where it could impose its views on how to deal with the past and future. The crimes were grave, and the scale of 'victims' and 'perpetrators' was vast. By implication of both kinds of justice, the Rwandan population was legally and morally divided by the underlying presumption made by criminal justice, which is that one is either wholly innocent or wholly guilty. The outcome today is that Tutsi victims are the only 'living survivors of the genocide', defined by their eternal victimhood, and Hutus are collectively understood to be perpetrators. This has become the contemporary relevance of Hutus today, where the presumption of guilt continues to define their identity. This is despite the fact that Hutus were killed during the genocide for refusing to participate in the genocide, and have been targeted by the RPF since the genocide for supposedly having collaborated with 'Hutu Power'.

In the aftermath of the genocide, the RPF wanted to hold public executions for the 'accused' in the national stadiums, inviting the victims to witness the redemptive act as a symbolic gesture towards justice. Fortunately, the state was prevented from doing so because of the conditions applied by the international community who argued it was against human rights and values. However, after the genocide, 'suspicions' and distrust facilitated undocumented murders of Hutus by the military and local RPF cadres (*abakada*). Thousands have also been detained, languishing in jail without a case file or access to legal-counsel. Whereas the human rights NGO community has expressed their concern for prison conditions and mass incarceration without due process, the government has responded with a moral authority, re-iterating their ownership of the judicial process to silence their critics. The estimates of suspected Hutus perpetrators continue to grow, with one minister asserting that "80 percent of those Hutu alive had participate in the killing."[1] In the first genocide commemoration, all Rwandans who had lost their lives were mourned. However, by mid-1995, the government began to re-define who are the 'true victims', and prescribed to an 'official narrative' of the genocide that completely ignores Hutu victims. The political implication is that today, Hutus are treated with suspicion and excluded from public life, forced to mourn and face their experiences in private. It has also deprived Hutus of their political and civil rights, as well as socio-economic benefits.

The judicial process in Rwanda has been a haphazard affair that has not delivered the kind of justice that it proclaimed it would. Furthermore, the presumptions made by the 'criminal trial' in cases of mass violence have led to the politicisation of justice in Rwanda. Criminal justice sees the violence as criminal violence, and responsibility as individual. Thus, the genocide has been criminalised rather than being seen as political violence, which would allow for a more thorough investigation into the issues the drove the genocide. Criminal justice seeks individual responsibility so that it may uphold due process, pursue top military and political

leaders, and avoid collectivising a group or constituency. In Rwanda, naming the genocide as the 'crime of all crimes' has allowed the post-genocide government's aggressive judicial pursuit of the Hutu population. This has collectively assigned guilt to all Hutus without a free and fair trial or due process. Secondly, it has provided judicial immunity to the Tutsi population, particularly to the RPF, who have even presented themselves as victims because they are Tutsi. Paralysed by the opposition from the government, the ICTR reached an impasse fairly soon after it was established. It could not effectively prosecute the RPF for 'crimes against humanity'. The significant 'stand-off' between Prosecutor Carla del Ponte and President Kagame demonstrated that the Tribunal had no bearing on Rwanda's justice without the goodwill and cooperation of the government, and that justice in Rwanda is deeply politicised. The RPF has tested the tolerance of both Rwandans and the international community, and the initial 'genocide credit' afforded to them has depleted over the years. The mounting critique of their human rights record and judicial immunity has challenged the former perception of their 'good guys' image as the 'liberators' of Rwanda.

What would it then mean to think of the genocide as political violence and not criminal violence? Arguably, it would mean seeing the genocide as having a history- a historical and political context. This in turn would require the current regime in Rwanda to confront its political record and address the political crisis that continues to have hold on Rwanda today.

The post-genocide power relies on Tutsi victimhood and a singular historical perspective to maintain control of the state and society. I do not deny the extensive persecution of Tutsis and the distinct objective to annihilate them during the genocide. I am concerned, however, with how Tutsi victimhood has been politicised in order to make a purchase on political power, which has led to the emergence of 'Tutsi Power'. Furthermore, the problem with the singular historical perspective is that it continues the practice of history writing and history making in Rwanda, a powerful tool used to secure power, citizenship rights, and justice for one group over another.

This was demonstrated in the political logic of the 1959 Social Revolution, and the First and Second Republic, which spoke of Hutus as the eternal victims of Rwanda's politics under the pre-colonial Tutsi monarchy, and the experience of 'double colonialism' by both Tutsis and the Belgian colonialists. The Social Revolution and subsequent regimes show that they bought into the fiction of race, as demands were made based on a 'native prerogative'. When they spoke of justice, it was specifically justice for the Hutu indigenous majority. Thus political identity shaped the meaning of justice. Chapter 2 demonstrated that Rwanda's Independence was a political victory for the Hutu elite and secured their power. However, it reaped few benefits for 'ordinary Rwandans', especially the poor, and victimised the Tutsi minority on the basis that they were foreign/non-indigenous group within Rwanda.

The mode of power that came into being relied on a rhetoric that the battle is essentially between Hutu and Tutsi, and history had demonstrated that Tutsis could not be trusted in a power-sharing arrangement. It excluded other critiques of colonialism or suggestions for inter-ethnic dialogue that were taking place in the peripheries. It also showed that political

identities had become naturalised through their links to organised forms of power. The inherited colonial legacy set a profound precedent for both Republics and the post-genocide regime, because the political crisis is embedded in the institutions of rule, and is given life through political power and meaning of citizenship. Tutsi were primarily kept out of politics and public life, and were made to pay for past injustices based on their ethnic identity. Identity cards were retained, which reminded each Rwandan that there is a hierarchy of political identities. This is seen in the way the identity cards were used to mark out privileges, such as access to land and education, and to identify the Tutsi minority who were excluded. The colonial experience also shaped a distinct type of justice that closely resembles the logic of 'victor's justice' and a 'victims justice' rationale today.

The historical limitations of the post-colonial political crisis became acute after the October 1990 invasion. Chapter 5 explored how the exiled experience of the Tutsi diaspora in Uganda, which has its own colonial legacy (post-colonial citizenship crisis), shaped a yearning amongst the Tutsi diaspora to return to Rwanda, their ancestral home and basis for citizenship and rights. The RPA launched an external critique of the Habyarimana regime, and organised itself along the lines of returning to Rwanda as a right, and to represent the political demands that Tutsis were making to be recognised as equal citizens of Rwanda. I importantly noted that this was despite Habyarimana proposing internal political reform in the midst of a negotiation with Ugandan President Museveni regarding the 'right of return' for those in the diaspora. Thus, the Invasion was seen by the government as an attempt by the RPA to overthrow the Rwandan government, which polarised and antagonised racial groups within Rwanda. As the RPA gained military ground, Hutus either fled Rwanda along with Tutsis, or they became part of the expanding internally displaced population. Moreover, the internal opposition that was calling to liberalise Rwanda were discredited, and in some cases killed, because they were seen as co-conspirators by 'Hutu Power'. This was supported by the role of the radio, television and print media which would spew propaganda, fuelling tensions with the claim that Tutsis were not an ethnic group, but a foreign race in Rwanda seeking to re-install the Tutsi monarchy and subjugate the indigenous Hutu population. The civil war returned Rwanda's politics back to the battleground between Hutu and Tutsi over state power, and the political tendency to see power as the only security for rights and protection of one's group. It also allowed radical Hutu politics to emerge from the peripheries and take centre stage.

Rwanda's historical political tendency was re-affirmed during the Arusha Peace negotiations, which excluded major constituencies, and framed their political demands as being disruptive and merely about political power. Both radical and moderate Hutu political opposition saw this as a 'victor's deal' for the RPF, and feared that it would mean a return to Tutsi privilege and power. Thus, 'Hutu Power' recalled the logic of colonialism, the ideology of race that distinguished Hutus as native and the political majoritarian, and devised a policy for genocide premised on justice for Hutus. 'Hutu Power' was very much thinking along the lines of the 1959 Social Revolution, seeking to redeem what it saw as the 'failed revolution'- the unfulfilled promise of a Hutu nation.

The Arusha Accords critically failed to de-racialise Rwanda's institutions of rule, and the mode of power and citizenship. Instead it focused on universal liberal-democratic principles, such as the 'rule of law', 'power-sharing', multi-party elections…etc., and neglected the political context. When the RPF broke the ceasefire agreement, and it was evident that President Habyarimana had no interest in fulfilling it either, it demonstrated that the transitional compromise was a dead deal. Arguably, it contributed to the genocide, as the deal reified the racialised political identities.

The Arusha Agreement should have been comprehensively addressed after the genocide, but instead the interim government chose to modify its stipulations, which placed the RPF in important positions, allowing them to have direct influence on power and policy-making. The RPF's 'military victory' particularly allowed Paul Kagame full reign, to set the terms and conditions of the post-genocide political dispensation.

'Justice' and 'Tutsi victimhood' have become powerful tools for the RPF's control of the political space in Rwanda. The political rhetoric of the former regimes that projected 'victim consciousness' echoes loudly in the logic of the RPF. Between 1994-2003, the RPF were seen to have desirable character traits (discipline and vision) that were seen to be necessary for preventing the resumption of war, establishing order and restoring the functions of the state, whilst attending to its traumatised population by seeking justice and socio-economic development.

For this reason, I divided my analysis on the post-genocide political record into two periods: the interim transitional government, and from 2000-today. The investigation demonstrated that the political crisis prevails, political reform has not taken place, and that there is a well-established historical tradition that has formulated the RPF's current political tendencies. The RPF does not see the party having much of a choice other than monopolising power in order to secure justice for the victims. Moreover, it has to contend with a widely held perception that sees the RPF as being representative of the Tutsi political minority, and an even smaller constituency- the Tutsi political diaspora. This has meant that the RPF does not trust opening up the political space and allowing for a competitive democracy, as it would simply mean that they would lose power and endanger the security of the Tutsi population. This has also seen the party alienate Hutu democrats and later Tutsi survivors, a growing opposition which has been forced to operate primarily in exile. The silencing of the political opposition, and the limited to non-existence political menu at the national elections (2003) had garnered the critique that Rwanda has seen both the 'Tutsification' of the state, and 'RPFization of power'. Initially, the international community and even Rwandans were reluctant to critique the 'liberators'. I would argue that this was because the trauma of the genocide was still very much fresh in the minds of everyone and the reconstruction project was an almost impossible task. Furthermore, bold re-engineering project, which seeks to 'remake Rwanda', and re-define its political, economic and social landscape, was a great distraction.

The post-genocide regime places significant emphasis on socio-economic development as the basis for reconciliation and unity, and to restore the dignity of Rwandans. However,

agricultural and land tenure system reforms; the forced 'villagisation programme'; the Gacaca court; and the 're-education' of the Rwandan population, have contributed dramatically to inequality, poverty, and insecurity of Rwandans, especially the rural poor. These policies have also done little to assist social peace and reconciliation. Whereas, the 2003 Constitution has legally eradicated ethnic identification, the new 'speech and thought crimes', also known as the 'genocide-laws', and the new categories of identification (victims, perpetrators, returnees, old-caseload refugees and new-caseload refugees) have added new meaning to Hutu and Tutsi. Practices such as prioritising land security for Tutsi victims, returnees, and old-caseload refugees, or forcing predominantly Hutus off their land and into the villagisation programme, or into land sharing arrangements, only serve to further antagonise the population. As I discussed in Chapter 5, land is inextricably linked to the organisation of forms of power, social, and economic relations. Of crucial importance, colonials used land relationships and management to politicise identities premised on the ideology of race. Thus, whilst the government pushes for reconciliation, its policies constantly draw attention to the past and the un-reconciled political identities.

A central conviction of the current regime is 'Never Again', which has meant that the past cannot be forgotten. There are constant painful reminders of the genocide, from the annual commemorations and memorials held for Tutsi victims, to the monopoly of the 'official history' and narrative of the genocide that has been forced onto Rwandans. This is very difficult for Rwandans, where radically different narratives of the past exist but Rwandans cannot publicly engage in a discussion on them, because alternative views are silenced by the genocide laws. This does little to allow Rwandans to recognise each other's experiences and to see that they all share Rwanda's common tragic past. My discussion on the 're-education' programme presented an alarming transcript of how the regime seeks to condition and discipline the minds of Rwandans. It also is used to continue the demonising of the Hutu identity, and cast them as second-class citizens in Rwanda. The official policy on reconciliation and unity relies on the exclusion of Hutu victims and Hutu memory. The government has a peculiar approach to identities. On the one hand it practices 'ethnic amnesia' and speaks of 'Rwandicity and a post-ethnic society. On the other hand, the post-genocide power has become trapped by its 'victims consciousness', which has led to each policy serving justice for Tutsis. The result is that it constantly attacks the Hutu identity, which has led to an uncomfortable co-existence for Rwandans when the regime consistently reminds them of the 'guilty majority' and 'fearful minority'.

Rwanda will not be able to conceive a single political community whilst it remains trapped by the logic of 'victims justice'. As I demonstrated in Chapter 6, this logic has further complicated the dilemma of reconciling Hutus and Tutsis, because it has now taken on diasporic character. Born from the Tutsi diaspora, the RPF has, since the genocide, pursued genocidaires in the Great Lakes region on the pretext that it has a moral obligation to protect the survival of Tutsis within Rwanda and in the diaspora. Similar to how the genocide hardened Hutu and Tutsi as political identities, the post-genocide political and military campaigns in Congo have violently reconstructed two diasporic communities, one Hutu and one Tutsi. Moreover, what began as a policy pursuing justice and security for Rwanda and

Tutsis, quickly evolved into revenge attacks against the Hutus in the diaspora. This has had a devastating impact on the Great Lakes, which triggered two Congolese wars, which has claimed more lives than the genocide and has displaced millions of people in the region. Rwanda's political crisis has become a regional dynamic, because Congo, as with other states in the region, has inherited its own colonial legacy, shaping a complex post-colonial citizenship crisis which the Banyarwanda have become victims of. The post-colonial citizenship crisis has produced two types of citizens: one ethnic and one civic, and with each crisis the Congolese state re-defines who belongs and who should govern based on politics of indigeneity. The Banyarwanda have become victims of this predicament.

This dissertation has drawn on arguments made by Mahmood Mamdani, particularly concerning citizenship and justice. My suggestion is that we need to think of Mamdani's concept of 'survivor's justice', rather than 'victims justice or victor's justice', which assist in confronting the needs of political reform that address colonial legacies.

I would like to introduce one of Mamdani's key contributions in '*When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda.*' It is the notion of 'survivors justice'. Karenkezi argues that it is one of the most original and important contributions because the Banyarwanda have come to be considered globally as 'settlers', and if we take Mamdani's argument that the Genocide in Rwanda was a 'Native's genocide against the Tutsi settler', than this has troubling consequences. [2]The 'lived experience' of the Banyarwanda is one that seeks continuous affirmation because they fall between the cracks of 'citizen-rights' and 'customary-rights'. Thus, it supports the argument that the issue of citizenship requires commitment by each state, through disinheriting their colonial legacies that have shaped post-colonial political institutions; and it requires a strong regional approach and commitment in order to achieve a sustainable solution. I will thus explore the notion of 'survivors justice' and its prospects for post-genocide Rwanda, since Rwanda lies at the epicentre of the Great Lakes regional crisis.

Mamdani asserts that while the RPF won the war, there has been no divorce between Hutu and Tutsi in Rwanda.[3]Furthermore, consequential to a military victory and a political victor, is that justice for the victims is only determined by the victor. This is referred to as 'victors justice' and 'victims justice'. This renders the question, if the form of justice flows from the form of power, and "victor's justice requires victor's power, than is not victor's justice simply revenge masquerading as justice?[4] Within Rwanda, and as demonstrated in Chapter 6, what began as military intervention into Congo, premised on the argument that it is necessary for protecting Tutsis in the diaspora, has turned into revenge attacks and a cyclical war which keeps producing new 'sets of victims and perpetrators'. Mamdani calls for a re-thinking around the formulation of 'justice', which produces the mode of power. It also redirects inquiry back to the question of 'justice' itself, and one needs to ask: "Is a form of justice possible that is not at the same victor's justice?" And "Is a form of reconciliation possible that is not at the same time an absence of justice, and thus an embrace of evil?"[5]These questions relate back to the central historical question of what type of 'justice' to pursue-punishment or impunity? 'Successor justice' emerged as the most suitable form of justice,

and has come to define how we think about justice. Moreover, these two questions are thought about within the contemporary debates on the 'rule of law dilemma' and the 'peace versus justice dilemma' (discussed in Chapter 1). Mamdani argues, "these question provide a clue to finding a way out of the dialectic of civil war"- that way has to be anchored in an alternative, which Mamdani has called 'survivors justice'.[6]

Mamdani asserts, "The prerequisite for survivor's justice, as for victor's justice, may also be military victory".[7] But, it is different to 'successor justice' ('victor's justice') which has historically decided on the fate of the vanquished, and whether the 'vanquished' should be included or excluded from the political settlement and new political order. 'Survivors justice' transcends these categories, by seeing all those "who continue to be blessed with life in the aftermath of civil war" as survivors or as a 'community of survivors.'[8] In Rwanda, this would transcend the idea that only 'Tutsis are victims' and the reproduction of Hutu and Tutsi through the categories of perpetrator, victim, returnee, and old and new caseload refugee.

'Survivors justice' was formulated from the logic of two types of post-war paradigms of justice: 1 'de-Nazification' and 2. 'de-Sovietization'. 'De-Nazification' came about at the onset of the Cold-War, where justice is premised on the logic of blaming the agent. This requires identifying 'victims' and 'perpetrators', and to go further by 'demonising the perpetrator'.[9] For the latter- 'de-Sovietization' marked the end of the Cold War. The logic was to blame the system, and is anchored in the identity of the survivors.[10] Post-genocide Rwanda has followed the logic of 'de-Nazification', and has pursued the leadership through the Arusha Tribunal and judicial courts.[11] Mamdani argues, "to pursue the logic of de-Sovietization would be to put emphasis, first and foremost, on the institutions of rule in Rwanda. Where survivors, victims and perpetrators, from an earlier round of struggle must learn to live together, ways must be found to reconcile the logic of reconciliation with that of justice."[12]

'Survivors justice' is also different to revolutionary justice, and only makes sense where there have been few beneficiaries from the preceding civil war. This is the case in Rwanda. The key to reconciliation in Rwanda is political reconciliation. Mamdani argues, "The prime requirement for political reconciliation is neither criminal justice nor social justice, but *political justice*."[13] Political justice goes beyond holding perpetrators accountable, and replaces the question of 'who should govern' to 'how they should govern'- through what kinds of institutions.[14] This is important because historically in Rwanda, political identities and power are linked to formation of the state, and institutions of rule. Political justice requires shifting the primary focus on individuals and redirecting it to the institutions. Furthermore, it requires recognising that the key to institutional reform is the reform of institutions of rule.[15] The objective is to depoliticise Hutu and Tutsi, and reorganise the mode of power in order to make reconciliation possible, and introduce a single criterion for citizenship: residence. This is not easy but is acutely necessary for political reconciliation and justice for all survivors. It renders an important question that needs to be taken up, which is "what would it mean to reform institutions of rule so as to give the survivors of the genocide another chance?"[16]

Notes on Introduction:

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[1] Author Unknown, *A day in the marshes,* Rwandan Stories, available from http://www.rwandanstories.org/genocide/marshes.html (accessed on 11 November 2015)

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[4] Ibid., 3.

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[67] Mamdani, "*The Logic of Nuremburg,*" 33

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