

Rwanda's Application for Membership of the Commonwealth:

Report and Recommendations
of the Commonwealth Human Rights Initiative



CHRI

Commonwealth Human Rights Initiative

working for the practical realisation of *human rights* in the countries of the Commonwealth



Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

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Professor Yashpal Ghai, a Kenyan educated at Oxford and Harvard, was awarded Doctorate of Civil Law by Oxford in 1990, and elected Fellow of the British Academy in 2000. He was called to the English Bar and admitted to practice law in Tanzania.

A law teacher for most of his professional life, he taught at the University College, Dar es Salaam from 1963-72, and was the first East African dean of the Law Faculty. Until 2006 he was first Sir Y K Pao Professor of Public Law at the University of Hong Kong. In between he was a Research Fellow at the University of Uppsala, Sweden, for five years, and taught at the University of Warwick, UK, for over a decade. He has been a visiting professor at the Yale Law School, the Harvard Law School, University of Wisconsin, University of Toronto, Melbourne University, and the National University of Singapore.

Professor Ghai publishes extensively on public law, including human rights. His first publication was *Public Law and Political Change in Kenya* (1971, with Patrick McAuslan), and his most recent book looks at implementing the Millennium Development Goals through constitutional protection of economic, social and cultural rights (a project for the UNDP regional office, Bangkok).

Professor Ghai frequently advises governments and political parties on constitutional matters, and was a consultant on the independence constitutions of Papua New Guinea, Solomon Islands and Vanuatu, and worked on constitution making or reform in Fiji, Cook Islands, Iraq, Afghanistan and, recently, in Nepal, where he headed the UNDP's Constitution Support Unit from 2006 -2008. Professor Ghai chaired the Kenya Constitution Review Commission (2000 to 2004) and the Kenya National Constitutional Conference (2002 to 2004). He was Special Representative of the UN *Secretary-General for human rights in Cambodia* from 2005-8. He has served on the boards of Interights, Minority Rights Group, International Council on Human Rights Policy, the Asian Commission of Human Rights, and the International Centre for Transitional Justice. He was a member of the first Advisory Commission of CHRI, and edited their first report, *Put our World to Rights*, and rejoined its Advisory Commission last year.

Lucy Mathieson

Ms Lucy Mathieson, *Coordinator of CHRI's Human Rights Advocacy Programme*, has a Masters in International Law from the Victoria University in New Zealand. She has rich experience having associated with the National Consultative Committee on Disarmament, Institute for International Mediation and Conflict Resolution, UK, Charities Advisory Trust. She has worked with Peace Brigades International, Nepal, South Asian Forum for Human Rights, India, Ministry of Immigration in New Zealand and UNHCR.

PREFACE

The Commonwealth Human Rights Initiative's (CHRI) report on Rwanda is published in order to assist the Commonwealth Heads of Governments in arriving at a decision as to whether Rwanda should be admitted to Commonwealth membership. The decision would be momentous, as until recently the rules for admission to the Commonwealth restricted membership to those states that have had a close constitutional relationship with a Commonwealth state. Mozambique was the exception, when it was formally admitted in 1995, because of its intimate links with Southern African Commonwealth states and its role in ending the apartheid era within South Africa. Since then the Heads of Governments have adopted rules for the admission of new members. These rules open up the possibility of membership to states like Rwanda, which have had no previous constitutional link with a Commonwealth state. The most important criterion is that the applicant state should demonstrate that it respects and follows Commonwealth values, particularly of human rights and democracy, as set out in the Harare Declaration of 1991.

The decision the Commonwealth Heads of Governments make will be a precedent for the consideration of future applications. It is therefore critical that the decision is not rushed, but is made with great care, with a full consideration of the applicant's record on human rights and democracy. The Commonwealth Secretariat has prepared a report on Rwanda's application, which presumably includes an assessment of Rwanda's compliance with Commonwealth standards of human rights and democracy. Unfortunately the report has not been made public. The Commonwealth is primarily an association of the peoples of its member states, who may thus be unable to assess Rwanda's eligibility for membership, or the impact it will have on the values and working of the Commonwealth. Some Commonwealth governments have already expressed strong support for its admission.

CHRI is concerned to ensure that the issues of human rights and democracy are given due consideration in the decision on Rwanda's application. It is for this purpose that the CHRI is publishing this report. It was prepared at the request of the Advisory Board of the CHRI by Professor Yash Ghai with the assistance of Lucy Mathieson, the Programme Coordinator of CHRI's Human Rights Advocacy Programme. Professor Ghai, a member of the Advisory Commission, is a distinguished scholar of constitutional law, human rights and democracy, and has considerable experience of making and evaluating constitutional and political systems. Lucy Mathieson has studied and worked on issues of human rights law within the Commonwealth, specialising in the situation of civil society and human rights defenders. After several months of research and preparation, the team visited Rwanda during May 2009.

The reaction to the interim report, which was released in London in late July 2009, suggested that there was considerable misunderstanding, or at least confusion, about Rwanda's history, the politics of the genocide of 1994, and the record of the government

led by the Rwandese Patriotic Front (RPF) since the end of the genocide. This prompted the preparation of a fuller report that examines the evolutionary factors which have shaped Rwanda's present politics— particularly because the RPF evokes strong emotions of both approval and dislike. CHRI trusts that this detailed report will enable both the governments and the peoples of the Commonwealth to assess the merits of Rwanda's application.

The CHRI is grateful to Professor Ghai and Lucy Mathieson for their work on this report. It also wishes to thank Jill Cottrell for her comments on an earlier draft and her assistance with research and editing the final report. CHRI is appreciative of comments on the draft report provided by Marc Laroche, Penal Reform International, Karol Lai, Danish Institute for Human Rights, Oumar Kane of the United Nations Development Programme, Neville Linton, Richard Bourne and Derek Ingram. Finally, CHRI would like to thank all individuals and organisations in Kigali, Rwanda, who met them, particularly the staff of the British Embassy for their assistance in arranging meetings. None of them bears any responsibility for the contents of the report.

Sam Okudzeto

Chair, Advisory Commission

Commonwealth Human Rights Initiative

New Delhi, India

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EXECUTIVE SUMMARY

Rwanda's application for membership of the Commonwealth is likely to be on the agenda at this year's Commonwealth Heads of Government Meeting at Port Spain in Trinidad and Tobago. Traditionally, because of its origins, the membership rules for the Commonwealth were informal. In recent years, interest in membership has been shown by states with no previous constitutional link to the Commonwealth or its members. This led to specific criteria being developed from CHOGM, 1997 onwards, the chief of which is that an aspirant member state must abide by the Principles set out in the 1991 Harare Declaration. Rwanda has no constitutional link to any Commonwealth country. Only one country without a constitutional link has previously been admitted in this way—Mozambique in 1995—and that was before there were formal criteria. Given this, Rwanda represents an important test case. Among the key Harare Principles are commitments to the protection of human rights and to democracy. The Commonwealth Human Rights Initiative (CHRI) believes that overwhelming evidence, conveniently ignored by leading Commonwealth states, demonstrates that the government of Rwanda is not sufficiently committed to these values.

The situation with regard to human rights within Rwanda has been an ongoing concern for many international agencies and human rights organisations. The provisions of the 2003 Constitution against "genocide ideology", and consequent laws, prohibiting the raising of any doubts about the extent of the killing of Tutsis in 1994, and any discussion of retaliatory killings of Hutus, have been used to suppress freedom of speech and have created a climate of fear in civil society. Censorship is prevalent and the government has a record of shutting down independent media outlets and newspapers, and harassing journalists. General civil society is also severely hampered by restrictive laws governing independent associations. There remain serious concerns about the level of political freedom and the fact that the independent body in charge of registering political parties is still controlled by the ruling Rwandese Patriotic Front (RPF). Rwanda's judiciary has systemic weaknesses and there are troubling questions about the failure of the judiciary to investigate and prosecute members of the Rwandese Patriotic Army (RPA) for their involvement in human rights abuses and proven involvement in war crimes in the Democratic Republic of the Congo (DRC).

There are some serious human rights concerns about the operation of the Gacaca courts, set up to deal with the majority of those accused of involvement in the genocide. They do not adhere to basic presumptions of innocence or fair trial procedures. President Kagame has used his power to give immunity from prosecution to some of those suspected of being the most serious perpetrators of human rights abuses. The Rwandan government's ongoing activities in the Democratic Republic of the Congo and its support of Tutsi militias in Kivu have raised grave concerns, and indeed recommendations that senior figures in the RPF ought to be brought before international and foreign tribunals.

CHRI acknowledges that Rwanda has what appears to be a well-deserved reputation for governmental efficiency and for being less corrupt than a number of other countries—but its claims about the lack of corruption appear hollow when considering its complicity in the illicit economy of the region, and its plunder of the Democratic Republic of the Congo's (DRC) natural resources. Furthermore, such attributes are not sufficient for membership of the Commonwealth. Indeed, the capacity for efficient government ought perhaps to indicate that a country should be able to govern without major human rights abuses, contrary to the situation in Rwanda. The Rwandan government has excellent public relations machinery. Its leaders are astute, and effectively play upon the conscience of the world,

particularly Western states, by invoking victimhood of genocide (while cleverly hiding the fact that thousands of Hutus were killed by its armed forces, the total political destabilisation it has constantly engineered in the DRC, and the heart-rending suffering it has brought to the Congolese and other communities). It has succeeded in persuading the key members of the international community that it has an exemplary constitution emphasising democracy, power-sharing, and human rights which it fully respects.

The truth is, however, the opposite: it uses the constitution opportunistically as a façade, which hides the exclusionary and repressive nature of the regime; relies on power structures that sometimes run parallel to, and sometimes cross-cuts, the formal government; and in which the army plays a central role. (Sometimes Rwanda is described as “an army with a state”, and at other times the army is described as “*soldats sans frontières*”, or “soldiers without borders”). Rwanda has relied heavily for its revenue (to fund its institutions and elites) on the plunder of the mineral resources of the DRC—and extraordinarily generous development assistance from the United Kingdom, the United States of America, and some other Western governments. It bears the primary responsibility for the political and economic instability in the Great Lakes Region (including the overthrow of the Congolese government), which is functional to its mode of extraction of wealth and its dominance of the region. It practises, and has contributed to, a complex, regional regime of illegal economic transactions, evasion of United Nations sanctions, arming of militias and criminal business organisations, and disregard of neighbours’ borders and fiscal systems, which has greatly impoverished the people of the region.

The RPF has used an extraordinary amount of violence, domestically and internationally, in the pursuit of its illegitimate aims. It is responsible for killing almost 500,000 persons, whether citizens or not, and is responsible for the deaths of many times more through displacement, malnutrition and hunger. It has denied hundreds of thousands of children of the opportunity to go to school, and deprived millions of prospects of family and community life. The UN has voluminously documented these practices and repeatedly chastised Rwanda (as the extracts from UN reports in the appendices demonstrate).

CHRI also observes that the membership criteria, including adherence to the Harare Principles, are not a basis for *entitlement* to membership; they are just a minimum threshold. Again, CHRI has no wish to underplay the fact that the Rwandan people have suffered gross human rights abuses and endured the most horrific mass atrocities since the end of the Second World War, but this cannot provide a justification for their membership of the Commonwealth as long as basic human rights in the country remain in such an unsatisfactory state.

It does not make sense to admit a state that already does not satisfy Commonwealth standards. This would tarnish the reputation of the Commonwealth and confirm the opinion of many people and civic organisations that the leaders of its governments do not really care for democracy and human rights, and that its periodic, solemn declarations are merely hot air. The admission of a state below standard will lower the “average”, as it were, of the Commonwealth commitment to democracy and human rights. And, it would weaken the Commonwealth when it comes to making decisions on sanctions against defaulting existing members, increasing the number of states who have shown little regard for human rights. Such admissions of new members with poor records would drive a wedge between the governments and peoples of the Commonwealth, reducing the organisation to a mere trade union of governments. The fact that there are a number of members of the Commonwealth which gained their membership by virtue of their post-colonial heritage are themselves human rights abusers, should not be a factor in Rwanda’s application for membership. If anything, this provides the grounds

for making the criteria for continued membership of the Commonwealth on human rights observance more stringent.

CHRI believes that the procedure for admission to the Commonwealth must include a full and comprehensive review of the state of human rights in the applicant country. CHRI recommends that, at the 2009 CHOGM, an independent commission be set up to examine the entire question of membership, and that the nature and future of Commonwealth membership should be considered afresh, independently of political concerns and current membership applications. In addition, it recommends that an independent commission of eminent Commonwealth persons, and experts on the applicant country should be set up to review each application, beginning with Rwanda, and report to the Heads of Government. This would subject the applicant country to rigorous scrutiny of its record on human rights and democracy and engage with its civil society, trade unions, political parties, universities and so on to obtain a sense of public opinion. The latter commission should have resources to prepare background materials to inform the people of the applicant state about the history and significance of the Commonwealth and the rights and obligations of membership. And a process must be set up whereby a state wanting entry to the Commonwealth can indicate that the government has consulted with the people, and it must be able to objectively demonstrate their support.

Supporters of Rwanda's admission claim that Commonwealth membership will provide it with the incentive and the opportunity to improve its human rights record. It would learn about the importance and practice of human rights from other members, and at the same time, it would come under pressure to improve its own standards. With all due respect, this is extremely unconvincing. Several member countries in the rest of the Commonwealth violate human rights with near total impunity as far as the Commonwealth is concerned. Rwanda would feel very comfortable going to CHOGM retreats, secure in the knowledge that no one will raise questions about its gross violations of democratic principles, the rule of law, and human rights. Cameroon, which was admitted in 1995, has yet to meet the basic Commonwealth requirements in spite of endless Commonwealth Secretariat efforts and expense. The Commonwealth machinery for enforcing human rights and disciplining errant states is rudimentary, ineffective and marked by a lack of political will. In general, Commonwealth states have come under greater pressure from non-Commonwealth countries. The major brokers of peace, restoration of democracy and human rights are the United States of America and the European Union: in Kenya's worst political crisis since independence, with thousands killed and hundreds of thousand displaced, the silence and inactivity of the Commonwealth was astounding.

Our conclusion is that the state of governance and human rights in Rwanda does not satisfy Commonwealth standards. Rwanda does not therefore qualify for admission. It has been argued that neither do several existing members. Unfortunately, that is certainly true. But there is an important difference between these states and Rwanda. They became members by virtue of their past history of British colonialism and the convention of more or less automatic membership. Until the Harare Declaration, there were no *formalised* standards of Commonwealth values. Governments of member states which deviate seriously from these standards are now subject to disciplinary measures, including suspension or even exclusion (although the last option has not been exercised so far, on the assumption that exclusion would be unfair to the people of the state, who may themselves be victims of violations). Suspension is lifted only when the deviant practices have been abandoned. If the Commonwealth admits a state below its standards, it would have to welcome the new member, if it is to stand firm on its self-proclaimed values, by criticising its democratic and human rights record and considering sanctions.

It is important that the Commonwealth, several of whose members are associated with the non-aligned movement, should not be swayed by the interests of some of its members, who have for long supported the present Rwandan regime, despite its gross and well-known violations of human rights. Nor must it, as a predominantly anglophone association, rejoice in the present regime's rejection of *francophonie* (which in large part may be opportunistic), just as the French assistance to the Habyarimana regime in 1990, when the RPF invaded Rwanda, was inspired by the devout wish to retain Rwanda within the francophone community—and to worst the “Anglo-Saxons”, successors to “*les Anglais*”. That would be puerile and beneath the dignity of the Commonwealth.

While CHRI takes into account the extreme violence and suffering that Rwanda's people have been through, it acknowledges the economic and administrative progress that has been made under the present regime, recognises the potential within its constitution to nurture a democratic polity and accepts that Rwanda has traditional and growing ties with some Commonwealth members in its region. CHRI therefore proposes that CHOGM should not reject Rwanda's application outright, but deal with it in the fashion of the European Union, when considering applications for membership. The Commonwealth should reiterate its values, identify areas where Rwanda falls short, and ask it to remedy deficiencies while offering assistance to resolve these. Once it is satisfied that appropriate laws and, most importantly, practices have been instituted, Rwanda should be welcomed to the Commonwealth. The admission of Cameroon was made subject to its satisfying Commonwealth values and standards as was the re-admission of Fiji after the first coup of 1987.

Recommendations

CHRI puts forward two recommendations—one is general relating to the process for admission of new members, and the other specific to Rwanda.

I(a). This report comments on the lack of a mechanism to establish that the people of an applicant state in reality seek or support the bid for membership, and that the state in fact satisfies the test of Commonwealth values. CHRI considers that now is the time to deal with this lacuna, before further applications are received. We therefore urge the next CHOGM to address these two issues before it proceeds to the consideration of Rwanda's application. We propose that an independent commission of eminent Commonwealth statespersons, representatives of leading pan-Commonwealth NGOs, and experts on the applicant country should be set up to review the application and report to the Heads of Government. It would subject the applicant to rigorous scrutiny of its record on human rights and democracy, and engage with its civil society, trade unions, political parties, universities and so on, to obtain a sense of public opinion.

The commission should have resources to prepare background materials to inform the people of the applicant state about the history and significance of the Commonwealth and the rights and obligations of membership. If necessary, it should commission studies on the country's legal, economic and social systems (to educate the Commonwealth about the potential new member and enable its communities to assess the eligibility of the applicant)—in a rudimentary form. Unless this is done, there is the danger that the Commonwealth could slide into debased standards, and lose both its attraction to the people of the Commonwealth and its own the reputation.

I(b). With the prospect of new applications this is the right time for renewed debate on the nature and future of the Commonwealth. The world has changed very

significantly in recent decades. There has been a large growth of new regional and international organisations. What is the relevance of these developments for the Commonwealth? What will the Commonwealth gain from aspirations to become a universal organisation? What will be the effect of the admission of states without a history or understanding of the Commonwealth? These and other questions should be addressed in the first instance by a commission established jointly by Commonwealth governments and civil society. Its report should be disseminated widely and debated by the public.

II. This report makes it clear that Rwanda does not satisfy the test of Commonwealth values. 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. Consequently, its admission would send the signal, loud and clear, that the commitment of the governments of the Commonwealth countries to its values is shallow. We therefore suggest that the next CHOGM make no decision on the applicant other than to set up a procedure to examine Rwanda's eligibility for membership and the consequences for the Commonwealth of expansion in its members. In consultation with Commonwealth civil society, it should set up the commission as proposed in recommendation I(a), to initiate this discussion. The commission should report within a year of its appointment. The report and recommendation should be the basis of negotiations with Rwanda, and Rwanda should be informed accordingly.



The image features four hands of a dark brown complexion, raised from the bottom and fanned out towards the top. The hands are positioned against a coarse, grey, pebbly texture that fills the entire background. The lighting is warm, highlighting the skin tones and the texture of the background. The text is centered over the hands in a bold, yellow, sans-serif font.

**RWANDA'S APPLICATION FOR MEMBERSHIP OF THE
COMMONWEALTH: REPORT AND RECOMMENDATIONS
OF THE COMMONWEALTH HUMAN RIGHTS INITIATIVE**

I RWANDA'S APPLICATION

Rwanda has applied for membership of the Commonwealth. The application is likely to be discussed at the next Commonwealth Heads of Governments meeting (CHOGM) in November 2009. The Commonwealth Secretariat has already made an assessment of the application (although its report is, unfortunately, still confidential). As the question of Commonwealth membership is not a matter merely for governments but also for the peoples of the Commonwealth (the Commonwealth being primarily an association of the people of member states), the Commonwealth Human Rights Initiative (CHRI), decided to make its own assessment of the application against the criteria for membership. For this purpose, it sent a mission to Rwanda in May 2009. The mission paid particular attention to the state of human rights and the role of civil society, in accordance with the criteria and terms of the Harare Declaration. It also considered the implications of the expansion of membership, particularly by admission of states which have had no historic links with the Commonwealth.

The mission benefited from a report prepared by Lucy Mathieson, a CHRI Programme Coordinator, who visited Rwanda during August 2008, where she met a number of individuals and organisations during a Commonwealth civil society meeting in Kigali. During May 2009, the mission met a number of government and state officials, members of several independent commissions, NGOs, the media, human rights organisations and members of the international community. Before and after the visit, it consulted with experts and activists on Rwanda. It also undertook a systematic survey of literature, including several important reports by independent local and international organisations.

Because all the individuals and organisations whom CHRI interviewed (except officials of the Rwandan government) expressed fears for their safety if directly cited, CHRI has, at their request, maintained their anonymity. Our inability to cite these sources has greatly handicapped us in providing detailed and personal accounts of people on the ground. But this experience did provide us with intimations of the repressive nature of the regime, which was confirmed during our consultations and research.

II THE COMMONWEALTH AND RULES FOR MEMBERSHIP

The Commonwealth is a voluntary association of 53 independent sovereign states almost all of which were previously part of the British Empire.¹ The Commonwealth provides members with a framework for consultation and cooperation in the common interests of their peoples and in the promotion of international understanding and world peace. It has no constitution or charter, but members commit themselves to certain beliefs and values set out by the Heads of Government. The basis of these values is the Declaration of Commonwealth Principles, agreed at Singapore in 1971, and reaffirmed in the Harare Declaration of 1991. These values include democracy and good governance, respect for human rights and gender equality, the rule of law, and sustainable economic and social development.

¹ Cameroon, admitted in 1995, was a German protectorate from 1894 to 1916. It was administered by Britain and France under a League of Nations mandate, and then a UN mandate, from 1922. Part of the British administered area joined with Nigeria in 1961 and the rest united with the French administered area to form a Federation and later a unitary republic. Mozambique was a Portuguese colony that joined the Commonwealth in 1995, admitted because of the country's important role as a "front-line state" in relation to apartheid South Africa.

The Commonwealth brings together large and small states, a microcosm of the world, in equal partnership. The fact that the Commonwealth is a “family” of nations, which have a common heritage in many fields, including a common language,² enables its members to work together in an atmosphere of cooperation and understanding. Commonwealth governments also learn from each other through regular meetings at various levels. Apart from the summits, there are meetings of ministers and senior officials. The Commonwealth has an active programme supporting economic development in member nations, helping members meet the Millennium Development Goals both through expert advisers and by highlighting their issues, particularly those of smaller states, in international forums. Developing countries are also eligible through the Commonwealth Fund for Technical Cooperation, for technical assistance and training programmes.

The rules for membership have developed over nearly 80 years, reflecting the evolution of Empire into Commonwealth. They remained largely informal until recently. The formalisation of the rules was principally due to two factors. The first was the need to define its essential principles and values, arising out of increased membership, with differing political systems and uneven commitment to democracy and human rights. This led to the adoption of the Harare Declaration in 1991,³ which following the Singapore Principles of 1971, placed great emphasis on democracy and human rights, and the Millbrook Commonwealth Action Programme principles (1995) which establish sanctions for fundamental breach of Commonwealth principles.

The second was the interest in membership shown by states with no previous constitutional link to the Commonwealth or its member states. Mozambique was admitted without formal rules. Concerns that this would allow open-ended expansion of the Commonwealth and dilute its historic ties prompted the 1995 CHOGM, to establish the Inter-Governmental Group on Criteria for Commonwealth Membership (the Patterson Committee). The group recommended that new members be limited to those with a constitutional association with an existing Commonwealth member. Its recommendations were endorsed at the 1997 CHOGM held in Edinburgh. The rule about a constitutional link with a member state was re-examined and rejected at the 2007 CHOGM in Kampala,⁴ which decided that, in exceptional cases, a close relationship between a member state and an applicant state would suffice. An applicant country should accept Commonwealth norms and conventions, such as the use of the English language as the medium of inter-Commonwealth relations, and acknowledge the role of Queen Elizabeth II as the Head of the Commonwealth. For our purpose, the three other requirements are of special interest. They include (paragraph 87):

(c) an applicant country should accept and comply with Commonwealth fundamental values, principles, and priorities as set out in the 1971 Declaration of Commonwealth Principles and contained in other subsequent Declarations;

(d) an applicant country must demonstrate commitment to: democracy and democratic processes, including free and fair elections and representative legislatures; the rule of law and independence of the judiciary; good governance, including a well-trained public service and transparent public accounts; and protection of human rights, freedom of expression, and equality of opportunity;

² See below.

³ See <http://www.thecommonwealth.org/document/181889/34293/35468/35773/harare.htm> visited August 20, 2009.

⁴ For communiqué see: <http://www.thecommonwealth.org/document/34293/35232/173044/chogm2007finalcommunique.htm> visited August 22, 2009.

and...

f) new members should be encouraged to join the Commonwealth Foundation, and to promote vigorous civil society and business organisations within their countries, and to foster participatory democracy through regular civil society consultations.

Nevertheless, assessing applications for Commonwealth membership remains problematic. For instance, the Commonwealth Ministerial Action Group (CMAG) assesses compliance of members with the Harare Declaration on a very limited basis: what it refers loosely to as “failures of democracy”. This is based almost entirely on whether or not the country has a democratically elected government. As a result, Commonwealth States that commit serious human rights abuses are not necessarily placed formally on CMAG’s agenda.⁵

CHRI believes that the procedure for admission to the Commonwealth must include a full and comprehensive review of the situation of human rights in the applicant country. CHRI stands by its previous submissions to the Secretariat that unless successful applicants are compelled to show compliance with the high human rights standards, the admission process will remain fatally flawed. Applicants should expect to be vigorously scrutinised, both at the point of application and subsequently, to ensure all members are compliant. There is no mechanism for monitoring the extent of general public endorsement of the application in the applicant country. There must be such a process to ensure that these criteria are met. Furthermore, the process of admitting only those states that comply with stringent standards should be paralleled by better monitoring of current members’ compliance with the Harare Principles.⁶

Whilst the current membership criteria appear to be supportive of such an approach, there are no benchmarks for membership, and no process for monitoring. The final decision is more marked by subjectivity and politics than transparency and consistency. Shifting the negotiation to pre-CHOGMs does not in itself make it any more transparent, and, given the lack of a mechanism for sounding out civil society, a democratic deficit will remain. Without clear benchmarks for monitoring compliance, political wrangling will continue. The emphasis will shift from CHOGM to pre-CHOGM diplomacy and issues such as human rights and civil society participation will continue to be secondary.

III RWANDA: HISTORY AND BACKGROUND

Rwanda, a Germany colony from the end of the nineteenth century, and then a Belgian League of Nations mandate/UN trust territory, has a population of about 10 million, which consists of three groups: the Hutu (about 85 per cent), Tutsi (14 per cent) and Twa (1 per cent). In the pre-colonial period, the territory now constituting Rwanda was progressively brought under the rule of a centralised Tutsi kingdom, reaching its apogee in the reign of Rwabugiri, from 1860 to 1895, when Ruhengeri and Gisenyi (in the north-west), until then ruled by the Hutu, was brought under Tutsi control. The *Umwami* (king) from, mainly the Nyiginya clan of the Tutsi sub-group, had almost absolute powers. The relationship between the king and the rest of the population was sustained by the

⁵ While Fiji was scrutinised in 2009, for failure of the interim government to hold parliamentary elections, Sri Lanka was not, despite allegations against the government of war crimes against its civilians during its military attacks on the LTTE.

⁶ Submission from the Commonwealth Human Rights Initiative to the Working Committee on Commonwealth Membership (November 2006).

highly organised system of *ubuhake*, a “patron-client” or contractual relationship between the landed gentry and ordinary subjects. The extension of the kingdom had altered the system of autonomous or semi-autonomous clan-structures. In particular, it led to the manipulation of traditional socio-economic categories, the major distinction being between cattle owners (Tutsi) and farming (Hutu).

These categories had allowed for some degree of social mobility; a Hutu who had acquired cattle could become Tutsi and conversely, a Tutsi could become Hutu by shifting socio-economic activity from cattle herding to farming. Rwabugiri increasingly gained control over access to land and managed to a great extent to replace the Hutu ruling elite with Tutsi, paving the way for collective sentiments of superiority and inferiority, which later became characteristic of the relations between the two groups.

With the arrival of the Germans and then the Belgians, these developments were reinforced by the colonial categorisation of the people into ethnic groups, which, as elsewhere in Africa, was based more on European racist anthropology than historical reality. These categories were based on European assumptions of the superiority of some African tribes over others (in this case of the Tutsi over the Hutu and Batwa), and mistook social classes or grouping for ethnic categories. This categorisation had a profound impact on the way the colonial state was organised and on the development of politics and political parties in the run up to, and after, independence. Though built on imagined differences, it changed the basis for the relations between different communities. Cooperation and mobility between communities were replaced by rigid, hierarchical and competitive relations. This made the social, economic and political system rigid. Differences between communities no longer connoted merely cultural differences, but also status. Hutu identity became associated with inferior status; the Tutsi were systematically privileged and the Hutu discriminated against. This led to a greatly inflated Tutsi identity and sense of superiority, while the Hutu suffered an inferiority complex and began to nurse resentments against the Tutsi. These racial categories have continued to bedevil independent Rwanda and are central to an understanding of the genocide and other forms of extreme violence that have marred its recent history.⁷

Over 40 years, for practical and political reasons, the Belgian administration favoured the king and his chiefs, who were mostly a Tutsi ruling elite. When the demand for independence began, mainly by the same previously favoured Tutsi elite, under a political party, the *Union Nationale Rwandaise* (UNAR), the Belgian authorities hastily switched support to a section of Hutu seminarians under a political party called PARMEHUTU, founded on a sectarian ethnic ideology. Hutu elite politics of 1959, and events leading to independence in July 1962, were crucial to the political life of Rwanda, involving the swing of the political pendulum in their favour, and continuing the practice of the exclusion of one ethnic group from the power of the state.

A new electoral system saw the Hutu party come to power at the centre and in the country, as elected officials ousted traditional Tutsi leaders. The Tutsi were excluded from all positions of leadership and their access to education was limited. All political and economic power was concentrated in the hands of a few members of the Hutu elite from the central region. This was accompanied by violence against Tutsi leaders, and led to a wave of Tutsis seeking refuge in neighbouring states. Serious strife erupted in December 1963, with an invasion by Tutsi refugees, and a large-scale massacre of Tutsis, producing in turn a new wave of refugees.

⁷ See Gérard Prunier's *The Rwanda Crisis: History of a Genocide* (Kampala: Fountain Press, 1999), 2nd Ed.) and Alison Des Forges, *Leave No One to tell the Story* (New York: Human Rights Watch; Paris: International Federation of Human Rights, 1999) - <http://www.hrw.org/en/reports/1999/03/01/leave-none-tell-story>.

In 1965, Rwanda became a *de facto* one-party state under *Mouvement Démocratique Rwandais* (MDR)/PARMEHUTU, which was the architect of the racist ideology that was to be consolidated in the Second Republic under President Major-General Juvenal Habyarimana and the *Mouvement Révolutionnaire Nationale pour le Développement* (MRND). Hutus, now in control, were responsible for several pogroms against the Tutsi, particularly in 1959-61, 1963 and 1973, which killed thousands, and led some hundred thousand Tutsis to take refuge in neighbouring countries, particularly Uganda. A coup, and what was by now perceived as an ethnic division between the communities, combined with intermittent flows of returning Tutsi refugees to a country where land is both scarce as well as the main source of livelihood, resulted in further ethnic clashes. A group of Tutsi refugees in Uganda, calling itself the Rwandese Patriotic Front (RPF or FPR for *Front Patriotique Rwandais*), invaded Rwanda in 1990, and occupied part of the territory, displacing many Hutus.

This produced considerable anxiety among the Hutus. Peace talks were held in Arusha in 1993, which led to an agreement between the government, the RPF and other political parties, involving a ceasefire, power sharing, the repatriation of refugees and the integration of the armed forces. But, on 6 April 1994, the plane carrying Habyarimana on his way back from a high-level regional meeting in Tanzania (where he had come under considerable pressure to implement the Arusha agreement) was shot down as it was about to land in Kigali. This was suspected to be the work of the RPF, although others have also been accused, particularly the hard-line Hutus, and even France. This led to attacks on civilians, culminating in the genocide in which over 800,000 Rwandans, mainly Tutsi, but also “moderate” Hutu and Batwa, were murdered. The genocide ended when the RPF seized most of the Rwandan territory and drove the genocidal regime into exile. (Killings continued for a while, with revenge murders being committed against Hutu civilians.)⁸

Nature of the Genocide

It is easy to ascribe conflicts in Africa and Asia to “ethnic” factors, as indeed many commentators and politicians have analysed the conflict in Rwanda. While ethnic factors are not always relevant, reducing all causes to ethnicity obscures deep, underlying causes, and minimises the overarching importance of social justice. It also obscures the fact that ethnic hostilities are mostly the result of manipulation by political or ethnic leaders, as a way to win power or resist change.⁹

⁸ Professor René Lemarchand, a leading scholar of Rwanda and Burundi, writes, “Widely praised at first for stopping the genocide, the virtuous image projected by the FPR is now being seriously dented: there is a growing body of evidence pointing to its involvement in war crimes and crimes against humanity in eastern Congo, for its alleged participation in the military operation that brought down Habyarimana’s plane, and more generally for its responsibility in the 1994 genocide” (*Rwanda: The State of Research* (Online Encyclopaedia of Mass Violence, Nov. 2007; <http://www.massviolence.org/Rwanda-The-State-of-Research>), page 12).

⁹ According to Lemarchand (*State of Research* page 17), the role played by local leaders and the elite is documented by Michael Mann (*The Dark Side of Democracy: Explaining Ethnic Cleansing*, Cambridge and New York: Cambridge University Press, 2005, pp. 454-460) and Michele Wagner (“All the Bourgmestre’s Men: Making Sense of Genocide in Rwanda”, *Africa Today*, vol. 45, no. 1, January-March 1998, pp. 25-36). The latter interviewed *génocidaires* and described, “The self-confident smile of a rural *fonctionnaire*, projecting himself as an ‘intellectual’ among non-literate farmers and striving to become a local ‘patron’ in the politics linking his rural centre to Kigali.” (Wagner p. 30). Lemarchand (p. 18) also says that Scott Straus refuted or seriously qualified “one after another ... the notion of a planned total genocide, the myth of long-standing ethnic hatreds, the contention that the ideology of genocide propagated by the media lies at the heart of the killings, the cliché phrase of a culture of obedience” (citing *The Order of Genocide: Race, Power and War in Rwanda*, Syracuse: Cornell University Press, 2006).

The Rwandan genocide took place in a country with the highest population density in Africa, and whose people depend almost exclusively on subsistence farming. Some commentators attribute the Rwandan conflicts to competing claims over scarce land, rendered more intense by population growth. An economic crisis in the 1980s, combined with a sharp fall in coffee prices and the effects of structural adjustment programmes in 1990 and 1992, led to increased poverty and unemployment. Others argue that underlying ethnic tensions, and the Hutu resentment of historical Tutsi domination and the fear of its revival, prompted by the invasion by the RPF (which caused the displacement of up to one million overwhelmingly poor Hutu farmers), were the primary cause of the genocide. The worsening economic conditions no doubt created a fertile ground for the Hutu state-sponsored hate propaganda and the reaction of the Tutsi.

Events in neighbouring Burundi (including the murder of the first Hutu president of the country by a Tutsi, see below) also affected developments in Rwanda. There the Tutsi minority retained, to a considerable extent, hegemony during the country's post-colonial period, but only by committing massive human rights violations, including killings of several hundred thousand Hutus. As a result, at the beginning of the Rwandan genocide there were some 350,000 Burundian Hutu refugees in Rwanda, who fuelled anti-Tutsi and anti-RPF sentiments among fellow Hutus. Rwandese Hutu who had been internally displaced by the RPF incursions were particularly receptive to these negative images of the Tutsi.

It is possible that the Hutu feared that the Arusha power-sharing agreement would curtail the power-base of the Hutu government. The deteriorating economic conditions for ordinary farmers coincided with the weakening of the Hutu elite's grip on power, which was also undermined by internal power struggles. The Hutu regime reacted by instigating fear and hope among destitute and poor Hutu farmers. The government made promises to Hutu farmers that they would get the land of every eliminated Tutsi, who in most cases were just as poor as the Hutu. Many of the people who had been displaced by the Tutsi invasion, and the Burundian refugees, were soon found among the perpetrators of the genocide.¹⁰ Mutual recriminations and the wrongs by the two communities contributed to the underlying economic difficulties and the ease with which ethnic entrepreneurs were able to mobilise fears and hatred of the other community. Although many Hutus were also victims of the genocide, the attacks on the Tutsi and the counter-atrocities by the RPF against the Hutus further inflamed ethnic animosities.

The genocide was (and continues) to be a defining moment in Rwanda. Yet there is considerable controversy about its origin and nature. It is important that the Heads of Commonwealth Governments understand the nature of the conflict and its consequences before they decide on the Rwanda application. The matter is put in perspective by Professor René Lemarchand, the foremost political science authority on the Great Lakes Region. He writes, "Nowhere is the temptation to frame the Rwanda tragedy in moral absolutes more likely to get in the way of sober analysis than in the relative weight to be assigned to the two principal underlying 'causes' of the genocide. There is, on the one hand, the gathering force of genocidal rage, fuelled by incitements to murder, mobilized by militias, supervised and manipulated by Habyarimana's cronies, local officials, and army men. And there is, on the other hand, the context in which it occurred—the context of a civil war triggered by the invasion of the country by some 6,000 Tutsi 'refugee warriors' from Uganda, fighting their way into the country under the banner of the FPR, and thus threatening to reduce to naught '*les acquis de la révolution*' —everything that had

¹⁰ Prunier *The Rwanda Crisis* p. 247.

been accomplished since the 1959-62 Hutu revolution.”¹¹ He goes on to say, “Omission of this necessary dualism can only produce an extremely lopsided image of the dynamics of violence. This is plainly demonstrated by the one-sidedness of the early accounts of the tragedy. Partly because of the sheer horror of the images conveyed by the media—what some refer to as the ‘CNN effect’—and because of the skilful management of information by Rwanda’s new leaders (Gowing, 1998),¹² many of these works are oblivious of the ‘retributive’ side of the story, and thus tend to reflect the official version of the facts projected by the FPR. The result has been a ‘politically correct’ view of the genocide, which is only now being challenged in the light of a new body of evidence ...”

We need say little about the atrocities on, for the most part, the Tutsi committed by a substantial number of the Hutu, as they have been extensively and vividly chronicled. Suffice it to say that they were horrendous and wreaked unbearable suffering on their victims, in the most brutal way. They must be condemned in the strongest possible way—as they have been.

Killings by the Tutsi

But there is another side to the story. Lemarchand talks of the studied disregard of the narratives of the Hutu refugees about the massive persecution and killings inflicted on Hutus by the RPF, “[a]ll of these add up to a devastating commentary on the conspiracy of silence surrounding one of the biggest ethnic cleansing operations that followed in the wake of the genocide” (p. 11).¹³ So, briefly, the RPF, closely associated with Museveni’s regime in Uganda (having helped him to overthrow Obote’s government), planned to capture Rwanda, assisted by Uganda. President Habyarimana’s regime in Rwanda was somewhat shaky and was forced into a process of democratisation. Among its new policies was the repatriation of the Rwandese refugees in Uganda, set for November 1990. Gérard Prunier, the distinguished historian of the Great Lakes Region, writes, “[t]his new development augured ill for the RPF militants who were now in danger of losing their support among the refugees if the latter felt that their return to Rwanda could be achieved without fighting. Accordingly, they accelerated their preparations to beat the November deadline”.¹⁴ Prunier says that the RPF was goaded into action for another reason: intellectual circles in Rwanda were busy preparing to launch political parties, as Habyarimana, now under pressure also from the French, “could not long delay the acceptance of a multiparty system—which would deprive the RPF of one its best public relations points, i.e., that it was fighting a totalitarian single-party dictatorship.” (p. 91).

The early phase of the RPF’s invasion was rather unsuccessful; it lost four of its key leaders to enemy bullets, and had to retreat to Uganda (with the help of that country’s government) to regroup and reorganise. On its return, it achieved greater success, and

¹¹ René Lemarchand, *State of Research* p. 7.

¹² Gowing, Nik, “New challenges and Problems for Information Management in Complex Emergencies: ominous lessons from the Great Lakes and Eastern Zaire”. Paper presented at the “Dispatches from Disaster Zones” The reporting of humanitarian emergencies” conference, London, 27-28 May 1998. Gowing is a respected BBC journalist and presenter. The paper is available at the forced migration online website at http://repository.forcedmigration.org/show_metaad_ata.jsp?pid=fmo:1848.

¹³ The complexity of the violence of genocide is well captured in the memoir of a survivor. Lemarchand says, “One of the most arresting and unbiased of such testimonies, by a survivor of mixed origins, is Edouard Kabagema’s *Carnage d’une nation : Genocide et massacres au Rwanda, 1994* (2001). His message comes clear and loud in the first pages: “Not only have I seen the genocide of Tutsi perpetrated by their neighbors and their huts going up in flames... I also saw many Hutu using a thousand tricks to save their Tutsi neighbors... and I saw FPR rebels engaging in a selective and then a large-scale massacre of Hutu, to avenge their own people and consolidate their grip on the country” (*State of Research* p. 5).

¹⁴ Prunier, pp. 90-91.

forced the Habyarimana government into peace negotiations and a ceasefire agreement. However, after the agreement on power sharing, and violence by some Hutu groups, the RPF broke the ceasefire and unleashed its own violence, with such success that a large number of Hutus (estimated at over 800,000) began to flee from their homes. The attack by the RPF alarmed many Hutus who had previously supported it or assumed that it had peaceful intentions. Fulfilment of the Arusha agreement, through consensus decisions, depended on trust among the parties, which was in short supply.

However, it was the murder of the president of Burundi, Melchior Ndadaye, the first Hutu to hold that post, by extremist Tutsi army officers, that caused a major crisis in Burundi which spilled over into Rwanda. The murder led to anti-Tutsi pogroms and anti-Hutu army killings. About 150,000 Tutsis left their homes and sought protection in army-controlled towns, and some 30,000 Hutus fled, mostly to Rwanda. These events strengthened the hands of Hutu extremists in Rwanda, and their coming together. RPF sympathisers were murdered, other Tutsis as well as Hutus regarded as untrustworthy were killed. Anti-Tutsi propaganda escalated, and the political situation was compounded by the failure of Habyarimana to implement the Arusha agreement and hand over power to a government of national unity (despite considerable local and international pressure).

The shooting down of Habyarimana's plane precipitated numerous killings, initially of "moderate" Hutus, followed by massacres of Tutsis, in what seemed a very systematic way that suggested prior planning. The question whether the genocide was planned in advance, and by whom, is much contested (and can easily be consulted in books and personal narratives). Little purpose would be served by rehearsing it here. The scale and horror of the atrocities against the Tutsi are well documented and well known. The pertinent question is how one-sided were the atrocities, and in what ways, if any, were the RPF complicit in atrocities against the Hutu. There seems to be credible evidence that the RPF killed Hutus, but there is less agreement on the number killed. Some killings took place in revenge or retribution, others were intended to intimidate the Hutu and force them to submission.

Fate of Hutu Refugees

There is better evidence for the complicity of the RPF in the persecution and killing of Hutu refugees (estimated at 2 million) who fled during and shortly after the genocide to Zaire (now Democratic Republic of the Congo), Burundi and Tanzania for fear that the victorious military wing of the RPF (the RPA) would seek revenge and as a result of intimidation by the leaders who had orchestrated the genocide. Another 1.2 to 1.5 million people fled to the "zone turquoise" in the south-west of Rwanda established by the French government with the approval of the UN and became internally displaced, until the last camp, hosting around 120,000 people, was violently dismantled by the RPA in April 1995, and people forced to return.

More critical was the issue of Rwandese refugee camps in the Congo (1996); there were perhaps as many as 500,000 refugees.¹⁵ They were at risk from armed infiltrators and there was the real danger that thousands would be killed. There were many calls for an international military-humanitarian intervention, to protect the refugees, and to allow those who wanted to return to Rwanda to do so (opening up safe corridors). While there was considerable support for the protection of refugees within the camps,

¹⁵ A full account of the politics of the refugee camps and its consequences is Filip Reyntjens, *The Great African War* (Cambridge University Press, 2009), especially chapter 3.

the RPF government wanted the repatriation of the refugees and threatened to fight any resistance to it. Paul Kagame (at the time Vice-President and Defence Minister) did all he could to prevent the creation of such an international force, including stopping any observers or journalists from entering Goma to ensure that there would be no publicity about the situation. The refugees were repatriated by force by the Rwandan government, the impression being created that they had returned voluntarily. The international community and the media were prevented from investigating the truth of these claims by the Rwandan government which closed off the area and refused visas. As Reyntjens says, Kagame declared that most refugees had returned; “just a few scattered refugees” remained in Zaire and he accused the humanitarian agencies of exaggerating the figures.¹⁶ At the same time, the World Food Programme estimated that 700,000 refugees were unaccounted for.

The United States of America and the United Kingdom supported the Rwandan position that there was no need for an international force as only a few thousand refugees remained in the Congo, at the same time as the United Nations High Commission for Refugees put the figure at close to 500,000.¹⁷ To quote Reyntjens again,

Disinformation, dubbed “Operation Restore Silence” by Oxfam emergencies director Nick Stockton, in which ‘the US, UK and other governments (...) managed the magical disappearance’,¹⁸ was crucial: the cynical numbers game and the manipulation of information have been decisive in a process which proved extremely costly in terms of human lives.

When, as the gravity of the threat to the large number of refugees became obvious (“condemned to death through starvation, exhaustion, illness or assassination by those who have been chasing them for months”),¹⁹ the United Kingdom argued strongly against, and succeeded in frustrating, fresh proposals for an international force, supported by some European Union (EU) members. The lack of international intervention may be compared to the earlier ineffectiveness of the international community, during the 1994 genocide. On the other hand, there is some evidence of support by the United States of

¹⁶ While Kagame claimed that the refugees had returned voluntarily, Reyntjens says, “First, the refugees did not have much of a choice, as they were fired upon and the only safe passage opened to them led into Rwanda. Secondly, the fact that the refugees interviewed by the international press upon their arrival in Gisenyi claimed they were “happy to come home” and expressed relief at being “freed from their intimidators” was not convincing for those who know how Rwandans communicate. For many returnees, declarations of that kind were part of a survival strategy: they said what they felt they had to say in view of the expectations of those who held the power over life and death in their hands; saying the opposite would entail all the unpleasant consequences of being considered *interahamwe*. Thirdly, observers were struck by the fact that the refugees walked back like sheep, without showing the slightest enthusiasm for being “freed” and returning to their home country at last.”

¹⁷ This was not the first time that the US State Department disagreed with the analysis of the UNHCR (even against the US Department of Defence). It tried to discredit Robert Gersony’s report (mentioned elsewhere in this report) on the scale of RPF atrocities against the Hutu refugees. As Reyntjens puts it, it is surprising that the US Ambassador in Rwanda, R. E. Gribbin, took this position. In his memoirs (*In the Aftermath of Genocide. The U.S. Role in Rwanda*, New York, iUniverse, 2005, pp. 144-145), he states that that “RPF luminaries proved to be masters of spin (...) The RPF played the genocide card shamelessly (correctly so, in my view, because genocide had defined the Rwandan tragedy) and staked out the moral high ground. The claim to righteousness was then misused to shield or justify political decisions” (p. 199, quoted by Reyntjens).

¹⁸ N. Gowing, *New challenges and problems...*, *op. cit.*, p. 56 (fn. in original).

¹⁹ *Le Monde*, 12 March 1997, quoting the French Secretary of State for Humanitarian Action, Xavier Emmanuelli (from Reyntjens).

America, Uganda and Britain to the RPF in the invasion of Rwanda and subsequent killing of Hutu.²⁰

There had been persistent rumours that the RPA killed a large number of Hutus, including those who had taken refuge in other countries. These rumours acquired considerable legitimacy from a report of the United Nations High Commission for Refugees consultant, Robert Gersony, that the RPF had massacred 30,000 Hutus, and that many more were under threat, leading to an exodus of Hutu refugees into neighbouring countries. The accuracy of Gersony's report has become a matter of controversy between those who say that it was de-legitimised or suppressed to save embarrassment to the Kagame regime and the UN,²¹ and others who deny that there was reliable evidence to support his conclusions (see further below). Roméo Dallaire, the commander of the UN Forces in Rwanda, writes that there were many incidents of revenge murders, looting and rape of Hutus by the RPF, but doubts if these had the backing of the top leaders.²²

It now seems clear that thousands of Hutus were killed by the Rwanda army and militias supported by it.²³ The matter became so serious that the Office of the Higher Commissioner for Human Rights (OHCHR) and the UN Security Council despatched teams to investigate the scale of atrocities. Rwanda and also, at Uganda's insistence, the Democratic Republic of the Congo, placed every possible obstacle in the way of investigations: Reyntjens mentions, in connection with the Security Council team, "travel restrictions, 'spontaneous' demonstrations organised by the government, intimidation of witnesses and physical threats against members of the team".²⁴ Nevertheless that team did produce a report, which concluded that the RPA had committed large-scale war crimes and abhorrent crimes against humanity, based on the systematic massacre of Hutu refugees remaining in Zaire.²⁵ The RPF denied any humanitarian assistance to the refugees (as it had done during the genocide in the areas it controlled), so much so, that the then UN Secretary General, Boutros-Ghali stated that "two years ago, the international community was confronted with the genocide of the Tutsi by weapons.

²⁰ In September 1997, Amnesty International observed that US military assistance to Rwanda had intensified during the months preceding the RPA's operation in Zaire. The report said that a US-supported public information campaign "played a significant role in convincing foreign governments and humanitarian organisations that it was safe for Rwandese refugees to return home, where many of them have subsequently been subjected to human rights violations, including extrajudicial execution and 'disappearances'". The organisation concluded that "the apparently uncritical political support of the USA for the Rwandese government can only be encouraging the Rwandese authorities to believe that they can carry on violating human rights with little fear of criticism from their most important allies".

²¹ See below.

²² Roméo Dallaire, *Shake Hands with the Devil* (Vintage Canada, 2003), p 479.

²³ A Human Rights Watch report (Des Forges, *Leave None to Tell the Story*, http://www.hrw.org/legacy/reports/1999/rwanda/Geno15-8-03.htm#P810_253140 in the internet version) states: "In their drive for military victory and a halt to the genocide, the RPF killed thousands, including non-combatants as well as government troops and members of militia. As RPF soldiers sought to establish their control over the local population, they also killed civilians in numerous summary executions and in massacres. They may have slaughtered tens of thousands during the four months of combat from April to July. The killings diminished in August and were markedly reduced after mid-September when the international community exerted pressure for an end to the carnage. Carried out by soldiers who were part of a highly disciplined military organisation, these killings by the RPF rarely involved civilian participation, except to identify the persons to be slain. In only a few cases, particularly in areas near the border with Burundi, civilian assailants reportedly joined soldiers in attacking other civilians."

²⁴ Reyntjens also states that the deputy leader of the Security Council team, a Zimbabwean, Andrew Chigovera, resigned, referring to his "great difficulty in believing that an environment favourable to an independent and impartial inquiry on human rights existed in the RDC [DRC] or could present itself" (Reyntjens cites "AFP, Kinshasa, 13 February 1997").

²⁵ UN Security Council, *Report of the Investigative Team Charged with Investigating Serious Violations of Human Rights and International Humanitarian Law in the Democratic Republic of Congo*, S/1998/581, 29 June 1998, paragraph 96.

Today we are faced with the genocide of the Hutu by starvation" (November 1996). Six months later, his successor Kofi Annan said that "it is possible to kill by weapons or by hunger. The killing is done by hunger today".

On 13 July, the Security Council condemned the massacres, other atrocities and violations of international humanitarian law, including crimes against humanity. It requested that the Congolese and Rwandan governments carry out inquiries and punish the guilty.²⁶ Although well-founded estimates are that nearly 250,000 Hutus (including children and women) were killed, these governments ignored the Security Council resolution (which had also demanded a report on compliance from these governments), and the Council did not revisit the matter. Impunity prevailed yet again.

It is also possible that when it was strategic, the RPF allowed the killing of the Tutsis. Dallaire writes that the deaths of Rwandans can also be laid "at the door of the military genius, Paul Kagame, who did not speed up his campaign when the scale of genocide became clear and even talked candidly with me at several points about the price his fellow Tutsi might have to pay for the cause".²⁷ Dallaire reports that, during the killings, he advised Kagame to accept ceasefire and use troops to stop the massacre, but Kagame refused, Dallaire thinks, because Kagame was winning the war. Reyntjens states that Kagame implicitly justified mass killings by the RPF when he said: "People see this in terms of human rights (...), which is a poor analysis. One must understand that every conflict is not bad. There are conflicts that are a sort of purification. In certain cases, conflicts erupt in order to make a real transformation possible."²⁸ In these ways, thousands of lives, which could have been saved, including those of Tutsis, were lost.

It will be obvious from the above account that the Rwandan genocide and massacres do not help us to distinguish "good guys" from "bad guys" or, in a simple way, victims from oppressors. The complexity of the great tragedy in Rwanda cannot be analysed in these simple categories, nor in terms of communities as corporate entities. Judgements have been made at different stages of the unfolding of the tragedy, without access to all the relevant information. The problem has been compounded by considerable, and often skilful, disinformation (particularly by the RPF, and also by some states, including the United States of America).

Professor René Lemarchand provides a useful summary of consensus as well as differences among academics.²⁹ He cites what he describes as, "Alison Des Forges's landmark investigation", *Leave No One to Tell the Story*,³⁰ which he describes as "the

²⁶ According to Reyntjens, after a new war broke out between Rwanda and the DRC, the Congolese government was to recognise the facts, but blamed them on Rwanda. Minister Victor Mpoyo claimed that the AFDL was unaware of the massacres: "The Rwandan army controlled the area and, therefore, the information. (...) We could not imagine that those men who survived a genocide could behave in such a bloodthirsty fashion". Even after coming to power in Kinshasa, "we were gagged by the Rwandans on this subject" (*Libération*, 17 September 1998).

²⁷ Roméo Dallaire, op. cit., p. 515.

²⁸ *Great African War* citing "AP, Kigali, 7 June 1997".

²⁹ *State of Research*

³⁰ See above. But this book has not necessarily been influential on policymakers in the US and the UK. That credit must go to a NY Times journalist, Peter Gourevitch's acclaimed bestseller, *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories from Rwanda* (New York: Farrar, Straus, and Giroux, 1998). Of this book Lemarchand writes, "Allusions to the Holocaust as a frame of reference are unconvincing. So is his breathless tribute to Paul Kagame as the hero who brought the genocide to an end ... From this uncomplicated tale of woe emerges an image of the Hutu as the collective embodiment of evil. This is where his narrative carries implications that go beyond the realm of travel writing: it is not unreasonable to assume that this highly naïve and uncritical rendering of the genocide has had a powerful hold on the official thinking of US policymakers towards the new Rwandan state. To this day, the Tutsi-dominated State enjoys the unconditional support of the US government" (p. 8).

most wide-ranging, thoroughly researched and reliable source of information on the 1994 genocide.... If any work on the genocide can be called definitive, this is it." According to her, while Tutsi civilians were the prime target of the *génocidaires*, a "substantial number of Hutu affiliated to opposition parties were massacred in the south and central regions".³¹ When the RPF captured Kigali, on 4 July 1994, although killing of Tutsis stopped, that of Hutus did not. Des Forges says that many Hutu civilians were "deliberately massacred" by RPF troops,³² including sometimes by holding "public meetings designed to round up and kill Hutu civilians".³³

It is evident that some Hutus, prominent in their own community, were the victims of the genocide at the hands of their kin group, while some Tutsis sacrificed members of their kin group for the "higher cause". Members of each community provided shelter and protection for their friends, even strangers, of the other community, from the threats and violence of their own community, at great personal risk. Despite the troubled history of inter-community relations in the pre-colonial and colonial periods, Rwandese had learnt to live together in peace and cooperation, except when goaded into violence by ambitious individuals and groups, intent on their own profit, using ethnicity as the tool. It is therefore unjustified to blame the whole community (in this case the Hutus) for the sins of some members, as is the wont of the RPF. Kagame wants each Hutu to apologise for the atrocities of a limited number, while at the same time denying that Tutsis engaged in any counter-killing.

Contemporary Rwanda

Since the conclusion of the civil war that RPF started when it invaded Rwanda in 1990 and then stopped the genocide, the RPF has effectively been in charge of the Rwandan state. The new government sworn in on 19 July 1994 was notionally based on the Arusha agreement of August 1993, emphasising a multiparty government. But the RPF ensured that it was in charge of the administration. The seats to be allocated to the Habyarimana's party (MRND) were all taken over by the RPF. Its senior Hutu member, Pasteur Bizimungu, was appointed president, and a special office of vice-president was created for Paul Kagame, who also held the defence portfolio. The Ministry for the Civil Service was also given to a RPF military commander, which ensured that appointments to administrative posts were made by the RPF. The minister of the interior was a senior Hutu member of the RPF, Seth Sendashonga.³⁴ In practice, power resided with RPF ministers. In 2000, Bizimungu was eased out of the presidency, which was then assumed by Kagame. The transitional period was to last for 22 months, but was extended unilaterally by the RPF to five years (as it feared, with good reason, that it would lose elections so soon after it had assumed power). Having established its authority, the RPF initiated the process of making a new constitution, through public participation under its direction.

³¹ Citing des Forges, pp. 555-559.

³² Citing Des Forges, pp. 726-34.

³³ Citing Des Forges, pp. 109, 707, 728.

³⁴ Sendashonga was unusual among Hutus for his clear and consistent condemnation of the genocide (Prunier, p. 372). He was critical of the RPF regime's refusal to take seriously the issue of RPA abuses, and eventually quit the government and went into exile (Prunier p. 368). He was killed in Kenya in 1998 (after a failed attempt in 1996 by someone identified as an employee of the Rwandan embassy in Nairobi). It is widely assumed that he was assassinated on the instructions of the Rwandan regime for continually speaking out on these issues. The Kenyan government has been criticised for its feeble efforts to deal with these crimes: Gulgielmo Verdimare and Barbara Harrell-Bond, *Rights in Exile: Janus-faced humanitarianism* (New York, Oxford: Berghahn Books, 2005), p. 130.

The Constitution was intended to herald a period of democratic and accountable political system, with the separation of power, multipartyism with elements of power sharing, strong protection of human rights, and emphasis on equality and national consensus, and unity. It has a number of innovative provisions for accountability and power sharing. It sets up several independent institutions for the exercise of sensitive state functions, such as organising elections, and accountability, like the human rights commission.³⁵

Paul Kagame was elected to a seven-year term in largely peaceful, but seriously marred, elections. Under the constitution, the RPF has continued to dominate the legislature and the executive. It has made significant progress in bringing political stability and economic development to the country. It claims to eschew ethnic politics, and to promote national unity by recognising merit and integrity, and emphasising the equal rights and obligations of citizenship. It has set up a comprehensive system to achieve justice and the rule of law. It credits itself with healing the wounds of the ethnic conflicts and genocide, and the determination to ensure reconciliation and harmony among all the people. It has earned abroad the reputation of being an honest and efficient government, and aspires to play a leading, constructive role in Africa. President Kagame has been widely acclaimed as an enlightened and purposeful leader (which some attribute to clever management of the media rather than the behaviour of the president).

However, not everyone agrees with this assessment. International human rights organisations have generally been critical of what they regard as the RPF's opportunistic approach to human rights. The dominance of the RPF is said to negate the separation of powers mandated by the Constitution. Elections are manipulated to ensure RPF victories. Decentralisation is likewise dismissed by critics as the means of co-opting and controlling local leaders. The regime is said to have suppressed the freedom of expression and the media, and restricted the right of freedom of association. The judicial system has serious weaknesses, which have enabled the government to use and abuse it for partisan purposes.

Rwanda has been accused of pursuing pro-Tutsi policies under the guise of a non-ethnic approach and the penalisation of discussion of ethnic issues. Its economic recovery is attributed to the massive infusion of foreign aid and the plunder of the mineral wealth of the DRC. The Rwandan regime has, as a matter of policy, engineered political instability in the DRC, and is considered to have been responsible for the wars and killings in the Great Lakes Region. It is blamed for the plunder of the natural resources of the DRC and for the promotion of an illicit economy there, which negate the key functions of the state.

Given the importance of democracy and rights to Rwanda's credentials, and the very different perceptions of its record, an essential task of the CHRI was to make its own independent assessment.

IV ELIGIBILITY OF RWANDA FOR MEMBERSHIP OF THE COMMONWEALTH

Rwanda's application for membership of the Commonwealth raises firstly, the general question of how the expansion of the Commonwealth affects its values, ambience and procedures, and secondly, the specific issue whether Rwanda meets the prescribed

³⁵ For the original constitution of 2003 in English see http://inteko.gov.rw/index.php?option=com_content&task=view&id=18&Itemid=423.

criteria. It is not sufficient for entry, that an applicant satisfies the criteria, although whether the test of the Harare Declaration is satisfied, is a matter of judgment on which there can be differences among reasonable people. In other words, the membership criteria go to the eligibility, not the entitlement, of the applicant. There has to be a very good reason why a country without any prior constitutional link to the Commonwealth should be admitted. But before we proceed to these considerations, we deal with the formal criteria.

There is little doubt that Rwanda is a sovereign state. It has accepted English as an official language. Its constitution and laws are published in English as in other official languages (Kinyarwanda and French). Many Rwandans, including senior politicians and public servants read, write and speak English (particularly those who grew up in exile in Uganda or Tanzania). English is rapidly becoming the medium of instruction in higher education, and increasingly at other levels. Rwanda has introduced elements of the common law in its legal system (aiming, as the Minister of Justice explained, at drawing on the best of the common and civil laws). Since the RPF assumed power, Rwanda has made a deliberate effort to distance itself from the francophone connections that had constituted such an important part of its identity, state system and international relations (at least in part because of its resentment at French assistance to previous Hutu-dominated regimes), and to move closer to the English-speaking world. And, it undoubtedly acknowledges the role of Queen Elizabeth II as the Head of the Commonwealth.

That leaves two criteria which are not so straightforward—general endorsement of the application by citizens, and democracy and human rights. It is exceedingly hard to say what Rwandans think of the Commonwealth, even if they have heard of it at all. As this report shows, there is not much of a civil society that would be interested and would have views on the application. There are strict restrictions on freedom of expression, and opposition to the position or policies of the government is not easily expressed. So even if there is opposition to membership, it would not be easy to detect it. However, the chances are that the people know little about the application and probably care less. As this report has indicated, there is little guidance in the membership criteria as to how the will of the people is to be discovered—as by informing and engaging the people on the issue. (The Constitution of Rwanda, Article 109, provides for a referendum to decide important national issues, but this might be considered too cumbersome and expensive.) Perhaps it is not too late for the Commonwealth to adopt some benchmarks and procedures for ascertaining public opinion, to be applied to this application. The Commonwealth has already accepted that the government must consult with the people who must demonstrate their support, as part of the process of admission.

There is substantial evidence on the record (laws as well as practice) of democracy and human rights, in accordance with general norms as well as those adopted in the Harare Declaration. But, as this report has hinted, it is not easy to assess the evidence against the standards that Rwanda must meet. In as objective a manner as possible, the report tries to make a judgement of compatibility with the letter and spirit of the Declaration. The Declaration reiterates the long-standing principles of the Commonwealth, among them the following:

- belief in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives;
- recognition of racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil; and

- opposition to all forms of racial oppression, and commitment to the principles of human dignity and equality.

It then re-commits the Commonwealth to:

- the protection and promotion of the fundamental political values of the Commonwealth: democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
- equality for women, so that they may exercise their full and equal rights;
- provision of universal access to education;
- commitment to fight poverty and promote economic and social development;
- recognition of the importance of the role of non-governmental Commonwealth organisations in promoting these objectives, in a spirit of cooperation and mutual support; and
- promotion of international understanding and cooperation.

The fundamental principles that are addressed in this report are therefore: democracy, the rule of law (including the independence of the judiciary), fundamental human rights regardless of race or creed, gender equality and equity, and socio-economic rights—and the recognition of the significance of civil society.

Compatibility with the Harare Declaration

The Ideological Framework of Governance in Rwanda

Before we turn to the specifics of the conditions under the Harare Declaration, it is useful to review the broad framework within which most social and political activity is viewed and regulated in Rwanda, and which has an impact on most principles of the Harare Declaration. We examine first the government's professed approach and policies, and next the "ideology of genocide", which seems inconsistent with them, and yet is the most critical element of the strategies and policies of the Rwandan government.

The RPF government claims that it intends to establish a regime in which there would be both accountability for past atrocities and prevention of future acts of political and ethnic killings. The preamble of the constitution of 2003, sets out the people's "resolve to fight the ideology of genocide and all its manifestations and to eradicate ethnic, regional and any other form of divisions". The "ideology of genocide" appears in Kinyarwanda as the relatively new term: *"ibengabyitekerezo bya jenocide"*, meaning literally the ideas that lead to genocide. The experience of genocide also led the regime to emphasise the unity of the country ("one Rwanda") and its people, and to ban ethnic classifications or any discussion of the country's diversity. Several provisions of the constitution reflect this approach. A fundamental principle is the "eradication of ethnic, regional and other divisions and promotion of national unity" (Art. 9, paragraph 3). Article 13 specifies that revisionism, negationism (i.e., denial) and the minimisation of genocide were punishable by law, while Article 33 states that all ethnic, regionalist, and racial propaganda, and any propaganda based on any other form of division, are punishable by law.

The reference to culture is always to "national culture" (Arts. 50 and 51). Political parties cannot be based on ethnicity, tribe, clan or "any other division which may give rise to

discrimination” (Art. 54). Party lists of candidates at elections must reflect these principles (presumably ignoring ethnic considerations (Art. 77, paragraph 3). The Senate must supervise the observance of these principles (Art. 87). There is an emphasis on resolution of disputes between parties by a political parties’ forum, operating on the principle of consensus (Art. 56). Power sharing is secured by the requirement to have a multiparty government, a provision which restricts the majority party to not more than half the seats in the cabinet, (Art. 116, paragraph 5), and the rule that the President of the Republic and the President of the Chamber of Deputies cannot be from the same party (Art. 58). Citizens are also obliged to promote social solidarity: “Every citizen has the duty to relate to other persons without discrimination and to maintain relations conducive to safeguarding, promoting and reinforcing mutual respect, solidarity and tolerance” (Art. 46).

The Ideology of Genocide: “Negation”, “Revisionism” and Trivialisation”

This approach and these provisions are consistent with the emphasis in the Harare Declaration on equality and non-discrimination, and against racism. But many critics allege that this superstructure hides the reality of the way in which state power is exercised—that the prohibition of ethnic discrimination and the disregard of ethnic factors is a ruse to build and maintain the dominance of the Tutsi. They argue that political and legal prohibition of “genocide ideology” is used to suppress public discussion and criticism of the past and present conduct of the RPF, particularly the violence that led to its capture of state power and in its continuing hold on power—the violence, which is still manifested nationally and in its armed excursions into neighbouring states.³⁶ They say power sharing is a means of co-opting opposition parties, as is the emphasis on consensus, and that goals and strategies of reconciliation are geared towards entrenching the power of the RPF. It is undoubtedly the case that the politics of genocide ideology has become central to Rwandan politics (as this report shows in its discussion of democracy and human rights). As a preliminary to that discussion, the report examines the legislation on genocide ideology.

The 2003 law³⁷ punishes the crime of genocide, crimes against humanity, and war crimes, prohibits denial, gross minimisation, and any attempt to justify or approve of genocide as well as any destruction of evidence of the genocide (Article 4). Neither the Constitution nor the 2003 law provides specific definitions of the terms “revisionism”, “denial” or “gross minimisation”. Persons guilty of “divisionism” are liable to imprisonment for up to five years and to loss of their civil rights. Those convicted of denying or grossly minimising genocide, attempting to justify genocide or destroy evidence related to it, are liable to a minimum of ten and a maximum of twenty years in prison.³⁸

In June 2008, the parliament adopted a law that criminalises what has been termed “genocide ideology”.³⁹ Genocide ideology is defined as “an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people based on ethnic group, origin, nationality, region,

³⁶ See the section on International Relations below.

³⁷ Law No. 33bis/2003 of 06/09/2003 punishing the crime of genocide, crimes against humanity, and war crimes, Article 4, found at <http://droit.francophonie.org/doc/orig/rw/loi/fr/2003/2003dfrwlgfr1/2003dfrwlgfr1.pdf> [Human Rights Watch “*Law and Reality*” (24 July 2008) at <http://www.hrw.org/en/node/62097/section/8> (last accessed on 16 June 2009)].

³⁸ Law No. 33bis/2003 of 06/09/2003, Article 4 and Law No. 47/2001, Article 1, paragraph 2 and Article 3, paragraph 2, Articles 5 and 15 [Human Rights Watch “*Law and Reality*” (24 July 2008) at <http://www.hrw.org/en/node/62097/section/8> (last accessed on 16 June 2009)].

³⁹ Law No. 18/2008.

colour, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war”.

“Negationism” (used in Article 13 of the Constitution) usually refers to the denial of the genocide against the Tutsi and conditions around its implementation. This includes claims that there was “double genocide” and other crimes against humanity committed during the war launched by the RPF, and acts of revenge after the 1994 genocide. “Revisionism” refers to movements that attempt to deny an “established fact or ideology”. The 2008 law penalises, among other acts, “marginalizing, laughing at a person’s misfortune, defaming, mocking, boasting, despising, degrading, creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred”. Individuals as well as organisations can be punished under this law, with severe penalties. Its vagueness induces extreme caution on the part of both, even when their work is the investigation of the violation of rights or the integrity of state agencies, understandably because the judiciary has failed to balance the charges against the freedom of expression and other rights. Politically motivated accusations of divisionism have been used to attack civil society organisations, the press and individuals. Accusations of divisionism or “genocidal ideology” are among the most effective tools for silencing critics of the government.

What this says about the prospects of “one Rwanda” for the future is uncertain, but using genocide ideology to exclude any question or debate around the deaths of Hutus as the result of retaliation by RPF’s armed forces does not bode well for reconciliation, the coming to terms with the past, and the development of a national identity—all claimed by the regime as its principal objectives. Criminal proceedings are used to emphasise the victimhood of the Tutsi and the “wickedness” of the Hutus as a community.⁴⁰ At the same time, it protects the RPF from an examination of its own brutalities; it is a very effective gag on the freedom of expression.

The politics of the genocide ideology pervades so many aspects of official policies and their impact on society that it is now central to any examination of the attitude of the state towards human rights, governance and civil society (as will be obvious from the following assessment of Rwanda’s record on rights and governance). There is the danger of the ideology becoming an obsession with the RPF, disabling it from an objective analysis of the political and economic situation in the country, curbing the freedom of expression, discussion and consultation that is necessary for it to come to terms with, and avoid the errors of its past.

A perceptive commentator on Rwanda, Gérard Prunier, by no means unsympathetic to the Tutsi, says that: “the memory of the genocide which weighs on everybody’s soul like a heavy stone contributes to keeping the chasm wide open. The Tutsi keep it open by constant reminders, while the Hutu tend to deny it in order to extricate themselves from collective guilt. Of course their denial (often taking the shape of allusions to vague and unfocussed ‘violences’, the better to confuse an already confused matter) only confirms the opinion of the Tutsi that they feel no repentance and cannot be trusted in the future.”⁴¹ And, the

⁴⁰ Lemarchand mentions the tendency of the Kagame regime to grossly overestimate the number of Hutu perpetrators (*State of Research* citing Straus, Scott, 2004, “How many perpetrators were there in the Rwandan Patriotic Front? An Estimate”, *Journal of Genocide Research*, vol. 6, no. 1, 85-98), and comments that this “stands as a major obstacle to reconciliation” (p. 10).

⁴¹ Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (Kampala: Fountain Press, 1999), 2nd Ed. p. 371.

same author, nearly 10 years later, noting that “any mention of the word “Tutsi” or “Hutu” is strictly forbidden by law⁴² writes: “[t]his means that any lucid examination of the relationship between Tutsi and Hutu before, during and after the genocide is now impossible. [...] Rwanda is now locked into an ideological straitjacket providing a relentless and official interpretation of history from which all shades of meaning have been sanitised.”⁴³

The objective of the genocide ideology, to emphasise the atrocities committed by the Hutu, contrasts sharply with the constant efforts of the RPF, now and in the past, to prevent an examination of its own conduct, and to frustrate any attempt at the trial of its members. We describe later the numerous ways in which the RPF has prevented the entry of journalists, human rights NGOs, and international committees and investigators in areas where traces of its brutalities could be detected. It has excluded a review of these atrocities from the jurisdiction of the wide network of Gacaca courts (discussed later) and prevented the International Criminal Tribunal on Rwanda (ICTR) from any indictments against its members. It was only too ready to criticise the ICTR for “softness” towards the accused Hutu, but took every step to protect its own members⁴⁴ (even though the jurisdiction of the Tribunal covered only one year—1994, immunising numerous RPF atrocities after that period), including reading the mail of the Chief Prosecutor, Louise Arbour. Arbour has said that she was afraid to investigate crimes by the RPF fearing that the investigator would be killed.⁴⁵

Kagame had the powerful support of the United States of America and the United Kingdom, as well as the UN. This is best illustrated by the Gersony report “incident”. Robert Gersony and two others were sent by the UNHCR in May 1994, to recommend steps for the repatriation of Rwandese refugees. He found highly convincing reports that during April to August the RPF had killed between 25,000 and 45,000 persons, between 5,000 and 10,000 persons each month from April through July and 5,000 for the month of August. Many were refugees who were fleeing the country. His report was scrutinised and forwarded by the High Commissioner for Refugees, Mrs. Sadako Ogata, who recommended that refugees should not be repatriated. UN Secretary General, Boutros-Ghali became very concerned about the impact on the reputation of the UN (whose agencies had reported no such atrocities) and of the Rwandan government. He ensured that the report was not published, and initiated the process of de-legitimising Gersony’s findings, with the approval of the United States of America. Kofi Annan, then a senior UN official, was instructed to follow up, and to ensure that the report was not made public (a UN memo states that he was worried that disclosure of the report, if accurate, would seriously damage the UN and the Rwandan

⁴² During the commemoration of the victims of genocide in 2009, for the first time since 1994, reference was made to ethnic differentiation, where posters in Kigali, advertising and commemorating memorial activities, refer to the “genocide against the Tutsi”. Since then, the Constitution has been amended to refer to the genocide in the same way (Amendment of 13/8/2008, Official Gazette of the Republic of Rwanda Year 47, Special issue of August 13, 2008 (amending the Preamble and several articles)).

⁴³ Gérard Prunier, “Rwanda – Pain of a Nation” *BBC: Focus on Africa*, April-June 2009.

⁴⁴ Carloff Off writes: “Although the RPF seemed to want unlimited prosecutions of their enemies, they were proving to be less receptive to any suggestion that they should be held accountable for their own violence” and recounts that when the appeal chamber ordered the release of the former Rwandan foreign minister, Jean-Bosco Barayagwiza, “the outraged RPF government practically shut down the prosecution office”. He had been released as the court considered that his fundamental right to a fair trial had been repeatedly violated. Off continues: “but Kagame was not interested in the fine points of law, and for a period, his officials made it impossible for ICTR prosecutors to enter the country” (*The Lion, the Fox, and the Eagle: A Story of generals and injustice in Rwanda and Yugoslavia*, Random House, Canada, 2000, (p. 331).

⁴⁵ *Ibid.*, p. 331. She often complained that basing her office in Kigali made proper investigations impossible. But the UN told her the office was put there to make amends for their moral failure in Rwanda during the genocide (pp. 331-2).

government.)⁴⁶ The Rwandan government admitted that some refugees may have been killed, but nothing on the scale Gersony had reported. There certainly were crimes against humanity in the period within the ICTR jurisdiction, but powerful international forces in collusion with the RPF ensured that the ICTR took no action.

Another example is the frustration of attempts to indict Kagame for the rocket attack on the plane carrying Habyarimana.⁴⁷ Michael Andrew Hourigan, an investigator at the ICTR, was deputed by the Chief Prosecutor, Goldstone, to investigate the shooting down of the plane. His team made considerable progress, the evidence pointing to the involvement of Kagame. At first, Louise Arbour, who succeeded Goldstone as the Chief Prosecutor, was quite excited by Hourigan's report, but soon after changed her stance, taking the position that the shooting of the plane fell outside the jurisdiction of the Tribunal even though it occurred in 1994. Hourigan has provided an affidavit on the initial instructions to him, and assurances that the shooting fell within the jurisdiction of the Tribunal. He has included two lengthy attachments, which provide the evidence on the basis of which he concluded that Kagame was responsible for Habyarimana's killing.⁴⁸ Arbour's critics have accused her of giving in to UN officials, who, in complicity with the US and the UK, wanted to cover up the crimes of Kagame and his colleagues and protect them from prosecution.⁴⁹

Investigations by the French judge Jean-Louis Bruguière have led him to issue international warrants against nearly a dozen members of Kagame's inner circle for killing the former president.⁵⁰ Some Spanish magistrates have also issued similar warrants.⁵¹ It has been alleged that in the summer of 2003, the then Chief Prosecutor at the Tribunal, Carla del Ponte (Arbour had by this time been appointed by Secretary General Kofi Annan as the

⁴⁶ The memo itself was a cable from Shahariyar Khan of UNAMIR to Kofi Annan, on the subject of "The Gersony 'Report' Rwanda" dated 14 October 1994. It was filed as an exhibit before the ICTR, and can be read in various places including <http://africannewsanalysis.blogspot.com/2007/12/gersony-report-proof-it-exists-and-more.html>. And there is an account of the whole affair in Des Forges, see http://www.hrw.org/legacy/reports/1999/rwanda/Geno15-8-03.htm#P1028_317571. See also, the account by Peter Erlinder, lead defence counsel for former Major Aloys Ntabakuze "The 'Rwanda Genocide' Cover-up" available in various places including the Jurist website at <http://jurist.law.pitt.edu/forumy/2008/02/rwanda-genocide-cover-up.php>, where it is followed by an attempt to rebut the allegations of cover-up by Clinton's USAID Chief for Africa, Brian Atwood. The Gersony Report has not been made public (indeed there was an attempt to deny any such report existed); however, Des Forges summarises the main points.

⁴⁷ See also Peter Robinson and Golriz Ghahraman, "Can Rwandan President Kagame be held responsible at the ICTR for the Killing of President Habyarimana?" *J Int Criminal Justice*. 2008; 6: 981-994.

⁴⁸ The affidavit is available in various places including at www.rud-urunana.org/documentation%5CStatement%20re%20plane%20crash.doc and *The Age* website at <http://www.theage.com.au/articles/2007/02/09/1170524298439.html>. The attachments have proved hard to download, though they are supposed to be at the Age site. See also Peter Erlinder's Rwanda Documents Project: <http://www.rwandadocumentsproject.net/gsd/cgi-bin/library>.

⁴⁹ *Ibid.* and the statement by Erlinder, above.

⁵⁰ Alison des Forges expressed the view that the decision had some clearly political aspects. See *Hirondelle News Agency*: <http://www.hirondellenews.com/content/view/116/99/>.

⁵¹ Human Rights Watch *Law and Reality: Progress in Judicial Reform in Rwanda*: "X. Equal Access to Justice: Prosecuting Crimes by RPA Soldiers" http://www.hrw.org/en/node/62097/section/11#_ftn290. In February 2008 a Spanish judge issued arrest warrants for 40 Rwandan Defence Force officers for war crimes and crimes against humanity committed against Spanish, Rwandan, and Congolese citizens in the 1990s. The prosecution is based on both domestic law and universal jurisdiction, a doctrine which permits national courts to prosecute the most heinous crimes committed abroad. Rwandan authorities mobilised African governments against such judicial action, labelling it neo-colonialist. In 2006, Rwanda broke relations with France after a judge issued warrants against nine RDF officers. In August 2008, Rwanda published a report charging French involvement in the genocide and announced possible prosecutions of French citizens. In November Germany arrested Rose Kabuye, one of the nine, on a French warrant. Rwanda immediately expelled the German ambassador and organised protest demonstrations in Rwanda and abroad (Human Rights Watch, 2009).

UN High Commissioner for Human Rights), publicly announced that she would soon begin prosecuting members of Kagame's government for the same kinds of crimes charged in the French and Spanish warrants. However, no prosecutions took place because, it is claimed by some, del Ponte was effectively sacked under pressure from the US and the UK (by having her prosecutor's mandate split into two, retaining only the Yugoslavia portfolio).⁵² Her successor, Hassan Bubacar Jallow, has taken no action against the RPF. But he was recently urged by the Human Rights Watch to indict the RPF officers suspected of war crimes, cautioning him that his "failure to commit to prosecuting senior RPF has undermined his credibility and that of the ICTR".⁵³

Democracy and Governance

In a speech at a National Prayer Breakfast in Nairobi (May 2009), Kagame told Kenyans: "[t]he foundation for any successful nation is a deep-rooted sense of national belonging, organically grounded in a sovereign state in which all citizens, in their diversity, enjoy and exercise their cultural, social, economic, religious and political rights".⁵⁴ He placed special emphasis on "harnessing the diversity of our people". He talked of the need for a country to solve its own problems without outside intervention—something he has denied the DRC. He accused the previous Rwanda regime of "self-aggrandisement, self-preservation, and control rather than serving their countrymen and women". He set out three pillars of the policies of his government: "acceptance of and building on our diversity, no longer seen as a threat, but facilitating mobilisation and unity; consensus-building on what constitutes our common good and national interest"; and "inclusion of all political expressions in national debate and execution of the country's development agenda". CHRI would endorse each of these pillars; unfortunately, as our analysis shows, none of them is observed in practice in Rwanda.

The Commonwealth's commitment to democratic principles must go beyond rhetoric and must seek to ensure that all of a country's democratic institutions reinforce one another. These institutions, whether legislative, judicial or executive, must be transparent in their deliberations and accountable for their decisions. Each institution has a distinct role to play in addition to checking and balancing other institutions. Rwanda's constitution provides for a democratic system, with separation of power, representative institutions, accountability of the government, and a comprehensive bill of rights. However, many people told the CHRI mission that the executive was both powerful and authoritarian. The mechanisms for multiparty government were used to co-opt and neutralise the opposition parties. The manipulation of the law on genocide ideology, with its broad and vague definition, plus the indoctrination that the reconciliation strategies facilitate, enhances the influence of the government in all state institutions, including the judiciary and security forces. Although the Constitution establishes a number of independent institutions (including commissions on the electoral process, prevention of genocide, reconciliation, human rights, and complaints against the administration), they tend to be staffed by supporters of the government. And, with a weak civil society, Rwanda gives a strong impression of a one party state.

⁵² Del Ponte and her press agent Florence Hartmann have both recently published books that deal with this topic among other things. On the latter, see "10.09.07 - ICTR/Book – 'Peace and Punishment': An Explosive Book on International Justice" <http://www.hirondellenews.com/content/view/844/295/>.

⁵³ http://www.hrw.org/sites/default/files/related_material/2009_06_Rwanda_Jallow_Response.pdf.

⁵⁴ *Sunday Nation* (Nairobi) 30 May 2009. The text (not quite as delivered) is on the website of the Rwandan President at http://www.presidency.gov.rw/index.php?option=com_content&view=article&id=218:-national-prayer-breakfast-nairobi-28-may-2009&catid=34:speeches&Itemid=34.

The 2003 presidential and parliamentary elections presented Rwandans with only a limited degree of political choice. Most election observers found fault with the elections, including intimidation. Although marred by a lack of transparency, procedural shortcomings and intimidation,⁵⁵ which precluded any genuine challenge to the RPF, the 2003 elections were presented by the RPF as part of a continuing evolution toward democracy in the country. The regime has, according to some analysts, become even more repressive since the end of the transition period in 2003.⁵⁶ The earlier local elections had been conducted by local authorities dominated by the RPF, and had dispensed with the secret ballot, with voters lining up in different queues. Contests for officials at the next higher level used secret ballots, but it was reported that there were numerous irregularities, including stuffing of ballot boxes and intimidation of candidates. In a number of contests, voters did not have a choice, as only one candidate stood.⁵⁷

The RPF dominates the political arena. Eight other political parties associate themselves with the government. The constitutionally-mandated Political Party Forum, to which all parties must belong, operates on the principle of consensus, and in practice the RPF guides its deliberations. The Constitution officially permits political parties to exist, but under certain conditions. They must not base themselves on race, ethnic group, tribe, religion “or any other division which may give rise to discrimination” (Art. 54). Political parties closely identified with the 1994 massacres are banned, as are parties based on ethnicity or religion. The Senate can bring charges against a political party which violates these principles; such a party if found guilty is dissolved, and all its members in the House of Deputies lose their seats. A number of applications for the registration of political parties have been rejected. The African Peer Review team found that political parties (other than those affiliated to the RPF) were not allowed to operate freely and the Political Party Forum served to limit political pluralism. Election monitoring teams regularly mention unfairness in the administration of elections.

The legislative and judicial branches of government have done little to counterbalance the executive or mitigate the influence of the military in policymaking. In practice, power remains firmly concentrated in the hands of a small inner circle of military and civilian elites, predominantly, former Tutsi refugees. In this way the diversity of Rwanda is negated.

The Reality of the Political System

In Rwanda, as in some other countries, there is limited value in an analysis of the Constitution and law, as a way to understand the realities of state power. The practice of government bears little resemblance to the constitutional values and rules. Prunier, the distinguished academic and journalist, whose first account of the precursors and aftermath of the 1994 genocide was relatively favourable to the RPF, revised his views as more historical evidence of the atrocities of the RPF came to light, and the record of the RPF government after the genocide unfolded.⁵⁸ He says that up to August 1995,

⁵⁵ In accordance with EU election observation methodology, the EU Election Observation Mission to Rwanda assessed the conduct of the legislative elections in line with international standards for elections, in particular the International Covenant on Civil and Political Rights (ICCPR), which Rwanda ratified in 1966 and the African Charter on Human and Peoples’ Rights (1981). Also applicable is the AU Declaration on the Principles Governing Democratic Elections in Africa (2002).

⁵⁶ See for example, Filip Reyntjens, “Post-1994 Politics in Rwanda: Problematising ‘Liberation’ and ‘Democratisation’”, *Third World Quarterly* 27, no. 6 (2006).

⁵⁷ “Rwanda—Events of 2006” (New York: Human Rights Watch [HRW], 2007) at <http://hrw.org/englishhrw2k7/docs/2007/01/11/rwanda14782.htm> (last accessed on 7 February 2007).

⁵⁸ His revised views appear in the new last chapter (“Living in a Broken World”) in the second edition of his book, *Rwanda Crisis: History of a Genocide* (Kampala: Fountain Publishers Ltd., 1999).

the government derived its legitimacy from two sources: its role in stopping the genocide, and the “rough implementation” of the power sharing provisions of the Arusha agreement. But it soon became clear that the government had no intention of sharing “real power”. He says: “Sharing the trappings, yes—and President Pasteur Bizimungu [a Hutu] soon became adept at ingratiating himself with the new real power structure. But everyday political life was grim for any Hutu who wanted an honest shared involvement.”⁵⁹ A senior Hutu politician/administrator wrote in *Le Monde* as early as 15 June 1995, of the “revanchist style” of the RPF government, which “denies that there is any ethnic problem today with the same energy it used in denouncing the ethnic imbalance of the old regime”. Instead of offering a new paradigm, the RPF “has simply installed a new form of Tutsi power”.⁶⁰ This means that state and party institutions penetrated deep into society, dominating it completely.⁶¹ Soon four key Hutu ministers resigned or were sacked. Kagame’s faction appointed all officials of local governments, which demonstrated the RPF’s intention to “fully control the administration, in the same way the old MRND had” (p. 368). He says: “[a]s for the violence and human rights violations, they were commonplace. Disappearances, scattered murders, killings by soldiers who were never brought to court, were common” (p. 368).

Prunier describes the structure and practice of government as follows:

The new Rwanda regime is a bizarre construction. Outwardly it still fits within the tattered remnants of the Arusha agreement. A majority of the ministers are Hutu. There is no proclaimed theory of ethnic exclusivity as was the case during the many years of the Hutu *rubanda nyamwinshi* ideology. The regime presents itself as “democratic” because it “shares power” with former opposition parties. But the whole thing is largely a make-believe exercise. First of all because, as in many authoritarian governments, there are two channels of authority: one is the official administrative structure of the Cabinet and the ministries; the other is the RPF network, both civilian and military, which runs parallel to the official administration and make up an unofficial government of the shadows controlling the reality of the decision-making process. The real master of the country is not the (Hutu) President Bizimungu, it is the (Tutsi) Vice-President and Minister of Defence General Paul Kagame [since then of course Kagame has also become President].

Prunier then gives the numbers of Tutsi public service heads of ministries, chief ministerial staff, mayors, police, local government staff, judges and academic university staff and students to establish that they constitute about 80 per cent or more. “The few Hutus who are in positions of ‘power’ are shadowed by Tutsi guardians who make sure they ‘behave correctly.” (p. 369). The government cleverly exploits differences among Hutu parties, rendering their leaders ineffective, and rendering the emergence of a political opposition highly unlikely. Prunier goes on to say:⁶²

Within that dual structure—both official and unofficial—the military have gained an enormous role. RPA officers are present at all levels of the government and head several of the big parastatals....Every *prefecture* has a military Political Education officer in charge of promoting the proper type of ideological consciousness. And there are over a hundred such officers scattered at a lower level in all the *communes*. Television is in the hands of an army officer and so is

⁵⁹ Ibid.

⁶⁰ Ibid. quoting Jean-Damascène Ntakirutimana.

⁶¹ The *Economist*, normally expected to support a pro-market and pro-West government, wrote: “Anyone who poses the slightest threat to the regime is dealt with ruthlessly.” (August 21, 2008).

⁶² At p. 370.

the national energy office...RPA officers routinely discharge police duties or run various prisons and detention centres. The Mayor of Kigali is an army major. Army officers have also gone into business and the few still-profitable enterprises are often in their hands. And probably more important than all that, the notorious and omnipresent Director of Military Intelligence (DMI) is of course a purely military institution. It oversees the whole political process and provides for a near-general presence of the army in the Hills.

Not only are most key positions reserved for Tutsi, but for a special category of Tutsi—practically “none has ever lived in Rwanda prior to 1990. There is very little representation of the survivors of the genocide in the regime”. Prunier concludes: “[t]hus even if the regime does not want to consciously promote an ideology of ethnic exclusion, its very social structure and the cultural strangeness embodied in Tutsi supporters coming from abroad makes it an alien form of power.”⁶³ It is interesting that many features of the RPF style of administration and rule was pre-figured when it was fighting the government in the early 1990s. According to Prunier, the RPF kept essential decision-making within a familiar core of Uganda Tutsi refugees, added a select number of “outsiders” including a few trusted Hutu, and then tried to build a broader, apparently “multi-ethnic” official leadership for public consumption. Thus anti-tribalism was delegated to tribal elite, much in the same way that the task of creating the communist classless society had been to “vanguard of the proletariat”.⁶⁴

Fundamental Human Rights

Rwanda has ratified most international and regional human rights treaties. Its Constitution contains a good chapter on human rights, including socio-economic rights. Both in this chapter and other parts, there are provisions for the promotion of gender equality and women’s participation in public affairs. The rights of the marginalised communities (though not directly identified or defined) are given special consideration, as are those of the disabled and the survivors of the genocide. There is, as already mentioned, great emphasis on non-discrimination and equality before the law. The constitution protects the right to choose one’s employment, and guarantees equal pay for equal work. It ensures to workers and employers the right to form collectives, for negotiations and other purposes, and additionally, to workers a qualified right to strike. Free and compulsory primary education is to be provided by the state, which, together with the people, has commitments to provide medical services.

However, the practice of human rights is generally different from the constitutional provisions. An exception is the impressive improvement in the situation of women, who are well represented in the legislature, executive and public administration. But even here, with the reduction of public space in which civil society organisations operate, women’s organisations that were very effective in lobbying the government on women’s issues in the past, tend now to avoid tackling issues that are not in line with the government’s policy directives. Discrimination against, indeed oppression of, women continue in families and communities, as noted by the CEDAW Committee in 1999. Ten years later, while noting that equality between men and women is enshrined in the Constitution of Rwanda, and that it had “triggered extensive legal reforms aimed at removing discriminatory provision” the Committee also expressed concern that discrimination against women still exists in several fields, particularly under the Civil

⁶³ At p. 371.

⁶⁴ At pp. 152-3.

Code and the Family Code, though review of these laws was under way though somewhat slowly.⁶⁵ The new law on gender-based violence is, however, welcome,⁶⁶ as is Law No. 01/2007 of 20/01/2007 “Relating to Protection of Disabled Persons in General”.⁶⁷ However, Human Rights Watch has commented adversely on proposals for compulsory testing in the HIV context and sterilisation of people with intellectual disabilities.⁶⁸

The government scores well on education, with an impressive expansion in institutions of learning. It also scores well on economic development, but at the cost of increasing disparities between the rich and the poor, and urban and rural areas. Whilst the government has acknowledged the impoverished status of the Batwa and has encouraged district governments to include Batwa and all poor citizens in housing and tuition assistance programmes, it has opposed peaceful organisation among the Batwa on the grounds that such organising violates the principle of national unity. Additionally, other marginalised groups, such as street children, beggars, sex workers and the indigent, face social discrimination as well as government policies that infringe on their rights. And, lesbian, gay, bisexual, transgender and intersex peoples (LGBTI) are currently facing a new law which, if enacted, will criminalise activities that promote discussion or work on issues related to alternate sexuality.⁶⁹

“Life imprisonment”

In 2007, Rwanda abolished the death penalty.⁷⁰ This move was widely acclaimed internationally. A primary reason for the abolition was to facilitate the rendition of persons to Rwanda that the regime wanted to try for various offences (many countries, including those in the EU, do not extradite suspected offenders to a country which has capital punishment, but as this report shows later, even that was not sufficient to ensure extradition due to weaknesses in the administration of justice.⁷¹) It was not noticed by many that the capital punishment was, in most cases, replaced by life imprisonment in solitary confinement. As the UN Human Rights Committee commented, such solitary confinement is against Article 7 of the Covenant on Civil and Political Rights.⁷² Article 3 of the Organic Law substitutes sentences of “life imprisonment with special provisions” or “life imprisonment” for the death penalty wherever it appears in “all the legislative texts”. Article 4 defines “life imprisonment with special provisions” as having the following two elements: the convicted person (a) is kept in isolation; and (b) the person is “not entitled to any kind of mercy [or] conditional release [...] unless he/she has served at least twenty (20) years of imprisonment.”

⁶⁵ “Draft concluding observations of the Committee on the Elimination of Discrimination against Women: Rwanda” CEDAW/C/RWA/CO/6. The Committee also observed that there is “no explicit prohibition of discrimination against women” in the law or constitution, but this is not strictly true. Article 11 prohibits discrimination on the basis of sex and says it is punishable by law, while Article 14 says that everyone is equal before the law.

⁶⁶ Law No. 59/2008 of September 10, 2008 on Prevention and Punishment of Gender-Based Violence http://www.minijust.gov.rw/IMG/pdf/ITEGEKOrya_GBV.pdf.

⁶⁷ No. 01/2007 of 1 January 2007.

⁶⁸ “HRW condemns Rwanda’s draft law on HIV tests and sterilisation” <http://womensphere.wordpress.com/2009/07/17/hrw-condemns-rwanda-s-draft-law-on-hiv-tests-and-sterilisation/>.

⁶⁹ “The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Rwanda: A Shadow Report” submitted to the Human Rights Committee by: Coalition of African Lesbians, Global Rights, Horizon Community Association, International Gay and Lesbian Human Rights Commission (IGLHRC), International Human Rights Clinic, Human Rights Program, Harvard Law School; March 2009.

⁷⁰ Organic Law No. 31/2007 of 25 July 2007 relating to the abolition of the death penalty.

⁷¹ In 2009, Switzerland, Sweden and Finland have refused extradition to Rwanda because of fears suspects would not receive a fair trial.

⁷² Consideration of reports submitted by states parties under Article 40 of the Covenant Concluding Observations of the Human Rights Committee (Draft) paragraph 14 CCPR/C/RWA/CO/3 (April 2009).

Life imprisonment with special provisions is reserved for the most serious offences under Rwandan law. These include cases of recidivism which were previously punishable by death; torture resulting in death; murder or other killing with dehumanising acts on the dead body; crimes of genocide and crimes against humanity; acts of terrorism resulting in the deaths of persons; rape of children; sexual torture; and establishing or running a criminal organisation aimed at killing persons. Life imprisonment in solitary confinement can be imposed by Rwandan conventional courts and community-based *Gacaca* courts. In May 2008, the Rwandan legislature transferred most of the remaining genocide cases to *Gacaca* courts and requires the mandatory punishment of lifetime solitary confinement when an accused is convicted and has not previously confessed or pleaded guilty. A constitutional challenge was mounted to the lifetime solitary confinement penalty, but the Rwandan Supreme Court found it constitutional in August 2008. The government has announced plans to issue instructions on how the punishment should be implemented, but has not yet done so. In addition, the solitary confinement provision impeded the transfer of cases from the ICTR to Rwanda, despite assurances by Rwandan government officials that transfer suspects would not be subject to lifetime solitary confinement provision. The ICTR denied transfer of five suspects, with appeals by the prosecutor rejected on the same grounds in several of the cases.⁷³

Article 4 of the Organic Law on “life imprisonment with special provisions” appears to be in conflict with Article 10(3) of the International Convention on Civil and Political Rights (ICCPR), which provides that “the penitentiary system shall comprise the treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” Article 27 of the Vienna Convention on the Law of Treaties provides that a state shall not invoke its domestic law to defeat its international treaty obligations. In this respect, Article 4(1) of the Organic Law also contradicts certain provisions of the National Prison Service Law, which invokes Article 10(3) of the ICCPR. Article 4(1) is also problematic in its prohibition of early release, because it does not comply with standards set down by the Nuremberg Tribunal, the Statutes of the ICTR, the International Criminal Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone or the International Criminal Court, which had either in practice or in law envisaged situations where an offender could be released before the completion of his/her sentence.

Furthermore, Article 4(2) of the Organic Law on “solitary confinement” gives no time limit. Solitary confinement for prolonged periods violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 7 of the ICCPR, and Article 5 of the African Charter on Human and Peoples’ Rights). Rwanda ratified the African Charter in 1983, and acceded to the ICCPR in 1975 and to the Convention against Torture on 15 December 2008. Article 4(2) also appears to contravene the Constitution of Rwanda Article 15 of which states that “no person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment”. The Organic Law also appears to deviate from Rules 31 and 32 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Rwanda had committed itself to obeying the Standard Minimum Rules, at least in relation to prisoners sentenced by the ICTR who will be serving their sentences in Rwanda. Moreover, it has been argued that the Rules now have the status of customary international law. Other serious offences that had previously attracted the death penalty are punishable by life imprisonment, a sentence that is not defined in the Organic Law or in the National Prisons Service Law, 2006.

⁷³ See “17.12.08 - ICTR/Transfer - ICTR Rejects Fifth Transfer Request of Accused to Rwanda” Hirondele News Agency <http://www.hirondellenews.com/content/view/11823/482/>.

Arbitrary Arrest, Detention and Enforced Disappearances

Security forces have continued to improve their professionalism since 2004, and the RDF is acknowledged as being among the best-disciplined troops in Africa. Nonetheless, security forces continue to commit abuses, including arbitrary arrest and possible extrajudicial executions. The government and security forces continue to arrest, detain or “disappear” critics of the government, the RPF, or the President. Senior military officials reportedly continue to play an important role in the government. Since late 2006, extrajudicial executions and arbitrary killings by police have been on the rise. According to Amnesty International, at least three prisoners at the Mulindi military detention centre were killed and more than 20 were seriously wounded when military police fired on unarmed prisoners while responding to a protest by them.⁷⁴ In Eastern Province several detainees were shot while “trying to escape”, according to authorities, but forensic evidence indicated that the detainees had been executed.⁷⁵ According to Human Rights Watch, a number of persons named by a parliamentary commission that led to the dissolution of the MDR political party disappeared early in 2003. Some of those who disappeared were said to have sought asylum abroad or to have been detained in military custody. Police have at times imposed collective punishments, including beatings, on residents of communities in which the property of genocide survivors had been damaged or destroyed. Prolonged pre-trial detention and government officials’ attempts to influence judicial outcomes remain problematic.

The UN Human Rights Committee has expressed concern about reported cases of enforced disappearances and summary or arbitrary executions in Rwanda and about the impunity apparently enjoyed by the police forces responsible for such violations. It was also concerned about reported cases of enforced disappearances and summary or arbitrary executions in Rwanda and about the impunity apparently enjoyed by the police forces responsible for such violations.⁷⁶

The emphasis in this report is on political rights, which are critical to democracy (including the accountability of the government) and the flourishing of civil society—the freedom of expression and the media, and the rights to associate and assemble. It is significant that, unlike the formulation of most other rights in the Rwanda Constitution, these rights are not regarded as inherent in the people, but are made subject to the law, so that ultimately it is up to the executive and the legislature to determine their scope.

Freedom of Expression

The mission had some sense of the situation of freedom of expression in Rwanda, finding that many people it wanted to speak to were afraid to talk at all, or would only speak on the assurance of anonymity. This experience squared with the various reports of human rights organisations and media reports. Despite some easing of tensions with broadcast media, overall media independence and freedom of expression have declined. Several periods marked by courageous journalism criticising the government, the RPF, and the president have been followed by crackdowns on the media.

⁷⁴ “Rwanda: Reports of Extrajudicial Executions in Mulindi Military Detention Centre Must be Independently Investigated” (AI, 16 March 2006) at <http://web.amnesty.org/library/print/ENGAFR470042006> (last accessed on 18 December 2006).

⁷⁵ “Killings in Eastern Rwanda” (HRW).

⁷⁶ Initial Comments, 2009 (above) paragraph 12.

Freedom of conscience and opinion, and their “public manifestation” are protected by the Constitution (Art. 33), but only “in accordance with conditions determined by law”, an expression that returns to the legislature and executive, power that the constitution ostensibly limits. And propagation of ethnic, regional, racial or discrimination or any other form of division is punishable (Art. 33(2)). Article 34 protects freedom of the media, but mentions a wider freedom of speech, only to say that it must not prejudice various concerns including public order and morals. Basic legal guarantees of freedom of expression and the media were contained in the media law adopted in 2002. The law states that the press is free and censorship is forbidden, but in practice the media are still tightly controlled by the government. Articles of the same law impose criminal sanctions on the media for a wide range of offences such as divisionism and genocide ideology, punishable by one to five years in prison. Accusations of these crimes are used to intimidate and silence journalists.

Since February 2004, when the government began easing restrictions on broadcast media, the radio airwaves have become more diverse, with several local and international radio stations broadcasting on the FM bands. By the end of 2005, at least nine commercial, community and religious stations were operating in the country along with new provincial stations belonging to the state-owned Radio Rwanda.⁷⁷

The government has however stopped transmissions of radio stations on several occasions, including the FM transmission of Radio France International on 27 November 2006.⁷⁸ The BBC has been the target of a number of government complaints, which accused the Corporation in 2004 of propagating “genocide ideology”. In late 2007, the government accused a BBC journalist, Yusuf Mugenzi, of exacerbating ethnic differences through the *Imvo n’imvano* programme, which brings together leading—and at times controversial—figures from the Rwandese diaspora. Government officials accused the programme of giving airtime to “genocide fugitives”, referring to the Democratic Forces for the Liberation of Rwanda (FDLR), a Hutu rebel group based in eastern Congo, some of whose members took part in the 1994 genocide and continue to threaten stability in the region. There have been threats of suspension of BBC broadcasts on several occasions, and in 2009 its Kinyarwanda broadcasts were in fact stopped.⁷⁹

Since 2005, one of the few independent newspapers, the biweekly *Umuco*, and its personnel have been repeatedly harassed and threatened for their criticism of the government, and the publication has been censored. Copies have been seized, the editor forced into hiding for a while, as an *Umuco* journalist was arrested in 2005, just after he published an article in which he accused *Gacaca* officials in Gitarama province of mismanagement and witness-tampering,⁸⁰ and imprisoned for nearly 11 months on a charge related to the 1994 genocide of which he had previously been acquitted.⁸¹ Another independent paper, *Umuseso*, has been the target of similar treatment; several

⁷⁷ “Rwanda Country Report,” in *Attacks on the Press in 2005* (New York: Committee to Protect Journalists [CPJ], 2006).

⁷⁸ “Radio France Internationale Censored” (CPJ, 2006) at http://www.cpj.org/cases06/africa_cases_06/rwanda27nov06ca.html (last accessed on 19 December 2006).

⁷⁹ After it broadcast a “trailer” for an airing of *Imvo n’imvano* that was to include a debate on forgiveness. This included comments by a former presidential candidate, Faustin Twagiramungu, opposing the government’s attempt to have the country’s entire Hutu population apologise for the genocide, since not all had participated. It also included a man of mixed Hutu-Tutsi ethnicity questioning why the government had refused to allow relatives of those killed by the RPF forces to grieve for their loved ones.

⁸⁰ *Ibid.*

⁸¹ “Rwandan Journalist Freed after 11 Months in Jail” (CPJ, 2006) at <http://www.cpj.org/news/2006/africa/rwanda31july06na.html> (last accessed on 19 December 2006).

of its journalists were forced to flee the country,⁸² and in August 2006, Rwanda's highest court upheld a ruling imposing a one-year suspended prison sentence and ordering editor Charles Kabonero to pay the equivalent of US\$ 2,000 damages for defaming the deputy speaker of parliament in a 2004 article.⁸³ Reporters Without Borders reported in August 2006, that Bosco Gasasira, the editor of the weekly *Umuvugizi*, had been receiving threatening phone calls and had been under surveillance by military intelligence for criticising Economy and Finance Minister, James Musoni.⁸⁴ The director of *Umurabyo* was jailed in January 2007 for publishing an anonymous letter that criticised the administration of President Kagame.⁸⁵ In March 2009, the UN Human Rights Committee expressed concern over reports that the Rwandan government had subjected journalists critical of government policies to intimidation and harassment and had charged other journalists with "divisionism", a crime vaguely defined under Rwandan law as spreading ideas that encourage ethnic animosity between the country's Tutsi and Hutu populations.

The Government of Rwanda has begun preparing a new law governing the media. This reportedly contains provisions criminalising non-disclosure of journalists' sources, and will require editors to hold qualifications at the level of a master's degree in journalism and/or media. It is thought that this law will cause the closure of many of the already struggling independent local media. The recent legislation, currently awaiting presidential approval, would make defamation a criminal offence in addition to other civil and administrative sanctions, and would impose a wide range of restrictions on gathering and reporting information.⁸⁶

Freedom of Association and Assembly

The Constitution recognises freedom of association, but it is restricted in practice, and again, the expression: "such freedom shall be exercised under conditions prescribed by law" appears (Art. 35). Rwandan law protects the right to form, join, and participate in trade unions; however, unions must follow the same onerous certification and registration process as other NGOs. Overall, trade unions are able to advocate for the interests of their members to a limited degree. Freedom of assembly has rather weak protection under the Constitution (Art. 36); it is guaranteed "within the limits fixed by law",⁸⁷ and is not fully guaranteed in practice. Protests and demonstrations in support of RPF or government policies occur on a regular basis. To hold a demonstration, the sponsoring groups must apply for a permit. Between 2004 and 2007, no demonstrations against government policies or critiquing the RPF took place.⁸⁸

Land Issues and Land Policies

A major source of economic problems in Rwanda is the scarcity of land. It is said that at least some of the killings during and after the genocide were connected with competing

⁸² Ibid.

⁸³ "High Court Upholds One-Year Suspended Sentence and Heavy Fine for Editor Who Published Political Analysis" (RSF, 2006), at http://www.rsf.org/article.php3?id_article=12964 (last accessed on 19 December 2006).

⁸⁴ "Umuvugizi Editor Latest Target in Harassment of Independent Press" (RSF, 2006) at http://www.rsf.org/article.php3?id_article=18505 (last accessed on 19 December 2006).

⁸⁵ "In Rwanda, Newspaper Director Jailed for Publishing Critical Letter" (CPJ, 16 January 2007) at <http://www.cpj.org/news/2007/africa/rwanda16jan07na.html> (last accessed on 21 February 2007).

⁸⁶ <http://rtv.rtrlondon.co.uk/2009-08-18/23e97ac.html>

⁸⁷ This is our translation from the French rather than the official English version "if it is not inconsistent with the law".

⁸⁸ On August 21, 2008, the *Economist* wrote: "He [Kagame] allows less political space and press freedom at home than Robert Mugabe does in Zimbabwe."

claims for land, which were settled by murders. The problem was aggravated by the return of refugees, whose land in the meantime had been occupied or appropriated by others, giving a special twist to ethnic tensions. Hutus might have occupied land vacated by fleeing Tutsis in the post-independence period, and when the Hutus fled with the invasion of the RPF the incoming Tutsis might have occupied their land. Prunier writes:⁸⁹ "There seems to have been a total return migration of about 750,000 Tutsi coming from Zaire, Uganda, Burundi and Tanzania after the end of the war, and when large numbers of politically highly suspect Hutu came out of the southern IDP camps, they do not seem to have been welcome to their former homes." State authorities became involved in allocations of land, often by preventing the return of the internally displaced persons (IDPs) or refugees to their homes.

The Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council has argued that policies about disputed land claims led to violations of the liberty of movement and the freedom to choose one's residence as well as the prohibition of arbitrary or unlawful interference with home protected by the ICCPR.⁹⁰ One response of the state has been the policy of "villagisation", which provides for the relocation of all Rwandans living in scattered homesteads into government-created villages. As a result some people have lost the right to go back to their homes and property.

The IDMC, on a mission in May 2005, found in Ruhengeri and Gisenyi a pattern of reports indicating that villagers could not return and reclaim their property, i.e. homes and land, because of the illegal appropriation of land and intimidation by high-ranking military officers and their representatives. These allegations seem to be substantiated by reports of Rwandan asylum seekers in Uganda and Zimbabwe describing the difficulties of reclaiming land as reasons for seeking asylum. In the words of one asylum seeker: "If you get a Major on the land, you cannot order him out."

Land has also wider economic implications, for which the Rwandan government adopted a national land policy in January 2004 and in September 2005 a national land law. The development of this new statutory framework on land tenure and management required more than seven years of internal debates between policymakers. Increasing land scarcity due to population pressure, environmental degradation, and land-grabbing by a new elite create an extremely precarious future for the national economy of the small, very poor and landlocked country. Specialists have been warning of the probability that domestic agriculture will soon reach its natural limits, which indeed makes a land reform urgently needed.

But beyond that impending necessity, there looms the possibility that the Rwandan authorities may take advantage of restructuring the agrarian sector in order to pursue their own particular interests. Although the land law stipulates: "to establish a land system that is secure for all Rwandans", its strong focus on privatisation and capitalisation, along with ongoing inequalities in land access, and the regime's tendency toward historical revisionism, have raised doubts about the government's true intentions.

⁸⁹ *The Rwanda Crisis* pp. 364-5.

⁹⁰ Submission from Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council to the Human Rights Committee in its 89th session held in New York, 12-30 March 2007, related to the discussion of the country situation in Rwanda in the absence of the State Party's report.

A closer look at the so-called consultations of civil society in this context reveals a pseudo-process based on pre-set decisions.⁹¹ Subsequently, neither the policy nor the law offer adequate guarantees and safeguards to protect the interests of large parts of the population. Representatives of local civil society fear that the government may seek to tighten the elite's grip on land or to restore the old, pre-colonial feudal system. This would inevitably lead to a further marginalisation of groups that are discriminated against, which in turn could provoke them to seek self-determination, and thus be the source of renewed social tensions. Already now, an estimated 80 per cent or more of cases coming before a prefect court are concerned with land. Many of these cases are related to ethnic discriminations in the distribution of plots to returning refugees and their resettlement. As a result, the majority of the Rwandan population considers the land issue to be a main obstacle in building lasting peace in the country.⁹²

Rule of Law and Independence of the Judiciary

The constitution commits the state to observe the rule of law. The rule of law underlies the principle of legality, and is critical to the supremacy of the constitution. It requires that all laws be compatible with the constitution, and state policies and administration must be compatible with it as well as with the laws. The rule of law is also critical to the protection and enforcement of fundamental rights—and the effective functioning of the economy.

The rule of law depends on the general respect for the constitution and laws. The government and other agencies of the state must be committed to the principle of legality. Courts, as the primary interpreter and enforcers of the constitution and the law, must be free, impartial and competent. So should the prosecutorial authorities. The law must be accessible to the people. Access to justice in a broader sense must be ensured, including access to legal advice and representation. Most of these elements are provided in the Constitution. As mentioned, at a formal level, Rwanda has made great strides in building the infrastructure of the rule of law. However, the refusal to incorporate some experienced Hutu judges and prosecutors, who remained in the country or who returned after the RPF's victory, as well as the arrest, assassination or departure into exile of a number of them, has led to a lack of experienced personnel. It also gives rise to the suspicion that the government wants to control the legal system.

A truly independent legal system is essential to end the culture of impunity. Ending this culture would require the systematic prosecution of RPA military personnel responsible for human rights violations. In cases where such abuses have caused international concern (such as the large-scale massacres of Hutu refugees in eastern Congo), the official RPF line has been that those responsible would be prosecuted and punished. However, despite some reports that transparency and efficiency of the military justice system are improving, prosecution and punishment seem to remain the exception rather than the rule.

In a 2008 amendment, the Constitution was changed to provide that a retiring president (which presumably refers to the prospect of retirement of President Kagame) "shall not

⁹¹ Several non-governmental stakeholders in Rwanda critically observe the disturbing repetition by the current government of certain discriminatory patterns in the distribution of land and resources. The upcoming land reform, they fear, is likely to further strengthen these tendencies since it is said to predominantly safeguard the interests of the elite, and not the security needs of the rural poor. This feeling of mistrust has also been fostered by the development of the new land policy and law, which largely took place behind closed doors.

⁹² John Bruce "Drawing a line under the crisis: Reconciling returnee land access and security in postconflict Rwanda" HPG Working Paper (June 2007) at <http://www.odi.org.uk/resources/download/3186.pdf> (last accessed on 16 June 2009).

be prosecuted for [high treason or grave and intentional breach of the Constitution] when no proceedings in respect to such an offence were brought against him/her during his or her presidency". Interestingly, Bosco Gasasira, editor of the *Umuwugizi* newspaper is reported (by a government website) to have said: "It is a signal that would be paving way for the succession of President Kagame because most of his predecessors or some presidents in neighboring countries in the Great Lakes or in Africa refuse to leave office for the fear of being prosecuted. So, Rwandans see it in a way that at least he (President Kagame) may be the first president to leave office when his term expires."⁹³

The Arusha Tribunal has expressed doubts about justice in Rwanda Courts, at least in cases involving charges of genocide. They have expressed concern about the safety of defence witnesses because of reports of harassment, detention and even murder of witnesses or potential witnesses.⁹⁴ And according to the 2006 Rwandan Senate report, questioning the legitimacy of the detention of a Hutu is one manifestation of "genocidal ideology". In several cases documented by Human Rights Watch, witnesses who appeared for the defence at the Tribunal, were arrested after their return to Rwanda.

The English High Court has also blocked extradition to Rwanda on the grounds that the accused would not receive justice. It said: "The question whether a court is independent and impartial cannot be answered without considering the qualities of the political frame in which it is located. We have had no day-by-day details from the Government of Rwanda of the conduct of the Rwandan High Court's business. No details of trials; of defences run, successfully or unsuccessfully; no details of any of the myriad events that show a court is working justly. We have reached a firm conclusion as to the gravity of the problems that would face these appellants as regards witnesses if they were returned for trial in Rwanda. Those very problems do not promise well for the judiciary's impartiality and independence. The general evidence as to the nature of the Rwandan polity offers no better promise. When one adds all the particular evidence we have described touching the justice system, we are driven to conclude that if these appellants were returned there would be a real risk that they would suffer a flagrant denial of justice."⁹⁵

To these criticisms can be added another. The 2003 constitution had originally provided that, unless otherwise provided by law, judges have life tenure (Art. 142). In a constitutional amendment gazetted on 13 August 2008, the life tenure of all judges was removed. While the President and Vice-president of the Supreme Court have only one terms of eight years, the Presidents of other courts are now appointed for four or five years, renewable once. Other judges are appointed for "determinate periods" (fixed by law), renewable by the High Council of the Judiciary, "after evaluation". That Council was composed entirely of judges, under the 2003 Constitution, plus two deans of law schools, the president of the Human Rights Commission and the Ombudsman. But the amendment adds: "Other officers designated by the Organic Law determining the organisation, powers and functioning of the High Council of the Judiciary", opening the way for parliament to add any number of political or government appointees. We heard many complaints during our visit in Rwanda that few judges are independent, and some said that they no longer turn to the judiciary for the protection of their rights.

⁹³ http://www.gov.rw/news.php?id_article=23.

⁹⁴ In October 2008 the ICTR Appeal Chamber upheld the Trial Chamber's refusal to agree to the transfer of the case of Yussuf Munyakazi to Rwanda. It said that it was not clear that the defence could "obtain the attendance of, and to examine, witnesses under the same conditions as witnesses called by the prosecution" – quoting the press release ICTR/INFO-9-2-576.EN of 9 October 2008.

⁹⁵ *(Brown (aka Bajinja) & Ors v. The Government of Rwanda Secretary & ana* [2009] EWHC 770 (Admin).

The 2008 amendments also bring the National Prosecuting Authority under the Minister of Justice, who determines the general policy for prosecution, but may also give specific instructions in respect of a case, to prosecute or desist from prosecution (amendment to Article 162).

Similar threats are posed to the independence of the legal profession. Rwanda has a small, and for the most part inexperienced, legal profession. Many members are providing useful service to the community. It has its own association which is committed to the independence and ethics of the profession. Its members provide free or inexpensive legal assistance to those who cannot afford it (although there are difficulties of getting legal advice and representation in politically charged cases). In recent months, the independence of the profession has come under threat of government intervention, owing to proposals for a new law governing the profession, which would increase the representation of the government, including the military, in its governing council. The law would also make inroads into lawyer-client confidentiality, about which the private legal sector is most perturbed.

Gacaca Courts and Transitional Justice

A particular problem for Rwanda's justice system is the persistence of *Gacaca* courts, which were established to try genocide cases, a complex field. The dilemma the government faced was that the international tribunal at Arusha could deal with only a limited number of accused and that at great cost. Yet there were thousands of persons who had participated in the genocide who had also to be brought to justice. Given the limited resources and a preference for reconciliation, it was decided to use the *Gacaca* courts, which have informal procedures, without rules of evidence or procedure, no formal indictments (but accusations by victims or others knowledgeable about the offence), and no defence counsel. They are always described as traditional tribunals of justice, rooted in local concepts of justice, oriented towards reconciliation.

In fact they are nothing of the kind. They are state courts, operating under state legislation and direction. Their jurisdiction is asymmetrical in that only killers of the "Tutsi genocide" are liable to be tried, not those who may have killed Hutus in the massacres, which were part of the same conflict.⁹⁶ The offences they try are quantitatively and qualitatively different from traditional offences, grave in their commission and severe in the punishment. Nor is there an adequate supervisory or appellate mechanism. As Ingelaere, who has made a thorough study of the court, says, "State intervention through legal and social engineering has designed and implemented a novelty, loosely modelled on an existing institution."⁹⁷

In 2002, the government decided to use the *Gacaca* courts to try the bulk of genocide cases, and started the trials in 2005. In March 2005 approximately 761,000 suspects stood accused of genocide. The majority of these suspects remain in their communities

⁹⁶ Bert Ingelaere says that, the distinction may be justified on the basis that the first was genocide and the other civil war crimes (in part revenge), "[n]evertheless, the fact that the first is being dealt with and the second is eclipsed from view establishes a moral hierarchy of right and wrong, pain and suffering. The dissonance between popular embodies experiences and understandings of the conflict on the one hand and the government-controlled and government-produced way of dealing with the past, at the practical and interpretative levels, is one of the main obstacles to legitimizing the current socio-political order." Bert Ingelaere, "The *Gacaca* courts in Rwanda" in Luch Huyse and Mark Slater (eds), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance, 2008) p. 56.

⁹⁷ *Idem.*, p. 32.

as the *Gacaca* courts continue trials; however, unknown numbers have been arrested or rearrested and returned to prison. The use of these courts has extended well beyond the original date; and increasing numbers of persons who were expected to be tried by the formal courts have now been transferred to the jurisdiction of the *Gacaca* courts. It is likely that the courts will continue for some years to come.

A number of studies of their operation have pointed to major deficiencies: the lack of any formal training of judges, their relative lack of independence (*Gacaca* judges are particularly susceptible to administrative influence), few formal rules of procedure, fears of victimisation, and lack of security for witnesses. A 2009 report by Human Rights Watch, noting that in 2008 the government shifted thousands of the most serious genocide cases from conventional courts to *Gacaca* courts, commented that instances of faulty procedure, judicial corruption, and false accusations undermine trust in *Gacaca* jurisdictions among victims as well as the accused. The UN Human Rights Committee has expressed similar reservations about these courts. A mission of the UN High Commissioner for Human Rights had recommended against the adjudicatory jurisdiction of the *Gacaca*, but favoured a reconciliation role; and cautioned against too much government intrusion and administrators.⁹⁸

With the launching of *Gacaca* courts nationwide in 2005, many segments of society began to feel less secure. In some regions, genocide survivors have been threatened by people who did not want to be accused of genocide crimes, and *Gacaca* judges have been threatened or harassed. Transitional justice has been and continues to be largely one-sided as *Gacaca* will not be used to prosecute alleged revenge killings or war crimes by the RPF in Rwanda between 1990 and 1995 or in the Democratic Republic of Congo between 1996 and 2000. As Ingelaere has mentioned, the core of the *Gacaca* courts is retributive, while the essence of the ancient institution was restorative. Noting these contradictions, he cautions against enhancing “cleavages one is supposedly eradicating and to instil and support inclusive policies that are not creating an ‘us versus them’ dynamic within the population, enhancing identities one wants to reconfigure (unless that which one says is not that which one wants, of course)”.⁹⁹

Just as we discovered a significant and disturbing divergence between the “official” system and the practical realities in respect of the constitutional and political system, so also is the case with the judicial system. Prunier, noting that, since the genocide, the number of “political” prisoners has grown “monstrously” and the backlog of trials has mounted, refers to the government explanation that the judicial system was destroyed during the genocide. He comments as follows (pp. 365-6):

The explanation, which was reasonable up to early 1995, became more and more unreal as time went by and, in the words of former Prosecutor General Francois-Xavier Nsanzuwera, “it became obvious that the State and its representatives (police, civil service) were the main obstacles to the carrying out of justice” [footnote omitted]. One obvious element in this blocking of the judiciary process was the refusal by the government to use foreign judges in Rwandese courts. This reluctance to actually judge the people suspected of taking part in the 1994 genocide has complex causes. Part of the problem is of course disorganisation. But the process is too systematic to simply be a result of neglect. Part of this “go-slow” policy comes from the frustration at holding only minor

⁹⁸ *Idem.*, p. 36, citing UNHCHR, *Gacaca: Le Droit Coutumier au Rwanda* (Kigali, 1996).

⁹⁹ *Idem.*, p. 58.

figures of the genocidal drama and from the fear that judging them would provide a sort of excuse for not charging and judging the major figures. But there were also less acceptable motivations: for example the fact that generalised arbitrary detentions are a powerful tool of political and social control. Nobody in Rwanda is free from the arbitrariness of the *abakada*.¹⁰⁰ They are the ones who can get anybody arrested on suspicion of being a *genocideur* or an infiltrator from Zaire. Apart from this immediate function of social control, the non-judgement of the suspects plays several more complex and perverse roles: the existence of this “mass of killers” is a permanent reminder for the international community of its own hypocrisy and self-inflicted impotence. When a large human rights organisation takes to task the Rwandese government for its miscarriage of justice the exercise is ambiguous to say the least, since an equally severe document could be written about the international miscarriage of justice. The bursting jails of Rwanda are both a moral sore and the irritating reminder of an unresolved horror. They enable the present government to sanctuarise itself in its moral superiority and to extract a maximum of political advantages from the situation.

And domestically, the non-judgement of prisoners is also a way of keeping open the sore of collective Hutu guilt. Any Hutu can go to jail at any time, because any Hutu is either a real or a potential murderer. In the Hills, the *abakada* are on the lookout for signs of discontent, criticism and subversion. Whether real or imaginary, they often find them, making jail without judgement a Damoclean sword over every Hutu head.

Civil Society

The importance of civil society (for its positive impact on democracy and accountability as well as culture and arts) and its participation in the affairs of the Commonwealth are emphasised in the Harare Declaration. Civil society in Rwanda is very weak, which is not surprising given the restrictions on the freedom of expression, the media, and the rights of association and assembly. Repercussions of the 1994 genocide continue to be felt through restrictive and vague laws and broad concepts like “genocide ideology” which have been used to silence opposition, dissent and criticism of the government. As stated previously, all the members of Rwandan civil society who were spoken to in the course of interviewing, researching and writing this report feared retaliation from the authorities if they were directly quoted or cited. Similarly, many international organisations and foreigners working in Rwanda were afraid that they would be denied visas and restrictions would be placed on the functions and operations of their organisations.

At the end of June 2004, a report by a parliamentary commission on genocidal ideology recommended the dissolution of several international and local NGOs that “preached genocidal ideology and ethnic hatred”. The organisations mentioned in the list included the only local human rights organisations willing to criticise the government publicly and document human rights abuses committed by government authorities. Almost all the local organisations named in the report ceased to operate between July 2004 and January 2005. In 2006, all international NGOs and local civil society organisations with ties to France, or which promoted the French language or culture, were either ejected from the country or forced to close following the diplomatic row over the indictment of several RPF leaders, by a court in France

¹⁰⁰ Prunier (*The Rwanda Crisis*, p. 366n) explains: “From the French ‘cadres’. They are the young men who make up the basic network of the RPF in the countryside. Their control of the hills is impressive.”

overseen by the anti-terrorism judge Bruguière. The effect of these events has undermined autonomous civil society in Rwanda, as the surviving civil society organisations are very careful to avoid criticising the government, the RPF, the president, or their policies.

Many of what used to be independent non-government organisations are now essentially government-organised non-government organisations (or GONGOs). Those remaining independent organisations often, like the media, practise self-censorship in order to be able to continue working and receiving foreign funding. This climate is then aggravated by a judiciary and legal system in which there have in the past been allegations of executive interference and where the presumption of innocence is not even necessarily deemed applicable to all types of cases. As mentioned, there is little access to justice on the basis of alleged killings at the hands of the returning RPF forces, after the end of the 1994 genocide and even debate around these deaths risks prosecution for promoting divisionism, negating genocide or indeed, promoting genocide ideology. It is no wonder in such a situation that members of Rwandan civil society may leave the country or refer with some cynicism to what could be referred to as the government policy of “one Rwanda”.

While there remained some degree of press freedom, the scope for dissidence was reduced through a number of measures. First, by intimidation pure and simple: at the end of 1997, an estimated hundred people “disappeared” every month in the city of Kigali alone.¹⁰¹ It had the desired result, in that, those who would otherwise express criticism, became extremely cautious. Second, some measures specifically targeted “troublemakers”: in 1997, one journalist was killed, two others arrested, as were two leaders of human rights associations (ADL and ARDHO) and several judges, including a Vice-President of the Supreme Court. Third, the regime neutralised civil society by infiltrating it or otherwise. The election of the Vice-President of the Ibuka association, which at the time maintained close ties with the regime, as head of the CLADHO (a human rights collective) and that of another influential member of Ibuka as chair of the CCOAIB (a collective of development NGOs), were part of this strategy,¹⁰² which was quite openly acknowledged by the general secretary of the RPF, Denis Polisi. Passing through Brussels on 15 June 1997, he denounced “those business enterprises called NGOs” and lambasted “the latest invention of the NGOs, namely civil society”.¹⁰³

International Relations

As an association of both governments and people, the issue of interstate relations has considerable significance for the Commonwealth. The Harare Declaration expresses the Commonwealth’s interest in international understanding, cooperation and world peace—which is highlighted in the 2007 CHOGM communiqué as a fundamental political value of the Commonwealth (paragraph 4). Without a doubt, Rwanda does not satisfy this criterion. Just as in the political and legal systems, we find major divergence between the proclaimed and the real, so in international relations we find a duality, between self-proclaimed commitment to international law and cooperation, and the practice of armed politics and ruthless exploitation of neighbouring states.

¹⁰¹ Amnesty International, confronted with the magnitude of this phenomenon, sounded the alarm in a communiqué published on 12 March 1998: *Rwanda: selon des délégués d’Amnesty International, les “disparitions” atteignent un taux alarmant*. In their communiqué No. 006/98 of 23 February 1998, the Resistance Forces for Democracy (FRD) had already drawn attention to this matter.

¹⁰² The resolutions and recommendations of the extraordinary general assembly of CLADHO held on 28 February 1998, made no mention of the abuses committed by the army.

¹⁰³ Transcribed on the basis of the reports of two persons present at the meeting.

As this report has already mentioned, the Rwandan government has refused to cooperate with countries where prosecuting authorities have issued warrants against its senior party or military officials for crimes against humanity. It has closed embassies of “offending” states, and victimised NGOs from those countries operating in Rwanda—which also casts doubts on its commitment to civil society.

But even more shocking have been its persistent intervention in the affairs of neighbouring countries, creating great instability, particularly in the DRC, and its central role in the triggering of numerous conflicts and wars in the Great Lakes Region. Similarly reprehensible, has been its role in establishing a network of illicit transactions and relationships based on massively “privatised economies”, replacing the authority and policies of the state in a host of economic and political spheres. Such economies flourish on systematic and extensive evasions and breaches of the law. They have enabled the RPF government to plunder the natural resources of the DRC to finance its own institutions and the lifestyle of its elite. These two aspects are explored in this section. They have been the subject of numerous UN investigations, conducted at the request of the Security Council. The appendices to this report contains extracts from only two of these investigations. They have also been analysed by Professor Filip Reyntjens, among others, in his new book, *The Great African War*. This section of the report is based on these sources.

Political Destabilisation of the Great Lakes Region

Kagame, a Rwanda refugee in Uganda, began his military career as an officer in Museveni’s army fighting against Obote. Reliance on military might has always been an essential component of his and RPF’s policies and strategy. As mentioned above in the section on democracy and governance, the military plays a central role in the policies and administration of the government (“an army with a country”). This report has already described the ways in which the RPF and RPA pushed Rwandese out of their country as refugees, and interfered with, and directed, their activities. The creation, mobilisation, and direction of refugees have been a method for the extension of Rwanda’s civil war into its neighbours, which is disdainful of their sovereignty. Another and more potent method has been the deployment of Rwandan soldiers in other countries, particularly the DRC (“*soldats sans frontières*” one might say). Rwanda has invaded the DRC, either alone or in collaboration with other states (particularly Uganda), several times, and fought other states on DRC territory. Kagame has made territorial claims against the DRC. Sometimes the Rwandan government has operated through militias it has set up itself, like the RCD-Goma, on its western flank, or the insurgents or rebels from others’ armies (as with Kabila in the overthrow of Mobutu’s government or with Laurent Nkunda and Col. Mutbutsi against Kabila). These alliances are very opportunistic and therefore fluid and fluctuating (as with changing partners in the DRC, and more dramatically, the conflict with Museveni and his army).¹⁰⁴ In relation to the conflict with Uganda, Reyntjens writes:

¹⁰⁴ In August, the Rwandan and Ugandan armies fought a battle in Kisangani, following other clashes in May and June 2000.. Around 400 civilians and 120 soldiers were killed. According to Reyntjens, the two differed over the assistance to Kabila in 1996-7, when Kabila was “parachuted” into power without much Congolese ownership as Rwanda preferred a quick military solution and the installation of yet another figurehead in Kinshasa. Reyntjens quotes Prunier to the effect that Kampala had no problem with an independent and efficient government in the DRC, a vision dramatically opposed to Kigali’s view that wanted to keep its Congolese proxies under control (G. Prunier, “*L’Ouganda et les guerres congolaises*”, *Politique Africaine*, No. 75, October 1999, p. 47). Reyntjens identifies other reasons for the conflict, including that “entrepreneurs of insecurity” belonging to the elite networks in both countries were engaged in a competition to extract Congolese resources (footnote omitted) and that Museveni resented the geopolitical ambitions of his small Rwandan neighbour and the lack of gratitude displayed by Kagame, who owed his accession to power to the support of Uganda.

Just like the Rwandan civil war, the conflict with Uganda was fought out on the soil of a weak neighbour and, in part, by proxy. Both countries supported rebel movements and (ethnic) militias in the context of an increasingly fragmented political-military landscape. They continuously traded accusations of supporting each others' rebel groups, which both sides indeed did, and in March 2001, Rwanda was declared a "hostile nation" by the Ugandan government. Despite attempts at appeasement during the following months, on 28 August 2001, Museveni sent a long and bitter letter to the UK Secretary of State for International Development, Clare Short "about the deteriorating situation in the bilateral relations between Uganda and the government of Rwanda, led by President Kagame". He stressed that he had "no doubt that Rwanda is planning aggression against us either using proxies or, even, directly", and he pointed to training facilities offered by Rwanda to Ugandan dissidents around Kigali and in the DRC. He even referred to the "ideological bankruptcy" of the Rwandan regime. As a consequence, Rwandan-Ugandan relations further deteriorated, and troops were massed on both sides of their common border. On 6 November 2001, Short summoned her two *protégés* to London to put an end to a situation that risked becoming a fiasco for the UK, just like the Ethiopian-Eritrean war of 1998-2000 had been one for the US. While relations did not become cordial, the threat of direct war subsided.

The UN committee (see Appendix I) received and analysed numerous reports of trucks allegedly ferrying weapons and logistical materiel to the DRC through the Rwandan border posts of Gisenyi and Cyangugu (in violation of the UN sanctions on supply of weapons to the DRC). It has helped sometimes to recruit soldiers for the DRC army and sometimes against it. It has been involved in their regrouping and training within Rwanda military camps; and given safe refuge to families of rebels, all of which the UN committee and Security Council have condemned.

Criminalisation of Regional Economies and Plunder of DRC's Natural Resources

One of the greatest disservices that Rwanda did was to promote the destabilisation of the DRC and begin the plunder of its resources. The attack on the DRC by Rwanda and Uganda drew in other states, for or against the Rwanda-Uganda agenda, so as not to be left out of the spoils. As the UN noted, these conflicts were fought over minerals, farm produce, land and even tax revenues. Rwanda's initial justification for military forays was national security (not without reason), but soon, as the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (see Appendix II) noted, the greed for minerals superseded security considerations. At first Rwanda needed its army in the DRC to exploit its economic resources, but as the pressure from the Security Council increased for the withdrawal of all foreign troops, Rwanda began to establish militias to maintain its stranglehold on the resources. And when even that became difficult, the direct looting was "replaced with organized systems of embezzlement, tax fraud, extortion, the use of stock options as kickbacks and diversion of State funds conducted by groups that closely resemble criminal organizations"—in short "a self-financing war economy centred on mineral exploitation".¹⁰⁵

¹⁰⁵ The Panel had correctly anticipated that "withdrawals of armies are unlikely to alter the determination of Rwanda and Zimbabwe, and Ugandan individuals, to exercise economic control over portions of the Democratic Republic of the Congo. The departure of their forces will do little to reduce economic control, or the means of achieving it, since the use of national armies is only one among many means for exercising it... The Governments of Rwanda and Zimbabwe, as well as powerful individuals in Uganda, have adopted other strategies for maintaining the mechanisms for revenue generation, many of which involve criminal activities, once their troops have departed."

The Panel noted that the Rwandan government “replaced Congolese directors of parastatals with businessmen from Kigali to ensure continuing revenue from water, power and transportation facilities. It has replaced local currency with Rwandan currency. RPA battalions that specialize in mining activities remain in place, though they have ceased wearing RPA uniforms and will continue the activities under a commercial guise. The Panel’s sources have reported that RPA recently undertook an operation to obtain a large number of Congolese passports so as to give an appropriate identity to RPA officers who continue to be stationed at strategically important sites in the Democratic Republic of the Congo.” Apart from fraud, state or state-sponsored violence is a central feature of this economy. The main operators “consist of a small core of political and military elites and business persons and, in the case of the occupied areas, selected rebel leaders and administrators. Some members of the elite networks occupy key positions in their respective Governments or rebel groups.”

The Panel commented as follows on the illegal income generated:

While revenues and expenditure in the Congo Desk are considerable, they are kept strictly separate from Rwanda’s national budget. A reliable source associated with the Congo Desk has calculated that income to the Desk provided 80 per cent of all RPA expenditure in 1999. The official Rwandan budget for 1999 allocated \$80 million to the military. If this official budget allocation of \$80 million represents the 20 per cent referred to by the Panel’s source as the portion of military expenditure not covered by the Congo Desk, then the total military budget from all sources would approximate \$400 million. This comes to 20 per cent of GNP for 1999 and approximately 150 per cent of recurring budget expenditure for that year. The Congo Desk’s contribution to Rwanda’s military expenses would therefore have been in the order of \$320 million. The activities funded by revenues generated by the Congo Desk strongly shape Rwanda’s foreign policy and directly influence national decision-making in a number of domains. These transactions are, however, hidden from the scrutiny of international organizations...¹⁰⁶

75. The bulk of coltan exported from the eastern Democratic Republic of the Congo, as much as 60 to 70 per cent, has been mined under the direct surveillance of RPA mining *détachés* and evacuated by aircraft from airstrips near mining sites directly to Kigali or Cyangugu. No taxes are paid. Rwandan military aircraft, Victor Bout’s aircraft and small airline companies are used in the evacuation of the coltan. RPA has maintained control over most of the coltan sites where rich deposits are found, where the percentage of Tantalum is high, and where local airstrips are accessible. A variety of forced labour regimes are found at sites that have been managed by RPA mining *détachés*, some for coltan collection, some for transport, others for domestic services. Many accounts report the widespread use of prisoners imported from Rwanda who work as indentured labour.

The Panel has surveyed the social consequences of this criminalised economy. Here are some extracts from its report.

¹⁰⁶ Reyntjens states that a UN Panel estimated (1999-2000) that the RPA must have made at least US\$ 250 million over a period of 18 months (UNSC 2001 :paragraph 130). He also suggests that in 1999, the total value added of plundered diamonds, gold and coltan amounted to 6.1% of Rwanda’s GDP and 146 % of its official military expenditure citing S Marysse “Redress and War: the Case of the DR Congo” *European Journal of Development Research* Vol. 15(1) 73-98 (2003) at p. 88, adding in a note that the total value of export crops amounted to only 0.4% of GDP.

One consequence is the rapid escalation of disorder and an “increased use of arms by a wide range of groups. The Panel said that these confrontations “resulted in considerable displacement of populations in the path of troop movements” and the seizure of food and property by armed groups. “Armed movements arose among local populations for self-defence, and occasionally these local militias banded together with other local militias to create larger armed groups.” Thefts of cattle valued at more than \$15 million took place. “The multiplication of armed forces and fighting in the interior have all but destroyed farm production on the rich plateau in the interior of northern Katanga. Excesses by RPA in requisitioning resources for the ‘war effort’ set a standard for behaviour by the far less disciplined ANC rebel forces, who have ravaged the countryside. Growers are reluctant to invest in crops when they are so likely to be stolen. Large numbers of persons have been displaced from their homes and have abandoned their lands out of fear. The Office for the Coordination of Humanitarian Affairs has estimated that, in the northern Katanga area alone, 350,000 displaced persons are living away from their homes, with neighbours, in the cities or in the bush.

Malnutrition studies carried out by non-governmental organizations in both northern Katanga and the Kivus have shown that, in some places, as many as 25 to 30 per cent of all children under 5 years are malnourished. In most cases, this is due to the large numbers of displaced persons who have been forced to leave their own agricultural production and have taken refuge in nearby host villages. A number of studies have shown the close link between elevated malnutrition levels and mortality rates in this region.

The most commonly quoted conclusion from the International Rescue Committee’s surveys is that 2.5 million more people died since the beginning of the war than would have died had the war not occurred... If one assumes mortality to have continued at the same rate, this would mean that more than 3.5 million excess deaths would have occurred from the beginning of the war up to September 2002. These deaths are a direct result of the occupation by Rwanda and Uganda. Extensive mortality, especially mortality among children, is the consequence of a cycle of aggression, the multiplication of armed forces, a high frequency of conflict and its consequences, especially displacement.

Concluding Observations on Rwanda’s Record

The numerous violations of democratic principles and human rights that we document have been excused by the supporters of the Rwandan government as the result of the genocide. Fifteen years after the genocide, during which the RPF has had complete control over its affairs and has received bountiful assistance from the international community, the excuse is beginning to lose credibility. The violations continue. On 12 December 2008, the UN Group of Experts on the Democratic Republic of the Congo Report Pursuant to UNSCR Resolution 1807 reported that Rwandan authorities have supplied military equipment and been complicit in recruiting soldiers, including children, to support the Congolese rebel National Congress in Defence of the People, led by a former general of the Congolese Armed Forces, Laurent Nkunda, now a rebel. Detention of political prisoners continues for long periods. There appears to be no significant improvement in the operation of *Gacaca* courts.¹⁰⁷ The Rwandan government continues

¹⁰⁷ All these points are documented in the US State Department Report on Human Rights, 2008 (Washington, 2009).

to support and benefit from illegal mining in the DRC by providing military support and routes for illegal exports, and permitting the operation in its territory of companies which market the minerals. In particular, it backs Nkunda's Congress, now led by its *de facto* military leader, Bosco Ntaganda, who is wanted for war crimes by the International Criminal Court.¹⁰⁸

Why, despite the well-documented accounts of the Kagame government's complete disregard of human rights, democratic principles and the sovereignty of its neighbours, the massacre of many innocent people, the plunder of the natural resources of its neighbours, the criminalisation of their economies, claims on the territory of the DRC, the repeated violations of the rule of law and of international law, the exclusion of Hutus and large sections of Tutsis from government, does Rwanda enjoy, for the most part, a favourable reputation for efficiency, democracy, and human rights?

Is it, as many have claimed, that the world, and in particular the West, suffer a guilt complex for their inaction during the 1994 genocide, to the extent that many countries, including the USA and the United Kingdom, felt able to compound their initial inaction by subsequent support or at least condoning of the RPF massacres of Hutus and other regional communities? There is no doubt that Kagame and his colleagues played upon this guilt; as one minister said: "any action undertaken against the regime in Kigali is always perceived as offering moral support to those guilty of genocide; it is true that the Rwandan regime is benefiting from this ambivalence, and we know it."¹⁰⁹ An American diplomat acknowledged that "the Americans were terribly manipulated by this (Rwandan) government and now are almost held hostage by it".¹¹⁰ Without false modesty, General Kagame stated that "[w]e used communication and information warfare better than anyone. We have found a new way of doing things".¹¹¹

We conclude this section with an extract from Filip Reyntjens' book on the *Great African War*:

[A] detailed study by Nik Gowing, provides some useful insights as to how this tragedy was possible, despite everyone concerned being aware of it. The central pillar of the strategy of Rwanda and the AFDL was the management of information. The technique of the "closure of the conflict scene" was successfully used by the RPF in Rwanda: Kagame confirmed that, since early 1994, "the aim was to let them [the NGOs and the press] continue their work, but deny them what would be dangerous to us".¹¹² Intimidation was the next tool: "Kagame does not like NGOs, so he paralysed them completely and terrorised them. If he did not like what they did with information, he kicked them out."¹¹³ Likewise, reporters "knew the Rwandan government could make life unpleasant".¹¹⁴ The fear of expulsion was constant and, in certain cases, justified.¹¹⁵ An ICRC delegate went further: "I was scared that we would have a full stop, then a dead delegate

¹⁰⁸ Global Witness, *Faced with a Gun, what can you do?: War and the Militarisation of Mining in Eastern Congo* (London, 2009).

¹⁰⁹ *Le Monde*, 26 October 1996, quoted by Reyntjens, *Great African War*.

¹¹⁰ *The Washington Post*, 14 July 1998, quoted by Reyntjens.

¹¹¹ N. Gowing, *New challenges and problems for information management in complex emergencies*. above, p. 4. (quoted by Reyntjens.)

¹¹² N. Gowing, *New challenges and problems...*, *op. cit.*, p. 15. This and the following footnotes are as in Reyntjens.

¹¹³ *Idem.*, p. 22.

¹¹⁴ *Idem.*, p. 36.

¹¹⁵ *Idem.*, p. 43 and 52.

at the end of sentences in reports.”¹¹⁶ This fear was reinforced by monitoring and leaks: thus “one particular NGO partial to the Rwandan government” (USCR, IRC) would fax sit-reps directly to Kagame’s office.¹¹⁷ Another source explained how: “I was present in the (Rwandan) Ministry of Defence as (...) information would come across the fax lines from NGOs in Britain. One NGO was particularly notorious on this.”¹¹⁸ Along the same lines, a humanitarian agent indicated that “if the Save the Children person in Bukavu radioed that he had refugees (...), then those refugees would be under threat because networks were bugged”.¹¹⁹ Humanitarian staff themselves were uneasy; a feeling exacerbated by the assassination in January 1997 of three Spanish *Médecins du Monde* workers by the RPA.

The international media became “a tool for Rwandan manipulation”: the Kigali government “blocked information from inside the conflict zone”, “prevented the deployment of the multinational force” and “wrong-footed the international perceptions of what was taking place”.¹²⁰ The “natural sympathy” which benefited the RPF in the press played a considerable role. The logic being used was that of the “good guys versus the bad guys”, a logic dear to many Americans: fully banking on the pretence that “its people were a victim of genocide”, the RPF were the good guys. A number of reporters were “RPF groupies”; one of them recognised that “journalists and NGOs were in bed with the RPF”.¹²¹ At any rate, the choice was simple: “The RPA’s line was that you are either with the RPA or against them”.¹²² However, even though the skills of the RPF, which realised as early as in 1990 that a modern war is as media-oriented as it is military, were undeniable, these manipulation and disinformation techniques were only able to succeed with the complicity of governments, organisations, journalists and scholars who threw their weight behind the regime in Kigali and chose to ignore the “collateral damage” caused by those they supported. In a detailed and convincing demonstration, Johan Pottier explains why and how the RPF succeeded in “converting international feelings of guilt and ineptitude into admissions that the Front deserves to have the monopoly of knowledge construction”.¹²³ He shows that the RPF’s “rewriting project” benefited from the empathy and services not only of (mainly Anglophone) journalists unfamiliar with the region, but also of newcomer academics, diplomats and aid workers.

V CONSIDERATIONS FOR A POLICY ON ADMISSION

As a Commonwealth human rights organisation, CHRI’s primary concern is with the situation of human rights and democracy. This report shows that across various areas Rwanda’s standards fall short of those proclaimed by the Commonwealth. There is particular concern with the monopolistic role of the state in propagating versions of history and inter-community relations, which stifles free speech and free enquiry. The

¹¹⁶ *Idem.*, p. 45.

¹¹⁷ *Idem.*, p. 47.

¹¹⁸ *Idem.*, p. 50.

¹¹⁹ *Idem.*, *ibid.*

¹²⁰ *Idem.*, p. 38.

¹²¹ *Idem.*, p. 41.

¹²² *Idem.*, p. 62.

¹²³ J. Pottier, *Re-Imagining Rwanda: Conflict, survival and disinformation in the late twentieth century*, Cambridge, Cambridge University Press, 2002, p. 202.

restrictions on the freedom of expression and of the media are serious impediments to democratic rights and practices in general, and the accountability of the government in particular. The legal framework and the fear within which social and human rights organisations operate has greatly weakened civil society. In some critical aspects, the judicial system has had major flaws, especially the continuing jurisdiction of the *Gacaca* courts over genocide cases. Such findings lead logically to the conclusion that Rwanda does not currently meet the preconditions for membership within the Commonwealth and should not be admitted. But we turn to consideration of other policy issues relating to admission.

Admitting Rwanda has far-reaching implications for the Commonwealth. New members from non-traditional Commonwealth membership backgrounds bring with them many positive attributes and learning that can influence and expand the depth and experience of the inter-governmental organisation. Rwanda's membership will no doubt increase the diversity within the Commonwealth. It will also increase the number of member states.

The fact that Rwanda is anxious to join the Commonwealth may be seen as adding to the prestige of the Commonwealth (although the Commonwealth and particularly the United Kingdom should resist gloating over the anti-French attitudes of the Rwandan government). The much published efficiency and lower levels of corruption in the Rwandan government may set a good example for the Commonwealth countries lacking in these qualities. Its experiment in non-ethnic approaches to the ideology and organisation of the state may be of particular interest to the numerous countries of the Commonwealth. We understand that sections of the business community in some Commonwealth countries believe that Rwandan membership would improve their prospects of investment in, and strengthen economic relations with, Rwanda. The shift to aspects of the common law might also make transactions easier for them.

But the expansion of membership will change the character of the Commonwealth. Expanding membership can potentially bring with it states with poor human rights records, suppressed civil society, flawed governance structures and failures of democracy, which will undoubtedly have the effect of dampening Commonwealth principles rather than strengthening them. It will also affect the informal style of the working of the official Commonwealth, with the implicit and now explicit commitment to valuable underlying principles. Integration at the level of civil society may be harder (a matter of special interest to CHRI). A Commonwealth with uneven integration across member states of its various civil society organisations will certainly reduce its significance as the Commonwealth of peoples. From that perspective, the distinction between the Commonwealth and other interstate organisations will diminish—and so will the rationale for the Commonwealth.

There is also the question of the motives of an applicant country. As well as we could fathom, the reasons that Rwanda wishes to join the Commonwealth have to do with its desire to further distance itself from France, link itself to the English-speaking world, and strengthen its relations with its immediate neighbours (Kenya, Tanzania, and Uganda) with whom it shares several cultural traditions and now growing economic ties. It also sees the Commonwealth as offering opportunities for higher education (particularly with Commonwealth scholarships) and new commercial, trading, and economic advantages and relations.

Rwanda has also expressed an interest in learning more about the common law and its constructive integration with the francophone civil law. Some of our respondents told us that the Rwandan government hopes to achieve a measure of legitimacy through

Commonwealth membership, particularly by pointing out that it meets the Commonwealth's high standards of human rights and democracy. Rwanda's global contacts would be facilitated by interaction with several, far-flung parts of the Commonwealth. It could be argued that many of these advantages could be secured without the membership of the Commonwealth; and help from members of the Commonwealth could be forthcoming even without full membership.

As a Commonwealth human rights organisation, our primary concern is with the situation of human rights and democracy—which as we have already suggested, is one of two criteria on which there is doubt. Our discussion of this has highlighted various areas where Rwanda's standards fall short of those proclaimed by the Commonwealth. There is particular concern with the monopolistic role of the state in propagating versions of history and inter-community relations, which stifles free speech and free enquiry. The restrictions on the freedom of expression and of the media are serious impediments to democratic rights and practices in general, and the accountability of the government in particular. The legal framework and the fear within which social and human rights organisations operate has greatly weakened civil society. In some critical aspects, the judicial system has had major flaws, especially the role of the Gacaca courts.

We realise of course, that Rwanda has gone through a most horrendous experience of political instability, violence and genocide. Many of the shortcomings that we have noted can be explained as the result of this experience—and by the anxiety of the state to avoid a repeat of the terrible killings. But there is also the likelihood that the RPF realises that it would not win a fair election in the absence of firm controls over media and civil society (if only given that the current ruling class constitutes a minute proportion of the total population of Rwanda). We have noted the efforts of the government to establish a system of governance that emphasises conciliation and power sharing, a due-process-based legal and judicial system, and the framework for institutions for the protection of rights, including a human rights commission. Practice does not always live up to these ideals (as we have also tried to demonstrate). This is in part due to the inherent difficulties of establishing a new constitutional and political order after periods of extreme violence and societal polarisation, and in part due to Rwandan government policies.

Supporters of Rwanda's admission claim that Commonwealth membership will provide it with the incentive and the opportunity to improve its human rights record. It would learn about the importance and practice of human rights from other members, and at the same time, it would come under pressure to improve its own standards. With all due respect, this is extremely unconvincing. Violations of human rights are endemic in a large number of Commonwealth countries, with near total impunity as far as the reaction of the Commonwealth goes Rwanda would feel very comfortable going to CHOGM retreats, secure in the knowledge that no one will raise questions about its gross violations of democratic principles, the rule of law, and human rights. It is notable that Cameroon has yet to meet the basic Commonwealth requirements in spite of endless Commonwealth Secretariat efforts and expense.¹²⁴ The Commonwealth machinery for enforcing human rights and disciplining errant states is rudimentary, ineffective and marked by a lack of political will. In general, Commonwealth states have come under greater pressure from non-Commonwealth countries. The major brokers of peace, restoration of democracy

¹²⁴ The US State Department's annual human rights report for 2003 said of Cameroon "The Government's human rights record remained poor" (<http://www.state.gov/g/drl/rls/hrrpt/2003/27716.htm>). And see Amnesty International "Cameroon: A catalogue of human rights abuses" Press release January, 26 2009 [#=e](http://www.amnestyusa.org/document.php?id=ENGP200901269166).

and human rights are the US and the EU: in Kenya's worst political crisis since independence, with thousands killed and hundreds of thousand displaced, the silence and inactivity of the Commonwealth was astounding.

Our conclusion is that the state of governance and human rights in Rwanda does not satisfy Commonwealth standards. Rwanda does not therefore qualify for admission. It has been argued that neither do several existing members. Unfortunately, that is certainly true. But there is an important difference between these states and Rwanda. They became members by virtue of their past history of British colonialism and the convention of more or less automatic membership. Until the Harare Declaration, there were no *formalised* standards of Commonwealth values. Governments of member states which deviate seriously from these standards are now subject to disciplinary measures, including suspension or even exclusion (although the last option has not been exercised so far, on the assumption that exclusion would be unfair to the people of the state, who may themselves be victims of violations). Suspension is lifted only when the deviant practices have been abandoned.

Under the framework of these rules and procedures, it does not make sense to admit a state which *already* does not satisfy Commonwealth standards. One, admitting such a state would tarnish the reputation of the Commonwealth and reinforce in many people and organisations that leaders of its governments do not really care for democracy and human rights, and that its periodic, solemn declarations are merely hot air. Second, the admission of a state below standards will lower the "average", as it were, of the Commonwealth commitment to democracy and human rights when it comes to making decisions on sanctions against defaulting existing members, increasing the number of states who have shown little regard for human rights. Third, if the Commonwealth admits a state below standards, it would have to welcome the new member, if it is to stick to its self-proclaimed values, by criticising its democratic and human rights record and considering sanctions. Fourth, the admission of new members with a poor record will drive a wedge between governments and their peoples, and reduce the Commonwealth merely to a trade union of governments.

It is important that the Commonwealth, several of whose members are associated with the Non-Aligned Movement, should not be swayed by the interests of some of its members, who have for long supported the present Rwandan regime, despite its gross and well-known violations of human rights. Nor must it, as a predominantly anglophone association, rejoice in the present regime's rejection of *francophonie* (which in large part may be opportunistic)—just as the French assistance to the Habyarimana regime in 1990, when the RPF invaded Rwanda, was inspired by the devout wish to retain Rwanda within the francophone community—and to worst the "Anglo-Saxons", successors to "*les Anglais*".¹²⁵ That would be puerile and beneath the dignity of the Commonwealth.

Having said that, we return to the extreme violence among, and the suffering of, the Rwandan people, acknowledge the considerable progress under the present regime, and its public commitment to democracy, fairness, and human rights. And its traditional ties with some Commonwealth members in its region, which are likely to become closer. CHRI accordingly proposes that the CHOGM should welcome Rwanda's application. But, in the fashion of the EU when considering applications for membership, the Commonwealth should reiterate its values, identify ways in which Rwanda falls short of

¹²⁵ Prunier attributes prompt French assistance to the 1990 Rwanda government, in considerable part, to this precise ground, (*The Rwanda Crisis...op.cit.* p. 103-7).

them, and ask it to remedy the deficiencies (even offering to assist). Once it is satisfied that appropriate laws and practices have been instituted, Rwanda should be welcomed to the Commonwealth. It can make important contributions to the Commonwealth, just as the Commonwealth can enrich Rwanda's public and private sectors.

VI RECOMMENDATIONS

We make two recommendations—one is general relating to the process for admission of new members, and the other specific to Rwanda:

I(a). This report has commented on the lack of a mechanism to establish that the people of an applicant state seek or support membership and that the state satisfies the test of Commonwealth values. CHRI considers that now is the time to deal with this lacuna, before further applications are received. We therefore urge the next CHOGM to address these two issues before it proceeds to the consideration of Rwanda's application. We propose that an independent commission of eminent Commonwealth elder statespersons, representatives of leading pan-Commonwealth NGOs, and experts on the applicant country be set up to review the application and report to the Heads of Government. It would subject the applicant to rigorous scrutiny of its record of human rights and democracy and engage with its civil society, trade unions, political parties, universities and so on to obtain a sense of public opinion.

The commission should have resources to prepare background materials to provide the people of the applicant state information on the history and significance of the Commonwealth and the rights and obligations of membership. If necessary, it should commission studies on the country's legal, economic and social systems (to educate the Commonwealth on the potential new member and enable its communities to assess the eligibility of the applicant)—in a rudimentary form. Unless this is done, there is a danger that the Commonwealth could slide into debased standards, and lose its attraction to the people of the Commonwealth and the reputation of the organisation. When Fiji applied for re-admission, having ceased automatically to be a member when it became a republic after the first coup in 1987, but having adopted a new and democratic constitution in 1997, the Commonwealth commissioned a report by John Wilson, a British lawyer, on the new constitution to assess its compatibility with the Harare principles.

I(b). With the prospect of new applications for membership, now is the time for renewed debate on the nature and future of the Commonwealth. The world has changed very significantly in recent decades. There has been a great growth of new regional and international organisations. What is the relevance of these developments for the Commonwealth? What will the Commonwealth gain from aspirations to become a universal organisation? What will be the effect of the admission of states without a history or understanding of the Commonwealth? These and other questions should be addressed in the first instance by a commission established jointly by Commonwealth governments and civil society. Its report should be disseminated widely and debated by the public.

II. This report has made it clear that Rwanda does not satisfy the test of Commonwealth values. 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. Consequently, its admission would

send the signal, loud and clear, that the commitment of the governments of the Commonwealth countries to its values is shallow. We therefore suggest that the next CHOGM make no decision on the applicant other than to set up a procedure to examine the eligibility of Rwanda for membership and the consequences for the Commonwealth of the expansion in its members. In consultation with Commonwealth civil society it should set up the commission as proposed, to initiate this discussion. The commission should report within a year of its appointment. The report and recommendations should form the basis of negotiations with Rwanda, and Rwanda should be informed accordingly.

APPENDIX I

Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

Introduction

1. Pursuant to Security Council resolution 1493 (2003) of 28 July 2003, the Security Council imposed an arms embargo, for an initial period of 12 months, in which all States, including the Democratic Republic of the Congo, were required to prevent the direct or indirect supply, sale or transfer of arms and any related material and the provision of any assistance, advice or training related to military activities to all foreign and Congolese armed groups and militias operating in North and South Kivu and Ituri and to groups not party to the Global and All-Inclusive Agreement on the Transition, in the Democratic Republic of the Congo.

.....

14. In view of the fact that the Security Council mandated the Group of Experts to report on non-compliance with and violations of the arms embargo, the Group has striven to meet the highest evidentiary standards available to a non-judicial body. In the absence of judicial recourse, it considers as “beyond a reasonable doubt” the information obtained from or volunteered by at least three credible and independent primary sources or two such sources in addition to expert observations in situ. It has used its best judgement in assessing the relevance of the information collected from primary and secondary sources before coming to a considered and unanimous view.

15. Throughout its mandate, the Group of Experts has made a point of being physically present in areas of concern to obtain first-hand information and make first-hand assessments. It also made every attempt to meet with representatives of armed groups and dissident factions. For instance, it interacted with the former and current leaders of the Parti pour l’unité et la sauvegarde de l’intégrité du Congo (PUSIC), Kahwa Mandro Panga and Kisembo Bitarama, the leader of the Forces populaires pour la démocratie au Congo (FPDC), Thomas Unencan Uketha, the Chief of Staff of the Forces armées du peuple congolais (FAPC), Emmanuel Ndungutse, and dissident commander Jules Mutebutsi. The Group is aware of at least two instances in which its mere presence in the field had a deterrent effect on the activities it had come to investigate.

.....

19. The normalization of relations between the Democratic Republic of the Congo and its neighbours to the east, Rwanda and Uganda, has also progressed, despite episodic relapses, in particular with Rwanda. Progress is due largely to sustained bilateral and multilateral diplomatic efforts.

....

21. Recent events in the Kivus represent a significant setback in the normalization of relations between the Democratic Republic of the Congo and Rwanda and indicate that, despite the withdrawal of its troops in October 2002, Rwanda, which has legitimate security concerns in the eastern part of the Democratic Republic of the Congo, continues to play a destabilizing role there. Albeit diffuse, the role of Uganda, in particular in Ituri province, should not be overlooked. The sovereignty of the Democratic Republic of the Congo continues to be challenged not only by the intervention and military support provided by Rwanda and Uganda to its allies or proxy forces in the Democratic Republic

of the Congo, but also by the presence of foreign armed groups such as Forces démocratiques de libération du Rwanda (FDLR) and Allied Democratic Forces on its soil.

....

33. The Group of Experts has received and analysed numerous reports of trucks allegedly ferrying weapons and logistical materiel to the Democratic Republic of the Congo through the Ugandan border posts of Arua, Paidha and Mpondwe and the Rwandan border posts of Gisenyi and Cyangugu. It was able to collect from multiple credible and independent eyewitnesses detailed information on trucks allegedly used to transport weapons and related materiel, such as dates and routes used. However, such information has been difficult to confirm after the fact, in particular because the end-users are usually armed groups that exert tight control over their populations. More importantly, the Group was unable to travel to some of the areas concerned.

....

37. As for Lake Kivu, a number of credible sources report suspicious ongoing traffic to and from the Kivus. The traffic reportedly consists of military materiel and ammunition, recently recruited Congolese returning from Rwanda for active military service within the ranks of mutinous forces in the Democratic Republic of the Congo and Rwandan government troop movement. Although such claims were persistently reported and are supported by satellite imagery and other surveillance documentation, the Group of Experts had insufficient time to independently confirm the allegations. Nevertheless, it concluded that it was highly likely that the claims were true and that such activities should remain a primary target of monitoring. However, in March and April 2004 MONUC personnel discovered arms and ammunition caches hidden in the waters of Lake Kivu on the Democratic Republic of the Congo side near areas in Bukavu recently controlled by Mutebutsi's mutinous forces. According to local reports, the weapons and ammunition were brought over from Rwanda by pirogue at night and dropped in the water, with a bamboo stick demarcating the hiding place. The material was retrieved the following evening by its intended recipients. In one such cache, a relatively newly manufactured South African R-5 rifle was discovered. Upon tracing its origin, the Group learned that it was part of an inventory previously supplied to Rwanda by means of a licensed purchase from South Africa.

.....[On illegal transport of weapons]

One case that the Group of Experts has been investigating involves an airline company indulging in irregular registration and flight-plan practices. On 1 June 2004, an Antonov 32 registered in Rwanda under registration number 9XR-SN departed from Goma on a flight plan to Beni. En route, the aircraft diverted its flight and stopped in Kigali airport before proceeding to Beni. Once alerted, the Beni airport authority denied landing authorization to the aircraft. The aircraft subsequently returned to Kigali airport where it crash-landed, the right undercarriage having collapsed. No major casualties were reported. Rwandan military personnel were observed disembarking the aircraft. The aircraft, operated by Mango Mat Airlines and owned by Sun Air Charter Limited, flies regularly out of Goma airport using different company names, such as "Flying", "PAC" and "FAC" on various flight plans. The Group requested from the Government of Rwanda a copy of the incident report, which has not been provided to date.

...

VI. Aiding and abetting

A. Case of Rwandan support for the mutinous forces of Mutebutsi and Nkunda

65. The role of Rwanda, as a front-line State, was considered by the Group of Experts to be decisive for the effective implementation of the arms embargo. In accordance with

its mandated tasks, the Group sought to determine what measures had been taken by Rwanda to prevent its territory from being used to aid and abet armed groups or militias in the Democratic Republic of the Congo. Shortly after the military confrontation in early June 2004 between FARDC and dissident military forces of the suspended deputy commander of the tenth military region, Jules Mutebutsi, in Bukavu, the Group travelled in two teams at different times to the Rwandan border area of Cyangugu and directly witnessed and documented Rwanda's non-compliance with the sanctions regime.

66. The Group of Experts concluded that Rwanda's violations involved direct and indirect support, in both the Democratic Republic of the Congo and Rwanda, to the mutinous troops of Jules Mutebutsi and Laurent Nkunda during their armed military operations against FARDC. Rwanda has also exerted a degree of command and control over Mutebutsi's forces. It became apparent to the Group of Experts during interviews with persons directly involved, that certain businesses, as well as financial and political targets in Bukavu, had been spared on direct orders by Rwandan officials.

67. Bordering Bukavu, Cyangugu has been used strategically by Mutebutsi's forces as a rear base for military operations, including recruitment drives, inside the Democratic Republic of the Congo. The Group of Experts also documented that his forces had been ensured safe passage to Rwanda on at least two occasions during the recent crisis, once during the height of military confrontation in Bukavu for regroupment purposes and a second time as a rear retreat. Mutebutsi informed the Group that he had sought protection from Rwanda. From the safety of his Rwandan camp, Mutebutsi informed MONUC, which visited him there, that he would return to the Democratic Republic of the Congo "whenever he pleased".

B. Rwanda as a rear base for regroupment

68. On 8 June, 157 of Mutebutsi's troops, including 12 officers, crossed into Cyangugu from Bukavu, in small groups, at a regular border crossing known as Ruzizi 1. After being registered by Rwanda as refugees, the 12 officers were taken to the Rwandan military camp of Ntendezi, some 30 kilometres inland, while the others were installed in the United Nations High Commissioner for Refugees (UNHCR) transit centre of Nyagatare. Although credible eyewitness sources reported that Mutebutsi himself had crossed into Rwanda on the same day, the Group was not able to independently confirm the allegation. Wounded soldiers were hospitalized by the Rwandans both in Cyangugu and further inland in Butare.

69. After a lull in military activities, Mutebutsi and his troops redeployed to Kaminyola, to the south of Bukavu, in an area directly bordering Rwanda. After Mutebutsi and his troops forcibly occupied the Congolese border town and opened fire on a MONUC patrol, MONUC riposted forcefully. Subsequently, Mutebutsi and his forces fled back into Rwanda, regrouping in Bugarama, which is located a few kilometres away, on the Rwandan side of the border. On 21 June, the Rwandan military reported taking Mutebutsi's forces into custody before escorting them, on Rwandan military trucks, to Ntendezi military camp. The Group of Experts attempted to visit Bugarama, where the Rwandan Defence Forces (RDF) maintain a military base, but was denied access to the actual border by Rwandan military personnel.

70. At the time of its multiple visits to Cyangugu, the Group of Experts observed that Mutebutsi had not disbanded his troops. Approximately 300 of them, in uniform, remained in a coherent command structure under the protection of Rwandan troops. The Group concludes that those troops remain a latent threat to the Democratic Republic

of the Congo. Mutebutsi's forces remained in uniform in the camp. The Group documented the freedom of movement that Mutebutsi's troops enjoyed both inside the camp, which was not fenced or cordoned, and for travel outside. One key officer, Colonel Mukalay, admitted to having left the camp, travelled to Goma and returned to the camp at a time when the Group had been denied permission by the Government of Rwanda to cross the border into the Democratic Republic of the Congo, as it was temporarily sealed off. It is also illustrative that the Government of Rwanda has permitted Mutebutsi to speak to the press openly about his military ambitions, thus aiding in his propaganda campaign.

71. The Group of Experts is concerned that the regroupment within a Rwandan military camp where Rwandan officers, trainers and other troops are located affords immediate and unchecked access to military advice, training and logistical support on the part of Rwanda. Based on recruitment patterns it had already documented, the Group was concerned that the military camp, based within 10 metres of a large educational institution, afforded a substantial pool of potential youth for recruitment.

C. Recruitment

72. Between 5 and 6 a.m. on 18 June 2004, members of the Rwandan military entered the premises of the UNHCR transit camp in Cyangugu, rounded up 30 young men and forced them into one of their trucks. Some of the young men interviewed by the Group of Experts described having been taken to a police compound and then to a Rwandan military compound, where they were asked to enter into military service on behalf of Mutebutsi's forces inside the Democratic Republic of the Congo. Those interviewed believed that they were being forced into service and were returned to the UNHCR transit camp only after UNHCR and family members had exerted pressure on the Rwandan authorities to release them. On the same day, members of the Rwandan military also rounded up young Congolese men, some forcibly, in and around the Cyangugu market, reportedly for recruitment purposes. The Group was unable to ascertain their whereabouts.

73. In a separate incident, Rwandan officials, along with representatives from Congolese-based dissident forces, made an appeal to demobilised Rwandan and Congolese soldiers present in Cyangugu to return to active military service inside the Democratic Republic of the Congo. Some of those interviewed by the Group of Experts were offered monetary compensation by Rwandan officials, worth the equivalent of \$100, or mobile phones to join Mutebutsi's forces in Kamanyola. Such financial support from Rwanda is critical in helping Mutebutsi sustain payment of troops for military operations. It may be recalled that from approximately 2 to 9 June, Mutebutsi's and Nkunda's forces systematically looted areas of Bukavu, including \$1 million to \$3 million from the Central Bank, giving them ample cash for further recruitment as well as for the payment and supply of troops.

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76. The Government of Rwanda claims that when Mutebutsi fled to Rwanda from Kamanyola, it had disarmed his troops. During its visit to Cyangugu, the Group of Experts was denied permission by the Rwandan regional commander to view Mutebutsi's weapons. MONUC had reported that the weapons consisted of Kalashnikovs, lightweight machine guns, 12.7- and 7-millimetre machine guns, rocket-propelled grenades (RPG-7s), a few 81- and 120-millimetre mortars and two vehicles mounted with 80-millimetre mortars. Upon the completion of the Group's investigations, Mutebutsi's heavy weaponry was still unaccounted for, although it is highly likely that it is in storage in Rwanda.

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Special protection

77. The Group of Experts believes that the special protection provided by neighbouring countries to the relatives and cohorts of the leaders of dissident forces and uncontrolled armed groups constitutes a form of support. As long as they feel that their own families are safe, these forces enjoy a psychological advantage. At the very onset of fighting, Mutebutsi relocated his family from Bukavu to Cyangugu, where they stayed at the Hotel du Lac on 28 and 29 May. According to credible eyewitness sources, Mutebutsi was also seen there on 28 May. Shortly after, his family relocated elsewhere in Rwanda for added safety.

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Preparations for military activities inside the Democratic Republic of the Congo

78. Prior to the outbreak of the Bukavu conflict, Rwandan government officials lent their support to General Nkunda and the commander of the tenth military region, General Obedi, on recruitment drives inside Rwanda, including within Congolese refugee camps. Such actions affect the civilian nature of the camps and are in blatant violation of the 1951 convention relating to the Status of Refugees.

79. The Group of Experts visited the Gihembe refugee camp in Byumba, Rwanda, administered jointly by UNHCR and the Government of Rwanda. The Group was able to confirm that Rwandan government officials, including military soldiers in army vehicles, and high-ranking Congolese leaders based in North Kivu and loyal to Nkunda, visited the camps in an attempt to recruit forces for military service inside the Democratic Republic of the Congo. While the first visit occurred in December 2003, more recent attempts were made on 2 March, 14 April and 3 May 2004. On both 2 March and 14 April, in the presence of Rwandan officials, Nkunda personally requested that refugees enrol and conveyed to them that the time had come to continue warfare inside the Democratic Republic of the Congo against the Kinshasa Government.

80. Highly credible reports and documentation indicate that the same activities were carried out in the Kiziba refugee camp in Kibuye, which the Group of Experts did not have the time to independently verify.

81. Rwandan officials, along with Nkunda and other Congolese officials, used intimidation tactics to further the recruitment aims. During the recruitment drives, refugees were threatened with the loss of their Congolese citizenship and were told that Rwandan hospitality had been exhausted. When certain members of the refugee population resisted Nkunda's solicitation, they were directly threatened by Rwandan officials.

82. From its interviews with refugees in Gihembe camp, eyewitness sources and humanitarian organizations, the Group of Experts concluded that Rwanda's refusal to provide the refugees with appropriately documented refugee status or identity cards was a tool used to pressure the refugees into military service inside the Democratic Republic of the Congo on behalf of dissident forces.

G. Forced recruitment in support of Nkunda's war preparations

83. The Group of Experts was able to interview young Rwandan men who had been forcibly recruited by Rwandan officials on Rwandan territory after having been through the disarmament, demobilization, repatriation, reintegration and resettlement process. The youth interviewed had left military service in April 2004, after which they entered a demobilization camp in Goma. In May they were repatriated to Rwanda through the

border town of Gisenyi. Upon their arrival in Gisenyi, five were detained by local Rwandan officials, including the police, and were forcibly driven back across the border into the Democratic Republic of the Congo with the complicity of Rwandan immigration officers. Those detained believed they had been selected because they were the fittest or best trained for renewed military service. During this episode, they were told that they would join the “RCD [Rassemblement congolais pour la démocratie] military”. Those who refused were beaten and jailed under harsh conditions until they escaped into MONUC custody.

84. Based on its direct observations and assessments in the Rwandan border towns of Gisenyi and Cyangugu, as well as the neighbouring towns of Goma and Bukavu in the Democratic Republic of the Congo, the Group of Experts has concluded that Rwandan officials, including the police, are abusing the disarmament, demobilization, repatriation, reintegration and resettlement programmes in Rwanda and are subjecting those who return to forced recruitment, intimidation and physical abuse.

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89. Since the imposition of the embargo, there have been a number of high-ranking FDLR defections. Defectors have returned to Rwanda outside of normal disarmament, demobilization, repatriation, reintegration and resettlement processes and official transitional government channels, indicating that the Government of Rwanda has significant communication channels within the FDLR hierarchy. The Government of Rwanda has not cooperated with either the transitional Government or MONUC during the repatriation of the FDLR defectors. Enhanced communication and cooperation around such issues might ensure more successful disarmament, demobilization, repatriation, reintegration and resettlement programmes and would assuage suspicions regarding Rwanda’s interaction with FDLR in the Democratic Republic of the Congo.

90. Despite the FDLR defections and disarmament, demobilization, repatriation, reintegration and resettlement mechanisms in place, the demobilization of the remaining FDLR forces is not imminent and they remain a security concern for Rwanda. However, in carrying out its field investigations on both sides of the border between North Kivu and Rwanda, the Group of Experts concluded that the FDLR presence in that area and its limited cross-border incursions did not justify the level of Rwandan troop deployment inside the Democratic Republic of the Congo in this instance.

B. Rwandan forces inside the Democratic Republic of the Congo

1. Rwandan Defence Forces encroachment into Virunga National Park

91. The Group of Experts received highly credible reports from eyewitness sources and persons directly involved that from mid-May to June 2004, Rwandan troops had instigated the clear-cutting of the Mikeno sector (southern sector) of Virunga National Park, a World Heritage Site, inside the Democratic Republic of the Congo.

92. To investigate such claims, the Group conducted a site visit to the area on the Rwandan side of the border and interviewed villagers living adjacent to the park and other people involved in the land-conversion activities. The villagers informed the Group that an order had just been issued for all conversion activities within the Democratic Republic of the Congo to cease. The Group concluded that the order had been issued in anticipation of its visit. When the Group arrived, RDF had withdrawn to a defensive position on a nearby hill overlooking the park’s boundaries. Still, the Group was able to observe smouldering fires and freshly cut bamboo shoots. A follow-up visit was made to adjacent areas in Virunga National Park in the Democratic Republic of the Congo.

93. The Group of Experts was able to confirm that, in conjunction with local leaders in and around Kibumba in the Democratic Republic of the Congo, Rwandans had been instructed by RDF to deforest the area in exchange for firewood. RDF had deployed to the area to accompany the movement of the local Rwandan population during its clear-cutting operations inside the Democratic Republic of the Congo. According to direct testimony, RDF officers also put parts of the deforested area in the Democratic Republic of the Congo up for sale.

94. While there were active incursions of FDLR into Rwanda from some of those areas, the limited impact did not appear to justify the actions of RDF. Clear-cutting of the bush along one's border perimeter is a common practice to repulse such incursions, but the activities instigated by RDF had advanced considerably beyond any acceptable range. Destruction of large parts of the park's natural habitat endangers the Congo's mountain gorilla population, which is a vital asset for tourism development.

95. Rwanda's deployment into the southern sector of Virunga National Park, in violation of the embargo, echoed reports that the Group of Experts had received about the presence of RDF in and around northern parts of the park and which it subsequently investigated.

2. Rwandan troop deployment in remote areas in North Kivu

96. The Group of Experts conducted a site visit to the Congolese border town of Bunagana and its surroundings, which are in Virunga National Park. The Group received reports from highly credible sources in both Rwanda and the Democratic Republic of the Congo indicating that RDF had maintained semi-fixed positions in the region since at least October 2003. That information was corroborated with photographic images showing fixed heavy-weapon encasements.

97. In Bunagana, the Group of Experts carried out a number of independent interviews with a variety of sources and learned that RDF often visited the local markets in the area for provisions. They were tolerated by local officials and troops. Some interviewees could name local people who had been forcibly recruited by soldiers or who had fled the country for fear of reprimand for having refused military service. The Group did not sufficiently confirm whether this resulted from local RDF or FARDC recruitment activities.

98. The Group of Experts also obtained the names of the sites where the RDF troops were said to be deployed, most recently Runyoni, Jomba Park, Kabonero, Lushabanda, Ruginga and Nchanzu, as well as Virunga National Park. The areas also matched information, including photographic evidence, collected from other sources. Most of the troops were said to have travelled on foot through Virunga National Park to reach their positions.

99. The Group of Experts then travelled to Runyoni, approximately 40 kilometres outside of Bunagana. The Group stopped at every village and enquired multiple times in each one about the RDF presence. Most interviewees mentioned the regular presence of an RDF unit on Runyoni hill. Upon its arrival at Runyoni, the Group talked to the local village population. Local leaders confirmed that the Rwandan troops had departed the day before the Group's visit but that they were otherwise stationed there.

100. On the basis of its interviews and field investigation, the Group of Experts is highly confident that RDF troops have been deployed in the region for a considerable period of time, complementing new deployments in other parts of Virunga National Park that it was able to verify independently.

Appendix II

Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (UN Document S/2002/1146)

7. The Panel obtained information from a wide variety of sources, including from Governments (civilian and military representatives), intergovernmental organizations, non-governmental organizations, businesses and private individuals. Owing to the nature of its mandate, gaining access to information has been difficult. Nevertheless, the Panel collected well-substantiated and independently corroborated information from multiple sources. These knowledgeable sources provided documents and/or eye-witness observations. It is this type of information—consisting mostly of documentary evidence—that the Panel has relied on its report.

8. The Panel has operated under a reasonable standard of proof, without recourse to judicial authority to subpoena testimony or documents. It obtains information from sources on a strictly voluntary basis. Furthermore, the Panel has made every effort to fairly and objectively evaluate the information it has gathered.

....

12. The regional conflict that drew the armies of seven African States into the Democratic Republic of the Congo has diminished in intensity, but the overlapping microconflicts that it provoked continue. These conflicts are fought over minerals, farm produce, land and even tax revenues. Criminal groups linked to the armies of Rwanda, Uganda and Zimbabwe and the Government of the Democratic Republic of the Congo have benefited from the microconflicts. Those groups will not disband voluntarily even as the foreign military forces continue their withdrawals. They have built up a self-financing war economy centred on mineral exploitation.

13. Facilitated by South Africa and Angola, the Pretoria and Luanda Agreements have prompted the recent troop withdrawals from the eastern Democratic Republic of the Congo. Welcome as they may be, these withdrawals are unlikely to alter the determination of Rwanda and Zimbabwe, and Ugandan individuals, to exercise economic control over portions of the Democratic Republic of the Congo. The departure of their forces will do little to reduce economic control, or the means of achieving it, since the use of national armies is only one among many means for exercising it. All three countries have anticipated the day when pressure from the international community would make it impossible to maintain large forces in the Democratic Republic of the Congo. The Governments of Rwanda and Zimbabwe, as well as powerful individuals in Uganda, have adopted other strategies for maintaining the mechanisms for revenue generation, many of which involve criminal activities, once their troops have departed.

14. The Uganda People's Defence Forces continue to provoke ethnic conflict, as in the past, clearly cognizant that the unrest in Ituri will require the continuing presence of a minimum of UPDF personnel. The Panel has evidence that high-ranking UPDF officers have taken steps to train local militia to serve as a paramilitary force, directly and discreetly under UPDF command, which will be capable of performing the same functions as UPDF. There will be little change in the control that Ugandans now exercise over trade flows and economic resources. As UPDF continue to arm local groups, only less conspicuously than before, the departure of Ugandan armed forces is unlikely to alter

economic activities by those powerful individuals in the north-eastern Democratic Republic of the Congo.

15. Like UPDF, and under pressure from its closest allies, Rwanda has started withdrawing. It has prepared for withdrawal by putting in place economic control mechanisms that do not rely on an explicit presence of the Rwandan Patriotic Army. It has replaced Congolese directors of parastatals with businessmen from Kigali to ensure continuing revenue from water, power and transportation facilities. It has replaced local currency with Rwandan currency. RPA battalions that specialize in mining activities remain in place, though they have ceased wearing RPA uniforms and will continue the activities under a commercial guise. The Panel's sources have reported that RPA recently undertook an operation to obtain a large number of Congolese passports so as to give an appropriate identity to RPA officers who continue to be stationed at strategically important sites in the Democratic Republic of the Congo.

16. The Panel has learned of other tactics for disguising the continuing presence of an armed force loyal to Rwanda. Reliable sources have reported an initiative by the Chief of Staff of the Armée Nationale Congolaise, Major Sylvain Mbuki, to reorganize the RCD-Goma forces in order to accommodate large numbers of RPA soldiers inside ANC units and local defence forces made up of pro-Rwanda elements. Most of the ANC units have had RPA leadership for some time, and now, with this reorganization, a significant number of RPA soldiers will be integrated into the ANC rank and file. Instead of departing for Rwanda, large numbers of Rwandan Hutus serving in RPA have been provided with new uniforms and assigned to ANC brigades as Congolese Hutu. Rwanda has diverted attention from those soldiers staying in the Democratic Republic of the Congo by drawing particular attention to those who depart. Ceremonies have been held at points of re-entry. In fact, the number of soldiers who have left the Democratic Republic of the Congo is so far only a portion of the total number of RPA troops in the eastern Democratic Republic of the Congo, which various sources estimate at between 35,000 and 50,000. Simultaneously with the RPA troop withdrawals, Rwandan officials have repatriated to North Kivu thousands of Congolese Tutsi refugees under duress from the camps around Byumba and Kibuye Provinces in Rwanda. Schools in the Rwandan camps have remained closed and some camp structures have been razed to encourage further repatriations. All the Panel's sources have also suggested that this movement could be part of the new tactic for maintaining Rwanda's presence in the eastern Democratic Republic of the Congo.

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19. At the same time, local militias and local politicians have supplemented the role that State armies previously played in ensuring access to and control of valuable resources and diverting State revenue. The looting that was previously conducted by the armies themselves has been replaced with organized systems of embezzlement, tax fraud, extortion, the use of stock options as kickbacks and diversion of State funds conducted by groups that closely resemble criminal organizations.

...

21. The Panel has identified the following elements that are common to all of the elite networks and that are essential to understanding the nature of the exploitation carried out by these networks in the Democratic Republic of the Congo:

- The networks consist of a small core of political and military elites and business persons and, in the case of the occupied areas, selected rebel leaders and administrators. Some members of the elite networks occupy key positions in their respective Governments or rebel groups.

- Members of these networks cooperate to generate revenue and, in the case of Rwanda, institutional financial gain.
- The elite networks ensure the viability of their economic activities through control over the military and other security forces that they use to intimidate, threaten violence or carry out selected acts of violence.
- The networks monopolize production, commerce and fiscal functions.
- The elite networks maintain the facade of rebel administrations in the occupied areas to generate public revenues that they then divert into the networks, thereby depleting the public treasury.
- The elite networks derive financial benefit through a variety of criminal activities including theft, embezzlement and diversion of “public” funds, undervaluation of goods, smuggling, false invoicing, non-payment of taxes, kickbacks to public officials and bribery.
- The elite networks form business companies or joint ventures that are fronts through which members of the networks carry on their respective commercial activities.
- The elite networks draw support for their economic activities through the networks and “services” (air transport, illegal arms dealing and transactions involving the natural resources of the Democratic Republic of the Congo) of organized or transnational criminal groups.

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Katanga

62. Lubumbashi, and southern Katanga generally, have been affected by Rwanda’s presence in the north. The occupation by RPA of the northern portion of Katanga, the rich agricultural plains around Nyunzu and Kongolo, has cut the southern portion off from what was once the breadbasket of Katanga.

63. A recent study by Médecins sans Frontières in Kilwa, a representative town in southern Katanga south of the front line, with a population of 350,000, has found a death rate for children under 5 of 3.2 per 10,000 per day. Over the course of a year this means that 12 per cent of all children under 5 years old will die, and one out of every four children die over a period of two years. Notably, virtually none (0.6 per cent) of the deaths resulted from violence. Deaths instead result from illness — malaria and dysentery: conditions closely linked to malnutrition and the absence of medical facilities.

64. Malaria and dysentery are treatable. International non-governmental organizations—World Vision and Médecins sans Frontières in this case—try to step in where government facilities no longer function. However, the soaring death rates in the Government-held areas around Ankoro, Kilwa, Dubie and Lwanza, especially where medical facilities are non-existent and where State medical professionals receive no salaries, are indications of Government negligence. The rates of malnutrition and mortality are measures of that negligence and are the consequence, in part, of diverting State resources from State companies such as Gécamines into the private accounts of Zimbabwean individuals, other private interests, and Congolese individuals.

IV. Rwanda-controlled area

65. The claims of Rwanda concerning its security have justified the continuing presence of its armed forces, whose real long-term purpose is, to use the term employed by the Congo Desk of the Rwandan Patriotic Army, to “secure property”. Rwanda’s leaders have succeeded in persuading the international community that their military presence in the eastern Democratic Republic of the Congo protects the country against hostile groups in the Democratic Republic of the Congo, who, they claim, are actively mounting an invasion against them.

66. The Panel has extensive evidence to the contrary. For example, the Panel is in possession of a letter, dated 26 May 2000, from Jean-Pierre Ondekane, First Vice-President and Chief of the Military High Command for RCD-Goma, urging all army units to maintain good relations “with our Interahamwe and Mayi-Mayi brothers”, and further, “if necessary to let them exploit the sub-soil for their survival”.

67. Prominent members of a Congolese Hutu group, Benemugabohumwe, recently began to encourage Hutus living in the Democratic Republic of the Congo, some of them opposition groups, to work instead for the cause of Rwanda in the country. Eugene Serufuli, RCD-Goma Governor of North Kivu Province and reportedly himself a Hutu, has promoted a non-governmental organization, *Tous pour la paix et la démocratie*, aiming to conscript Hutus of all political persuasions to throw in their lot with the Rwandans. Their purpose, as described by the *Nord Kivu Reveil* in a circular dated 16 April 2002, has been to “express allegiance to Rwanda by joining its efforts to control the eastern Democratic Republic of the Congo”.

68. A 30-year-old Interahamwe combatant living in the area of Bukavu described the situation in a taped interview with a United Nations officer in early 2002. “We haven’t fought much with the RPA in the last two years. We think they are tired of this war, like we are. In any case, they aren’t here in the Congo to chase us, like they pretend. I have seen the gold and coltan mining they do here, we see how they rob the population. These are the reasons for their being here. The RPA come and shoot in the air and raid the villagers’ houses but they don’t attack us any more. If you are lucky, and you have a big brother in the RPA, he might be able to get you some food and ammunition.”

69. On the basis of its analysis of considerable documentation and oral testimony, the Panel holds the view that the rationale for Rwanda’s presence is to increase the numbers of Rwandans in the eastern Democratic Republic of the Congo and to encourage those settled there to act in unison to support its exercise of economic control. The recent departure of troops should not be interpreted as a sign of Rwanda’s willingness to reduce its considerable involvement in the evacuation of valuable resources, to reduce the level of armed conflict or to diminish the humanitarian crisis in the region. Economic exploitation in its various forms will continue, relying on a less conspicuous armed force and alternative strategies for carrying out the exploitative activities.

The elite network

70. The elite network’s operations in the eastern Democratic Republic of the Congo are managed centrally from the RPA Congo Desk, which serves to link the commercial and military activities of RPA. The Panel has described this function in some detail in previous reports. The Panel continues to receive documentation on ways in which the proceeds of the RPA commercial wing finance an armed presence. As an illustration, the Panel has recently acquired documents showing coltan sales being negotiated by ranking

Congo Desk officials. The Panel has copies of faxes sent from the office of RPA Major Dan Munyuzza on behalf of Maniema Mining Company and another fax sent from the office of RPA Chief of Staff General James Kaberebe.

71. While revenues and expenditure in the Congo Desk are considerable, they are kept strictly separate from Rwanda's national budget. A reliable source associated with the Congo Desk has calculated that income to the Desk provided 80 per cent of all RPA expenditure in 1999. The official Rwandan budget for 1999 allocated \$80 million to the military. If this official budget allocation of \$80 million represents the 20 per cent referred to by the Panel's source as the portion of military expenditure not covered by the Congo Desk, then the total military budget from all sources would approximate \$400 million. This comes to 20 per cent of GNP for 1999 and approximately 150 per cent of recurring budget expenditure for that year. The Congo Desk's contribution to Rwanda's military expenses would therefore have been in the order of \$320 million. The activities funded by revenues generated by the Congo Desk strongly shape Rwanda's foreign policy and directly influence national decision-making in a number of domains. These transactions are, however, hidden from the scrutiny of international organizations.

72. The elite network maintains close commercial ties with transnational criminal networks, including those of Victor Bout, Sanjivan Ruprah and Richard Muamba Nozi. Victor Bout's aircraft are utilized for a number of purposes including transport of coltan and cassiterite, the transport of supplies into mining sites, and the transport of military troops and equipment. During the last major military campaign in Pweto, Democratic Republic of the Congo, Victor Bout's aircraft were used to transport RPA personnel to the area.

73. While Sanjivan Ruprah has frequently worked within Victor Bout's criminal organization, he maintains an independent affiliation with the Congo Desk in Kigali. On 7 February 2002, Mr. Ruprah was arrested in Belgium on suspicion of planning to provide 6 million new Zaire banknotes—still valid in the eastern Democratic Republic of the Congo—to RCD-Goma with financing by diamond dealers based in Belgium. The President of RCD-Goma, Adolphe Onusumba, who has kinship and business ties with Mr. Ruprah, played a key role in this counterfeit operation. Another group, the Muamba Nozi counterfeiting operation, also provides counterfeit Congolese francs to RCD-Goma. Its regional base of operations is located at Nairobi, where they print and distribute to the eastern Democratic Republic of the Congo large quantities of counterfeit Congolese francs. Officials in the Central Bank of Kinshasa have informed the Panel that Mr. Muamba Nozi's counterfeit activities are politically motivated and designed to deliberately destabilize the present regime by weakening the currency.

Strategies and sources of revenue

Coltan

74. The end of the SOMIGL coltan monopoly in April 2001 was less a consequence of the falling price of coltan and more a consequence of Rwanda's determination to capture more of the revenue that was being taken in taxes by the RCD-Goma rebel administration. The termination of the agreement with SOMIGL made it possible for RPA to frustrate the efforts of RCD-Goma to raise revenue for its own purposes.

75. The bulk of coltan exported from the eastern Democratic Republic of the Congo, as much as 60 to 70 per cent, has been mined under the direct surveillance of RPA mining

détachés and evacuated by aircraft from airstrips near mining sites directly to Kigali or Cyangugu. No taxes are paid. Rwandan military aircraft, Victor Bout's aircraft and small airline companies are used in the evacuation of the coltan. RPA has maintained control over most of the coltan sites where rich deposits are found, where the percentage of tantalum is high, and where local airstrips are accessible. A variety of forced labour regimes are found at sites that have been managed by RPA mining *détachés*, some for coltan collection, some for transport, others for domestic services. Many accounts report the widespread use of prisoners imported from Rwanda who work as indentured labour.

76. A smaller portion, perhaps 15 to 25 per cent of the total coltan exported, is purchased by *comptoirs* owned by Rwandans who buy from local *négociants* at remote coltan sites or from the agents of local defence groups. More typically these *comptoirs*, owned by Rwandan army officers or those closely linked to the Government of Rwanda, such as MHI *comptoir*, Eagle Wings or Rwanda Metals, have obtained their own mining sites and conscript their own workers to exploit the sites under severe conditions.

77. The smallest portion of coltan is purchased by the few remaining Congolese-owned *comptoirs* at one of the large number of coltan sites in remote areas. Most of the Congolese *comptoirs* have found it impossible to compete with the RPA or Rwanda-owned *comptoirs*.

78. As mining profits to the Congo Desk have increased, the share of RCD-Goma has declined. The Congo Desk has perennially deprived its junior partner, RCD-Goma, of any significant share in resources and prerogatives, and RCD-Goma has perennially complained. RCD-Goma administrators have frequently pointed out that they were unable to manage their army without sufficient revenue. Lacking financial support, the ANC brigades have turned to pillaging villagers throughout the eastern Democratic Republic of the Congo. The third Brigade has stolen a large number of cattle around Kalemie, and the first Brigade has taken diamonds from Opala. The Panel possesses extensive documentation on these activities. Most of these rebel forces are under the command of RPA officers. They have little hesitation, when so directed, in attacking local self-defence groups who obstruct their commercial operations, to eliminate specific enemies, to provide security around gold, coltan and diamond rich areas, to provide police services in urban areas and occasionally to keep a force present along the front lines. Since ANC troops are neither paid nor disciplined, they use their weapons to prey on the population, frequently burning whole villages to acquire property and food.

Case study of a commercial chain involving coltan

79. Eagle Wings Resources International, a coltan *comptoir* in Bukavu, is a subsidiary of Trinitech International Inc., based in Ohio, United States. Eagle Wings has offices in Rwanda, Burundi and the Democratic Republic of the Congo. The manager of Eagle Wings in Kigali has close ties to the Rwandan regime. Consequently, Eagle Wings operates in the Democratic Republic of the Congo as a Rwanda controlled *comptoir* with all the privileges derived from this connection. Eagle Wings is not obliged to fulfil its full responsibilities to the public treasury managed by the RCD-Goma administration. Like other Rwanda-controlled coltan *comptoirs*, Eagle Wings collaborates with RPA to receive privileged access to coltan sites and captive labour.

80. Approximately 25 per cent of Eagle Wings coltan is shipped from Kigali to the Ulba Metallurgical Plant of NAC Kazatomprom, in Kazakhstan. Another 25 per cent is sold to the parent company of Eagle Wings, Trinitech International Inc. in the United States,

which arranges for sales to both Ulba and to the Chinese processing facility at Ningxia Non-Ferrous Metals Smeltery (NNMS). H. C. Starck, based in Germany and a subsidiary of the transnational corporation Bayer AG, purchases about 15 per cent of Eagle Wings coltan. H. C. Starck has denied on numerous occasions obtaining coltan originating from Central Africa. In a press statement issued on 24 May 2002, H. C. Starck reiterated that the company had purchased no material originating in Central Africa since August 2001. The Panel possesses documents showing the contrary. In the same press release, H. C. Starck claimed that its coltan originates from “peasant suppliers” and not from rebel groups. In fact, no coltan exits from the eastern Democratic Republic of the Congo without benefiting either the rebel group or foreign armies.

81. In one instance on which the Panel has documentation, Mozambique Gemstone Company provided false documents establishing Mozambique as the origin of a shipment of coltan originating in Rwanda and transiting through South Africa. Mozambique Gemstone Company then sold the consignment to AMC African Trading and Consulting Company Ltd., based in South Africa, which subsequently sold the consignment to H. C. Starck Ltd. in Rayong, Thailand, on 21 September 2001. H. C. Starck sent a letter of credit for this consignment on 9 May 2002 to Chemie Pharmacie Holland, which oversaw the transaction, and which is a commercial partner of Eagle Wings providing logistical and financial services. Eagle Wings is the only coltan source for Chemie Pharmacie. Eagle Wings has no operations in Mozambique.

82. The Panel has also had direct contacts with the Chinese processing facility, NNMS, to determine whether they use coltan originating in the eastern Democratic Republic of the Congo. NNMS categorically denied doing business with “any individual or any entity that represents somebody or some entity in the Democratic Republic of the Congo.” In fact, a number of brokers trading in coltan originating from the eastern Democratic Republic of the Congo have informed the Panel of their sales to NNMS. A publicity presentation prepared by NNMS itself has stated that the reason that they are able to provide low prices for their output is that NNMS buys significant amounts of cheap raw material from Central Africa. One NNMS report notes that 50 per cent of all coltan purchased for processing originates in Central Africa. Frequent follow-up Panel enquiries with NNMS were ignored.

Diamonds

83. The diamond market was the prize Rwanda fought Uganda to have for its own. After the last clash in Kisangani in June 2000, RPA worked through the RCD-Goma administration to funnel all the diamonds in Kisangani through the Congo Desk control. The technique was to oblige all local diamond traders to sell to one principal *comptoir* holding exclusive export rights.

84. The Congo Desk gave Aziz Nassour the first monopoly. Aziz Nassour fell out of favour with the Congo Desk and was replaced by an Israeli diamond dealer, Philippe Surowicz. Diamond traders in Kisangani remember the Surowicz period as a “reign of terror”. Diamond sellers frequently reported entering “Monsieur Philippe’s” *comptoir* only to be confronted with RPA military who named a derisory price and took the diamonds. The Congo Desk replaced Mr. Surowicz in October 2001 with a Lebanese, Hamad Khalil, who worked through the Bakayoko *comptoir* in Kisangani.

85. In mid-November 2001, the Department of Lands, Mines and Energy of RCD-Goma conducted a study of Hamad Khalil’s performance in the first month of his tenure. His quota had been set at a minimum of \$500,000 per month. Mr. Khalil met his quota

exporting diamonds valued at \$576,380 over a period of 27 days. The performance was adequate, but it was far below the Kisangani sales potential of up to \$2 million per month. His poor performance raised the suspicion that the Congo Desk was using Mr. Khalil to divert revenues that might otherwise accrue to the RCD-Goma administration. A similar inspection of diamond production in the Sankuru and Lodja areas of Northern Kasai the week before had also revealed that RPA officers were clandestinely taking large quantities of diamonds out of Northern Kasai directly to the Congo Desk in Kigali. RCD-Goma determined that Mr. Khalil was undervaluing the diamonds, and the consequence was a reduction in taxes payable to RCD-Goma's public treasury as well as a greater margin of profit for Mr. Khalil and the Congo Desk. The study concludes that "The public treasury would have four times the present revenue from diamonds were it not for fraudulent practices and the under-valuation of diamonds".

Imports, Taxation and Requisition by the Public Sector

86. The controversial "conflict" diamonds from Kisangani are marketed by criminal networks. Proceeds from these criminal sales are laundered by the purchase of large quantities of household goods in Dubai—sugar, soap, cloth and medicines—which are then imported to the Democratic Republic of the Congo and offered to local sellers at attractive prices. The Rwandan wholesalers use the profits in Congolese francs to buy dollars and, to close the trade circuit, to purchase diamonds.

87. The interest of the RPA commercial wing in selling consumables at attractive prices is not only to launder money from criminal diamond sales, but also to place the once-thriving Kisangani economy under Rwanda's control. The cloths that were once manufactured at the Kisangani Sotexki factory and renowned for their quality no longer compete with the cheaper imports, and the result is that the Sotexki labour force, once 2,000, now stands at 100. The palm oil once produced locally at the Unilever-owned plant can no longer compete with the imported oil that is sold in Kisangani at a third of the price of locally produced oil. The Unilever-owned palm oil plants in Kisangani are practically at a standstill. Weakening local production not only undermines the local manufacturing economy and makes the Kisangani population captive consumers, it also shifts Kisangani's manufacturing economy to Kigali.

88. Another strategy for raising revenue is to use RCD-Goma's public sector facade to requisition funds from public enterprises. On 21 November 2001, the Secretary General of RCD-Goma requisitioned by decree all revenues generated by public utilities and parastatals. On the following day the Secretary General annulled all existing collective agreements for workers in those enterprises. The decrees were applicable to all public enterprises, including the water utility, the airport authorities, the electricity utility, the road and transport authority among others. RCD-Goma declared the requisitions to be in the public interest. Within a month, the water utility lacked sufficient funds to purchase water purification chemicals in Kisangani and Bukavu and power stations stopped functioning for lack of necessary repairs. The International Committee of the Red Cross has stepped in to provide 60 tons of chemicals for water purification and has financed costly repairs at Tshopo power station to avert a discontinuation of water supply in Kisangani and avert a cholera outbreak. The parastatal transport company ceased to function, and the airport authorities appealed to RCD-Goma to restore a portion of the requisitioned funds since no salaries had been paid for six months.

89. Following a decree on 15 March 2002, new taxes were introduced and all existing tax rates have been increased. Over an 18-month period, since the previous tax decree

of September 2000, taxes on electrical consumption have increased by 200 per cent. Licences for trading in agricultural products increased fourfold. Most licensing fees for operating a business were doubled or tripled. The number of different taxes collected in the area under RCD-Goma administration has increased four times since 1998. None of the tax revenue is used to provide public services.

Armed conflict and its consequences

90. Medical practitioners, church workers, and non-governmental organizations in northern Katanga all attest to rapidly escalating disorder in Kalemie and an increased use of arms by a wide range of groups, some affiliated with RCD-Goma and others not. Fighting between RPA and FAC has been limited to Rwanda's seizure of northern Katanga in November 1998 and a government counter-offensive in October 2000. These confrontations resulted in considerable displacement of populations in the path of troop movements. However, it was the aftermath of those confrontations that resulted in the most severe armed conflict. Rwandan troops seized material for their campaigns. The RCD-Goma third ANC Brigade, following Rwanda's example in their own random fashion, seized food and other property. Armed movements arose among local populations for self-defence, and occasionally these local militias banded together with other local militias to create larger armed groups. The Panel has received extensive documentation from local lawyers, Catholic and Protestant churches, the Fédération des Entreprises au Congo and others detailing thefts of cattle valued at more than \$15 million, thefts of over \$1 million worth of retail goods and the destruction or fraudulent sale of equipment from the Société nationale de chemin de fer du Congo.

91. The Catholic Church in the eastern Democratic Republic of the Congo has spoken out boldly about the thefts, killings, torture, extortions, rapes and piracy on Lake Tanganyika perpetrated originally by RPA and continued by ANC, the RCD-Goma police and the Banyamulenge militia. The Church, and most notably the Bishop of Kalemie-Kirungu, recently headed a campaign to expose these abuses. Directors of RCD-Goma's Department of Security and Information responded by threatening to kill prominent church leaders. The Catholic Diocese published a list of those threats on 15 May 2002.

92. The multiplication of armed forces and fighting in the interior have all but destroyed farm production on the rich plateau in the interior of northern Katanga. Excesses by RPA in requisitioning resources for the "war effort" set a standard for behaviour by the far less disciplined ANC rebel forces, who have ravaged the countryside. Growers are reluctant to invest in crops when they are so likely to be stolen. Large numbers of persons have been displaced from their homes and have abandoned their lands out of fear. The Office for the Coordination of Humanitarian Affairs has estimated that, in the northern Katanga area alone, 350,000 displaced persons are living away from their homes, with neighbours, in the cities or in the bush.

93. Armed conflict along the Masisi-Walikale-Goma axis arises from tensions between the large numbers of RPA in place to manage mining operations and Hutus who may be resident, but who are also imported or conscripted by Rwandan forces to carry out mining under forced labour conditions. Separate Rwanda owned *comptoirs* have quarrelled among themselves for access to sites. RPA forces have attacked and burned villages to seize coltan mined by some Hutu groups or local villagers. The Panel has taken testimony from villagers who have been forced to leave their villages following attacks. With minor exceptions, the objective of military activity is to secure access to mining sites or ensure a supply of captive labour.

94. Population displacement is the outcome of frequent armed conflict, with the predictable consequences of food insecurity, malnutrition and high mortality rates for both the displaced and host populations. The Office for the Coordination of Humanitarian Affairs estimated that 1.5 million persons were displaced in March 2001 in the areas occupied by Rwanda in North and South Kivu, Maniema and Katanga, nearly 14 per cent of the population. More than three quarters of families living in the rural areas have probably been forced to move at least once in the last five years. This degree of armed conflict undermines local authority and encourages an abusive social environment. Public infrastructure is destroyed. School enrolment in Shabunda has dropped 56 per cent since 1998. Men are led to abuse women on a surprising scale throughout the eastern Democratic Republic of the Congo. International non-governmental organizations have provided comprehensive reports about groups of women being taken hostage and submitted to long periods of sexual abuse. Children become instruments of war, forced to work in the mines and conscripted into armed forces. United Nations officials have suggested that the number of child soldiers in the rebel armies is much higher than reported by the rebel administrations, and that 50 per cent of local defence and Mayi-Mayi groups are children.

Malnutrition and mortality

95. Malnutrition studies carried out by non-governmental organizations in both northern Katanga and the Kivus have shown that, in some places, as many as 25 to 30 per cent of all children under 5 years are malnourished. In most cases, this is due to the large numbers of displaced persons who have been forced to leave their own agricultural production and have taken refuge in nearby host villages. A number of studies have shown the close link between elevated malnutrition levels and mortality rates in this region.

96. The most commonly quoted conclusion from the International Rescue Committee's surveys is that 2.5 million more people died since the beginning of the war than would have died had the war not occurred. While the study is directly relevant to the sample population of 1.3 million, the International Rescue Committee has assumed that conditions are sufficiently similar throughout all five provinces of the eastern Democratic Republic of the Congo to justify applying the mortality rates found in the sampled population to the larger population in all five provinces. The study covered the period from August 1998 to April 2001. If one assumes mortality to have continued at the same rate, this would mean that more than 3.5 million excess deaths would have occurred from the beginning of the war up to September 2002. These deaths are a direct result of the occupation by Rwanda and Uganda. Extensive mortality, especially mortality among children, is the consequence of a cycle of aggression, the multiplication of armed forces, a high frequency of conflict and its consequences, especially displacement. One should not be surprised to find, in areas most affected by the conflict, a mortality rate for children under five years of 35 per cent.



APPENDIX III

List of Organisations Consulted

Advocats Sans Frontières

AJPRODHO

British Broadcasting Corporation

Caura

Cestrar

Commission on The Prevention of Genocide

Commission on Unity and Reconciliation

Commonwealth Foundation

Commonwealth Policy Studies Unit

Department for International Development (UK)

Embassy of United Kingdom

Haguruka

Human Rights Commission

Human Rights First

Human Rights Watch

IRDP

LDGL

Legal Aid Forum

LIPRODHUR

Minister of Justice, Government of Rwanda

Ministry of Internal Security, Government of Rwanda

Norwegian's People's Aid

Penal Reform International

RCN

Rwanda Bar Association

Rwanda Journalists Association

Rwandan Civil Society Forum

The Danish Institute for Human Rights

The Kigali Bar Association

The Legal Clinic

Umusaso

Voice of America

MEMBERS OF THE CHRI INTERNATIONAL ADVISORY COMMISSION

Sam Okudzeto is Chair of CHRI's International Advisory Commission and a member of the Commonwealth Lawyers Association. He is a member of the Board of International Bar Association and also a member of the Bank of Ghana Board and Chairman of the University of Ghana College of Health Sciences Council. He has also been a member of the Prisons Service Council, General Legal Council and the Judicial Council, Chairman of the Public Accounts and Judicial Sub Committee of the Parliament of Ghana, and President of the Ghana Bar Association.

B.G. Verghese is Chair of CHRI India's Executive Committee and formerly associated with the Commonwealth Journalist Association (CJA). A columnist and author, he is a former Information Advisor to the Prime Minister of India, former editor of Hindustan Times and Indian Express, Member of several official commissions and committees on water, security, the media, the Northeast and served on the boards of a number of public sector enterprises.

Neville Linton is Chair of CHRI's Executive Committee, United Kingdom, is a consultant on political affairs, specialises in democratisation and human rights issues in transition societies. Previously he was a political scientist at the University of the West Indies before serving as a senior official at the Commonwealth Secretariat. Currently he is a Senior Adviser with Transparency International and works on corruption issues in Africa and the Caribbean.

Eunice Brookman-Amisshah is a former Minister of Health in Ghana and former Ambassador to the Netherlands. She has been associated with the Commonwealth Medical Association in her capacity as Vice-President of the Ghana Medical Association. She has been active in women's rights for many years and is currently Vice-President of IPAS in Africa.

Murray Burt is past president of the Commonwealth Journalists Association. He is a former City and National Editor of The Globe and Mail in Toronto, and a former Managing Editor of the Winnipeg Free Press. He is on the Board of Governors of the National Newspaper Awards in Canada and a past president and life member of the Canadian Association of Newspaper Editors.

Yashpal Ghai is a scholar in constitutional law. He is the head of the Constitution Advisory Support Unit of the United Nations Development Programme in Nepal and a Special Representative of the UN Secretary General in Cambodia on human rights. He has been a Fellow of the British Academy since 2005. He was the Chairman of the Constitution of Kenya Review Commission (which attempted to write a modern constitution for Kenya) from 2000 to 2004. Ghai has written several books on law in Africa, the Pacific islands, and elsewhere.

Alison Duxbury is a Senior Lecturer at the Law School of the University of Melbourne where she teaches International Humanitarian Law and Constitutional and Administrative Law. She is a member of the Advisory Board of the Melbourne Journal of International Law; the International Humanitarian Law Advisory Committee, Australian Red Cross (Vic); the Asia Pacific Centre for Military Law; and the Australian and New Zealand Society of International Law.

Zohra Yusuf is a writer and editor on media and human rights issues. She has been a Council Member of the Human Rights Commission of Pakistan since 1990, was Vice-Chairperson (Sindh Chapter) from 1990-1993 and Secretary-General for two terms. She is also a Collective Member of Shirkatgah Women's Resource Center, a founding member of Women's Action Forum and a member of the Steering Committee of Aga Khan Foundation's NGO Resource Centre.

Maja Daruwala is Director of CHRI and is a barrister actively advocating for human rights. She is on the board of Civicus, Open Society Justice Initiative, International Women's Health Coalition, South Asians for Human Rights, Voluntary Action Network of India and Chairperson, Multiple Action Research Group.

CHRI PROGRAMMES

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy:

CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

Access to Information:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy-makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice:

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock on effect on the administration of justice overall.

Rwanda's application for the membership of the Commonwealth raises the question, more generally, of how qualifications for membership are prescribed and determined. More specifically, whether Rwanda meets the prescribed criteria, in particular the standards of democracy and human rights as enshrined within the Harare Declaration. Opening up membership, has broad-reaching implications for the Commonwealth as a whole. New members from non-traditional Commonwealth membership backgrounds bring with them many positive attributes and learning that can influence and expand the depth and experience of the inter-governmental organization. However, expanding membership can potentially also bring with it States' with poor human rights records, suppressed civil society, flawed governance structures and failures of democracy, which will undoubtedly have the effect of dampening Commonwealth principles rather than strengthening them. Within such a context, there is a need for great care and analysis to be undertaken in assessing applications for membership. A careful balancing needs to occur so as to be able to follow a transparent and participative application procedure, which resonates deeply from within the Commonwealth's own values, specifically the Harare Declaration. It is in this vein that the Commonwealth Human Rights Initiative (CHRI) proceeded to undertake a fact-finding into the human rights situation in Rwanda. Aware that the Commonwealth Secretariat undertook a similar process during 2008, the findings of which were articulated in a confidential report, CHRI saw the value within the rubric of a rights-based approach, to facilitate a Commonwealth civil society report on Rwanda, which would be situated in a grass-roots analysis of the human rights context within the country and encapsulate analysis of the constitutional framework within Rwanda. In this respect, the investigation and this report is based almost wholly on a human rights assessment as framed around the principles contained within the Harare Declaration.



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