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Advocacy-Orientated, Advocacy-related and Scholarly Literature on the Rwandan Genocide of 1994: Assessing whether the Main Points of Concern, Criticism or Dispute about the Literature Arise from the Basic Facts and Empirical Evidence Presented or from the Interpretive Frameworks Employed to Analyse Them

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This minor dissertation is submitted in fulfilment of the requirements for the degree of Master of Social Science (International Relations) in the Department of Political Studies, University of Cape Town.

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ABSTRACT

Advocacy-Orientated, Advocacy-Related and Scholarly Literature on the Rwandan Genocide of 1994: Assessing whether the Main Points of Concern, Criticism or Dispute about the Literature Arise from the Basic Facts and Evidence Presented or from the Interpretive Frameworks Employed to Analyse Them

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M.SocSc. International Relations thesis, Department of Political Studies, University of Cape Town

- Guiding Text: **Timothy Longman**, "Placing Genocide in Context: Research Priorities for the Rwandan Genocide," *Journal of Genocide Research* 6, no. 1 (2004): 29-45.
- Reviewed Works: **Human Rights Watch and Fédération Internationale des Ligues des Droits de l'Homme**, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de l'Homme, 1996).
- Adam J. Jones**, "Gender and Genocide in Rwanda," *Journal of Genocide Research* 4, no. 1 (2002): 65-94.
- Mahmood Mamdani**, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001).
- Linda Melvern**, *Conspiracy to Murder: The Rwandan Genocide*, 2nd edition (London: Verso, 2006).

This literature review is written as a response to Timothy Longman's general suggestion that much of the literature on the "Rwandan genocide of 1994" was based on empirically poor secondary analyses instead of "rigorous" original empirical research. The study was further alerted by Longman's indication that there had been "myths and inaccuracies" circulating in the literature. This raised the question of whether these "myths and inaccuracies" were with regard to the basic facts and evidence of what is known about the

events of the “Rwandan genocide” or with regard to how these events had been interpreted by different authors. As its point of departure, the study proposes that a general literature review could not fully appreciate the contributions made by different types of literature on the subject at hand. The study contends that each type or “genre” of literature had its own research priorities, objectives, preferred methods of evidence gathering and its own range of interpretative frameworks for the processing of the facts and evidence. Rather than attempt a large-scale and superficial survey of the literature, the study searches for the answer to the research question by conducting an examination of a small selection of works. The works are paired according the complementary themes that they investigate. Melvern’s *advocacy-related investigative journalism* is compared with Mamdani’s *scholarly theoretical analysis* on the theme of Hutu civilian participation in the killings of the “Rwandan genocide”; while the *advocacy-orientated human rights reporting* of Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme was contrasted with Jones’s *scholarly theoretical analysis* on the theme of sex-selective or sex-specific manifestations of violence of the “Rwandan genocide.”

DECLARATION

I hereby declare that “**Advocacy-Orientated, Advocacy-Related and Scholarly Literature on the Rwandan Genocide of 1994: Assessing whether the Main Points of Concern, Criticism or Dispute about the Literature Arise from the Basic Facts and Evidence Presented or from the Interpretive Frameworks Employed to Analyse Them**” is entirely my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged with complete references.

I have used the Chicago/Turabian Style of Citation and Referencing. I have referred to the following sources for basic guidance on how to use this style of referencing:

University of California Berkely Library, *Turabian and Chicago Styles of Citation* [Online]. Available: <http://www.lib.berkeley.edu/instruct/guides/chicago-turabianstyle.pdf>

University of Cape Town [Faculty of Humanities], *Handbook on Citation and Related Matters* (Cape Town: University of Cape Town, 2003), 15-17.

University of Wisconsin-Madison [The Writing Centre], *Chicago/Turabian Documentation* [Online]. Available: <http://writing.wisc.edu/Handbook/DocChicago.html>

Nompumelelo Motlafi

Signed:.....

Date:.....

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Chapter One: From Longman's Proposal on what the 1994 Rwandan Genocide Research Priorities should be, to Questioning what the Research Priorities have been in the Advocacy-Orientated, Advocacy-Related and Scholarly Literature

1.1. Introduction

The literature on the Rwandan genocide of 1994 is concerned with giving accounts or analyses of the mass killings, sexual violence and other mass violence perpetrated by a variety of Hutu agents against mainly Tutsi victims in the period of April-July 1994.¹ The current study requires the investigation of the possible analytical or classificatory uses of the term 'genocide' within the literature on the 1994 genocide, as well as the investigation of the various documented acts of violence perpetrated in Rwanda in the period of April-July 1994 that may not necessarily be considered as falling under the concept of genocide.² Therefore while acknowledging the use of the term '1994 Rwandan genocide' as the commonly designated reference for the violent events of the period in question, this study also uses more general terms such as: 'the mass killings of April-July 1994' or 'the 1994 mass killings' or 'the mass sexual violence of April-July 1994' or 'the mass violence of April-July 1994'.

Timothy Longman noted in 2004 that prior to the mass violence of 1994, few people knew or were interested in Rwanda "outside the limited circle of African studies scholars."³ Himself a member of the "tiny coterie" of pre-1994 Rwanda specialists,⁴ Longman posited that it was the extensive press coverage of the "genocide and its brutalities" that brought Rwanda worldwide attention and that ultimately attracted new

¹ See for example: Timothy Longman, "Placing Genocide in Context: Research Priorities for the Rwandan Genocide for the Rwandan Genocide," *Journal of Genocide Research* 6, no. 1 (2004): 35; Linda Melvern, *Conspiracy to Murder: The Rwandan Genocide*, revised ed. (London: Verso, 2006), XV, 252; Scott Straus, "How Many Perpetrators were there in the Rwandan Genocide? An Estimate," *Journal of Genocide Research* 6, no. 1 (2004): 87, 88..

² See Stuart Stein, "Geno- and other Cides: A Cautionary Note on Knowledge Accumulation," *Journal of Genocide Research* 4, no.1 (2002): 46. Stein proposed that the events that have been called "genocides" need to be dissected into their various parts.

³ Longman, 29.

⁴ Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001), 41.

researchers to the country.⁵ Longman was concerned that too much of the literature on 1994 mass killings was based on secondary sources and a handful of original interviews and that not enough literature was based on “rigorous empirical research.”⁶ He was also concerned that the reliance on secondary sources had led to the circulation of “myths and inaccuracies” from earlier accounts of Rwanda, which “have long been disproved.”⁷ The “myths and inaccuracies from earlier accounts” to which Longman directly referred concerned the colonial scholarship on the “supposed conquest of Rwanda by the Tutsi”, which was used “to bolster the developing political and social systems of the increasingly centralized state,” thereby helping to “solidify ethnic identities” and justifying the Tutsi minority’s domination of the Hutu majority.⁸ The “myths and inaccuracies” that colonial scholarship created were again used to feed the anti-Tutsi revolt on the eve of Rwanda’s independence from European colonial rule. However within the article as a whole there are suggestions that there may be “myths and inaccuracies” with regards to the documentation of violence of the April-July 1994 period.

Longman’s article identifies at least four problems that have arisen from the scarcity of good quality original empirical research on the 1994 Rwandan genocide. The first problem is that “myths and inaccuracies from earlier accounts” of Rwanda’s history have marred the historical accounts offered by some of the more recent authors as background information for primary accounts as well as secondary analyses.⁹ The second problem is that some of the research on the violence of 1994 was conducted in haste without verifying details; contributing to the presence of factual inaccuracies in primary descriptive accounts, which are then circulated into secondary analyses.¹⁰ Longman did not give details about the exact factual inaccuracies documented. The third problem is that there is very little new empirical evidence being generated, which is needed for the production of more detailed descriptive accounts of the violence of April-July 1994.¹¹ The fourth problem is that, while macro-level causal and theoretical explanations have

⁵ Longman, 29.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid., 31.

⁹ Ibid., 30-33.

¹⁰ Ibid., 33.

¹¹ Ibid., 33-38.

been proposed for why the violence broke out, few have been subjected to local level testing; meaning that there are doubts about the extent of applicability of these explanations.¹²

Longman suggested that original empirical research was needed not just on the factual details of the violence of the April-July 1994 period itself, but also on the historical, cultural and regional context in which the violence occurred.¹³ He added that the research needed currently was “sectoral, thematic, and local-level research that tests theories of genocide,” which would add new data to the existing empirical record and enable a “more complex and complete understanding of Rwanda’s tragedy.”¹⁴

Longman’s recommendations for the direction of research on the events of April-July 1994 were proposed in view of his extensive literature survey, which included journalistic accounts, human rights reports, scholarly works and the personal accounts of survivors. However, his recommendations seem to have had a focus that would serve the purposes of scholarly descriptions or explanations and ultimately build a knowledge base that would more than likely be primarily of scholarly interest. He admitted that he had not attempted “to catalogue the numerous publications on the 1994 genocide”.¹⁵ In the process he lost sight of the fact that different types or “genres” of literature make different contributions to how the mass violence of 1994 is understood.¹⁶ Literature reviews and proposals need to take into consideration the “genre” of literature under review. At the same time, his concerns attest to the real or possible inter-disciplinary use of “Rwanda texts”. While it is a basic requisite that all the literature conveys the basic facts as accurately as is possible, one needs to keep in mind that different “literary

¹² Ibid., 30, 36-38. See also Stathis N. Kalyvas’ comparative discussion on the local level dynamics of civil wars. Stathis N. Kalyvas, “The Ontology of Political Violence: Action and Identity in Civil Wars,” *Perspectives on Politics* 1, no. 3 (2003): 475-494.

¹³ Longman, 30.

¹⁴ Ibid.

¹⁵ Longman, 30.

¹⁶ This study appropriates the use of term “literary genre” as a reference to different kinds of literature on the same subject matter from Ron Dudai. See Ron Dudai, “Advocacy with Footnotes: the Human Rights Report as a Literary Genre,” review of *Through No Fault of Their Own: Punitive House Demolitions During the al-Aqsa Intifada* by B’Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, *Human Rights Quarterly* 6, no. 3 (2006): 783 [Electronic]. Available from HeinOnline at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/databases/platforms.htm&libid=88> [2009, May 15].

genres” are interested in different aspects or issues concerning the Rwandan genocide, in line with “genre-specific” target audiences, objectives, data collection methods and interpretive frameworks. Furthermore, the study cautions against the presumption that all works based on secondary sources are inherently prone to recording factual inaccuracies. Likewise, the study does not presume that all works based on primary sources are inherently free of factual inaccuracies and poor-quality evidence.

1.2. Identifying Advocacy-Orientated, Advocacy-Related and Scholarly Literature

It is not possible to account for all the “literary genres” involved in producing fact-based literature on the Rwandan mass killings and mass sexual violence of 1994 within the limited space of a minor dissertation. The focus herein is limited to those literary genres that, from Longman’s article, appear to have been the most prolific in generating literature on the events under consideration (in no particular order): journalistic works; human rights reports; and scholarly works.¹⁷ For reasons stipulated below, it is proposed that journalistic works within the investigative journalism sub-field constitute advocacy-related literature and human rights reports constitute advocacy-orientated literature.

a) *Works of Investigative Journalism as Advocacy-Related Literature*

All journalistic works have the public as their main target audience.¹⁸ Investigative journalism is set apart from other types of journalism by its more vigorous and more extensive research. Investigative journalism is concerned with stories that expose

¹⁷ Longman, 33-38.

¹⁸ Theodore L. Glasser and James S. Ettema, “Investigative Journalism and the Moral Order,” *Critical Studies in Mass Communication* 6, no. 1 (1989): 3 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16]; Murray Levine, “Investigative Reporting as a Research Method: An Analysis of Bernstein and Woodward’s All the President Men,” *American Psychologist* 35, no. 7 (1980): 628 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16].

transgressions/ “wrongdoing”.¹⁹ Published works produced through investigative journalism are herein considered as advocacy-related literature: the instance of “wrongdoing” is presented to the public in the hopes that public opinion might be mobilised to put pressure on policy-makers and/or “transgressors” to acknowledge, end, rectify or mete out punishment for the transgressions in question.²⁰

The first task of exposing transgressions is establishing the details of what has happened and what has been done by whom against whom/what.²¹ This involves “gathering evidence and assessing its quality.”²² The journalism trade entails a constant search for new stories or new developments in existing stories, making direct access to primary sources of evidence vital.²³ Thus they primarily seek out interviews with informants who have first-hand knowledge of the events under investigation as well as access to “concrete” documentary evidence (such as government and personal records).²⁴ However, the judgement that a transgression is a transgression cannot be made solely with reference to the basic evidence and facts; nor can it be explicitly made with reference to the journalist’s personal sense of right or wrong.²⁵ The second task, then, involves the journalist’s location, selection and interpretation of some “empirically determined” standards “that can be used by the public to make such judgements”²⁶ The preferred interpretive frameworks that make for “empirically determined” standards of judgement include (in descending order): the law; formalised codes or guidelines; recognised expertise in a specific field; statistical or other comparative data that gives suggestions of what is normal; common decency.²⁷

¹⁹ Glasser and Ettema, 2-3; Carl Bernstein and Robert Woodward, *All the President’s Men* (New York: Warner Books, 1974), cited in Levine, 626-638. Levine conducted a study of the methods used by investigative reporters Bernstein and Woodward in their breaking of Nixon’s Watergate scandal.

²⁰ Glasser and Ettema, 6-7; See also Linda Melvern, *Conspiracy to Murder: The Rwandan Genocide*, revised ed. (London: Verso, 2006), 235. Melvern reported that certain observers believed that there may have been an armed international humanitarian intervention in Rwanda in 1994 had the Western media mobilised public opinion in the Western States to put pressure on Western governments to respond to the crisis.

²¹ Glasser and Ettema, 2, 10.

²² *Ibid.*, 10.

²³ Levine, 627-628.

²⁴ *Ibid.*

²⁵ Glasser and Ettema, 10.

²⁶ *Ibid.*, 2-3.

²⁷ *Ibid.*, 10.

Longman generally dismissed journalistic accounts for being “impressionistic”, without due regard that this kind of writing may be more accessible and palatable to a public with a more general interest in the killings.²⁸ For his interest on specific aspects of the killing and other violence of 1994, he may have done better to look at works of investigative journalism. The interpretive frameworks used by investigative journalists may also attract the interest of specialists and other interested parties within the general public. Incidentally, Longman made mention of one prominent investigative journalist on the Rwandan genocide: Linda Melvern.²⁹ Longman stated that she was “accumulating an archive on the Rwandan genocide, particularly on the reaction of the United Nations, available at the Hugh Owen Library of the University of Wales.”³⁰ Although Longman seemed to be more interested in the national-level research that scholars could produce using Melvern’s archive rather than what Melvern herself might produce from it, his mentioning of her has indirectly brought Melvern to the reader’s attention and thus indirectly suggested that Melvern’s work might be worth investigating. Melvern’s book *Conspiracy to Murder: The Rwandan Genocide*, which is partially based on documents that she appears to have added to the archive mentioned by Longman, is reviewed in this study.³¹ The book is introduced in section 1.6 of this chapter.

b) Human Rights Reports as Advocacy-Orientated Literature

Human rights reports are typically intended to effect a response to humanitarian crises (from natural disasters to serious violations of International Humanitarian Law) and

²⁸ Philip Gourevitch, *We Wish to Inform You that Tomorrow We will be Killed with our Families: Stories from Rwanda* (New York: Farrar Straus and Giroux, 1998), cited in Longman, 33; Christian Jennings, *Across the Red River: Rwanda, Burundi, and the Heart of Darkness* (London: Gollancz, 2000), cited in Longman, 34; Fergal Keane, *Season of Blood: A Rwanda Journey* (London: Viking, 1996), cited in Longman, 34.

²⁹ Longman, 39.

³⁰ Ibid.

³¹ The first edition of Melvern’s book *Conspiracy to Murder: The Rwandan Genocide* was published in the same year as Longman’s article (2004). It has not been possible to confirm which was published first, which could have provided further explanation for the book’s exclusion from Longman’s review. Nevertheless, one notes that Melvern’s other works do not appear in Longman’s article, namely: Linda Melvern, *A People Betrayed: the Role of the West in Rwanda’s Genocide* (London and New York: Zed Books, 2000). This earlier book concentrated primarily on the reaction of the United Nations to the Rwandan genocide.

human rights violations by making explicit recommendations addressed directly to the relevant policymaking bodies, namely governments and inter-governmental organisations (for example, the United Nations).³² For this reason, human rights reports are considered herein as advocacy-orientated literature. To a certain degree, human rights reports function in a similar way to investigative reporting: they indirectly target audiences who may be in a position to pressure policymakers to take the required steps.³³ These ‘invisible audiences’ include: the media, the general public and others.³⁴

As with investigative journalism, the first task of human rights reports is to establish the factual details of violence perpetrated against humans.³⁵ In terms of the evidence, it is vital to human rights reporters to gather the direct testimonies of victims and others who may have firsthand knowledge of the violence under investigation.³⁶ This evidence is supplemented with information from statistical reports, graphs and other recorded data.³⁷ Thus human rights reporters tend to conduct on-site investigations in what is called fact-finding missions in human rights reporting parlance (and called “fieldwork” in scholarly parlance).³⁸ Human rights reports differ from works of investigative journalism in that human rights reports also try to make generalisations about the widespread nature of the violence under investigation.³⁹ Human rights reporters are arguably more limited to using the standards provided in International Law and other international agreements as frameworks with which to interpret the facts.⁴⁰ Where applicable, they may also refer to domestic laws and standards.⁴¹

³² Stanley Cohen, “Government Responses to Human Rights Reports: Claims, Denials and Counterclaims,” *Human Rights Quarterly* 18, no. 3 (1996): 517-518; Dudai, 793; Diane F. Orentlicher, “Bearing Witness: the Art and Science of Human Rights Fact-Finding,” *Harvard Human Rights Journal* 3 (1990): 83-84 [Electronic]. Available from HeinOnline at: <http://www.lib.uct.ac.za.ezproxv.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16].

³³ Cohen, 518; Dudai, 793.

³⁴ Ibid.

³⁵ Orentlicher, 94-95.

³⁶ Ibid.; Dudai, 790

³⁷ Dudai, 791.

³⁸ Orentlicher, 108.

³⁹ Ibid., 95.

⁴⁰ Dudai, 791 ; Orentlicher, 97.

⁴¹ Ibid.

Of the three human rights reports reviewed, Longman gave an overall positive review to only one. The positively-reviewed report approximated a scholarly work in its efforts to provide a more complex account of the cause of the mass violence of 1994, concentrating on the planning and organisation of the genocide and “the ideology behind the killing”.⁴² He criticised one report for being based on hastily-conducted research that had left no time for the verification of facts and had resulted in flawed factual details.⁴³ He commended another for “providing a first glance at the use of sexual violence as a weapon in the genocide”, but pointed out that it left unanswered questions concerning the relative prevalence of certain acts of sexual violence in certain local communities over others and other possible comparative data.⁴⁴ The criticisms and questions raised in relation to these reports are very valid. Still, one recalls that the research of the latter two reports was conducted soon after the end of mass violence of April-July 1994 relative to the former report. Thus, both probably provided a starting point for international responses and more intensive investigations.⁴⁵ It is with this in mind that one of the latter two reports has been selected for review in this study, namely the report produced jointly by Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme in 1996.

c) Scholarly Literature

Scholarly literature is concerned with scientific description and explanation for its own sake.⁴⁶ Other scholars are the main target audience of this “literary genre”. It is in this light that one makes sense of Longman’s request for research that would add “new data, creating building blocks upon which a more complex and complete understanding” of the

⁴² Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme, *Leave None to Tell the Story: The Rwandan Genocide* (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme, 1999), cited in Longman, 34.

⁴³ African Rights, *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995), cited in Longman 33.

⁴⁴ Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (New York: Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme, 1996), cited in Longman, 35.

⁴⁵ Orentlicher, 107.

⁴⁶ Dudai, 793; Glasser and Ettema, 5.

Rwandan mass violence of April-July 1994.⁴⁷ This is not to say that scholars do not have normative concerns; it simply means that the dominance of positivism in scientific research has meant that scholars have had to avoid putting normative concerns “explicitly in the heart of the project.”⁴⁸ It is necessary to acknowledge but - due to the limited scope of the study - not to get drawn into the epistemological debates within the philosophy of science that have challenged the positivist position of value-free science.⁴⁹ With regard to studies of mass killings and other mass violence within comparative genocide studies, sociologist Stuart Stein expressed concern that social scientists’ focus on the detection and prevention of genocide had been pursued “at the expense of the development of micro- or macro-comparative frameworks.”⁵⁰

From Longman’s survey, one can identify at least three categories of scholarly literature (regarding the events of 1994 the preceding history): works that provide primarily descriptive accounts;⁵¹ works that provide causal explanations;⁵² and works that provide theoretical explanations.⁵³ Conventional thought on the scholarly knowledge economy (in the social sciences) holds that there is a division of labour in which scholars in historians and “area specialists” (those specialising in the study of specific geographical regions) are expected “to yield up empirical materials” through descriptive accounts “for theoretical processing by social scientists.”⁵⁴ Some observers have noted that there have been challenges to this division of labour: area specialists have also developed theory in

⁴⁷ Longman, 30.

⁴⁸ Dudai, 789; Glasser and Ettema, 5.

⁴⁹ Readers who are more interested in these philosophical debates may refer to the following readings: Birger Hjørland, “Theory and Metatheory of Information Science: a New Interpretation,” *Journal of Documentation* 54, no. 5 (1998): 610; Eugene Miller, “Positivism, Historicism and Political Inquiry,” *The American Political Science Review* 66, no. 3 (1972): 796-817; Leo Strauss, “What is Political Philosophy?” *Southern Political Science Association* 19, no. 3 (1957): 343-368.

⁵⁰ Stein, 46.

⁵¹ David Newbury, “Precolonial Rwanda and Burundi: Local Loyalties, Regional Royalties,” *International Journal of African Historical Studies* 34, no. 2 (2001): 255-314, cited in Longman, 32.

⁵² For example: Peter Uvin, *Aiding Violence: the Development Enterprise in Rwanda* (Connecticut: Kumarian Press, 1998) cited in Longman, 37

⁵³ For example: Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001), cited in Longman, 33.

⁵⁴ Joseph M. Bryant, “On Sources and Narrative in Historical Social Science: a Realist Critique of Positivist and Postmodernist Epistemologies,” *British Journal of Sociology* 51, no. 3 (2000): 491.

their research endeavours; and political scientists do produce descriptive accounts.⁵⁵ It is in view of this “traditional disciplinary division of labour” that the validity of Longman’s criticism of a work by Mahmood Mamdani (a political scientist) is noted. Longman noted that while Mamdani heavily criticised “area studies research” on Rwanda, he relied “almost entirely on it for his sources.”⁵⁶ Mamdani criticised area specialists for specialising in the production of new facts, which he argued led to area studies’ resistance to theoretical explanations.⁵⁷ Mamdani later stated that his book was “an attempt to rethink existing facts in light of rethought contexts, thereby to illuminate old facts and core realities in new light.”⁵⁸ By this statement, Mamdani confirmed his reliance on a knowledge ‘production line’ wherein “area specialists” and others collected the evidence and established the facts on which his own theoretical labour relied. Mamdani’s work is included for review in this study because Mamdani’s work is an example of a theoretical work that “processes empirical materials” produced through “the original empirical research” of others.

1.3. Research Question

Given the existence of different “literary genres” responsible for producing fact-based literature on Rwanda and Longman’s statement about myths and inaccuracies circulating in the post-1994 literature on Rwanda, one central question arises: have factual inaccuracies and limited or poor-quality evidence been the main points of concern, criticism and dispute to have arisen from the advocacy-orientated, advocacy-related and scholarly literature on the Rwandan mass violence of April-July 1994? Or does the problem lie in the interpretive frameworks used to analyse or “process” the basic facts and evidence?

⁵⁵ Ibid.; René Lemarchand, “A History of Genocide in Rwanda,” review of *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda*, by Mahmood Mamdani, *Journal of African History* 43, no. 2 (2002): 307.

⁵⁶ Longman, 33. See also Lemarchand, review of *When Victims Become Killers*, 307.

⁵⁷ Mamdani, XIII.

⁵⁸ Ibid., XIV.

To answer the question, one must first grasp: a) how the evidence may be used to establish facts; b) how the facts and evidence function in relation to generalisations; c) how the facts and evidence function in relation to concepts and conceptualisations; d) how the facts and evidence functions in relation to causal and theoretical explanations.

a) The Basic Facts and Evidence

The establishment of the basic facts about past events of mass killing and sexual violence is the substance of descriptive accounts and is a necessary starting point for any interpretive analysis of those events and is the substance of descriptive accounts.⁵⁹ It involves a search for evidence, evidence being usefully understood as the ‘residue’ of past deeds, occurrences and circumstances.⁶⁰ The basic evidence may be usefully understood as the ‘residue’ of past events and past circumstances.⁶¹ Evidence is gathered from sources. In the context of historical research, one distinguishes between primary, secondary and even tertiary sources of evidence. Primary sources include people who have first-hand information about the events under study, for example surviving witnesses, perpetrators and other eye-witnesses.⁶² Primary sources also include any documents and records produced by the people who were directly involved in the investigated events or otherwise generated by others who have directly observed the people who were involved in the investigated events, such as government records, registers, diaries and so forth.⁶³ Secondary sources are those sources that have referred to primary sources for the facts and empirical evidence while tertiary sources refer to secondary sources. In the context of legal proceedings, one distinguishes between direct and indirect/circumstantial evidence.⁶⁴ Direct evidence is that evidence that “proves a fact

⁵⁹ Bryant, 502., 497-498.

⁶⁰ Ibid., 497-498.

⁶¹ Bryant, 498.

⁶² Dominic LaCapra, *History and Criticism* (Ithaca: Cornell University Press, 1985), 18; Levine, 628; Dudai, 791.

⁶³ Levine, 627.

⁶⁴ David Yau Fai Ho, Rainbow Tin Hung Ho, and Siu Man Ng, “Investigative Research as a Knowledge-Generation Method: Discovering and Uncovering,” *Journal for Theory of Social Behaviour* 36, no. 1 (2006): 23-24 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16]

without an inference or presumption and which in itself, if true, establishes that fact.”⁶⁵ Eye-witness testimony is an example of direct evidence, and an eye-witness is an example of a primary source. Direct evidence may also be gathered from primary documents, if the documents explicitly express factual and other details about actions and agreements under investigation. Circumstantial Evidence is “evidence from which a fact-finder can infer whether the facts in dispute existed or did not exist.”⁶⁶ Examples of circumstantial evidence include forensic evidence, such as DNA and fingerprints.⁶⁷ Circumstantial evidence may also be gathered from primary documents that give details from which certain actions and agreements may be inferred. Thus, primary sources do not always provide direct evidence; although the overlap is frequent.

b) The Bearing of the Basic Facts and Evidence on Generalisations

Generalisations entail the description of “broad patterns” of occurrences from facts based on limited samples of empirical evidence.⁶⁸ They may be unavoidable in empirical studies. The question is whether the samples are representative and/or what level of inductive support they provide for those generalisations.

c) The Bearing of the Basic Facts and Evidence on Concepts and Conceptualisations

Conceptualisation is the process whereby individuals and groups – whether they are members of a language, political, professional or other community – come to agreements about the rules concerning the actual or possible use of terms, thereby controlling to some degree what is commonly understood by the use of those terms.⁶⁹ The product of the process is called a *concept*. Concepts are different from conceptions in that conceptions

⁶⁵ Kevin Jon Heller, “The Cognitive Psychology of Circumstantial Evidence,” *Michigan Law Review* 105, no. 2 (2006): 248.

⁶⁶ *Ibid.*, 250.

⁶⁷ *Ibid.*, 241; Ho, Ho and Ng, 23.

⁶⁸ Orentlicher, 95.

⁶⁹ Earl Babbie and Johann Mouton, *The Practice of Social Research* (Oxford: Oxford University Press, 2001), 109, 111.

have to do with individual perspectives and perceptions, while concepts are general and inter-subjective.⁷⁰

Conceptualisation involves the specification of one or more *indicators* of what the above-mentioned individuals or groups have in mind, indicating the presence or absence of the concept under review or study.⁷¹ Indicators pertain to what Abraham Kaplan distinguishes as three classes of things that scientists (and others) are concerned with measuring.⁷² The first class is *direct observables*, which entails those things that people can observe simply and directly. The second class is *indirect observables*, which require “relatively more subtle, complex or indirect observations”. The third class is *constructs*, which are theoretical creations that are based on observations but which cannot be observed directly or indirectly.

At the basic level there are concepts involved in *ordinary language* or *usage* such as ‘killing,’ ‘mass killings,’ and ‘violence’ that are used and understood by the competent speakers of any given language, without reference to special definitions or justifications.⁷³ Nevertheless, the terms can be used incorrectly when they are not used according to the conceptual rules of ordinary usage. *Technical or specialist terms* such as ‘murder’, ‘culpable homicide’, ‘involuntary manslaughter’, ‘rape’ and ‘statutory rape’ have authoritatively determined meanings in law.⁷⁴ ‘Genocide’ is a technical term in as far as it applies to the definition thereof as encapsulated in the *Convention for the Prevention and Punishment of the Crime of Genocide* (henceforth referred to as the Genocide Convention).⁷⁵ Terms like ‘rape’ and ‘murder’ may be used in ordinary language in ways that are similar or contrary to the authoritative legal-technical

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Abraham Kaplan (1964), *The Conduct of Inquiry: Methodology for Behavioural Sciences* (New York: Thomas Y Crowell, 1964), 55, cited in Babbie and Mouton, 110.

⁷³ Louise du Toit, “Conceptual Analysis,” in *Intellectual Tools: Skills for the Human Sciences*, ed. Deon Roussow (Pretoria: Van Schaik, 2000), 23.

⁷⁴ Ibid., 25.

⁷⁵ *Convention for the Prevention and Punishment of the Crime of Genocide*, Approved and Proposed for Signature and Ratification or Accession by General Assembly Resolution 260 A (III) of 9 December 1948, Entry into force January 1951, in Accordance with Article XIII, Article 2 [Online]. Available: http://www.unhchr.ch/html/menu3/b/p_genoci.htm [2007, November 28].

definitions thereof. *Descriptive terms* with historical and cultural origins - such as 'pogroms', 'lynchings' and 'ethnic cleansing' - were part of ordinary usage in certain historical contexts and social contexts (Eastern Europe, the American South, the Balkans), but have since been incorporated into (scholarly) comparative genocide studies for other contexts.⁷⁶ When used in the latter sense for academic and scholarly purposes, it is crucial that they be clearly defined and used consistently while keeping the original usage in mind.

Theoretical concepts such as 'ethnocide' and 'gendercide' are formulated within general theories that are elaborated in abstract conceptual frameworks around law-like generalisations linked to empirical evidence.⁷⁷ They require a general and systematic understanding of the theory as a whole; contingently, their definitions and justifications are bound up with the justifications of the theory as a whole. *Invented terms* with stipulative definitions have meanings and definitions that are stipulated by the inventor/user of the term.⁷⁸ This means that stipulative definitions are neither right nor wrong; but this also means that nobody else is bound to the new term or its meaning and individuals can choose to ignore it or to make up their own terms with different stipulative meanings. This was the case with the term 'genocide' when the jurist Raphaël Lemkin coined it in 1944.⁷⁹ He then campaigned for it to become a technical term in law. He eventually succeeded when as parts of his concept were incorporated in the Genocide Convention in 1948 and subsequent international law.⁸⁰ "Genocide" as a legal-technical term has a different meaning and a higher status than the stipulative term. Concepts also concern the problem of classification, which requires "clarity and closure about the scope of application of a particular concept," in relation to another concept.⁸¹

⁷⁶ Carl G. Hempel, *Philosophy of Natural Science* (Engelwood Cliffs: Prentice Hall, 1966), 85-86; Drazen Petrovic, "Ethnic Cleansing – An Attempt at Methodology," *European Journal of International Law* 5 (1994): 343, 347; *YIVO Encyclopedia of Jews in Eastern Europe* (2005), s.v. "Pogroms".

⁷⁷ Hempel, 88.

⁷⁸ *Ibid.*, 85-86.

⁷⁹ Raphaël Lemkin, *Axis rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington D.C.: Carnegie Endowment for International Peace, 1944), 79.

⁸⁰ Samantha Power, *A Problem from Hell: America in the Age of Genocide*, Revised ed. (New York: Harper Perennial, 2007), 47-60.

⁸¹ du Toit, "Conceptual Analysis," 24.

d) The Bearing of the Basic Facts and Evidence on Causal and Theoretical Explanations

Causal and theoretical explanations require that there is agreement regarding the basic empirical facts about the killings to be *explained* (technically the *explanandum* or dependent variable) as a condition for proposing different causes as independent variables or as theoretical explanations (technically the *explanans*).⁸² Causal explanations propose a factor or a set of factors - based directly on the empirical evidence or facts - as the cause (independent variable) and an event or phenomenon as the consequence (dependent variable).⁸³ Causal explanations depend on logical inferences between the set of factors proposed and the event/phenomenon proposed. Theoretical explanations, like concepts, do not depend simply or directly on the empirical evidence. They are composed of abstract related theoretical entities that point to possible observations.⁸⁴

1.4. Research Methodology

This study is conducted through a literature review of four selected works on the Rwandan mass violence of April-July 1994. This study includes: a work that is an example of advocacy-related investigative journalism; a work that is an example of advocacy-orientated human rights reporting; and two works that each provide an example of scholarly theoretical analysis. All the works are typically concerned with more than one issue or argument. This study has identified the main issue in each work and endeavours to limit its examination to the main issues. The works are organised thematically: two works employ different methods to explore the subject of mass civilian participation in the violence of the demarcated period; two works are similar in their focus on the violence directed at females and males respectively. The study separates the basic facts that are the foundation of each work from the interpretive frameworks used by

⁸² Andre du Toit and Annette Seegers, *An Introduction to the Study of Politics* (Unpublished notes: University of Cape Town, 1997), 12-13.

⁸³ *Ibid.*

⁸⁴ Garvin McCain and Erwin M. Segal, *The Game of Science* (St. Paul: Brookes/Cole Publishing Company, 1969), 101.

the respective authors. The source critical method is used to evaluate the verity of the facts as well as the credibility and reliability of the sources of the evidence. With regard to the interpretive frameworks, the study notes that the works of investigative journalism and human rights reporting appeal to International Law as a standard by which to interpret the facts and evidence. The scholarly works develop their own concepts concerning the killings. This study contextualises their concepts within the broader sub-field of comparative genocide studies and compares them to the authoritative legal-technical definition of genocide. Furthermore, one scholarly work utilises an identity-based theory that seeks to provide an explanation of communal conflict. This theory will be looked at in relation to other identity-based theories on conflict. The other scholarly work requires familiarity with the theoretical construct of gender and gender-based theory. The research methodology of this study is explained in greater detail in Chapter Two.

1.5. Research Limitations

Due to the limited selection of works to be reviewed as well as to budgetary, geographical and time constraints, it has not been possible to conduct original fieldwork research in order to ascertain facts and to test the theories presented in the literature. Thus, this study can only be viewed as a starting point suggesting what the problems might be with regards to the facts, empirical evidence and the interpretive frameworks in the broader literature on the Rwandan mass violence of April-July 1994. Since it is not possible to interact directly with the original evidence, the study relies on other published sources and critical reviews to assess problems with facts and evidence within the selected work. Where relevant, the study has referred to legal documents which the International Criminal Tribunal for Rwanda has made available to the public on its online archive and to Rwandan legislation (also available online).

1.6. Works Selected for Critical Review

The works to be reviewed are arranged first by theme and then in the order of the date of their publication.

a) *Works investigating Mass Civilian Participation in the Mass Killings of April-July 1994*

Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001)

Mamdani's work is included as an example of scholarly work seeking to provide a theoretical explanation of mass civilian participation in the mass killings of April-July 1994. His study involved a consideration of empirical evidence on the 1994 mass killings, using human rights organisations as his main sources and including a few of his own original interviews.⁸⁵ His study also involved viewing the events of April-July within the broader context of Rwandan pre-colonial, colonial and pre-1994 post-colonial history. In the latter regard, Mamdani referred to the empirical research produced by the "tiny coterie of Rwanda specialists" among mainly Western scholars ("mostly Belgian, French and North American").⁸⁶

His point of departure is the agreement between the sources and his own observations that the mass killings were, overall, perpetrated by members of the Hutu majority group within Rwanda's population overwhelmingly against members of the Tutsi minority group.⁸⁷ He claimed that the killing of Tutsi (and not of other possible victims of the killing) was 'genocide'.⁸⁸ He stipulated his own concept of genocide and proposed that in order to explain how Hutu came to be pitted against Tutsi in genocidal violence, one must understand the historical origin and evolution of Hutu and Tutsi as opposed "political

⁸⁵ Mamdani, XIII, 184-233.

⁸⁶ Ibid., XIII, 41

⁸⁷ Ibid., 3-9.

⁸⁸ Ibid., 5.

identities”.⁸⁹ This study investigates the verity of the facts and reliability and adequacy of the evidence that Mamdani presented in support of the facts about the killings. It then investigates the theoretical framework that Mamdani created through his combination of his concept of genocide and his theory of political identity. From there, the study investigates how Mamdani applied his theoretical framework in his interpretation of the historical facts and the facts of mass civilian participation in the mass killings.

Linda Melvern, *Conspiracy to Murder: the Rwandan Genocide*, revised ed. (London: Verso, 2006)

Melvern’s book is also included in this study for its contribution to the understanding of how the mass civilian participation in the 1994 mass killings was made possible. It is an example of *advocacy-related* investigative journalism. Melvern’s book introduced evidence from the previously unexamined primary documentary sources, namely the records of Rwanda’s former government and military (the *Forces Armées Rwandaises*/FAR or Rwandan Armed Forces/RAF) in the years and months leading up to – and including – the mass killings of April-July 1994.⁹⁰ The records provide previously top-secret information about communications and activities of the military and civilian government. Some of these documents have subsequently been added to Melvern’s archive (which appears to be accessible to scholars and possibly other researchers).⁹¹

Melvern contended that the killing of the Tutsi constituted genocide and that Hutu mass civilian participation in the killing of Tutsis in April-July 1994 was the result of a conspiracy to commit genocide within a group of high-level Hutu military and government officials.⁹² These officials then formulated a genocide plan. Melvern claimed that documentary sources from the government and the military “included evidence of the planning of genocide” and that this new material “gave a unique insight into the minds of the conspirators and how they determined that genocide and the racist ideology

⁸⁹ Ibid., 21-33.

⁹⁰ Melvern, *Conspiracy to Murder*, XIV-XVI. Melvern simply stated that she gained access to these records. She did not specify how she gained access to them.

⁹¹ Ibid., XIV, XVI.

⁹² Ibid.

that underpinned it should become a part of government policy”.⁹³ Making reference to some of the trials of high-ranking military and civilian officials at the International Criminal Tribunal for Rwanda (ICTR), Melvern set out to show that these individuals needed to be convicted for their part in the ‘conspiracy to commit genocide’ against the Tutsi group. To underscore that ‘genocide’ and ‘conspiracy to commit genocide’ are punishable crimes under International Law, Melvern made reference to the *Genocide Convention*.⁹⁴ This is a treaty that, as the title proclaims, bound signatory States to prevent and punish instances of genocide commission and conspiracy according to the legal-technical definition of genocide found therein. She also included materials detailing the ICTR Prosecution team’s building of a genocide conspiracy case against a number of high-ranking military officers and informed the reader that the evidence produced in one trial included some of the military documents she had discovered in Kigali (Rwanda’s capital city) – which had subsequently become part of her archive.⁹⁵ Melvern asserted that these trials were of public interest worldwide because “whatever evil may befall any group, nation or people” was a matter of concern “for the entire human family.”⁹⁶

There are a number of facts about military activities that Melvern presented from the military documentary sources, which may serve as the basis of interpreting the presence of a genocide conspiracy. This study limits its examination to Melvern’s factual account of the creation and expansion of the civil defence programme for the mass training and arming of civilians (as outlined in the military documents) and her interpretive argument that this programme constituted part of a conspiracy and plan to commit genocide.

b) Works Investigating Mass Sexual Violence against Females and the Selective Mass Killing of Males

Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme (FIDH), *Shattered Lives: Sexual Violence during the Rwandan Genocide and*

⁹³ Ibid., XIII-XIV.

⁹⁴ Ibid., XV.

⁹⁵ Ibid., XIV. See Longman’s statement about Melvern collecting useful primary documentary sources at the Hugh Owen Library in section 1.2 of this chapter.

⁹⁶ Ibid., XV.

its Aftermath (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de l'Homme, 1996).⁹⁷

This report from Human Rights Watch and FIDH is included as an example of advocacy-orientated human rights reporting. The report documented cases of rape and other acts/forms of sexual violence perpetrated in 1994 predominantly against Tutsi women and girls and to a lesser extent against Hutu women and girls.⁹⁸ This documentation was mainly based on interviews with surviving victims of sexual violence, but also included testimonies from medical practitioners and Rwandan women's organisations as well as Rwandan government and United Nations reports.⁹⁹ They argued that the evidence presented "showed" that rape was systematic and "extremely widespread".¹⁰⁰ It is the first work to focus on the aspect of sexual violence against women in Rwanda in 1994 and is commonly cited in secondary analyses on the subject.¹⁰¹

The report appealed to the ICTR and to the Rwandan government to investigate and prosecute sexual violence perpetrated against women in Rwanda.¹⁰² Referring to provisions in International Law, the report argued that all the identified acts of sexual violence could be prosecuted either as 'genocide', crimes against humanity or 'war

⁹⁷ Human Rights Watch and Fédération Internationale des Ligues des Droits de l'Homme (FIDH), *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de l'Homme, 1996), vii. Binaifer Nowrojee is the primary writer of the Human Rights Watch Report under review. She is a scholar of law and a consultant to the Human Rights Watch Women's Rights Project. Janet Fleischman and Alison Des Forges also contributed to the report's writing.

⁹⁸ *Ibid.*, 24.

⁹⁹ *Ibid.*, vii, 24.

¹⁰⁰ *Ibid.*, 2.

¹⁰¹ Human Rights Watch, *Shattered Lives*, cited in Adam Jones, "Gender and Genocide in Rwanda," *Journal of Genocide Research* 4, no. 1 (2002), 65, 85-86; cited in Lisa Sharlach, "Gender and Genocide in Rwanda: Women as Agents and Objects of Genocide," *Journal of Genocide Research* 1, no. 3 (1999): 394-395; cited in Clotilde Twagiramariya and Meredith Turshen, "Favours to Give and Consenting Victims: the Sexual Politics of Survival in Rwanda," in *What Women do in Wartime*, eds., Meredith Turshen and Clotilde Twagiramariya (London and New York: Zed Books, 1998), 103, 115. Twagiramariya offered a brief analysis of sexual violence against women before the publication of this report, which does not appear as comprehensive as the report under review. See Clotilde Twagiramariya, "Women as Victims of Power Conflicts: the Case of Rwanda," *Association of Concerned African Scholars Bulletin*, no. 44/45 (1995): 13-18.

¹⁰² Human Rights Watch and FIDH, *Shattered Lives*, 8-10.

crimes’ – provided that the definitional elements of each crime were met.¹⁰³ The report was however, mainly concerned with “showing” that the mass sexual violence of April-July 1994 that was aimed against Tutsi women constituted genocide.

This study examines the facts of sexual violence as presented in the report. It also examines the generalisation about the widespread nature of sexual violence as well as the report’s motivations for the prosecution of acts of sexual violence as ‘genocide’, ‘crimes against humanity’ or ‘war crimes’.

Adam J. Jones, “Gender and Genocide in Rwanda,” *Journal of Genocide Research* 4, no. 1 (2002): 65-94.

Jones’s article is included in this study as another example of a scholarly theoretical analysis. It is a direct response to the *Shattered Lives* report, choosing instead to focus primarily on the apparently deliberate disproportionate killings of Tutsi males (and some Hutu males) in the mass violence of April-July 1994.¹⁰⁴ The facts about the killing of males are gathered from Jones’s selection of five human rights reports.¹⁰⁵ Jones argued that these killings were “*gendercides*”: gender-selective killing.¹⁰⁶ *Gendercide* is a theoretical concept attached to a specific gender theory and requiring an explanation of gender (an abstract concept) as an analytical tool.¹⁰⁷ The article under this study’s review is a refinement and further development of his previous work in the conceptualisation of

¹⁰³ Ibid., 27-31.

¹⁰⁴ Adam J. Jones, “Gender and Genocide in Rwanda,” *Journal of Genocide Research* 4, no. 1 (2002): 69-75, 85-87.

¹⁰⁵ African Rights, *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995); African Rights, *Rwanda – Not So Innocent: Women as Killers* (London: African Rights, 1995), Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme, *Leave None to Tell the Story: Genocide in Rwanda* (New York and Paris: Human Rights Watch Fédération Internationale des Ligues des Droits de l’Homme, 1999); Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme, 1996); Organisation of African Unity, *International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events*, July 7, 2000 [Online]. Available: <http://www.oau-oua.org/Document/ipep/ipep.htm>, cited in Adam Jones, “Gender and Genocide,” *Journal of Genocide Research* 4, no. 1 (2002): 65.

¹⁰⁶ Jones, “Gender and Genocide,” 72.

¹⁰⁷ Ibid., 69-73.

gendercide.¹⁰⁸ Jones understood “gendercide” to be the early or “onset phase” of genocide.¹⁰⁹ His theoretical analysis is meant to explain why males tended to be killed first and in larger numbers. This study examines whether the fact of the disproportionate killing of males is an agreed upon fact supported by the evidence before taking a closer look at the theoretical case made.

1.7. Basic Background Facts: The Rwandan Genocide of 1994 and Surrounding Events

On 1 October 1990, a guerrilla organisation known as the Rwandan Patriotic Army/Front (RPF/RPA) launched its first attempted invasion of Rwanda from its base in Uganda.¹¹⁰ Its leadership and soldiers were mostly second generation Rwandan Tutsi refugees from the political violence surrounding the 1959 “Social Revolution” against the Tutsi monarchy and aristocracy, and subsequent episodes of mass violence against Tutsis during the administration of the Rwandan President Grégoire Kayibanda (1962 -1973).¹¹¹ A few were relatively recent Hutu political opponents to the regime established by President Juvénal Habyarimana since 1973, under the *Mouvement Révolutionnaire National pour le Développement* (MRND).¹¹² Most of the refugees had failed to secure full citizenship in their host countries, using invasion to effect their own repatriation and to call for multiparty democracy in Rwanda.¹¹³ Since Rwanda’s independence, Tutsis

¹⁰⁸ Adam J. Jones, “Gendercide and Genocide,” *Journal of Genocide Research* 2, no. 2 (2000): 185-211. cited in Jones, “Gender and Genocide,” 94.

¹⁰⁹ Jones, “Gender and Genocide,” 87.

¹¹⁰ Mamdani, *When Victims Become Killers*, 186; Linda Melvern, *A People Betrayed: the Role of the West in Rwanda’s Genocide* (London and New York: Zed Books, 2000), 28; Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (London: Hurst and Company, 1995), 93. ‘Rwandan Patriotic Front’ and ‘Rwandan Patriotic Army’ were meant to convey the idea of a political wing and a military wing respectively of the same organization. The literature suggests that the distinction was not clear in practice and that the organization was predominantly known as the RPF. Since Rwanda is largely a Francophone country, the organization – now in government – is known as the Front Patriotique Rwandais (FPR). However the organization has its origins in an Anglophone country (Uganda) and is still internationally known as the RPF.

¹¹¹ Mamdani, *When Victims Become Killers*, 160-184; Mironko, “Ibitero, 177, 184;” Catharine Newbury and David Newbury, “A Catholic Mass in Kigali: Contested Views of the Genocide and Ethnicity in Rwanda,” *Canadian Journal of African Studies* 33, no. 2/3 (1999): 296-299, 302-303.

¹¹² *Ibid*; Prunier, 76.

¹¹³ Melvern, *A People Betrayed*, 29.

had been systematically excluded from national government and the army.¹¹⁴ Furthermore, discrimination occurred within the Hutu majority, with the Kayibanda administration favouring Hutus from Rwanda's southern *préfectures* over Hutus from the north (Kayibanda being a Hutu southerner) and the Habyarimana administration similarly favouring Hutu northerners over southerners on the basis of Habyarimana's (and his supporters') origins.

The Habyarimana administration responded to the RPF invasion and subsequent military advances with massive arrests of suspected RPF collaborators (mostly Tutsis) and mass killings of Tutsis.¹¹⁵ From 1990 to 1993 an estimated 2000-3000 Tutsis of the Bagogwe and Bahima sub-groups were killed in operations visibly directed by local authorities and carried out by ordinary civilians or martially-trained civilian militias.¹¹⁶ Responding to international criticism about the refugee problem and human rights abuses in Rwanda, Habyarimana hastily began a democratization processes in 1991 and sat at the head of a multiparty coalition government by 1992.¹¹⁷ The democratisation process saw the formation of four major opposition parties, which became part of the multiparty government: the *Coalition pour la Défense de la République* (CDR); the *Mouvement Démocratique Républicain* (MDR); the Parti Libéral (PL); and the *Parti Social Démocrate* (PSD).¹¹⁸ The MRND was "reborn" as the *Mouvement Révolutionnaire*

¹¹⁴ Newbury and Newbury, "A Catholic Mass in Kigali," 299; Peter Uvin, "On Counting, Categorizing and Violence in Burundi and Rwanda," in *Census and Identity: the Politics of Race, Ethnicity and Language in National Census*, eds. David I. Kertzer and Dominique Arel (Cambridge and New York: Cambridge University Press, 2002), 164.

¹¹⁵ Human Rights Watch, *Rwanda: Talking Peace and Waging War, Human Rights Since the October 1990 Invasion*, 27 February 1992: 8-9. In 1991, The Rwandan government eventually admitted to arresting 8 047 persons, while Africa Watch (a division of Human Rights Watch) estimated that 10 000 were arrested and eventually released in 1991.

¹¹⁶ Human Rights Watch, and FIDH, *Leave None to tell the Story*, 70-73; Mamdani, *When Victims Become Killers*, 192-194; Melvern, *Conspiracy to Murder*, 17-19, 55-56.

¹¹⁷ Christopher Clapham, "Rwanda: the Perils of Peacemaking," *Journal of Peace Research* 35(2)(1998): 198-205; Alan J. Kuperman, "Provoking Genocide: a Revised History of the Rwandan Patriotic Front," *Journal of Genocide Research* 6, no. 1 (2004): 71-74; Samantha Power, *A Problem from Hell: America in the Age of Genocide* (New York: Harper Perennial, 2007), 345-346.

¹¹⁸ Isaac Kamola, "The Global Coffee Economy and the Production of Genocide in Rwanda," *Third World Quarterly* 28, no. 3 (2007): 585; Mamdani, *When Victims Become Killers*, 203; Melvern, *Conspiracy to Murder*, 24. In keeping with the democratic spirit, the MRND was renamed the MRNDD – the *Mouvement Révolutionnaire National pour le Développement et la Démocratie*. The MDR was a re-invention of President Kayibanda's party, which had formed the basis of his totalitarian regime of 1962-1973.

National pour le Développement et la Démocratie (MRNDD). The CDR was initially the only party that was ostensibly against a power-sharing deal with the RPF and its members were predominantly defectors from the old MRND party. Its anti-RPF and anti-Tutsi stance was matched by the views espoused on the 'hate' radio station *Radio-Télévision Libre des Mille Collines* (RTL) and the newspaper *Kangura*.¹¹⁹ Each party had a youth wing that eventually became a martially-trained civilian militia in the face of fierce inter-party rivalries.¹²⁰ The most well-known of these was the *Interahamwe* of the MRNDD and *Impuzamugambi* of the CDR. Repeated RPF incursions cast suspicion over whether the RPF itself was in favour of power-sharing. The biggest RPF offensive, staged in February 1993, came at the time of a ceasefire. Intra-party divisions between those who supported continued negotiations with the RPF and those who were against the RPF became more pronounced. A peace agreement known as the Arusha Accords was eventually signed on 4 August of 1993, which gave the RPF representation in the government and made provisions for the incorporation of the RPF soldiers into the Rwandan army.¹²¹ The United Nations Assistance Mission in Rwanda was deployed in November 1993 to oversee the implementation of the agreement.¹²²

On 6 April 1994, a ground-to-air missile shot Habyarimana's plane on his return from the peace talks in Arusha, Tanzania.¹²³ It was never clear who exactly conducted this assassination, but each side of the war blamed the other. Within hours of this incident, Rwandan Prime Minister Agathe Uwilingiyimana was also assassinated. The mass killing of Tutsis commenced thereafter, alongside the killing of Hutu political "moderates" and ordinary Hutus who opposed the killings. Implicated in the killings and the sexual violence were the Rwandan Armed Forces, civilian militias of every political

¹¹⁹ Mamdani, *When Victims Become Killers*, 190; Melvern, *Conspiracy to Murder*, 49-54. The argument is that some of the shareholders of the RTL were CDR and MRNDD members who were in government or the army.

¹²⁰ Kamola, "The Global Coffee Economy," 585; Melvern, *Conspiracy to Murder*, 36-38, 54-55. Melvern argued that most of this violence was actually committed by members of the MRNDD and CDR or individuals otherwise closely aligned to the two parties with the purpose of spreading suspicion and division among the parties. Later it would be used to attempt to unify the parties against the RPF.

¹²¹ Clapham, "The Perils of Peacemaking," 202-204; Mamdani, *When Victims Become Killers*, 199. The CDR was the only major party left out of the proposed transitional coalition government.

¹²² *Ibid.*

¹²³ *Ibid.*, 216. The President of Burundi was also on board.

party, civilians trained within the State's civil defence programme and ordinary Hutu civilians.¹²⁴ The killings ended with the RPF/RPA's military victory in mid-July. There are claims and some evidence that the RPA engaged in the mass killings of Hutu civilians around this time.¹²⁵ The RPA-perpetrated killings are beyond the scope of this study.

1.8. Chapter Organisation

The study is organised into five chapters including the current one. Chapter Two provides a more detailed outlining of the research methodology to be used in examining the selected works. Chapter Three provides an examination of the issues raised with regard to the works of Mamdani and Melvern. Chapter Four provides an examination of the issues raised with regard to the *Shattered Lives* report and Jones's article. Chapter Five contains the study's closing reflections.

¹²⁴ Human Rights Watch and FIDH, *Rwanda, Shattered Lives*, 12; Melvern, *Conspiracy to Murder*, 252

¹²⁵ Human Rights Watch, "Leave None to Tell the Story," 540, 553; Philip Verwimp, "Testing the Double-Genocide Thesis for Central and Southern Rwanda," *Journal of Conflict Resolution* 47, no. 4 (2003): 423.

Chapter Two: Research Methodology

2.1. Introduction

The study has posed the question of whether the main points of concern, criticism or dispute coming from the literature on the Rwandan mass violence of April-July 1994 are regarding the basic facts and evidence presented within the literature or regarding the interpretive frameworks used to “process” those facts. The study proposes that the answer lies in first assessing the research priorities and objectives behind advocacy-related, advocacy-orientated and scholarly literature. This probe uncovers the preferred methods of evidence-gathering and interpretive frameworks of the “literary genres” specified. This chapter of the study further discusses the methods to be used to assess the facts, evidence and the “genre-relevant” interpretive frameworks. It begins with a basic introduction to source criticism, the method used for probing the facts and evidence. It then moves on to a very brief discussion of how generalisations are made from the evidence. The chapter looks at how mass killings and mass sexual violence may be interpreted under International Law, which is the framework proposed by Melvern and Human Rights Watch/FIDH. The legal approach is contrasted with the social-scientific approach adopted in the subfield of comparative genocide studies, which has some relevance to understanding Jones’s and Mamdani’s conceptualisations of gendercide and genocide respectively. The chapter ends with a discussion of theories of communal identities and with an introduction to how the theoretical construct ‘*gender*’ may be used as an analytical tool.

2.2. Basic Facts, Empirical Evidence and Interpretive Frameworks

2.2.1. Source Criticism as a Method of Investigating Basic Facts and Empirical Evidence about Mass Killings and Sexual Violence

Source criticism is associated with a “documentary” or “objectivist” model of knowledge, whose basis of research is the search for facts about things, events or phenomena.¹²⁶ The objective of the researcher is to find out as many details as is possible about past events through a critical review of the fragmentary evidence presented by a number of sources, and to thereby uncover the factual inaccuracies and misrepresentations garnered from the sources.¹²⁷ Scholars are required to critically evaluate the quality of the both their sources and the evidence they glean from them in the same way that the courts, humans rights organisations and journalists are required to evaluate their evidence.¹²⁸ Using the “hermeneutics of suspicion”¹²⁹ the researcher considers: the *authenticity* and proof of authorship of a documentary source; the *credibility* of an informant/witness (that is, the

¹²⁶ Dominic LaCapra, *History and Criticism* (Ithaca: Cornell University Press, 1985), 18; Joseph M. Bryant, “On Sources and Narrative in Historical Social Science: a Realist Critique of Positivist and Postmodernist Epistemologies,” *British Journal of Sociology* 51, no. 3 (2000): 497-498, 502.

¹²⁷ Daniel Mathewson, “A Critical Binarism: Source Criticism and Deconstructive Criticism,” *Journal for the Study of the Old Testament* 98 (2002): 13. Source criticism, as method of obtaining the ‘real story’ about past events/phenomena, has itself been subject to fierce epistemological debates. One example of such debates is that around the work of Leopold von Ranke, the German historian who introduced source criticism to the historical studies. Ranke is remembered for having said that the historian’s task was not to sit in judgement of the past but only to show “how it actually was” (*wie es eigentlich gewesen*). On this basis, Braw argues that some have mistakenly placed Ranke as a positivist. However, Braw’s re-interpretation of von Ranke places the historian as a historicist who was aware of his own socio-cultural influences and who attempted to view the past in its relative socio-cultural context. Leopold von Ranke, *Geschichten der romanischen und germanischen Völker von 1494 bis 1514*, 3rd ed. (Sämtliche Werke, vol. 33)(Liepzig: Duncker & Humblot, 1885), VII, quoted and cited in J.D. Braw, “Vision as Revision: Ranke and the Beginning of Modern History,” *History and Theme* 46, no. 4 (2007): 46-47, 48.

¹²⁸ Diane F. Orentlicher, “Bearing Witness: the Art and Science of Human Rights Fact-Finding,” *Harvard Human Rights Journal* 3 (1990): 109-121 [Electronic]. Available from HeinOnline at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16]; David Yau Fai Ho, Rainbow Tin Hung Ho, and Siu Man Ng, “Investigative Research as a Knowledge-Generation Method: Discovering and Uncovering,” *Journal for Theory of Social Behaviour* 36, no. 1 (2006): 23-24 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16]. Ho, Ho and Ng write of investigative journalism/reporting as one of two “truth-seeking traditions within what is broadly termed “investigative research.” See also: *The Prosecutor versus Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Judgement, 18 December 2008, paragraphs 89-94 [Online]. Available: <http://www.unict.org/Portals/0/Case/English/Zigiranyirazo/Judgement/081218e.pdf> [2010, January 10].

¹²⁹ Mathewson, 13.

external aspects of the source); as well as the *factual accuracy* of the evidence presented by the source (*internal aspects*).¹³⁰ With regard to factual accuracy the researcher considers two components: the internal component, which refers to the ability of the evidence to stand on its own in terms of its “directness, coherence and logical consistency”; the external component, which refers to the extent of correspondence or agreement between one source and other independent sources on the facts.¹³¹ In principle, primary sources are considered to be more reliable than secondary sources because of their proximity to the event in question.¹³² Among the works to be reviewed, those of Melvern and Human Rights Watch/FIDH are secondary sources in the historical sense. The works of Mamdani and Jones are tertiary sources. However one keeps in mind that the authors’ claim to credibility may be that they are trained observers who are expected to critically sift through evidence – regardless of whether the evidence was received directly from the primary sources (as is largely the case with Melvern and Human Rights Watch/FIDH) or from secondary sources (as is largely the case with Mamdani and Jones).

2.2.2. *Making Generalisations about Mass Killings and Sexual Violence*

Human rights investigators and social scientists seek not only to verify individual cases of violence but also to make generalisations about the extent of the violence, “the nature of government (and where relevant, insurgent) responsibility for the abuses, and the significance of apparent trends” within a given time period.¹³³ They have a responsibility to guard against selection procedures that would produce a distorted picture of the general patterns of violence in a country.¹³⁴ To minimise the evidentiary distortions that may be presented by one particular source, they need to review a broad range of sources in order to identify potential witnesses for interviewing purposes.¹³⁵ Investigators need to collect testimonies from a broad range of witnesses from different parts of the area under

¹³⁰ Bryant, 508; Francis Stuart Chapin, *Field Work and Social Research* (New York: The Century Co., 1920), 37; Ho, Ho and Ng, 23;

¹³¹ Ho, Ho and Ng, 23-24.

¹³² La Capra, 18.

¹³³ Orentlicher, 95

¹³⁴ *Ibid.*, 110.

¹³⁵ *Ibid.*, 110, 112.

investigation which, when viewed as a whole, would provide a representative picture of patterns of abuse in that area.¹³⁶ If investigators are unable to get a sample of testimonies that are representative of patterns of abuse in the whole area because other parts of the area are (for whatever reason) inaccessible to the investigator or witnesses in this area are unwilling/unable to give testimony, then investigators must convey the effect of the constraints on the final conclusions presented in the report.¹³⁷

2.2.3. Mass Killings, Mass Sexual Violence and International Law

As advocacy-related and advocacy-orientated literary genres, investigative journalism and human rights investigation are essentially driven by moral concerns or moral principles, that is, the ‘alleviation’ of ‘human suffering’ or the public exposure of ‘wrongdoings’.¹³⁸ However sceptics of such ‘humanitarian’ concerns have argued that moral principles are not universal and conceptions of ‘human suffering’ are both culturally-determined and era-specific.¹³⁹ To counter challenges to their claim of objectivity, writers within the two genres use a strategy described by some observers as the “objectification of moral standards” by which they locate some “empirically determined standard” by which to demonstrate the transgression and harm done.¹⁴⁰ Human rights reporters use the provisions found in International Human Rights Law,

¹³⁶ Ibid., 110.

¹³⁷ Ibid., 112.

¹³⁸ Ron Dudai, “Advocacy with Footnotes: the Human Rights Report as a Literary Genre,” review of *Through No Fault of Their Own: Punitive House Demolitions During the al-Aqsa Intifada* by B’Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, *Human Rights Quarterly* 6, no. 3 (2006): 783-784, 789 [Electronic]. Available from HeinOnline at: <http://www.lib.uct.ac.za.ezproxv.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, May 15]; Theodore L. Glasser and James S. Ettema, “Investigative Journalism and the Moral Order,” *Critical Studies in Mass Communication* 6, no. 1 (1989): 10 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxv.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16]; D.C. Hallin, “The American News Media: a Critical Theory Perspective,” in *Critical Theory and Public Life*, ed. J. Forester (Cambridge: Massachusetts Institute of Technology Press, 1985), 129, cited Glasser and Ettema, 5.

¹³⁹ Ibid.; Bhikhu Parekh, “Rethinking Humanitarian Intervention,” *International Political Science Review* 18, no. 1 (1997): 54-56, cited in Nicholas J. Wheeler and Alex J. Bellamy, “Humanitarian Intervention and World Politics,” in *The Globalization of World Politics: an Introduction to International Relations*, eds. John Baylis and Steve Smith, 2nd ed. (Oxford: Oxford University Press, 2001), 472. An example given of the historical-cultural construction of what is considered ‘condemnable human suffering’ is the practice of slavery, which was widely practiced in past historical epochs but is now condemned under the provisions of International Human Rights Law and under the moral principles of some societies.

¹⁴⁰ Dudai, 784; Glasser and Ettema, 2, 10.

International Humanitarian Law and other international standards (and to a lesser extent domestic law) to interpret instances of violence.¹⁴¹ Investigative journalists have a range of 'objective' standards, rules or guidelines by which to interpret events; but they appear to favour the law as a principle instrument of interpretation.¹⁴²

Melvorn, the investigative journalist, claimed to show that the creation of the Rwandan civil defence programme was the manifestation of a conspiracy and plan to commit genocide against the Tutsi group.¹⁴³ The Human Rights Watch/FIDH authors advocated the investigation and prosecution of rape and other acts/forms of mass sexual violence perpetrated in April-July 1994 "where applicable" as "genocide," "crimes against humanity" and "war crimes",¹⁴⁴ even though the main focus of the report was showing how mass sexual violence against Tutsi women in this period met the definitional elements of the crime of genocide.

Both works have either explicitly expressed or implied that 'genocide', 'crimes against humanity' and 'war crimes' are crimes in International Law, but both have generally avoided explaining under what sub-division of International Law the crimes belong.¹⁴⁵ They may have had good reason: the literature produced by law scholar-practitioners has referred to all three crimes as being subsumed either under International Humanitarian Law or under International Criminal Law, leading to possible confusion among non-specialists.¹⁴⁶ By this study's understanding, the three crimes constitute both serious violations of International Humanitarian Law and crimes under International Criminal

¹⁴¹ Dudai, 784.

¹⁴² Glasser and Ettema, 10.

¹⁴³ Linda Melvorn, *Conspiracy to Murder: The Rwandan Genocide*, revised ed. (London: Verso, 2006), 20-21.

¹⁴⁴ Human Rights Watch and Fédération Internationale des Ligues des Droits de L'Homme (FIDH), *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de L'Homme, 1996), 9, 28-36.

¹⁴⁵ Human Rights Watch and FIDH, *Shattered Lives*, 27, 28; Melvorn, *Conspiracy to Murder*, XV. It is noted that in *Shattered Lives*, the authors referred to International Humanitarian Law in relation to 'war crimes'

¹⁴⁶ See: Rhonda Copelon, "Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law," *McGill Law Journal* 46, no. 1 (2000): 220; Allison Marston Danner, "Constructing a Hierarchy of Crimes in International Criminal Law Sentencing," *Virginia Law Review* 87, no. 3 (2001): 417.

Law.¹⁴⁷ Serious violations of International Humanitarian Law are those acts committed in situations of armed conflict/war in contravention of the laws and customs of war.¹⁴⁸ International Criminal Law encompasses a broader range of internationally punishable crimes, both “crimes of war” and crimes that are not necessarily tied to the context of armed conflict (for example torture, slavery, piracy and terrorism).¹⁴⁹ Genocide and crimes against humanity are recognised as crimes in armed conflict/war and in times of peace.¹⁵⁰ International Criminal Law involves the practice of holding individuals responsible for committing international crimes through criminal prosecution and the establishment of precedents emanating from international criminal prosecution.¹⁵¹ Thus International Criminal Law may be usefully understood as encompassing the “penal aspects of International Humanitarian Law”.¹⁵²

Both authors framed their agendas in the context of ongoing and expected trials at the International Criminal Tribunal for Rwanda (ICTR), which has jurisdiction over crimes of genocide, crimes against humanity and violations of Article 3 Common to the *Geneva Conventions* and of *Additional Protocol II* (‘war crimes’ pertaining to a civil war context).¹⁵³ Article 2 of the *ICTR Statute* is taken directly from the *Genocide Convention*, defining *genocide* as:

“any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.”¹⁵⁴

¹⁴⁷ Danner, 417.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.; William Schabas, “Crimes against Humanity,” in *Encyclopedia of Genocide and Crimes against Humanity*, vol. 1, ed. Dinah L. Shelton (Farmington Hills: Thomson Gale, 2005), 209.

¹⁵¹ Colin Warbrick, “International Criminal Law,” *The International and Comparative Law Quarterly*, 44, no. 2 (1995): 466-467

¹⁵² Danner, 417.

¹⁵³ *Statute of the International Criminal Tribunal for Rwanda*, Resolution 955 (1994) Adopted by the Security Council at its 3454th Meeting on 8 November 1994 UN Doc S/RES/955 (8 November 1994), [Online]. Available: <http://www.unictt.org/Portals/0/English/Legal/Tribunal/English/2007.pdf> [2010, October 17]

¹⁵⁴ *ICTR Statute*, Article 2(2); *Convention for the Prevention and Punishment of the Crime of Genocide*, Approved and Proposed for Signature and Ratification or Accession by General Assembly Resolution 260

Article 2 of *ICTR Statute* further elaborates that genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.¹⁵⁵

Drawing from and modifying the precedent definition of crimes against humanity as laid out in Article 6 of the Charter of the Nuremberg Tribunal and Control Council Law Number 10 (both written in 1945 in the context of post World War II trials to prosecute persons responsible for serious violations of International Humanitarian Law), Article 3 of the *ICTR Statute* defines *crimes against humanity* as:

“...the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: a) Murder; b) Extermination; c) Enslavement; e) Deportation; f) Imprisonment; g) Torture; h) Rape; i) Persecutions on political, racial, or religious grounds; j) Other humane acts.”¹⁵⁶

Article 4 of the *ICTR Statute* fuses the provisions provided by the *Geneva Conventions* and the second Protocol Additional to the Geneva Conventions (*Additional Protocol II*) in order to determine war crimes in the Rwandan context. The four *Geneva Conventions* and their *Additional Protocols* are treaties that lay out prohibited conduct in armed conflicts.¹⁵⁷ Only Article 3 common to the Geneva Conventions and Additional Protocol

A (III) of 9 December 1948, Entry into force January 1951, in Accordance with Article XIII, Article 2 [Online]. Available: http://www.unhchr.ch/html/menu3/b/p_genoci.htm [2007, November 28].

¹⁵⁵ *ICTR Statute*, Article 2(3); *Genocide Convention*, Article 3.

¹⁵⁶ *ICTR Statute*, Article 3. Schabas, 211-213. From Schabas one sees that the definition of crimes against humanity has evolved from 1945. Whereas the Nuremberg Charter held that crimes against humanity were committed in pursuit of aggressive war or crimes against peace, the ICTR Statute has removed this nexus with aggressive war.

¹⁵⁷ The four Geneva Conventions are as follows: *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, including Annex I*, 12 August 1949, 75 UNTS 31; *Convention (II) for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 75 UNTS 85; *Convention (III) Relative to the Treatment of Prisoners of War, including Annexes I-IV*, 12 August 1949, 75 UNTS 135. [Online]. Available:

<http://www.unhchr.ch/html/menu3/b/91.htm> [2009, June 10]; *Convention (IV) Relative to the Protection of Civilian Persons in Time of War, including Annexes I-III*, 12 August 1949, 75 UNTS 287. The Additional Protocols are as follows: *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, entered into force 7 December 1978; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609, entered into force 7 December 1978. [Online]. Available: www.un.org/arabic/preventgenocide/rwanda/text-images/Geneva_Protocol2.pdf-2007-12-21 [2009, June 10]. All Conventions and Protocols are cited in Ntombizozuko Dyani, “Protocol on the Rights of Women

II are applicable to non-international armed conflicts.¹⁵⁸ Article 4 of the *ICTR Statute* states that the following acts are punishable under the ICTR's jurisdiction as Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II:

a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation and any form of corporal punishment; b) Collective Punishments; c) Taking of hostages; d) Acts of terrorism; e) Outrages on personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; f) Pillage; g) The passing of sentences and the carrying out of executions without previous judgement passed by a regularly constituted court, affording all judicial guarantees which are recognized as indispensable by civilised peoples; h) Threats to commit any of the foregoing acts.”¹⁵⁹

Both Melvern and the Human Rights Watch/FIDH authors expressed confidence that the acts and activities that they documented were clearly prosecutable under the provisions outlined above, because the provisions made explicit reference to acts of ‘killing’ and ‘rape’.¹⁶⁰ Furthermore, the Human Rights Watch/FIDH authors were confident that the wording of some of the provisions listed above was open to interpretation (especially in the definition of genocide), thereby allowing for the consideration of acts and forms of sexual violence that were not explicitly enumerated.¹⁶¹ However, one observer of human rights reporting warned that the law is a “plastic medium of discourse, capable of varied, though certainly not infinite interpretations.”¹⁶² He warned that those accused of transgressions/violations had three options: *literal denial* (nothing happened); *interpretive denial* (for example: something happened, but it was not, genocide or conspiracy to commit genocide); and *implicatory denial* (what happened was justified).¹⁶³ He suggested that most disagreements between alleged perpetrators of violence and their critics (human rights reporters and others) are at the level of interpretation.

in Africa: Protection of Women from Sexual Violence during Armed Conflict,” *African Human Rights Law Journal* 6, no. 1 (2006): 172.

¹⁵⁸ Dyani, 173.

¹⁵⁹ *ICTR Statute*, Article 4.

¹⁶⁰ Melvern, *Conspiracy to Murder*, XV; Human Rights Watch and FIDH, *Shattered Lives*, 27-36.

¹⁶¹ Human Rights Watch and FIDH, *Shattered Lives*, 30, 35.

¹⁶² Cohen, 526.

¹⁶³ Cohen, 522.

2.2.4. *The Social Scientific Study of Mass Killing and Mass Sexual Violence in Comparative Genocide Studies*

Social scientists within the cross-disciplinary sub-field of comparative genocide studies are broadly concerned with the same basic facts (*explanandum*): mass killing, sexual violence and other violence against members of a group “that is differentiated from other groups along one or more dimensions.”¹⁶⁴ The mass killing is conceived to be carried out by “individuals who are acting as members or representatives of a group.”¹⁶⁵ The social scientists’ professional claim is that they study different cases of mass killing for the purpose of defining and outlining the “boundaries of a set of cases which they want to study for the purpose of discovering their common elements and analysing the processes that brought them about”.¹⁶⁶ In the case of comparative genocide studies the specific objective is “to identify cases of genocide (or mass killing) and use qualitative, country-case comparisons to isolate commonalities across time and space.”¹⁶⁷ Part of the task entails the scholars’ distinguishing between those cases that they would classify as ‘genocide’ from those they would classify, for example, as ‘*gendercide*’.¹⁶⁸

Social scientists in comparative genocide studies have a conflicted relationship with the technical term of ‘genocide’, which demarcates an international crime. On the one hand ‘genocide’ is a term suited for legally-based analyses such as those carried out by legal scholars/practitioners (lawyers) and human rights reporters/activists. Social scientists are not typically involved in the legal task of regulating international crimes such as genocide and are not strictly bound to the use of technical terms in the way that legal scholar/practitioners and human rights reporters are. Nevertheless, the comparative genocide studies sub-field is historically tied to the juridical origins of the term ‘genocide’: from the coinage of the term by the jurist Lemkin in the context of the Jewish

¹⁶⁴ Stein, 41.

¹⁶⁵ *Ibid.*

¹⁶⁶ Frank Chalk, “Redefining Genocide,” in *Genocide: Conceptual and Historical Dimensions*, ed., George Andreopoulos (Philadelphia: University of Pennsylvania Press, 1997), 47.

¹⁶⁷ Scott Straus, “Second-Generation Comparative Research on Genocide,” *World Politics* 59, no. 53 (2007), 77.

¹⁶⁸ Stein, 39.

Holocaust and its aftermath;¹⁶⁹ to the inter-State acceptance of a common definition of genocide at the inception of the Genocide Convention in 1948.¹⁷⁰ Thus, it may not come as a surprise that the most influential authorities in comparative genocide studies have shown themselves to be heavily influenced by the juridical/human perspective in their concern with the detection and prevention of the mass killing of civilians.¹⁷¹ It would appear that for the most part, social scientists are caught between introducing entirely new analytical definitions of genocide and keeping the essential ‘spirit’ of the legal definition (that is, the spirit of international protection for human groups against organised mass violence).

The requirement that there be an “intent to destroy” a group and the restriction of victim groups to racial, national, ethnical and religious groups are the defining markers of the legal definition of genocide. Lemkin originally defined genocide as “the destruction of a nation or of an ethnic group.”¹⁷² The term genocide is constructed from the ancient Greek derivative ‘*genos*’ (meaning ‘race’ or ‘tribe’) and the Latin derivative ‘*cide*’ (meaning ‘killing’).¹⁷³ Subsequently, social scientists have had the option of using the term ‘genocide’ to designate any mass killing that targets groups on any single or combination of dimensions and of abandoning the requirement of intent articulated in Article 2 of the Genocide Convention.¹⁷⁴ In the place of the requirement of intent, social scientists might choose to focus on the consequences of the killing.¹⁷⁵ However because social scientists can formulate their own conceptualisations of genocide, authors in the sub-field lack

¹⁶⁹ Samantha Power, *A Problem from Hell: America in the Age of Genocide* (New York: Harper Perennial, 2007), 31-61.

¹⁷⁰ Refer to subsection 1.6 in Chapter One.

¹⁷¹ Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven & London: Yale University Press, 1990), cited in Stein, 45; Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven and London: Yale University Press, 1981), cited in Stein, 45; Helen Fein, *Accounting for Genocide: National Responses and Jewish Victimization during the Holocaust* (New York and London: The Free Press and Collin Macmillan Publishers, 1979), cited in Stein, 45.

¹⁷² Raphaël Lemkin, *Axis rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington D.C.: Carnegie Endowment for International Peace, 1944), 79.

¹⁷³ Ibid. See also Power, 42. Power further explained that the Latin derivative *cide* is taken from the infinitive *caedere* (meaning ‘to kill’).

¹⁷⁴ Stein, 48; Beth van Schaak, “The Crime of Political Genocide: Repairing the Genocide Convention’s Blind Spot,” *The Yale Law Journal* 106, no. 7 (1997): 2261-2265.

¹⁷⁵ Stein, 48.

agreement on what genocide is and what genocide is not.¹⁷⁶ One surveyor of the subfield commented that “one author’s genocide is another’s state terrorism”.¹⁷⁷ Whereas scholars are typically expected to give accounts of the works of other genocide scholars in their own analyses, this study uses the legal-technical definition of genocide as the definition by which to compare Mamdani and Jones’s respective conceptualisations of genocide (as discussed in Chapters Four and Five). It was earlier noted that within the Rwanda case study, Jones considered gendercide to be a component of genocide; but in his earlier work, Jones expressed that gendercide might be usefully understood as a type of genocide (this is discussed further in Chapter Five).¹⁷⁸

2.2.5. *Understanding Victims and Perpetrators of Mass Killing and Mass Sexual Violence as Members of Communal Groups*

To understand a strategy of genocide, one must grasp how the perpetrators choose the designated victim group and how the perpetrators differentiate themselves from the victim group.¹⁷⁹ The United Nations member States who contributed to the formulation of the *Genocide Convention* argued that an individual’s membership in a racial, ethnic, religious or national group was usually hereditary and the distinctive features of these groups were permanent; thus distinguishing these groups from those where membership was supposedly voluntary (for example political groups) and whose distinctive features were impermanent.¹⁸⁰ Yet nothing in their argument explained why genocide might be perpetrated against the identified groups.

¹⁷⁶ Ibid., 40-41.

¹⁷⁷ Ibid., 41. See for example: Barbara Harff and Ted Gurr, “Toward Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945.” *International Studies Quarterly* 32, no. 3 (1988): 360 [Electronic]. Available from JSTOR at <http://www.jstor.org> [2005, October 24].

Irving Louis Horowitz, *Taking Lives: Genocide and State Power* (New Brunswick and London: Transaction Books, 1982), 1; Schaak, 2261-2265.

¹⁷⁸ Adam J. Jones, “Gendercide and Genocide,” *Journal of Genocide Research* 2, no. 2 (2000): 200.

¹⁷⁹ Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001), 9; Stein, 41.

¹⁸⁰ Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven and London: Yale University Press, 1981), 26; Matthew Lippman, “The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide,” *Boston University International Law Journal* 3, no. 1 (1985):30. This was the argument of Iran, Soviet Union, Poland and Venezuela, the latter three arguing that protection of political groups in particular, would mean that efforts to combat domestic subversion would be labelled genocide. The ICTR maintained the views of the original drafters of the Genocide Convention

There are at least two complementary bodies of social-scientific scholarship (with some overlap in their concern with mass violence) to which one can refer in attempts to fill this explanatory lacuna. The first is the already mentioned subfield of *comparative genocide research*, which is responsible for the generation of explanations of why and how genocides (and other comparable schemes of human mass killing/elimination occur).¹⁸¹ The second is what one may refer to (in perhaps very broad and oversimplified terms) as the scholarship on *ethnicity* or the study of the basis of communal group differentiation and *identity*.¹⁸² The latter body of scholarship extends to encompass (among other concerns) the study of ethnicity/communal group differentiation as a factor or cause of mass violence, of which armed conflicts/wars and genocide are but a few manifestations.¹⁸³ An independent, extensive, critical and cross-disciplinary survey of the discussions and debates on the available theories of genocide and ethnicity (specifically ethnicity and inter-group violence) within the literature would have been desirable; yet such an endeavour is impossible given the limited scope of this minor dissertation. This sub-section is only a starting point to understanding some of the issues around both bodies of scholarship and serves as an introduction to Mamdani's effort to fuse to his theory of political identity (which entails a rethinking of "ethnicity") with his theory of genocide in order to explain why the Rwandan genocide of 1994 occurred.¹⁸⁴

Scott Straus, a political scientist and expert in comparative genocide research, has provided a review article that serves as a brief history of social-scientific scholarship on genocide: from the "first-generation" pioneering genocide scholars of the 1970s and

about the protection of permanent groups whose membership was primarily hereditary. See *The Prosecutor versus Jean-Paul Akayesu*, section 6.3.1., paragraphs 511-516.

¹⁸¹ Straus, "Second-Generation Comparative Research on Genocide," 479. Straus's reference to genocide as a "topic of study", rather than a "subfield" (as used in the minor dissertation), is noted.

¹⁸² G. Carter Bentley, "Ethnicity and Practice," *Comparative Studies in Society and History* 29, no. 1 (1987), 24-25; Sheldon Stryker and Peter J. Burke, "The Past, Present and Future of an Identity Theory," *Social Psychological Quarterly* 63, no. 4 (2000): 284 [Electronic]. Available from JSTOR at <http://www.jstor.org> [2005, November 12].

¹⁸³ Randall J. Blimes, "The Indirect Effect of Ethnic Heterogeneity on the Likelihood of Civil War Onset," *Journal of Conflict Resolution* 50, no.4 (2006): 536-547; Errol A. Henderson, "Culture or Contiguity: Ethnic Conflict, the Similarity of States, and the Onset of War, 1820-1987," *Journal of Conflict Resolution* 41, no. 5 (1997): 649-668.

¹⁸⁴ Refer to Chapter Three, subsection 3.2.2 under point b.

1980s to the “second-generations of the post Cold-War era.”¹⁸⁵ While he has noted that neither generation of genocide scholars has thus far succeeded in producing a commonly accepted concept of genocide,¹⁸⁶ his review has highlighted that each generation has within itself a few commonly-shared main theoretical perspectives and has highlighted the points of departure between the generations with regards to their respective proposals on the factors leading to genocide. A very limited discussion of his general findings is offered here. Three main claims are identified as being central to first-generation genocide scholarship. The first claim is that “*deep social divisions*”, including cultures of prejudice and entrenched practices of discrimination, are structural causes of genocide.”¹⁸⁷ The second claim is that genocide is a feature of *authoritarian regime types*.¹⁸⁸ The third claim is that genocide is a response to *deprivation* and *social stress* caused by such factors as economic crisis or defeat in war.¹⁸⁹ Second-generation

¹⁸⁵ Straus, “Second-Generation Comparative Research on Genocide,” 476-501. Straus cited the following works as belonging to first-generation genocide scholarship, among others: Chalk and Jonassohn, *The History and Sociology of Genocide*; Kuper, *Genocide*; Fein, *Accounting for Genocide*; Irving Louis Horowitz, *Genocide: State Power and Mass Murder* (New Brunswick, New Jersey: Transaction Books, 1976); Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge: Cambridge University Press, 1989); Isidor Wallimann and Michael Dobkowski, eds., *Genocide and the Modern Age: Etiology and Case Studies of Mass Death* (New York: Greenwood Press, 1987). Kuper, Fein, Chalk and Jonassohn, Horowitz and Wallimann are/were sociologists; Staub is a psychologist; and Dobkowski is a historian. Straus cited the following as works belonging to second-generation genocide scholarship: Mark Levene, *Genocide in the Age of the Nation State*, vol. 1, *The Meaning of Genocide* (London: I.B. Tauris, 2005); Mark Levene, *Genocide in the Age of the Nation State*, vol. 2, *The Rise of the West and the Coming of Genocide* (London: I.B. Tauris, 2005); Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (New York: Cambridge University Press, 2005); Manus I. Midlarsky, *The Killing Trap: Genocide in the Twentieth Century* (Cambridge: Cambridge University Press, 2005); Jacques Sémelin, *Purifier et détruire: Usages politiques des massacres genocides* (Paris: Seuil, 2005); Benjamin A. Valentino, *Final Solutions: Mass Killing and Genocide in the Twentieth Century* (Ithaca: Cornell University Press, 2004); Eric D. Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton: Princeton University Press, 2003). Most of the second-generation genocide scholars reviewed by Straus are political scientists, the exceptions being Weitz (a historian) and Mann (a sociologist).

¹⁸⁶ Straus, “Second-Generation Comparative Research on Genocide,” 494-495.

¹⁸⁷ *Ibid.*, 480. For examples, Straus quoted/cited arguments from the following (no page references): Israel Charny, *How Can We Commit the Unthinkable? Genocide, the Human Cancer* (Boulder Colorado: Westview Press, 1982); Fein, *Accounting for Genocide*; Kuper, *Genocide*.

¹⁸⁸ Straus, “Second-Generation Comparative Research on Genocide,” 481. Straus quoted/cited arguments from the following: Horowitz, *Taking Lives*, 36; Rudolph Rummel, *Death by Government* (New Brunswick, New Jersey: Transaction Publishers, 1994), 1.

¹⁸⁹ Straus, “Second-Generation Research on Genocide,” 482. Straus cited arguments from the following works (no page references): Barbara Harff, “The Etiology of Genocide,” in *Genocide and the Modern Age: Etiology and Case Studies of Mass Death*, eds. Isidor Wallimann and Michael Dobkowski (Westport: Greenwood Press, 1987); Staub, *The Roots of Evil*. With specific reference to how this first-generation

genocide scholars reject all these claims, mainly on the following bases: social-cultural divisions, authoritarian regimes and socio-economic crises are relatively ubiquitous compared to genocide (which is relatively rare) and therefore none of the three afore-mentioned conditions is sufficient or necessary to cause genocide; arguments attributing genocide to any of the three afore-mentioned conditions cannot explain the timing of genocide; there were cases where genocides were perpetrated in areas where the three afore-mentioned conditions did not necessarily apply.¹⁹⁰

Straus identified three overlapping explanatory paradigms from the books he reviewed: *idealism*, *political development*, and *state interest*.¹⁹¹ *Idealism* posits that genocide is the result of leaders' efforts to achieve an ideal society by removing groups (identified by the leaders as being different from the leaders' groups on ethnic, national, racial or other identity-based dimension) who do not fit into this ideal society.¹⁹² The *political development* paradigm posits that genocide is the result of "mainstream quests to establish modern democratic and competitive states" by removing the nations, ethnic, racial and other groups that leaders perceive (for various reasons) to be obstacles to 'progress'.¹⁹³ The *state interests* paradigm posits that genocide is the result of leaders' schemes to pursue/protect "*raisons d'état* – the interests of state leaders to survive, win wars, and implement their fundamental goals", usually as an emotional or rational response to certain events or conditions such as wartime losses and clashes over land/living space.¹⁹⁴ A potential strength of second-generation genocide scholarship is its aim to analyse genocide as one type of outcome out of a number of other possible outcomes and "to use the tools of comparative historical analysis to understand why the

thinking has been applied to the Rwandan case study, Straus referred to Peter Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (West Hartford, Connecticut: Kumarian Press, 1998).

¹⁹⁰ Straus, "Second-Generation Research on Genocide," 480-483.

¹⁹¹ *Ibid.*, 489.

¹⁹² *Ibid.* Straus cited the following authors as the main exemplars of this paradigm: Weitz, *A Century of Genocide*; Sémelin, *Purifier et détruire*.

¹⁹³ Straus, "Second-Generation Research on Genocide," 490. Straus cited the following authors as the main exemplars of this paradigm: Mann, *The Dark Side of Democracy*; Levene, *Genocide in the Age of the Nation State*.

¹⁹⁴ Straus, "Second-Generation Research on Genocide," 491. Straus cited the following authors as the main exemplars of this paradigm: Valentino, *Final Solutions*; Midlarsky, *The Killing Trap*.

phenomenon happens.”¹⁹⁵ Straus had a number of criticisms concerning each paradigm. One of the main problems he identified with these paradigms as a whole is that they contained the some of the same central weaknesses identified within the claims of the first-generation genocide scholarship: idealistic leaders, states seeking to modernise, leaders in pursuit/protection of “*raisons d'état*” and many of the other conditions specified were ubiquitous relative to genocide and mass killing; some case studies of genocide and mass killing did not conform to the conditions posited by the paradigms.¹⁹⁶ It is important to stress that Straus’s review is mentioned here as a relatively good starting point to understanding the overall history of comparative genocide scholarship, the intention is not to portray it as the final or only word on the development of theories of genocide within the comparative genocide subfield. Those who want to pursue a serious study of genocide theories would need to look at other reviews and search for specific scholars to concentrate on.

On its own, the subfield of comparative genocide studies may not be able to adequately address the question of the conceptualisation of ethnic, national, racial and other groups. This is where the body of scholarship and ethnicity and identity may be useful.¹⁹⁷ Attempts within this study to find a recent review article on the history of social-scientific scholarship on ethnicity and identity have been less successful than was the case with comparative genocide studies. A relatively old article by G. Carter Bentley offers a brief history of the anthropological study of ethnicity.¹⁹⁸ Bentley stated that “ethnicity emerged as a key problem in anthropology” when Edmund Leach challenged the then conventional assumption that societies and cultures co-vary to such an extent that the two

¹⁹⁵ Straus, “Second-Generation Research on Genocide,” 478.

¹⁹⁶ *Ibid.*, 488-492.

¹⁹⁷ A potentially useful reference is: Stryker and Burke, “The Past, Present and Future of an Identity Theory,” 284. Social psychologists Stryker and Burke identified three usages of the term ‘identity’. The first refers to the culture of a people and makes no distinction between identity and ethnicity, for example. The second refers to a common identification with a collectivity or social category, as in social identity theory or in contemporary work, which creates a common culture among participants. The third refers to the parts of the self, made up of the meanings that individuals attach to the multiple roles they play in “highly differentiated contemporary societies”

¹⁹⁸ Bentley, 24-55.

terms can be used interchangeably.¹⁹⁹ Leach contended that members of a social group do not necessarily share distinctive cultural traits and that social units are the result of “subjective processes of categorical ascription” that are not necessarily related to “the observers’ perceptions of cultural discontinuities.”²⁰⁰ Leach thus opened the debate on whether analytical units should be based on observer’s criteria or on indigenous social distinctions, which (with increasing contributions from other scholars) evolved into a debate over whether “analytically useful units can be inferred from observed distributions of culture traits.”²⁰¹

Debates over ethnicity have subsequently been broadly divided into two major schools of thought: *primordialism* and *instrumentalism*.²⁰² While this study has not been able to pinpoint the moment at which other social scientists (besides anthropologists) entered into the study of ethnicity, a look at Bentley’s review and other reviews suggests that the “primordialist-instrumentalist dichotomy” cuts across social-scientific disciplines.²⁰³ Primordialists contend that “subjective claims to ethnic identity” are “derived from the affective potency of primordial attachments” (such as shared histories, languages *et cetera*),²⁰⁴ and propose that nations and ethnic groups are naturally-occurring units that have always divided the human species as basically as sex or geography.²⁰⁵ The

¹⁹⁹ Edmund Leach, *Political Systems of Highland Burma* (London: G. Bell and Sons, 1954), cited in Bentley, 24.

²⁰⁰ *Ibid.*

²⁰¹ Bentley, 24. Bentley also mentioned that this debate “reached its apogee in an exchange between Michael Moerman and Raoul Naroll. See Michael Moerman, “Ethnic Identity in a Complex Civilization: Who are the Lue?” *American Anthropologist* 67, no. 5 (1965): 1215-1230; Michael Moerman, “Being Lue: Uses and Abuses of Ethnic Identification,” in *Essays on the Problem of Tribe*, ed. June Helm (Seattle: University of Washington, 1968), 153-169; Raoul Naroll, “On Ethnic Unit Classification,” *Current Anthropology* 5, no. 4 (1964), 283-291, 306-312; Raoul Naroll, “Who the Lue Are,” in *Essays on the Problem of Tribe*, ed. June Helm (Seattle: University of Washington Press, 1968), 72-79.

²⁰² Bentley, 25. See also: Blimes, 537; Henderson, 655.

²⁰³ One notices, for example, Bentley’s citations of Immanuel Wallerstein (an international relations scholar/world systems analyst, sociologist and historical social scientist) and Crawford Young (an expert in comparative politics) alongside citations of prominent anthropologists such as Clifford Geertz. See Bentley, 25. Immanuel Wallerstein, “Ethnicity and National Integration,” *Cahiers d’études africaines* 1, no. 3 (1960): 129-39; See also the literature surveys of the following: Blimes, 536-547; Henderson, 649-688.

²⁰⁴ See for example: Clifford Geertz, “The Integrative Revolution: Primordial Sentiments and Civil Politics in the New States,” in *Old Societies and New States*, ed. Clifford Geertz (New York: Free Press, 1963), 105-157, cited in Bentley, 25; Harold P. Isaacs, *Idols of the Tribe: Group Identity and Political Change* (New York: Harper and Row, 1975), cited in Bentley, 25.

²⁰⁵ See: Anthony Smith, *The Ethnic Origins of Nations* (Oxford and New York: Basil Blackwell, 1986), 12; Blimes, 537; Henderson, 655.

primordialist argument appears to be in line with the argument made by the United Nations member States, as specified at the beginning of this subsection. Instrumentalists share the position that certain political, economic and other material interests drive the formation of ethnic and other groups. Some instrumentalists contend that subjective claims to ethnic identity are derived from the “manipulation of culture in service of collective political and economic interests” and that ethnic groups (and nations) exist as a vehicle for the “pursuit of collective advantage.”²⁰⁶ Other instrumentalists contend that ethnic and national units are the outcome of elite manipulation in the elites’ struggle for wealth, power and prestige,²⁰⁷ proposing that ethnic and national membership is “a fiction constructed by leaders and sold to their impressionable followers.”²⁰⁸ While conceding the appealing simplicity of the general positions under these two schools of thought, Leach was not convinced that either school explained how individual people come to recognise the “commonalities” (and differences) underlying claims to common (and separate) identity.²⁰⁹ Although social psychologists Sheldon Stryker and Peter J. Burke did not necessarily seek to resolve the problem that Leach identified with primordialism and instrumentalism, they were similarly concerned with the problem of identity at the level of the individual.²¹⁰ They posited that individuals have multiple identities and that the key question is that of *identity salience*, which is a question of “the probability that an identity will be invoked across a variety of situations, or alternatively across persons in a given situation.”²¹¹

The primordialist and instrumentalist schools of thought have dominated what political scientist Errol Henderson referred to as “a cottage industry...around studies of ethnic

²⁰⁶ Immanuel Wallerstein, “Ethnicity and National Integration,” *Cahiers d'études africaines* 1, no. 3 (1960): 129-139, cited in Bentley, 25; Leo A. Despres, *Cultural Pluralism and Nationalist Politics in British Guiana* (Chicago: Rand McNally, 1967), cited in Bentley, 25; Abner Cohen, *Custom and Politics in Urban Africa: Hausa Migrants in Yoruba Towns* (Berkeley: University of California Press, 1969); Crawford Young, “The Temple of Ethnicity,” *World Politics* 35, no. 4 (1983): 652-662, quoted in Bentley, 25.

²⁰⁷ Mamdani, 15; Smith, 8; Blimes, 537; Henderson, 656.

²⁰⁸ Paul R. Brass, *Language, Religion, and Politics in North India* (London: Cambridge University Press, 1974), cited in Bentley, 26.

²⁰⁹ Bentley, 26.

²¹⁰ Stryker and Burke, 284, 286.

²¹¹ *Ibid.*, 286.

conflict.”²¹² Primordialists argue that “ancient hatreds” or socio-biological differences between groups are the cause of violent conflict between them.²¹³ Instrumentalists argue that campaigns of violence between groups are strategies by which group elites pursued their interests.²¹⁴

Mamdani argued that racial and ethnic groups need to be considered as *political identities*.²¹⁵ Political identities are created by the State, which allocates rights and privileges to certain groups and not others.²¹⁶ Mamdani offered his political identity theory as an explicit challenge to primordialist and instrumentalist propositions about the constituents of ethnic difference.²¹⁷ He also wanted to discuss the issue of race, which he identified as a remarkable silence in studies on African politics; in contrast to the relatively vigorous debate on ethnicity²¹⁸ Exactly how Mamdani linked political identities to political violence and genocide - in order to explain the Rwandan mass killings of 1994 - is explored in Chapter Three.

2.2.6. *Gender as an Analytical tool for Studying Mass Killing and Sexual Violence*

This study seeks to interrogate how Jones used gender, a theoretical construct, as an analytical tool in his development of the concept of “*gendercide*” to classify and to explain the killing of Tutsi males. The study also notes that the Human Rights Watch/FIDH report claimed that “women and girls are often targeted for sexual abuse on the basis of their gender” and used the terms “sexual violence” and “gender-based crimes” interchangeably;²¹⁹ but the report only offered rudimentary explanations of gender and no sustained theoretical gender analysis.

²¹² Henderson, 651.

²¹³ *Ibid.*, 655-657, Blimes, 537.

²¹⁴ *Ibid.*

²¹⁵ Mamdani, 20.

²¹⁶ *Ibid.*, 22.

²¹⁷ *Ibid.*, 15.

²¹⁸ *Ibid.*

²¹⁹ Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme (FIDH), *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme, 1996), 1, 25.

Generally speaking, theoretical knowledge of how gender operates is underdeveloped; but there are several schools of thought (mostly feminist) who have inconsistently tried to use gender as a “central category of analysis.”²²⁰ At a minimum, these schools of thought have tried to achieve a unanimously agreed-upon distinction between sex and gender, with sex meant to refer to the basic biological differences between men and women and gender referring to the various social beliefs about these biological differences.²²¹ In practice, these schools are divided between those who focus exclusively on the distinction as a dichotomy (socio-cultural or constructivist approach) and those who posit that the overlap/interplay between ‘bodies’ and ‘beliefs’ is greater than the distinction (socio-biological approach).²²² There is a middle ground on the matter; one that holds that while the dichotomy between “bodies” and “beliefs” is false, the distinction between sex and gender is analytically necessary for operationalising the two.²²³

In line with this middle ground, the current investigation elaborates the distinction between the two. Sex is a reference to the biological classification of ‘male’ and ‘female’ as anatomically and physiologically different entities (in this context the entities are constituent of the human species). Sex can usually be observed directly with little controversy.²²⁴ When observing an instance of mass violence, one can determine

²²⁰ J. Ann Tickner, *Gendering World Politics* (New York: Columbia University Press, 2001), 5, quoted in R. Charli Carpenter, “Gender Theory in World Politics: Contributions of a Nonfeminist Standpoint,” *International Studies Association* (2002): 155.

²²¹ Jan Jindy Pettman, “Gender Issues,” *The Globalization of World Politics: an Introduction to International Relations*, eds. John Baylis and Steve Smith, 2nd ed. (Oxford: Oxford University Press, 2001), 587.

²²² Joshua Goldstein, *War and Gender: How Gender Affects the War System and Vice Versa* (Cambridge: Cambridge University Press, 2001), 2, cited in Carpenter, “Gender Theory,” 161; John Money, “The Concept of Gender Identity Disorder in Childhood and Adolescence after 39 Years,” *Journal of Sex and Marital Therapy* 2(1994): 163-177.

²²³ Carpenter, “Gender Theory,” 161.

²²⁴ There are two exceptions to this rule. The first is the existence of “inter-sexed” or hermaphroditic individuals who display some or all the sexual/reproductive organs of both males and females. The second exception is the medical condition known as “Gender Identity Disorder” (in reference to “transgendered people”). Recent neurological research has revealed that there are dimorphisms in terms of the brains of males and females. People with male reproductive organs typically have ‘male-coded’ brains and the same applies to females. People with Gender Identity Disorder have male-coded brains have female reproductive organs or vice versa. For social scientific gender studies, the term Gender Identity Disorder is problematic because it is a medical/biological condition, whereas ‘gender’ pertains to socially-learned/determined behaviours. On inter-sexed individuals, see R.K. Williamson, “The Blessed Curse: Spirituality and Sexual Difference as viewed by Euro-American and Native-American Cultures,” *The College News*, 17, no. 4

whether: the victims are males only (men and/or boys); the victims are females only (women and/or girls); whether the victim group consists of equal numbers of males and females; whether the victim groups consist of different numbers of males and females. Gender is loosely understood as a social construction consisting of shared beliefs about how men and women should behave and how they should present themselves (in terms of dress code, *et cetera*) in order to be considered socially-acceptable men and women (that is, masculine and feminine respectively).²²⁵ The same 'gendered' social beliefs also prescribe, among other things, socially-accepted divisions of labour between the sexes.²²⁶ Inter-sex and intra-sex interactions are regulated by these social beliefs and the social institutions created through these beliefs. One cannot observe gender directly; one can only observe the sex-based outcomes that may be a result of "gendered" beliefs.

It is an analytical error to assume that 'gender' is a factor in instances where victims are exclusively or predominantly of one sex.²²⁷ Likewise, it is an analytical error to assume that gender is not a factor in instances where both sexes are equally represented in a victim group.²²⁸ To invoke gender in explanations of mass violence, one has to show how social beliefs about men and women have led to such outcomes.²²⁹ For this study's purposes, Carpenter's theoretical framework of gender is borrowed. *Gender identities* work at the inter-related levels of individual self-perception (personal identity) and societal perception (social identity), both of which concern beliefs and expectations about what 'sort' of 'man' or 'woman' an individual is and regulate how he/she should behave in a given situation.²³⁰ *Gender discourses* "ascribe certain attributes to men and women respectively (men are aggressive, women are nurturing)" and generate "principled gender ideologies" consisting of sets of prescriptions (as well as proscriptions) for the behaviour of men and women respectively ("men should be soldiers, women should be

(1995), adapted and reproduced in Haviland, 442-445. On "gender identity disorder" or "transgendered" individuals see Money, "The Concept of Gender Identity Disorder," 163-177.

²²⁵ Carpenter, "Beyond Gendercide," 80; Pettman, 587.

²²⁶ Carpenter, "Beyond Gendercide," 80.

²²⁷ *Ibid.*, 78

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ Carpenter, "Beyond Gendercide," 80; Pettman, 588.

mothers”).²³¹ Gender discourses also consist of gender norms such as ‘spare women and children’, which may inform certain actions and policy decisions. Gender discourses direct attention to gender identities, resulting in empirical outcomes that are either be *sex-selective* (intentionally targeting people of one sex) or *sex-distinctive* (intentional and direct targeting people of both sexes, but in different ways or in different proportions).²³² *Gender structures* come into being through the socially-determined channelling of men and women into different institutions, such as the military for men or the care-giving/caretaking professions of the nurse, housewife or domestic servant for women. Gender structures may originate from overt gender discourse, but over time the presence of men and women in these institutions “naturalises the supposed masculinity (or femininity) of the institutions themselves.”²³³ The empirical outcomes of gender structures are *sex-specific*, since individuals are targeted not on the basis of individual or collective gender identities *as such*, but rather on the basis of their membership of gender structures that have come to be predominantly male or predominantly female.

In order to qualify his assertion that the killing of Tutsi men was gender-selective (that is, with a sex-selective outcome), Jones will have to show how Tutsi men were killed on the basis of perpetrators’ beliefs and discourses about their gender identities, as opposed to being targeted on the basis of their belonging to gender structures in which men predominate.²³⁴ Likewise, while human rights reports are not typically strong on theory, one might still expect the Human Rights Watch/FIDH authors to give some indication of the social beliefs that made the targeting of women for sexual violence possible.

²³¹ Carpenter, “Beyond Gendercide,” 80-81.

²³² *Ibid.*, 78, 90.

²³³ *Ibid.*, 81.

²³⁴ *Ibid.*, 78.

Chapter Three: Mamdani and Melvern: Mass Civilian Mobilisation and Participation in the Rwandan Mass Killings of April-July 1994

3.1. Introduction

The books of Mamdani and Melvern are examined in this chapter as examples of *scholarly analysis* and of *advocacy-related investigative journalism* respectively.²³⁵ They provide two different approaches and perspectives to the investigation of mass civilian participation in the mass killings of April-July 1994. While Mamdani's book is the older publication, it is a secondary analysis that is primarily dependent on the limited empirical data collected by other researchers as the basis for applying a specific theoretical framework to explain what Mamdani saw as the popular agency of those who participated or otherwise condoned the killing of Tutsis and suspected Tutsi sympathisers. Melvern's work appears to be the hallmark of groundbreaking investigative journalism, given the author's opening statement about her introduction of previously inaccessible sources to provide new details about the Rwandan government's war strategies against the invading Rwandan Patriotic Front/Army (RPA/RPF) from 1990 up to the outbreak of the mass killings in April 1994. She also apparently made use of previously published literature. Melvern's work sought to show how certain civilian and military authorities were responsible for mass civilian participation in the 1994 mass killings. But beyond a factual description of events, Melvern sought to show that the authorities in question had committed international crimes for which they ought to be punished. In focusing on the activities of the mentioned authorities from the start of the civil war and to the commencement of the 1994 and in referring to both International Law provisions and the arguments of the Prosecution in key cases at the International Criminal Tribunal for Rwanda (ICTR), Melvern professed to show that there had been a "conspiracy to commit genocide".

²³⁵ Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton; Princeton University Press, 2001); Linda Melvern, *Conspiracy to Murder: The Rwandan Genocide*, revised ed. (London: Verso, 2006).

3.2. Mamdani: “Popular Agency” as the Driving Force of Mass Participation in the Mass Killings of April-July 1994

3.2.1. *The Facts to be Explained*

It is an undisputed fact that, even though the exact numbers are unknown, the Tutsis were the predominant targets and victims of the April-July 1994 killings.²³⁶ It is also beyond dispute that Hutu civilians participated in the killings that were instigated by Hutu extremist or *génocidaires* within government, the army and civil society.²³⁷ The category of ‘civilian’ included: members of “youth wings” or “militias that were directly linked to Rwanda’s political parties with paramilitary training (such as the infamous *Interahamwe* of the Mouvement Révolutionnaire National pour le Développement et la Démocratie or MRNDD); civilians who were trained and armed under the civil defence programme; and untrained ordinary civilians. There is however, uncertainty about the exact quantity of this “popular” mass participation. Around the time of the publication of Mamdani’s book, the prevalent assumption among scholars and others was that there had been overwhelming popular participation from the Hutu.²³⁸ These assumptions seemed to be fed in part by speculation from surviving victims and by statements made by representatives of RPF-led government about having to face “a criminal population”.²³⁹ Drawing from these earlier published works and sources, Mamdani strongly asserted that

²³⁶ Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (New York: Human Rights Watch and Fédération Internationale des Ligues des Droits de L’Homme, 1996), 12-13; Human Rights Watch, *Leave None to Tell the Story: The Rwandan Genocide* (New York and Paris: Human Rights Watch and Fédération International des Ligues des Droits de L’Homme, 1999), 6, 11-14, 17 [Online]. Available: <http://www.grandslacs.net/doc/1317.pdf> [2009, August 25]; Adam Jones, “Gender and Genocide in Rwanda,” *Journal of Genocide Research* 4, no. 1 (2002): 67-80, Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington D.C.: Brookings Institute Press, 2001), 19-20; Mamdani, 5-6, 206; Melvern, *Conspiracy to Murder*, 20-21, 252-253; Scott Straus, “How Many Perpetrators were there in the Rwandan Genocide? An Estimate,” *Journal of Genocide Research* 6, no. 1 (2004): 85, 88; Marijke Verpoorten, “The Death Toll of the Rwandan Genocide: A Detailed Analysis of the Gikongoro Province,” *Population* 60, no. 4 (2005): 331-333.

²³⁷ Ibid.

²³⁸ Timothy Longman and Scott Straus provided a literature survey of authors who have made this assumption of a high level of popular participation in the 1994 killings, apparently without solid evidence. Timothy Longman, “Placing Genocide in Context: Research Priorities for the Rwandan Genocide,” *Journal of Genocide Research* 6, no. 1 (2004): 35, Straus, “How Many Perpetrators were in the Rwandan Genocide,” 85.

²³⁹ Ibid.; Mamdani, 6, 224-225, 266-267.

the mass-scale participation of the civilian Hutu population is the primary weapon that made it possible for the Hutu extremists to achieve the killing of Tutsi on a massive scale. He supported this assertion with evidence that is either incomplete or that he had misread, and with some sources of questionable credibility.

a) The Number of Victims Killed, by Ethnic Group

While Mamdani acknowledged that the exact number of victims was not known (and may never be known), Mamdani cited that estimates of Tutsis killed varied between 500,000 to a million and that estimates of Hutus killed varied between ten and fifty thousand.²⁴⁰ He provided neither commentary nor separate referencing on the Hutu death toll, creating uncertainty about the sources of his information. While he provided some commentary and detailing of the sources providing the various estimates of the Tutsi death toll, he gave no indication of which source he found more reliable.²⁴¹ Nevertheless, two sources do stand out. The first is the Tutsi-dominated Rwandan Patriotic Front (RPF, the ruling party), a source whose credibility and reliability Mamdani has questioned due to perceived political bias and motives (elaborated in his discussion of perpetrator estimates). Mamdani vaguely mentioned that the estimate of one million Tutsis killed “is often heard of in the media and in RPF statements.”²⁴² It is unclear whether Mamdani was implying that this estimate was mere propaganda. The second source is the joint Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme report written in 1999 by Alison Des Forges, a report widely regarded as reliable and whose author is regarded as an authority on Rwanda.²⁴³ In an unfortunate misreading of the latter source, Mamdani saw an inconsistency in the Human Rights Watch report’s claim that at least half a million people (read: Tutsi) had died in the killings and had then later cited demographer William Seltzer’s estimate of 657,000 Tutsis perished.²⁴⁴

²⁴⁰ Mamdani, 5.

²⁴¹ Ibid., 283.

²⁴² Ibid.

²⁴³ Longman, 34; Melvern, *Conspiracy to Murder*, 277; *The Prosecutor versus Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Judgement (18 December 2008), paragraph 103 [Online]. Available: <http://www.unictr.org/Portals/0/Case/English/Zigiranyirazo/Judgement/081218e.pdf> [2010, January 10].

²⁴⁴ Ibid.

Mamdani, went on to state that the figure of 657,000 was an extrapolation based on the 1991 Rwandan census data and is rejected by some experts as problematic.

Upon closer investigation of the report itself, it is clear that both the figure of 500,000 and 657,000 are from Seltzer.²⁴⁵ The figure of 657,000 was thought to be the size of the total Rwandan Tutsi population in 1994 prior to the killings, based on statistical calculations applied to the size of the total Tutsi population as reported in the 1991 national census. It was never suggested as an estimate of the Tutsis killed. The figure of 500,000 was Seltzer's estimate of Tutsi deaths in 1994. It is unclear how he reached this figure. However, Des Forges showed that a similar figure (507,000) was produced when the number of recorded Tutsi survivors (150,000) was subtracted from the extrapolated figure (657,000). It must be stressed again that Des Forges did not claim the figure of "half a million" Tutsi as the definitive death toll but that she claimed that the available data suggested that a minimum of half a million Tutsi were killed. Des Forges herself pointed out that the figure 657,000 was possibly an unreliable base from which to calculate an estimate of the Tutsi death toll, in view of the fact that certain critics (unnamed) had suggested that the Hutu-dominated MRND government had deliberately underreported the Tutsi population in order to "minimise the importance of the Tutsi in the population".²⁴⁶ She stated that there was no documentary evidence to support the critics' assertions; nevertheless, she claimed that the Tutsi population was underreported in the records because there were Tutsi who registered as Hutu "to avoid discrimination and harassment."²⁴⁷ Unfortunately, she was only able to provide anecdotal evidence to support this claim.²⁴⁸ Whereas Longman suggested that secondary works simply rehashed

²⁴⁵ Human Rights Watch and FIDH, *Leave None to Tell the Story*, 6, 17. Please note that there are page differences in the hard copy and the electronic copy of the report. The basic content of both copies is exactly the same. Mamdani quoted from the hard copy, in which the relevant death estimates appeared in pages 1 and 15.

²⁴⁶ *Ibid.*, 17. See also Kuperman, 19; Verpoorten, 334. The exact allegation was that the MRND (later MRNDD) government had fixed the Tutsi population at 8.4 percent in order to peg Tutsi participation in the civil administration (on the basis of proportional representation) and to peg Tutsi school enrolments (justified as 'proportional representation').

²⁴⁷ Human Rights Watch and FIDH, *Leave None to Tell the Story*, 17.

²⁴⁸ *Ibid.* See also: Service National de Recensement, République Rwandaise, *Recensement Général de la Population et de l'Habitat au 15 Août 1991: Résultats Définitifs* (Kigali : Service National de Recensement, République Rwandaise, December 1994), 114, quoted in Verpoorten, 335. The report on the

“the inaccuracies from earlier accounts on Rwanda,” Mamdani’s misreading of a source suggests that at times the problem might possibly be that the information from previous accounts is recorded inaccurately in subsequent works.²⁴⁹

As is later discussed, Mamdani’s concept of genocide is partly defined on the basis of the success of the perpetrators to realise their intention to destroy a specific group. Getting as close as possible to an accurate estimate of the number of Tutsis killed is necessary for working out the proportion of Tutsis killed out of the entire Tutsi population. Since the publication of both Mamdani work and Des Forges’ report, it appears there has been at least one promising development in this regard. By examining the local population registers of communes (districts) within Gikongoro Préfecture (a province) in the southwest of Rwanda and comparing them with the data presented in the 1991 national census, Marijke Verpoorten has found evidence that the national census underreported the number of Tutsis in Gikongoro.²⁵⁰ More local level empirical research of this nature across Rwanda may lead to more accurate estimates of the number of Tutsi that were alive prior to 1994 killings and enable a more accurate calculation of how many Tutsis perished in the killings.

b) The Number of Perpetrators of the Killing

Mamdani asserted that the mass killings of 1994 were “executed with the slash of the machete”.²⁵¹ Since “the machete had to be wielded by a single pair of hands”, many hands were required to execute the killings (as opposed to technology that enabled a few to kill many, for example the Nazi gas chambers).²⁵² He stated that since killing a person with a machete was hard work, “there were often several killers for every single victim”.²⁵³ He claimed that the killings were carried out “by hundreds of thousands, perhaps even more”, the latter part of the statement implying that the number of

Rwandan census of 1991 also suggested that the proportion of Hutu might have been falsely inflated, due to some Tutsis reporting themselves to be Hutu.

²⁴⁹ Longman, 29.

²⁵⁰ Verpoorten, 331-367.

²⁵¹ Mamdani, 5.

²⁵² *Ibid.*, 5-6.

²⁵³ *Ibid.*, 6.

perpetrators could have run into the millions.²⁵⁴ To support his claims, Mamdani quoted a number of Rwandan Patriotic Front (RPF) officials whom he had either spoken to personally or who had made public speeches about the April-July 1994 killings in July 1995. One source was an unnamed political commissar in the police (of the RPF-led government) who asserted that “there were killers in every locality – from ministers to peasants – for it to happen in so short a time and on such a large scale.”²⁵⁵ A second source was President Pasteur Bizimungu (a Hutu in an otherwise Tutsi-dominated RPF leadership and predecessor to current Tutsi President Paul Kagame),²⁵⁶ who is quoted as stating in a speech that there were “hundreds of thousands of criminals” spread evenly across the land.²⁵⁷ A third source was an unnamed political commissar in the Rwandan Patriotic Army (RPA), who claimed that the RPA had faced “a criminal population” upon their capture of Kigali.²⁵⁸ Without any consideration of the sources’ possible political bias, Mamdani used these sources in the first chapter of his book as the primary grounds to identify the success of a “tiny group” of génocidaires to “convince the majority to kill, or acquiesce in the killing of, the minority”.²⁵⁹ Mamdani envisioned that his task was to provide an explanation as to *why* the Hutu majority killed or acquiesced in killing, not to investigate *whether* the majority had actually done so.

In his book’s last chapter, Mamdani indicated that subsequent to his 1995 inquiries, he had asked other (RPF) government ministers and officials how many perpetrators they thought had taken part in the April-July 1994 killings.²⁶⁰ He claimed that while most government officials questioned in 1995 had estimated that 3-4 million Hutus perpetrated

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ See Jeremy Sarkin, “The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the role of the Gacaca Courts in Dealing with the Genocide,” *Journal of African Law* 45, no. 2 (2001): 151-152. Sarkin wrote of how a number of high-ranking Hutu officials in the RPF-led coalition government - including RPF members such as Pasteur Bizimungu - had eventually resigned or were compelled to resign and sometimes flee the country over disagreements with the Tutsi leadership.

²⁵⁷ Mamdani, 6.

²⁵⁸ Ibid., 6. Straus also noted, with a measure of incredulity, that Mamdani had quoted an RPF commissar as evidence of mass participation without independent corroboration. See Straus, “How Many Perpetrators were in the Rwandan Genocide,” 95.

²⁵⁹ Mamdani, 7.

²⁶⁰ Ibid., 266.

the killings (out of a total Rwandan population of about 7.5-7.8 million),²⁶¹ government officials questioned in 1997 estimated that there had been 4-5 million killers.²⁶² From a position of uncritical acceptance of the assessments of certain RPF sources, Mamdani now claimed that he was not so much interested in the verity of the claims but rather in the political implications and uses of the growing estimates. He then explained that although the RPF-led government avoided using 'Hutu' and 'Tutsi' as "political identities" (as discussed in the subsection to follow), it had managed to organise post-1994 Rwandan society in such a way that Tutsis who lived through the civil war and mass killings (1990-1994) are classified as survivors (meaning those entitled to State aid) while all living Hutu are presumed to be perpetrators.²⁶³ Mamdani's argument appears to be that the RPF officials of 1995 were relatively more reliable than the officials of 1997 because the officials of 1997 were more aware that the maintenance of Tutsi dominance depended on the socio-political condemnation and the moral justification of the suppression or marginalisation of the Hutu majority.²⁶⁴ Yet the fact remains that no RPF source could ever have been considered as an impartial source, and this needed to be pointed out as acknowledgement that independent sources were needed for corroboration so as to counter presumptions about the RPF sources' lack of credibility.²⁶⁵

Mamdani also used witness/survivor and (less often) perpetrator testimonies as evidence to support his assertion of mass participation. A handful of these were gathered through

²⁶¹ Kuperman, 19; David Newbury, "Understanding Genocide," *African Studies Review* 41, no.1 (1998): 78; Service National de Recensement, 124, cited in Straus, "How Many Perpetrators were in the Rwandan Genocide," 96.

²⁶² Mamdani, 266.

²⁶³ *Ibid.*, 266-267; [Republic of Rwanda] *Organic Law No. 08/1996 of 31 August 1996 on the Organisation of Prosecution of Offences Constituting the Crime of Genocide or Crimes against Humanity since 1 October 1990* (1 September 1996), Article 1 [Online]. Available:

<http://www.unhcr.org/refworld/docid/3ae6b4f64.html> [2010, May 23]. Mamdani explained that the RPF-led government recognises both Tutsis and Hutus killed as victims: Tutsis as victims of genocide and Hutus as victims of political killings related to the Tutsi genocide. It is important to keep in mind that where as scholars, journalists and human rights organisations consider that the genocide occurred between April and July 1994, the Rwandan government stipulates that the genocide began in October 1990.

²⁶⁴ See also Straus, "How Many Perpetrators were in the Rwandan Genocide," 85.

²⁶⁵ Diane F. Orentlicher, "Bearing Witness: the Art and Science of Human Rights Fact-Finding," *Harvard Human Rights Journal* 3 (1990): 120[Electronic]. Available from HeinOnline at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> (2009, April 16).

Mamdani's own original interviews.²⁶⁶ Most are testimonies gathered and assessed by others, ostensibly the human rights organisation African Rights – a source that some observers have simultaneously praised for giving one of the most detailed early descriptions of the 1994 killings and criticised for showing signs of being heavily influenced by RPF propaganda.²⁶⁷ The problem with relying on these testimonies is that they do not come from observers trained in data collection and few were in a position to count the exact number of killers in their own locations, much less make broader assessments about the level of civilian-perpetrated killing in the country.²⁶⁸ Likewise, from the citations of Mamdani, the authors for African Rights do not appear to have undertaken a systematic attempt to quantify the perpetrators. Examples of individual doctors and other professionals who assumed leading roles as killers of accomplices are followed by assessments such as, “the percentage of doctors who became ‘killers par excellence’ was very high”; but there are either no estimates provided or no attempts to show how estimates were reached.²⁶⁹

Mamdani's willingness to endorse evidence that is either incomplete or possibly manipulated for political ends also seems to be based on his own assumptions about how

²⁶⁶ See for example: Mamdani, 4-5, 221-225.

²⁶⁷ Ibid., 201. For critical reviews of African Rights see: Villia Jefremovas, review of *Rwanda: Death, Despair and Defiance*, by African Rights, *Africa Magazine* (22 March 2000) [Online]. Available: <http://www.accessmylibrarv.com/article-1G1-64698533/rwanda-death-despair-and.html> [2009, October 21]; René Lemarchand, “Rwanda: The State of Research,” *Online Encyclopedia of Mass Violence* (4 November 2007) [Online]. Available: <http://www.massviolence.org/Rwanda-The-State-of-Research?artpage=4> [2010, July 28]; Longman, 33. Jefremovas (an anthropologist) and Lemarchand (a historian) have lengthy experience in Rwandan history and politics and the mass killings of 1994, constituting (like Longman) part of the small body of “Rwanda experts” pre-dating the war and mass killings.

²⁶⁸ See for example, the testimony of Mectilde in Mamdani, 224. Mectilde, a Tutsi surviving victim told Mamdani that of the Hutu population: “ten percent helped; 30 percent were forced to kill; 20 percent; killed reluctantly; 40 percent killed enthusiastically.” Mamdani then stated that his citation of Mectilde's estimates was not an endorsement thereof, but rather a demonstration of the point that from the perspective of the Tutsi minority, the Hutu majority is guilty “either of killing, or condoning or, or just looking elsewhere while the killing happened. See also Straus, 89. Straus explained that survivors of the 1994 killings typically survived by hiding and were therefore usually not in a position to have “direct and detailed knowledge about the size and makeup of the groups that attacked them.”

²⁶⁹ African Rights, *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995), 3-4, cited in Mamdani, 227.

the killings were ‘implemented’. His statements that the machete was a labour-intensive tool for killing and that several killers were often required to kill one victim imply (intentionally or unintentionally) that he assumed that the number of killers must have equalled or exceeded the number of victims. There is certainly some correspondence between the range of victim estimates and Mamdani’s ‘hundreds-of-thousands-or more’ claim. Yet this too exposes another set of untested assumptions: that the vast majority of victims were killed by machete and that all killings perpetrated by machete were perpetrated by civilians. Independent and trained observers had not yet collected this kind of data at the time of Mamdani’s book’s publication.²⁷⁰ There was however a release of the preliminary results of a nationwide government study of the killings in the same year of the book’s publication, which found that a small majority of victims were killed by machete (37.9 percent) as opposed to those killed by clubs (16.8 percent), firearms (14.8 percent) and other methods.²⁷¹ The accuracy of these estimates has not been independently verified.²⁷² Mamdani’s assumption that the vast majority of killings were perpetrated by machete is somewhat at odds with his claims that the civil defence units – which “formed the civilian core of the machinery that came to carry out the genocide” – were armed (or were supposed to be armed) with firearms/guns.²⁷³ Furthermore, while he acknowledged the role of the army, he gave little attention to how many killings could have been perpetrated by it.²⁷⁴

Local level quantitative and qualitative empirical research on the confessed perpetrators of the genocide has posed some serious challenges to some of Mamdani’s assumptions about mass popular participation from ordinary civilians. Straus’s study of perpetrators suggested that the killings were perpetrated by a minority of Hutu civilians (about

²⁷⁰ Straus, “How Many Perpetrators were in the Rwandan Genocide,” 88.

²⁷¹ Ministère de l’Administration locale, de l’Information et des Affaires sociales, République Rwandaise, *Dénombrement des Victims du Génocide: Rapport préliminaire* (Kigali: Ministère de l’Administration locale, de l’Information et des Affaires sociales, Republic Rwandaise, Décembre 2001), 26, cited in Melvern, 252; Ministère de l’Administration locale, de l’Information et des Affaires sociales, République Rwandaise, *Dénombrement des Victims du Génocide: Rapport final* (Kigali: Ministère de l’Administration locale, de l’Information et des Affaires sociales, Republic Rwandaise, Novembre 2002), 26, cited in Straus, “How Many Perpetrators were in the Rwandan Genocide,” 88.

²⁷² Straus, “How Many Perpetrators were in the Rwandan Genocide,” 88.

²⁷³ Mamdani, 206.

²⁷⁴ *Ibid.*, 206-207.

200,000, a much lower range of the ‘hundreds of thousands’ than Mamdani seems to have had in mind) and that there were varying degrees of participation in the killings: ordinary civilians seemed to have killed less people than those who were part of the party-based civilian militias and the civil defence units.²⁷⁵ Straus urged that the category of perpetrators be disaggregated and investigated as such.²⁷⁶ Similarly, Jean Hatzfeld’s interviews with confessed perpetrators in Nyamata Commune in Kigali Préfecture (eastern Rwanda) challenge to a certain degree Mamdani’s assumptions about the universal participation of Hutu civilians across age, sex and class divides.²⁷⁷ Perpetrators in Nyamata asserted that killing was ‘men’s work’ and that women’s participation in killing was proscribed (even though some did want to kill and some did kill, supporting the fact that there was some Hutu approval of the killings).²⁷⁸ Mamdani claimed that “a disproportionate number of the educated played a leading role” in the killing of Tutsi; Hatzfeld’s interviews revealed that some members of the educated middle class paid for the privilege of not having to kill or paid servants “so as not to dirty themselves.”²⁷⁹

3.2.2. *Explaining “Popular” Agency: The Role of Political Identity in the Perpetration of “Genocide” and other Mass Killings*

Mamdani’s contention was that Hutu civilian masses killed the Tutsi and the Hutu perceived to be their accomplices out of fear of what they believed the Tutsi to be.²⁸⁰ To understand the conversion of the Tutsi from an ethnic ‘neighbour’ of the Hutu to a group whose extermination was deemed vital, Mamdani asserted that one needed to understand how the categories of ‘Hutu’ and ‘Tutsi’ were constructed as opposing political identities during Rwanda’s colonial era (1894-1961), the Hutu “Social Revolution” (1959-1962)

²⁷⁵ Straus, “How Many Perpetrators were in the Rwandan Genocide, 95

²⁷⁶ Ibid.

²⁷⁷ Mamdani, 225. The evidence presented by Mamdani did suggest that the participation of women and children (both girls and boys) over seven years was lower relative to the participation of Hutu adult men.

²⁷⁸ Jean Hatzfeld, *A Time for Machetes: The Rwandan Genocide: The Killers Speak*, translated from the French by Linda Coverdale (London: Serpent’s Tail, 2008), 101, 103. Women were allowed or even expected to carry out the looting of the possessions of the dead, meaning that there was a division of labour of sorts.

²⁷⁹ Testimony of Marie-Chantal, quoted in Hatzfeld, 67.

²⁸⁰ Mamdani, 14, 191. Mamdani stressed that the Hutu masses acted out of fear and not out of hatred for the Tutsi. Thus, Longman’s assessment that Mamdani was among the authors who believed “that ethnic hatred was the primary force motivating the genocide” was incorrect. Longman, 36.

and during the Rwandan Civil War (1990-1994).²⁸¹ This requires the reader to first grasp Mamdani's theoretical framework concerning genocide and political identity.

a) The Intersection of Mamdani's Concept of Genocide and Theory of Political Identity

The Genocide Convention defines the crime of genocide on the basis of the perpetrators "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."²⁸² For Mamdani, genocide is both the intention and the partial or complete fulfilment of the intention to extinguish a specific population group identified for killing purposes as a *race*.²⁸³ Thus the distinction between the killing of Tutsi and Hutu in 1994 was both the greater number of Tutsis killed and the branding of the Tutsi as a race group, whereas the Hutus were killed as individual Tutsi "accomplices".²⁸⁴ Mamdani asserted that it was the mass participation of ordinary civilians that made the difference between "a string of massacres perpetrated by death squads" and genocide.²⁸⁵ The implication is that the difference between a massacre and a genocide is in the numbers killed,²⁸⁶ and yet he gives no clear indication of what number of deaths would constitute a massacre and how many massacres would constitute genocide.

The bulk of Mamdani's attention was dedicated to explaining how and why the perpetrators would define a group as an enemy race whose extermination was necessary.²⁸⁷ This explanation is relayed through the theory of political identities. In advancing the theory of political identity, he implicitly or explicitly rejected or otherwise rethought a number of ideas about how human beings are organised into racial, ethnic or

²⁸¹ Mamdani, 14, 70-71.

²⁸² *Convention for the Prevention and Punishment of the Crime of Genocide*, Approved and Proposed for Signature and Ratification or Accession by General Assembly Resolution 260 A (III) of 9 December 1948, Entry into force January 1951, in Accordance with Article XIII, Article 2 [Online]. Available: http://www.unhchr.ch/html/menu3/b/p_genoci.htm [2007, November 28].

²⁸³ Mamdani, 5, 13, 14, 225.

²⁸⁴ *Ibid.*, 5.

²⁸⁵ *Ibid.*, 225.

²⁸⁶ Elisa G. von Joeden-Forgey, review of *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda*, by Mahmood Mamdani, *H-Genocide H-Net Reviews* (June 2002): 8 [Online]. Available: <http://www.h-net.org/reviews/showrev.php?id=6365> [2009, April 2].

²⁸⁷ Mamdani, 9.

national groups.²⁸⁸ He neither accepted nor rejected the validity of the claims of some in the natural sciences that race was a “technical biological” concept and that human racial dimensions could be scientifically measured;²⁸⁹ rather his theory of political identities is more concerned with how the State would use supposed racial differences as the basis of organising its citizens or subjects into hierarchies. He rejected the ideas that were put forward by social scientists within the two major schools of thought about ethnicity: primordialism and instrumentalism. He rejected the primordialist proposal that nations and ethnic groups are naturally-occurring units that have always divided the human species as definitively as sex or geography.²⁹⁰ He therefore rejected the primordialist argument that “ancient hatreds” or socio-biological differences between groups were the reason why extreme political violence occurred between communal groups – of which genocide is one manifestation. Similarly, he rejected the instrumentalist proposal that ethnic and national units are an outcome of elite manipulation in the elites’ struggle for wealth, power and prestige.²⁹¹ Therefore, he rejected the argument that extreme political violence between groups was a strategy by which group elites pursued their interests.

Mamdani argued that racial and ethnic groups need to be considered as political identities.²⁹² Political identities are the result of the history of state formation.²⁹³ In the modern state, political identities are inscribed in law and are thus legally enforced. Those that the law recognises as members of an ethnic group become ethnic beings legally and those that the state recognises as members of an ethnic group become ethnic beings institutionally. Those whom the law recognises as members of a racial group have a relationship to the state and other legally defined groups that is mediated through the law

²⁸⁸ Ibid., 15.

²⁸⁹ Mamdani, 41-50. See also: William A. Haviland, *Anthropology*, 9th ed. (Fort Worth: Harcourt Publishers, 2000), 348-355; J Milton Yinger, “Ethnicity,” *Annual Review of Sociology* 11 (1985): 159. [Electronic]. Available from JSTOR at <http://www.jstor.org> [2005, October 31]. Yinger supported the idea that geneticists can measure the dimensions of race with “sophisticated instruments”, while Haviland argued that efforts to biologically group humans into separate races have been futile.

²⁹⁰ Mamdani, 15; Anthony Smith, *The Ethnic Origins of Nations* (Oxford and New York: Basil Blackwell, 1986), 12; Randall J. Blimes, “The Indirect Effect of Ethnic Heterogeneity on the Likelihood of Civil War Onset,” *Journal of Conflict Resolution* 50, no.4 (2006): 537; Errol A. Henderson, “Culture or Contiguity: Ethnic Conflict, the Similarity of States, and the Onset of War, 1820-1987,” *Journal of Conflict Resolution* 41, no. 5 (1997): 655.

²⁹¹ Mamdani, 15; Smith, 8; Blimes, 537; Henderson, 656.

²⁹² Ibid., 20.

²⁹³ Ibid., 22.

and the state.²⁹⁴ When the law defines one's inclusion and exclusion from a regime of rights or entitlements – including one's participation in state-organised institutional and political life - on the basis of one's race or ethnic group, then it becomes a central defining fact for one as an individual and for one's designated group.²⁹⁵ Mamdani further stated that political identities demarcate the parameters of the political community (hence distinguishing between those who belong and those who do not), which in the modern state has meant the differentiation between the aliens/settlers/non-natives and the natives/indigenous people.²⁹⁶ The distinctions of race or ethnicity on the one hand and native or settler on the other hand are mutually reinforcing and it is usually some combination of the two constructs that is the basis of group allocation of rights and privileges as well as the basis of inter-group violence.²⁹⁷ For Mamdani, there are only two kinds of genocide: a *settler's genocide* entailing an *alien race's* extermination of a *native race* in the process of the alien race's settlement on the native race's land; and a *native's genocide* entailing a native race's extermination of an alien race of settlers.²⁹⁸

There were some objections to Mamdani's theoretical framework. One reviewer saw Mamdani's definition of genocide "on the basis of the effectiveness of the perpetrators in carrying out annihilation" as being 'dangerous'.²⁹⁹ At the same time, Mamdani did not provide any indication of how he assessed the "effectiveness" of the annihilation. Another reviewer pointed out that Mamdani's discussion of genocide did not include references to the major pioneering scholars on genocide and rejected the argument that genocide can only happen where the victim group has been constructed as an alien race (and not when the victim group is constructed as an ethnic group).³⁰⁰ Overall, the real

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid., 23-24, 27-31

²⁹⁷ See Mamdani's discussion of the citizenship crisis in Uganda involving the descendants of the Rwandan Tutsi refugees: Mamdani, 170-184. See also: Anthony D. Smith, *The Nation in History: Historiographical Debates about Ethnicity and Nationalism* (Cambridge and Oxford: Historical Society of Israel, 2000), 6.

²⁹⁸ Ibid., 10-14.

²⁹⁹ Von Joeden-Forgey, 8.

³⁰⁰ René Lemarchand, "A History of Genocide in Rwanda," review of *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda*, by Mahmood Mamdani, *Journal of African History* 43, no. 2 (2002): 307, 310.

question was to what extent Mamdani's theoretical framework was applicable to the "Rwandan genocide" against the Tutsi in 1994.

b) The Rwandan Context

Mamdani argued that the "Rwandan genocide" was a native's genocide.³⁰¹ In order to understand how the Hutus had come to identify themselves as natives and to target the Tutsi as an alien race of settlers, one had to trace the development of the 'Hutu' and 'Tutsi' identities through the history of the formation and evolution of the Rwandan State.³⁰² In this regard, Mamdani utilised a broad range of literature on the history of the Rwandan people. Sources included race-centred colonial scholarship of the colonial and the 'more balanced' post-colonial scholarship of reputable Rwanda scholars such as Catharine Newbury, David Newbury, René Lemarchand and others.³⁰³ Mamdani explained that, for a little over a century prior to German and Belgian colonisation, the Tutsi had been a privileged stratum of Rwandan society on the basis of having a common ethnic political identity as the Tutsi monarchy and aristocracy of the Rwandan pre-colonial state.³⁰⁴ European colonial administrators and historians conceived of the Tutsi as Hamites, that is, black-skinned 'aliens' of Semitic and/or Caucasian origin who had conquered the Hutu 'Negroid' masses and whose civilising influence had brought about the centralised Rwandan kingdom.³⁰⁵ This classification of the Tutsi was the basis for the justification of the creation of a Tutsi middle class with a minor share in the colonial

³⁰¹ Mamdani, 14.

³⁰² Ibid.

³⁰³ Mamdani, XIII. I list only a few examples here from Mamdani's endnotes: Colonial/early post-colonial scholarship: Jacques J. Maquet, *The Premise of Inequality in Ruanda: A Study of Political Relations in a Central African Kingdom* (London: Oxford University Press, 1961), cited in Mamdani, 290; A Pagès, *Au Rwanda, sur le bord du Lac Kivu (Congo Belge): Un Royaume Hamite au centre de l'Afrique* (Brussels: IRCB, 1933) cited in Mamdani, 302. Post-colonial scholarship: Catharine Newbury, *The Cohesion of Oppression: Clientship and Ethnicity in Rwanda, 1860-1960* (New York: Columbia University Press, 1989), Mamdani, 294; David Newbury, David Newbury, "The Clans of Rwanda: An Historical Hypothesis," *Africa* 5, no. 4 cited in Mamdani, 290. René Lemarchand, *Rwanda and Burundi* (New York: Praeger, 1970), cited in Mamdani, 293.

³⁰⁴ Mamdani, 63-71.

³⁰⁵ Ibid., 79-80, 87-88.

administration, while the Hutu became the serf-like servants/labourers of both Europeans and the Tutsis.³⁰⁶

Given that legal definitions frame power-enforced political identities that are defined “from above” and constitute the starting point of identities forged “from below”, the Hutu call for independence from European colonial rule and struggle against Tutsi feudal –type subjugation began with the recognition that the Hutu majority were the recognised racial and ethnic natives of Rwanda and the rightful heirs to the postcolonial state.³⁰⁷ Mamdani asserted that the 1959 Hutu ‘social revolution’ and surrounding events were the means by which the emerging Hutu counter-elite and the Hutu peasant masses finally rejected both the privileged Tutsi classes (monarchy, aristocracy and professional middle class) and ordinary Tutsis as a race of alien settlers who were to be denied rights and privileges in the postcolonial Rwandan State.³⁰⁸ In the ensuing violence (1959-1962) the Tutsi monarchy was ejected and Tutsis were either killed or forced to flee Rwanda.³⁰⁹ Within the first Hutu Republic (under President Grégoire Kayibanda) the remaining Tutsi population was allowed to remain as an alien minority with no citizenship rights, subjected to reprisal killings each time the Tutsi exiles attempted to return to Rwanda (1963-1964).³¹⁰

Under the Second Republic, President Juvénal Habyarimana redefined the Tutsi as an indigenous/native group entitled to the rights and privileges that were deemed to be proportional to their number as an ethnic minority.³¹¹ However, his policy did not solve the problem of the descendants of the Tutsi exiles and refugees of the 1960s, who were denied citizenship in the neighbouring African States where their parents had sought refuge.³¹² It was within the context of this African citizenship crisis that the RPF/RPA was created and within this context that the RPF launched an attack which would be the

³⁰⁶ Ibid., 71.

³⁰⁷ Ibid., 14, 23, 103-104, 116-119.

³⁰⁸ Ibid.

³⁰⁹ Ibid., 123

³¹⁰ Ibid., 126-131.

³¹¹ Ibid. 189.

³¹² Ibid., 155-157.

means by which the Tutsi refugees could 'return' to Rwanda, their 'ancestral land'.³¹³ The RPF invasion gave the Hutu extremists in and around government and the army who were opposed to Habyarimana's ethnic reconciliation policy an opportunity to bring back to the fore of the public imagination the idea of Tutsis as an invading alien race whose objective was to subject all Hutus to servitude. These Hutu extremists used the mass media to reach the masses, namely in the form of the radio station *Radio-Télévision Libre des Mille Collines* (RTLM) and the newspaper *Kangura*.³¹⁴ The Hutu civilian masses voluntarily killed the Tutsis out of fear that the Tutsi RPF would force them into servitude just as the Tutsi monarchy and aristocracy had done in the pre-colonial and colonial era.³¹⁵ This fear was especially fuelled by a major RPF/RPA offensive in 1993 and was then ignited by the killing of President Habyarimana, which Hutu extremists attributed to the RPF.³¹⁶ Hutu individuals (both the political moderates and others opposed to the killing of Tutsis) were killed as suspected collaborators in the alleged Tutsi domination plan. It appears then, that Mamdani located popular agency in the collective self-identification of the Hutu as natives who saw their mission "as one of clearing the soil of a threatening alien presence" embodied by the Tutsi group.³¹⁷

Critics of Mamdani's work have claimed that the applicability of Mamdani's theoretical framework to the Rwandan context is questionable.³¹⁸ Lemarchand asserted that the native/settler divide was not a feature of the 1959 "Social Revolution", which Lemarchand claimed was aimed at the Tutsi monarchy and aristocracy rather than at the Tutsi as a group.³¹⁹ Lemarchand further asserted that Mamdani's concentration on the argument that the Hutus 'as natives' attacked the Tutsis 'as an alien race of settlers' underplayed the fact that the killings were a Hutu extremist tactic to abort the Arusha

³¹³ Ibid., 159-184.

³¹⁴ Ibid., 190-191, 209, 212, 222.

³¹⁵ Ibid., 191.

³¹⁶ Mamdani, 203-204.

³¹⁷ Ibid., 14.

³¹⁸ Lemarchand, review of *When Victims Become Killers*, 308; Longman, 36; Charles K. Mironko, "Ibitero: Means and Motive in the Rwandan Genocide," *Macmillan Center Genocide Studies Papers* 23(2004): 174-175. [Online]. Available: <http://128.36.236.77/workpaper/pdfs/GS29.pdf> [2007, December 1].

³¹⁹ Lemarchand, review of *When Victims Become Killers*, 308. See also Johan Pottier, who makes the same argument as Lemarchand: Johan Pottier "Re-imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century" (Cambridge: Cambridge University Press, 2002), 124.

peace agreement between the Rwandan coalition government and the RPF.³²⁰ Charles Mironko argued that Mamdani over-estimated the role of the individual agency of the Hutu civilians who killed, ignoring the role of built-in coercive structures within Rwandan communities that made it difficult for ordinary people to refuse to partake in the killings.³²¹ Although Hatzfeld was not a critic of Mamdani's work, his original empirical research also revealed that - in some localities - there were very real penalties for males who did not participate.³²² For Longman the problem was that even if the Hutu extremist organisers of the Tutsi genocide had "sought to demonize Tutsi as alien interlopers, it is unclear how widely the general population accepted these characterisations."³²³ Overall, Mamdani's theory required that the extent of Hutu civilian participation be established and that the acceptance of Hutu extremist propaganda at the grassroots level be investigated. This is where original empirical research on Mamdani's part was most needed.

3.3. Melvern: The Rwandan Civil Defence Programme and the Genocide Conspiracy

In the preface of her book, Melvern introduced her central argument (which also alluded to in the book title): the Rwandan genocide of 1994 had been the result of a longstanding genocide conspiracy among a segment of Rwanda's Hutu elite within the government and the army.³²⁴ She had new information and material that "shed new light on how the genocide was planned..." and how the "conspirators....determined that genocide and the racist ideology that underpinned it should become a part of government policy."³²⁵ The new material consisted of: a mélange of documents from the Rwandan army and government (the Hutu regime preceding the Tutsi dominated RPF-led administration of

³²⁰ Lemarchand, review of *When Victims Become Killers*, 309.

³²¹ Mironko, 174-175; 192-195.

³²² Hatzfeld, 65-70. The perpetrators interviewed in Hatzfeld's study spoke mostly of heavy fines and much less of death as punishment (although this did occasionally occur). The importance of monetary fines must be assessed in the context of widespread poverty among the Hutu peasants, as pointed out by the perpetrators who claimed that the rich had no problem paying the fines.

³²³ Longman 36.

³²⁴ Melvern, *Conspiracy to Murder*, XIII-XIV.

³²⁵ Ibid.

Rwanda), which were abandoned in Kigali when the army and government fled from the advancing RPA to the neighbouring Democratic Republic of the Congo (formerly Zaire); and the evidence submitted by the office of the Prosecution in a number of high-profile cases at the International Criminal Tribunal for Rwanda (ICTR), particularly the *Military One* Trial of Colonel Théoneste Bagosora and other high ranking military officers (also known in the abbreviated form ‘*the Prosecutor versus Bagosora et al.*’).³²⁶ Melvern further added that some of the documents she had gathered in Kigali were submitted as evidence in court (specifically the Military One trial).³²⁷

Since the publication of Melvern’s book, the ICTR has concluded many of its major cases and the judgements are publicly available from the ICTR’s website. The Prosecution has not been successful in proving a genocide conspiracy in the cases of the two individuals that Melvern argued were the kingpins of the “Akazu” (Hutu extremist) plan of genocide: Colonel Bagosora (former *directeur de cabinet* in the Rwandan Ministry of Defence) and Protais Zigiranyirazo.³²⁸ In both cases, the respective Chambers noted that the charge of ‘conspiracy to commit genocide’ was largely based on circumstantial evidence and ruled that a genocide conspiracy was not the only reasonable conclusion that could be inferred from the evidence.³²⁹ The Prosecution had therefore failed to prove beyond a reasonable doubt that the accused were involved in a genocide conspiracy.³³⁰ The availability of the judgements presents this review of Melvern’s

³²⁶ *Ibid.*, XIV, 280-281. See also: *The Prosecutor versus Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Judgement and Sentence (18 December 2008) [Online]. Available:

<http://www.unict.org/Portals/0/Case/English/Bagosora/Judgement/081218.pdf> [2010, January 10].

³²⁷ Melvern, *Conspiracy to Murder*, XIV; Linda Melvern, “Biography”, *Linda Melvern, Investigative Journalist*, (2006). [Online]. Available: <http://www.lindamelvern.com/bio.htm> [2008, May 6]. Melvern is not explicit about her involvement in the Military One trial, but on her website, it is specified that she was a consultant to the Military One Prosecution team

³²⁸ Melvern, *Conspiracy to Murder*, 22-23, 29, 30, 31, 33, 118, 124, 280-284. “Akazu” is the name that prosecution witnesses have used to refer to the small group of Hutu extremists who allegedly conspired and planned to commit the Tutsi genocide. See *Prosecutor versus Zigiranyirazo*, paragraphs 98-103.

³²⁹ *Prosecutor versus Bagosora et al.*, paragraphs 2110-2113; *Prosecutor versus Zigiranyirazo*, paragraphs 388-395.

³³⁰ See also: *The Prosecutor versus Protais Zigiranyirazo*, Case No. ICTR-01-73-A, Appeal Judgement (16 November 2009), paragraphs 63-74 [Online]. Available:

<http://www.unict.org/Portals/0/Case/English/Zigiranyirazo/decisions/091116.pdf> [2010, January 24].

Having initially been found guilty of genocide and not guilty of conspiracy to commit genocide, Zigiranyirazo has since been acquitted of all charges due to certain errors in the Trial Chamber’s consideration of exculpatory evidence.

argument of a genocide conspiracy with a disadvantage and advantage. On the one hand, it may be argued that the reviewer has a retrospective bias against the book because the outcomes are now largely known.³³¹ On the other hand, the ICTR judgements provide an external source by which to assess Melvern's evidence and arguments. In order to balance out the retrospective bias, this study has consulted some critical reviews written shortly after the book's first and second editions were published (in 2005 and 2007 respectively).³³²

Straus (mentioned in the Mamdani review above), an experienced scholar in the study of the 1994 Rwandan mass killings, appreciated the book's first edition for its "fresh details, anecdotes and evidence about the fateful months just prior to... the genocide."³³³ He criticised the book for making claims about a genocide conspiracy that were not developed within the body of the book. Lars Waldorf, with a background in journalism and International Human Rights Law, similarly expressed that the revised edition was not successful in showing a genocide conspiracy.³³⁴ He conceded that the ICTR had not yet proved a conspiracy either and pointed out that the high-level trials were ongoing; perhaps implying that Melvern's role was limited to reporting the ICTR Prosecution's arguments. Both voiced concerns about her seemingly uncritical reliance on the ICTR Prosecution's witness testimonies and documentary evidence, in view of general concerns about source credibility in the Rwandan context of violence. The latter criticisms about Melvern's evidence raise important questions about what is expected from a journalistic account. While it is clear that critical source evaluation is a critical

³³¹ This minor dissertation was meant to be finished some months before the judgements were made, but there were unforeseen delays.

³³² There are minor differences between the two editions. The 2006 edition has a preface and an extra chapter entitled "Judgements", which contains information about the progress of the ICTR cases. The 2004 edition has a chapter entitled "Ten Years Later."

³³³ Scott Straus, review of *Conspiracy to Murder: the Rwandan Genocide*, by Linda Melvern, *Political Science Quarterly* 120, no. 2 (2005): 349 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, October 6].

³³⁴ Lars Waldorf, review of *Conspiracy to Murder: The Rwandan Genocide*, by Linda Melvern, *African Studies Review* 50, no. 1 (2007): 145-147 [Online]. Available: http://findarticles.com/p/articles/mi_qa4106/is_200704/ai_n21278694 [2009, October 7]; York School of Law, "Lars Waldorf," *University of York*, (last updated 19 November 2009) [Online]. Available: <http://www.york.ac.uk/law/staff/staffprofile%20LW.htm> [2010, January 16].

part of an investigative journalist's work, it is unclear to what extent the journalist has a duty to show how she/he evaluated her sources within the finished product (be it an article, book or broadcast).³³⁵ Nevertheless, it would have been to the book's benefit for Melvern to demonstrate the credibility and/or authenticity of her evidence in some way. With both the ICTR judgements and the critical views in mind, this study suggests that both the ICTR Prosecution and Melvern's arguments failed for the same reason: a genocide conspiracy was not the only or primary reasonable inference to be drawn from the circumstantial evidence and the facts. It further suggests that with the symbiotic relationship of mutual information-sharing between the Prosecution and Melvern makes it very difficult to distinguish between their respective arguments. Both the Prosecution's case and Melvern's genocide conspiracy argument consist of several complex parts. It is impossible to scrutinise every part within the length limits of this study; however a detailed investigation of all parts is a worthwhile future project. Thus only one of these parts is examined in this study, a part which also stands as a self-contained argument of a genocide conspiracy: Melvern's discussion of the creation of the "civil defence programme".³³⁶

A superficial glance at Melvern's end notes does seem to suggest that Melvern's 'genocide conspiracy' claim relies more on the ICTR testimonies she gathered than on the military and government documents that she "gained access to", possibly raising doubts about the book being a hallmark of investigative journalism. However, the limited scope of this review on Melvern's book allows one to see the small but significant contributions that the military and government documents have made in providing

³³⁵Theodore L. Glasser and James S. Ettema, "Investigative Journalism and the Moral Order," *Critical Studies in Mass Communication* 6, no. 1 (1989): 10 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16]; Murray Levine, "Investigative Reporting as a Research Method: An Analysis of Bernstein and Woodward's All the President Men," *American Psychologist* 35, no. 7 (1980): 627, 629, 633 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> (2009, April 16); David Yau Fai Ho, Rainbow Tin-Hung Ho, and Siu Man Ng, "Investigative Research as a Knowledge-Generation Method: Discovering and Uncovering," *Journal for Theory of Social Behaviour* 36, no. 1 (2006): 23-24 [Electronic]. Available from EbscoHost at: <http://www.lib.uct.ac.za.ezproxy.uct.ac.za/index.php?html=/libs/dbases/platforms.htm&libid=88> [2009, April 16].

³³⁶Melvorn, *Conspiracy to Murder*, 20.

information about the proposed martial training and arming of the State-created civil defence units prior to the implication of civil defence-trained civilians in the mass killing of unarmed civilians in 1994.³³⁷ Furthermore, Melvern's apparent success in finding ICTR officials who "broke convention" and "took the risk" of providing her with a copy of convicted former Rwandan Prime Minister Jean Kambanda's "sealed 1, 800-page interrogation" (which she used in documenting the details of the creation and expansion of the civil defence programme)³³⁸ could also be viewed as a spectacular journalistic feat: it means that she was the first to get the 'inside story'.³³⁹ It also raises some potentially serious legal and ethical concerns about how she received the evidence and whether she was protecting her sources by being vague about the details of how she acquired the evidence.³⁴⁰ All the same, this review attempts to show that the presentation of 'fresh' evidence alone is insufficient to make an argument of genocide conspiracy.

There is no dispute on any side that civilians armed and trained under the State-created civil defence programme were among the civilian militias that carried out "genocide" against Tutsi and killings against other unarmed civilians in April-July 1994, even though there are important gaps in the information about the extent of the implementation of the programme and there is acknowledgement of the difficulty of empirically distinguishing civil defence members from the party-controlled militias such as the *Interahamwe*.³⁴¹ There is also no dispute that Bagosora and other military officers were involved in the creation of this programme.³⁴² The point of dispute (as far as arguments of the presence or absence of a genocide conspiracy are concerned) is whether the programme was

³³⁷ Please pay attention to the footnotes in the discussion to follow, particularly under subsection 3.3.1, points a and c.

³³⁸ Again, please pay attention to the footnotes in subsection 3.3.1.

³³⁹ Melvern, *Conspiracy to Murder*, 357.

³⁴⁰ See Murray Levine, "Investigating Reporting as a Research Method: An Analysis of Bernstein and Woodward," *American Psychologist* 35, no. 7 (1980): 627; Laurence B. Alexander, "Looking Out for the Watchdogs: A Legislative Proposal Limiting the Newsgathering Privilege to Journalists in the Greatest Need of Protection for Sources and Information," *Yale Law and Policy Review* 20, no. 97 (2002): 103.

³⁴¹ *Ibid.*, 240-241; *Prosecutor versus Bagosora et al.*, paragraphs 458-459, 488-492. See also: Mamdani, 206; Human Rights Watch and FIDH, *Leave None to Tell the Story*, 11-14; Human Rights Watch and FIDH, *Shattered Lives*, 12-13.

³⁴² *Prosecutor versus Bagosora et al.*, paragraphs 454-455, 494-495; Melvern, *Conspiracy to Murder*, 282. As seen in Melvern's account and the details of the Bagosora et al. case, under the charge of genocide the Accused generally denied that the civil defence members and civilian militias were acting under the authority of the Rwandan military in killing Tutsis and other civilians in April-July 1994.

created with the intention to kill unarmed civilians, particularly to carry out a genocide against the Tutsi group.³⁴³ The facts and evidence that Melvern presented about the civil defence programme are, for the most part, not the major problem in Melvern's account. However, her inferences that the programme was created with the intention of killing unarmed civilians – particularly, of carrying out a “genocide” – are questionable.

3.3.1. *The Civil Defence Programme*

a) *Origin and Expansion of the Civil Defence Programme*

The civil defence programme was created after the RPF invasion in October 1990.³⁴⁴ Melvern claimed that “by all accounts plans were being laid in Rwanda for mass murder on a countrywide scale towards the end of 1990 just after the RPF invaded.”³⁴⁵ The idea of perpetrating genocide against the Tutsi as a response to invasion by the Tutsi-dominated RPF “was spread in a series of secret meetings starting at the end of October, most of them taking place in Gisenyi prefecture” where the extremist Hutu elite (or “Akazu”) were from.³⁴⁶ Details concerning these secret meetings are scant within Melvern's account. Nevertheless, Melvern maintained that “it was clear to the planners that they would require many more people than just the police and army personnel.”³⁴⁷ She went on to claim that the civil defence programme was the means by which Rwandan society was militarised, which in turn “contributed to the speed of the killing in 1994.”³⁴⁸

Melvern's introduction suggests that the civil defence programme was designed specifically to help the extremists to carry out a genocide. However, the facts and

³⁴³ Ibid.

³⁴⁴ ICTR transcript, Interrogation of Jean Kambanda, cited in Melvern, *Conspiracy to Murder*, 2, 21, 288; Prosecutor versus Bagosora, paragraph 460. Jean Kambanda was the Prime Minister of Rwanda's interim government. Jean Kambanda confessed his part in the interim government's implementation of the policy of genocide.

³⁴⁵ Melvern, *Conspiracy to Murder*, 20. There is no direct citation provided, therefore it is unclear which accounts Melvern was talking about.

³⁴⁶ ICTR Prosecution testimony, Military One, Witness One, Witness ZF, cited in Melvern, *Conspiracy to Murder*, 20, 288.

³⁴⁷ Melvern, *Conspiracy to Murder*, 20.

³⁴⁸ Ibid.

evidence she presented about the origins and expansion of the programme predominantly suggest that it was a legitimate response to RPF/RPA military onslaught by augmenting a weak Rwandan army with civilian forces.³⁴⁹ The Rwandan ambassador to Zaire had recommended the programme in 1989, after completing an investigation that suggested that elements within the Tutsi diaspora were intending to attack Rwanda and that the Rwandan army was ill-prepared to meet this attack.³⁵⁰ The recommendation came under serious government consideration only after the RPF/RPA attack in 1990. Melvern's account merely states that this was a programme to arm (and train) peasants in each cell, the smallest administrative division in Rwanda.³⁵¹ Melvern did not clarify what number of peasants was to be armed in each cell and how many people a cell entailed. Contradictory evidence is then presented. On the one hand, there is documentation that Colonel Agustin Ndindiliyimana (then Minister of Defence) submitted a proposal to President Habyarimana in 1991 to implement nationwide military training of civilians under the civil defence programme as soon as finances were available.³⁵² The evidence of an intention to implement a nationwide civil defence programme is supported in part by a similar nationwide civil defence plan outlined in 1993 within Colonel Bagosora's diary.³⁵³ However the plan in Bagosora's diary was only drawn up following the renewed RPF onslaught in 1993 and seems to be a response to this attack, rather than the mere following of a schedule. Other evidence suggests that the civil defence programme was initially intended to be of limited geographical scope. A witness is cited as claiming the existence of documentation detailing a plan for a civil defence programme in which the capital city (Kigali) would receive the best protection; but "nothing had been provided for the parts of the country where the war with the RPF was not expected to take place."³⁵⁴ This meant that the programme was meant to be confined to the northern prefectures that bordered Uganda, from which the RPF/RPA had launched its attack. Further evidence

³⁴⁹ Ibid.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Rwandan Republic, *Note to His Excellency the President. Subject: Study of the Means Necessary for Defence and to Allow the Population to Counter any Attack from Inside or Outside the Country*, undated. Col. Augustin Ndindiliyimana. Author's archive, cited in Melvern, *Conspiracy to Murder*, 21, 288.

³⁵³ Melvern, *Conspiracy to Murder*, 44.

³⁵⁴ ICTR transcript, Interrogation of Jean Kambanda, cited in Melvern, *Conspiracy to Murder*, 48.

strongly suggests that the civil defence programme was a legitimate (though confidential) State project, rather than the well-kept secret of a few Hutu extremists. One reads, for example that as Rwanda went from a one-party government under the MRND/MRNDD to a multiparty coalition government (between 1991 and 1992), ministers from the MRNDD's opposition parties were also actively involved in civil defence strategising (after the 1993 RPF/RPA attack).³⁵⁵ Most strikingly, there is nothing in the evidence produced about the civil defence programme that unambiguously states that Tutsis residing in Rwanda were to be excluded.

Melvorn presented evidence that some *Interahamwe* members received military training, apparently using State resources and certain army personnel.³⁵⁶ She further presented evidence that *Interahamwe* members were involved in the mass killing of Tutsi in Murambi Commune (east of Kigali) four months after Ndindiliyimana submitted his civil defence proposal in 1991.³⁵⁷ Other mass killings of Tutsis in other locations followed. Melvorn appears to have been implying that the *Interahamwe* were trained under the civil defence programme and that the *Interahamwe* had used this training to kill the Tutsis in Murambi, as practice for the "genocide" that finally unfolded in 1994. However, there is no real evidence that the training and arming of *Interahamwe* was done under the State-created civil defence programme. Neither is it proved that the killing of Tutsis in these pre-1994 instances were State-sanctioned, as such. It is with this understanding of the separation of the State from the party that one understands the Bagosora Defence's distinction between "the legitimate civilian self-defence system" and political party militias such as the *Interahamwe*.³⁵⁸ It could be alternatively argued that the training of *Interahamwe* was possibly the MRNDD's unsanctioned abuse of State resources, owing to the Party's privileged access to the State sources.³⁵⁹

³⁵⁵ Rwanda Republic, Ministry of Defence, National Gendarmerie, Account of Meeting of National Gendarmerie, Kigali, 27 March 1993, Author's Archive cited in Melvorn, *Conspiracy to Murder*, 43, 292

³⁵⁶ ICTR Prosecution witness statement, KL, cited in Melvorn, *Conspiracy to Murder*, 26, 289; ICTR Prosecution Testimony, Military One, Omar Serushago, cited in Melvorn, *Conspiracy to Murder*, 26, 289.

³⁵⁷ André Guichaoua, ed., *Les Crises Politiques au Burundi au Rwanda (1993-1994)*, Université des Sciences et Technologies de Lille (Paris: Karthala, 1995), 26, 289, cited in Melvorn, *Conspiracy to Murder*, 26.

³⁵⁸ *The Prosecutor versus Bagosora et al.*, paragraph 455.

³⁵⁹ See Mamdani, 193. Mamdani made a similar argument, stating that it makes sense to see the pre-1994 killing of Tutsis not as projects of the government itself, but of some Hutu extremists within government.

b) *The Definition of the Enemy as set out in the Enemy Commission Report*

While the army and government had already envisaged the civil defence programme by 1990, the formal definition of the enemy of the state only occurred after the deliberations of the “Enemy Commission” in 4-20 December 1991.³⁶⁰ Bagosora (who was involved in the civil defence programme) chaired the commission consisted of both of alleged ‘extremist’ (“*Akazu*”) and ‘moderate’ high-ranking military officers.³⁶¹ The commission produced a report, of which only a few passages have been recovered to be admitted as prosecution evidence.³⁶² The passage containing the definition of the enemy was retrieved and is enough to convince Melvern that all Tutsi were branded as enemies and made genocide against them a feasible war strategy. The Enemy Document/Report is the central piece that grounds the other components of Melvern’s genocide conspiracy argument – including civil defence. She also mentioned that the ICTR (Prosecution) traced the conspiracy’s roots to it.³⁶³

The key ‘enemy definition’ passage is quoted in Melvern’s account as:

“The principle enemy is the Tutsi inside or outside the country, extremist and nostalgic for power and who has never recognised and will never recognise the realities of the social revolution of 1959 and who want their power back by any means, including weapons.”³⁶⁴

The same passage appears somewhat differently in the *Military One* judgement, beginning with: “The principle enemy are the *extremist* [my emphasis] Tutsi inside or

Still, rather than seeing the killings as practice for genocide, Mamdani saw the Tutsi as a hostage population whose members were killed as a means to force concessions from the RPF/RPA on the battlefield and at the negotiation table. Genocide became an option once the extremists failed to get these concessions. See also Human Rights Watch and FIDH, *Leave None to Tell the Story*, 9. For Des Forges of Human Rights Watch, the civil defence programme was a means of recruiting young men for killing using administrative – rather than party - channels. The fear was that the *Interahamwe* militia was tainted by partisan rivalry.

³⁶⁰ Human Rights Watch and FIDH, *Leave None to Tell the Story*, 62, cited in Melvern, *Conspiracy to Murder*, 23, 289; *Prosecutor versus Bagosora et al.*, paragraph 198.

³⁶¹ *Ibid.*

³⁶² Melvern, *Conspiracy to Murder*, 23; The authenticity and authorship of the document were acknowledged by the accused. See *Prosecutor versus Bagosora et al.*, paragraph 201.

³⁶³ Melvern, *Conspiracy to Murder*, 23.

³⁶⁴ Vénuste Nshimiyimana, *Prélude du Génocide Rwandais. Enquête sur les Circonstances Politiques et Militaires du Meurtre du Président Habyarimana* (Paris: Quorum, 1995), quoted in Melvern, *Conspiracy to Murder*, 23.

outside the country...”³⁶⁵ The positioning of the qualifying adjective “extremist” makes a difference in the meaning of the passage. Whereas Melvern’s citation implies that all Tutsis were State enemies as ‘power-nostalgic extremists’, the *Military One* judgement citation implies that the Enemy Commission only identified extremist Tutsis as being the enemy. The *Military One* Trial Chamber therefore reasonably rejected the Prosecution’s argument that the passage implied that all Tutsis were extremists.³⁶⁶ Viewed from the Chamber’s clarification, the formal definition of the enemy was in appearance a legitimate military exercise to identify the predominantly Tutsi armed forces and possible collaborators who were attacking Rwanda at that point. It fails as evidence of a conspiracy to kill the Tutsi group *as such*.

One fact appears to account for the discrepancy between the Chamber’s and Melvern’s citations: the original Enemy Document was written in French, and subsequently gave rise to different English translations.³⁶⁷ The Chamber pointed out that the Defence had criticised the Prosecution’s translation of the definition of the enemy within its Indictments of the Accused found in the Indictments, following which the Prosecution submitted a corrected translation with the French original exhibit.³⁶⁸ One notes that Melvern quoted from a secondary source. One also notes that the enemy definition quoted by Melvern more closely resembles the Indictment translation than it does the corrected translation quoted in the Chamber’s judgement.³⁶⁹

c) The Purchase of Machetes for the Purposes of Arming Civilians under the Civil Defence Programme

³⁶⁵ Prosecution Exhibit 13.1 (Definition of the Enemy Document), quoted in *Prosecutor versus Bagosora et al.*, paragraph 202.

³⁶⁶ *Prosecutor versus Bagosora et al.*, paragraph 203.

³⁶⁷ *Ibid.*, footnote 232.

³⁶⁸ *Ibid.*

³⁶⁹ *The Prosecutor against Théoneste Bagosora*, Case No. ICTR-96-7-I, Amended Indictment (12 August 1999), paragraph 5.6 [Online]. Available: <http://www.unict.org/Portals/0/Case/English/Bagosora/indictment/index.pdf> [2011, January 30].

Under a 1991 civil defence proposal, an estimated 87,000 guns were required to arm civilians under the civil defence programme.³⁷⁰ The US\$100 million that government spent on military weapons between 1990 and 1993 was meant to meet this target. Melvern was suspicious of the plans to distribute firearms among civilians. She was even more suspicious of a “project” undertaken in 1993 by some unnamed Rwandan companies to import large quantities of agricultural tools such as: machetes, razor blades, nails, hoes, axes, screwdrivers, scythes, saws, spades, knives, pliers, pincers, scissors, hammers and shears.³⁷¹ While she stated that these companies were not usually associated with agriculture, she showed no direct link between these companies, the civil defence programme and its creators.³⁷² The only link she was able to show was that the owner of one of the companies was a shareholder in the ‘hate radio’ RTLM, much like Bagosora and some other high ranking military officers.³⁷³ Furthermore the fact that these individuals were shareholders in the radio station did not necessarily mean that they communicated with each other or that they “had a role in the shaping [the radio station’s] broadcasts.”³⁷⁴ She stated that through this agricultural import project, there was one new machete for every third male in the country by 1993. While there is no dispute that machetes were eventually used to kill Tutsi civilians in 1994, the evidence that Melvern presented about their acquisition is insufficient to draw the conclusion that these tools were originally bought to kill civilians. The Prosecution’s expert witnesses (in the Military One case) similarly argued that the purchase of “traditional bladed weapons” for the civil defence programme indicated that the target was civilian rather than military.³⁷⁵ The Defence’s expert witness (an authority on civil defence programmes in Europe) asserted in a report that the use of traditional weapons reflected “the government’s limited resources, the risks of having too many automatic weapons in circulation, and the need to discourage these forces from engaging better trained troops.”³⁷⁶ He claimed that

³⁷⁰ Rwandan Republic, Ministry of Defence, Cabinet Minister to President, *Subject: Arms for the Auto-Defence of the Population*, Kigali (18 November 1991), signed Colonel L. Rusatia, Author’s Archive, cited in Melvern, *Conspiracy to Murder*, 57.

³⁷¹ Melvern, *Conspiracy to Murder*, 56. Melvern provided no source for this information.

³⁷² *Ibid.*

³⁷³ *Ibid.*

³⁷⁴ *Prosecutor versus Bagosora*, paragraph 642.

³⁷⁵ *The Prosecutor versus Bagosora et al.*, paragraph 484.

³⁷⁶ *Ibid.*, paragraph 486.

the role of civil defence units was typically to “focus on infiltrators, accomplices and looters.”³⁷⁷ The Chamber was satisfied that this assessment cast reasonable doubt on the argument that “traditional bladed weapons” were meant to be used to kill civilians, especially in view of one of the Prosecution witnesses’ concession that not all people who were involved in the civil defence programme understood it as a scheme to kill Tutsis or other ordinary civilians.³⁷⁸

3.3.2. *Genocide and Conspiracy to Commit Genocide*

Melvorn used the legal-technical definition of genocide as the objective standard by which to ground her argument of the presence of a longstanding genocide conspiracy by Hutu extremists against Rwanda’s Tutsi group.³⁷⁹ If genocide is “the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” (through killing and other harmful acts against members of the target group), then a conspiracy to commit genocide is a secret agreement between two or more people regarding their shared intention to destroy the target group and “requiring a concerted plan of action” to bring about its destruction.³⁸⁰ In a strictly legal context, an argument of a genocide conspiracy that is supported with circumstantial evidence (evidence of people working together, suggesting an agreement amongst them to reach a common goal) rather than direct evidence (for example, proof of explicit statements from the accused of an agreement to commit genocide) must be able to show that genocide conspiracy is the only reasonable inference that can be drawn from the evidence.³⁸¹ However, since Melvorn’s work is a journalistic account rather than a legal argument and it is ultimately up to the readers to make up their own minds, it may be sufficient for Melvorn to have shown that a genocide conspiracy is the strongest or primary inference to be drawn from the evidence she

³⁷⁷ Ibid.

³⁷⁸ Ibid., paragraph 490.

³⁷⁹ Melvorn, *Conspiracy to Murder*, XV. A copy of the Genocide Convention is included as an appendix in the book.

³⁸⁰ Ibid. See also: the *Prosecutor versus Bagasora et al.*, paragraph 2087-2088. The judgement on this case contains a more precise and detailed legal-technical consideration of a conspiracy to commit genocide, which includes an explanation of the *actus reus* (criminal act perpetrated) and *mens rea* (criminal mental intent) of the crime.

³⁸¹ Ibid., paragraph 2088.

presented. Since it has not been possible to analyse all the evidence that Melvern has presented in support of her argument of genocide conspiracy, it is only possible to make an assessment of the genocide conspiracy argument in relation to the establishment of the civil defence programme.

The evidence that Melvern presented concerning the creation and expansion of the civil defence programme is entirely circumstantial. Melvern failed to show that the creators of the civil defence programme created it on the basis of an agreement that it would be used to perpetrate genocide against the Tutsis as a group.³⁸²

3.4. Conclusion

Mamdani and Melvern provided different approaches to the study of the Rwandan mass killings of April-July 1994. Mamdani's theoretical framework of genocide and identity-driven violence was applied to evidence largely acquired from others. By examining Mamdani's work, it has been possible to identify the disadvantages of relying on the research of others and on an empirical record that is limited or compromised by the political motives of certain sources. Critics generally shared the view that Mamdani's work would have been more convincing had he attempted extensive original empirical research on the level of civilian participation in the killings. Mamdani's theoretical framework for explaining political agency and genocide has been questioned. Critical reviews further suggest that his theoretical explanation would have been more persuasive had he attempted to test it – through local level empirical research - against competing theories on civilian participation. In contrast, Melvern's work is based on the discovery of new evidence about the early formation of the civil defence programme. Her attempts to infer that the creation and expansion of a civil defence programme signalled the development of a genocide conspiracy were unsuccessful because a genocide conspiracy was not the only - or the primary - inference that could be drawn from the presented evidence.

³⁸² See also *Ibid.*, paragraph 2102 (v).

Chapter 4: Human Rights Watch/FIDH and Jones: Mass Sexual Violence against Women and Girls and the Mass Killing of Men and Boys in Rwanda during April-July 1994

4.1. Introduction

Shattered Lives: Sexual Violence during the Rwandan Genocide and the Aftermath (hereinafter referred to as *Shattered Lives*)³⁸³ is among the first works to inquire into the incidence of the mass rape of Rwandan women during the April-July period of mass killing.³⁸⁴ Together with Adam Jones's article "Gender and Genocide in Rwanda",³⁸⁵ it is among the few works that focus primarily on sex-selective or sex-specific violence in Rwanda that occurred during the outlined period. Each work is an example of advocacy-orientated human rights reporting and scholarly analysis respectively.

Shattered Lives is based largely on empirical evidence collected through original empirical research, mainly testimonies of surviving victims. While its authors fulfilled the task of documenting incidents of sexual violence, it was not solely meant to be a descriptive account: like other human rights reports, it came attached to urgent policy concerns pertaining to Rwandan women in the aftermath of the civil war and the violence perpetrated in the pursuit of genocide against the Tutsis. Chief among these concerns was advocacy for the investigation and prosecution of these crimes at the International Criminal Tribunal for Rwanda (ICTR) as well as within the Rwandan criminal justice

³⁸³ Human Rights Watch and Fédération Internationale des Ligues des Droits de L'Homme (FIDH), *Shattered Lives: Sexual Violence during the Rwandan Genocide* (New York and Paris: Human Rights Watch and Fédération Internationale des Ligues des Droits de L'Homme, 1996), 2-6. The report was written primarily by Binaifer Nowrojee (main writer), Janet Fleischman (contributor) and Alison Des Forges (contributor) of Human Rights Watch using the resources of both Human Rights Watch and FIDH.

³⁸⁴ Cynthia Enloe, "Crucial Reporting: Human Rights Reports and Why We Should All be Reading Them," review of *Shattered Lives: Sexual Violence during the Rwandan Genocide; Leave None to Tell the Story: Genocide in Rwanda; Hopes Betrayed: The Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution; Killing You is a Very Easy Thing for Us: Human Rights Abuses in Southeast Afghanistan*, by Human Rights Watch, *The Women's Review of Books* 22, no. 5 (2004): 22.

³⁸⁵ Adam J. Jones, "Gender and Genocide in Rwanda," *Journal of Genocide Research* 4, no. 1 (2002): 65-94.

system. This entailed explaining the provisions in International Law and Rwandan Criminal Law that would make such prosecutions possible.

The starting point of Jones's article is his recognition of the basic fact that, although exact numbers are not known, more males than females were killed in the April-July 1994 campaign of genocide and other mass killing. Jones engaged in a polemical attack against Human Rights Watch, suggesting that the *Shattered Lives* authors had downplayed the significance of the mass killings of males (predominantly from the Tutsi group), even while the authors presented estimates that supported the assertion that males were overwhelmingly represented among the dead.³⁸⁶ Nevertheless, there is basic agreement between both the Human Rights Watch and Jones's accounts that men tended to be killed more frequently than women in 1994, a fact that is generally supported by surviving-victim testimonies found in both works. That said, it is noted that the testimonies on which Jones's analysis relies were collected through the original empirical research of others. Jones's efforts then, were not to produce 'new facts' or 'new empirical evidence' but to bring a new perspective into the interpretation of the existing evidence. Jones pointed out that gender analyses tend to be limited to violence against females, leading to the danger of *gender* being equated with *females* and assumptions that violence against men was gender-neutral.³⁸⁷ Jones introduced the theoretical concept '*gendercide*' into scholarly discourse on the Rwandan mass killings of April-July 1994, developing the argument that the targeting of men and boys was deliberate and that the reasons for this

³⁸⁶ Human Rights Watch and FIDH, *Shattered Lives*, 2, cited in Jones, "Gender and Genocide in Rwanda," 85. Human Rights Watch had claimed that the post-1994 Rwandan population was "70 percent female". The figure was based on a post-war Rwandan government census and was widely accepted as being relatively accurate for some time. The estimate, as written in *Shattered Lives* was quoted by both Jones and myself in our respective earlier works. In the light of subsequent government records, the re-appearance of Tutsi men assumed dead and the return of Hutu refugees, this estimate is outdated. In any event, I was unable to find a direct claim in the *Shattered Lives* report that the skewed demographic pattern was due to the killings alone, which is what Jones suggested was meant by the *Shattered Lives* authors. See: Heather B. Hamilton, "Rwanda's Women: The Key to Reconstruction," *Journal of Humanitarian Assistance* (2000): 1, cited in Jones, "Gender and Genocide," 85; Adam Jones, "Gendercide and Genocide," *Journal of Genocide Research* 2, no. 2 (2000): 189; Helen Scanlon and Nompumelelo Motlafi, "Indigenous Justice or Political Instrument? The Modern Gacaca Courts of Rwanda," in *Peace versus Justice: The Dilemma of Transitional Justice in Africa*, eds., Chandra Lekha Sriram and Suren Pillay (Scottsville: University of KwaZulu-Natal Press, 2009), 309-310.

³⁸⁷ Jones, "Gender and Genocide in Rwanda," 87.

targeting could be traced to 'gendered' social beliefs about males.³⁸⁸ Jones's project began with the article "Gendercide and Genocide".³⁸⁹ The article "Gender and Genocide" is meant to be an improvement on this previous work.

4.2. Human Rights Watch/FIDH: Mass Sexual Violence against Women and Girls in Rwanda, April-July 1994

4.2.1. Sexual Violence: Basic Facts, Empirical Evidence and Generalisations

The authors introduced three terms that apparently refer to three distinct acts or forms of sexual violence: 'rape', 'sexual slavery', and 'sexual mutilation'.³⁹⁰ Within the report, these terms served simultaneously as empirical categories by which the authors organised surviving victim's testimonies as well as terms that referred to specific sexual violence crimes. The legal-technical status of these terms is discussed in subsection 4.2.2. In this subsection the discussion is limited to the consideration of the basic acts and circumstances represented under these empirical categories and generalisations about the widespread nature of these acts.

a) Basic Facts and Empirical Evidence

The authors explained that within the timeframe of April-July 1994, Hutu militiamen and soldiers of the Rwandan Armed Forces (RAF/FAR) perpetrated sexual violence against Tutsi women and girls on a massive scale.³⁹¹ Some Hutu women and girls were similarly attacked, but on a much lesser scale.³⁹² Comparative estimates of the number of Tutsi and Hutu females subjected to sexual violence were unavailable. The only attempt to estimate the overall level of sexual violence was determined through statistical extrapolations based on the recorded number of pregnancies that doctors confirmed or suspected to have been the result of rape. On the determination that every hundred cases of rape result in

³⁸⁸ R. Charli Carpenter, "Beyond 'Gendercide': Incorporating Gender into Comparative Genocide Studies," *The International Journal of Human Rights* 6, no. 4 (2002): 78; Stuart D. Stein, "Geno- and Other Cides: A Cautionary Note on Knowledge Accumulation," *Journal of Genocide Research* 4, no. 1 (2002): 39.

³⁸⁹ Adam J. Jones, "Gendercide and Genocide," *Journal of Genocide Research* 2, no. 2 (2000): 185-211.

³⁹⁰ Human Rights Watch and FIDH, *Shattered Lives*, 1

³⁹¹ *Ibid.*, 18

³⁹² *Ibid.*, 65.

one pregnancy and given that the rape-produced pregnancies were estimated to be between 2,000 and 5,000, it was calculated that the number of rape cases was between 250,000 and 500,000.³⁹³ However these estimates did not give any detail on the “principle and types of rape” (and, presumably, other forms of sexual violence).³⁹⁴

No definition of rape was provided in the report. Instead what was offered is a list of different types of rape: *individual rape* (denoting the rape of one woman or girl by one man or boy); *gang-rape* (denoting the rape of one woman by a number of men); and *rape with objects* such as sharpened sticks or gun barrels.³⁹⁵ Though hardly explicit, the general thrust of surviving witness testimonies within the report attested to fact that rape entailed some sort of penetrative sexual interaction inflicted by the perpetrator on the victim through physical force or through the threat of force or death against the victim or a third party (most notably, the victim’s children).³⁹⁶ What the authors call “rape with objects” is the introduction of sharpened objects into the vagina of the victim, which was apparently done either to kill the victim (impalement) or as a torturous simulation of sexual intercourse wherein the sharp object is used in lieu of a penis.³⁹⁷ What the authors termed ‘sexual slavery’, was essentially perpetual rape under conditions of prolonged confinement.³⁹⁸ There were two kinds of sexual slavery: collective sexual slavery and individual sexual slavery. *Collective sexual slavery* was described as the militiamen’s

³⁹³United Nations Economic and Social Council, Commission on Human Rights, *Report on the Situation of Human Rights in Rwanda Submitted by Mr R. Degni-Ségui, Special Rapporteur of the Commission on Human Rights under paragraph 20 of the resolution S-3/1 of 25 May 1994*, UN Doc. E/CN.4/1996/68, (29 January 1996), paragraph 16 [Online]. Available: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/ae2ff8ad005e2f6802566f30040a95a?Opendocument> [2010, June 20], quoted in Human Rights Watch and FIDH, *Shattered Lives*, 24.

³⁹⁴ Human Rights Watch and FIDH, *Shattered Lives*, 24

³⁹⁵ *Ibid.*, 30-34.

³⁹⁶ Human Rights Watch and FIDH, *Shattered Lives*, 44, 46, 65. See for example the testimony of “Perpetue” who begged not to be raped but was nevertheless beaten and raped. See also the testimony of “Marie-Claire” who stated that to “survive, you had to let yourself be raped.” See also the testimony of “Christine” who was threatened with death if she did not submit sexually but who ultimately submitted to save her children. Her children, like those of “Marie Claire” were killed nevertheless.

³⁹⁷ See the testimonies of “Perpetue” and “Jane”, in Human Rights Watch, *Shattered Lives*, 44, 64. For a more graphic detailing of ‘rape with objects’ as forced simulation of sexual intercourse, see *The Prosecutor versus Laurent Semenza*, Case No. ICTR-97-20-T, Judgement and Sentence (15 May 2003), paragraph 253 [Online]. Available: <http://www.ictr.org/ENGLISH/cases/Semanza/judgement/6.htm#6d> [2010, February 23], cited in Catharine A. Mackinnon, “Defining Rape Internationally: A Comment on Akayesu,” *Columbia Journal of Transnational Law* 44, no. 3 (2006): 952.

³⁹⁸ Human Rights Watch and FIDH, *Shattered Lives*, 1.

practice of confining groups of women and girls to ensure their continued sexual availability to the militiamen for periods ranging from a number of days to the duration of the entire April-July 1994 period of mass killing.³⁹⁹ *Individual sexual slavery* or “forced marriage”, as it was commonly known, was the practice of individual Hutu militia men confining women individually for the purpose of forced sexual service and forced domestic labour for periods of time ranging from a number of days to periods extending beyond the original April-July time frame.⁴⁰⁰ *Sexual Mutilation* was described as the perpetrator’s deliberate infliction of physical injury into what would usefully be divided into the female victim’s primary and secondary characteristics: victim’s genitals, internal reproductive organs, pelvic area and breasts.⁴⁰¹ Injury was inflicted with instruments such as machetes, knives, sticks, boiling water and acid. Sexual mutilations were often performed after the perpetration of rape.

There appears to be no major reason to doubt the verity of the individual victim testimonies, mostly because of the considerable risks posed to the surviving victims’ personal safety and social standing by speaking of their experiences. There were two or three accounts taken from victims from communes in the prefectures of Gitarama and Butare (both in the south of the country), that conflicted with the more general accounts on the matter of the timing of the start of the mass killings and other violence in those prefectures. Accounts of the 1994 killings generally agree that the killings and other violence against Tutsis in these southern *préfectures* began in mid-April 1994 (between 18 and 21 April 1994).⁴⁰² Two or three surviving victims stated much earlier dates as the starting point of violence in their respective communes, suggesting either that there were errors in the victims’ memories or in the authors’ recordings or serving as further support

³⁹⁹ Ibid., 1, 52-53.

⁴⁰⁰ Ibid., 1, 56. The original Kinyarwanda term for forced marriage is not provided.

⁴⁰¹ Ibid., 1, 62.

⁴⁰² Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington D.C.: Brookings Institution Press, 2001), 122; Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton, New Jersey: Princeton University Press, 2001), 219; Linda Melvern, *Conspiracy to Murder: The Rwandan Genocide*, 2nd ed. (London: Verso Books, 2006), 193; 198-199, 212-213. See also Human Rights Watch and Fédération International des Ligues des Droits de L’Homme, *Leave None to Tell the Story: Genocide in Rwanda* (New York and Paris: Human Rights Watch and Fédération International des Ligues des Droits de L’Homme, 1999), 213 [Online]. Available: <http://www.grandslacs.net/doc/1317.pdf> [2009, August 25] (written by Alison DesForges).

that more local-level research is needed.⁴⁰³ Besides these few exceptions, the basic facts of the individual testimonies were relatively unproblematic.

b) Generalisations

The authors asserted that sexual violence against Tutsi women and girls was “widespread”.⁴⁰⁴ This assertion was apparently based on the authors’ interviews with surviving victims/witnesses from six of the 11 prefectures of Rwanda.⁴⁰⁵ However, the overwhelming majority of interviewees were residents of communes in the prefectures of Butare, Gitarama and Kigali; and were attacked there. Surviving-victim testimonies are scattered throughout the report, making the tracking of each one a difficult and time-consuming endeavour. There is a section of the report where the authors arranged some of the collected testimonies under the relevant category of sexual violence.⁴⁰⁶ In this particular section of the report, 26 interviewees are accounted for. Of the 26 interviewees (21 Tutsis and 5 Hutus):⁴⁰⁷ 11 were attacked in Butare (far southern Rwanda); eight were attacked in Gitarama central-southern Rwanda); five were attacked in Kigali (central-eastern Rwanda); one was attacked in Gikongoro (southwestern Rwanda) and one was attacked in Kibungo (southeastern Rwanda). One individual - originally from Gitarama - was attacked in a number of communes in Gitarama before she fled to Gisenyi (far

⁴⁰³ See the Testimony of “Bernadette”, “Perpetue”, and “Liberata” in Human Rights Watch and FIDH, *Shattered Lives*, 42, 44, 49. See also: Human Rights Watch and FIDH, *Leave None to Tell the Story*, 340; *The Prosecutor versus Jean-Paul Akayesu* Case No. ICTR-96-4-T, Judgement and Sentence (2 September 1998), paragraphs 183-193, 294. [Online]. Available: <http://www.unictr.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf> [2010, January 10]. Both Liberata and Perpetue were attacked in Taba commune, Gitarama Prefecture. Liberata claimed that militias first arrived in Taba commune on 12 April 1994. Perpetue claimed she was captured on 9 April 1994 by militia in an already fully active campaign against Tutsi in the same commune. It is possible that the date quoted from Perpetue is a typing error: a footnote reveals that Perpetue was interviewed on 9 April 1996. Testimony from the ICTR case of the bourgmestre (mayor) of Taba, confirms that widespread killings only started after 18 April 1994. Liberata claimed her family was killed at her home in Rusatira commune, Butare three days after the killing of President Habyarimana on 6 April 1994. Liberata did not state that the killings were widespread at that point. These killings might have been among the relatively isolated early killings instigated by soldiers in Butare on 7 April 1994. Killings became widespread in that prefecture on 21 April 1994, as detailed in the Human Rights Watch and FIDH Report, *Leave None to Tell the Story*.

⁴⁰⁴ Human Rights Watch and FIDH, *Shattered Lives*, 18.

⁴⁰⁵ *Ibid.*, 6.

⁴⁰⁶ *Ibid.*, 42-68.

⁴⁰⁷ One Hutu woman was erroneously included under the “Rape of Tutsi women” section, under the category “individual sexual slavery. See Human Rights Watch and FIDH, *Shattered Lives*, 62.

northwestern Rwanda), where she was attacked again.⁴⁰⁸ This Gitarama native provided the only testimony of sexual violence perpetrated in the northern region of the country.⁴⁰⁹ An observer of Human Rights Watch/FIDH explained that the report focused on Gitarama as part of a major international human rights campaign to have charges of sexual violence included in the International Criminal Tribunal for Rwanda's (ICTR) indictment of Jean-Paul Akayesu, the mayor of Taba commune in Gitarama (the ICTR's first case).⁴¹⁰

The report thus raises many questions about how representative this sample of interviews was and how widespread rape really was in other communes. There is little indication of where rape and/or sexual slavery were used more systematically or where rape and/or sexual slavery were more common.⁴¹¹ The authors made a distinction between singular cases of rape and cases of sexual slavery, but there is a great deal of overlap in the cases categorised either simply as rape or as the more complex sexual slavery arrangements. And while it is clear that some Tutsi women and girls were killed after being subjected to sexual violence and others were spared, the authors were unable to give a clear explanation as to why certain groups of Tutsi women or girls were left alive or killed immediately after the perpetration of sexual violence. Judging by the age range of the victims (the youngest being 11 years old and the eldest four women being 38 years old),⁴¹² age is one of the factors implicitly suggested as determining whether Tutsi females were killed immediately without the subjection to rape and sexual slavery; older women (possibly those past middle age) and very young children (pre-pubescent children and infants) were possibly killed immediately upon discovery.

⁴⁰⁸ See the testimony of Perpetue in *Ibid.*, 43-45.

⁴⁰⁹ It is recalled that the RPF had occupied Byumba prefecture in northwestern Rwanda before the eruption of the killings in April. See: Melvern, *Conspiracy to Murder*, 193.

⁴¹⁰ Rhonda Copelon, "Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law," *McGill Law Journal* 46, no. 1 (2000): 224.

⁴¹¹ Timothy Longman, "Placing Genocide in Context: Research Priorities for the Rwandan Genocide," *Journal of Genocide Research* 6, no. 1 (2004): 35.

⁴¹² Human Rights Watch and FIDH, *Shattered Lives*, 46, 47, 51, 52, 58.

4.2.2. *The Problem of the Lack of Legal-Technical Definitions for Sexual Violence under International Law and Rwandan Criminal Law*

One of the most helpful recommendations that authors made to the Rwandan government was to suggest that investigators of sexual violence needed to be individuals with training on the issue of sexual violence and that Rwandan inspectors should have knowledge of the status of sexually violent acts as crimes punishable by law.⁴¹³ It was the starting point to building awareness that sexual violence is not necessarily self-evident. However, the report itself was written with the explicit – and incorrect - assumption that the law itself was unproblematic. The authors stated that international failure to investigate and prosecute incidences of wartime or systematic sexual violence lay “not in the absence of adequate legal prohibitions, but in the international community’s willingness to tolerate sexual abuse against women.”⁴¹⁴ The authors also strongly suggested that while Rwandan Criminal Law had penal provisions to deal with cases of sexual violence, the Rwandan government lacked the “political will” to investigate sexual violence crimes.⁴¹⁵ The authors may have made a valid point in asserting that the lack of investigation of “genocide” and armed conflict-related violence in Rwanda was the result of lack of political will. However, the authors overstated the adequacy of the legal prohibitions on sexual violence and understated the fact that International Humanitarian Law and Rwandan Criminal Law provide extremely limited ‘sexual violence’ conceptual frameworks both in terms of the different sexual violence crimes explicitly listed and the definitions for those crimes. Furthermore, prior to the establishment of the ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY), there were no Case-Law precedents in International Criminal Law from which definitions of ‘rape’ and similar sexual crimes could be derived.⁴¹⁶

⁴¹³ Ibid., 8.

⁴¹⁴ Ibid., 28.

⁴¹⁵ Ibid., 36-38, 88-89.

⁴¹⁶ Jennifer Green, Rhonda Copelon, Patrick Cotter and Beth Stephens, “Affecting the Rules for the Prosecution of Rape and Other Gender-Based Violence Before the International Criminal Tribunal for the Former Yugoslavia,” *Hastings Women’s Law Journal* 5, no. 2 (1994): 189.

The authors specifically addressed the ICTR, the ad-hoc body that was established to prosecute and punish the chief planners and organisers of the crime of genocide and other serious violations of International Humanitarian Law.⁴¹⁷ With regard to sexual violence, this meant that the ICTR mainly had jurisdiction over authorities who were individually responsible for directing subordinates/civilians to perpetrate acts of sexual violence or authorities who bore superior responsibility for their subordinates' perpetration of these acts (a fact that is not emphasised in the *Shattered Lives* report).⁴¹⁸ They recommended that the ICTR recognise and prosecute "rape, sexual slavery and sexual mutilation...where appropriate, as crimes against humanity, genocide crimes, or war crimes."⁴¹⁹ The authors concentrated mainly on the argument that all three forms of sexual violence could be subsumed under some of the acts specified in the legal technical definition of genocide - as specified in the *Genocide Convention* and the *ICTR Statute* respectively - in as far as they were perpetrated against Tutsi women as members of the Tutsi 'ethnic' group.⁴²⁰ Slightly less attention was paid to discussing the explicit and implicit provisions for the recognition of sexual violence as war crimes and as crimes against humanity. Of the three acts or forms of sexual violence specified in the report, only 'rape' is explicitly enumerated as a war crime in the fourth *Geneva Convention, Protocols I and II Additional to the Geneva Conventions* and the *ICTR Statute* at the time of the report's writing.⁴²¹ 'Rape', which had not been consistently enumerated as a crime

⁴¹⁷ *Statute of the International Criminal Tribunal for Rwanda*, Resolution 955 (1994) Adopted by the Security Council at its 3454th Meeting on 8 November 1994 UN Doc S/RES/955 (8 November 1994), [Online]. Available: <http://www.unicttr.org/Portals/0/English/Legal/Tribunal/English/2007.pdf> [2010, October 17].

⁴¹⁸ This does not mean that the chief planners and Organisers always refrained from carrying out acts of sexual violence themselves. ICTR accused Alfred Musema was himself found to have personally forced a Tutsi woman to have sexual intercourse with him. He was found guilty of rape as a crime of genocide and as a crime against humanity. See *The Prosecutor versus Alfred Musema*, Case No. ICTR-96-13-A, Judgement and Sentence (27 January 2000), paragraphs 849-851, 933, 965-967 [Online]. Available: <http://www.unicttr.org/Portals/0/Case/English/Musema/judgement/000127.pdf> [2011, January 12].

⁴¹⁹ Human Rights Watch, *Shattered Lives*, 9.

⁴²⁰ *Ibid.*, 34.

⁴²¹ *Ibid.*, 29. *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, including Annexes I-III*, 12 August 1949, 75 UNTS 287, Article 27 [Online]. Available from the International Committee of the Red Cross at: <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5> [2010, June 16]; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, entered into force 7 December 1978, Article 76(1) [Online]. Available from the International Committee of the Red Cross at: <http://www.icrc.org/ihl.nsf/WebART/470-750098?OpenDocument> [2010, June 16]; *Protocol*

against humanity in the statutes of past international criminal tribunals, was explicitly recognised as such in the *ICTR Statute*.⁴²²

The Rwandan courts were (and are) responsible for the prosecution of lower-level leaders and the ordinary civilians accused of perpetrating acts of sexual violence and other criminal acts during the April-July 1994 period.⁴²³ Thus, the authors urged the Rwandan government to ensure that “the sexual violence that took place during the genocide...be fully investigated and where possible, prosecuted and punished.”⁴²⁴ They noted that ‘rape’ (*le viol*) is enumerated as a crime under Article 360 of the Rwanda Penal Code of 1977.⁴²⁵ They further noted that the Rwandan government had passed legislation to facilitate the prosecution of genocide and crimes against humanity between 30 October 1990 and 31 December 1994.⁴²⁶ This legislation recognised ‘sexual torture’ as an act of genocide and as a crime against humanity under “Category One”, which is the category

Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, entered into force 7 December 1978, Article 4(2)(e). [Online]. Available from the International Committee of the Red Cross at: <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument> [2010, June 16]; *ICTR Statute*, Article 4(e).

⁴²² *ICTR Statute*, Article 3(g); Human Rights Watch and FIDH, *Shattered Lives*, 29.

⁴²³ *ICTR Statute*, Resolution 955(1994).

⁴²⁴ Human Rights Watch and FIDH, *Shattered Lives*, 8.

⁴²⁵ *Ibid.*, 36; [Republic of Rwanda] *Décret-Loi No. 21/77 du 18 août 1977: Code Penal*, Article 360 [Online]. Available:

http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=947&Parent_ID=3070640&ttype=public&Langue_ID=Fr&rubID=30691315#30691315 [2010, October 25]. Prior to the advent of the RPF-led government, Rwandan law was written exclusively in French. Subsequent legislation passed by the current Rwandan administration is written in three official languages: Kinyarwanda, English and French. On the language of Rwandan legislation see: William A. Schabas, “Prosecuting International Crime: Justice, Democracy and Impunity in Post-genocide Rwanda, Searching for Solutions to Impossible Problems,” *Criminal Law Forum* 7, no. 3 (1996): 532.

⁴²⁶ Human Rights Watch and FIDH, *Shattered Lives*, 36-38; [Republic of Rwanda] Organic Law No. 08/1996 of 31 August 1996 on the Organisation of Prosecution of Offences Constituting the Crime of Genocide or Crimes against Humanity since 1 October 1990 (1 September 1996), Article 2 [Online]. Available: <http://www.unhcr.org/refworld/docid/3aef6b4f64.html> [2010, May 23]. See also Organic Law No. 13/2008 of 19 May 2008 Modifying and Complementing Organic Law No. 16/2004 of 19 June 2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes against Humanity, Committed between October 1, 1990 and December 31, 1994 as Modified and Complemented to Date, Article 6 [Online]. Available: <http://www.inkiko-gacaca.gov.rw/pdf/L.O%20N%2013.2008%20VERSION%20FINALE.pdf> [2010, May 23]. Where Organic Law No. 08/1996 refers only to sexual torture, Organic Law No. 13/2008 refers to both rape and sexual torture, which is translated into the French as “Infractions de viol et de torture sexuelle” (Offences of rape and sexual torture) and into Kinyarwanda as “Ibyaha byo gusambanya ku gahato no kwangiza imyanya ndangabitsana”, rape being “gusambanya ku gahato” and sexual torture being “kwangiza imyanya ndangabitsana”.

enumerating the most serious offences out of a total of four categories. While expressing certainty that many rape cases would fall under Category 1 as ‘sexual torture’, the authors were uncertain of whether sexual torture would be “interpreted to include all acts of rape or only those with certain characteristics.”⁴²⁷

To the report’s detriment, the authors failed to acknowledge that ‘rape’ is a legal-technical term for a crime recognised almost universally in domestic criminal law systems worldwide.⁴²⁸ Domestic jurisdictions typically have their own definitions of the crime of rape and other sexual assaults. While the crime of ‘rape’ was explicitly named both in Rwandan Criminal Law and in International Law; neither International Law nor Rwandan Law provided any definition of rape or any other comparable sexual assault (‘sexual violence crime’) at the time of the writing of the report.⁴²⁹ In legal proceedings it is necessary to determine a legal-technical definition of rape (or any other sexual assault) before any assessment can be made of whether rape constitutes genocide, or a crime against humanity or a ‘war crime’.⁴³⁰ The authors’ failure to engage with the issue of the absence of standard legal-technical definitions of sexual assaults in International Law and Rwandan Law is especially problematic in view of ‘rape-law reform’ literature suggesting that there have been controversies and fierce disputes regarding the definition of different sexual assaults within domestic jurisdictions worldwide.⁴³¹ Given the length

⁴²⁷ Human Rights Watch and FIDH, *Shattered Lives*, 38.

⁴²⁸ David John Frank, Tara Hardinge and Kassia Wosick-Correa, “The Global Dimensions of Rape-Law Reform: A Cross-National Study of Policy Outcomes,” *American Sociological Review* 74, no. 2 (2009): 275-276; William Schabas, “Crimes against Humanity,” *Encyclopedia of Genocide and Crimes against Humanity*, ed., Dinah Shelton (Farmington Hills, Michigan: Thomson Gale, 2005), 211.

⁴²⁹ *Prosecutor versus Akayesu*, paragraph 686; *The Prosecutor versus Anto Furundžija*, Case No. IT-95-17/1-T, Judgement (10 December 1998), paragraph 175 [Online]. Available: <http://www.un.org/ictv/furundzija/trialc2/judgement/fur-tj981210e.pdf> [2010, January 10]; Catharine MacKinnon, “Defining Rape Internationally: A Comment on Akayesu,” *Columbia Journal of Transnational Law* 44, no. 3 (2006): 942. The rape definition from the *Akayesu* case was the first international definition of rape.

⁴³⁰ *Prosecutor versus Akayesu*, paragraph 686, *Prosecutor versus Furundžija*, 175.

⁴³¹ Penelope E. Andrews, “Violence Against Women in South Africa: The Role of Culture and the Limitations of the Law,” *Temple Political and Civil Rights Law Review* 8, no. 2 (1999): 454; Alice Armstrong, “Evidence in Rape Cases in Four Southern African Countries,” *Journal of African Law* 33, no. 2 (1989): 172; Valérie Ceccherini, “Rape and the Prophet,” *Index on Censorship* 28, no. 1 (1999): 21; Amy Jo Everhart, “Predicting the Effect of Italy’s Long-Awaited Rape Law Reform on The Land of Machismo,” *Vanderbilt Journal of Transnational Law* 31, no. 3 (1998): 682-684; Mackinnon, “Defining Rape Internationally,” 952; Martha I. Morgan, “The Bitter and the Sweet: Feminist Efforts to Reform Nicaraguan Rape and Sodomy Laws,” *Inter-American Law Review* 26, no. 3 (1995): 439-488; Cassia Spohn and Julie

constraints of this study it is unfortunately not possible to list and discuss these issues surrounding rape and sexual assaults. What can be said is that these disputes had a role in the formulation of *Rule 96* of the *Rules of Procedure and Evidence* of both the ICTR and the ICTY.⁴³² *Rule 96* gives some guidelines regarding the role of the victim's non-consent and victim coercion in sexual interactions potentially classifiable as sexual assaults, stipulating that defendants have to satisfy the court that evidence of the victim's consent is relevant.⁴³³ This has been seen as a moderate victory by some rape-law activists who argued that non-consent is notoriously difficult for prosecutors to prove, and who had confidence in the fact that *Rule 96* prohibits the Defence's submission of evidence of consent once the Chamber had established the presence of coercive circumstances to which the victim was subject.⁴³⁴ Others criticised the very existence of *Rule 96*'s consent-defence provision.⁴³⁵ Nevertheless, *Rule 96* failed to provide enumerations and definitions of different sexual assaults. This explains the varied Case-Law definitions of rape that have arisen from the ICTR and ICTY.⁴³⁶ In the context of cases processed through the Rwandan courts, the author of a follow-up Human Rights Watch report observed that the terms 'rape' and 'sexual torture' were used inconsistently in trials and judgements, indicating confusion among prosecutors and judges about what the terms meant.⁴³⁷ She further observed that the reliance on judicial discretion to identify criminalised acts of sexual violence had resulted in inconsistent guilty verdicts and

Horney, "The Law's the Law, but Fair is Fair: Rape Shield Laws and Officials' Assessments of Sexual History Evidence," *Criminology* 29, no. 1 (1991): 137, 157; Cassia Spohn, "The Rape Reform Movement: The Traditional Common Law and Rape Law Reforms," *Jurimetrics* 39, no. 2 (1999): 123-124; Beth Stephens, "A Developing Legal System Grapples with an Ancient Problem: Rape in Nicaragua," *Women's Rights Law Reporter* 12, no. 2 (1990): 75.

⁴³² *International Criminal Tribunal for the Former Yugoslavia: Rules of Procedure and Evidence*, Adopted on 11 February 1994 as Amended on 24 July 2009, UN Doc. IT/32/Rev43, Rule 96 [Online]. Available: http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_Rev43_en.pdf [2010, August 12]; *International Criminal Tribunal for Rwanda: Rules of Evidence and Procedure*, Adopted on 29 June 1995 as amended on 9 February 2010 [Online]. Available:

<http://www.unictcr.org/Portals/0/English/Legal/ROP/100209.pdf> [2010, October 17]; Kate Fitzgerald, "Problems of the Prosecution and Adjudication of Rape and Other Sexual Assault under International Law," *European Journal of International Law* 8, no. 4 (1997): 646-647; Green et al., 189-192, 217-219.

⁴³³ *ICTR Rules of Procedure and Evidence*, Rule 96 (ii)-(iii).

⁴³⁴ Green et al., 217.

⁴³⁵ *Ibid.*, 218, MacKinnon, "Defining Rape Internationally," 947.

⁴³⁶ See for example: *Prosecutor versus Akayesu*, paragraphs 686-688, *Prosecutor versus Furundžija*, paragraph 185; *Prosecutor versus Semanza*, paragraph 346. For a comprehensive overview of the rape judgements at the ICTR and ICTY, see MacKinnon, "Defining Rape Internationally," 940-958.

⁴³⁷ Human Rights Watch, *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda* (New York: Human Rights Watch, 2004), 32. This Human Rights Watch report was written by Shiva Eftekhari.

punishments.⁴³⁸ Another observer pointed out that “the Rwandan rape law is limited and denies prosecution for deeds commonly committed during the genocide – penetrating women’s vaginas with gun barrels, bottles and sharpened sticks.”⁴³⁹ These are all foreseeable problems that the *Shattered Lives* authors should have addressed.

4.2.3. Acts of Sexual Violence as Acts of Genocide

One might argue that the report made a fair case that some forms or acts of sexual violence constituted genocide (according to the Genocide Convention’s definition), if one overlooks the problems arising from the legal-technical definitions of different sexual assaults and concentrates on the basic facts of the perpetrated acts.⁴⁴⁰ All the individual cases of sexual violence were perpetrated in the context of organised and widespread killing and sexual violence against Tutsi civilians. Furthermore, the actions and statements of the perpetrators - as recalled in some of the victim testimonies documented in the report - generally suggest that the perpetrators expected that attacking their victims sexually would inflict psychological and/or physical injury on the victims and thereby “advance the cause of the destruction of the Tutsi people.”⁴⁴¹ Some of the incidents of ‘sexual mutilation’ and sexual penetration with objects (‘rape with objects’) recorded in the report were a method of physical killing, even though death was not always the

⁴³⁸ Ibid.

⁴³⁹ Elizabeth Barad, “Export and Import of the Rule of Law in the Global Era,” *ILSA Journal of International and Comparative Law* 11, no. 2 (2005): 328-329.

⁴⁴⁰ Ibid., 35.

⁴⁴¹ Ibid. It is however important to point out that it would be very difficult – if not impossible – to argue that every single act of sexual violence was an act of genocide under the guidelines of the Genocide Convention. In some of the cases of sexual attack – especially in cases of so-called ‘forced marriage’ (individual sexual slavery) – one can easily argue that the attacks were opportunistic. In the course of attacks against the Tutsi, some militiamen appear to have seized the opportunity to seize a Tutsi ‘wife’ contrary to orders from leader to kill these women. In such cases, it could be argued that it was the perpetrators’ sexual desire for the Tutsi women, rather than the “intent to destroy” the Tutsi group, that prompted the attack. See for example: Testimonies of “Perpetue” and “Venautie”, in Ibid. 44-45, 61. “Venautie” explained that she was originally ordered to dig her own grave, but was spared when one militiaman randomly decided that he wanted her. Before he forced her to have sexual intercourse with him, he explained, “If there were peace, you would never accept me”. “Perpetue” was pulled from a mass grave by a militiaman who wanted to engage her sexually. This attack seems to have been opportunistic; but the perpetrator seemed to understand that a sexual attack could kill a victim, since he is said to have claimed that “any Tutsi woman from Gitarama would be killed in an even worse way than what he was doing” to Perpetue (raping her). It is to the Human Rights Watch authors’ credit that they did not claim that all cases of sexual violence against Tutsi women were genocidal.

result.⁴⁴² Cases where victims were forcefully subjected to sexual intercourse (usually with multiple perpetrators) could be divided into two types of harm: those cases in which the perpetrators intended to inflict such extensive physical injury as to cause physical death;⁴⁴³ and those in which the perpetrators expected to cause not only psychological trauma due to the sheer violence of the attack but also psychological harm due to feelings of shame brought on by the social significance of sexual attacks against women.⁴⁴⁴ The authors explained that the victims' feelings of shame stemmed from the 'gendered' societal emphasis on female sexual virtue as the standard by which females maintained respect in their communities and were accepted (by males) to be wives and mothers.⁴⁴⁵ A female's engagement in non-marital sexual activity – even if it was against her will – compromised her public reputation of sexual virtue (measured via fidelity or virginity), brought shame to her family and ultimately resulted in the victim's ostracism. Sexual violence was an effective strategy of genocide because both the female victims and the perpetrators understood that these females would be ostracised by whatever remained of their communities and they would be rejected as reproducers (wives and mothers).⁴⁴⁶ In addition, the authors and victim testimonies underscored that fact that sexual violence against Tutsi women was fuelled by politically-channelled socio-cultural beliefs that Tutsi women were more beautiful and more sexually desirable than Hutu women.⁴⁴⁷ The subjection of Tutsi women to sexual violence thus served the purposes of sexually gratifying the male Hutu perpetrators as well as sexually 'defiling' Tutsi women and girls. Overall, cases of 'sexual violence as genocide' could be interpreted as falling

⁴⁴² Ibid., 63-65.

⁴⁴³ For the best example see : Testimony of "Bernadette" in Ibid., 42. In explaining her attackers' surprise at finding her alive after they thought they had killed her, Bernadette explained that her attackers had exclaimed, "Those Tutsi people won't die – we raped her and she survived. We threw her in the river and she still survived."

⁴⁴⁴ See the Testimony of Clementine, in Ibid., 47. Clementine explained that older militiamen had ordered the younger militiamen to subject her to sexual intercourse ('rape'). When the young men were finished, the older men ordered them not to harm her further because they had "already killed her." The authors also claimed that some victims (unnamed) reported that their attackers stated that rather than kill the women immediately, they would leave them to die from their sorrow. See: Ibid., 35.

⁴⁴⁵ Ibid., 2, 26, 28.

⁴⁴⁶ See Ibid., 26, 41. Rape survivors in Rwanda are documented as making statements such as: "After rape, you have no value in the community"; "It was the humiliation of women"; "It was the disfigurement of women, to make them undesirable, used"; "Women's worth was not respected."

⁴⁴⁷ Ibid., 18-19, 43, 47, 51, 54, 63.

within one of four acts of genocide as listed in Article 2 of the *Genocide Convention* and the *ICTR Statute* respectively:

“a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measure intended to prevent births within the group”.⁴⁴⁸

4.3. Jones: “Gender-Selective” Killings in Rwanda, April-July 1994

4.3.1. Gendercide and Genocide

Jones’s interest in the mass killing of males stemmed from his perception that male-targeted violence in Rwanda (and in other conflicts worldwide) failed to attract the attention of scholars and policymakers alike, even though it was widely acknowledged that males were overwhelmingly represented among those killed.⁴⁴⁹ Jones first proposed that the mass targeting and killing of males be understood as *gendercide* in an article entitled “Gendercide and Genocide”, in which he defined gendercide “inclusively...as gender-selective mass killing”.⁴⁵⁰ Jones asserted that for his purposes, gender was “defined primarily, if not exclusively in terms of biological sex.”⁴⁵¹ Jones’s first article brought the term ‘gendercide’ into mainstream comparative genocide studies, having appropriated it from Mary Anne Warren, who had originally coined it to refer to either gender-selective killing or sex-selective killing.⁴⁵² Two significant critical reviews

⁴⁴⁸ *Convention for the Prevention and Punishment of the Crime of Genocide*, Approved and Proposed for Signature and Ratification or Accession by General Assembly Resolution 260 A (III) of 9 December 1948, Entry into force January 1951, in Accordance with Article XIII, Article 2 [Online]. Available: http://www.unhchr.ch/html/menu3/b/p_genoci.htm [2007, November 28]; *ICTR Statute*, Article 2, quoted in Human Rights Watch and FIDH, *Shattered Lives*, 34-35. The authors tie the various acts of sexual violence explicitly to acts b) , c) and d), but both the authors and the victims’ testimonies imply the relevance of act a) as well.

⁴⁴⁹ Adam J. Jones, “Gendercide and Genocide,” *Journal of Genocide Research* 2, no. 2 (2000): 186; Jones, “Gender and Genocide,” 85, 88.

⁴⁵⁰ Adam J. Jones, “Gendercide and Genocide,” *Journal of Genocide Research* 2, no. 2 (2000): 185.

⁴⁵¹ Jones, “Gendercide and Genocide,” 186.

⁴⁵² Mary Anne Warren, *Gendercide: The Implications of Sex Selection* (Totowa, New Jersey: Rowman and Allenheld, 1985), cited in Jones, “Gendercide and Genocide,” 186. According to Carpenter, Warren had distinguished between those killings based on ‘gender as social beliefs’ and those that had been based on biology. Her reason for subsuming killings based primarily on biological imperatives under the term ‘gendercide’ was that the term ‘sex-cide’ was not as ‘catchy’. See R. Charli Carpenter, “Beyond Gendercide: Incorporating Gender into Comparative Genocide Studies,” *International Journal of Human Rights* 6, no. 4 (2002): 78, 97. Also see Stein, 39.

emerged in the scholarly response to Jones's work. One was produced by Stuart Stein, a sociologist in comparative genocide studies who promoted the production of more disaggregated analyses of the different kinds of mass killings and other atrocities that may typically make up a single campaign of genocide.⁴⁵³ The other was produced by R. Charli Carpenter, a Political Scientist promoting the diffusion of gender-based analyses beyond the study of "rape and sexual atrocity against women and girls in contemporary genocide" and into the mainstream of comparative genocide studies.⁴⁵⁴ Their criticisms found fault with his theoretical explanation that the victims had been selected on the basis of gender rather than the verity of the facts of the cases that he presented. These criticisms of the prior article have some relevance in understanding Jones's development of the term gendercide and its relationship to the concept of genocide within the article currently under review, particularly in as far as both concepts may apply to the Rwandan mass killings of April-July 1994. The possible impact of Carpenter's critical review on Jones's subsequent article is initially suggested in Carpenter's inclusion in Jones's list of acknowledged persons.⁴⁵⁵

Stein contended that in most of Jones's cases, the victims had not been primarily targeted on the basis of their "maleness" (since this was the primary basis of Jones's definition of their gender). Rather the male victims had been targeted on the basis of the perpetrators' beliefs about the ascriptive roles that they played or might play in "patriarchal-type social systems", leading perpetrators to calculate that the males of competing communal groups posed a greater military (or political or economic) threat than females to the perpetrators' ethno-national schemes.⁴⁵⁶ However Stein himself also tended to conflate sex with gender in his explanation of sex-selective or sex-specific outcomes (even after initially differentiating the two), leading to some confusion. Carpenter provided the more systematic and helpful critique, calling for conceptual clarity and consistency in Jones's work and maintaining the same clarity and consistency in her own explanations of the

⁴⁵³ Stuart D. Stein, "Geno- and Other Cides: A Cautionary Note on Knowledge Accumulation," *Journal of Genocide Research* 4, no. 1 (2002): 39-40, 50-54

⁴⁵⁴ Carpenter, "Beyond Gendercide," 77.

⁴⁵⁵ Jones, "Gender and Genocide in Rwanda," 89.

⁴⁵⁶ Stein, 52.

workings of 'gender'. According to Carpenter, the problem with Jones's whole theoretical explanation began with the fact that he had implied that the terms 'sex' and 'gender' were essentially interchangeable, much in the same way that the terms were used colloquially.⁴⁵⁷ In social scientific study, the term gender was specifically created to differentiate between the "brute facts of human biology" (in this case, the sexual differentiation of male and female individuals) and the social constructions around sex differences.⁴⁵⁸ Using the terms 'gender' and 'sex' interchangeably in a social scientific work such as Jones's article blunted gender as an analytical tool. Gender and sex needed to be kept analytically separate precisely because researchers needed to test - rather than assume - that sex disparities in mass atrocities were due to social beliefs (gender) rather than due to strictly biological imperatives or considerations.⁴⁵⁹ By defining '*gendercide*' as "gender-selective mass killing" and stipulating that *gender* was primarily defined on the basis of "biological sex", Jones was making the tautological claim that the killings were sex-selective (male selective, to be exact) without giving insight to the causes of the sex-selection of the victims.

When gender is properly understood on the basis of social beliefs and institutions constructed around the differences between the sexes, one can begin to understand the direct and indirect ways in which 'gendered' beliefs could result in the sex disparities that may be evident in mass killings or other mass atrocities.⁴⁶⁰ Gender operates indirectly through gender structures that channel males and females "into separate spaces where they are at risk of different types of harm," leading to outcomes that are '*sex-specific*' rather than '*sex-selective*'. The hypothesis is that males coincidentally occupy specific social roles that perpetrators deem threatening. If, for example, a certain government's forces were sent out to kill all the members of the political opposition, it is possible that males (specifically adult males) might be over-represented among the victims. Such an

⁴⁵⁷ Carpenter, "Beyond Gendercide," 80.

⁴⁵⁸ Ibid., 78.

⁴⁵⁹ Ibid., 80. The specific sex-selective atrocity that Carpenter gave as an example of targeting on the basis of biology is forced pregnancy. She maintained that in such cases "women rather than men are subjected to this form of abuse because they are biologically female," even if gender discourses and ideologies are involved in the use of forced pregnancy as a strategy for the purposes of destroying a communal group. "But we do not need 'gender' to explain why it is women and not men who are targeted."

⁴⁶⁰ Ibid., 83.

outcome might be explained by referring to political institutions constituting a pre-existing gender structure that has become 'masculine' through the channelling of men (adult males, however legally or socially defined) into the public sphere of politics and civil society and the concurrent systematic exclusion of women (adult females) from the same institutions.⁴⁶¹ Provided that the attack was aimed at the members of the political opposition *per se* regardless of sex, the over-representation of males among victims would be termed 'sex-specific'. Gender operates directly as conscious gender discourses – specifically gender ideologies and gender norms – of actors “who may use sex as a proxy variable for socially constructed attributes,” which may lead to sex-selective killing.⁴⁶² Gender discourses and ideologies are particularly crucial where the ascriptive characteristics they espouse about males and females respectively trump the empirical reality regarding people's individual capacities, regardless of sex.⁴⁶³ If, for example, one was able to show in a specific case of mass killing that government forces had targeted all the male members of a specific communal group primarily on the basis of beliefs that the males of that group were more likely to comprise the current or future political opposition, then one would be able to argue that the targeting of males was gender-based. This gender-based targeting might occur in spite of the fact of females being involved in political organisation. These considerations of gender often coincide with considerations of ethnicity and/or social class.⁴⁶⁴ However, a note of caution needs to be made here: in some cases, biological factors may be the primary consideration determining sex-selective outcomes, even where gender discourses and ideologies help create the conditions under which the sex-selective outcomes are secured. An example of this would be the subjection of sexually mature females to forced pregnancy as a strategy of inter-communal attack.

Carpenter asserted that sex-selective killings – and sex-selective outcomes generally – were not the only possible results of gender-selective targeting.⁴⁶⁵ Gender-selective killings could also be '*sex distinctive*', for example in instances where perpetrators killed

⁴⁶¹ Ibid., 82.

⁴⁶² Ibid., 83.

⁴⁶³ Ibid., 91.

⁴⁶⁴ Ibid., 86; Stein, 50-51.

⁴⁶⁵ Carpenter, "Beyond Gendercide," 90-91

more males than females within a specific communal group, but females were disproportionately targeted for rape and other sexual violence. Alternatively, both males and females might be killed; but males may first be 'emasculated' through castration, while females are raped to violate their presumed sexual virtue (indicative of family and community 'honour') and to taunt 'their' men for being unable to fulfil their assumed 'protective' role.⁴⁶⁶ Carpenter also asserted that gender-selective targeting can include 'sex-inclusive' killings and other outcomes, which manifest in identical effects on individuals of either sex.⁴⁶⁷ This would be due to the fact that gender creates certain categories that are not related to an individual's sex, but rather related to the individual's "relationship to a gender regime's definition of male/female relations more generally."⁴⁶⁸ What this means is that gender groups need not necessarily be composed of people of the same sex.⁴⁶⁹ For this reason, the deliberate targeting of confirmed or suspected homosexuals may be viewed as one form of gender-selective targeting resulting in sex-inclusive killing.⁴⁷⁰ Thus, for Carpenter, when gender is appropriately distinguished from biological sex and gender-selective killing is distinguished from sex-selective killing, *gendercide* (as gender-selective killing) is a concept that encompasses both sex-selective and sex-inclusive killings as empirical outcomes.

Stein and Carpenter's criticisms of Jones's work also concerned the relationship that Jones established between 'gendercide' and 'genocide'. Both critics used the Genocide Convention's definition of genocide as the guiding framework for their own understanding of the concept: killings and other acts that fall short of killing are genocide in as far as they are perpetrated with "the intent to destroy, in whole or in part, a racial, national, ethnical or religious group."⁴⁷¹ Jones's own concept of genocide deviated from the Genocide Convention's definition of genocide in that Jones had defined genocide as "the actualization of the intent, however successfully carried out, to murder *in whole or in*

⁴⁶⁶ Ibid., 90.

⁴⁶⁷ Ibid., 91.

⁴⁶⁸ Ibid., 91.

⁴⁶⁹ Ibid., 85.

⁴⁷⁰ See: Richard Plant, *The Pink Triangle: The Nazi War against Homosexuals* (New York: Holt, 1996), cited in Carpenter, "Beyond Gendercide," 91; Frank Rector, *The Nazi Extermination of Homosexuals* (New York: Stein and Day), cited in Carpenter, "Beyond Gendercide," 91.

⁴⁷¹ See Carpenter, "Beyond Gendercide," Stein, 43, 51.

substantial part any national, ethnic, racial, religious, political, social, gender or economic group as these groups are defined by the perpetrator by whatever means.”⁴⁷² In spite of these significant conceptual differences, both critics supported Jones’s argument that the sex-selective killing of males could and did feature in many case of genocides and other inter-communal attacks.⁴⁷³ Both critics disputed Jones’s claim that “gendercide against men and women - but particularly men - may be seen in this light as one of the more common forms of genocide.”⁴⁷⁴ In order for Jones (or anyone else) to make a credible argument about gendercide being a form of genocide, he would have to show that perpetrators of one gender group had tried to eliminate another gender group (as such/*per se*) by killing or otherwise harming the members of the victim group.⁴⁷⁵ Since gender groups simultaneously constitute sex groups under Jones’s framework, gendercide as genocide would envisage males executing the intent to destroy females as group or vice versa.⁴⁷⁶ With the possible exception of some female infanticides, cases in which one gender/sex group had tried to destroy another gender/sex group were thus far either unknown or non-existent.⁴⁷⁷ This was due to the fact of basic male-female interdependence in reproduction; a fact which may change in the future with the development of cloning technology.

4.3.2. *Gender, Gendercide and Genocide: The Sex-Selective Killing of Men and Boys as a Component of the Genocide against the Tutsis*

Jones’s article, “Gender and Genocide in Rwanda,” serves as a continuation of and a departure from the work begun in “Gendercide and Genocide”.⁴⁷⁸ It is a continuation in the sense that Jones was still primarily concerned with the gendered causes of the sex-selective killing of males.⁴⁷⁹ It is a departure from the previous work in the sense that Jones decided to focus on a single case study, this being the sex-selective killings aimed

⁴⁷² Jones., “Beyond Gendercide,” 199-200.

⁴⁷³ Carpenter, “Beyond Gendercide,” 78, 85; Stein, 51.

⁴⁷⁴ Jones, “Gendercide and Genocide,” 200, quoted in Carpenter, “Beyond Gendercide,”

⁴⁷⁵ Carpenter, “Beyond Gendercide,” 86.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ *Ibid.*, 87; Stein, 51.

⁴⁷⁸ Jones, “Gender and Genocide in Rwanda,” 65-66.

⁴⁷⁹ *Ibid.*, 69-76.

predominantly against Tutsi men in April-July 1994. The gendered cause of sex-inclusive killings is also discussed, among a number of other sex-specific and sex selective outcomes whose details are too lengthy to be discussed here.⁴⁸⁰

Jones's "Rwandan Genocide" study is based on original testimony collected in what he identified on the "five most significant human rights reports on the Rwandan genocide published in English so far."⁴⁸¹ Jones claimed that the general thrust of human rights reportage suggested that males were overwhelmingly targeted "in the genocide's earliest and most virulent stages"; and yet, Jones depended heavily on a single human rights report for his study of sex-selective killing of Rwandan males: *Rwanda, Death Despair and Defiance* by African Rights.⁴⁸² His motivation for his dependence on this particular report is that it is superior to others in "its detail and specificity," thus making it "foundational to our understanding of our understanding of events overall – and their complex 'gendering' in particular."⁴⁸³ Timothy Longman (a political scientist with pre-1994 and post-1994 fieldwork research experience in Rwanda) raised concerns about any reliance on this particular report and on African Rights work on Rwanda generally, stating that research for the report was conducted quickly "without verification of the facts" and that "as a result, the details are flawed."⁴⁸⁴ He further warned that the African Rights report reflected that the organisation was deeply influenced by the RPF regime's propaganda. Two other independent reviewers offered very positive reviews concerning the detail of African Rights' descriptive account of the killing of Tutsi in 1994; but much like Longman, both contended that the African Rights writers had been uncritical in their portrayal of the RPF (particularly the role of the RPF soldiers in human rights violations against Hutu civilians).⁴⁸⁵ It thus appears reasonable to conclude that the evidence that

⁴⁸⁰ Ibid., 76-87.

⁴⁸¹ Please refer to Chapters One and Two for the full listing of these reports.

⁴⁸² Jones, "Gender and Genocide in Rwanda.," 71.

⁴⁸³ Ibid., 66.

⁴⁸⁴ Timothy Longman, "Placing Genocide in Context: Research Priorities for the Rwandan Genocide," *Journal of Genocide Research* 6, no. 1 (2004): 33.

⁴⁸⁵ Villia Jefremovas, review of *Rwanda: Death, Despair and Defiance*, by African Rights, *Africa Magazine*, 22 March 2000 [Online]. Available: <http://www.accessmylibrary.com/article-1G1-64698533/rwanda-death-despair-and.html> [2009, October 21]; René Lemarchand, "Rwanda: The State of Research," *Online Encyclopedia of Mass Violence* 4 November 2007 [Online]. Available:

Jones used from the African Rights report is quite reliable in as far as he has limited his reliance on the report to facts and evidence about the killing of Tutsis and Hutu political moderates in the April-July 1994 period. All the cases to which he referred were of mass killings that occurred in Rwanda's central and southern prefectures: Butare (far southern Rwanda) Cyangugu (far southwestern Rwanda), Gikongoro (southwestern Rwanda), Gitarama (southern Rwanda), Kibuye (western Rwanda), Kibungo (southeastern Rwanda) and Kigali (central to eastern Rwanda).⁴⁸⁶ These are the regions where it is currently believed the largest scale of Tutsi mass killings occurred.⁴⁸⁷

Unlike his previous article, "Gender and Genocide" contains no preliminary general definition of gender and hence no attempt at a general explanation of the relationship between 'gender' and 'biological sex'. This makes efforts to follow his arguments about the gendered causes of empirical outcomes more difficult than they have to be (especially without a background reading of Carpenter's review of the previous article). Furthermore, Jones neglected to provide an explicit definition of '*genocide*' to which he subscribed, consequently making Jones's conception of the relationship between 'gendercidal' and 'genocidal' killings less clear than it could be. Jones mentioned the Genocide Convention's definition of genocide, but in a rather non-committal way.⁴⁸⁸ What can be gathered from the article is that genocide entailed the carrying out of the intent to destroy the Tutsi as a group through mass killings of Tutsis from April 1994 to July 1994, with a great deal of ambiguity about whether acts falling short of killing would constitute genocidal measures.⁴⁸⁹

<http://www.massviolence.org/Rwanda-The-State-of-Research?artpage=4> [2010, July 28]. Jefremovas (an anthropologist) and Lemarchand (a historian) have lengthy experience in Rwandan history and politics and the mass killings of 1994, constituting (like Longman) part of the small body of "Rwanda experts" pre-dating the war and mass killings.

⁴⁸⁶ Jones, "Gender and Genocide in Rwanda," 71-76, 79-80, 81-84.

⁴⁸⁷ *Ibid.*; Mahmood Mamdani, *When Victims Become Killers: Nativism, Colonialism and the Genocide in Rwanda* (Princeton, New Jersey: Princeton University Press, 2001), 219; Linda Melvern, *Conspiracy to Murder: The Rwandan Genocide*, revised ed. (London: Verso Books, 2006), 193, 199, 212- 215, 227-229.

⁴⁸⁸ *Ibid.*, 82. Jones simply stated that the Genocide Convention's definition of genocide could be used to argue that certain inter-communal rapes could be considered to be acts of genocide.

⁴⁸⁹ *Ibid.* 70, 82.

Within the general context of mass killings that occurred in the stipulated timeframe, Jones defined gendercide as the “gender-selective targeting of males”, that is, sex-selective killings on the basis of gender-selective targeting.⁴⁹⁰ Rwandan Tutsi males were the predominant targets of gendercide, particularly Tutsi males ranging from adolescents (starting at the age of thirteen) up to adults in their forties.⁴⁹¹ In other instances Tutsi male infants and very young boys were also killed alongside those within the aforementioned age-groups.⁴⁹² The remainder of the gendercidal attacks were aimed at Hutu male adolescents and adults “of an oppositionist bent”, a group that Jones identified as including political moderates in government, prominent members of civil society and ordinary civilians; basically every Hutu male who refused to sanction or partake in the killing of the Tutsi.⁴⁹³ Jones locates the “gender-selectivity” of the killings of Tutsi and Hutu males within the overall strategy of genocide against the Tutsi as a group. Gendercidal killings against Tutsi males constituted acts of genocide; gendercidal killings against the Hutu “oppositionists” did not. Nevertheless gendercide against both groups of males served “as a kind of vanguard for the genocide as a whole, an initial barrier to be surmounted and a threat to be removed before the remainder of the [Tutsi] community is consigned to violent death.”⁴⁹⁴

Hutu extremist authorities had incited the general Hutu population to attack the Tutsi male population and the Hutu “oppositionist” males because they were perceived – as males – to present the greatest military threat.⁴⁹⁵ The belief was that Tutsi males and Hutu “oppositionist” males who were between adolescence and middle age (“battle age” males) posed the greatest immediate military threat; hence the Hutu extremists’ often unfounded accusations that the males within this age group were RPF soldiers or

⁴⁹⁰ Ibid., 72.

⁴⁹¹ African Rights, *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995), 466, 522, 597-598, 625-626, cited in Jones, “Gender and Genocide in Rwanda,” 72. African Rights, *Rwanda: Not so Innocent*, 165, cited in Jones, “Gender and Genocide in Rwanda,” 72; Human Rights Watch and FIDH, *Leave None to Tell the Story*, 296 cited in Jones, “Gender and Genocide in Rwanda,” 72.

⁴⁹² African Rights, *Death, Despair and Defiance*, 39, 561, 717, 815, 798, cited in Jones, “Gender and Genocide in Rwanda,” 72.

⁴⁹³ African Rights, *Death, Despair and Defiance*, 85, cited in Jones, “Gender and Genocide in Rwanda,” 68; Jones, “Gender and Genocide in Rwanda,” 70, 71, 78.

⁴⁹⁴ Jones, “Gendercide and Genocide,” quoted in Jones “Gender and Genocide in Rwanda,” 70.

⁴⁹⁵ Jones, “Gender and Genocide in Rwanda,” 70, 73.

infiltrators.⁴⁹⁶ The deliberate separation of battle-age males from groups of Tutsi captives and their immediate murder was further meant to fulfil the objective of leaving the Tutsi adult female ('women') defenceless, along with very Tutsi young children, the elderly and the infirm of both sexes. This is why gendricidal killings against "battle-age" males featured mainly in "the early and most exterminatory weeks of the mass killings."⁴⁹⁷ In the instances where male infants and young children were included in gendricidal killings, the justification was that these children would grow up to become Tutsi leaders.⁴⁹⁸ Remarkably, the Hutu male oppositionists were also targeted on the basis of "gender ideologies" about what they had failed to do: their failure to sanction and partake in the killings of Tutsis (particularly Tutsi males) was seen as their failure to fulfil their 'traditional' masculine roles as 'soldiers' and 'protectors' of the Hutu nation against the 'Tutsi threat; in a context where Tutsis were branded as *de facto* RPF supporters.⁴⁹⁹ It is also necessary to remember that efforts to conscript Hutus into compulsory 'killing duty' groups (namely the party militias and others trained under the national 'civil defence' plan, who were responsible for manning the roadblocks and travelled across *préfectures* to kill) were aimed primarily at ordinary civilian Hutu males.⁵⁰⁰

Without adopting Carpenter's terminology, Jones was fairly successful in shifting his concept of gender-selection from one based primarily on the basic fact of "biological sex" to one based on social beliefs about the capabilities and duties of those of a certain sex – what Carpenter referred to as targeting based on explicit gender discourses and gender ideology.⁵⁰¹ Jones's analysis would have been even better had he distinguished more clearly between the role of gender in the targeting of Hutu political moderates and the role of gender in the targeting of ordinary male civilians who refused conscription or other inducement to participate in the Tutsi genocide on the other hand. Jones did at one point in the article refer to the killing of Hutu and Tutsi authorities and politicians who were identified from written lists as "eliticide", but it appears that he subsumed these

⁴⁹⁶ Ibid.

⁴⁹⁷ Jones, "Gender and Genocide in Rwanda,"

⁴⁹⁸ Ibid., 73.

⁴⁹⁹ Ibid., 68.

⁵⁰⁰ Ibid., 83.

⁵⁰¹ Carpenter, "Beyond Gendricide," 84. Carpenter also used the killing of Tutsi males as an example of gender-based killing.

killings under the label “gendercide”.⁵⁰² Since these male authorities and other elites were killed on the basis of the political positions they occupied and the authority they had in pushing for the negotiation and implementation of the peace agreements with the RPF, their killings are primarily attributable to the pre-existing gender structure. There were far more males involved in the government and in party politics than there were females and hence, far more male Hutu political moderates. A point to remember is that all political moderate who were explicitly in favour of peace agreements with the RPF were killed and the “elitocide” included not only the killing of Prime Minister Agathe Uwingiliyamana, but also the killing of the wives and other family members of the political elite.⁵⁰³ Jones himself acknowledges this fact, which makes it difficult to understand why he included the killing of males in the “elitocide” as being part of the gendercidal killings. The Hutu extremists may have made certain ‘gendered’ statements about the character of the male political “oppositionists”; but this should not detract from the fact that they were killed primarily because of their political views and the fact that they occupied real political offices or had informal political clout that would have allowed these political views to be expressed in policy-relevant ways. Anyone in those offices who had adopted a position of political moderation would have been killed, regardless of sex.

Jones explained that Tutsi males were killed in at least two other types of killing, besides gendercide. Groups of “battle-age” Tutsi males were also disproportionately killed due to the fact that, whether voluntary or through pressure from other Tutsi, they fulfilled gender expectations to protect those perceived as more vulnerable in the community (“women and children”) by forming human barriers between Tutsi refugees and Hutu militias or by hiding in less sheltered locations (such as hilltops) while adult females and children hid in more enclosed locations (such as churches and health centres).⁵⁰⁴ Lastly,

⁵⁰² Ibid., 78.

⁵⁰³ Human Rights Watch and FIDH, *Leave None to Tell the Story*, 187-192, cited in Jones, “Gender and Genocide in Rwanda,” 78; Taylor, 165-167. It should also be recalled that Prime Minister Uwingiliyamana had her character as a wife attacked prior to her murder, with cartoons showing her in compromising sexual positions with the leader of her party. As Rwandans valued chastity and fidelity in women, Uwingiliyamana’s portrayal as an adulterer was particularly damaging.

⁵⁰⁴ African Rights, *Death, Despair and Defiance*, 341, 380, 446, 466, 550, cited in Jones, “Gender and Genocide in Rwanda,” 74, 79. In the latter case, there is testimony suggesting that Tutsi males seeking

Tutsi “battle age” males were killed in cases of age and sex-indiscriminate attacks.⁵⁰⁵ It is these sex-inclusive killings that are the real enigma within Jones’s work. Jones claimed that both sex-selective and indiscriminate killings of Tutsis occurred in the early weeks of the genocidal campaign.⁵⁰⁶ The killing of Tutsi females was rare in Rwanda’s post-colonial history of inter-communal violence; the killing of Tutsi women and girls in 1994 required the removal of gender norms that mitigated murderous attacks against them.⁵⁰⁷ Both Jones and the *Shattered Lives* authors cited Hutu extremist ideology (encapsulated most famously in the Hutu Ten Commandments), which identified Tutsi women as collaborators in a Tutsi scheme to dominate the Hutu majority and claimed that children born of Tutsi women in Hutu-Tutsi unions were actually being raised to further the Tutsi cause.⁵⁰⁸ They argued that it was this ideology that worked to repeal the protection that Tutsi women married to Hutu men had traditionally relied on and minimised the sparing of Tutsi women on the basis that they could be impregnated with Hutu children (on the basis of legally-enforce cultural rules that children automatically assumed the ethnicity of their fathers), enabling the killing of Tutsi females.⁵⁰⁹ Both Jones and the *Shattered Lives* were unable to identify to any extent Tutsi females were more likely to be killed immediately in an anti-Tutsi attack in the earliest stage of the genocide (the first weeks of April), or to be raped before murder or to be spared for sexual slavery.

Jones’s inquiry into the existence of a central government policy concerning the scheduling of the killing of Tutsi females did not yield any clear answer.⁵¹⁰ Jones

refuge in more open spaces actually fared better than Tutsi adult females and children hid hidden in buildings; this being because males were able to assess the situation more clearly and to flee when militias attacked while adult females and children found themselves trapped in their enclosures.

⁵⁰⁵ African Rights, *Death, Despair and Defiance*, 662-664, cited in Jones, “Gender and Genocide in Rwanda,” 71; African Rights, *Not so Innocent*, 26, cited in Jones, “Gender and Genocide in Rwanda,” 71; Human Rights Watch and FIDH, *Leave None to Tell the Story*, 488, cited in Jones, “Gender and Genocide in Rwanda,” 71.

⁵⁰⁶ Jones, “Gender and Genocide in Rwanda,” 71-72.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ Human Rights Watch and FIDH, *Shattered Lives*, 16-18; Jones, “Gender and Genocide,” 77-79. The other part of these gender norms was based on beliefs of the innate weakness and vulnerability of females and that females did not pose a significant military threat to the Hutu regime.

⁵⁰⁹ *Ibid.*

⁵¹⁰ African Rights, *Death, Despair and Defiance*, 299, 491, 508, cited in Jones, “Gender and Genocide in Rwanda,” 79-80; Human Rights Watch and FIDH, *Leave None to Tell the Story*, 296, cited in Jones, “Gender and Genocide in Rwanda,” 79. Witness accounts vary between those claiming that the killings of

suggested that there may have been some provincial differences regarding the killing of Tutsi females, but did not go on to seriously pursue this line of inquiry in a sustained, systematic manner.⁵¹¹ It is unfortunate that Jones did not include African Rights reporting on the first mass killing of Tutsis in the northwestern province of Giyiseni (the stronghold of the alleged chief planners of the genocide and other killings), which suggested that killings of Tutsi in this prefecture tended to be generally comprehensive and sex-inclusive.⁵¹² His theory needs to be empirically tested at the local level in view of evidence of exceptions to the rule of sex-selective killing in Rwanda in April-July 1994.

4.4. Conclusion

In both the works reviewed here, there is little reason to doubt the accuracy of the basic facts or doubt the credibility and reliability of the sources used. However, in view of the greater objectives of both works respectively, each needed well-developed conceptual or theoretical frameworks to process the evidence. In the case of Human Rights Watch/FIDH report, authors needed to identify the relevant international and national laws that criminalised acts of sexual violence in armed or communal conflicts. The report did not pay attention to the finer aspects of the prosecution of sexual violence crimes, namely the possible importance of legal-technical precision in identifying different acts or forms of sexual violence and the evidentiary rules that hinge on this legal-technical precision. Overall, Jones's work provided a relatively good framework for understanding how social beliefs ('gender') could bring about sex-selective outcomes, namely the deliberate killing of Tutsi males and Hutu 'oppositionists'. His concept of gender could have been improved with a clear and upfront definition of gender. While Jones's argument about the early prevalence of gendericidal killings in 1994 is plausible, he did not test it. Local level testing of his theory might provide a better idea of how prevalent gendercide was. It might also provide a better idea of the instances in which local politics

Tutsi females were only enforced from May 1994 and others suggesting that local officials called off the killing of females after the initial killings in April.

⁵¹¹ Ibid.

⁵¹² African Rights, *Rwanda: Death, Despair and Defiance*, 547, 557, cited in Melvern, *Conspiracy to Murder*, 167-168

and other factors were more likely to have contributed to females being killed alongside males in the early stages of the 1994 mass killings.

Chapter 5: Closing Reflections

This study was inspired by a Longman's review on the state of research on the "Rwandan genocide of 1994". Longman assessed that the literature on the predominantly Tutsi-targeted Rwandan mass violence of April-July 1994 was saturated with secondary analyses, whereas more works based on "rigorous" empirical research were required. He suggested that the over-reliance of many of the post-1994 works on Rwanda on secondary sources had resulted in the circulation of "myths and inaccuracies" which had long been disproved. Longman recommended that the kind of research that was most required was research that would provide more facts and evidence about the violence, as well as research that would empirically test the various theories that had been proposed about why the violence had occurred. In view of Longman's statement about "myths and inaccuracies" in the literature, this study questioned whether the main points of concern, criticism and dispute within the literature arose from the basic facts and evidence presented in the literature's descriptions of the details of the violence or whether the disputes arose from competing interpretations of the facts and evidence at hand. This study made a preliminary suggestion that it was necessary to assess each work according to the research priorities and objectives that were typical to the "literary genre" to which it belonged. Only then could the contributions of the existing literature be better appreciated.

Four works were selected and identified as *advocacy-related journalism*, *advocacy-orientated human rights reporting* and *scholarly literature* respectively. Works belonging to different "genres" were grouped together to study how each one approached a similar theme with regards to how the evidence on the Rwandan mass violence of April-July 1994 was collected and interpreted. Mamdani and Melvern were grouped together for their contribution to the understanding of how Hutu civilians were mobilised through military training and through racist ideology to participate in the Rwandan government's war effort and to eventually participate in the killing of Tutsi civilians and others. Human Rights Watch/FIDH and Jones were grouped together for their contribution to the understanding of how the violence of 1994 manifested in sex-selective or sex-specific

ways. Overall, within the reviewed works, it appears that the interpretive frameworks used to “process” the facts were more problematic than the basic facts and evidence presented. Nevertheless, it is clear that much more empirical data is required both to improve descriptive accounts and to improve or change interpretations. As examples of *advocacy-related literature* and *advocacy-orientated literature* based on original empirical research, the works of Melvern and Human Rights Watch/FIDH provided the new empirical evidence and factual details on which their respective “genres” are primarily dependent. Melvern provided previously unpublished details about who was responsible for the creation of the civil defence programme and how they went about developing the programme. Like Mamdani, Melvern could not provide details about how many Hutu civilians were eventually absorbed into the programme and how many civil defence members actually took part in the killing. Human Rights Watch/FIDH gave a detailed micro-level evidence of sexual violence against Tutsi females (and a few Hutus), whereas Jones was primarily concerned with the broader patterns of the mass killing of Tutsi males (and a few Hutus). Both Melvern and Human Rights Watch largely assumed an uncomplicated relationship between factual findings and their assessment under International Law, which is a weakness that has been identified (by expert observers of both “genres”) as being typical of the both “literary genres”. Melvern’s inferences that the creation and expansion of the civil defence programme was proof of a ‘conspiracy to commit genocide’ were unpersuasive and fell short of the requirement under law that a genocide conspiracy should be the only reasonable inference to be drawn from circumstantial evidence. Likewise, Human Rights Watch/FIDH’s strategy of naming different acts/forms of sexual violence and trying to show that they fell under the international crimes punishable under the jurisdiction of the International Criminal Tribunal for Rwanda – namely genocide, crimes against humanity and Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (‘war crimes’) – masked some serious unresolved issues surrounding the legal-technical determination of what constitutes a crime of “sexual violence” under law and what does not.

The works of Mamdani and Jones were both examples of *scholarly literature* providing theoretical explanations based on basic facts and evidence provided in previously-

published literature – in Mamdani’s case – a few original interviews. Mamdani focused on the Hutu mass civilian participation in the Rwandan mass killings of April-July 1994. Of all the works under this study’s review, Mamdani’s work was the only one found to have used sources and evidence of seriously questionable quality, particularly his use of Rwandan Patriotic Front (RPF) informants to support the factual assertion that there was a very high level of Hutu civilian participation in the killings of April-July 1994. Mamdani’s theory was that State-created political identities could result in violent conflict between State-marginalised groups and groups who were the State’s main beneficiaries. The study found this to be a plausible theory. However, critics questioned the theory’s applicability to the Rwandan context, based on contestations over the historical significance of the 1959 ‘Social Revolution’ in pitting Hutu against Tutsi and based on the fact that the theory had not been empirically tested. Jones used the available incomplete but otherwise uncontested fact that males tended to be killed more often than females during the Rwandan genocide as the launch-pad to his explanation of gendercide. His theory was that males were predominantly killed due to ‘gendered beliefs’ that males were more likely to defend the group against violent attacks and to join the RPF military campaign. While his theory was also plausible it also needed to be tested empirically. The works of both authors suggest that scholars may still have to provide complex explanations of events even in view of a limited empirical data base. Much like the *prima facie* cases made through human right reporting, such analyses can only be viewed as an initial inquiry into the events under study and are subject to later revision as the empirical data base is expanded.

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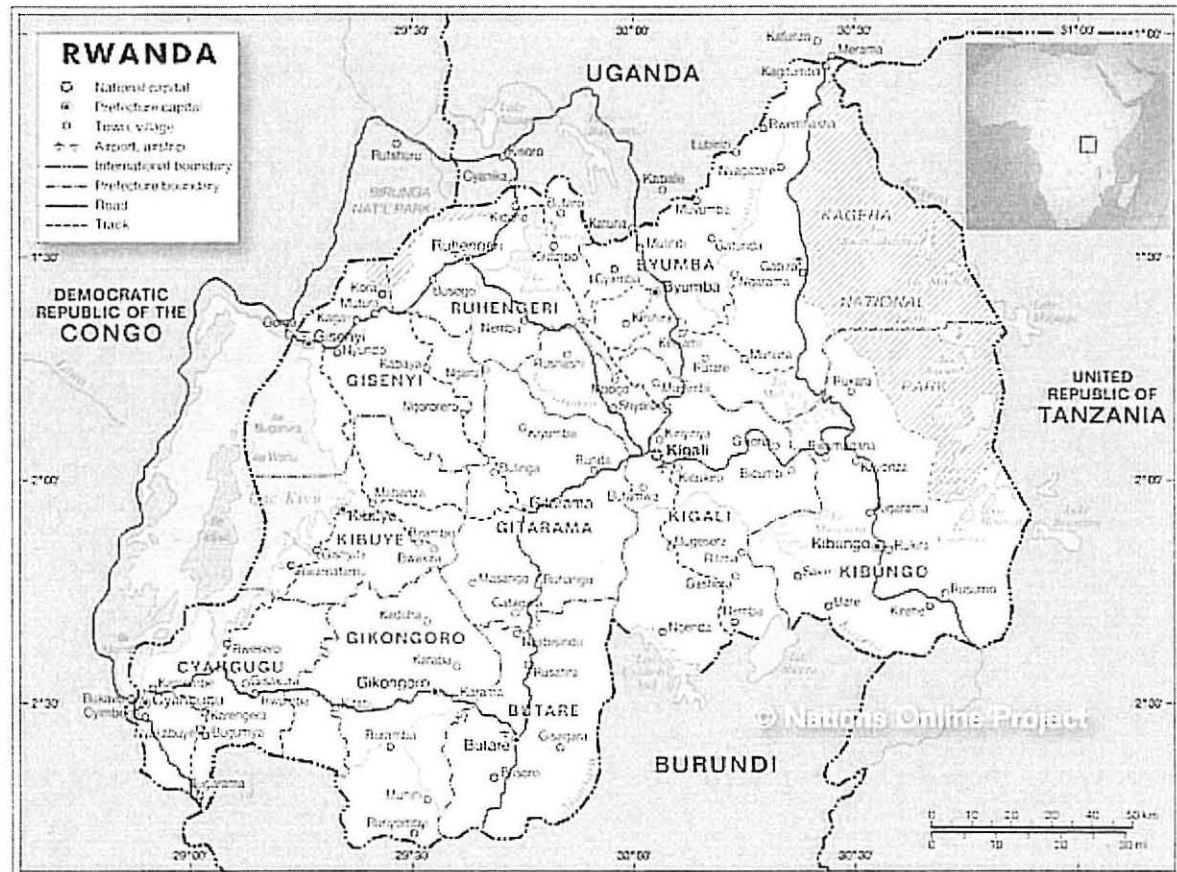
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APPENDIX I: Political Map of Rwanda, 1962-1994



Based on a map of UN Cartographic Section. Available at:

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