

**The Travesty of Human Rights Watch on Rwanda**

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## **I. Introduction**

What Human Rights Watch (HRW) does on Rwanda is not human rights advocacy. It is political advocacy which has become profoundly unscrupulous in both its means and its ends. HRW's Board of Directors should hold Executive Director Kenneth Roth and the HRW personnel who cover Rwandan issues accountable for this travesty, which has dangerous implications for Western policy toward Rwanda and for the overall credibility of Western human rights advocacy. Donors to HRW should think seriously about what causes their money might serve. Western governments should be careful about following HRW advice, and courageous enough to challenge them publicly when need be.

HRW's discourse on Rwanda over the past twenty years has been viscerally hostile to the Rwandan Patriotic Front (RPF) which defeated the genocidal Hutu Power regime in 1994, and systematically biased in favor of letting unrepentant Hutu Power political forces back into Rwandan political life.

I'm a retired American diplomat. My professional experience includes the genocide in Bosnia, and my personal experience includes living in Rwanda in 2008-2010 as the spouse of another U.S. diplomat. My purpose here is not to defend the Rwandan government, which is accountable first and foremost to its own people as well as to a variety of outside institutions. My purpose is to expose and perhaps alter the conduct of HRW. With substantial funding and a mission statement whose nobility matches that of any established religion, HRW has enormous influence on Western media and foreign policy makers, particularly with regard to countries like Rwanda which are outside the core areas of Western interest and familiarity. But HRW's decision-making process is not transparent, the aura of sanctity around its professed mission deters public scrutiny of its policies and practices, and the degree of accountability of HRW to anyone is quite unclear. This situation of unchecked power is one where things can go seriously wrong. With regard to Rwanda, they have.

HRW's discourse on Rwanda is a threat to that country and to peace and stability in Central Africa. It discourages Western governments from doing what they should to support Rwanda's recovery from the 1994 genocide. It perpetuates impunity for important genocide perpetrators. It pains many Rwandans and particularly the genocide survivors. It crowds out the potential for a more constructive dialogue between the West and Rwanda, and raises the risks of cynicism and a bunker mentality in Kigali. Above all, it encourages the leaders of the still extant "Hutu Power" movement -- most visible as a small stratum of upper class extremists among the Rwandan diaspora who are unrepentant about and often implicated in the 1994 genocide against the Rwandan Tutsi -- to keep blowing on the embers of that genocide in the hope of restoring Hutu Power governance in Rwanda.

The survival of the Hutu Power movement since 1994 seems strange but is not in fact surprising.

Germany's good faith reckoning with the Holocaust is an exceptional case, and came after complete defeat by the Allies, rapid symbolic justice at the Nuremberg trials, significant "denazification" programs, the quasi-universal condemnation of Nazi ideology and Holocaust denial, the banning of Nazi or successor party activities and propaganda, the Marshall Plan, and decades of German soul-searching with regard to criminal, political, and moral responsibility.<sup>(1)</sup>

In contrast, while the Rwandan genocide leaders and followers have suffered major military defeats, first throughout Rwanda in summer 1994 and then in eastern Congo and northwest Rwanda in 1996-98, these defeats were not complete. In Rwanda, several hundred thousand persons implicated in the genocide have since been tried and convicted, served their sentences, and been reintegrated into Rwandan society. But thousands of other perpetrators and supporters have benefitted from what amounts to a peculiar life-support system outside Rwanda: de facto safe havens in many parts of Africa, Europe and North America, and extensive (whether witting or unwitting, voluntary or involuntary) material, political and moral support from a range of UN agencies and Western officials, churches, NGOs, and intellectuals. Crypto-racist or politically expedient denial and trivialization of the 1994 genocide against the Tutsi has been a pervasive phenomenon in the West for the past 18 years, particularly but not only among the French political elite, Christian Democratic and Catholic Church circles, and a range of Belgian and Dutch NGOs.<sup>(2)</sup>

In this context, those Rwandan Hutu who continue to draw a permanent fault line between purported Hutu and Tutsi communities, to hold that this alleged fault line must define Rwandan politics, and to hope to return to power, have done none of the soul searching done by post-Holocaust Germans.

HRW's discourse has been an important part of their life-support system, particularly over the past twelve years. This discourse -- what is said and left unsaid, what is highlighted and what is downplayed, what is averred and what is implied -- can best be understood as four commands addressed to the post-genocide Rwandan government:

- Let the genocidal parties back in.
- Do not outlaw their ideology.
- Don't hold more than a few perpetrators accountable, and forget about their foreign accomplices.
- Admit that you are no better than they.

HRW has used a variety of strategies to press Western governments and international bodies to back up these commands, including forceful advocacy for economic sanctions and the arrest of senior Rwandan officials. If successfully imposed, they could certainly restore Hutu/Tutsi identity politics (a vestige of the racist fantasies imposed by European officers and Catholic missionaries in the colonial era) as the basis of Rwandan governance. Judging from the track record of such politics from the 1920s to 1994 and the nature of the groups who aspire to such

politics today, this would likely reignite violence and reverse the rapid progress Rwanda has made on human development since 1994. This might ensure the livelihoods of a whole new generation of Western “humanitarians,” but it would be a catastrophe for Rwanda and its region.

How HRW has expressed these four commands over the past twenty years is detailed below, to dispel any illusion that HRW can be trusted in its treatment of Rwandan issues.

## **II. ‘Let the Genocidal Parties Back In’**

### **(1) The RDR in 2010**

The most flagrant instance of this command came during Rwanda’s Presidential election in 2010, when HRW campaigned hard for an émigré Rwanda political coalition called the FDU (“United Democratic Forces”) led by one Victoire Ingabire to be allowed to register as a political party in Rwanda and compete in the election.

In all their statements on the issue,<sup>(3)</sup> HRW presented Ingabire as a credible and legitimate “opposition leader” whose exclusion from the election would confirm HRW’s longstanding portrayal of the RPF-led Rwandan government as anti-democratic. This narrative was picked up in countless Western media reports and some Western government statements, and by dint of repetition became the most publicized Western assessment: President Kagame may have been reelected in August 2010, with a 97% turnout and 93% of the vote against three candidates from three other parties, in secret balloting unmarked by significant irregularities, after a campaign which featured massive and enthusiastic crowds at his appearances around the country -- but the election was flawed, because the FDU was not allowed to run and Ingabire was charged and later arrested for divisionism, genocide denial, and collusion with a terrorist group called the FDLR (see below). In short, the familiar story of an African dictator repressing his people to hold on to power.

Meanwhile, absent from the HRW narrative was any consideration of the history and nature of the FDU. This omission is astonishing. It testifies to a profound disrespect for the Rwandan people, and a high degree of confidence that Western decision makers and opinion leaders who are unfamiliar with Rwanda can be led by the nose.

The FDU is a coalition of three Rwandan émigré political factions. Its central component, also presided over by Ingabire since 2000, is a party called the RDR. And, it so happens, the RDR is the direct political heir of the Hutu Power regime that perpetrated the genocide against the Rwandan Tutsi in 1994.<sup>(4)</sup>

The RDR (Rally for the Return of Refugees and Democracy in Rwanda) was created in eastern Congo (then called Zaire) in early 1995 by leading perpetrators of the genocide, who had fled there (together with their genocidal regime, army and Interahamwe militia, and a mass of over a

million Rwandans including civilian participants in the killing, and many bystanders) after being militarily defeated by the RPF in Rwanda in summer 1994.

Housed in so-called “refugee camps” along the border with Rwanda, fed and in effect financed by the international community via the UNHCR and a host of Western NGOs, rearmed by Congo’s Mobutu and France’s Mitterrand, and advised by European friends from among French officialdom and the Christian Democratic International, “White Father” missionaries and various European NGOs, the genocidal Hutu Power movement began to regroup from its military defeat in Rwanda. Creating the RDR was a critical step forward. The military leaders of the genocide continued to lead the way: key roles in creating the RDR were played by military men like Colonel Théoneste Bagosora (often described as the “mastermind” of the genocide) and General and Chief of Staff Augustin Bizimungu, both later arrested and convicted of genocide by the ICTR.

The Hutu Power leaders meant the RDR to:

- replace the “Interim Rwandan Government” which had just carried out the genocide with a governing body less obviously tainted, but still committed to the same goals; thus, the RDR’s first titular President was a former minister who had not been in Rwanda during the genocide, but the secret minutes of the RDR’s founding meeting show that General Bizimungu and other military men would be in charge within a behind-the-scenes “Umbrella Committee”;<sup>(5)</sup>
- replace the several and in some ways rival Hutu Power political parties which had led the genocide with a single party in which membership was obligatory for everyone in the “refugee camps;”
- control the camp population and the resources made available to the camps by the UNHCR;
- integrate, reorganize, enlarge, rearm, indoctrinate, and train Hutu Power armed forces (i.e. the former Armed Forces of Rwanda, the National Police, the Interahamwe and other militias, and new conscripts from the camp population);
- lead the propaganda campaign to deny the genocide, with help from the Rwandan intellectuals, clergy and “civil society” activists in the camps, and reach out for foreign political and material support;
- and plan and implement the return of the genocidal Hutu Power movement to rule in Rwanda, by force or by negotiation.

As the Hutu Power movement’s government, military leadership, single party and administration in the camps, the RDR made considerable progress on all these fronts in 1995-96, as well as on collusion with Congo’s Mobutu regime to kill or drive out the eastern Congo’s local Tutsi population. By fall 1996 the movement was stronger and more capable than when it arrived in summer 1994. However, in fall 1996, the post-genocide Rwandan RPF-led government -- after

several explicit warnings that it would have to act if the international community did nothing about this threat -- intervened militarily, with Congolese rebel allies, to break up the camps, repatriate the large majority of the camp population, scatter the RDR and its armed forces, and indeed overthrow Mobutu.

This was Hutu Power's second military defeat, but again the defeat was not total. Remnants of its armed forces were able to regroup in eastern Congo (under the name Rwanda Liberation Army or ALIR in the late 1990s, until ALIR was listed as a terrorist organization by the U.S. Government, and then Democratic Front for the Liberation of Rwanda or FDLR since 2000), first to launch a murderous insurgency war in northwest Rwanda which was largely defeated by mid-1998 (the last large-scale incursion was routed in 2001), and then to remain as a root cause of mayhem in eastern Congo until today. While several key RDR leaders (Théoneste Bagosora, Tharcisse Renzaho, Ferdinand Nahimana, Hassan Ngeze, Augustin Bizimungu, to name a few) were finally arrested for trial and eventual conviction by the International Criminal Tribunal for Rwanda (ICTR), others were able to reach de facto safe haven in Europe and North America. The Hutu Power movement was much diminished, and rendered more nebulous with the emergence of rival armed groups in eastern Congo (e.g. RUD/Urunana) and a kaleidoscope of rival and generally tiny political groupings in Europe and North America.<sup>(6)</sup>

By 1998, the RDR had evolved from a quasi-government with extensive territory in eastern Congo into a small (the RDR does not publish membership data, but a good guess would be a few dozen leaders and activists and several hundred active members) émigré political party based largely in the Netherlands, Belgium, Germany and France. In 2002, it shortened its name to "Republican Rally for Democracy in Rwanda." From 1995 until today, the RDR has survived as the political center of gravity of the Hutu Power movement, with ties to its military center of gravity in eastern Congo.

There is no evidence that the purpose or the core ideology of the RDR has changed since 1995. While the "big fish" genocide perpetrators who led the RDR in its halcyon 1995-96 days are more or less out of the picture, leadership continuity has been provided by several key lesser figures such as Denys Ntirugirimbahazi (Governor of the Rwandan National Bank in 1991-94, an RDR founder in 1995 and its first Treasurer, subject of an Interpol Red Notice on charges of active participation in the 1994 genocide, but nonetheless quietly resident in the Netherlands); Joseph Bukuye (named as the RDR's Chairman for Information and Documentation in April 1995, a member of the FDU's "coordinating committee" announced in February 2011, resident in Belgium); and most notably, Charles Ndereyehe Ntahontuye, a participant in the RDR's founding meeting in April 1995 and a figure with sinister Hutu Power credentials.

In Rwanda in the early 1990s Ndereyehe was the President of the "Circle of Progressive Republicans" (CPR) a group of some 200 extremist intellectuals established in 1991, and a member of the Coalition for the Defense of the Republic (CDR), the most overtly genocidal party in Rwanda in 1992-94 and the organizer of a militia that made an important contribution to

the killing. The CPR, which appears to have been a precursor of the CDR, included some of the more notorious names of that era, like Ferdinand Nahimana, initiator of the infamous RTLM radio, convicted of genocide by the ICTR; Jean Bosco Barayagwiza, RTLM's chief executive and a founder and leader of the CDR, also convicted of genocide by the ICTR; and Leon Mugasera, finally extradited from Canada to Rwanda in 2011 and now on trial for incitement to genocide during a bloodthirsty 1992 speech in northwest Rwanda.<sup>(7)</sup> Circa 1992, Ndereyehe became director of an agricultural research institute near Butare in southern Rwanda. In a major study of the genocide in Butare, he appears as a vocal and active CDR activist during the run-up to the genocide; he also appears twice in the appointment diary of Jean Kambanda, Prime Minister in the "Interim Government" which oversaw the genocide, who met with him in October 1994 in eastern Congo and in December 1994 in Nairobi.<sup>(8)</sup> Ndereyehe's agricultural research institute was an important killing site during the genocide, and Ndereyehe's deputy there, Venant Rutunga, has been convicted in absentia of genocide in Rwanda; he is presently living in the Netherlands. After the genocide, Ndereyehe spent time in both Kenya and eastern Congo before moving to the Netherlands in 1998.

Ndereyehe was the RDR's Political Commissioner from 1995 and the RDR's President in 1998-2000. He handed off that role to Victoire Ingabire in 2000, but continues today as an active member of the FDU/RDR leadership, listed on the FDU website as the "strategist" for the coalition. In May 2006, Ndereyehe was placed on the Rwandan Government's list of 93 most wanted genocide suspects, for participation in the genocide in the Butare region, and on Interpol's Red Notice List of Rwanda genocide suspects.

The discourse of the RDR has evolved in a tactical sense since 1995-96. It was no longer expedient to simply deny that the 1994 genocide occurred, or to highlight earlier RDR statements authored by leaders then in Africa who were later convicted of genocide by the ICTR.<sup>(9)</sup> In Europe, genocide denial and hate speech can lead to prison sentences. The message needs to be expressed in more coded language, and to be all the more camouflaged in the rhetoric of virtue. As a leading expert puts it, "Never have the words 'truth,' 'history,' and 'justice' been employed more prolifically than in the texts denying the reality of the genocide against the Tutsi in Rwanda."<sup>(10)</sup>

But the strategic direction of the rhetoric has remained the same: "the Hutu" (it is standard practice in this rhetoric to shield the concept of perpetrator behind the concept of the identity group, as if any accusation of the former constituted an attack against the latter) are the victims and not the victimizers; an alleged but unsubstantiated "double genocide" against the Hutu is the important issue, not the UN-recognized genocide against the Tutsi; Tutsi and the RPF are at the root of everything bad that has happened in Rwanda and the Great Lakes region (together with insufficient unity among the Hutu); the ICTR and Rwanda's special genocide courts (the "gacaca" courts) are evil persecutions of innocent persons; Rwanda's governance must once again be organized along Hutu/Tutsi lines, with Hutus in charge; and the use of force against the current Rwandan government is legitimate.

The several hundreds of pages of RDR public statements, party programs and speeches since 1995 (downloaded from the RDR.org website in 2011) also demonstrate a complete absence of any genuine reflection about the ideology and ethics of those who led and carried out the 1994 genocide against the Tutsi, and who sought to implicate as many Rwandan Hutus as possible in the process.

No member of the RDR has ever testified for the prosecution at the ICTR or in Rwanda's gacaca courts, or applauded the achievements of these justice mechanisms, or even recognized the challenges they have faced in trying those responsible for the genocide. There is no instance of RDR action against well-known genocide suspects in the party's ranks and supporting milieu. Instead, Ndereyehe and a fellow-member of the CPR from the early 1990s named Eugene Rwamucyo, both themselves on the Interpol Red Notice list of Rwandan genocide suspects, have participated in the conferences organized by ICTR defense attorneys in order to defend their clients' cause outside the courtroom.<sup>(11)</sup> Ingabire initially defended, then sought to distance herself from, but never condemned her deputy Joseph Ntawangundi, who accompanied her to Rwanda in early 2010, where he was later arrested and then confessed to his participation in the 1994 genocide.<sup>(12)</sup>

This is the party at the core of the FDU coalition which Victoire Ingabire wanted to have registered for participation in the Rwandan Presidential election when she returned to Rwanda in early 2010 (she had left shortly before the 1994 genocide). Her brief political campaign was clearly designed to revive Hutu Power ideology and politics in Rwanda.<sup>(13)</sup> Her arrest for trial in 2010 and subsequent conviction in October 2012 were abundantly justified, and represent a victory for human rights.

HRW reacted to Ingabire's conviction with a five-page statement clearly aimed at perpetuating HRW's mendacious portrayal of Ingabire as an innocent victim of oppression. Thus, the statement continues HRW's cover-up of the history and nature of the RDR/FDU, chooses not to address the substance and merits of Ingabire's conviction for genocide denial, and seeks to discredit her conviction for collusion with the FLDR by questioning the reliability of "some" of the evidence presented --- while ignoring other evidence less subject to tendentious interpretation, e.g. the documentary evidence of Ingabire's collusion with the FDLR which was seized by Dutch police at her residence there.<sup>(14)</sup>

HRW's advocacy for Western action against the genocide in 1994 and its history of the genocide published in 1999<sup>(15)</sup> are a significant part of HRW's reputation. It is sadly ironic as well as morally reprehensible that since 2010 HRW has put its prestige and influence behind the efforts of the direct political heir of the genocidal regime of 1994 to reenter Rwanda politics. That HRW does so without divulging the history of the RDR to its Western audience compounds the villainy.

## **(2) The FDLR Since 1994**

Whereas the RDR is the direct political descendent of the Hutu Power regime that carried out the genocide against the Rwandan Tutsi in 1994, the FDLR is the direct military descendent of the Rwandan Armed Forces (FAR) and Interahamwe militia that spearheaded the killing. Sylvestre Mudacumura, the senior FDLR leader in eastern Congo, was a senior officer in the FAR's Presidential Guard which kick-started the genocide in April 1994. Ignace Murwanashyaka, the FDLR President now on trial in Germany, was previously the president of the RDR's Germany branch. Callixte Mbarushimana, the FDLR Secretary General resident in Paris and targeted for prosecution by the International Criminal Court (ICC) for FDLR crimes, is also wanted in Rwanda (and has been indicted in France) for genocide crimes committed in 1994.<sup>(16)</sup>

HRW's stance on the FDLR is nearly as unscrupulous as its stance on the RDR. It can be summed up as follows: blame the post-genocide Rwandan government for the continued existence of the FDLR, and demand that Rwandan "political space" be expanded to make it more attractive to the FDLR; seek to disassociate the FDLR from the 1994 genocide and from any threat of renewed genocide in Rwanda; do not advocate forceful action against the FDLR, and when it occurs, demand that it be stopped; and treat the FDLR as a secondary issue compared to Tutsi-based armed groups in Congo.

How HRW gets to this stance is more complex than its trick of simply not mentioning the RDR's history and ideology.

First, it should be noted that in May 1995, HRW called for steps by the international community that, if taken, would have likely preempted or certainly reduced the problem of the FDLR: enforce the arms embargo on the ex-FAR and Interahamwe in eastern Congo, separate these forces from the wider population in the "refugee camps," and arrest the leading genocide perpetrators for trial by the ICTR.<sup>(17)</sup> Here, HRW was on strong ground. Unfortunately, the international community did not act. Also unfortunately, this was among the very few times – and was the very last time – in the past 18 years that HRW saw fit to treat the surviving Hutu Power movement as a serious problem for Rwanda, or to call for specific coercive measures against Hutu Power armed forces in Congo.<sup>(18)</sup>

Second, HRW recognizes that the FDLR is a destructive group, and has reported on several occasions on its crimes against humanity in Congo.<sup>(19)</sup> However, while most observers have seen the arrival of Hutu Power armed forces in eastern Congo in 1994 as the root cause of the catastrophes this region has suffered since then, HRW has devoted less energy and space to calling for action against the FDLR than to reporting and calling for action against similar crimes by the Congolese Tutsi-based CNDP and its predecessors, or alleged crimes by Rwandan intervention forces. In 2006, HRW called for the arrest of CNDP leader Laurent Nkunda. It was not until December 2009 that HRW called for any of the leaders of the FDLR to be "investigated" – and this was several weeks after German authorities, after years of false starts

and delays, had finally arrested the FDLR President and his deputy in Germany.<sup>(20)</sup> Here, HRW is on weak ground.

Third, which brings us well into the realm of the bizarre, HRW insists that the solution to the FDLR in Congo lies -- not, for example, in arresting its worst leaders and screening, arresting or demobilizing and reintegrating its other leaders and foot soldiers -- but in changing Rwanda.

Here is a June 2011 HRW written statement on the FDLR:

“With its record of extreme violence against civilians, the FDLR too remains a major source of instability and conflict. While some FDLR members have been through a demobilization programme and have been repatriated to Rwanda, many others continue their operations in eastern DRC and show no sign of returning to their country... the FDLR retains the capacity to inflict huge suffering on the Congolese population.

Donor strategies aimed at restoring peace and stability in the Great Lakes should consider the creation of conditions in which FDLR members might contemplate disarming and returning to Rwanda. HRW does not advocate a political role for the FDLR, but believes that the absence of political space in Rwanda, the repressive nature of the Rwandan state and the lack of an independent justice system in Rwanda are genuine deterrents to the return of some FDLR members...”<sup>(21)</sup>

Now to parse the untruths:

Whereas HRW says, in June 2011, that “some” FDLR members have returned to Rwanda but “many” have not, the truth is the reverse. Tens of thousands of officers and soldiers from the FDLR and its predecessors have returned from Congo and been reintegrated into Rwandan society since 1994. This includes 27,000 ex-FAR soldiers reintegrated into Rwandan society between 1994 and 2002 (of which 15,000 were brought into the new Rwandan army), and some 8500 Rwandan combatants (the vast majority from the FDLR) from early 2002 through 2009.<sup>(22)</sup> In January 2009, the UN estimated that there were 6130 FDLR combatants in Congo. After a major joint Congolese-Rwandan military operation in early 2009 which scattered the FDLR, the arrest of key FDLR leaders in Germany in November 2009 which demoralized the rank and file, and a resulting surge in the demobilization and repatriation of FDLR combatants (over 3000 in 2009-2012), FDLR strength had fallen to around 1500 men by mid-2011. This was HRW’s “many,” while its “some” referred to tens of thousands.<sup>(23)</sup>

Whereas HRW says that Rwandan “lack of political space” is the disincentive to FDLR return, people who work on FDLR demobilization and repatriation point elsewhere: there has been a hard core of FDLR leaders who do not want to return because they were genocide perpetrators in 1994 and do not want to face justice and because they are doing well for themselves as warlords, while many rank and file FDLR soldiers have been afraid of being killed by their leadership if they try to go back, or have put down roots in Congo.<sup>(24)</sup>

When HRW speaks of repression and lack of political space in Rwanda, its main issue is with Rwanda's laws against divisionism (e.g. political parties based on the Hutu or Tutsi identity groups), genocide denial and genocide ideology and their application to parties like the RDR – see above and part III below on the legitimacy of these laws.

HRW's comment here about "the lack of an independent justice system in Rwanda" came just five days before the ICTR, over HRW objections, expressed confidence in the independence and impartiality of the Rwandan judicial system, by approving the first transfer of an ICTR indictee to Rwanda for trial – see part IV below.

In a fall 2010 news interview, HRW Senior Africa researcher Anneke Van Woudenberg had said something similar to the written HRW statement cited above. In words that were less stilted and probably more honest as to the core HRW vision for Rwanda, she put it this way: "As long as the political space in Rwanda is not opened up to the Hutu, the problem of the FDLR will continue."<sup>(25)</sup>

There are several claims implicit in Van Woudenberg's statement: that "the Hutu" constitute a distinct, homogeneous and primordial political category in Rwanda and that Rwandan politics must be along Hutu/Tutsi lines; that the post-genocide Rwandan government has a policy of repression, discrimination, or political exclusion directed against "the Hutu;" that the views of FDLR leaders (if not the organization itself) are a legitimate part of the "Hutu" political spectrum; and that the FDLR in Congo are there because they are "Hutu" and not because they exhibit a particular and evil political ideology and behavior. HRW has never offered substantiation for such implied claims.

Fourth, HRW has not only avoided advocating the use of force against the FDLR; it has also opposed the use of force against the FDLR when this does occur, on the grounds that Congolese forces commit abuses during such operations, that the FDLR retaliates with mass murder and rape against civilians, and that the UN peacekeeping force in eastern Congo is ineffective in preventing either of these phenomena. These criticisms have some validity. But there is more validity to the recognition, expressed at the time by the UN Special Representative in the Congo, that the use of force is necessary to deal with the FDLR, that a clean application of such force is unlikely in the foreseeable future, and that delay just prolongs the already very long agony of the population of eastern Congo.<sup>(26)</sup>

Fifth, even as HRW has been reporting on the FDLR's mass murder and mass rape in eastern Congo over the last decade, it has sought to downplay the FDLR's role as the armed wing of the wider and still active genocidal Hutu Power movement. HRW has highlighted the point that with attrition and the passage of time, many of the officers and soldiers of the FDLR are no longer individuals who were personally implicated in the 1994 genocide, as if this meant that genocidal Hutu Power leadership and indoctrination were no longer critical to understanding the problem of the FDLR as an armed force.<sup>(27)</sup> HRW's line here is at variance with the assessment

of repatriation professionals, who find that within the FDLR leadership the salience of leaders implicated in the 1994 genocide (the people who have most to lose by surrender) has risen in recent years.<sup>(28)</sup> HRW has also sought to downplay the importance of genocide ideology as a driving force in FDLR activities, by conceding to take statements of some FDLR members at face value or by emphasizing the role of Christian themes in FDLR members' thinking.<sup>(29)</sup> Although in 1994-95 HRW did recognize, briefly, that leading genocide perpetrators were regrouping in eastern Congo with the goal of "finishing the work," HRW has never examined the role and strategic objectives of the RDR itself in launching what became the FDLR. Indeed, HRW has never even mentioned the RDR in any of its reports since 1995 – a feat understandable only in the context of willful blindness and a tunnel-vision focus on alleged sins of the post-genocide Rwandan government.

Further, HRW has recognized (but only after it was made clear in a December 2009 report by the UN Group of Experts) that "The FDLR has received significant support from diaspora cells and satellites in European, north American, and African countries which have facilitated money transfers, coordinated arms deliveries or facilitated recruitment for the group."<sup>(30)</sup> But HRW has never cited the RDR as the important player it is among these cells, or examined the propaganda assistance of these groups to the FDLR, or called for them to be investigated or prosecuted as supporters of what the UN Security Council treats as a terrorist organization.

### **3. The MDR in 2003**

One reason why HRW could fall so low on the RDR in 2010 is that it had already fallen a good way there in 2003, when it campaigned hard against Rwandan government moves to ban another Rwanda political party called the Rwandan Democratic Movement or MDR.

The 2002-2003 period was a critical time in Rwanda's post-genocide transition: preparing the new Constitution and the law on political parties, and preparing for the first post-genocide Presidential and Parliamentary elections. In a May 2003 report,<sup>(31)</sup> HRW condemned the Rwandan Government's soon-to-be implemented ban and dissolution of the MDR political party, as anti-democratic and worthy of Western sanctions. HRW reached this judgment through the following steps:

-- Dismissing the legitimacy of Rwanda's post-genocide laws against particularist political parties ("divisionism") and genocide ideology. (See part III below.)

-- Minimizing the evils of the "historic" MDR created by Grégoire Kayibanda in 1959, which became Rwanda's de facto single party during Kayibanda's racist and proto-genocidal 1962-1973 regime. To illustrate: in the weeks after it routed an armed incursion by Rwandan Tutsi refugees outside Kigali in December 1963, Kayibanda's regime orchestrated the mass murder of tens of thousands of Rwandan Tutsis; in March 1964 Kayibanda himself threatened to exterminate the Tutsis "as a race" in the event of any new incursion that took Kigali.<sup>(32)</sup>

-- Minimizing the evils of the reconstituted MDR in its 1991-94 phase, when the party split into a minority “moderate” faction which supported the Arusha Accords between the Habyarimana regime and the RPF, and a majority MDR-Power faction which allied itself with the genocidal side of the Habyarimana regime and played a major part in the 1994 genocide.<sup>(33)</sup>

-- Minimizing the evidence from 1994 to 2003 that the post-genocide MDR was incapable of freeing itself from its racist past.<sup>(34)</sup>

-- Asserting that if the MDR ran in the 2003 election it could conceivably win thanks to support from Rwanda’s majority Hutu identity group, on the basis of its “perceived” link to the original MDR founded in 1959, and recognizing that the MDR in 2002-2003 still contained both “Hutu Power” and “moderate” wings.

-- But concluding nevertheless that the MDR was innocent of representing any threat of divisionism or genocide ideology, on the basis of the white-washing of MDR’s past cited above, and three further arguments -- of which two are non sequiturs and the third a misrepresentation of reality:

-- HRW argued that by demonstrating dissensions within the MDR, the RPF-led Rwandan Government undercut its argument that the MDR was perpetuating “the same pro-Hutu ideology developed by the MDR-Parmehutu party in 1959.” This does not follow. On the contrary, the fact that the MDR in 2003 was still unable to rid itself of Hutu Power elements supports the argument that the MDR represented a divisionist threat.

-- HRW argued that the fact that the RPF had sought to work with the “moderate” wing of the MDR from 1991 to 2003 “is in itself sufficient to discredit the claim that the MDR was committed to a genocidal ideology throughout that period.” This also does not follow. One can more reasonably conclude that the RPF showed remarkable patience and goodwill in trying to wean the minority “moderate” wing of the MDR away from the party’s exclusivist, genocidal heritage.

-- HRW stated that “while the (RPF) argument is that the MDR must be ended because of its pro-Hutu genocidal ideology, authorities also sought to suppress two earlier dissident groups that were multiethnic in nature, suggesting that it is the fact of dissent rather than any supposed ethnic nature of the dissent which is targeted.” This is a misrepresentation of reality: both of the “groups” in question can easily be characterized as divisionist. The first “group” refers to Joseph Sebarenzi, the Speaker in the (appointed, not elected) Transitional National Assembly. Sebarenzi held that the Hutu and Tutsi identity groups must be represented in politics, and apparently dabbled with appealing to Tutsi survivors and (virtually non-existent) monarchist sentiments among some Tutsi, whereas any movement toward restoring the pre-independence monarchy would be perceived by many as anti-Hutu in intent. The other group, which attempted to form a new political party called PDR-Ubuyanja, was led by former President Bizimungu, whose rhetoric and actions were clearly aimed at playing the Hutu ethnic card.<sup>(35)</sup>

Implicit in HRW's presentation was the thesis that the Rwandan Government must allow the MDR to compete in the 2003 election, even if with its continuing Hutu Power and "moderate" wings it could win enough votes from Rwandan Hutus to return to power – just nine years after the genocide the historic MDR and the MDR-Power party of 1992-94 did so much to prepare and execute, and which the post-1994 MDR was unable to deal with honestly.

### **III. 'Do Not Outlaw Their Ideology'**

HRW has bolstered its campaign to make Hutu Power parties look good and thus worthy of renewed participation in Rwanda politics by also trying to make the Rwandan laws that keep them out look bad. Thus its desired picture is complete: Rwanda uses aberrant laws to persecute legitimate opposition parties. This has achieved the status of a "meme" in Western discourse about Rwanda.

Rwanda's post-genocide constitution and laws restrict the freedoms of speech and association by banning genocide ideology, genocide denial, discrimination, sectarianism and divisionism (i.e., ethnicist politics, or political parties based on the Hutu or Tutsi identity groups). This is not surprising given the role that extremist ideology and politics played in generating massive participation in the 1994 genocide against the Tutsi, and is comparable to the course Germany took after its experience with Nazism.

Nonetheless, HRW has never recognized that the 1994 genocide gives Rwanda legitimate grounds to interpret international legal norms on freedom of speech and association differently than does the United States.

HRW has used two remarkable sleights of hand to discredit the relevant Rwanda laws as illegitimate, both discernible in its report "Law and Reality: Progress in Judicial Reform in Rwanda," whose issuance in 2008 was timed to coincide with the start of a large international conference in Kigali to take stock of Rwanda's performance in this domain.

The first sleight of hand is to describe Rwanda's social and political landscape as if the genocidal tidal wave of 1994 had totally receded and left not a trace of genocidal ideology, emotion, or activism in its wake. Thus, the authors of this 109 page report (which looks back as far as 1994) do not cite a single instance where post-genocide Rwandan authorities had reasonable cause to apply the bans in question. One way to paint this imaginary landscape is for HRW to ignore the substance of four voluminous reports on such dangers by the Rwandan Parliament (the reports were in fact alarming, but HRW can count on very few people outside Rwanda reading them – see footnote <sup>34</sup>) after condemning the reports on procedural grounds (e.g. because they describe named persons as guilty without judicial process). Another is to focus uniquely on a small sample of cases of alleged official abuse of the laws to silence dissent.

Participation in the 1994 extermination of Tutsi was furious, intimate and massive. Hundreds of thousands of participants in the genocide have since been actively involved in post-genocide

Rwandan society, in many walks of life and in facing justice and possible punishment, including long prison terms for the worst offenders. Nevertheless, HRW would have its readers believe that the post-genocide Rwandan authorities have had no need to take legal action against manifestations of genocidal ideology or behavior. (We will return to the phenomenon of disappearing *genocidaires* in Section IV below.)

The second sleight of hand is to pretend that HRW's very American interpretation of what constitutes legitimate restriction of the freedoms of speech and association represents the international legal norm, while Rwanda's restrictions make it a peculiar outlier. In reality, both the United States and Rwanda are outliers on this issue, with the U.S. at the permissive end of the spectrum and Rwanda at the restrictive end. Indeed, a strong case can be made that Rwanda is within the international consensus on these issues while the U.S. is not, since the U.S. is unique in rejecting any restriction on freedom of speech based on the evil of the content or viewpoint expressed.<sup>(36)</sup>

Here, for example, is what HRW says about Rwanda's 2008 law against genocide ideology:

“While it has been defended by Rwandan authorities as similar to laws banning Holocaust denial, in fact it is written in far broader terms than even laws banning incitement to racial hatred, and can cover a very wide range of speech that is unquestionably protected by international convention. International human rights law prohibits hate speech that amounts to incitement of violence, discrimination or hostility against a protected group. Such restrictions, however, must be consistent with what is “necessary” in a democracy. It is inconsistent with freedom of expression to criminalize hate speech without the requirement that the speaker be proven to have intended that his words incite, and that incitement was the foreseeable and imminent result of those words...Human Rights Watch also maintains that the crime of genocide denial is only consistent with freedom of expression (sic) where genocide denial amounts to hate speech, that is, intentional incitement to violence, hostility or discrimination.”<sup>(37)</sup>

It is telling to compare the back of the hand HRW gives to Rwanda's approach with HRW's courteous criticism of Germany's laws banning hate speech, Holocaust denial, and extremist right wing groups, wherein HRW recognizes the historical problems Germany has faced and makes it clear that HRW's criticism is based on HRW policy convictions rather than international law.

For Germany, HRW “acknowledges that the tragedy of the Holocaust is the historical context in which such laws were adopted... recognize(s) that, by more rigorously enforcing these laws, the German government has underscored the seriousness with which it views the danger posed by right-wing extremists...(and is) mindful of the fact that international human rights law provides different and conflicting standards in this area...but we base our policy on our conviction that the protected rights of speech, association and assembly are fundamental rights that should be guaranteed.”<sup>(38)</sup>

One would not suspect, from reading HRW's condemnation of Rwanda's laws with its avoidance of any comparative perspective, that reservations expressed on ratification have put the American approach to freedom of speech in dubious compliance with the 1966 International Covenant on Civil and Political Rights and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, nor that "the vast majority of non-American laws prohibiting the incitement to racial hatred would be unconstitutional in the United States...(and that) American doctrines and understandings about freedom of expression have typically been rejected as extreme, unbalanced and hardly worthy of emulation."<sup>(39)</sup>

Nor would one suspect that for all its permissiveness, even U.S. law is not fully consistent with HRW's approach to freedom of speech. In its 2003 ruling on *Virginia v. Black*, the Supreme Court found that under the First Amendment Virginia could indeed ban Klu Klux Klan-style cross burning carried out with an intent to intimidate (i.e. regardless of whether there was intent to incite unlawful action, or to carry through on the threat). This particular Supreme Court ruling is not particularly consistent with the overall thrust of U.S. jurisprudence on freedom of speech, but is understandable in light of the historical legacy of racist persecution in the U.S. It also suggests that for all its "exceptionalism," the U.S. approach to freedom of speech would be quite different today if America had suffered a genocide of Rwandan proportions in the recent past.

The pros and cons of criminalizing genocide denial (which is illegal in a number of western countries regardless of intent to incite) are the subject of extensive, honest debate in Europe and North America.<sup>(40)</sup> Deborah Lipstadt is a U.S. scholar firmly committed to the American version of freedom of speech but also appalled by Holocaust denial. She resolves her dilemma by calling for American civil society to informally ostracize Holocaust deniers. This is a plausible strategy in America, but is much less so in post-genocide Rwanda. And Lipstadt recognizes that criminalizing denial is a legitimate option in countries which have recent experience of genocide.<sup>(41)</sup>

Oddly enough, HRW does not specifically address the legitimacy of Rwanda's restriction of freedom of association whereby the ban on divisionism bars political parties based on the Hutu and Tutsi identity groups. Here too, the kind of international comparison which HRW chooses to avoid would show that bans on particularist (for example, "ethnicist") parties are now the norm across Africa, and not uncommon in Europe as well (see footnote <sup>36</sup>). In addition, the European Court of Human Rights (ECHR) has made two noteworthy rulings over the past decade with regard to restricting freedom of association which by analogy lend legitimacy to Rwanda's laws and their application. In 2003, the ECHR upheld Turkey's ban on the theocratic Islamic Rafah party as contrary to the (then) Turkish principle of secularism, and in 2009 the ECHR upheld Spain's ban on the Basque nationalist party Batasuna (a party with sympathy for and ties to the terrorist ETA) as engaging in conduct incompatible with democracy and prejudicial to constitutional values, democracy and human rights.<sup>(42)</sup>

For HRW to criticize the legitimacy of Rwanda's ban on particularist parties would require HRW to explicitly support the legitimacy of political parties based on Hutu/Tutsi lines. HRW appears to find it more expedient to take the "stealth" approach of pressing for entry of the FDU/RDR, without divulging its Hutu Power basis or its links to the FDLR, or the specious approach of claiming that the crux of the problem of the FDLR in Congo is an alleged "lack of political space" in Rwanda.<sup>(43)</sup>

#### **IV. 'Don't Hold More Than a Few Perpetrators Accountable, Forget About Their Foreign Accomplices'**

Before showing how this command is expressed in HRW discourse on Rwanda, it is useful to look at how HRW minimizes the genocide and scales down the importance and the scope of accountability.

##### **(1) Minimizing the relevance and the scale of the genocide**

There are many ways to minimize a genocide. HRW uses several on the Rwandan case. The simplest is to relegate it to an irrelevant past. This is what HRW has done ever since it published *Leave None To Tell the Story* in 1999, as if HRW's 'closing the book' on the subject meant that Rwanda could, and in fact should, do the same. Since then, HRW has generally treated the genocide, not as a catastrophe whose consequences remain a serious social and political issue for Rwanda, but as something the Rwandan government exploits to repress opponents (e.g. the MDR and RDR, see above) or to ward off criticism from Western governments supposedly guilt-ridden about their inaction in 1994.<sup>(44)</sup>

This assertion echoes the well-known charge that Israel "plays the Holocaust card" to win Western acquiescence in its policies, but without any Rwandan equivalent to a "powerful Jewish lobby" to influence Western policy-makers' decisions. Absent such a transmission belt, the assertion rests on dubious psychology. One can as easily argue that guilt makes people dislike and find fault with those they have wronged, to lessen their status as victim. "Blaming the victim" was in fact a common aspect of Western behavior toward the genocides of the 1990s in both Bosnia and Rwanda.<sup>(45)</sup>

If guilt made Western policy-makers go easy on the post-genocide Rwandan government, one would expect the West to try to expiate its guilt in other ways as well. However, while Western aid levels are important for Rwanda, they are not particularly generous compared to what other countries get. The West has never considered offering reparations to Rwandan genocide survivors; it has performed abysmally on denying safe haven to Rwandan fugitives implicated in the genocide (see below); it has never held to account those Western officials, most notably in France, who were most complicit in the genocide, nor supported the efforts of French civil society groups to have them tried; and it has never spoken out against the most salient Western attempt to "blame the victim," i.e. France's fraudulent 2006 indictment which accused Rwandan President Kagame of shooting down President Habyarimana's plane on April 6, 1994 and

thereby “causing” the genocide (see below). In short, the West does not fit the profile of an actor seeking to expiate guilt.

As for the charge that the Rwandan government “exploits the genocide” to deflect outside criticism, it is not clear how HRW could really substantiate such a charge, or how the Rwandan government could disprove it. However, Rwanda’s progress on recovery and development since 1994 does not fit the profile of a polity based on exploiting human suffering, and it is odd to speak in terms of an issue being exploited when the societal impact of that issue, if translated to the American context of 1994, would mean over 10 million Americans mobilized by a genocidal elite to exterminate over 20 million Americans, up close and personally.

Another time-honored tactic to minimize a genocide is to minimize the number of victims and perpetrators.

In the “Numbers” Section of its 1999 *Leave None* report, HRW used “preliminary data” to estimate that some 507,000 Tutsi were killed in the genocide. This number was based on HRW’s estimate that there were some 150,000 Tutsi survivors, out of a pre-genocide estimated total of some 657,000 Tutsi inhabitants. The latter figure, which constitutes a supposed ceiling for the number of potential Tutsi victims, is an extrapolation from a 1991 Habyarimana regime census, which claimed that the Tutsi were only 8.4 percent of the population. However, few outside the Habyarimana regime have ever given this census credence. The regime had a strong incentive to set the Tutsi share of the population as low as possible, since this was the benchmark for its quota system restricting Tutsi access to secondary and higher education and government jobs; at the same time, persecuted Tutsi had a strong incentive to try to pass as Hutu. The more commonly used figures for the Tutsi share of the population before the genocide range from 12 to 15 percent, and imply that the ceiling for the number of potential Tutsi victims in 1994 was somewhere between 1.0 and 1.3 million persons.

HRW has largely kept to its 1999 estimate to this day, and its “over 500,000” anchor number for the victims’ column is widely used in Western literature and media about Rwanda. Occasionally, HRW uses the 800,000 figure advanced by the UN. It is remarkable that HRW has never reconsidered its use of the 1991 Habyarimana regime census to frame the issue of the number of genocide victims, despite subsequent scholarship demonstrating its unreliability.<sup>(46)</sup> It is even more remarkable that HRW has never acknowledged the figures put forward by Rwandan authorities in 2002, on the basis of a from-the-bottom-up count by the Ministry for Local Government, which arrived at a total of 1,074,017 persons murdered during the genocide, of whom 934,218 could be identified by name and of whom 94 percent were killed because they were identified as Tutsi.<sup>(47)</sup> This is almost twice HRW’s “anchor number.”

For the perpetrators column, HRW recognizes that participation in the genocide was high among Rwandan Hutu, but notes that this was often coerced, or enabled by the legitimacy Western governments gave the Rwandan regime during the genocide, or only indirect (for example,

identifying a Tutsi hiding place to “the authorities” rather than using a machete oneself). After highlighting these implicitly extenuating circumstances, HRW estimated nonetheless in 1999 that there were “tens of thousands” of killers.<sup>(48)</sup>

This is an extremely low estimate. HRW has stuck with it to the present day. This takes some stubbornness, given more recent estimates by Western scholars ranging from around 200,000 to over 400,000 perpetrators,<sup>(49)</sup> and especially, the work of Rwanda’s 2002-2012 special “gacaca” genocide courts (see below). HRW has never addressed the evidence that its “tens of thousands” is a fraction of the real number of Rwandan genocide perpetrators.

Another HRW minimizing tactic is to veil the issue of massive participation in the genocide by speaking only of “the accused,” as in HRW’s 2008 report “Law and Reality.” Here, HRW approaches the issue of post-genocide justice almost exclusively in terms of due process for “the accused,” rather than in terms of “how many of the perpetrators are being held to account.” Although one sentence in the report notes that the organizers of the genocide mobilized “hundreds of thousands of persons” to various levels of involvement,<sup>(50)</sup> the report consistently ignores the reality of a massive number of real and very guilty perpetrators. The same report, 109 pages long, uses the word “victim” only once. The agony of the victims and survivors, the burden of guilt borne by the perpetrators, and the daily challenges of their living side by side are all rendered virtually invisible.

HRW’s discourse thus functions, apparently deliberately, not to “deny” the genocide per se, but certainly to reduce its scale and relevance to suit HRW’s vision of and policy prescriptions for post-genocide Rwanda.

## **(2) Reducing the importance of post-genocide accountability**

From 1999 to 2011, the level of importance HRW ascribes to justice and punishment for the genocide declined from a “must” to merely “important but not a panacea” to...some unstated level.

In 1999, in the concluding “Justice and Responsibility” section of *Leave None*, HRW averred that retributive justice was absolutely essential in response to the 1994 genocide, though it gave this a peculiar HRW twist:

“There must be justice for the genocide, political murders, and other violations of human rights in Rwanda in 1994. The guilty must be punished and prevented from inflicting further harm. The innocent must be freed from unjust assumptions about their culpability...Without justice, there can be no peace in Rwanda, nor in the surrounding region. This truth, widely acknowledged in 1994, has become even clearer in the four years since: insurgents, including some responsible for the 1994 genocide, and RPA soldiers are killing and will keep on killing civilians until they become convinced that such a course is futile and costly...Establishing the

responsibility of *individual* Hutu is also the only way to diminish the ascription of *collective* guilt to all Hutu.”<sup>(51)</sup>

There are of course two other ways in which justice is essential, which HRW neglects to mention: as a gesture of respect for the victims of the genocide, and as a measure of solace for the survivors.

In this same section of *Leave None*, the survivors make two cameo appearances. In the first, to highlight the importance of not ascribing collective guilt to Hutu and to illustrate that “remarkably enough, some Rwandans who have suffered enormously recognize the need for fairness and honesty in judging alleged perpetrators” (note the backhanded insinuation that most survivors do not), HRW quotes a survivor who was also a rape victim as saying “Not all the Hutu had wild hearts...I cannot say that all the Hutus have killed. There is a difference between Hutu and assassin.” In the second, the survivors appear as cheaters: “some survivors have learned to exploit the system to their advantage and request damages from defendants who never harmed them.”<sup>(52)</sup>

Had it wanted to, HRW could have found abundant evidence, and poignant anecdotes, to underscore the points that justice, even if seeking it was a risky and traumatic process, was a crucial measure of solace for the survivors; and that the number of genocide survivors who have received “damages” in restitution is infinitesimal.<sup>(53)</sup>

Of note here too is that HRW finds it equally important to render justice for lesser crimes as it is for genocide, and ascribes moral equivalence to killings of civilians by “insurgents, including some responsible for the 1994 genocide” and by the RPA (the RPF-led government’s army) that was fighting the insurgency. We will return to these issues in part V below.

In 2002, HRW’s senior Rwanda players at the time (Kenneth Roth and Alison Des Forges) published a short essay called “Justice or Therapy” which also used strong language on the importance of justice and punishment: “...it is precisely at a time of atrocities...that a policy of trials and punishment is essential.” To rebut a proposal by Helena Cobban to limit retributive justice in favor of reconciliation and therapy with regard to the perpetrators of the 1994 genocide, Roth and Des Forges argue that “the killers are not the latest hapless victims of the genocidal flu. They are deliberate, immoral actors. Treating them as no more culpable than children who refuse to wear coats and catch cold is both wrong and dangerous. Wrong because it does a deep disservice to the victims...Dangerous because it signals to other would-be mass murderers that they risk not punishment but, at most, communal therapy sessions.”<sup>(54)</sup>

What is surprising is that these words came, not to support Rwanda’s effort at the time to create a hybrid justice mechanism (the gacaca courts, see below) which would hold genocide perpetrators to account in a way that would both end impunity and promote reconciliation, but to rebut a straw-man therapy alternative (Cobban’s proposal was in fact more nuanced) which was not a

real-world option. It's also remarkable that this rebuttal was the last time HRW described trials and punishment for the 1994 *genocidaires* as essential.

By 2004, in an essay by HRW's Des Forges and former HRW staffer Timothy Longman,<sup>(55)</sup> the importance of justice had declined. Here, accountability is merely "an important step in the social (note the omission of the word 'political') reconstruction of Rwanda...But trials are not a panacea..." -- particularly, in their view, because the Rwanda government elected in 2003 lacked legitimacy because the MDR had been banned, and because the gacaca court system was one-sided in focusing on the genocide and not also on lesser RPF crimes.

In two subsequent and lengthy reports on Rwandan justice issues in 2008 and 2011,<sup>(56)</sup> HRW does not ascribe any particular level of importance, whether absolute or qualified or something even less, to the issue of post-genocide justice. Some light is shed on the evolution of HRW thinking on this issue by comments made by Alison Des Forges to Sanford Unger in February 2009, when Unger, President of Goucher College, was trying to figure out whether a Rwandan émigré he had hired (Leopold Munyakazi) was a bone fide refugee or a genocide fugitive. Unger reports the conversation as follows:

"I don't think you have a problem here,' she reassured me. But then she paused, and almost seemed to reverse herself: 'We may never really know for sure about guilt or innocence,' she told me. 'During the Rwandan genocide, there were people who went without sleep for so many days in a row that they became psychotic. They killed some of their neighbors on one day, and saved others on the next. 'Many Rwandans,' she said, 'might never be sure themselves of exactly what they had done during that time of madness. They did what they had to do to survive.'"<sup>(57)</sup>

The points made above are helpful to understanding how HRW gets to its real answer on the question of accountability for the genocide, which is that it should have been quite limited for the Rwandan perpetrators, and is not needed at all for their foreign supporters. Naturally, HRW does not make this argument explicitly. However, it is the inescapable inference of most of what HRW does say explicitly, and from the priorities evident in its advocacy activity.

### **(3) Don't hold more than a few perpetrators accountable: condemning gacaca**

HRW has expressed this command by derisively condemning the gacaca courts which Rwanda created to handle justice for the genocide, as a "tool of repression" and a "forum for settling personal vendettas or silencing dissident voices."<sup>(58)</sup> HRW has fallen far short of substantiating its condemnation of gacaca, and has never put forward a realistic alternative that could try the massive numbers of Rwandans implicated in the genocide. One can only conclude that HRW would have preferred impunity for the large majority of perpetrators.<sup>(59)</sup>

Under the gacaca system in place from 2002 to 2012, 170,000 "persons of integrity" were elected by local communities to serve as judges in 12,000 community courts, in whose work nearly every adult Rwandan participated as a defendant, accuser, or witness. These gacaca

courts tried just over one million individual suspects who accounted for almost two million criminal cases (divided into three categories) stemming from the genocide. Of these, 1.3 million cases (Category 3) involved pillaging the property of the victims. The remaining 638,080 cases involved murders, rapes and assaults, of which 60,552 cases were in Category 1 (ringleaders and rapists) and 577,528 cases were in Category 2 (low level killers and assaulters). Conviction rates were highest for the Category 3 pillaging cases (1.27 million convictions or 96%), where the legal but generally unenforced penalty is restitution; then for the Category 1 ringleaders cases (53,426 convictions or 88%); and then for the Category 2 cases involving low level killers (361,590 convictions or 63%).<sup>(60)</sup>

The gacaca trials for one million suspects over ten years cost Rwanda and several foreign donors about \$50 million or an average of \$50 per suspect, in dramatic contrast to the ICTR, whose trials of 70 persons over 17 years have cost something in the range of \$2 billion or an average of over \$20 million per suspect.

The Rwandan government has not yet released data that would show how many individuals (as opposed to how many cases) were tried and convicted in each of the three criminal categories. However, the 415,016 cases which resulted in convictions in the murderous categories 1 and 2 indicate that the number of genocide perpetrators convicted by the gacaca courts is very likely over 200,000. Rwanda's regular courts have convicted several thousand more, while tens of thousands of other perpetrators escaped trial by death or fleeing the country.

The bottom line, when the gacaca system was closed down in mid-2012, 18 years after the genocide, was that some 40,000 genocide convicts were still serving time in Rwandan prisons, while another 20,000 or so were working off their sentences in community service labor camps ("TIG") around the country.<sup>(61)</sup> Sentences were very light compared to the gravity of the crimes committed, especially for those who confessed. Impunity was avoided to a significant degree, but reconciliation and reintegration were clearly dominant over retribution. With the guilty individually held accountable, the remaining Rwandan population was free of any implied burden of criminal liability.

Rwanda's gacaca courts represent the first comprehensive effort at post-genocide justice in world history. HRW contributed little to the extensive foreign reporting about gacaca while it was in operation. It signaled in passing fashion its hostile skepticism, in works that dealt with the Rwandan justice system in 2004 and 2008.<sup>(62)</sup>

Senior Rwanda specialist Des Forges was harshly critical in a November 2007 speech, where she reportedly said that "It is difficult to say that gacaca, as a judicial mechanism, is credible today and will be perceived as such...It is like a bar that closes at midnight, where people are pressing to get a last drink: the accusations rain down, persons who have been acquitted are accused again...it's worrisome. It's a train that is speeding down hill with no one at the controls..."<sup>(63)</sup>

HRW Executive Director Kenneth Roth was even more derisive, in an April 2009 statement timed (is this not cruel?) to coincide with Rwanda's annual week of mourning for the genocide.<sup>(64)</sup>

“...ironically, it is the genocide that has provided the government with a cover for repression...One tool of repression has been the gacaca courts. The original impetus was understandable: Rwandan prisons were overpopulated with tens of thousands of alleged *genocidaires* and no prospect of the country's regular courts trying them within any reasonable time. The gacaca courts provided a quick, if informal, way to resolve these cases. In theory, members of the community would know who had or had not been involved in the genocide, but in reality the lack of involvement by legal professionals has left the proceedings open to manipulation. Today, 15 years after the genocide, people are still coming forward and accusing their neighbors of complicity in it, suggesting that gacaca has morphed into a forum for settling personal vendettas or silencing dissident voices.”

HRW's first substantial assessment of gacaca, entitled “Justice Compromised,”<sup>(65)</sup> came only in May 2011. It can be understood as an attempt to back up Roth's slurs and to preempt a positive international opinion as gacaca drew to a close; it cannot be understood as a fair and balanced assessment of what Rwanda had achieved. Here are some of the reasons why.

HRW sticks to its figure of “tens of thousands” of perpetrators, blithely failing to address the fact that the gacaca courts had reached guilty verdicts in hundreds of thousands of perpetrator cases.

HRW makes a specious claim to analytical rigor by touting in a “methodology” section the “more than 350” cases it followed over 2000 days of trial observation in all four of Rwanda's regions — whereas this is a minute sample of the one million persons tried in two million cases, and HRW divulges nothing about how it chose to focus on them.<sup>(66)</sup>

Whether HRW tells the whole story for the cases it selects to criticize -- they are too few to be representative, but too many to individually dissect here -- is questionable. The highly symbolic case of Belgian “White Father” missionary Guy Theunis (the only European to have appeared as a defendant before a gacaca court) is one which HRW has been especially eager to defend: HRW highlighted it in two reports, portraying Theunis as an innocent priest, human rights activist, and journalist victimized by Rwandan authorities on venal or political grounds. But HRW suppresses an enormous amount of evidence that Theunis was personally and ideologically intimate with many Rwandans who played leading roles in the genocide, and quite active in support of their cause before, during and after the genocide.<sup>(67)</sup>

Almost all of the 20 “recommendations” HRW makes to Rwandan authorities in this report are in favor of those accused of genocide. Only one (more help for rape victims) is in favor of the victims. This would make sense only if the gacaca process had been corruptly retributive overall, which HRW's highly selective sample fails to demonstrate, and which is implausible from the outset if one compares the scale of the highly participatory 1994 genocide and the scale

of the punishment which gacaca meted out, with less than 60,000 convicts still in jail or community service 18 years after the event.

HRW chooses to minimize the issue of “ceceka,” i.e. the conspiracy of silence among perpetrators and their families and friends (who far outnumber genocide survivors in the hills of Rwanda), while more balanced assessments of gacaca see it as a major problem.<sup>(68)</sup>

HRW gives only cursory attention to the issue of restitution and damages for the survivors of the genocide, and indeed devotes more attention to survivors seeking unrightful “personal gain” (pages 109-110) than it does to the issue of the survivors’ frustrated rights (page 80). Nor does it address the issue of UN assistance for the survivors, which has been minimal since 1994.<sup>(69)</sup>

Even though gacaca’s comprehensive trials of individuals were the only way to escape the ascription of collective guilt to “the Hutu” -- a high priority for HRW (see above) -- HRW chooses in this 2011 report to insinuate that gacaca instead reinforced the idea of collective guilt. HRW argues here that because “only Tutsi can be victims in gacaca and generally only Hutu can be perpetrators,” gacaca has reinforced the association between the labels “Hutu” and “perpetrator.”<sup>(70)</sup> This argument stands logic on its head, given that it was the genocide itself which created an issue of collective guilt which only individual trials could resolve.

Neither the text of this 144 page report nor its 624 footnotes make a single reference to the many Rwandan studies and opinion polls assessing the gacaca process, its impact, and the views of the Rwandans involved – whose overall import is far more positive than the anecdotal comments of HRW’s chosen interlocutors.<sup>(71)</sup>

HRW presented its “Justice Compromised” report in an “off the record” briefing in Kigali. In a rare case of a diplomat standing up publicly to HRW, the Dutch Ambassador rose to express his disappointment at the tendentiousness of the report.<sup>(72)</sup>

#### **(4) Fighting transfers and extraditions to Rwanda**

Where does HRW stand on the rest of the world’s efforts to hold Rwandan genocide perpetrators accountable, in a situation where hundreds of notorious genocide leaders were able to flee the scene of the crime, most of whom have since 1994 enjoyed de facto safe haven around Africa, Europe and North America?

HRW’s advocacy effort concerning the international community’s treatment of Rwandan genocide suspects outside Rwanda has been consistent with HRW’s radically negative view of Rwandan governance and justice. But it has not been consistent with any real commitment to seeing more than a few Rwandan genocide suspects held to account.

HRW has been very active, via its 2008 “Law and Reality” report and *amicus curiae* briefs to the ICTR and a UK court, in supporting the efforts of Rwandan genocide suspects to avoid transfer

or extradition to Rwanda by the ICTR or by national courts, on the grounds that they would not get a fair trial there.<sup>(73)</sup>

These efforts were initially successful. In late 2008, the ICTR rejected the ICTR Prosecutor's first request for the transfer to Rwanda of several suspects indicted by the ICTR. In early 2009, the UK court, following the ICTR's lead, overturned a lower court's approval of a Rwandan request for extradition of four genocide suspects who are allegedly implicated in thousands of killings in the four districts they governed. HRW suggested they be tried in the UK on lesser charges of murder or torture, or for genocide if the UK would amend its laws to make this possible. Not surprisingly, neither has happened and the four continue to enjoy safe haven in the UK.<sup>(74)</sup>

HRW's advocacy against transfer or extradition to Rwanda was a factor in these decisions. However, it is important to note that the ICTR in fact rejected the heavier charges against the Rwandan judicial system in HRW's *amicus curiae* brief -- for example, that Rwandan courts were not independent and impartial and did not respect the presumption of innocence, and that there was a risk of torture or inhumane detention conditions. The ICTR denied the request for transfers on much narrower grounds. One was that there was ambiguity between two Rwandan statutes as to whether a genocide subject could be sentenced to life imprisonment with solitary confinement, which the ICTR considers a cruel and unusual punishment. The other was that there were potential problems in securing the testimony of defense witnesses leery of being arrested in Rwanda on charges of genocide, genocide denial, or genocide ideology, or of losing refugee status outside Rwanda if they travelled there.<sup>(75)</sup>

Since mid-2011, the tide has turned. In June 2011, in response to Rwandan measures to address the two concerns expressed by the ICTR in 2008, the ICTR began approving transfers to Rwanda. Following this ICTR "blessing" of the Rwandan judicial system, several national courts in Canada and Europe as well as the European Court of Human Rights have approved extraditions of genocide suspects to Rwanda. The ICTR's 2011 ruling, which was a victory for human rights, came despite renewed and still extensive objections from HRW.<sup>(76)</sup>

##### **(5) Ignoring the problem of impunity for fugitive genocide suspects**

HRW appears to consider the creation of the ICTR in November 1994 as an adequate fulfillment of the international community's obligation to punish the 1994 genocide, even though the ICTR was designed to try only a very small number of leading perpetrators (the ICTR has indicted some 90 persons, not all of them "big fish," and will try some 70 persons before closing down). Given HRW's view that the ICTR should keep the lead on holding to account the Rwandan genocide suspects it has indicted, it would be logical for HRW to work to ensure that the ICTR can actually get its hands on these suspects.

However, HRW has done nothing since 1995 to press recalcitrant countries to fulfill their legal obligation to track down and seize Rwandan genocide suspects indicted by the ICTR, of whom

ten are still at large (for example, alleged genocide financier Félicien Kabuga, believed to be hiding thanks to political protection in Kenya, and Presidential Guard commander Protais Mpiranya, believed to be doing the same in Zimbabwe).<sup>(77)</sup>

Nor has HRW done anything to press France to follow through on its February 2008 commitment to the ICTR to try the two indictees whom the ICTR had assigned to French jurisdiction (Father Wenceslas Munyeshyaka and former Governor of Gikongoro Province Laurent Bucyiburata, indicted by the ICTR in 2007, resident in France since 1994, and in and out of French arrest since 1995 and 2000, respectively – but never tried, despite France’s obligation to the ICTR and censure of French slowness on Munyeshyaka from the European Court of Human Rights).<sup>(78)</sup>

Nor has HRW gone out of its way to applaud the instances where countries have made arrests for the ICTR.

Meanwhile, ICTR indictees are a very small portion of the total number of Rwandan genocide suspects who remain outside Rwanda. These include many well-known figures accused of playing important roles in the genocide, whose addresses are known to the authorities, particularly in France, Belgium, and the Netherlands, and many of whom are the subjects of Interpol arrest notices.<sup>(79)</sup> HRW has made it clear that it does not want these suspects extradited to Rwanda. But does HRW want their host countries to meet their obligations under the 1948 Genocide Convention by arresting and trying the suspects themselves? HRW applauded and assisted in the trial and conviction of four genocide fugitives in Belgium in 2001. Since then, HRW has neither exerted pressure for prosecutions in national courts, nor applauded the few instances where such prosecution has taken place. Nor has HRW, despite its relatively lavish resources, joined other smaller organizations in tracking and alerting national authorities to the presence of the many genocide suspects living in its own backyard in the U.S., or in the countries in which HRW has offices.

## **(6) Forget about foreign accomplices: France, the Catholic Church**

In 1999, HRW had this to say about the responsibility of foreign officials relating to the genocide:

“...foreign leaders whose inaction contributed to the scale and duration of the catastrophe will likely face the judgment only of history and public opinion.”

“With the exception of the complaints against former Ministers Delcroix and Claes in Belgium, no effort has been made to hold policymakers personally and legally responsible for refusing to halt the slaughter. Researchers must continue trying to go beyond the relatively painless, generalized confessions of political leaders to analyze the decisions taken by individuals, so that these persons can be obliged to acknowledge their responsibility at least in the public domain, if

not in a court of law. Only in this way can we hope to influence decision makers in the future to never again abandon a people to genocidal slaughter.”<sup>(80)</sup>

Several comments about this 1999 statement and HRW’s subsequent behavior are in order.

First, HRW threw in the towel very easily on the question of foreign officials’ legal accountability for failures to protect the victims of the genocide.<sup>(81)</sup>

Second, HRW failed to mention and thus let off the hook those foreign officials, most notably among the French, who face much graver allegations of active complicity in the genocide.

Third, HRW failed to mention that a significant cohort of French researchers had been working hard since 1994 to expose French officials’ complicity in the genocide, i.e. to achieve exactly what HRW says is “the only way” to make progress on not abandoning the victims of genocide. This cohort of French researchers has grown over the past 18 years and is still at it today.<sup>(82)</sup> HRW has never mentioned, much less supported, their campaign.

Fourth, in 2007 and 2011 two ad hoc Rwandan investigative commissions produced two lengthy and extensively documented reports, the first on France’s role in the genocide and the second on the role of those who would go on to lead the genocide in shooting down President Habyarimana’s plane on April 6, 1994.<sup>(83)</sup> These reports are essential reading for an understanding of responsibility and justice for the genocide. HRW has never acknowledged the substance and the implications of these reports, for example the need for further investigation and charges against the French and Rwandan persons implicated.

The role of French officials and soldiers in the 1994 genocide ranks among the gravest moral and political challenge to the principle of accountability in 20<sup>th</sup> century French history. They are accused of assisting in the preparation of the genocide, covering up and perhaps assisting in the perpetrators’ initial step in the genocide (the shooting down of Habyarimana’s plane), participating in some of the killing, arming the perpetrators before, during and after the genocide, helping the perpetrators form their “interim government” at the beginning of the genocide, giving the perpetrators political cover during the genocide, helping the perpetrators escape and regroup in eastern Congo, assisting the Hutu Power movement’s post-genocide propaganda campaign, and providing safe haven to many notorious genocide fugitives. The substance of these accusations represents an enormous amount of damage to human rights in Rwanda. Since 1995, HRW has exerted zero pressure on French authorities to address these issues of complicity, whether politically or judicially.

The work of many foreign and Rwandan researchers<sup>(84)</sup> also demonstrates that the 1994 genocide raises grave issues of accountability for the Vatican and the Catholic Church more generally, including participation of Catholic clergy in the genocide, providing escape routes and safe haven to fugitive genocide suspects, and supporting the Hutu Power movement’s propaganda

campaign. HRW has never exerted any pressure on the Vatican or any part of the Catholic Church to address their issues of accountability on Rwanda.

## **V. ‘Admit You Are No Better Than They’**

### **1. Accusations in a mirror and moral equivalency**

“Accusations in a mirror” (accusing the other side of what you plan to do, are doing, or have done) have been the core strategy of Hutu Power propaganda in the preparatory, implementation, and denial phases of the 1994 genocide. HRW seemed to recognize this when it examined Hutu Power propaganda during the genocide in its 1999 *Leave None*,<sup>(85)</sup> but appears to have forgotten it thereafter.

As a human rights reporting and advocacy group, HRW seeks to identify and ensure accountability for violations of humanitarian law by all parties in a conflict. This is obviously a legitimate endeavor with value from a human rights perspective.

But setting out to focus even-handedly on the violations of all parties -- and all parties everywhere always commit some -- also involves analytical risks: missing the forest for the trees, obscuring the driving force of a conflict, and implying moral equivalence where none exists (or creating an “immoral equivalency,” as Deborah Lipstadt has put it, the usual instance cited being the efforts of right-wing German extremists to equate the Allied firebombing of Dresden and the Nazi extermination of Jews at Auschwitz).<sup>(86)</sup> It is a short trip between “both sides committed violations” to “both sides are bad,” and bystanders’ political expediency can make it even shorter. I remember vividly how in spring 1993, Secretary of State Warren Christopher, on the eve of Congressional testimony where he would resist pressure to recognize that genocide was underway against Bosnian Muslims, pressed his staff for data on war crimes by the victims.<sup>(87)</sup>

The challenge of avoiding the wrongful ascription of moral equivalency is particularly difficult when one posits, as HRW does, that all victims have equal status: “States have a duty to recognize genocide and similar mass crimes but should not recognize mass crimes selectively, favoring some victims and ignoring others...”<sup>(88)</sup> Were it applied retroactively, HRW’s stance would mean that not only German and Japanese officials but also Truman, Churchill and a host of Allied commanders would have faced war crimes trials after World War II. They could have faced a range of charges including the indiscriminate slaughter of hundreds of thousands of civilians in “terror bombing” campaigns, the unnecessary use of nuclear weapons, holding and using POWs for forced labor long after the end of the war, or complicity in the brutal and often deadly forced displacement of millions of ethnic German civilians from around Eastern Europe to Germany after the war. Perhaps a hypothetical case could be made for this, if some higher power had been available to hold the trials, but it probably would not have been helpful in getting Germany and Japan to recognize their responsibilities in World War II. In any case, in the world as it is, HRW’s Olympian vision is one that does not apply to major Western powers, but only to actors in weaker countries, which raises another set of double standards issues.

It is debatable whether an “even-handed” approach can really be politically neutral; it is certain that it should be done very carefully in a situation where the genocidal side is intent on shifting blame to the other side.

In the real-world case of Rwanda, the analytical risks of the “even-handed” approach seem to have damaged HRW’s reporting and advocacy from the start, at a time when HRW joined other human rights groups in an “International Commission on Human Rights Abuses in Rwanda” which visited Rwanda in January 1993 and published a 102 page report in March 1993. Several participants in this Commission recognized that Rwanda was in an early stage of genocide. HRW rejected that prescient assessment, worked to keep the word genocide out of the report issued in March, and protested (via a Kenneth Roth phone call to William Schabas) behind the scenes when other participants put out a press release which used the word genocide.<sup>(89)</sup>

Since the genocide, HRW has been eager rather than appropriately cautious about making or embracing unsubstantiated or weakly substantiated allegations which reinforce key elements of the Hutu Power “accusations in a mirror” strategy: for example, that the RPF is co-responsible for the genocide against the Tutsi, and that it has been RPF policy to systematically massacre Hutu, or to even to commit genocide against them.

## **2. Small brush strokes to damn the RPF**

Sometimes HRW does this with small brush strokes that add up to a damning portrait, as in the examples below.

HRW has not gone as far as Hutu Power propagandists and some other virulent critics of the RPF who condemn the armed return to Rwanda in 1990 of Rwandan refugees led by the RPF as illegitimate or even criminal. HRW has, however, insinuated that it was illegitimate, by calling it an “invasion” and stating that it was “supposedly” to win the right of return for Rwandan Tutsi refugees.<sup>(90)</sup>

HRW has not gone as far as Hutu Power propagandists who condemn the 1993 Arusha Accords (whose implementation the April 1994 Hutu Power coup d’état and genocide were designed to prevent, since the Accords laid the basis for a democratic and civic as opposed to single-party and racially based Rwanda). However, in 1993-94 HRW refrained from praising the Accords or pressing for their implementation; in its 1999 *Leave None* HRW had nothing to say about the degree to which the Accords reflected the democratic and peaceful aspirations of many Rwandans in addition to meeting the political goals of the RPF.<sup>(91)</sup>

At the same time, HRW has held the RPF to be co-responsible for the destruction of the Arusha Accords, without offering any substantiation for this claim. HRW has also held that the only “good guys” in Rwanda in 1994 were those who were unarmed, without explaining why it was lumping together the genocide perpetrators and the RPF as the “bad guys.”<sup>(92)</sup>

HRW has also held, apparently based on its own military expertise, that the RPF's military strategy in April-July 1994 was aimed at achieving military victory rather than saving the lives of Rwandan Tutsis.<sup>(93)</sup> This echoes Hutu Power rhetoric to the effect that Kagame sacrificed the Tutsi in order to win power.

Sometimes HRW's brush strokes are more broad.

### **3. Embracing the Gersony Report, pressing the ICTR to try RPF leaders**

In September 1994 an American consultant to the United Nations High Commission for Refugees (UNHCR) named Robert Gersony presented to UNHCR, other UN and Western officials in Kigali, and to the post-genocide Rwandan authorities, orally and in the form of draft notes for a report (based on his interviews during a five-week tour of parts of Rwanda and of UN camps for displaced persons in eastern Congo and Tanzania), his contention that RPF forces had over the past few months committed systematic massacres of 25,000 to 45,000 Rwandan Hutus. Gersony's contention was rejected by Rwandan authorities, who agreed to cooperate in checking it out; it met with strong skepticism among UN and Western officials in Rwanda who suspected Gersony had been duped in interviews guided by local Hutu Power leaders. Instead of a thorough and definitive effort to validate or invalidate Gersony's contention, what ensued was a partial reinvestigation by UN and Western officials, with the cooperation of Rwandan officials, which found no evidence to corroborate Gersony's claims; the leaking of his contention to Western media; and a UNHCR decision to treat the contention as valid by temporarily suspending repatriations from the camps -- but also to cancel the finalization of Gersony's report. Thus an "urban legend" is born.<sup>(94)</sup>

In its 1999 *Leave None*, HRW stated that "Although our research indicates considerable killing of civilians by RPF forces during this period, including massacres and executions, we have too little data to confirm or revise (Gersony's) estimates."<sup>(95)</sup> (Note the use of the vague word "indicates".)

Over subsequent years, HRW transformed Gersony's contested estimates into something with a much more authoritative ring, as in: "The UN High Commission for Refugees estimated the number of victims to be between 25,000 and 45,000 from April to August 1994."<sup>(96)</sup>

In several reports, HRW has sought to buttress Gersony's contention by citing the charge made in June 1998 by a Rwandan émigré in Nairobi named Seth Sendashonga that the RPF had killed some 60,000 persons between April 1994 and August 1995. HRW identified Sendashonga as formerly an RPF member and Interior Minister in the post-genocide Rwandan government in 1994-95, i.e. an authoritative inside source. HRW neglected to mention factors that undermined Sendashonga's credibility, e.g., the fact that he had contested Gersony's allegations in September-October 1994, that a precipitating factor in Sendashonga's split from the RPF and flight to Nairobi was, allegedly, his failed attempt to shield his brother from arrest on genocide

charges, or the fact that Sendashonga was, in 1998, organizing an effort to wage war against the Rwandan government.<sup>(97)</sup>

Never, in its use of the “Gersony Report,” has HRW acknowledged the degree to which knowledgeable foreign observers in Rwanda at the time contested his findings. Nor has HRW mentioned the controversial nature of Gersony’s previous work on similar issues in Mozambique, which other foreign researchers have criticized as “missing any critical methodology” and “transparently biased and politically motivated.”<sup>(98)</sup>

From 2002 on, based on Gersony’s contention and its own professed research, HRW repeatedly pressed the ICTR to prosecute alleged war crimes and crimes against humanity by RPF forces in Rwanda in 1994. HRW’s longstanding contention was that these alleged crimes must have been known and at least tolerated at a very senior level of the RPF – i.e. that “big fish” were implicated, including Kagame.<sup>(99)</sup>

Nevertheless, the ICTR Prosecutor, who is accountable to the UN Security Council, chose not to prosecute these alleged crimes, and instead to transfer some cases of RPF crimes to Rwandan jurisdiction. For all its pressure on the ICTR to prosecute the RPF, there is no evidence that HRW (or anyone else) has ever presented the ICTR with concrete, compelling and actionable evidence of RPF crimes that would warrant ICTR prosecution.<sup>(100)</sup>

#### **4. Endorsing the Bruguière and Merelles indictments**

In 2008, HRW gave its seal of approval to two foreign indictments which charged Rwandan President Kagame and several of his senior colleagues with extremely grave crimes. One, issued in November 2006 (after several years of preliminary leaks) by French judge Jean Louis Bruguière, accused Kagame and nine senior RPA officers of shooting down President Habyarimana’s plane on April 6 and thus ‘causing’ the genocide. The other, issued in February 2008 by Spanish judge Fernando Andréu Merelles, accused Kagame and 40 senior RPA officers of a wide range of offenses, from killing specific Spanish missionaries to genocide against the Hutu.<sup>(101)</sup>

HRW stated that “Parts of the French and Spanish orders appear to be based on serious investigations and to have merit. Other parts of each are not fully substantiated by the information presented. Some information in the Spanish order, such as the figure of some 40,000 civilians killed by RPA soldiers in February 1993, seems to be inaccurate. Judges in both cases are continuing their inquiries and must evaluate further information in the most systematic and critical way possible.”<sup>(102)</sup>

HRW strengthened this endorsement by calling on governments around the world to show their commitment to the rule of law and their respect for their obligations under the Interpol or European Arrest Warrant systems by executing arrest warrants stemming from the two

indictments. (This is something HRW has never done concerning Interpol arrest notices based on Rwandan indictments.)

Instead of touting the Bruguière and Merelles indictments as “based on serious investigations,” it would have been far less fanciful on the part of HRW had it condemned them as flagrantly incompetent and fraudulent judicial acts for which the two judges should be held accountable. The Merelles indictment, which is a cut-and-paste compilation from Hutu Power propaganda documents from the Habyarimana regime and the post-genocide émigré diaspora complemented by wildly implausible hearsay testimony, is still in place; it festers on but is largely ignored by the international community. The Bruguière indictment is based on the allegations of ICTR genocide convicts and on subsequently disowned or discredited testimony from a variety of witnesses, of which the most important, Abdul Joshua Ruzibiza, turned out to be a serial liar. The Bruguière indictment has been in a process of gradual collapse since it was issued; the *coup de grace* came in early 2012 when Bruguière’s successor, Marc Trévidic, issued a forensic report (Bruguière had never had one done) which determined conclusively that the missiles which downed Habyarimana’s plane were fired from an area under the complete control of Habyarimana’s own Presidential Guard.<sup>(103)</sup>

What remains is for Trévidic to formally quash the Bruguière indictment (its arrest warrants had been withdrawn even before the forensic report) -- and perhaps to apologize to the Rwandan government for the boost it gave to Hutu Power propaganda and the damage it did to Rwanda’s reputation for over a decade, as well as issue new indictments against any suspects that can be identified for the shooting down of the plane (some French researchers speculate that persons within Habyarimana’s military may have had help from official or semi-official French agents), and against the French officials and researchers who put together the Bruguière indictment.

The falsity of the Bruguière and Merelles indictments was arguably quite obvious from the start to anyone who read them with an open mind and had a minimum of expertise about Rwanda in the 1990s. The Bruguière indictment, which echoed accusations made since 1994 by the military leaders of the genocide, was the biggest coup for Hutu Power propaganda since the genocide. HRW has yet to comment on its collapse, much less support the French human rights activists who are pressing French authorities to come clean on this issue.

## **5. Touting the UN Mapping Report**

After the “Gersony Report” and the Bruguière and Merelles indictments, the most recent non-Rwandan document to suggest a moral equivalence between the perpetrators of the 1994 genocide against the Tutsi and the RPF is the “UN Mapping Report” dated August 2010.<sup>(104)</sup> Prepared by an anonymous team of researchers,<sup>(105)</sup> the Mapping Report purports to document 617 incidents of mass atrocities by a number of military forces in the DRC in 1993-2003, on the basis of two sources per incident, of which one a written source by a local or foreign entity and the other a local oral source. The report does not specify whether the local sources claim to be

direct or hearsay witnesses of the incident in question. The written sources are identified by the name of the responsible entity, and the oral sources are anonymous. The report's footnotes show that NGOs like HRW and Amnesty and a variety of Catholic NGOs and missionary groups (several of which are notoriously sympathetic to the Hutu Power cause) are particularly well represented among the written sources. The report does not define the criteria used to establish the mutual independence of the two sources for each incident, or the credibility of either. On the basis of these sources, the report finds -- among many other things, but this has predictably monopolized media reports -- that "tens of thousands" of persons were deliberately killed between 1996 and 2003 by the Rwandan military and its Congolese rebel allies (the AFDL), which the report charges were responsible for war crimes, crimes against humanity, and possibly genocide against "a part" of the Hutu population in the DRC. (The authors had to specify "a part" because Rwandan authorities in 1996 had repatriated and reintegrated into Rwandan society the large majority of the Rwandan Hutu population in the "refugee camps" of eastern Congo.)

Because the Mapping Report gives so little information about its authors and its sources, and is based on such low evidentiary standards, to accept its vision of what occurred in the DRC from 1993-2003 would be an act of faith rather than an a rational judgment based on transparent, concrete information.<sup>(106)</sup> The Mapping Report's contention that Rwandan and allied Congolese forces may have committed genocide, i.e. attempted to destroy "in part" the Congolese and Rwandan Hutu they encountered,<sup>(107)</sup> is far too grave to be justified by the weakness of the evidence and the tenuous argumentation in the report. The manner in which the report was leaked to French media in draft form suggests (even to analysts who respect the work of its authors) that the authors wanted to make it politically difficult for their UN superiors to delete the reference to a possible genocide from the final report.<sup>(108)</sup> In the event, the reference was substantially watered down in the final report, but remained.

HRW, which knew already in 2009 that the Mapping Report would evoke genocide,<sup>(109)</sup> has embraced the report as vitally important and an imperative for judicial action.<sup>(110)</sup> (Note that the accountability which for HRW had lost its essential character with regard to the proven genocide in Rwanda, has now regained in it with regard to a dubious allegation of genocide in the Democratic Republic of Congo.)

HRW called in October 2010 for the creation of a "hybrid" DRC-international court in the DRC to conduct trials of unspecified suspects, whether Congolese and foreign, with the involvement of foreign judges and prosecutors alongside Congolese judicial personnel as a guarantee against "political interference."<sup>(111)</sup> There has been little progress on this front since then, and there is not likely to be in the future.

However, that a UN body has issued a long report suggesting (however tenuously is politically irrelevant) the post-genocide Rwandan government may have committed a genocide against the

Hutu has replaced the Bruguière indictment as a leading theme for émigré Hutu Power groups like the FDU/RDR, as a vindication of their long-standing “double genocide” accusation.

## **6. Holding Kagame responsible for any renewed genocide against the Rwandan Tutsi**

One more and this time forward-looking instance of HRW irresponsibly echoing the “accusations in a mirror” of the perpetrators of the 1994 genocide merits attention here.

HRW Executive Director Kenneth Roth’s April 2009 statement “The Power of Horror in Rwanda” argued that Rwandan President Kagame was exploiting the 1994 genocide as a cover for repression carried out through the gacaca courts and the criminalization of genocide ideology. Roth concluded his statement as follows:

“But Kagame’s strategy is shortsighted and dangerous. He claims to be building a society in which citizens are only Rwandans, not Tutsi or Hutu, but his repression of civil society means that avenues to forge alternative bonds among people are limited. That makes it more likely that in moments of tension Rwandans will resort to their ethnic identity, as so often happens in repressive societies. The challenge for world leaders 15 years after the genocide is to overcome guilt and look beyond the enforced peace to convince Kagame and his government to build the foundation for a more organic, lasting stability. The best way to prevent another genocide is to insist that Kagame stop manipulating the last one.”

There are several remarkable aspects of Roth’s thinking here. One is the conflation between those he presumes to be the targets of the gacaca courts and the law against genocide ideology, and the broader concept of “civil society.” A second is the implication that debating with genocide deniers can be a bonding experience. A third is the notion that people spontaneously “resort to their ethnic identities” at moments of tension, as if extremist, polarizing ideology and political leadership were not essential to the process. But the most remarkable of all is the last sentence, where Roth certainly seems to be saying, in a backhanded way, that if there is another genocide against the Rwandan Tutsi, it will be Kagame’s fault.

To hold the potential victim of a future genocide at fault for his fate does not break any new ground in the annals of genocide ideology, but it does for international humanitarian thought.

## **VI. Conclusion**

I thought well of HRW when it was Helsinki Watch and focused on East Europe, and I was a Foreign Service Officer doing the same. I still did, the first time I read *Leave None to Tell the Story* before moving to Rwanda in 2008. But the more I learned about Rwanda, the less I trusted HRW. The decisive eye-opener for me was HRW’s campaign for the FDU/RDR to be included in Rwanda’s election in 2010. There is something seriously wrong with an institution that wants a political party founded by the leaders of a genocide to be allowed back in to the scene of their crime. It is dangerous when this institution has the power to influence Western policy. So I took

a closer look at HRW's discourse on Rwanda over the years. I found that the summary that captures it best is the one that structures this essay: let the genocidal parties back in, don't ban their ideology, don't hold more than a few perpetrators accountable, and admit you are no better than they. I hope that my summary will open others' eyes as well.

Readers who are thinking "But this can't be!" might want to review other contemporary evidence that HRW and groups like it can behave quite strangely,<sup>(112)</sup> as well as the sorry historical track record of Western intellectuals when it comes to dealing with Africa.<sup>(113)</sup>

Other readers may well be asking "But what about the real sins of the Kagame regime!" The post-genocide Rwandan government has certainly committed serious human rights violations, both at home and in the DRC, and it is regrettable that it has not provided more detailed information about the conduct of its forces in Rwanda in the aftermath of the genocide and later in the DRC, and about its own efforts to hold violators accountable. However, the evidence concerning its violations is polluted by enormous amounts of hostile misinformation and propaganda -- in which HRW has played a leading role -- so that the scale and intent are very hard to measure. To recognize that HRW has lost its ethical and analytical bearings on Rwanda does not require one to hold the post-genocide Rwandan government blameless; instead, it is a necessary step in assessing the degree of blame that government in fact deserves.

Finally, most readers are surely looking for a plausible explanation as to why the most prestigious and influential Western human rights organization has thought and behaved the way it has on Rwanda. A number of hypotheses come to mind. However, I have not been in a position to interview those responsible, and have therefore chosen not to speculate at this point. I have, however, laid out what needs to be explained, based on the public record of HRW's discourse over the past twenty years. Perhaps HRW will respond to this essay in ways that help us understand. In any case, while it is urgent to understand the motives and processes which have driven HRW's behavior on Rwanda, it is even more urgent to put an end to it.

The mendacity and bias in HRW's political campaign against the post-genocide Rwandan government undermines the overall credibility of Western human rights advocacy. It does enormous damage to the West's dialogue with Rwanda on democratic governance, national unity and reconciliation, and regional peace and security. It also makes HRW the de facto ally of a small stratum of Rwandan reactionaries who want to restore the racist governance of 1962-94, and quite possibly the genocidal policies which that governance produced in 1994.

How can such a travesty be contained, corrected, and prevented for the future?

Some solutions seem unlikely, in the world as it is, but one can always hope. Might HRW be obliged to answer in a court of law for its campaign to help a party created by the leaders of the 1994 genocide, and linked to the terrorist FDLR, to reenter Rwandan politics? Might major donors to HRW decide to suspend their support? Might HRW Chairman Steve Hoge have HRW's Board of Directors investigate and take appropriate action? Or, might Executive

Director Kenneth Roth hold himself accountable, or at a minimum, publicly acknowledge his responsibility for an unscrupulous campaign which does grave harm to Rwanda as well as to HRW's credibility and legacy?

Other solutions are certainly realistic. Western policy makers could have the courage to stand up to HRW when appropriate, and should definitely challenge HRW's policy stance on Rwanda. Western media could forego the convenience of echoing HRW reports, and do as much investigative reporting of HRW's errant behavior as they do about other powerful institutions. Organizations and groups committed to genocide remembrance and prevention should take a close look at how the flagship of Western human rights groups is dealing with the Rwandan case. Past or present HRW insiders who are troubled by its travesty on Rwanda – and it is hard to imagine that such persons do not exist – could speak their conscience. And, of course, anyone who shares the concerns expressed above could make their own analyses public.

## FOOTNOTES

1. The seminal work of this soul-searching is Karl Jaspers, *The Question of German Guilt*, Fordham University Press 2001, originally published in Germany in 1947.

2. The best published account of this life support system is by the renowned French historian of Central Africa Jean-Pierre Chrétien, *Le Défi de l’Ethnisme – Rwanda et Burundi 1990-1996*, Karthala, 1997, and updated edition 2012; see also his articles “Retour du Hutu Power” in *Le Soir*, December 19, 1994, and “Le génocide du Rwanda: un négationnisme structurel,” published on line July 25, 2010.

3. See HRW Rwanda website for 2010-2011, as well as HRW African director Georgette Gagnon, “A Nation’s Hope Imperiled,” April 30, 2010, *The Daily Beast*.

4. The full history of the creation of the RDR in 1995 and its evolution since then remains to be written, but much is known from the following sources, on which I have drawn for my summary:

Jean Pierre Chrétien, *Le Défi de l’Ethnisme* (opcit); Tom Ndahiro, *Friends of Evil*, unpublished manuscript (187 pages), and “Genocide-Laundering: Historical Revisionism, Genocide Denial and the ‘Rassemblement Républicain Pour la Démocratie au Rwanda’,” pp 125-144 in Phil Clark & Zachary Kaufman, eds., *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, Hurst 2008; Wm Cyrus Reed, “Guerillas in the Midst – the former Government of Rwanda and the Alliance of Democratic Forces for the Liberation of Congo-Zaire in Eastern Zaire,” pp 134-154 in Christopher Clapham, ed., *African Guerillas*, Oxford 1998; Howard Adelman & Govind Rao, eds., *War and Peace in Zaire/Congo*, Africa World Press 2004, especially chapter 3, Abbas Gnamo, “The Role of the Interahamwe in the Regional Conflict: the Origins of Unrest in Kivu, Zaire,” pp 85-108, chapter 4, Roger Winter, “Lancing the Boil: Rwanda’s Agenda in Zaire,” pp 109-136, and chapter 7, Fiona Terry, “The Humanitarian Impulse: Imperatives and Consequences,” pp 187-252; Médecins Sans Frontières, *Breaking the Cycle: MSF Calls for Action in the Rwandese Refugee Camps in Tanzania and Zaire*, 14 pages, November 1994, <http://www.msf.fr>, and *Deadlock in the Rwandese Refugee Crisis: Repatriation Virtually at a Standstill*, 20 pages, July 20, 1995, <http://www.doctorswithoutborders.org>; Arnaud Royer, “L’Instrumentalisation politique des refugies du Kivu entre 1994 et 1996,” pp 425-528 in André Guichaoua, ed., *Exiles, refugies, déplacés en Afrique Centrale et Orientale*, Karthala 2004; Howard Adelman, “The Use and Abuse of Refugees in Zaire, April 1996 to March 1997,” 26 pages, in Stephen John Stedman & Fred Tanner, eds., *Refugee Manipulation: War, Politics, and the Abuse of Human Suffering* (Brookings, 2003); Philip Gourevitch, *We Wish to Inform You that Tomorrow We Will Be Killed With Our Families*, Picador 1999 (esp. pp 261-353); Marina Rafti, “Rwandan Hutu Rebels in Congo/Zaire 1994-2006: an Extra-territorial Civil War in a Weak State?” in F. Reyntjens & S. Marysse, eds., *L’Afrique des Grands Lacs – Annuaire 2006*, “The Dismantling of the Rwandan Political Opposition in Exile,” pp 22-42 in F. Reyntjens, ed., *L’Afrique des Grands Lacs –*

*Annuaire 2003-2004*, and *The Rwandan Political Opposition in Exile: A Valid Interlocutor vis-à-vis Kigali?* 49 pages, University of Antwerp, Institute of Development Policy and Management, April 2004; Pole Institute, *Guerillas in the Mist: the Congolese Experience of the FDLR War in Eastern Congo and the Role of the International Community*, 65 pages, Goma, February 2010; Hans Romkema, *Opportunities and Constraints for the Disarmament and Repatriation of Foreign Armed Groups in the Democratic Republic of Congo – The Cases of the FDLR, FNL and ADF/NALU*, 94 pages, MDRP, World Bank, June 2007, and *The FDLR: The End in Sight*, 9 pages, May 2009; African Rights, *A Welcome Expression of Intent: The Nairobi Communiqué and the ex-FAR/Interahamwe*, 88 pages, Kigali, December 2007; Rakiya Omaar, *The Leadership of Rwandan Armed Groups Abroad with a Focus on the FDLR and RUD/URUNANA*, 319 pages, consultancy to the Rwanda Demobilization and Reintegration Commission, December 2008; Report of the UN Group of Experts on the Democratic Republic of Congo, December 9, 2009.

Several contemporary documents authored by key perpetrators of the 1994 genocide shed light on the process whereby they created the RDR:

-- “To all Field and General Officers; Subject: Reorganization of the Rwandan Armed Forces; From: Minister of Defense Augustin Bizimana, Goma, 11 August 1994” (6 pages), Case no. ICTR-98-41, Exhibit No. P339B, Date Admitted 4-5-2005, Tendered by Prosecution, KO235046-KO235051. (This shows, inter alia, that Bagosora was made head of the military’s Political and External Relations Committee.)

-- “To the President and Prime Minister of the Rwandan Republic, Bukavu (note: i.e., the “interim government in exile”); Subject: Meeting Report; From Major General Augustin Bizimungu; marked ‘Very Secret,’ Goma 29 September 1994,” (47 pages), Case No. ICTR 98-41-T, Exhibit No. P453A, Date Admitted 12-12-2006, Tendered by Prosecution, K0041476-K0041524 (This foresees the need to replace the “interim government in exile” with a “political-military organization whose structure will be studied and proposed by Political and External Relations Committee,” i.e. the committee headed by Bagosora).

-- “Déclaration du Haut Commandement des FAR a l’issue de sa reunion du 28 au 29 Avril a Bukavu,” 2 pages, available at <http://jkanya.free.fr/declaration.html>. (This expresses loyalty to the RDR as the new regime, breaks with “interim government in exile,” and demands that it transfer all its files to the RDR.)

- André Guichaoua, opcit, pp 891-900, Annex 11, “Rwanda: Echange de courriers entre le Gouvernement rwandais en exil et l’État-major des FAR au sujet de la création du RDR (Avril-Mai 1995),” (ditto).

- André Guichaoua website “delaguerreaugenocide.univ-paris1.fr” “Annexe 123: Les Stratégies de reconquête de Mathieu Ngirumpatse en exil (extrait de Mathieu Ngirupatse, La Tragédie Rwandaise, sans date, p.185-187)” (provides background on the role and thinking of the military

genocide perpetrators, and of their friends among Belgian Christian Democrats, in creating the RDR).

5. The 8-page minutes of the founding meeting of the RDR, chaired by General Augustin Bizimingu at the Mugunga “refugee camp” near Goma in eastern Congo, were introduced as evidence at the International Criminal Tribunal for Rwanda (ICTR) under the title “Réunion du 29 mars au 3 avril 1995: Exposé de la situation générale, échange d’information. Rapporteur Ntabakuze,” ICTR Case no. ICTR-98-41-T, Exhibit No. P415B, Date Admitted 25-9-2006, Tendered by Prosecution.

6. See African Rights and Rakiya Omaar, as well as Marina Rafti, *opcit.*

7. See African Rights and Rakiya Omaar, *opcit.*, as well as Hervé Deguine, *Un Idéologue dans le génocide rwandais: Enquête sur Ferdinand Nahimana*, Milles et une nuits/Librairie Arthème Fayard, 2010; the latter work is largely based on Nahimana’s failed defense strategy at the ICTR, but contains some useful information.

8. André Guichaoua, *Rwanda 1994: Les Politiques du génocide à Butare*, Karthala 2005, p. 124 and André Guichaoua’s website, *opcit.*, annexe 111, les agendas et carnets de notes de Jean Kambanda, pages 6 and 32.

9. See, for example: Colonel Théoneste Bagosora, “President Habyarimana’s Assassination or the Final Tutsi Operation to Regain Power in Rwanda Using Force,” Yaoundé, Cameroon, 30 October, 1995 (37 pages), Case No. ICTR-98-41-T, Exhibit No. P31B, Tendered 17-09-2002; Movement for the Return of Refugees and Democracy to Rwanda (RDR), Cameroon Wing, “United Nations Security Council Misled About the Presumed ‘Tutsi Genocide’ in Rwanda,” June 1996, 37 pages (twelve contributors, including Théoneste Bagosora, Jean Bosco Barayagwiza, Pasteur Musabe (Bagosora’s brother), and Ferdinand Nahimana); and “Commandement des Forces Armées Rwandaises en exil; Dossier Tribunal International Pour le Rwanda; Contribution des FAR à la Recherche de la Vérité sur le Drame Rwandais, La Guerre d’Octobre 1990 et la Catastrophe d’Avril 1994,” undated, 244 pages, Case No. ICTR-98-41-T, Exhibit no. DK81C, Date Admitted 23-9-2004, Tendered by Defense.

10. My translation, from Hélène Dumas, “L’Histoire des Vaincus. Négationnisme du Génocide des Tutsi au Rwanda,” pp 298-347 in *Rwanda Quinze Ans Apres: Penser et Ecrire l’Histoire du Génocide des Tutsi*, Revue d’Histoire de la Shoah, No. 190, Janvier-Juin, 2009, Paris); see also her “Banalisation, revision et negation: la ‘réécriture’ de l’histoire du génocide des Tutsi,” pp 85-102 in *Esprit* No.364, May 2010.

11. See the website [tpirheritagedefense.org](http://tpirheritagedefense.org) and the blogsite of Eugene Rwamucyo for details.

12. For contemporary news reports on the arrest and confession of Ingabire’s deputy, see The New Times, Kigali, “Rwanda: Ingabire’s assistant pleads guilty, seeks forgiveness,” 25 March

2010, “It’s Time for Human Rights Watch to Apologize,” 26 March, 2010, and “Ntawangundi Loses Appeal,” 16 April, 2010. HRW never addressed the implications of Ntawangundi’s confession. Nor did it report the statement by Domitilla Mukantaganzwa, Executive Secretary of the Gacaca Administration, that Ingabire’s mother, who joined her in Europe after the genocide, had been convicted in absentia for particularly gruesome genocide crimes. See the New Times, “Rwanda: Ingabire’s Mother a Fugitive Genocide Boss,” 28 January 2010, and The Rwanda Focus, Kigali, “Who is Victoire Ingabire,” 28 July 2010. Nor did HRW acknowledge the many reports in Rwandan media in 2010 about the history of Ingabire’s political party, for example: “A Note Describing the Nature of Issues Raised by FDU Inkingi and Victoire Ingabire Umuhiza,” posted on [rwandaisses.com](http://rwandaisses.com) on 10 June, 2010, and Tom Ndahiro, “Rwanda: Genocide Deniers and their Agents,” the New Times, 4 April 2010.

13. See Richard Johnson, “Rwanda takes a strict line on genocide denial – The U.S. should support that,” Christian Science Monitor June 28, 2010.

14. See HRW, “Rwanda: Eight-Year Sentence for Opposition Leader,” October 30, 2012. Ingabire was convicted by the Rwandan High Court on October 30, 2012 on charges of genocide denial and conspiracy with the FDLR to cause state insecurity, acquitted of other charges related to genocide ideology, divisionism and supporting armed groups, and sentenced to 8 years prison. Both she and the Prosecution have since appealed her case to the Rwandan Supreme Court, with Ingabire seeking a reversal of her convictions and the Prosecution seeking a review of her acquittals and of the lightness of her sentence.

15. HRW and Fédération Internationale des Ligues des Droits de l’Homme, *Leave None to Tell the Story*, 1999, 789 pages. The index of this book makes no reference to the first thorough documentation of the genocide by the NGO African Rights, *Death, Despair and Defiance*, London, 1995 (1201 pages), expanding on a first edition of September 1994. This is perhaps because the founder of African Rights had been fired by HRW for opposing the U.S. military intervention in Somalia in late 1992.

16. See Hans Romkema, *opcit*; the RDR website; and the ICC website. After refusing to register several hundred witnesses on grounds of lack of resources, the ICC ultimately dropped its case against Mbarushimana on grounds of insufficient evidence — see the 15 July 2011 statement by Redress, “Hundreds of Victims Prevented From Participating in Crucial Court Hearings due to Lack of Resources at the International Criminal Court.” For Mbarushimana’s alleged crimes in 1994 and with the FDLR, see: Rakiya Omaar, “The Leadership of Rwandan Armed Groups Abroad,” *opcit*, pp. 187-191; African Rights & Redress, “the Wider Implications of the Arrest of Callixte Mbarushimana in Paris,” 12 October 2010; and “Rebel Leader Accused of Genocide Lives in France,” Washington Post, 24 January, 2010. Mbarushimana’s many escapes from prosecution make him a prime example of Western fecklessness on dealing with Rwandan genocide suspects.

17. HRW, “Rearming With Impunity: International Support for the Perpetrators of the Rwandan Genocide,” May 1995.
18. Aside from a subdued echo of the call for arrests buried in HRW’s October 1997 report “What Kabila is Hiding,” and after-the-fact applause for the arrests of senior FDLR leaders in Europe in 2011-2012.
19. For example, HRW, “Democratic Republic of Congo - You Will Be Punished – Attacks on Civilians in Eastern Congo,” December 2009, 183 pages.
20. See HRW, “DR Congo: Arrest Laurent Nkunda for War Crimes, February 1, 2006; HRW, “Democratic Republic of Congo: You Will Be Punished,” *opcit*; and Simone Schlindwein, “How FDLR President Ignace Murwanashyaka pulled the strings in the Congo war from Germany without problems,” pp 50-63 in *Guerillas in the Mist: The Congolese experience of the FDLR war in Eastern Congo and the role of the international community*, Pole Institute, Goma, February 2010.
21. HRW written submission to the United Kingdom Parliament’s International Development Committee, June 23, 2011.
22. Romkema, “End in Sight,” *opcit*; Lars Waldorf, “Transitional Justice and DDR: the Case of Rwanda,” International Center for Transitional Justice, June 2009; and Rwanda – Report of the National Summit on Unity and Reconciliation 26 October 2002, p. 107.
23. Romkema, “End in Sight” *opcit*, and personal communication; also data from MONUC (now MONUSCO) for demobilization and repatriation of FDLR/ex-FAR and other Rwandan combatants, 2002-2012. MONUSCO data show that 10,721 Rwandan combatants in Congo were demobilized and repatriated to Rwanda from early 2002 to mid-February 2012. Judging from MONUSCO data for specific years and for specific armed groups (e.g., FDLR, CDNP etc), the vast majority of these Rwandans were from the FDLR. MONUSCO data show that 3259 FDLR combatants were demobilized and sent home from early 2009 to the end of November 2011.
24. See Romkema and Waldorf, *opcit*.
25. IRIN News “Analysis: Rebel Leader’s arrest just one step in fight against impunity in DRC,” October 21, 2010. Oddly enough, Van Woutenberg’s words to IRIN news also appear in HRW’s December 2009 “You Will Be Punished” report, *opcit*, supposedly from the mouth of an unnamed Western diplomat.
26. See the comments on this issue by Alan Doss, Special Representative of the UN Secretary General in the Democratic Republic of Congo, in “Alan Doss: HRW Attack on MONUC ‘Shortsighted’” Washington Times, December 28, 2009 and in Doss’s letters to HRW and Oxfam of April 28, 2009, published online by ReliefWeb Report of April 30, 2009.

27. See HRW, “Obeying the Rules of War?” 2001 pp.7-10 and “Democratic Republic of Congo ‘You Will Be Punished’,” *opcit*, which seeks to characterize the FDLR in the least negative fashion imaginable, as follows: “The FDLR are a predominantly Rwandan Hutu armed group that uses military force to seek political change and greater representation for Hutu in Rwanda. Some of the FDLR leaders are believed to have participated in the genocide in 1994 and the group has important ideological links to the former (sic) Hutu Power movement...The vast majority of these combatants did not participate in the genocide since they were too young at the time to have played a role.” (p. 29) For a more realistic assessment of the FDLR leadership and its roots in the 1994 genocide, see Romkema and Omaar, *opcit*, and particularly Omaar’s individual profiles of FDLR leaders, pp.61-160 in her “The Leadership of Rwandan Armed Groups Abroad With a Focus on the FDLR and RUD/URUNANA,” which make it clear that the FDLR leadership has a far more sinister agenda than “political change and greater representation for Hutu in Rwanda.”

28. Romkema, *opcit*.

29. HRW, “Obeying the Rules of War?” 2001, p.10.

30. HRW, “Germany: Groundbreaking Trial for Congo War Crimes” May 2, 2011.

31. HRW, Briefing Paper “Preparing for Elections: Tightening Control in the Name of Unity” (16 pages), May 2003.

32. For the massacres of 1963-64 and Kayibanda’s threat, see Paul Rutayisire, “Les mécanismes de l’exclusion des Tutsi,” in *Africa Review of Books/Revue africaine des livres*, September 2005; African Rights, *Go, If You Die, Perhaps I Will Live – a Collective Account of Genocide and Survival in Murambi, Gikongoro, April-July 1994*, April 2010, 213 pages, (specifically pp 14-19 re Christmas 1963, “The First Major Rehearsal”); Josias Semujanga et al, *Le Manifeste des Bahutu et la diffusion de l’idéologie de la haine au Rwanda (1957-2007)*, Editions de l’Université Nationale du Rwanda, 2010; Denis-Gilles Vuillemin, “L’extermination des Tutsis: Les Massacres du Rwanda sont la manifestation d’une haine raciale soigneusement entretenue,” *Le Monde*, February 4, 1964; and the website of French researcher Jacques Morel, which carries Vuillemin’s article as well as the text of Kayibanda’s genocide threat as published at the time in the Rwandan Ministry of Foreign Affairs’ journal, *Rwanda Carrefour d’Afrique*, no. 31, March 1964. HRW has noted that 1994 genocide ‘mastermind’ Bagosora found inspiration in Kayibanda’s speech. However, HRW relies on an expurgated version of the speech published by the Habyarimana regime in 1990 to claim, incorrectly, that Kayibanda did not threaten “the total and precipitate end of the Tutsi race.” (See *Leave None to Tell the Story* (henceforth *Leave None*), p. 106.)

33. HRW’s *Leave None* assigns MDR-Power a minor supporting role in the genocide; Jean-Paul Kimyono’s *Rwanda: un génocide populaire*, (535 pages, Karthala, Paris, 2008) demonstrates that MDR-Power played a major role.

34. See these Rwandan documents: “Rapport de la Commission Parlementaire sur les Problèmes du MDR,” Kigali, April 2003, 47 pages; “Rapport de la Commission Parlementaire Extraordinaire Mise en Place le 20 Janvier 2004, Chargé d’Examiner les Massacres Commis a Gikongoro et Analyser l’Idéologie du Génocide et Ceux Qui La Propagent Partout Dans le Pays,” Kigali, 2004, 156 pages; Rwanda Senate, “Genocide Ideology and Strategies for Its Eradication,” Kigali, 2007, 209 pages; and Institute of Research and Dialogue for Peace, “La Négationnisme du Génocide des tutsi: Evolution, Expressions, Mécanismes de Lutte,” December 2008, 165 pages.

35. On Joseph Sebarenzi, see HRW’s 2003 Briefing Paper, *opcit*; HRW “Rwanda: From the Search for Security to Human Rights Abuses,” April 2000; and Sebarenzi’s own account in his *God Sleeps in Rwanda*, Simon and Schuster, 2009; on Bizimungu, see Stephen Kinzer, *A Thousand Hills: Rwanda’s Rebirth and the Man who Dreamed It*, John Wiley & Sons, 2008, pp 220-226 and International Crisis Group, “Rwanda at the End of the Transition: A Necessary Political Liberalization,” November 2002, pages 12 and 30-31; and the text of Bizimungu’s interview in *Jeune Afrique*, No. 2112, July 3-9, 2001.

36. For a succinct overview of the differences between the U.S. and other countries on freedom of speech, see Frederick Schaur, “The Exceptional First Amendment,” pp 29-56 in Michael Ignatieff, ed, *American Exceptionalism and Human Rights*, Princeton University Press, 2005; see also Ronald J. Krotoszynski, Jr., *The First Amendment in Cross-cultural Perspective: A Comparative Analysis of the Freedom of Speech*, New York University Press, 2006; Ivan Hare & James Weinstein, eds., *Extreme Speech and Democracy*, Oxford 2009; and select U.S. Supreme Court rulings such as *Brandenburg vs Ohio* (1969) and *Virginia vs Black* (2003).

For the variety and substance of European approaches to restricting the freedoms of speech and association, see European Union “*Council Framework Decision on combating certain forms of racism and xenophobia by means of criminal law*,” November 28, 2008; Wikipedia, “Laws Against Holocaust Denial;” European Commission for Democracy through Law (Venice Commission), *Guidelines on the Prohibition and Dissolution of Political Parties and Analogous Measures*, Council of Europe, 41<sup>st</sup> Plenary Session, Venice December 10-11, 1999; and the German Office for the Protection of the Constitution website (re banning the Nazi successor “Socialist Reich Party” in 1952, the German Communist Party in 1956, and some 24 rightwing extremist organizations from 1992 to 2010).

For restrictions on the freedom of speech and association in Africa, see Matthias Basedau, Matthias Bogaards, Christof Hartmann and Peter Niesen, “Ethnic Party Bans in Africa: a Research Agenda,” *German Law Journal* vol 8, no. 6, 2007; Anika Becher and Matthias Basedau, “Promoting Peace and Democracy Through Party Regulation? Ethnic Party bans in Africa,” *German Institute of Global and Area Studies (GIGA) Working Paper* no. 66, January 2008; Anika Moroff, “Ethnic Party Bans in East Africa from a Comparative Perspective,” *GIGA Working Paper* no. 129, April 2010; Benjamin Reilly, Per Nordlund, and Edward Newman,

“Political Parties in Conflict-Prone Societies: Encouraging Inclusive Politics and Democratic Development,” United Nations University Policy Brief, no. 2, 2008.

37. HRW, “Law and Reality: Progress in Judicial Reform in Rwanda,” 2008, 109 pages.

38. HRW, “‘Germany for the Germans:’ Xenophobia and Racist Violence in Germany,” 1995, 54 pages.

39. Frederic Schauer, *opcit*, p. 43

40. See Deborah Lipstadt, *Denying the Holocaust: The Growing Assault on Truth and Memory*, Penguin 1994; and Robert Kahn, *Holocaust Denial and the Law: A Comparative Study*, Palgrave MacMillan 2004.

41. See Deborah Lipstadt’s blog site, article posted July 16, 2007.

42. See the European Court of Human Rights (ECHR) website.

43. It should be noted that there exists one scholarly study which examines Rwanda’s laws against divisionism and genocide ideology in the context of the post-World War II German model of “militant democracy,” and finds them to be applied in a manipulative and repressive way — because the author relies on HRW’s assessment of the excluded opposition parties. This is how Western intellectuals relying on each other’s views can, sometimes inadvertently, create an echo chamber of false narratives about Rwanda. See Peter Niesen, “Political Party Bans in Rwanda 1994-2003: three narratives of justification”, in *Democratization*, vol. 17, no. 4, August 2010, pp 709-729. For a similar phenomenon, see also Zachary Pall, “Light Shining Darkly: Comparing Post-Conflict Constitutional Structures Concerning Speech and Association in Germany and Rwanda,” *Columbia Human Rights Law Review*, Vol. 42.1, Fall 2010.

44. For examples of HRW criticism of Western governments for guilt-ridden leniency on the Rwandan government see p. 737 in *Leave None* from 1999 and Kenneth Roth’s “The Power of Horror” statement in 2009.

45. See Richard Johnson, “The Pin-Stripe Approach to Genocide,” pp 65-73 in Stjepan Meštrović, ed., *The Conceit of Innocence*, Texas A&M University Press, 1997; for examples of French officials blaming the victims in Rwanda, see the website [www.france-turquoise.fr](http://www.france-turquoise.fr).

46. A conservative estimate in one study based on comparing local population data to the census data is that Tutsi were undercounted in the 1991 census by 40% -- see Marijke Verpooten, “The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Province,” *I.N.E.D./population*, 2005/4 – vol. 60, pp 331-367, available at <http://www.cairn.info/revue-population-english-2005-4-page-331.htm>.

47. Ministry for Local Government, “The Counting of the Genocide Victims: Final Report Rwanda, Kigali, November 2002 (32 pages).

48. See HRW, *Leave None*, pp. 15-16 and p. 260; Alison Des Forges & Timothy Longman, “Legal Responses to Genocide in Rwanda,” pp 49-68 in Eric Stover & Harvey M. Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge University Press 2004; and HRW, “Rwanda: Justice Compromised, The Legacy of Rwanda’s Community-Based Gacaca Courts,” 2011, p. 13.
49. See Scott Strauss, *The Order of Genocide: Race, Power and War in Rwanda*, Cornell University Press, 2006, and Omar McDoom, “The Micro-Politics of Mass Violence: Authority, Security, and Opportunity in Rwanda’s Genocide,” PhD thesis, 2008, London School of Economics (my appreciation to Dr. McDoom for sharing the first chapter of his thesis with me, pending its publication).
50. See “Law and Reality,” 2008, p. 13.
51. HRW, *Leave None* p. 736.
52. Ibid, p. 748 and 760.
53. For a more empathetic and reality-based approach to these issues, see African Rights, *Rwanda: Killing the Evidence: Murder, Attacks, Arrests and Intimidation of Survivors and Witnesses*, April 1996, 105 pages, and *Survivors and Post-Genocide Justice in Rwanda – Their Experiences, Perspectives and Hopes* (132 pages), published by the two NGOs African Rights and Redress in November 2008.
54. HRW, “Justice or Therapy?” 2002.
55. Alison Des Forges & Timothy Longman, “Legal Responses to Genocide,” *opcit.*
56. HRW, *Leave None*, 1999 and “Justice Compromised,” 2011.
57. Sanford Unger, “Leopold’s Ghost: How one man’s mysterious past upended a college’s sense of purpose and its president’s sense of its liberal mission,” *New York Magazine*, July 22, 2012. For more on Des Forges’ role in the Munyakazi case, see also Andrew Rice, “Doubt: A professor, a genocide and NBC’s quest for a prime-time hit,” *The New Republic*, August 12, 2009. Additional perspective on the interventions of HRW and its senior Rwanda expert Alison Des Forges on Rwandan justice issues can be found in African Rights, *Antoine Sibomana and his Supporters: Burying the Truth in the Name of Human Rights*, 91 pages, September 1997.
58. HRW – Kenneth Roth, “The Power of Horror,” April 11, 2009.
59. Indeed, in a conversation with Phil Clark (a leading Western expert on gacaca), a HRW staffer had no hesitation in stating that amnesty would have been preferable to the gacaca trials. (Personal communication from Clark).

60. Rwanda Gacaca Administration, “Summary of the Report Presented at the Closing of Gacaca Courts Activities,” Kigali, June 2012.

61. For the number of genocide convicts still in prison, see Hironnelle News Agency, “Rwanda: 40,000 genocide convicts in jails,” February 29, 2012; for the number doing TIG community service, see The New Times, August 2, 2011 which reported that 60,000 persons were enrolled in the TIG program as of 2010, 37,000 completed their sentences between 2010 and mid-2011, and 16,000 persons were serving TIG sentences in August 2011.

62. Des Forges and Longman, 2004 and HRW, Justice and Reality 2008, *opcit.*

63. See Hironnelle News Agency, “Belgique/Justice – Critiques sur les Gacacas lors d’un colloque à Bruxelles,” November 27, 2007. Des Forges was addressing a seminar organized by EURAC (Réseau européen pour l’Afrique Centrale) at the European Parliament.

64. HRW – Roth, “The Power of Horror,” *opcit.*

65. HRW, “Justice Compromised,” May 2011, 144 pages.

66. As Phil Clark, puts it, “Human rights commentators have criticized gacaca from the outset, arguing that it contravenes norms of legal due process and encourages corruption and political interference at the community level. Such criticisms by Human Rights Watch, Amnesty International and others have been grossly exaggerated and are based on a highly selective sample of the worst gacaca cases.” See Phil Clark, “The Legacy of Rwanda’s Gacaca Courts,” Think Africa Press, March 23, 2012, and “How Rwanda Judged Its Genocide,” Africa Research Institute, April 2012).

67. HRW defends Theunis in its 2008 “Law and Reality” report (pp 60-62) and its 2011 “Justice Compromised” report (pp. 99-100); Theunis defends himself in *Mes Soizante-quinze Jours de Prison à Kigali*, Karthala, Paris, 2012. But see also Gérard Prunier, *The Rwanda Crisis*, Columbia University Press, 1997, p. 250; Jean-Damascene Bizimana, “Les attaques médiatiques du Père Theunis contre le Rwanda, ou la poursuite de la stratégie génocidaire et négationniste,” posted March 28, 2012 on [Rwandaresponds.org](http://Rwandaresponds.org); Antoine Mugesera, “Un Négationnisme Tombe dans l’Impunité: Le Cas du Père Theunis”, 24 pages, downloaded from the internet on April 11, 2012; Jean Paul Gouteux, “L’implication idéologique et politique dans le génocide du Père Theunis de 1990 a 1994,” in *La Nuit Rwandaise*, no. 1, April 2007 ; and African Rights, “Father Wenceslas Munyeshyaka: In the eyes of the survivors of Sainte Famille,” 96 pages, April 1999.

68. HRW “Justice Compromised” p. 84-85; for a clearer view of the ‘ceceka’ problem and its impact, see Penal Reform International (PRI), “The Contribution of the Gacaca jurisdictions to resolving cases arising from the genocide,” 2009.

69. On these issues, see Redress, “Access to Reparations for Survivors of the 1994 Genocide,” August 17, 2011; Survivors Fund (SURF) and Redress, “Survivors’ concerns over imminent

closure of gacaca courts need to be addressed,” June 15, 2012, and Survivors’ Fund (SURF), January 20, 2013 statement on the United Nations and Rwanda, which reports that despite a series of pious UN General Assembly resolutions since 2004, UN agencies’ spending for Rwanda survivors has totaled only \$250,000 since 1994, or less than one dollar per survivor.

70. HRW “Justice Compromised,” p. 126.

71. See, for example, three reports published by Rwanda’s National Unity and Reconciliation Commission: *The Causes of Violence After the 1994 Genocide* (2008), *Social Cohesion in Rwanda: an Opinion Survey – Results 2005-2007* (2008), and most notably, *Rwanda Reconciliation Barometer* (2010), especially pp. 63-73 on transitional justice.

72. A journalist for a Ugandan newspaper appears to have violated HRW’s “off the record” terms; he quotes the Netherlands Ambassador as saying “350 cases is a small number to base on to come up with a conclusive view on Gacaca compared to the many cases the courts dealt with...The title and timing of the report is not appropriate...It comes at a time when the government has promised to evaluate Gacaca courts and review cases that did not go well. I find it harsh, unfair and unbalanced.” The journalist also writes that “Surprisingly, when asked if HRW thought of an alternative to the Gacaca courts, Haskell (note: the report’s author) said the Gacaca courts were actually the best solution to the challenge Rwanda was facing.” See Magnus Mazimpaka, “Human Rights Watch under scrutiny over controversial Gacaca report,” *The Independent* (Kampala), June 11, 2011.

73. See ICTR Trial chamber III, 3 January 2008, *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Brief of Human Rights Watch as amicus curiae in opposition to Rule 11 bis transfer, 23 pages; HRW, “UK: Put Genocide suspects on Trial in Britain,” 2 pages, November 1, 2007).

74. For a sharp critique of the UK court’s misperceptions of the Rwandan justice system, and of HRW’s role therein, see Phil Clark and Nicola Palmer, “The International Community Fails Rwanda Again,” 2 pages, Oxford Transitional Justice Research Working Paper Series, 5 May 2009.

75. See William A. Schabas, “Anti-Complementarity: Referral to National Jurisdiction by the UN International Criminal Tribunal for Rwanda,” pp 29-60 in *Max Plank Yearbook of UN Law*, vol 13, 2009.

76. See ICTR Referral chamber Designated under rule 11bis, *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis: Decision on Prosecutor’s Request for Referral to the Republic of Rwanda. It is noteworthy that HRW ignores this ICTR legal decision and continues to decry the “lack of independence of the Justice system” in Rwanda, for example in HRW, “Letter to World Bank Vice President for Africa on Rwanda,” September 5, 2012.

77. For the state of play on bringing Rwandan genocide fugitives to justice, see Redress and FDIH, “Fostering a European Approach to Accountability for Genocide, Crimes Against Humanity, War Crimes and Torture – Extraterritorial Jurisdiction and the European Union Final Report,” April 2007 (85 pages); Redress and African Rights, “Extraditing Genocide Suspects from Europe to Rwanda – Issues and Challenges – Report of a Conference Organized by Redress and African Rights at the Belgian Parliament, 1 July, 2008,” (60 pages; pp 52-60 provide an overview of proceedings against Rwandan genocide suspects in Europe); Southern Africa Litigation Centre and Redress, “Closing the Impunity Gap: Southern Africa’s Role in Ensuring Justice for the 1994 Genocide in Rwanda – Moving Beyond the Tribunal’s Completion Strategy and Residual Mechanism,” 2012, (104 pages); and Rakiya Omaar, “Accountability for the Rwandan Genocide – Where Does Africa’s Responsibility Lie?” Open Society Initiative for Southern Africa (osisa.org), 7 March 2012.

78. See African Rights and Redress, “France to Prosecute Two Rwandan Genocide Suspects,” 20 February 2008; for details on France’s failure to try the two suspects, see the website of the French NGO “Collectif des Parties Civiles Pour le Rwanda.”

79. See the Interpol website for the list of its Red List Rwandan genocide suspects.

80. HRW, *Leave None*, p. 737 and 769.

81. And indeed, no Western policy-maker has been held legally responsible for failure to protect in Rwanda. However, with regard to the April 1994 ETO massacre in Kigali (on which the 2005 British movie *Shooting Dogs* is based) where several thousand persons were slaughtered immediately after UN troops from Belgium withdrew their protection, surviving widows filed suit in Belgium in 2004 against the Belgian government and the three commanding Belgian officers. The only relevant news reports I found on the internet date from 2010 (La Libre Belgique, “Procès contre l’Etat Belge,” September 9; “Massacre à l’ETO: un procès sur le fond en octobre 2011,” November 12; AFP, “Génocide Rwandais: la Belgique avait décidé d’évacuer des Casques Bleus,” December 9); they indicate that in 2010 a Belgian court accepted the suit, at least against the three officers, and scheduled a substantive hearing for October 2011. This is a sad story: the indicted officers were ‘just following orders,’ the case has dragged on for years, and public interest in the West is apparently minimal. HRW has not commented.

82. These French researchers and human rights activists and their works include:

Pascale Krop, *Le Génocide Franco-africain: faut-il juger les Mitterands*, J.C. Lattes, November 1994; Agir Ici et Survie, *Dossiers Noirs de la politique française au Rwanda: la France choisit le camp du génocide*, l’Harmattan, 1996; Mehdi Ba, *Rwanda: Un génocide français*, l’Esprit Frappeur, 1997; J.P. Chrétien, *Le Défi de l’Ethnisme*, Karthala, 1997; Jean Paul Gouteux, *Un Génocide Secret d’Etat: La France et le Rwanda 1990-1994*, éditions sociales, 1998; Michel Sitbon, *Un Génocide sur la Conscience*, l’Esprit Frappeur, 1998; Monique Mas, *Paris-Kigali 1990-1994*, l’Harmattan 1999; Benjamin Sehene, *Le Piège Ethnique*, éditions Dagorno, 1999;

and since 1999: Patrick de Saint Exupery, *Complices de l'Inavouable: La France au Rwanda*, éditions des Arenes, 2004; contributors to the annual journal *La Nuit Rwandaise*; Boubacar Boris Diop, Odile Tobner, and Francois-Xavier Verschave, *Nérophobie*, Les Arènes 2005; Jean-Francois Dupaquier, *L'Agenda du Génocide: Le Témoignage de Richard Mugenzi, ex-espion rwandais*, Karthala, 2010; Bruno Boudiguet, *Françafrique 2012: La bombe à retardement*, Aviso, 2012; Laure de Vulpian & Thierry Prunghaud, *Silence Turquoise: Rwanda 1992-1994, Responsabilités de l'Etat Français dans le Génocide des Tutsi*, Don Quichotte, 2012; the works of Hélène Dumas, Catherine Coquio, Maria Malagardis and, most comprehensively, Jacques Morel, *La France au Cœur du Génocide des Tutsi*, L'Esprit Frappeur, 2010, 1500 pages. See also the work of the "Commission d'Enquête Citoyenne" since 2004; and of the Collectif des Parties Civiles pour le Rwanda, AIRCRIGE, and the websites France Rwanda Genocide and Izuba Editions.

83. Mucyo Commission Report, Kigali, August 2008, 414 pages; and Mutsinzi Commission Report, Kigali, April 20, 2009, 186 pages and annex 107 pages; see also Philip Gourevitch, "The Mutsinzi Report on the Rwandan Genocide," on his New Yorker blogsite, 8 January, 2010.

84. See: African Rights "Open Letter to his Holiness the Pope John-Paul II," 12 pages, 13 May 1998, and "Open Letter to the His Holiness the Pope John-Paul II on the Occasion of the 10th Commemoration of the Genocide in Rwanda," 4 pages, 2 April 2004; Jean-Damascene Bizimana, *L'Eglise et le Génocide au Rwanda: les Pères Blancs et le Négationnisme*, l'Harmattan 2001; Christian Terras & Mehdi Ba, *Rwanda – l'Honneur Perdu de l'Eglise*, Ed. Golias, 1999; Jean Paul Gouteux, *Un Génocide Sans Importance: La France et le Vatican au Rwanda*, Ed. Tahin party, 2007; Faustin Rutembesa, Jean-Pierre Karegeye and Paul Rutayisire, eds., *Rwanda, L'Eglise Catholique à l'épreuve du génocide*, Ed. Africana, 2000; Leon Saur, *Influences parallèles - L'Internationale démocrate chrétienne au Rwanda*, Ed. Luc Pire, Bruxelles, 1998; Leon Saur, *Le Sabre, la machette et le goupillon – Des apparitions de Fatima au génocide rwandais*, ed. mols, 2004.

85. HRW, *Leave None*, pp 65-66, 70, 80, 171, 227, 256, 649; see also Kenneth L. Marcus, "Accusation in a Mirror," *Loyola University Chicago Law Journal*, 43 (2012) pp. 357-393.

86. Lipstadt, *opcit*, p. 85.

87. Richard Johnson, "Pin-Stripe Approach," *opcit*.

88. HRW "Law and Reality," 2008, p.43.

89. Personal communication from William Schabas; also Fred Grunfeld & Anke Huijboom, *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders*, Koninklijke Brill NV, Leiden, The Netherlands, 2007, page 70, which states: "The Press Release issued by the Commission at the conclusion of its visit was entitled 'Genocide and War Crimes in Rwanda.' But subsequently, after deliberations within the Commission, a more equivocal position was taken.

The final report said that there were some who considered that ‘acts of genocide’ had been committed, but it did not take a firm position on this point. One of the people who was strictly opposed to using the word ‘genocide’ was the representative of HRW. According to him, it was too stringent to argue that the events in Rwanda amounted to genocide. But William Schabas, the representative of the International Center of Rights of the Person and Democratic Development was convinced that what was happening in Rwanda did fulfill the criteria of Article 2 of the Genocide Convention of 1948. According to him, the intent to destroy the Tutsi as a group was evident and amounted to genocide. The Commission Report was widely circulated, but the international attention was minimal.”

Another member of the Commission, the Frenchman Jean Carbonare, expressed the same alarm as Schabas in a passionate appearance on French TV (available on YouTube). HRW, on the other hand, followed up with its own report in June 1993, (“Beyond the Rhetoric: Continuing Human Rights Abuses in Rwanda,” 28 pages), which featured “even-handed” criticism of the Habyarimana regime and the RPF (for “substituting words for action in the area of human rights” and “seeking political advantage in this tragic human problem” - p. 26), but still no warning of what was coming. The same is true of HRW’s last report before the genocide, “Arming Rwanda: the Arms Trade and Human Rights Abuses in the Rwandan War,” January 1994 (38 pages) — even after the UN Special Rapporteur Ndiaye had again raised the genocide issue in an August 1993 report.

90. HRW, “Beyond the Rhetoric,” June 1993, p. 3.

91. HRW’s June 1993 and January 1994 reports, cited above, mention the Arusha Accords but do not assess their worth or call for their implementation; nor does HRW’s 1999 *Leave None* (see pp. 123-126) assess the substance of the Accords.

92. See Alison Des Forges’ interview with PBS Frontline for its “Ghosts of Rwanda” report, October 1, 2003, at pbs.org, where she says of the Arusha Accords “We were all essentially naïve, I think, in failing to appreciate the extent to which certain people at both ends of the spectrum were not satisfied with that peace accord, and were determined to, in some way, upset it for their own purpose.” Des Forges does not specify how the RPF upset the Arusha Accords, which Habyarimana had finally committed himself to stop blocking just before he was assassinated on April 6, 1994. In response to a question “were there good guys, were there bad guys?” Des Forges says ““The good guys are the ones without the guns, and the bad guys are the ones with guns and machetes.” Des Forges adds that the Genocide Convention establishes a legal distinction between the genocide carried out by one side and the war crimes and crimes against humanity she imputes to the RPF, so that “there is no equivalence in the crimes.” Nonetheless, she leaves in place the notion that both the genocide perpetrators and the armed RPF were “the bad guys.”

93. HRW, “Leave None” page 698.

94. For the “Gersony Report” see the Wikipedia entry and its links; for critical views as to its veracity, see (then-UN Special Representative) Shaharyar Khan, *The Shallow Graves of Rwanda*, I.B. Taurus, 2001, pp 51-62, and (then-U.S. Defense Attache) William Odom, *Journey Into Darkness: Genocide in Rwanda*, Texas A&M 2005, pp 173-177; additional perspective on the genocidaires’ disinformation tactics in areas visited by Gersony can be found in Colette Braeckman, *Rwanda: Histoire d’un Génocide*, Fayard, 1994, pp 290-292, based on reporting from the NGO Doctors Without Borders about the tight control which Hutu Power leaders exercised over what their “refugee camp” populations said to outsiders.

95. HRW, *Leave None*, p. 16.

96. See, for example, HRW, Letter to the Prosecutor of the ICTR Regarding the Prosecution of RPF Crimes, 2009.

97. See HRW, *Leave None* p. 16 and “Law and Reality” p. 89; Jean Damascene Bizimana, “La Vérité Pour le Rwanda,” (5 pages), undated; Gérard Prunier, *Africa’s World War – Congo, the Rwandan Genocide, and the Making of a Continental Disaster*, Oxford University Press, 2009, pp 365-368; and Faustin Kagame, “Gérard Prunier et son invasion ratée du Rwanda (Analyse),” 5 April 2010, (6 pages) on [www.rnanews.com](http://www.rnanews.com). By 1998, Sendashonga had been joined by the émigré “moderate” MDR leader Faustin Twagiramungu (in 1994-95 he had been the first Prime Minister in the post-genocide Rwandan government) in creating an émigré party called Resistance Forces for Democracy, which Sendashonga wanted to make into an armed movement. By 1998, Twagiramungu, as ‘authoritative’ a source as Sendashonga, was claiming the RPF had killed over 300,000 Hutus in 1994-95. In 2002 Twagiramungu would appear as a defense witness for a subsequently convicted *genocidaire*, Elizaphan Ntakirutimana, and argue that the genocide was neither planned nor directed against the Tutsi. HRW has never commented on the vagaries of the post-1995 political course charted by this primary leader of the “moderate” wing of the MDR.

98. See Jean Pierre Chrétien, *Le Défi de l’Ethnisme*, 2012 edition, page 204 and the works cited there: Michael Radu, *The New Insurgencies. Anticommunist guerillas in the third world*, New Brunswick, Transaction Publishers, 1990, pp 185-187, and M. Cahen, “De la guerre civile à la plebe: la Renamo du Mozambique,” page 74, in Y. Guillaud & F. Letang, eds, *Du social hors la loi. L’anthropologie analytique de Christian Geffray*, Marseilles, IRD, 2009).

99. HRW, *Leave None*, p. 734-35.

100. For HRW’s stance, see: HRW, “Rwanda: Deliver Justice for Both Sides,” August 12, 2002; “Leading Rights Groups Urge Security Council to Ensure Management Reforms Do Not Undermine Rwanda Tribunal,” August 8, 2003; “Letter to the Prosecutor of the ICTR Regarding the Prosecution of RPF Crimes,” May 26, 2009; “Rwanda: Tribunal Risks Supporting ‘Victor’s Justice’,” June 1, 2009; “Letter to ICTR Chief Prosecutor Hassan Jallow in Response to His

Letter on the Prosecution of RPF Crimes,” August 14, 2009; “Rwanda: Tribunal’s Work Incomplete,” August 17, 2009.

For the ICTR stance, see: ICTR Prosecutor Hassan Jallow letter to HRW’s Kenneth Roth, June 22, 2009; and “My Interview with Tim Gallimore, Former Spokesman for the ICTR Prosecutor,” 6 pages, at <http://foreignpolicyblogs.com/2011/05/27>.

101. The text of the Merelles indictment, in the form of an unofficial French translation from the Spanish, can be found at [www.gerald.foci.net/acte-accusa-esp1.htm](http://www.gerald.foci.net/acte-accusa-esp1.htm); the text of the Bruguière indictment is at [www.lanuitrwandaise.org/.../023-ordonnance](http://www.lanuitrwandaise.org/.../023-ordonnance))

102. HRW, “Law and Reality,” 2008, p. 93; HRW failed to mention here any of the many bizarre aspects of the Bruguière indictment, or the great deal of other patently false “information” in the Merelles indictment, for example, that in 1994-95 in Rwanda the RPF killed 321,726 persons in Rwanda.

103. There does not appear to exist any non-Rwandan analysis of the Merelles indictment in English or French. It is persuasively exposed as a rehash of Hutu Power propaganda in a report to the Rwandan Parliament by Jean Damascene Bizimana, “Analyse Critique des Conclusions d’Enquêtes Rendues par les Juges Bruguière et Merelles,” 40 pages, Kigali 15 May, 2008, and in a study by Tom Ndahiro, “Merelles, the Indictable Spanish Judge,” 6 pages, posted February 14, 2011 on his “Friends of Evil” blog site).

An enormous amount has been published in French about the vices, political motivation, and process of collapse of the Bruguière indictment, but very little in English. From French and Belgian researchers, see Jacques Morel & George Kepler, “Un juge de connivence? Analyse de l’ordonnance de soit-communiqué du juge Bruguière mettant en cause Paul Kagame pour l’attentat du 6 avril 1994 a Kigali,” 43 pages, March 29, 2007; Michel Sitbon, “A propos de l’attentat contre Juvenal Habyrimana.” 37 pages, in *La Nuit Rwandaise*, No. 3, April 2009; Jacques Morel, *La France au cœur du génocide des Tutsi*, l’Esprit Frappeur, 2010; Jean-Pierre Perrin, “Paul Barril, ‘l’Affreux’,” pp 52-63 in *XXI-Vingt et Un*, No. 10, Spring 2010; as well as the works of Collette Braeckman, Maria Malagardis, Jean-Francois Dupaquier, and the “Rwandagrandemanip” website. From Rwandan researchers, see Jean Damascene Bizimana, “Analyse Critique” opcit, and the 2009 Mutsinzi Report, cited above. For the most recent episode in the collapse of the Bruguière indictment, see Reuters, “French probe exonerates Rwanda leader in genocide,” January 10, 2012; CNN, “Report: rebels cleared in plane crash that sparked Rwandan genocide,” January 11, 2012; Linda Melvern, “Rwanda: At Last We Know the Truth,” in the *Guardian*, January 10, 2012; Andrew Wallis, “Rwanda: A Step Toward Truth,” posted January 21, 2012 on [www.opendemocracy.net](http://www.opendemocracy.net)).

104. See “Democratic Republic of Congo 1993-2003 – Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law

committed within the territory of the Democratic Republic of Congo between March 1993 and June 2003,” Office of the UN High Commissioner for Human Rights, August 2010, 554 pages.

105. Anonymous save for team leader Luc Coté, who went public the day after the report was leaked to the French newspaper *Le Monde*, to allege that what “Rwandan Tutsi” troops did to Hutus in the DRC in 1996-97 was “the same thing” that was done to the Tutsis in Rwanda in 1994. See AFP, “Congo Butchery resembled Rwanda genocide,” August 27, 2010.

106. See also the range of critiques in “Official Government of Rwanda Comments on the Draft UN Mapping Report on the DRC,” 23 pages, Ministry of Foreign Affairs, transmitted to the Office of the High Commissioner for Human Rights on September 30, 2010, and Jean Damascene Bizimana, “Fautes et carences juridiques du Rapport Mapping de l’ONU sur les violations commises en République Démocratique du Congo de 1993-2003”, Kigali, 9 December 2010.

107. The report posits that Congolese and Rwandan Hutu constitute a single “ethnic group,” which makes it easier to speculate that they were a target of genocide, but would probably be news to them.

108. See Jason Stearn, “UN Mapping Report Leaked: Crime of genocide against hutu center of controversy,” posted August 26, 2010 on his Congo Siasa blogsite.

109. See Philip Gourevitch, “Rwanda Pushes Back Against U.N. Genocide Charges,” 4 pages, posted August 27, 2010 on his *The New Yorker* blogsite.

110. See HRW, “DR Congo: UN Report Exposes Grave Crimes,” October 1, 2010; “DR Congo: Q & A on the United Nations Human Rights Mapping Report,” October 1, 2010; HRW website posting of Reed Brody, “Identify the Congo killers and bring them to justice,” as published in the *Guardian*; and HRW, “DR Congo: Prosecute Atrocities Exposed by UN,” October 10, 2011.

111. See HRW, “DR Congo: Prosecute Atrocities Exposed by UN,” October 10, 2011.

112. See the Wikipedia entries “criticism of HRW” and “criticisms of Amnesty;” the NGO Monitor website (notably on Kenneth Roth’s analysis of Iranian threats against the Israeli people); the exchange between 17 women’s rights organizations and HRW entitled “Women and Islam: An Exchange with Kenneth Roth of Human Rights Watch” in the *New York Review of Books* (NYRB), March 22, 2012; Gita Sigal’s “Statement on Leaving Amnesty International” in the NYRB, May 13, 2010; and Stephen Kinzer, “End human rights imperialism” in the *Guardian*, December 31, 2010.

113. See, for example: Thomas McCarthy, *Race, Empire and the Idea of Human Development*, Cambridge University Press 2009; Paul Gilroy, *Against Race: Imagining Political Culture Beyond the Color Line*, Harvard University Press 2000; Edward Said, *Orientalism*, Routledge 1978 and *Culture and Imperialism*, Vintage Books 1994; Achille Mbembe, *Sortir de la Grande*

*Nuit: Essai sur l'Afrique décolonisée*, La Découverte 2010; Catherine Coquio, ed., *Retours du Colonial? Disculpation et Réhabilitation de l'Histoire Coloniale*, l'Atalante 2008; Adame Ba Konare, ed., *Petit Précis de Remise à Niveau sur l'Histoire Africaine à l'Usage du Président Sarkozy*, La Découverte 2008; Makhily Gassama, ed., *L'Afrique Répond a Sarkozy: Contre le Discours de Dakar*, Philippe Rey 2008; Boubacar Boris Diop, Odile Tobner, and François-Xavier Verschave, *Nérophobie*, opcit; Michel-Ralph Trouillot, *Silencing the Past: Power and the Production of History*, Beacon Press, 1995; and Sven Lindqvist, *Exterminate All the Brutes*, The New Press 1996.