

Rwanda: The Genocide, Its Aftermath, and the Tragedy of Victor's Justice

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<https://www.e-ir.info/2012/11/12/rwanda-the-genocide-its-aftermath-and-the-tragedy-of-victors-justice/>

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Introduction

The Rwandan Genocide was one of the most horrific events of the last century. Approximately one million people were systematically tortured, raped, and murdered, and thousands more were displaced. The ethnic tensions in Rwanda had been brewing for decades before the terrible events of the early 1990s. Part I of this paper discusses the history of the Rwandan divide between the Hutu and the Tutsi peoples. Part II details the violence of the Rwandan Civil War and examines the events that ultimately led to the genocide of 1994. Part III covers the tragedies of the genocide with a primary focus placed on crimes committed by the Rwandan Patriotic Front (RPF) during the conflict. Part IV analyzes the aftermath of the genocide, particularly the UN investigations leading to the creation of the International Criminal Tribunal for Rwanda (ICTR). The paper concludes with an examination of the unfortunate and blatant victor's justice that has occurred at the ICTR, and even at the gacaca courts, and its impact on the legitimacy of these forms of justice.

I. Historic Divide Between Hutu and Tutsi Peoples

To truly come to terms with the events of the genocide one must understand the history between the Hutus and the Tutsis. The Hutus inhabited the region for hundreds of years before the arrival of the Tutsi people. Nevertheless, the Tutsis swiftly dominated the Hutu people through the creation of a feudal state.[1] The Hutus were relegated to peasantry, while the Tutsis "established warrior kingdoms in Rwanda and Burundi headed by mwamis (kings)."[2]

The 20th century began with Rwanda in German control. The Tutsi monarchs continued to control Rwanda up until and through this era of colonial rule. The social structure in Rwanda continued along these same lines even after World War I, when Belgium acquired the lands through the Treaty of Versailles. By the 1930s and 40s, the Hutu minority began to grow restless and "rising Hutu nationalism"[3] in Rwanda became the norm. Belgium has actually been blamed for contributing to the divide between the Tutsi and Hutu people. Brigadier Henry Kwami Anyidoho states that "the Belgians gave preferential treatment to the Tutsis, making it possible for them to become better educated and more enlightened in the western tradition than the Hutus." [4]

In 1957, nationalist Gregoire Kayibanda created a political party known as the Hutu Social Movement, which "advocated equal treatment for the long-suppressed Hutu people." [5] The Tutsis responded soon after with the formation of the Rwandan National Union (UNAR). The back and forth political games continued with Kayibanda creating the Rwanda Democratic Movement/Party of the Movement of the Hutu Emancipation (PARMEHUTU) in 1959.

The political landscape in Rwanda was volatile, and later in the year violence erupted between Tutsi and Hutu political supporters. Approximately three hundred people were killed in this violence, which came to be known as the "Muyaga Massacres." [6] Elections followed the next year with PARMEHUTU winning the majority of government seats. In January 1961, these Hutu elected officials along with Belgian representatives announced the creation of the "sovereign democratic Republic of Rwanda," instantly bringing an end to the Tutsi monarchy, which had lasted

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for centuries.[7] Gregoire Kayibanda was named president and the Tutsi monarch, King Kigeli V, was removed from power.

While discord between the Tutsi and Hutu peoples went back centuries, this change in the political climate unquestionably laid the foundation for the violence of the late 20th century in Rwanda. Tutsi people feared “the actions of a retaliatory Hutu government”[8] and began crossing the border into Uganda as refugees. President Kayibanda became a recluse, fearing assassination by Tutsi exiles. After a coup in 1973, Major General Juvenal Habyarimana became president with an interest in keeping the government in the hands of the Hutus with nominal involvement from Tutsis. Many Tutsis, however, fought to regain their power back home by forming guerrilla groups. These guerilla organizations were known as “Inyenzi (cockroaches)”[9] among the Hutu people “because they attacked at night from ... Uganda, Burundi, Tanganyika, and Zaire”[10]. The basis for the attacks was the hope that Tutsis could salvage some semblance of power in Rwanda. Unfortunately, the Hutu response was “massive revenge killings of innocent Tutsi,”[11] resulting in a mass exodus of Tutsi people into neighbouring countries.

By the mid-1960s, half of the Tutsi population was exiled and living outside of Rwandan borders,[12] with the majority going to Uganda. The United Nations High Commissioner for Refugees (UNHCR) estimated the number of exiles at 150,000, but also acknowledged the possibility of perhaps twice that number due to a lack of full registration.[13] Rwandan exiles quickly gathered in settlements and refugee camps, with many settling for low-level jobs necessary for survival. With the help of the UNHCR, the children of these refugees were able to make strides in society that not only bested that of their parents, but also the local people within Uganda. Dixon Kamukama explains that “refugee children had their education paid for by the UNHCR while those of the indigenous people dropped out of school due to lack of school fees.”[14]

As the Tutsi refugees used these opportunities to escape life in camps and gain prosperous jobs, xenophobia began to spread in Uganda. Native Ugandans were envious and resentful towards refugees “who had surpassed them in nearly everything.”[15] It was feared that Ugandan President Obote would attempt to exclude “both citizens and refugees of Rwandese origin from the political process”[16] or possibly even banish them from the country. His overthrow by Idi Amin in 1971 temporarily halted these concerns, but Obote returned to power in 1980 after Amin’s regime was toppled in 1979. Soon after, a guerilla bush war was declared in Uganda against Obote’s government that had a significant role in the future devastation in Rwanda. Two prominent players in the National Resistance Army’s (NRA) guerilla movement were Fred Rwigyema and Paul Kagame. Rwigyema and Kagame, along with other Tutsi exiles in Uganda, formed the Rwandan Patriotic Front (RPF) in 1979 as the Rwandese Alliance for National Unity (RANU).[17] It was not until 1986 that the RPF “operated openly and legally”[18] after the NRA took power in Uganda, which caused great concern to Habyarimana’s government in Kigali.

The growth of the RPF in Uganda continued throughout the 1980s. A “cultural show” highlighting the lives of Rwanda exiles was staged in 1988. The show was a catalyst for the progression of international dialogues on the possible return of refugees to Rwanda. Kamukama explains:

The cultural show also coincided with more open discussions in all circles on Banyarwanda refugees’ desire to return home and the subsequent formation of a Joint Ministerial Commission in February 1988 between Uganda and Rwanda to explore possible ways to solve the problem of refugees. This was followed by a decision by both governments to seek UNHCR assistance to carry out a survey in refugee settlements to determine whether refugees wished to go back to Rwanda or continue staying in Uganda.[19]

Unfortunately, the survey never occurred. Various developments in the region and a growing unrest among RPF/NRA soldiers led to military action. In October 1990, RPF soldiers invaded Rwanda from Uganda. Anyidoho describes the guerilla force as being “made up of mainly Tutsis who were the offspring of those who had fled the country during the 1959 revolution.”[20] Over the previous three decades, the seeds of resentment and ethnic tensions between the Hutu and Tutsi people had only grown more volatile and culminated with the invasive action taken by the RPF that October. The Rwandan Civil War had begun.

II. The Rwandan Civil War

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The Civil War marked the beginning of more frequent acts of genocide and documented war crimes. According to Madsen, over “1200 Bagogwe people, a group akin to the Tutsi who lived in northwest Rwanda” were slaughtered by Rwandan Armed Forces, while “Hutu irregulars” murdered Tutsi people throughout the northern and southern regions. [21] The RPF was also guilty of repeatedly violating international law with their actions during the conflict. Tens of thousands of civilians were targeted. Paul Rusesabagina describes the attack on Ruhengeri city on January 23, 1991:

The RPF opened the gates of Ruhengeri prison, freeing many prisoners and enrolling them as fighters. The RPF also engaged in heavy looting activity in the city, and a reported 400 people were forced out of their homes to help carry the loot. These 400 civilians were all killed afterwards, along with another 100 civilians around the city as the RPF retreated.[22]

Political assassinations also took place. The RPF is said to have targeted political opponents, such as Emmanuel Gapyisi, who was overly critical and outspoken about the violence committed by the RPF.[23] As Rusesabagina noted, Gapyisi was just the beginning of “a wave of assassinations nationwide targeting Hutu political leaders, including businessmen, mayors, [and] parliamentarians.”[24] The RPF was accused of deplorable massacres within the Ruhengeri and Byumba provinces in February 1993. All told, they are thought to have killed approximately 40,000 people between the two provinces.[25]

The international community was understandably troubled by the events occurring in Rwanda, and an international commission denounced the acts of ethnic slaughter on both sides of the battle. It was unfortunate, however, that many leaders in a position of influence failed to pursue a peaceful intervention and solution. In the summer of 1993, after some of the most appalling acts of the war had been reported, French President Mitterrand remarked, “In countries like that, a genocide is not very important.”[26] Statements and sentiments like this indicated widespread apathy on a global scale. This apathy helped to enable the eventual genocide of up to a million innocent people.

The civil war continued through several failed cease-fire efforts until August 4, 1993, when the government of Rwanda and the RPF signed a comprehensive peace agreement in Arusha, Tanzania. The Arusha Accords, as they became known, called for a “broad-based transitional government”[27] that, to the dismay of many Hutu, would include the RPF. The implementation of the Accords was delayed due to the Hutus’ extreme opposition to and suspicion of RPF inclusion. Nevertheless, by early 1994, Habyarimana was determined to enact the Accords.

III. The Genocide

Despite the accords, the world could sense that “something catastrophic was about to happen in Rwanda.”[28] The fragile peace that had barely existed in Rwanda was shattered completely in April 1994. On April 6, Rwandan President Habyarimana and Burundi President Cyprien Ntaryamira were flying back to Rwanda when their plane was shot out of the sky during its descent. Everyone on board was killed. The Hutus used the assassination “as an excuse for starting the killing.”[29] The killing was supremely well planned, and Hutu forces carried out their plans in an almost robotic fashion. Cohen states that there were primarily “three types of killings” taking place: Hutus killing Tutsis and moderate Hutus; Hutus targeting moderate politicians; and killings from both sides that were occurring “in the context of the civil war,”[30] which had essentially resumed when the Hutu attack began. The end result was a horrific state-sponsored genocide that left between 800,000 and one million dead. In a 2002 report, the Norwegian Helsinki Committee declared:

The genocide was planned and organized by the government party, the army (the Rwandan Armed Forces – FAR) and the militia Interhamwe, together with mayors and leaders of sectors and cells. The purpose was to exterminate the Tutsis and opponents of the government among the Hutus. But the genocide regime also received help from several church leaders, intellectuals and the media, while at the same time the international community acted passively and did too little to stop the madness.[31]

The situation in Rwanda worsened by the minute. No help was coming from overseas. The United Nations essentially stood by idly. Paul Rusesabagina described it bluntly by saying:

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The UN was not just useless during the genocide. It was worse than useless. It would have been better off for us if they did not exist at all, because it allowed the world to think that something was being done, that some parental figure was minding the store. It created a fatal illusion of safety.[32]

Hutu civilians were ordered to kill their neighbors or risk being killed. Anti-Tutsi propaganda was fed to the masses through radio station RTLM. For years, the Hutus had been exposed to persistent condemnation of Tutsis and the RPF. The resulting "anti-Tutsi psychosis"[33] exploded across Rwanda in the days after President Habyarimana's assassination. The Hutus went house-to-house searching for Tutsis to kill on sight. There was essentially no escape for the vast majority.

Slaughter by the Tutsi RPF During the Genocide

While the systematic slaughter of Tutsi men, women, and children is well known and has been highlighted, documented, examined, and condemned through the media and post-genocide prosecutions, the response of the RPF during the genocide has garnered far less attention, particularly from those with the authority to prosecute. When the genocide began, RPF commanders saw the chaos and disarray as their best chance to take control of Kigali.[34] They struggled for many years to regain some form of control in Rwanda, and finally had their opportunity with the advent of the genocide. It might not be difficult to feel sympathetic toward the RPF and Tutsi people, especially after close examination of the extensive Hutu planning that went into making the genocide a reality. Nevertheless, being the victim of a planned targeted genocide does not give that victim the right to retaliate with war crimes of his or her own. While examining the conditions for refugees in Rwanda, Robert Gersony of the U.S. Agency for International Development discovered evidence of systematic massacres perpetrated by the RPF that continued through his October 11, 1994 presentation to the UN Commission of Experts on Rwanda.[35] Katherine Iliopoulos provided details of the RPF reprisals based on a draft UN report leaked to the media:

The common understanding of RPF aggression was that it was directed at those responsible for the genocide committed against the Tutsis; however, the UN report states that the majority of the incidents reported indicate that the Hutus were targeted as such, illustrated by the numerous targeted attacks against non-refugee Congolese Hutus. The report identifies the systematic use of barriers by the RPF, particularly in South Kivu, which "enabled them to identify people of Hutu origin by their name or village of origin and thus to eliminate them." This tendency to target all Hutus as such is, according to the report, also supported by evidence of declarations made during RPF "awareness-raising speeches" in certain places, "according to which any Hutu still present in Zaire must necessarily be a perpetrator of genocide, since the 'real' refugees had already returned to Rwanda." These speeches were considered to have possibly constituted incitement for the population to look for, kill or help kill Rwandan Hutu refugees, whom they called "pigs." [36]

The RPF was also known to have committed mass murders in the communes of Byumba and Buyoga. According to Paul Rusesabagina, "the RPF reportedly killed 20,000 innocent civilians"[37] in the area shortly after the Hutu attacks began. In another example of retaliatory genocide, the RPF arrived at Kiziguro parish, where Hutu militia had just murdered 1000 Tutsis. The RPF response was to kill 10,000 Hutus taking shelter at the parish.[38] In perhaps an even more appalling display of evil, the RPF concocted a cold-blooded murder scheme targeting youths at Kabuye. A squad of RPF executioners recruited team after team of youths into the RPF army. Once a team was recruited, its members were executed. The following team "would be recruited and told that the previous team had already been promoted and assigned to combat duty on the battlefield." [39] In one month's time, over 3000 youths were murdered. This barbaric murder plot was yet another example of the severity of RPF war crimes during the period.

On June 5, 1994, "3 bishops, along with 9 priests, 1 friar and 3 girls were gunned down by the RPF on direct orders from their superior." [40] In the aftermath of those targeted killings, the RPF went door to door in the surrounding neighborhood and killed anyone who witnessed the attack on the clergy. Their aim was to "decapitate" the Catholic Church in Rwanda.[41] Later that month, businessman Josias Mwangereza and his entire family were murdered. The forty-eight members of his family were part of a larger group of people who were separated into Tutsi and Hutu groups, at which point every Hutu was killed. The RPF gained control of the Rwandan capital in early July and the

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entire country by July 17, 1994. All told, it is believed they were responsible for 25,000 to 45,000 Hutu deaths in response to the genocide,[42] with some reports as high as 60,000 civilians.[43]

IV. Attempts at Justice After the Genocide

Post-genocide Rwanda was, expectedly, a country in shambles. The nation was in economic and political disarray. Rwanda's infrastructure and social structure were virtually non-existent. Many public officials and politicians had been killed. In addition to the exorbitant death toll, nearly two million Hutus fled Rwanda after the RPF gained control, further complicating efforts to find people to work and help rebuild the country. Shortly before Rwanda transitioned to a new national coalition government, which included both Hutus and Tutsis,[44] the UN Security Council finally entrusted an "expert commission" to investigate whether or not genocide had occurred in Rwanda.[45] The investigation showed undeniable evidence that a systematic genocide had taken place, and the commission called for the establishment of an international tribunal.

The Security Council established the International Criminal Tribunal for Rwanda (ICTR) on November 8, 1994. Its purpose was "to try the primary perpetrators of the crimes committed in Rwanda in 1994." [46] It was thought that the ICTR would bring peace and stability to the region by publicly addressing the crimes committed and prosecuting those most responsible. David P. Forsythe rationalized the creation of a new tribunal:

Even if the UN assisted Rwanda to create a functioning court system, states would be unlikely to have enough trust in the new government to extradite refugee leaders of the former regime. Nor could victorious RPF commanders be trusted to hold their soldiers accountable in national tribunals for retaliatory killing.[47]

The new Tutsi-dominated government in Kigali requested the creation of a tribunal, and then, curiously, was the only member of the Council to vote against the ICTR's creation. The Rwandan government was fearful of prosecution for RPF crimes, and also "objected to the UN locating the tribunal outside its borders [and] giving it primacy over national courts." [48] Nonetheless, the ICTR was established with the goal of prosecuting and punishing those guilty of violating international law, "instead of trading peace for impunity." [49]

While the tribunal claimed to fight against impunity, an examination of their prosecutions reveals this to be far from true. Indeed, they have been successful in prosecuting many of the primary Hutu perpetrators responsible for the genocide. However, where the ICTR has failed has been in the prosecution of RPF crimes. This is not entirely the fault of the ICTR. For obvious reasons, the regime in Rwanda has made things difficult for the tribunal. Forsythe states:

Rwanda successfully frustrated efforts to investigate and prosecute allegations of either Tutsi reprisal killings in 1994 or RPF responsibility for the April 1994 assassination of Prime Minister Habyarimana. Although ICTR investigators obtained evidence to support both allegations, prosecutors never completed indictments against any Tutsi.[50]

For all the positive accomplishments attributed to the ICTR, a black cloud is hanging overhead. The tribunal is in grave danger of being permanently seen as a victor's court. To date, there has not been a single prosecution of the RPF at the ICTR. In fact, the only known prosecution of RPF soldiers for war crimes is explained by Lars Waldorf, in his article, *A Mere Pretense of Justice: Complementarity, Sham Trials, and Victors Justice at the Rwanda Tribunal*. He writes:

In 2008, [the prosecutor] had agreed to let Rwanda conduct its own domestic trial of a case previously investigated by his office on the understanding that he would reassert jurisdiction if the trial was not fair or effective. Rwanda then put four RPF soldiers on trial for the notorious massacre of the Rwandan archbishop, three bishops, and nine other clergy at Gakurazo in June 1994. This was the first—and only—domestic prosecution of RPF soldiers for 1994 war crimes. The trial opened with guilty pleas from two low-ranking soldiers and ended with the acquittals of their commanding officers. The prosecutor expressed satisfaction with the trial and closed his own investigation.[51]

Human Rights Watch referred to this trial as "political whitewash," noting that the trial lasted only a few days and had

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virtually no international attention.[52] Perhaps even more revealing, the ICTR's Office of the Prosecutor "sent an observer for one day of trial, closing arguments, and the verdict." [53] While the prosecutor seemed satisfied with this result and Rwanda used these cases in order to claim justice had been done, two guilty pleas and two acquittals does not achieve justice for the severity of that specific crime, let alone approximately 45,000 other victims of war crimes and genocide. The essence of the actions taken by the RPF during the genocide was really no different than that of the Hutu. RPF crimes were well orchestrated and methodical. Alison Des Forges explains:

These killings were widespread, systematic and involved large numbers of participants and victims. They were too many and too much alike to have been unconnected crimes executed by individual soldiers or low-ranking officers. Given the disciplined nature of the RPF forces and the extent of communication up and down the hierarchy, commanders of this army must have known of and at least tolerated these practices.[54]

RPF soldiers tried in military courts were not charged with any war crimes or crimes against humanity, "even in an infamous case involving the massacre of thirty civilians." [55] President Kagame still asserts that the few rogue soldiers who committed crimes in 1994 have been discovered and sufficiently tried and punished. He stated:

While some rogue RPF elements committed crimes against civilians during the civil war after 1990, and during the anti- genocidal campaign, individuals were punished severely ... To try to construct a case of moral equivalency between genocide crimes and isolated crimes committed by rogue RPF members is morally bankrupt and an insult to all Rwandans, especially survivors of the genocide. Objective history illustrates the degeneracy of this emerging revisionism.[56]

Waldorf, however, informs us that credible reports indicated Kagame had prior knowledge of the RPF war crimes and allowed them to happen.[57] Kenneth Roth, executive director at Human Rights Watch, warned of the effect the ICTR's inaction would have on its legacy. He stated, "The tribunal's failure to address the RPF crimes risks leaving the impression that it is delivering only victor's justice." [58] It would be hard to argue against him, as detailed data on RPF massacres has not been utilized to bring justice for those killed. Even ICTR Prosecutor Jallow has admitted to having evidence of RPF atrocities committed, and yet he continued to show reluctance in prosecuting their crimes. Perhaps he was afraid of the Rwandan government interfering with the ICTR and receiving a similar fate as his predecessor, Carla Del Ponte, who was forcibly removed from her position as Chief UN Prosecutor [59] after pursuing RPF prosecutions. This is indeed the position taken by Victor Peskin who believes Jallow has been pacifying the Rwandan government in order "to avoid becoming the target of Kigali's wrath and to avert the political crisis that might arise if he tried to prosecute the RPF." [60]

Gacaca Prosecutions

Due to the overwhelming number of cases and its reputation as a restorative justice, Rwanda turned to a traditional form of communal law known as gacaca in an effort to address the many trials that could not be tried at the ICTR and in national courts. Unfortunately, even within gacaca evidence of victor's justice remained. According to Waldorf, "gacaca has become increasingly retributive in both design and practice." [61] It will indeed be difficult to make progress "if the suspects feel as if they are being tried as Hutus by Tutsis," validating the description of victor's justice. [62] And since the Rwandan government has forbidden the court to hold RPF soldiers accountable for war crimes committed against Hutu civilians, "gacaca is likely to impose collective guilt on most Hutu." [63]

V. Concluding Thoughts: Will Victor's Justice Set the Stage for Future Violence?

Perhaps the most significant and worrisome consequence of the victor's justice prevalent in Rwanda is not the failure of justice, but instead, the possibility of a reoccurrence due to inaction against all sides. Impunity is dangerous because it breeds an attitude of invincibility, which inevitably leads to more violence. Punishment, condemnation, and humiliation of one party but not of another that is guilty of the same crimes can quickly lead to resentment and the growth of hostility between both sides once again. In Rwanda, "the RPF leaves itself open to the possibility that political opponents will inflate the size and nature of RPF abuses" [64] by not addressing the accusations of Tutsi impunity. The ICTR also risks damaging its legacy. With a tainted legacy, its positive work can easily be

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overshadowed by discussion over what the tribunal failed to address. As Human Rights Watch observed:

It was unfortunate that the Rwanda tribunal's prosecutor did not charge those accused from all sides in the conflict, as the Yugoslav tribunal and the Sierra Leone Special Court did in the conflicts they addressed. The Rwanda tribunal's prosecutor failed to bring charges against members of the Rwandan Patriotic Front, which became the Rwandan Army, who had been implicated in war crimes. This failure jeopardizes the tribunal's long-term legacy.[65]

It is unfortunate that the ICTR and Prosecutor Jallow, in particular, actively and purposely resisted the prosecution of RPF war crimes. The tribunal's mandate required cooperation from the Rwandan government and empowered the tribunal to take up all cases that qualified. The fact that this has not occurred undeniably stains the legacy of both the ICTR and President Kagame. The crimes committed by the RPF pale in comparison to the large-scale genocide carried out by the Hutus. Nevertheless, this fact is not sufficient justification for a refusal to prosecute them. In order for true peace and reconciliation, all sides must acknowledge their mistakes and be held accountable for them. This is the only way to end the resentment and quell feelings of anger and thoughts of revenge. The ICTR should be commended for its vehement prosecution of Hutu perpetrators of the 1994 genocide. Despite this success, by ignoring the war crimes of the RPF, the tribunal has set a dangerous precedent. As Richard Dicker of Human Rights Watch said, "The tribunal has not prosecuted even one of the serious Rwandan Patriotic Front crimes from 1994. This glaring omission means delivering one-sided justice and risks tarnishing the important work that the court has done to date." [66] Ultimately, the ICTR has failed at achieving what should have been its true goal, impartial justice.

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[3] Madsen, at 102.

[4] Henry Kwami Anyidoho, Guns over Kigali: The Rwandese Civil War-1994 : (a Personal Account), at 2.

[5] Madsen, at 102.

[6] Madsen, at 102.

[7] Madsen, at 103.

[8] Madsen, at 103.

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[9] Madsen, at 103.

[10] Dixon Kamukama, *Rwanda Conflict: Its Roots and Regional Implications*, at 32.

[11] Kamukama, at 32.

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Date written: December 2011