

**“I never poured blood”:
Women accused of genocide in Rwanda**

**A thesis submitted to the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements of the degree of Master of Laws
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Abstract

In this thesis the author explores the role of women as participants in the Rwandan genocide. The thesis is informed by the insights of Western feminist criminologists, as well as a consideration of women's status in pre-genocide Rwanda. The author then draws from empirical research conducted both with female genocide suspects in the Rwandan prisons and with persons working in the Rwandan criminal justice system to reveal that popular understandings of 'participation' in the genocide do not always equate with formal legal meanings. She also considers questions of power and women's motivations for participating in the genocide. She argues that despite the adoption of a formal 'equal treatment' approach to genocide suspects, gender comes into play at almost every step of the Rwandan and international criminal justice processes, with the effect that some women appear to be receiving impunity for their actions, while others are being unfairly disadvantaged.

Résumé

Dans cette thèse, l'auteur explore le rôle des femmes en tant que participantes dans le génocide rwandais. La thèse est éclairée par les théories de criminologues féministes occidentales ainsi que par la considération du statut de la femme dans le Rwanda pré-génocide. L'auteur se base ensuite sur une recherche empirique effectuée auprès des femmes accusées de génocide dans les prisons du Rwanda et auprès de personnes travaillant dans le système de justice criminelle rwandais pour révéler que les définitions populaires du terme 'participation' ne correspondent pas toujours avec la signification légale formelle. Elle considère aussi la question du pouvoir et des motivations des femmes ayant participé au génocide. Elle soutient qu'en dépit de l'adoption de l'approche d'égalité formelle dans le traitement des accusés du génocide, le genre entre en ligne de compte dans presque chaque étape du processus de justice criminelle rwandais et international, avec la conséquence que certaines femmes apparaissent recevoir l'impunité pour leurs actions, alors que d'autres sont désavantagées par le système de justice criminelle.

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'I Never Poured Blood': Women Accused of Genocide in Rwanda

Introduction

I never poured blood, but the Defence told us that when we go to Court it does not make any difference if we are men or women and that we should not go there and tell them we are women.

Female genocide suspect, Gitarama prison, Rwanda, 19.7.01

Women's participation in the 1994 Rwandan genocide has recently been brought to the world's attention with the conviction of two Rwandan nuns by a Belgian Court for genocide and crimes against humanity.¹ In Arusha, Tanzania, at the International Criminal Tribunal for Rwanda (ICTR), the trial has also begun of Pauline Nyiramasuhuko, former Rwandan Minister for Family Affairs and Women's Development.² In the Rwandan courts, over 50 women have been convicted for genocide-related crimes,³ while almost eight years after the genocide, thousands more women still await trial in the Rwandan prisons, together with over 100,000 men.⁴

It is therefore surprising that no academic studies have been undertaken to date on women's involvement in the genocide, except as victims of the violence. Nor have any inquiries yet been made into the treatment of female genocide suspects by the Rwandan or international criminal justice systems. Although many other issues remain to be addressed in post-genocide Rwanda, the failure of political analysts, criminologists and feminists alike to tackle these topics suggests either that the questions they raise are too

All translations from French in this document are the author's own.

¹ Cour D'Assises de L'Arrondissement Administratif de Bruxelles-Capitale, Judgment 8.6.01, against: NTEZIMANA Vincent, HIGANIRO Alphonse, MUKANGANGO Consolata and MUABUTERA Julienne, Avocats Sans Frontieres, online, [www.asf.be/AssisesRwanda2/fr/fr VERDICT_verdict.htm](http://www.asf.be/AssisesRwanda2/fr/fr_VERDICT_verdict.htm), date accessed: 9.10.01. [Hereinafter, *Belgian Genocide Trial Judgment*].

² International Criminal Tribunal for Rwanda, Case No. ICTR-97-21-I.

³ See Part II.D.1 below.

⁴ See Part II, Introduction, below.

challenging, or that women are simply not important enough to warrant serious investigation.⁵

This work is a first step towards filling these gaps. It is based primarily on my interviews with 71 female genocide suspects in the Rwandan prisons, and on discussions with representatives of government and non-governmental organizations in Rwanda, carried out between June and August 2001. In addition, I considered judgments against female genocide suspects from the Rwandan Courts and studied the case of Pauline Nyiramasuhuko at the International Criminal Tribunal for Rwanda in Arusha, Tanzania.⁶

Two of the critical issues regarding women's participation in the genocide are encapsulated in the quotation with which I opened this thesis. First, what was the nature of women's participation in the genocide, and how did it differ to that of men? Second, if distinctions can be identified, what are the legal consequences of those distinctions? In relation to the first question, I will explain that it seems that women did indeed 'pour less blood' than men, at least in terms of direct participation in the violence. This does not, however, exclude the possibility that women could be very active participants in the genocide, and there is no doubt that some women also killed with their own hands.

In terms of the second question, it seems that notions of criminal participation and responsibility are flexible constructs, whereby legal definitions do not always accord with moral and social meanings. As a consequence, regardless of the formal legal requirements, it appears that where women's participation in the genocide can be characterized as 'passive' or indirect, and thereby more in accordance with social expectations than crimes of the 'active' type, less moral blame is attributed to them, not only by prosecutors, witness and judges, but also by the women themselves. One

⁵ Pearson makes this same allegation about feminists' failure to confront female aggression generally. See Pearson, P. *When She Was Bad: Violent Women & The Myth of Innocence*, (New York: Viking, 1997) at 31: 'To some, the subject of women's aggression is too threatening. To others, the subject is too trivial, destined only for the True Crimes shelves. To others, most notably the academics who define the terms and interpret the data, it's too alarmingly "anti-feminist" to even suggest. Yet, we must suggest it.'

⁶ A more complete report of my research methods is set out in my Methodology, in Annexure I.

possible effect is the differential treatment of women and men in the Rwandan criminal justice system.

Added to these complexities, Rwanda will soon be launching trials of genocide suspects through a 'traditional' system of justice called *gacaca*, whereby suspects will be tried in the community before their peers, in tens of thousands of local tribunals across the country. There is a question whether women will receive more sympathy by these tribunals than they have in the courts, which might mean either more 'justice', or more 'impunity' for women, depending upon one's point of view.

This thesis attempts to cover a great deal of ground, with the effect that at many points, I have not been able to explore a particular issue as deeply as I would have liked. As a result, inevitably I raise many questions and do not provide all the answers. I hope that others will try to pursue the topic further and I will be satisfied if at least I succeed in revealing three points. First, I hope to demonstrate the complexity of many women's lives during the Rwandan genocide and the constraints under which some women operated. Second, I argue that women often had capacity for self-direction and agency *despite* the patriarchal context in which they lived, and that some women even held a relatively large degree of power in Rwandan society. Third, I will suggest that gender expectations continue to influence perceptions of women accused of genocide - within the prisons, the Courts and in Rwandan society generally.

This thesis is divided into two main parts. In Part I, I set out the background to the study. I begin in section A by providing my theoretical framework, which is drawn from the insights of Western feminist criminologists into studies of women's crime. Those insights cover topics ranging from the absence of women from studies of crime and violence generally, through the 'chivalry' and 'evil woman' theories, which seek to explain women's interactions with the legal system, to questions of women's victimization and 'equal treatment'. I argue that these issues are remarkably pertinent to my analysis of women's participation in the Rwandan genocide, despite the obvious uniqueness of the context in which it occurred. In Section B, I try to situate female

genocide suspects in the context of women's status generally in pre-genocide Rwanda, by considering Rwandan folklore, women's role within the family, education levels, women's economic situation and their participation in political life.

I then turn to a history of the genocide, which focuses more on questions of ethnicity; in particular, on relations between Rwanda's three ethnic groups; the Hutu, Tutsi and Twa. This brief historical overview dates back to the pre-Colonial era, and travels through the preparation for the genocide, to the tragedy itself. In Section D, I outline the legal response to the genocide. This has involved prosecutions at both the international level, at the International Criminal Tribunal for Rwanda and in Belgium, and at the domestic level in Rwanda, with an attempt to process over 100,000 genocide suspects through the National Courts. With the recognition that the latter process would take centuries to complete, Rwanda has introduced the revolutionary *gacaca* system, which is a unique blend of the typical criminal justice model and a more reconciliatory approach.

In Part II, I present the results of my empirical research. This Part involves four fundamental questions: *how* and *why* did women participate in the genocide, *how much power* did women possess to prevent the violence, and *what is happening* to Rwandan women in the domestic and international criminal justice systems? In this context, I consider in section A the accusations against female genocide suspects and popular perceptions of women's participation in the genocide. In section B, I explore women's motivations for participating in the genocide, beginning with the fact that women are confessing at a lower rate than men, and discussing the inadequacies in some of their confessions. I propose three possible motivations for women's participation in the genocide: fear; the effect of anti-Tutsi hate propaganda, and simple greed and opportunism. During this discussion, I draw from Western feminist criminological theories, to conclude that some female offenders were 'victims', to differing degrees, while others were more deliberate participants in the genocide.

In section C, I explore in more detail the question of women's power, focusing on two distinct 'classes' of offenders, namely, 'ordinary' women, and their ability for positive

action, and women in leadership positions. Between this and the following section, I argue that there is evidence of both the 'evil woman theory' and the 'chivalry theory' at play in relation to the trials of Rwandan women, one effect of the latter being a high acquittal rate for female genocide suspects. I also argue that paradoxically, some women, and particularly Twa women, are being disadvantaged by the 'equal treatment' model of justice that has been formally adopted in Rwanda.

Ultimately, I claim that one of the greatest challenges of future genocide prosecutions, as well as for feminists interested in female offenders, will be for women's gendered experiences to be taken into account where appropriate, without granting women effective impunity for their actions. In this context, I suggest that a gender-sensitive analysis of the defence and / or attenuating circumstance of irresistible compulsion be considered; that women's family responsibilities should be taken into account when prioritizing cases for court, and that women, and particularly Twa women, should have access to legal representation before the National Courts and the gacaca tribunals. I also contend that the informal 'passive' / 'active' distinction, which reflects generally the different nature of women's and men's offending, needs to be openly addressed in Rwanda.

PART I – BACKGROUND TO THE STUDY

A. Insights From Feminist Criminology

1. 'Where are the Women and Women's experiences?'

Western feminists have commented since the 1970s that studies of crime and violence usually either exclude women altogether or explain female criminality in a simplistic and stereotyped manner.⁷ The field of feminist criminology thus developed from the premise

⁷ Carol Smart was the first woman to address male-oriented biases in traditional criminology. See Smart, C. *Women, Crime and Criminology – a Feminist Critique* (London, Routledge & Kegan Paul, 1976). Much of the early feminist criminological work sought to expose the sexism inherent in traditional criminological theories, espoused, in particular, by Cesare Lombroso and Enrico Ferrero, which attributed female crime to biological defects. For further discussion of their biological theories of female crime, see Heidensohn, F. *Women and Crime* (New York, New York University Press, 1995) at 146-147; Gavigan, S. 'Women's

that theories of crime that are unable to account for both women and men's behaviour are invalid.⁸ In attempting to develop gender-sensitive criminological theories, feminist researchers set out to answer a fundamental question: 'Where are the women and women's experiences?'⁹

Despite the many differences between common crime in the Western world and genocide in Rwanda, the same question arises in relation to women's participation in the Rwandan genocide. Although over a thousand articles have been written about the genocide,¹⁰ most of these articles ignore issues of gender. When women are considered at all, it is almost exclusively in the context of their plight as *victims* of the genocide, particularly as victims of sexual violence.¹¹ While this work represents significant progress towards the recognition of women's vulnerability during armed conflict situations,¹² it is only a partial representation of women's experiences. No substantial attempt has yet been made

Crime: New Perspectives and Old Theories', in Adelberg, E. & Currie, C., eds., *Too Few to Count: Canadian Women in Conflict with the Law* (Vancouver: Press Gang Publishers, 1987) 23, at 49-51; Boritch, H. *Fallen Women: Female Crime and Criminal Justice in Canada*, Toronto, ITP Nelson, 1997, at 51-55 and Denno, D. 'Gender, Crime and the Criminal Law Defenses' (1994) 85(1) *Journal of Criminal Law & Criminology* 80, at 86-89. The latter article suggests that biological determinism is not as out of favor as one might think. According to Denno's study, predictors of female crime included neurological abnormalities, left foot preference and right eye preference. See *Ibid*, at 114-117.

⁸ Heidensohn *supra* note 7, at 11. Also see Boritch, *supra* note 7, at 75.

⁹ Daly, K. and Maher, L. 'Crossroads and Intersections: Building from Feminist Critique', in Daly, K. and Maher, L. eds., *Criminology at the Crossroads: Feminist Readings in Crime and Justice* (New York, Oxford University Press, 1998) 1, at 2.

¹⁰ League Rwandaise Pour la Promotion et la Défense des Droits de l'Homme (LIPRODHOR), Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG): *Problématique de la Preuve dans les Procès de Génocide : L'Institution Imminente des Juridictions Gacaca Constituerait-Elle Une Panacée?*, (Kigali, LIPRODHOR, 2000) [hereinafter *Problématique de la Preuve*], at 4.

¹¹ See, for example, Human Rights Watch/Africa, Women's Rights Project Fédération Internationale des Ligues des Droits de l'Homme, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (New York, Human Rights Watch, 1996) [hereinafter *Shattered Lives*]; African Rights, *Rwanda: Death, Despair and Defiance*, Revised 1995 Edition (London, African Rights, 1995) [hereinafter *Death, Despair and Defiance*], Chapter 10 (748-797), and Avega "Agahozo", *Survey on Violence Against Women in Rwanda*, Kigali, 1999.

¹² Thanks to the efforts of international feminist criminal lawyers and Rwandan women who were prepared to speak out, sexual violence against women has received recognition at the International Criminal Tribunal for Rwanda. See *The Prosecutor v Jean-Paul Akayesu*, 'Judgment', ICTR-96-4-T, 2 September 1998, online: International Criminal Tribunal for Rwanda, www.icttr.org/english/cases/Akayesu/ (date accessed: 27 Apr 2001), [hereinafter *Akayesu Judgment*] paras. 121, 416, 421-2, 430, 437, 706 and 731.

to explain where the *rest* of Rwanda's women were during the genocide, either as participants, or as non-participants as the case may be.¹³

It may seem peculiar to be interested in women's *non-participation* in the genocide in a thesis about women accused of genocide in Rwanda. Yet, some feminist criminologists have argued that it is not sufficient to study female offenders; we can also learn a great deal about gender relations by exploring the overwhelming *absence* of women from officially recorded crime.¹⁴ Therefore, even though women represent only a small proportion of genocide suspects, both in Rwanda and at the International Criminal Tribunal for Rwanda in Arusha,¹⁵ this does not mean that women's participation in the genocide is too unimportant to warrant study. To the contrary, feminists should be trying to learn both about the women who *are* in detention charged with genocide, and why so few women are there in the first place.

On this latter question, it is, of course, possible, that women simply did not participate in the genocide to the same degree as men. Feminists might argue, for example, that women, whether by 'nature or nurture', are less violent than men,¹⁶ or that other forms of

¹³ Of course, no single study can encapsulate all the experiences of all women during the Rwandan genocide. However, we cannot even begin to construct a more complete, gendered history of events unless the scope of the study is broadened to include women who do not fit the traditional 'victim' model.

¹⁴ According to Heidensohn, 'sex differences in criminality are so sustained and so marked as to be, perhaps, the most significant feature of recorded crime.' Heidensohn, *supra* note 7, at 11. Also see Boritch *supra* note 7, at 75: 'Gender explains more variations in crime cross-culturally than any other variable.'

¹⁵ In relation to the proportion of women among female genocide suspects in Rwanda, see Part II, Introduction, below. Regarding the proportion of women among persons indicted before the ICTR, see Part I.D.1 below.

¹⁶ Feminists such as Carol Gilligan and Robin West contend that women have a 'different voice' to men and operate through networks of relationships, according to an 'ethic of care.' See Gilligan, C. *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA, Harvard University Press, 1982) and West, R. 'The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory', (1987) 3 *Wisconsin Women's Law Journal* 81. Other feminists reject this view, as well as the biological explanations put forward by early criminologists, which provided that men are by nature more prone to crime and aggression than women. Pearson, for example, asserts that the view that women are not violent 'is one of the most abiding myths of our time.' Pearson, *supra* note 5, at 7. In support of her statement, Pearson states: 'Women commit the majority of child homicides in the United States, a greater share of physical child abuse, an equal rate of sibling violence and assaults on the elderly, about a quarter of child sexual abuse, an overwhelming share of the killings of newborns, and a fair preponderance of spousal assaults.' *Ibid.* Pearson also reports that anthropologists have found that in some non-Western cultures women commit *more* public acts of physical aggression than men, which involves, in particular, aggression displayed towards other women. She quotes anthropologist Victoria Burbank, who argued that 'Western

social control connected to patriarchy¹⁷ dictated that women not become involved in the massacres.¹⁸ I believe there is some truth to both these propositions. As I will explain later in this thesis, although there is controversy in Rwanda as to the actual level of women's participation in the genocide, the general consensus is that few women committed violent crimes.¹⁹ It also appears that even during the genocide women's behaviour was, at least to some extent, dictated by the social expectations of them.²⁰ Nevertheless, it also seems that women are under-represented among genocide suspects.

2. Pollak and the Chivalry Theory

One explanation for this under-representation, which is distasteful to most feminists, can be traced back to the criminologist Pollak. He said that women commit just as many crimes as men, or at least, more than the official figures indicate, but that women's crimes are of a more covert nature.²¹ Specifically, 'the lack of social equality between the sexes has led to a cultural distribution of roles which forces women in many cases into the part of instigator rather than ... performer of an overt act.'²² Female criminals therefore either

theories, metaphors and stereotypes of female aggression and victimization frame our understanding' but do not speak universal truth. *Ibid.*, at 13-14.

¹⁷ Patriarchy, or the "law of the father", is one of the core concepts in feminist theory. It can be defined as 'the system of male domination that permeates all aspects of social life. It is a sex/gender system of stratified production in the interests of men, in which men dominate women and where that which is considered masculine is typically more highly valued than that which is considered feminine.' Einstadter and Henry, as quoted in Boritch, *supra* note 7, at 70. In the context of the genocide, patriarchy might have dictated that women's place was in the home, not participating in the violence. See discussion at Part II.A.2 below.

¹⁸ Feminist criminologist Frances Heidensohn attributes women's relatively low level of criminality to various social controls imposed on women in a patriarchal society, including by women themselves, which dictate appropriate feminine behavior. According to this school of thought, feminists cannot begin to understand women's *deviance* without starting with women's overwhelming *conformity* to social rules. See Heidensohn, *supra* note 7, generally as to 'social control theory', and in particular, at 11. Also see the discussion of 'Power-Control Theory' in Boritch, *supra* note 7, at 70-71. The problem with this type of argument is that it can lead to a proposition that in a less patriarchal society, women will inevitably commit more crime. This is the theory pronounced by Adler, for example, to explain apparent increases in female crime, although Adler's research has been discredited by other feminists. For discussion of Adler's 'liberation thesis' explained in her 1975 book *Sisters in Crime*, see Boritch, *supra* note 7, at 62-67 and Heidensohn, *supra* note 7, at 154-160.

¹⁹ See *infra*, note 379 and accompanying text.

²⁰ I make this point at various places in this thesis, relying upon quotations from female genocide suspects in the Rwandan prisons.

²¹ Gavigan, *supra* note 7, at 51.

²² Pollak (1950), as cited in Pearson, *supra* note 16 at 20-21.

employ deceit to manipulate and incite others to act, or commit crimes that are less easily detected, such as murder by poisoning.²³

Most feminist criminologists today characterize Pollak as a misogynist with little to give to feminist scholarship.²⁴ However, some observers, including women,²⁵ agree with Pollak's view that 'the criminality of women is largely masked criminality.'²⁶ Pearson, for example, argues that women commit acts of 'indirect aggression' and manipulate others to commit crimes, in Western and non-Western cultures alike.²⁷ Although she admits that Pollak was sexist, she says 'the essence of his insight is correct.'²⁸

I can neither prove nor disprove whether women committed 'just as many crimes as men', during the genocide, as this is a subject of much controversy in Rwanda and requires more extensive research.²⁹ However, my research results support some aspects of the Pollak/Pearson position. In particular, I conclude that often the types of crimes committed by women, which included instigating others to act, were of a less obvious nature than those committed by men and are therefore more difficult to prove.³⁰

Moreover, despite a broad definition of criminal participation in Rwandan law, the social interpretation of the term in Rwanda appears to be narrower, focusing on overt acts of

²³ See discussion of Pollak in Boritch, *supra* note 7, at 59 and Denno *supra* note 7, at 88.

²⁴ See, for example, Smart, *supra* note 7, at 46-53. Feminists have been particularly critical of Pollak's argument that women are inherently capable of deceit and manipulation for biological reasons connected to their ability to fake an orgasm and to hide their monthly menstruations. See Smart, *ibid.*, and Klein, D. 'The Etiology of Female Crime: A Review of the Literature', in Datesman, S. and Scarpitti, F. *Women, Crime and Justice* (New York, Oxford University Press, 1980) 70 at 94, arguing that 'Pollak reduces women's nature to the *sex act*, as Freud has done.'

²⁵ I do not necessarily characterize all female commentators as feminists. Although I do not want to launch into a thorough analysis of the many different versions of feminism, I would define a feminist at least as someone (woman or man) who accepts the premise that women suffer social inequalities, and believe in the objective of working towards eliminating those inequalities.

²⁶ Pearson, *supra* note 5 at 20, citing Pollak (1950).

²⁷ Pearson, *ibid.*, at 17, cites Finnish psychologist Kaj Bjorkqvist's definition of indirect aggression, as 'a kind of social manipulation: the aggressor manipulates others to attack the victim, or, by other means, makes use of the social structure in order to harm the target person, without being personally involved in the attack.' Pearson also cites (at *ibid.*, 19) the work of anthropologist Ilsa Glazer on indirect aggression among women in Zambia, Israel and Palestine, including 'violence by women against women'. She contends (at *ibid.*, 21) that feminists are uncomfortable with these types of analyses as they do not want to admit that women employ such underhanded strategies, as to do so would require confronting women's negative characteristics as duplicitous, cunning and manipulative.

²⁸ Pearson, *ibid.*, at 21.

²⁹ See discussion in Part II.A.2 below.

³⁰ *Ibid.*

physical violence. This implicitly operates to benefit women, with the effect that some women are getting away with impunity for their actions.

On the other hand, I believe that Pollak's willingness to characterize women as deceitful and manipulative, without acknowledging other facets of their behaviour, entrenches a strict binary vision of women as victims or delinquents, rather than acknowledging the diversity of women's experiences. As Carol Smart has suggested, 'Woman has always been both kind and killing, active and aggressive, virtuous and evil, cherishable and abominable, not either virtuous or evil.'³¹ The task of feminism is to bring this more complex analysis to the table.

Another aspect of Pollak's theory as to why women's crimes remain undetected is that women benefit from the chivalry of men. He argued that male witnesses, investigators, prosecutors and judges are so infected by gender stereotypes that they either cannot perceive of women as criminals, or feel protective towards them in spite of their suspected or proven criminality.³² Men therefore, perhaps unwittingly, exercise their discretion in women's favour at each level of the criminal justice system - during reports, arrests, prosecution and sentencing.³³ This serves to limit the number of women prosecuted by the law, as well as resulting in women receiving lighter sentences than men

³¹ Smart, C. 'The Women of Legal Discourse', in Daly, K. and Maher, L (eds.) *Criminology at the Crossroads: Feminist Readings in Crime and Justice*, New York, Oxford University Press, 1998, 2, at 28.

³² Pollak, as cited in Gavigan, *supra* note 7, at 52. Also see Carroll, J. 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', (1997) 75 *Texas Law Review* 1413, at 1417-1420.

³³ Moulds, E. 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', in Datesman and Scarpitti, *supra* note 24, 277, at 294. Also see Johnson, H. 'Getting the Facts Straight: A Statistical Overview', in Adelberg and Currie, *supra* note 7, 11, at 31.

for similar crimes.³⁴ In particular, 'this chivalrous attitude towards women manifests itself in a cultural reluctance to sentence women to death.'³⁵

Feminist criminologists who have researched the chivalry theory and found that there is some basis to it have pointed out some of the dilemmas that this finding poses for feminism. Principally, the problem is that, on the one hand, individual women benefit from the presumption that women should not be held criminally responsible for their actions, and overall, fewer women are in prison. These appear to be worthy feminist goals. On the other hand, 'women' as a whole might be disadvantaged, because the implication is that women are not capable of autonomous action.³⁶ Women might also feel that they need to fit gender stereotype in order to take advantage of the chivalrous attitudes of men. As Catharine MacKinnon has explained, '[a]rousing the sexism of the judge and jury may appear [to an accused woman] to be her only chance of acquittal. A prison term is a big price to pay for principle.'³⁷

Once again, my research is at least partially supportive of Pollak's theory on this point. I found that in Rwanda, despite an official equal-treatment approach towards male and female genocide suspects, women *do* seem to be benefiting from the indulgence of men. The presumption that women could not, or should not (and these are separate arguments) be criminally responsible for genocide appears to be resulting in the more lenient treatment of women at most stages of the justice process.³⁸ Where my research departs

³⁴ Some researchers have found that a chivalrous attitude towards women manifests in a judicial reluctance to incarcerate women at all. For example, see Musolino, as cited in Carroll, *supra* note 32, at note 24. On the other hand, many feminists dispute that women's lighter sentences can be attributed to the chivalry theory. Morris, for example, claims that other factors come into play in sentencing women. In particular, most women commit more minor offenses than men and most women are first offenders, whereas male offenders often have prior convictions. Other factors include: the involvement of other offenders, marital status, family background, the sexual composition of the Bench, and race. See Morris, A. 'Sex and Sentencing', [1988] *Criminal Law Review* 163, at 164-7, and 170.

³⁵ Carroll, *supra* note 32, at 1418. Carroll's article relates specifically to the death penalty in the United States. Carroll cites (at 1419) a U.S. Dept. of Justice Report, which found that male murderers were over 20 times more likely to receive a death sentence than female murderers. Also see Pearson, *supra* note 5 at 61: 'Chivalry justice is a thriving player in death penalty cases.'

³⁶ See Allen, at 64-66 and Coughlin, A. 'Excusing Women', (1994) 82(1) *California Law Review*, 1 generally.

³⁷ MacKinnon, C. 'Toward a Feminist Jurisprudence, 34 *Stan. L.Rev.* 703, at 721.

³⁸ In relation to prosecutions, see *infra* notes 382 to 390 and accompanying text. In relation to chivalrous treatment in the courts, see Part II.D.1 below.

from Pollak's 'chivalry theory' is that I found no evidence that the Rwandan Courts have refrained from ordering the death penalty for women when the circumstances seem to warrant it. To the contrary, women appear to be receiving the death penalty at a similar rate to men, even though the actual number of women sentenced to death are low.³⁹

3. The 'Evil Woman' Theory

On this last point, feminist criminologists have offered an explanation for the harsh treatment of some female offenders. These researchers contend that some women are deemed to have acted so far beyond society's norms that they are no longer deserving of chivalrous treatment. Instead, such women fall prey to the 'evil woman theory', whereby they are either de-gendered and treated as 'non-women', since 'real women' do not commit crimes,⁴⁰ or dehumanized and treated as 'monsters', that is, even *worse* than male criminals.⁴¹ This process is particularly likely to occur in the trials of women who were previously employed in caring professions, as they are deemed to have rejected their caring role.⁴² The result, which is specific to the criminal trials of women, is that the offender's sexuality is on trial as well as her actions.⁴³

³⁹ See *infra* note 627 and accompanying text.

⁴⁰ The 'non-woman' theory can be traced back to the work of early criminologists Lombroso and Ferrero, who maintained that criminal behavior in a woman could be attributed to her inability to control her inherent defects (i.e. moral deficiency, revengefulness, jealousy and an inclination 'to vengeance of refined cruelty') and to adapt to her biological, maternal role. According to Lombroso and Ferrero, '[i]n ordinary cases these defects are neutralized by piety, maternity, want of passion, sexual coldness, by neatness and an undeveloped intelligence. But when piety and maternal sentiments are wanting, and in their place are strong passions ... much muscular strength and a superior intelligence for the conception and execution of evil [then] the innocuous semi-criminal present in the normal woman must be transformed into a born criminal more terrible than any man.' Lombroso and Ferrero, *The Female Offender* 1895, at 151, as cited in Boritch, *supra* note 7, at 53. Also see Heidensohn, *supra* note 7, at 97, and Naylor, B. 'Women's Crime and Media Coverage: Making Explanations', in Dobash R.E., Dobash R and Noaks, L. eds., *Gender and Crime* (Cardiff, University of Wales Press, 1995) 77, at 89-90.

⁴¹ See Carroll, *supra* note 32, in particular at 1421, and Naylor, *supra* note 40, in particular at 88-91. NB: Naylor discusses 6 popular images of criminal women propagated in the media. In addition to the 3 discussed in this section (i.e.: (i) the figure of evil – the witch / the monster; (ii) the criminal woman as 'not-woman', and (iii) the image of woman as devious and manipulative (see discussion above), Naylor considers 3 other popular explanations for women's crime: (iv) Madonna/whore; (v) sexual passion/love as an 'excuse' for crime, and (vi) reproduction and madness (at 81 ff.) As I have seen no indication that these last 3 explanations have been raised in Rwanda in relation to women suspected of participating in the genocide, I do not discuss them in this paper.

⁴² Naylor, *ibid.*, at 90.

⁴³ *Ibid.*, at 93. Also see Carroll, *supra* note 32, at 1428: 'although both men and women are sentenced to death for heinous and atrocious crimes, it is impossible to separate the gender implications from the

There is some disagreement as to whether the 'evil woman theory' operates to impose *harsher* punishments on women than on men who have committed similar crimes, because women are deemed guilty both of a crime and of breaking society's rules about appropriate gender roles.⁴⁴ This question cannot be explored in respect to Rwanda without a detailed comparative analysis of judgments against both women and men, which is not the focus of this study. However, some feminist scholars also argue that the 'evil woman' mentality is necessary before a male judge or jury member can overcome his preconceptions about women (that is, counter the 'chivalry' mentality) and impose the *same* sentence upon a woman as upon a man convicted of a similar crime, and in particular, before he can sentence a woman to death.⁴⁵

In this thesis, I will suggest that there is evidence of the evil woman theory at play in the representation of serious female offenders, both in the Rwandan courts and in the trial of the two Rwandan nuns in Belgium.⁴⁶ I will also contend that all categories of female genocide suspects are strongly rejecting any depiction of malevolence, in an effort to reassure those they are coming into contact with in the criminal justice system that their behaviour conformed to expected gender roles.⁴⁷

woman's sentencing.' Allen also notes that 'ultimately legal discourse simply cannot *conceive* of a subject in whom gender is not a determining attribute: it cannot *think* of such a subject.' Allen, as cited in Smart, C. 'The Women of Legal Discourse', in Daly and Maher, *supra* note 9, 2, at 26.

⁴⁴ Carroll, *supra* note 32, at 1421: 'First, like their male counterparts, they [women] offend the collective sense of humanity with their crimes. Second, they offend the collective sense of femininity with their "unladylike" behavior. Having committed these social taboos, they relinquish the benefits and protections afforded their sex and become "evil incarnate".' Also see Johnson, *supra* note 33, at 31-33, arguing that in Canada, at least in relation to juvenile delinquents, 'girls traditionally have been dealt with much more severely by the social welfare and criminal justice systems.'

⁴⁵ Carroll, *supra* note 32, citing Streib's finding that 'political and social forces require women to be set outside of their protected status, or defeminized, before they can be executed.' Carroll herself concludes (at 1452) that 'women who are executed have crossed gender boundaries, and those who are not, have not.' C.f.: Elizabeth Rapaport, who denies the influence of the evil woman theory in the capital punishment of American women. Instead, Rapaport subscribes to an 'equality theory', whereby women are punished equally to men for violent transgressions. Rapaport, as cited in Carroll, *supra* note 32, at 1427.

⁴⁶ See Part II.C.2 below.

⁴⁷ See Part II.C generally below.

4. Criminal Women as Victims

The above discussion provides little assistance as to why at least *some* women participated in the genocide, regardless of the manner of that participation.⁴⁸ Later in this thesis, I will argue that numerous factors influenced women's behaviour during the genocide, not the least of which was anti-Tutsi propaganda, which affected Rwandan women as well as men.⁴⁹ However, in assessing women's motivations for participating in the genocide, it is also helpful to consider radical and socialist feminist explanations of female crime,⁵⁰ drawn from empirical research on female offenders conducted in Europe and North America. The unifying theme in these approaches is that women's criminality must be understood in terms of women's *victimization*, either in relation to patriarchal power and violence⁵¹ or their relative socio-economic powerlessness.⁵²

⁴⁸ See Part II.A.2 below regarding the distinction between 'active' and 'passive' participation in the genocide.

⁴⁹ See Part II.B.2(b) below.

⁵⁰ Radical feminism, which is most closely associated with the work of Catharine MacKinnon, focuses on the universal dominance of men over women, and the institutional nature of patriarchy. Female sexuality is particularly important in the radical feminist analysis of power. Radical feminists have analyzed the laws in relation to rape, prostitution and pornography in this context, claiming that the law legitimates the subordination of women through labeling them as sexual objects. Radical feminism has been criticized by other feminists for being too negative, depicting women only as victims, and offering no solutions to women's oppression. It has also been criticized for being essentialist – i.e. only representing the interests of white, middle-class, heterosexual, academic women (see discussion at I.A.6 below.) See, for example, MacKinnon, C. *Feminism Unmodified: Discourses on Life and Law* (London, Harvard University Press, 1987). Socialist feminism accepts most of the key concepts of radical feminism, but adds that women are oppressed not only by men, but also by political and economic factors. For a brief summary of the key concepts underpinning both radical and socialist feminism, see Boritch, *supra* note 7, at 87-88.

⁵¹ See, for example, Roberts, D. 'Foreward: The Meaning of Gender Equality in Criminal Law', (1994) 85(1) *Journal of Criminal Law & Criminology* 1, at 9: 'Feminists should analyze female crimes within the context of patriarchal power'; and Johnson, *supra* note 33, at 30: '[t]he small body of research in this area suggests that violence by women for the most part consists of acts of rebellion or retaliation against abusive or exploitative domestic situations.'

⁵² Heidensohn, for example, states: 'Most women's crime is ... linked to their powerlessness and economic marginalisation.' Heidensohn, *supra* note 7, at 195. Also see Johnson, *supra* note 33, at 26: 'Canadian statistics suggest a link between the social and economic status and the criminality of women', and again at 43: 'Many women offenders are at the same time victims.' Also see Boritch, *supra* note 7, at 6: 'Female criminality cannot be conceptually or practically separated from the issue of female victimization ... For many, if not most, female offenders, criminality and victimization are not discrete phenomena, but rather constitute a continuum of experience.'

This research has assisted in explaining certain crimes committed by women, such as poverty-induced property crimes or prostitution.⁵³ It has also contributed to the development of the battered wives' defence, in recognition of the fact that many, if not most, women who kill in the Western world do so following an ongoing cycle of physical and verbal abuse by their male partners.⁵⁴ Yet, many modern feminists have drawn attention to the inadequacies of the 'victimization approach'. They point out, for example, that women commit the full spectrum of crimes,⁵⁵ and that female criminals 'have not always been women in poverty and without power.'⁵⁶ Some feminists also warn that the victimization model, while well intentioned, actually serves to reinforce negative stereotypes against women, as 'crazy or helpless or both'.⁵⁷ Moreover, it is argued, female offenders 'do not *present* themselves as victims, without personality, resolution or self-esteem. There are a number of women with considerable strength, intelligence, many regrets for what had happened, but a lot of determination, humour and anger.'⁵⁸

The victimization model can also backfire on women who do not fit the mould of oppressed victim, or who appear to contradict popular notions of womanhood.⁵⁹

Feminists argue that it is precisely in these circumstances that the 'evil woman theory' is likely to be invoked to explain women's otherwise 'inexplicable' behaviour.⁶⁰ Feminists seeking to excuse a particular woman's criminal behaviour on the basis of their

⁵³ Johnson, *supra* note 33, at 27-29: 'Women's participation in property offences is consistent with their traditional roles as consumers and, increasingly, as low income, semi-skilled, sole support providers for their families ... Also in keeping with women's social and economic status is the number of young women who turn to prostitution.'

⁵⁴ Boritch, *supra* note 7, at 4.

⁵⁵ See, for example, Carlen, as quoted in Shaw, M. 'Conceptualizing Violence by Women', in Dobash, Dobash and Noaks, *supra* note 40, 115, at 127: 'However meager women's contribution to the sum total of crime, the relatively small numbers of female criminals have over the years embraced the whole spectrum of criminal ingenuity and socially injurious behaviour.'

⁵⁶ *Ibid.* Also see generally the discussion in Shaw, *ibid.* at 120-122.

⁵⁷ Naylor, *supra* note 40, at 87 (discussing the defence of battered wives' syndrome). Also see: Allen, H., 'Rendering Them Harmless: The Professional Portrayal of Women Charged With Serious Violent Crimes', in Daly and Maher, *supra* note 9, 54, especially at 65-66; and Coughlin, *supra* note 36.

⁵⁸ Shaw, *supra* note 55, at 122.

⁵⁹ Feminists are at a loss to explain women such as Karla Homolka, a Canadian woman who raped, tortured and killed two young women, including her own sister. Boritch, for example, claims that Homolka 'was an aberration in virtually every sense.' Boritch, *supra* note 7, at 4. For further discussion of Karla Homolka, see Pearson, *supra* note 7, at 39-40.

⁶⁰ Naylor, *supra* note 40, at 88.

victimization might therefore actually be doing other women a disservice. Another obvious question for current purposes is whether the victimization model has any relevance to female criminality in the context of the Rwandan genocide, where a multitude of other social and political factors came into play.⁶¹

5. The Equal Treatment Approach

According to some observers, the logical conclusion to these dilemmas, which is both more in line with notions of 'neutral' justice and more respectful of women, is to treat female offenders equally to men – that is, as autonomous beings who make rational choices to which they should be held legally accountable.⁶² The only text produced to date directly on women's participation in the Rwandan genocide, written by African Rights, and entitled *Rwanda - Not So Innocent: When Women Become Killers*,⁶³ clearly adopts this 'equal treatment' approach. African Rights defies the traditional view that Rwandan women are incapable of committing violent crime and provides important testimonies from genocide survivors about women's apparently active participation in the genocide. The organization then calls for prosecution of female genocide participants, along with men, and demands that women not be permitted to 'use their femininity as a shield.'⁶⁴

This work is significant, as it forces both Rwandans and outside analysts to confront an apparently unpleasant reality – that women are also capable of inflicting great harm. Nevertheless, *Not So Innocent* presents a limited view of women's participation in the

⁶¹ For an overview of the circumstances leading up to the Rwandan genocide, see Part I.C below.

⁶² Coughlin, *supra* note 36, Pearson, *supra* note 5 and Denno, *supra* note 7, are all advocates of this approach. The 'equal treatment' model is informed by liberal philosophy. Liberalism views all persons, male and female alike, as equally autonomous, capable and rational individuals. Liberal feminists, on the other hand, recognize that sometimes women's autonomy is constrained by social factors, but argue that autonomy should nevertheless remain the ideal. For a general defence of liberal feminism in the face of criticism from other feminist legal perspectives, see McClain, L. "'Atomistic Man' Revisited: Liberalism, Connection, and Feminist Jurisprudence", 65 S. Cal. L. Rev. 1171.

⁶³ African Rights, *Rwanda - Not So Innocent: When Women Become Killers* (London, African Rights, 1995) [hereinafter *Not So Innocent*].

⁶⁴ This reference is taken from another African Rights publication, *Confessing to Genocide: Responses to Rwanda's Genocide Law* (London, African Rights, 2000) [hereinafter *Confessing to Genocide*] at 21, specifically in relation to female genocide suspects. In *Not So Innocent*, African Rights also criticises 'the ease with which *all* women can exploit the label of "innocence".' *Not So Innocent*, *supra* note 63, at 255.

genocide. There is no acknowledgment, for example, of either the social conditions under which women lived immediately prior to the genocide or the complexity of some women's individual circumstances, which might have influenced their decision to participate in the genocide. In particular, there is no recognition that some female genocide perpetrators (though certainly not all) can appropriately be characterized as victims, although I shy away from all the connotations of that word. I will argue that a gender-sensitive standard of irresistible compulsion (duress) should be developed in order to better accommodate these women's experiences of the genocide. However, even if ultimately Rwanda rejects such a proposal in favour of the 'equal treatment' approach, at least an exploration of gender issues would at least allow the construction of a more complete picture of human experience.

6. Questions of Essentialism

There is one other insight from Western feminist scholars that must be mentioned at this point: the question of *essentialism*. As emphasized by African-American and postmodernist feminist scholars in recent years, in any study about 'women' it is necessary to be aware of the limitations of viewing 'women', or even 'Rwandan women', as a single, unified group, whose members share an 'essential' female experience.⁶⁵ In particular, some feminists have called attention to the need to recognize other aspects of women's identity, such as race and class, which may be so influential as to make some of feminism's 'grand theories', developed, on the whole, by white, upper class American women, of little relevance to other women.⁶⁶

Essentialism is a legitimate concern of feminist discourse. In particular, the postmodernist call to recognize the diversity of women's experience and 'variation[s] in

⁶⁵ See, for example: Harris, A. 'Race and Essentialism in Feminist Legal Theory', 42 *Stanford L.R.* 581; bell hooks, 'Black Women: Shaping Feminist Theory', in Eze, E.C. ed., *African Philosophy* (MA, Blackwell Publishers, 1998); Carrington, K. 'Postmodernism and Feminist Criminologies: Disconnecting Discourses?' in Daly and Maher, *supra* note 9, at 69 (entire Chapter relevant), and see generally, Daly & Maher, *supra* note 9, at 3

⁶⁶ See, for example, Gavigan, *supra* note 7, at 58: 'It becomes crystal clear that within criminology and criminal justice, as in social life, issues of gender cannot be considered in isolation from "the more specific factors of class, race and social position."'

levels of criminalization and victimization among [women]⁶⁷ has much to offer the current study. However, in the case of Rwanda, female genocide suspects represent a more homogenous group than in many other societies. Issues of 'race' do not really come into play, as in Rwanda there is, in fact, only one racial group, the Banyarwanda.⁶⁸ Ethnic distinctions are more tangible,⁶⁹ but almost all Rwandan genocide suspects are Hutus, so have the same ethnic background. I met only one Tutsi woman during my interviews with female detainees, although another 'sub-group' among genocide suspects may be Hutu women who were married to Tutsi men.⁷⁰

Rwandan society also comprises a largely ignored third ethnic group; the Twa. The Twa reportedly played an ambiguous role during the genocide, as both victims of it, due to their perceived historical alliance with the Tutsis, and as participants in it, at least in some cases, for food or material gain.⁷¹ There are also some Twa in the Rwandan prisons, including women, and one of the goals of my research was to uncover whether their experiences of the genocide and prison life are different to those of other female detainees.⁷² Therefore, at least to this extent, essentialism is addressed in my research.

I will argue throughout this thesis that probably the most important distinction among female genocide suspects is not ethnicity, but class. I identify two broad classes within this group: 'ordinary' genocide suspects, who are mostly illiterate peasants; and its former elites, who are identified by their educational background and former occupation. These

⁶⁷ Carrington, *supra* note 65, at 77.

⁶⁸ See *infra*, note 169.

⁶⁹ See *ibid*, regarding notions of ethnicity, which I have defined as a 'subjective consciousness of difference.'

⁷⁰ Among the 71 female detainees I interviewed, 8 fell into this category. All were from the Central or Southern regions of Rwanda, i.e. Kigali, Gitarama or Butare. I was not able to identify any peculiarities pertaining to this group of interviewees and I therefore do not make any conclusions about them in this thesis. However, two questions that might be useful to explore in future research are whether Hutu women who were married to Tutsi men (or, equally, Hutu men who were married to Tutsi women) hold any different perspectives of the genocide than other genocide suspects, or how this category of persons is treated by their fellow detainees within the prisons.

⁷¹ Lewis, J. & Knight, J. *The Twa of Rwanda: Assessment of the Situation of the Twa and Promotion of Twa Rights in Post-War Rwanda*, Chadlington U.K., World Rainforest Movement, 1995, stating at 57-58: Although the majority of Twa knew and know very little about politics and current affairs of their country, they are easy to manipulate due to their poverty and the discrimination they suffer ... The political message was not what attracted the Twa, but rather the opportunity for food, some money and political protection.'

⁷² See Methodology, Annexure I below.

class divisions are so great that Rwanda's intellectual class have even been called Rwanda's 'fourth ethnic group.'⁷³ I will contend that in some cases class appears to have a correlation to the manner of women's participation in the genocide and, in particular, to the degree to which victimization explains their actions during the genocide. In almost all cases, it affects women's perceptions of the genocide and their willingness to confess to their crimes.

Finally, regional differences also came into play in Rwanda.⁷⁴ I will refer to apparent regional differences on occasions throughout this study, but it is not my goal to over-emphasize such distinctions. Rather, I believe that the many similarities between women's experiences of the genocide throughout Rwanda allow for the making of general conclusions about women's involvement in it, subject to certain distinctions linked to ethnicity and class, with less risk of essentialism than in many other feminist works.

In sum, I will argue throughout this study that the insights of feminist criminology have much to offer an analysis of women's participation in the Rwandan genocide. I draw from those insights, but I also recognize that the unique nature of the genocide might make the wholesale application of Western feminist theory to the topic inappropriate. Before discussing the results of my research in more detail, it is necessary to situate women accused of genocide in context. This contextual background requires an understanding of the status of women in pre-genocide Rwanda, the history of the Rwandan genocide and the legal response to it. It is to these matters that I now turn.

⁷³ Vidal, C., *Sociologie des passions: Rwanda, Côte d'Ivoire* (Paris, Éditions Karthala, 1991) at 28-44. Vidal identifies the characteristics of this 'ethnic group' (the 'elite'), which she claims developed in Rwanda after Independence as threefold: (1) adoption of a European lifestyle; (2) practice of the Christian religion, and (3) a total acceptance of the written version of history provided by European colonizers. *Ibid*, at 29. This group despised and ruptured from the rural masses in the search of modernity. *Ibid*, at 31.

⁷⁴ For a thorough analysis of the different ways in which populations responded to, and were affected by, the genocide, see *Death, Despair and Defiance*, *supra* note 11, especially Chapters 3, 7, 9 and 15.

B. Women in Pre-Genocide Rwanda

*Only by starting from the outside, with the social construction of gender, or with women's experiences of their total lives, or with the structure of the domestic space, can we begin to make sense of what is going on.*⁷⁵

Just as the Rwandan genocide cannot be explained in isolation from the political circumstances in which it took place,⁷⁶ understanding women's participation in the genocide requires an appreciation of gender relations in pre-genocide Rwandan society.⁷⁷ In this section I try to assist in building that gendered context, by exploring references to Rwandan folklore and discussing women's role within the family, in education and in economic and political life.

1. Rwandan Folklore

Although it has been almost 100 years since the written word was introduced in Rwanda, Rwandan society remains largely dependent on an oral history.⁷⁸ Rwandan folklore can therefore tell us a great deal about the values that have traditionally been admired in Rwandan women. I will argue later in this thesis that the expectations and perceptions of Rwandan women that are depicted in the following three tales, dating back to the pre-Colonial era, continue to influence the treatment of women accused of genocide.

The first of these women is Nyabunyana, who was a princess in the 15th century and the daughter of King Yuhi Gahima. As an act of diplomacy, Nyabunyana was sent by her

⁷⁵ Cain, M. 'Towards Transgression: New directions in Feminist Criminology', [1990] *International Journal of the Sociology of Law* 1, at 10.

⁷⁶ See Part I.C below.

⁷⁷ Many feminists are now highlighting the need to look outside traditional criminological discourse in order to understand female criminality. Cain calls this approach 'transgressive criminology', which she has developed because 'feminist criminology must explore the total lives of women, and there are no tools within existing criminological theories with which to do this.' Cain, *supra* note 75, at 10.

⁷⁸ League Rwandaise Pour la Promotion et la Défense des Droits de l'Homme (LIPRODHOR), Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG), *Procès de génocide au Rwanda : Deux Ans Après (Dec. 96 – Dec. 98)*, (Kigali, LIPRODHOR, 1999) [hereinafter *Deux Ans*], at 11. Diana Opar of UNIFEM made the same comment, during an interview with me in Kigali. She stated: I think that one of the real problems in Africa is that very little is written. Africans rely on an oral history. This is why so little has been documented by African women about their culture or the genocide.' Interview with Diana Opar, UNIFEM, Kigali, 14.6.01.

family to marry the King of a neighbouring State (now Tanzania). Rwanda was then occupied by a foreign power. Shortly before his death, the King sent his heir, Ndoli, to Tanzania to stay with his aunt Nyabunyana. Nyabunyana kept Ndoli secure until, following the death of the head of the invaders, she was able to take him back to Rwanda under military escort provided by her husband, and re-establish the reign of the monarchy.

Nyabunyana is celebrated for three services that she rendered to her country: her hospitality to the young Ndoli, in keeping him secure; her role in re-establishing legality in Rwanda, and her diplomacy, which led to a pact of non-aggression between Rwanda and Tanzania, concluded by Ndoli under Nyabunyana's advice. This pact led to a permanent alliance between the two countries and created a buffer for Rwanda from other aggressions to the east of the country.⁷⁹

Nyabunyana was no doubt a great ambassador for Rwanda, even if that role, at least initially, appears to have been imposed upon her by her family. As I will discuss elsewhere in this paper, however, the idea that Rwandan women are, or should have been, hospitable and diplomatic, even during genocide, seems to have influenced both the responses by women accused of genocide to the allegations against them, and the treatment of these women by the Rwandan justice system.⁸⁰

Another woman who is considered to have played a decisive role in Rwandan history is Ndabaga, who was the daughter of King Ndabarasa.⁸¹ As the King had no son, Ndabaga learned military exercises and amputated her breasts so that she resembled a man, then joined the army. When the King discovered his daughter's activities, he asked her for an explanation. Ndabaga explained that such steps were necessary, as the King had no male

⁷⁹ Muzungu, B. o.p. 'L'Heroïsme au Féminin', in *Cahiers Lumière et Société, Histoire IV No. 8, Dec. 1997*, (Butare, Rwanda, 1997) 43, at 50-53.

⁸⁰ In relation to women's hospitality, see Part II.B.1 below on confessions and part II.C.2 below on women's attempts to present themselves in court in the best possible light. In relation to the expectation that women be diplomatic, in particular, as advisors to their husbands, see Part II.C.1 below.

⁸¹ See Muzungu, *supra* note 79, at 46. Muzungu does not provide the era of Ndabarasa's rule in his text, although he refers to another version of the same story, whereby the events take place in the 18th century and Ndabaga is not the daughter of a King.

successor who could replace him in the army. The King then realized that he had to avoid at all costs bringing his country to a point at which even women had to bear arms in order to defend it. Thus, the dictum 'Rwanda has arrived at Ndabaga's', meaning 'in a situation of extreme difficulty'.⁸²

Rwandan historian, Father Bernadin Muzungu draws the following three messages from this story: Ndabaga's actions were heroic, worthy of imitating; her military successes prove that, despite popular opinion, women are not inferior to men; and women have particular traits: an enduring loyalty to their families and a logic of the heart that are not retractable.⁸³ Indeed, Ndabaga was loyal, but such loyalty took her to the point of extreme self-sacrifice and the consequent denial of her womanhood. Ironically, these sacrifices were made in vain, as it appears that the King was unhappy with her attempts to be like (as good as) a man, in order to please him. One gender issue that seems to be implicit in this story, therefore, is that loyalty is becoming in a woman, but should not require her to abandon her femininity. At a practical level, there is also a clear message that women should take up arms only as a last resort.

Probably the most famous woman in Rwandan history is Robwa, who is considered to be the first Rwandan national heroine.⁸⁴ According to history, or legend, as the case may be, Robwa was the sister of King Ruganzu Bwimba (1312-1345) and lived during a time when Rwanda was called Gasabo. Robwa agreed to accept a political marriage with Kimenyi, the King of Gisaka (a neighbouring State), on the advice of the Queen Mother and her uncle, but against the will of the King, who suspected Kimenyi's plans to annex Gasabo.

Robwa promised her brother that she would not give birth to a son as long as he had no heirs. After her marriage, however, Robwa fell pregnant and Gisaka also launched a war against Gasabo, during which King Ruganzu Bwimba was killed. Shortly thereafter, Kimenyi presented his pregnant wife with a drum, ostensibly to console her for the loss of

⁸² *Ibid.*, at 47.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, at 48.

her brother, but which was, in fact, the symbol of Kimenyi's dynasty and a declaration of his sovereignty over Gasabo. Robwa then pierced her stomach with the edge of the drum, thus committing suicide, as well as sacrificing the child in her womb.

Robwa and her brother King Ruganzu Bwimba are both considered great liberators of Rwanda; the first in a long list of martyrs of the Nation.⁸⁵ Muzungu explains that this martyrdom demands that 'blood must sometimes flow in order to protect Rwanda from annexation.'⁸⁶ On his interpretation, Robwa 'is courage and fidelity. She is the national heroine *par excellence* and without contest. She is the honour of Rwandan women' and should be the 'ideal' for today's women to imitate.⁸⁷ The message of martyrdom that Muzungu condones is chilling in light of the belief propagated during the Rwandan genocide that Rwanda was under threat of annexation by the Tutsi-controlled Rwandan Patriotic Front.⁸⁸ Moreover, according to the tales of both Ndabaga and Robwa, women will be celebrated for their preparedness to sacrifice themselves and their children for the good of the Nation. This leads to a question, to which I will return later: how far should women have been prepared to go in order to prevent the deaths of others during the Rwandan genocide?

2. Women's Role Within The Family

Many Rwandan and international organizations point to the patriarchal structure of traditional Rwandan society and to women's consequent inequality within the family.⁸⁹

⁸⁵ *Ibid.*, at 49.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, at 50. Muzungu goes on to say that the image of Robwa counters the humiliations suffered by Rwandan women and mothers during the genocide. *Ibid.* I must admit, I fail to see the logic in this argument.

⁸⁸ See Part I.C.4 below.

⁸⁹ See, for example : Réseau Des Femmes Ouvrant Pour Le Développement Rural, *Étude Sur L'Implication des Femmes dans les Instances de Prise de Décision*, Kigali, 1999 [*hereinafter Prise de Décision*] at 33-34; United Nations Food and Agriculture Organisation, *La Place de la Femme Dans Les Projets de Développement Rural: Le Projet d'Intensification agricole de Gikongoro au Rwanda, Etude de Case*, F.A.O., Rome, 1991 [*hereinafter FAO Study*], at 7; Government of Rwanda, Ministry of Gender and Promotion of the Family, *Projet « Enquete Socioculturelle sur les Attitudes, les Pratiques, les Croyances en Rapport avec la Genre » Grandes Tendances Socio-Culturelles : Resultats de la Recherche Documentaire et des Interviews*, Centre Gasabo, November 1999, [*hereinafter Grandes Tendances*], at 4; *Shattered Lives*, *supra* note 11, at 19.

These organizations refer to popular Rwandan dictums such as 'the hen does not crow with the cocks';⁹⁰ 'in a home where a woman speaks, there is discord',⁹¹ and 'a woman's only wealth is a man'⁹² as appropriate characterizations of the subordinate position of Rwandan women to men. The Rwandan man is viewed as the natural head of the family (this position being cemented in law, in the Rwandan *Family Code*)⁹³; a symbol of strength and protection.⁹⁴ He makes all major decisions⁹⁵ and is admired for his bravery, courage, power and lucidity.⁹⁶

By contrast, the Rwandan woman is described as the symbol of 'fertility and weakness'.⁹⁷ She is respected for her roles as wife and mother and her fertility is considered to be her primary quality.⁹⁸ She is all the more respected when she bears several children, especially if they are boys.⁹⁹ (Rwanda's fertility rate, as at 1992, was one of the highest

⁹⁰ Muzungu, *supra* note 79, at 43. NB: Translation from Kinyarwanda (*Inkokokazi ntibika mu masake*) provided by Leo Kalinda, Montreal, 26.11.01. A slightly different version of this dictum is provided in *Prise de Décision*, *supra* note 89, at 34 (*Ntankokokazi ibika isake ihari*: 'The hen does not sing in front of the cock.')

⁹¹ Avega "Agahozo", *supra* note 11, at 32.

⁹² *Grandes Tendances*, *supra* note 89, at 13.

⁹³ Article 206 of the *Rwandan Family Code* (Law No. 42/1998, of 27/10/98) provides that 'a man is the natural head of the household and as head of the union his opinion prevails.' HAGURUKA, a Rwandan NGO working in the field of women's and children's rights, argues that this law should be revised in order to ensure equal rights between spouses. Email communication from Rose Mukantabana, National Executive Secretary, Haguruka, 23.10.01. Women's subordination to men was also recognized in Rwandan divorce law. Until 1998, the grounds of divorce available to Rwandan men were much wider than those available to women. A Rwandan man could seek a divorce on the grounds of his wife's adultery or sterility, her bad house-keeping or child rearing, or a public show of lack of respect by her towards him. The grounds of divorce available to women were limited to serious insult, excessive control over family resources, abandonment of the family or the transmission to her by her husband of a sexually transmitted disease. Further, a divorced woman had no right to keep her children, who were considered to belong to their father's family. After her divorce, the woman was forced either to return to her family of origin, where she was usually unwelcome, or to manage on her own. A widow also lost all rights over her children if she decided to remarry outside the family of her first husband. *Grandes Tendances*, *supra* note 89, at 10-11, and *Prise de Décision*, *supra* note 89, at 34. The new *Family Code*, which came into force 4 years after the genocide (see *supra*, this note) provides equal grounds for divorce between spouses. Email communication from Rose Mukantabana, *supra*, this note.

⁹⁴ *FAO Study*, *supra* note 89 at 7.

⁹⁵ *Prise de Décision*, *supra* note 89, at 34.

⁹⁶ *Grandes Tendances*, *supra* note 89, at 13.

⁹⁷ *FAO Study*, *supra* note 89 at 7.

⁹⁸ *FAO Study*, *ibid*; *Grandes Tendances*, *supra* note 89 at 12; *Prise de Décision*, *supra* note 89, at 33-34; *Shattered Lives*, *supra* note 11, at 19; and *Rapport National Du Rwanda aux Nations Unies pour la Quatrième Conférence Mondiale Sur Les Femmes, September 1995, Beijing (Chine)*, Kigali, 1995. [hereinafter *Report to Beijing*], at 12.

⁹⁹ *FAO Study*, *supra* note 89 at 7.

in the world, at 6.2.)¹⁰⁰ On the other hand, if a woman does not produce any children, her husband has the right to take another wife or repudiate her.¹⁰¹ A Rwandan woman's responsibilities include educating the children, welcoming visitors, managing the household, advising her husband and maintaining traditions.¹⁰²

Physical and sexual violence against women, a topic that received much publicity after the Rwandan genocide,¹⁰³ was also known to exist prior to the genocide.¹⁰⁴ It has, for example, been reported that in traditional Rwandan society:

From a young age, the [Rwandan] girl is educated in resignation, submission and discretion... She experiences different forms of violence that she does not discuss... If a man beats his wife, she will not speak of it until she has really had enough, then she will denounce him...

According to tradition, physical violence is perceived as a punishment. In most cases, women accept it as such ... The inferior status of the woman [and] her ignorance encourage her into submission and expose her to rape and sexual services ... A woman must accept all sexual advances from her husband as well as her male in-laws and her husband's friends...

*Women also suffer from psychological violence ... insults, arrogant words and provocation (gucyulirana). The woman is obsessed by the behaviour that is expected of her. She suffers from a total dependence on her husband.*¹⁰⁵

One weakness with such reports is that they fail to analyze the extent to which 'traditional' values' continue to impact upon Rwandan society, either immediately prior

¹⁰⁰ Report to Beijing, *supra* note 98, at 6.

¹⁰¹ *Prise de Décision*, *supra* note 89, at 34, and Seruka, *Travail de Recherche Sur le Role de la Femme Rwandaise Dans les Mecanismes Traditionnels de Resolution des Conflits Initie par le Collectif Pro-Femmes / Twese Hamwe et Realisé par l'Association Seruka*, Kigali, 1999, at 14. Socially, there are no infertile men in Rwandan society: *Grandes Tendances*, *supra* note 89, at 12.

¹⁰² *Grandes Tendances*, *supra* note 89 at 12.

¹⁰³ See, for example, reports referred to at *supra* note 11.

¹⁰⁴ *Grandes Tendances*, *supra* note 89, at 19; Avega *supra* note 11, at 32, and Report to Beijing, *supra* note 98, at 67-69.

¹⁰⁵ *Grandes Tendances*, *ibid*, at 19-20. Interestingly, this same document states that '[n]evertheless, it is not admissible to beat one's wife and those who do so are badly viewed, as it is considered a dishonor to the family.' (*Ibid*, at 19.) This should be contrasted with the report prepared by the Rwandan government for the Beijing Conference on Women in 1995, which states that 'Custom provides that a woman can be beaten by her husband and the woman must accept it. There are even Rwandan proverbs to the effect that a woman who has not yet been beaten is not a real woman. Mothers advise their daughters never to complain if they are beaten, or they will have trouble being a good housewife.' Report to Beijing, *supra* note 98, at 68.

to the genocide or until today.¹⁰⁶ Without disputing the existence of patriarchy in Rwandan society, nor the continuation of violence against Rwandan women by men,¹⁰⁷ the image of a woman who 'suffers from the total dependence on her husband' is difficult to reconcile either with statistics that show that prior to the genocide up to 25% of households were headed by women,¹⁰⁸ or the active participation of some women in the genocide independent of their husbands.¹⁰⁹

Even the historical depiction of Rwandan women has been challenged to some extent by both the current Rwandan government and certain Rwandan women's NGOs, which contend that gender relations within the 'traditional' Rwandan family were more equal than is often acknowledged.¹¹⁰ In particular, they emphasize the role that women have

¹⁰⁶ According to the Rwandan government's *National Gender Policy* dated March 2001, '[t]here is practical evidence that women and men are becoming increasingly aware of the need for a shift in gender perceptions and roles. For example, women and men have now assumed non-traditional roles... Rwandan men are also gradually taking over some childcare roles and other roles previously considered to be women's roles.' *National Gender Policy: A Revised Final Draft Submitted by E.C.A. / E.A. -S.R.D.C.*, March 2001, Kigali [hereinafter *National Gender Policy*] at 10. One shortcoming in this document is that it does not analyze either the extent of this phenomenon, nor its possible causes. For example, to what extent are these non-traditional roles the result of recent events in Rwanda, such as the influence of women returning to Rwanda from exile or the imposition of new responsibilities as a result of the genocide? See Avega, *supra* note 11, at 33.

¹⁰⁷ See *National Gender Policy*, *supra* note 106, at 18, which states that '[g]ender based violence is still a serious problem in Rwanda and manifests in many ways, namely psychological and physical, verbal and economic. Cases of rape, assault and defilement are on the increase with the age of the victim getting lower over the years.' Also see "Agahozo", *supra* note 89, at 37-42, especially at 42: 'Violence against women exists everywhere in the world ... Rwanda has and still is experiencing this phenomenon.'

¹⁰⁸ United Nations Development Program (UNDP) *Common Country Assessment - Rwanda: Gender*, 1999, unpublished (on file with author), at 3 (citing figures as at 1990/91). This figure might be overestimated, at least nation-wide. According to a report in 1990 by the Ministry of Agriculture (MINAGRI), 22% of households in *rural areas* as at 1990 were headed by women. MINAGRI report, as cited in Réseau des Femmes, *Profil Socio-Économique de la Femme Rwandaise*, Kigali, May 1991 [hereinafter *Profil Socio-Économique*], at 48. This statistic was broadly defined, to include women who were: widows; separated or divorced; in polygamous relationships (and who must effectively manage alone); young unmarried mothers; or left alone following the absence of their menfolk, especially to the city. *Ibid.* at 9, 25 and 48.

¹⁰⁹ See generally Part II.A below. In very few cases did my interview participants say that their husbands were accused of involvement in the same crime as them, even if they were also in prison.

¹¹⁰ For example, the Rwandan government claims that: '[h]istorically, there are many cases to show that although men largely played a dominant role in the Rwandan society, some positive tendencies existed within the Rwandan culture that reinforced women's social role and ensured their autonomy. For example, women played a pivotal role in the management of household resources and participated in decision making at different levels. In the traditional Rwandan society, the roles of women were accorded proportionate value and considered to be complementary in nature.' *National Gender Policy*, *supra* note 106, at 13. The same policy document states that 'gender discrimination and subsequent inequalities have been exacerbated by ... Colonialism'. *Ibid.* It is hard to see what there was to exacerbate, if gender relations were equal in pre-Colonial times! As another example, the Rwandan women's NGO, Seruka, also claims that in traditional Rwandan society 'women managed household goods and men could not do anything without

‘traditionally’ played as advisor to their husbands, even if this role had to remain discrete and was not publicly acknowledged.¹¹¹ Women’s NGOs in Rwanda working to encourage the participation of women in the gacaca courts as judges, witnesses and civil claimants, and in the maintenance of peace generally throughout the country, are currently highlighting this role as a potentially positive social force.¹¹² The risk for women is that such a focus could backfire, thus igniting debate as to whether women should have played their ‘true role’ during the genocide and prevented their husbands, brothers or sons from participating in it.¹¹³

3. The Education Of Girls

Secondary school enrolment rates in Rwanda for both boys and girls are very low compared to Western countries, but they are even below average for Sub-Saharan Africa.¹¹⁴ Rwandan girls remain under-represented at every level of the Rwandan education system.¹¹⁵ Flowing from the perception that their proper role is to get married

consulting their wife. Likewise, women could not make any decision regarding household management without consulting their husband. [However], women who bypassed this rule were considered difficult or disagreeable, and it was said that a disagreeable woman was no different from a billhook – both are destructive.’ Seruka, *Travail de Recherche Sur le Role de la Femme Rwandaise Dans les Mecanismes Traditionnels de Resolution des Conflits*, Kigali, 1999, at 14. (NB: A billhook is a small cutting or pruning tool with a hooked blade.) Avega, however, claims that in pre-Colonial society the education of girls centered on the qualities of being a good wife and pleasing her husband, especially sexually; girls who fell pregnant prior to marriage were drowned, and girls were subjected to forced marriages negotiated between the families. Avega, *supra* note 11, at 32-33. NB: Avega reports that this latter practice still exists in some areas in Rwanda and that a woman had to marry her husband’s brother or father if her husband dies. See *ibid.*, at 38-39.

¹¹¹ Seruka, *supra* note 110, at 14.

¹¹² *Ibid.*, at 23.

¹¹³ See Part II.C.1 below.

¹¹⁴ According to United Nations statistics, as at 1991, only 2% of Rwandan children have access to secondary education. *FAO Study*, *supra* note 89, at 15. UNDP noted that Rwanda’s gross secondary school enrolment rate as at 1998 of 7% was far below the Sub-Saharan average of 26%. UNDP, *supra* note 108, at 7.

¹¹⁵ According to UNDP, gross primary school enrolment as at 1998 was 96% for boys and 82% for girls (i.e. quite high). *Ibid.*, at 3. However, it is reported that secondary school enrolment rates were much lower: 14.9% for boys, and 11.5% for girls as at 1996. UN AIDS / Economic Commission for Africa, *AIDS in Africa Country by Country*, African Development Forum 2000, Geneva, October 2000, citing UNESCO data. According to UNIFEM, official school inscription rates usually overestimate the level of girls in education because school enrolment rates do not show: (1) actual *attendance* rates, which are often lower for African girls than boys; (2) the *quality* of education received by girls, which is often based on stereotypes that perpetuate inequality between the sexes; or (3) the level of education when students leave school. See United Nations Development Fund for Women (UNIFEM), *Le Progrès des Femmes à Travers le Monde, 2000: Rapport Biennal*, at 67. Regarding the first of these points, the following reasons have

and serve their in-laws, for many years the education of girls in Rwanda was not treated as a priority. Indeed, it was considered by many that to pay for a girl's education was a waste of money.¹¹⁶

Significant reforms were introduced into the Rwandan school system in 1979, which included increased attention to the education of girls.¹¹⁷ However, during the 1980s, the content of girls' education often still focused on learning home-making skills¹¹⁸ and the virtues of obedience and selflessness.¹¹⁹ Another barrier towards the education of girls in Rwanda, as elsewhere in Africa, was the ongoing belief that women who studied become too rebellious, promiscuous and independent.¹²⁰ Some young African men feared marrying a girl who was more educated than them.¹²¹ In light of these social pressures, it is not surprising that after primary school most girls either returned home to work on the land or married early.¹²²

By 1990/1991, girls officially represented approximately half of primary school students,¹²³ one third of secondary school students¹²⁴ and one fifth of University students.¹²⁵ Nevertheless, women still suffered from especially high rates of illiteracy, especially in rural areas. As at 1991, 70% of rural Rwandan women were reported to be illiterate, as against 50% of rural men.¹²⁶ Logically, women who were of secondary

been provided for the low school attendance rates of African girls: early marriage or pregnancy, expectations upon girls to help in the home, an inability to see the relevance of the education of girls to their future, the burden of school fees (and the preference for the allocation of scarce financial resources to the education of boys); and the poorer nutritional status of girls than boys, so that it is harder for girls to stay alert and concentrate. African Centre for Women, *Occasional Paper No. 1, Traditional and Cultural Practices Harmful to the Girl-child: A Cross Sectional Review*, Addis Ababa, 1997 [**hereinafter Occasional Paper**], at 37, and *National Gender Policy*, *supra* note 106, at 20.

¹¹⁶ *Grandes Tendances*, *supra* note 89, at 8.

¹¹⁷ *Ibid.*, at 7.

¹¹⁸ *Report to Beijing*, *supra* note 98, at 13.

¹¹⁹ *FAO Study*, *supra* note 89, at 7. It is notable that these are both values that are celebrated in the Rwandan folklore, discussed above.

¹²⁰ *Grandes Tendances*, *supra* note 89, at 8, and *ECA Occasional Paper*, *supra* note 115, at 37.

¹²¹ *Grandes Tendances*, *ibid.*, at 8.

¹²² UNDP, *supra* note 108, at 7.

¹²³ 47.6%, according to UNDP, *ibid.*, at 3.

¹²⁴ 38.9%, according to UNDP, *ibid.*

¹²⁵ 21.5%, according to UNDP, *ibid.* I refer back to the comment in *supra* note 115, regarding the need to be wary of any statistics based on school enrolment, rather than attendance rates.

¹²⁶ *FAO Study*, *supra* note 89, at 15. Data for national illiteracy rates varies enormously, but there is always a discrepancy between women and men. For example, according to one government statistic, as at

school age prior to the educational reforms of the 1980s, that is, women who were over 30 years old at the time of the 1994 genocide, are the most likely not to have benefited from a secondary education. This observation was confirmed in my research with women in the Rwandan prisons, the majority of whom were illiterate, or had very low levels of education.¹²⁷

4. Women's Economic Situation

On the eve of the genocide in 1994, Rwanda was classified as one of the poorest countries in the world, with 53% of Rwandan households living below the poverty line.¹²⁸ Yet, poverty was not experienced equally by both sexes, as women were its principal victims.¹²⁹ The 'feminization of poverty' in Rwanda is at least partly attributable to women's family responsibilities and their relatively low level of education, as discussed above. It was also compounded by discriminatory laws that denied property rights for women¹³⁰ and restricted women's participation in the labour market.¹³¹ Women's lack of

1990/1991, only 28% of Rwandan women and 17% of Rwandan men were illiterate. *Report to Beijing*, *supra* note 98, at 45. On the other hand, a report by Rwandan NGO Réseau des Femmes lists illiteracy rates among women for the same year (1990) at 56.6%. *Profil Socio-Économique*, *supra* note 108, at 15. According to the 1996 *National Socio-demographic Survey in Rwanda*, 56% of the Rwandan population overall was illiterate, of which 52% were women and 48% were men. As cited in UNDP, *supra* note 108, at 7. The Rwandan government has noted two factors that constrain women's literacy in Rwanda: Rwandan culture, which tends to limit women's role to that of housewife (which she is supposed to be able to conduct without needing to read or write) and a lack of time, because of her heavy domestic responsibilities. *Report to Beijing*, *supra* note 98, at 47.

¹²⁷ See *infra* note 302.

¹²⁸ UNDP, *supra* note 108, at 2. Also see *Report to Beijing*, *supra* note 98, at 12 (citing the fact that Rwanda was listed among the 25 poorest countries in the world in the 1980s). The overall economic situation in Rwanda has deteriorated even further since the genocide. By 1997, 70% of households were living below the poverty line: UNDP, *supra* note 108, at 2.

¹²⁹ *Report to Beijing*, *supra* note 98, at 29.

¹³⁰ Until 1999, a Rwandan woman had no right to inherit land or property. Upon the death of her husband, a widow was entitled only to a right of usage (usufruct) over her the marital property. Even this right was lost if she decided to remarry outside the family of her first husband. See *Grandes Tendances*, *supra* note 89 at 11 and 15; *Réseau des Femmes*, at 37, and *FAO Study*, *supra* note 89, at 7. Law no. 22/99, of 12/11/99 instituted new regimes for marriage, succession and inheritance. This law granted equal rights of succession and inheritance to boys as to girls, and allowed spouses to select from a range of succession arrangements between them. Email communication from Rose Mukantabana, *supra* note 93.

¹³¹ For example, the Rwandan *Commercial Code* provides that a woman may not engage in commercial activity, including employment, without the express authorization of her husband. However, Article 212 of the new *Family Code* of 1998 effectively abrogates this provision. That article provides that 'marriage does not modify the civil capacity of spouses. Their powers may only be limited by law and their matrimonial regime.' Article 213 of the same law provides the 'Each person has the right to exercise a profession, industry or business without the consent of his spouse unless there is a regime of community of wealth.'

property rights also severely limited their ability to access credit and other means of investment.¹³²

As at 1991, women were conducting 65-70% of agricultural work in Rwanda, including heavy work such as carrying water and firewood.¹³³ Yet, Rwandan women did 'not possess and [did] not have the capacity to control natural, economic and social resources. They [we]re working on family farms in the service of household food production.'¹³⁴ Given that many Rwandan women were significantly poor immediately prior to the genocide, a question to which I will return is whether poverty motivated some women to participate in the genocide.¹³⁵

5. Participation in political life

*The Rwandan woman is absent from political life, where social and political decisions are made. She stays inside the home and therefore cannot participate in public debates ... She finds herself facing exploitation and dependency vis-à-vis her husband, her father, her brother and her parents-in-law and she cannot take any decision for herself.*¹³⁶

This characterization of Rwandan women, while overly simplistic, represents many aspects of women's experiences in pre-genocide Rwanda. In particular, while women, were not completely 'absent from political life', they were certainly under-represented in

The *Employment Code* also prohibits the employment of women in any manufacturing job that requires her to work at night. There is some controversy among women's rights advocates in Rwanda about this provision. Some are in favor of maintaining this Article, in the name of positive discrimination. Others view it as a restriction on women's access to employment. Email communication from Haguruka, *ibid*.¹³² *Profil Socio-Économique*, *supra* note 108, at 13 and 64. As at 1990, the *Banques Populaires* allocated only 5% of their loans to women. It is believed that the actual usage by women of these funds was limited, as many women took loans on behalf of their husband. *Ibid*, at 65-66.

¹³³ *FAO Study*, *supra* note 89, at 9. NB: Women's economic position deteriorated after Rwandan independence (or following the advent of Colonialism, depending on the source) and the introduction of a monetary economy. This change reportedly led to a strict division of labor, whereby women were relegated to subsistence farming, while men took responsibility for cash crops and the income that resulted from their sale. *FAO Study*, *ibid*. Also see UNDP, *supra* note 108, at 8, *National Gender Policy*, *supra* note 106, at 13 and *Prise de Décision*, *supra* note 89, at 34.

¹³⁴ UNDP, *supra* note 108, at 8.

¹³⁵ I will return to this question in Part I.B.2(c) below.

¹³⁶ *Prise de Décision*, *supra* note 89, at 35-36, citing two 'realities' revealed by an analysis by Rutazana (1997).

Rwandan politics. Women achieved no leadership positions under Colonialism,¹³⁷ and under the First Republic in independent Rwanda¹³⁸ there was only one female government minister.¹³⁹ Women's representation was higher in parliament, where, as at 1990, there were 12 female members of parliament, of a total of 70.¹⁴⁰ Three female government ministers were appointed in 1992,¹⁴¹ but there remained very few women in local leadership positions. Immediately prior to the genocide in 1994, there were also still no women Prefects or Bourgmestres (mayors),¹⁴² and as at 1990, women represented only 1% of Conseillers (leaders at the sector level): 17 out of 1,472.¹⁴³

The current Rwandan government, as well as local and international women's organizations, list the following barriers to the greater participation of Rwandan women in political life: poverty; family responsibilities; low level of education and high levels of illiteracy; discriminatory attitudes and practices; a lack of self-confidence and a lack of socialization for leadership.¹⁴⁴ As to socialization, UNDP claims that '[w]omen by

¹³⁷ Under the Colonial administration, the special schools created for chief administrators were exclusively reserved for men, while women were trained in house-keeping. The current Rwandan Ministry of Gender and Women's Promotion attributes Rwandan women's 'inferiority complex' and associated belief that they do not have the capacity for leadership to this period. In the fight for independence, women were solicited to participate in political parties and to vote, although it has been alleged that men often imposed their political choice upon women. *Grandes Tendances*, *supra* note 89, at 26.

¹³⁸ See Part I.C.3 below for a discussion of Kayibanda's First Republic.

¹³⁹ This was Madeleine Ayinkamiye, Minister of Family Affairs. Avega, *supra* note 11, at 33.

¹⁴⁰ *Profil Socio-Économique*, *supra* note 108, at 4, and *Report to Beijing*, *supra* note 98, at 14 (same statistics, citing different sources).

¹⁴¹ These 3 women were Agathe Uwilingiyimana, Pauline Nyiramasuhuko and Agnes Ntamabyaliro, Prime Minister (originally Minister of Primary and Secondary Education), Minister of Family Affairs & Women's Development and Minister of Justice respectively. All are discussed below in this section of the thesis. These 3 women represented 16% of government ministers at the time: 3 from a total of 19. *Report to Beijing*, *supra* note 98, at 66.

¹⁴² *Prise de Décision*, *supra* note 89, at 38 (citing statistics as at 1992). But see *infra* note 161, regarding Prime Minister Agathe Uwilingiyimana's hope to appoint female Bourgmestres; a goal she was unable to achieve prior to her death in 1994.

¹⁴³ *Profil Socio-Économique*, *supra* note 108, at 4, and *Report to Beijing*, *supra* note 98, at 15 (same statistics, citing different sources). NB: Rwanda's administrative structure is as follows: The country is divided into 12 Prefectures (now called Provinces), each headed by a Prefet. Within each Prefecture, there are Communes (now called Districts), headed by a Bourgmestre (Mayor). Communes are in turn divided into Secteurs, headed by a Conseiller. Within each Secteur, are numerous Cells, the responsibility for which lies with leaders called Responsables.

¹⁴⁴ *Prise de Décision*, *supra* note 89, at 38 & 60; *Profil Socio-Économique*, *supra* note 108, at 22; *National Gender Policy*, *supra* note 106, at 14; Economic Commission for Africa, *African Women's Report 1998: Post-conflict Reconstruction in Africa: A Gender Perspective*, Addis Ababa, 1999, [hereinafter *African Women's Report*] at 45, and Economic Commission for Africa, *The Regional Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women* (Period:

Rwandese culture are supposed to be submissive and did not feature in leadership and decision making by the socialization process.¹⁴⁵ It also notes the:

*still prevalent cultural perspective that categorizes men as providers and leaders and, and [sic] women as helpers and followers. Consequently, women's participation in governance, and the development process is still insignificant. Decision-making is still predominantly a male domain.*¹⁴⁶

Despite this reality, there have been some powerful women throughout Rwandan history, who challenge the notion that no Rwandan woman can 'take any decision for herself'.¹⁴⁷ The Queen Mothers in pre-Colonial Rwandan society, for example, held substantial influence over Rwandan politics as advisor to the King. Some early European explorers even spoke of Rwanda as a territory ruled by a Queen.¹⁴⁸ One of the most famous Rwandan Queen Mothers was Kanjogera, who was the wife of King Rwabugiri, a particularly powerful King who lived at the end of the late 19th century.¹⁴⁹ After King Rwabugiri's death, Kanjogera and her brother managed to engineer a *coup d'état* and put her own son, Musinga, on the throne in place of Rwabugiri's designated successor.¹⁵⁰ Kanjogera then continued to play a substantial role in Rwandan politics, negotiating directly with the Colonial authorities.¹⁵¹ Rwanda expert Gerard Prunier describes Kanjogera as 'King Musinga's terrible mother, the real power behind the throne.'¹⁵²

2000 – 2004), Sixth African Regional Conference on Women, Mid-Term Review of the Implementation of the Dakar and Beijing Platforms for Action, November 1999, at 6.

¹⁴⁵ UNDP, *supra* note 108, at 4.

¹⁴⁶ *Ibid*, at 9.

¹⁴⁷ *Supra* note 136, and accompanying quotation.

¹⁴⁸ Taylor, C. *Sacrifice as Terror: The Rwandan Genocide of 1994* (New York, Berg, 1999) at 179, note 8. Seruka lists 3 famous Queen Mothers, as well as commanders and sub-chiefs in Rwandan history. Seruka, *supra* note 110, at 16. Some Rwandans argue, however, that the Queen Mother's role was not independent to that of the King, so that when he died she usually completely lost her powers (except, it appears, in the case of Kanjogera, discussed above). *Grandes Tendances*, *supra* note 89, at 25. Moreover, no other woman aside from the Queen Mother could intervene in the administration of the monarchy. Avega, *supra* note 11, at 32.

¹⁴⁹ See discussion of King Rwabugiri's role in encouraging ethnic divisions in Rwanda in Part I.C.1 below.

¹⁵⁰ Prunier, G. *The Rwanda Crisis: History of a Genocide*, (New York, Columbia University Press, 1995), at 23-25.

¹⁵¹ See Rumiya, J. *Le Rwanda Sous le Regime Du Mandat Belge (1916 – 1931) : Racines du Présent*, Harmattan, Paris, 1992, at 172. NB : In Rumiya's text, he uses Kanjogera's other name, Nyirayuhi.

¹⁵² Prunier, *supra* note 150, at 86. Rumiya also states that 'All the authority was theoretically in the hands of the King Musinga, but in practice, power was monopolized by the Queen Mother and her brothers.' Rumiya, *supra* note 151, at 134.

Almost a century later (and, as mentioned above, with few women in leadership roles in between),¹⁵³ three Rwandan women held positions as government ministers. One of these women, Agathe Uwilingiyimana, became Minister for Primary and Secondary Education in 1992, and was appointed to the rank of Prime Minister in July 1993.¹⁵⁴

Uwilingiyimana was consistently at odds with the pre-genocidal government, which, at one point, forced her resignation.¹⁵⁵ After an extensive propaganda campaign against her, including a rumour that she was planning to stage a *coup d'état*,¹⁵⁶ she became one of the first victims of the genocide, killed by the Presidential Guard on 7 April 1994 at the age of 40.¹⁵⁷

Uwilingiyimana has recently been named as a national hero in post-genocide Rwanda¹⁵⁸ and her biography has been written.¹⁵⁹ Also nicknamed 'the rebel',¹⁶⁰ Uwilingiyimana was a determined leader, who is particularly renowned for her promotion of the rights of women and the girl-child and her fight against ethnic and sexual discrimination.¹⁶¹ She is nonetheless represented in a rather ambiguous manner in her biography. Although she is

¹⁵³ See *supra*, note 137 and accompanying text.

¹⁵⁴ Agathe Uwilingiyimana was a maths teacher from 1976 to 1983. She obtained a Bachelor of Science in Chemistry at the National University of Rwanda in 1985, then taught chemistry for four years. In 1989, she was appointed Director of Small and Medium Industries in the Ministry of Commerce. She held this position until she was appointed government Minister in 1992. Forum for African Women Educationalists (FAWE – Rwanda Chapter), *Agathe Uwilingiyimana: The Rebel. A Biography of the Former Rwandese Prime Minister Assassinated on 7/4/1994*, First Draft, February 2000, Kigali, [hereinafter *FAWE*], at 13.

¹⁵⁵ Uwilingiyimana immediately denounced this resignation as being made under threat, and therefore null and void. *Ibid*, at 34.

¹⁵⁶ See Chrétien, J-P *et al*, *Rwanda: Les Médias du Génocide* (Paris, Éditions Karthala, 1995) especially at 62, 256, 336 and 368, and *FAWE*, *supra* note 154, at 34-35.

¹⁵⁷ *FAWE*, *ibid*, at 36-39. Also see Human Rights Watch, *Leave None to Tell the Story*, online, www.hrw.org/reports/1999/rwanda/Geno15-8-03.htm, (date accessed 6.11.01), 'The Month That Would Not End' (under sub-heading 'Bagasora in Command').

¹⁵⁸ The Rwanda Herald, 17-23.9.01, 'Rwigema, Ex-King Rudahigwa, Uwilingiyimana named heroes', Kigali.

¹⁵⁹ *FAWE*, *supra* note 154 generally.

¹⁶⁰ This is the subtitle of the biography about Agathe Uwilingiyimana, and was the characterization given to her by Rwandan men. *Ibid*, at 17.

¹⁶¹ *Ibid*, at 4. For example, as Minister for Education, Uwilingiyimana abolished the ethnic quota system in schools, encouraged girls to pursue science subjects and to continue onto University and increased the representation of women in decision-making positions in her department. *Ibid*, at 25-26 and 21 respectively. Also see Prunier, *supra* note 150, at 145 (regarding the abolition of ethnic quota system in schools). As Prime Minister, one of Uwilingiyimana's main goals was to appoint female bourgmestres, a goal which she was unable to achieve before her death. *FAWE*, *supra* note 154, at 22. Agathe also founded the women's association, *Seruka* (meaning 'show me'). *Ibid*, at 20.

described as being 'brighter than her husband',¹⁶² 'uncompromising and without inhibition; a modern woman',¹⁶³ this image is tempered by statements such as 'although she was combative, she remained prudent as Rwandese culture required',¹⁶⁴ and she 'stood her ground when she knew she was right, but when unsure, her feminine side would appear and men appreciated her for this.'¹⁶⁵ Even one of the most powerful woman in the country could therefore not avoid culturally constructed stereotypes of the 'ideal' Rwandan woman. I will argue later in this thesis that such depictions also have ongoing significance for women accused of genocide in Rwanda.¹⁶⁶

At least three other women held political power, both prior to, and during, the Rwandan genocide. First, there was the former 'First Lady', Agathe Kanzinga. She was nicknamed Kanjogera, after the famous Queen Mother discussed above, and by all accounts, she was a 'very powerful woman'.¹⁶⁷ Kanzinga is now on the list of principal genocide suspects, but is believed to be living freely in either France or Kenya. Two other women have not been so lucky. Pauline Nyiramasuhuko and Agnes Ntamabyaliro, former Minister of Family Affairs and Women's Development and Minister of Justice respectively, are both in prison, charged with genocide and crimes against humanity. I will discuss the level of power that these two women apparently wielded in Rwanda, in Part II of this thesis.¹⁶⁸ For now, let us take a step back and consider a history of the Rwandan genocide, focusing more on questions of ethnicity than gender.

¹⁶² *Ibid.*, at 13.

¹⁶³ *Ibid.*, at 19.

¹⁶⁴ *Ibid.*, at 6. This is a particularly interesting comment, in light of the fact that Uwilingiyimana was pregnant at the time of her marriage in 1976, having refused to have an abortion. One of her first decisions as Minister of Education was to allow unwed mothers to continue their education. *Ibid.*, at 21.

¹⁶⁵ *Ibid.*, at 18.

¹⁶⁶ See, for example, my discussion at II.C.2(b) regarding the efforts made by female Army Major Marie Nyirahakizima.

¹⁶⁷ Alice Karekezi, Director of Human Rights, Justice & Government Program, Centre for Conflict Management, National University of Butare, personal discussion, 4.6.01.

¹⁶⁸ See Part II.A.1(a) in relation to the accusations against Nyiramasuhuko, and *infra*, note 310 for a brief discussion of the accusations against Ntamabyaliro. On the question of power, see Part II.C.2(a).

C. A History of the Genocide

Genocide is the most heinous of crimes, involving an attempt to destroy an ethnic group through all available means.¹⁶⁹ In the Rwandan genocide, which began in April 1994, the targeted group was the Tutsi minority, which constituted approximately 14% of the population at that time.¹⁷⁰ The means to ensure their elimination ranged from arming soldiers, police and local militia groups to inciting the population through an extensive, State-sponsored propaganda campaign. Murder instruments included guns, grenades, nail-studded clubs (*masus*), machetes (*pangas*), hoes and blocks of wood. Tutsis were also buried and burned alive, while others were thrown into rivers. As with the conflict in

¹⁶⁹ The term genocide has a specific legal definition. As described in the Statute of the International Criminal Tribunal for Rwanda, 'Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. Statute of the International Criminal Tribunal for Rwanda, Annex to United Nations Security Council Resolution 955 (1994) U.N. Doc S/RES/955, online ICTR, 'Basic Legal Texts', www.un.org/ict/english/Resolutions/955e.htm (Date accessed 14.3.99). [hereinafter *ICTR Statute*], Article 2(2). Tutsis have been defined as an ethnic group for the purposes of the definition of genocide, even though to talk of 'ethnicity' in Rwanda is, according to the traditional criteria, an anomaly. The features of ethnicity in anthropological terms are distinct language, territory, religion, and culture. Yet in Rwanda, as in three other African States, all three 'ethnic' groups – the Hutu, Tutsi and Twa – speak the same language, share the same territory, worship the same Gods, have similar ways of life (although the Twa have certain additional cultural practices) and are members of the same clans. The three groups are known collectively as 'Banyarwanda', Eastern Africa's largest 'tribe' or ethnic group. See: Eller, J. *From Culture to Ethnicity to Conflict: An Anthropological Perspective on International Conflict*, University of Michigan Press, Ann Arbor, 1999, at 197-199 and Lewis and Knight, *supra* note 71, at 21. In this thesis, I adopt a broader, social science definition of 'ethnicity', as a subjective consciousness of difference. I draw this definition primarily from Eller's definition of ethnicity as 'consciousness of difference and the subjective salience of that difference'. Eller, *ibid* at 9. Alison Desforges, an expert witness in the *Akayesu* trial at the ICTR, provided a similar definition of ethnicity. She said that: 'The primary criterion for [defining] an ethnic group is the sense of belonging to that ethnic group.' *Akayesu Judgment*, *supra* note 12, para. 171. This definition was adopted by the tribunal. See *ibid*, at para 172. See also *The Prosecutor v Alfred Musema*, ICTR-96-13, 'Judgment', 27 January 2000, online: www.icttr.org/english/cases/Musema/ (date accessed: 28 Apr 2001) [hereinafter *Musema Judgment*] at para 928.

¹⁷⁰ It is commonly accepted that at the time of the genocide, the ethnic breakdown in Rwanda was: 85% Hutu, 14% Tutsi and 1% Twa. The percentage of Tutsis is particularly controversial, given that 'official' statistics, which the Habyarimana government relied upon to allocate access to education and employment, was 9%. See African Rights *Death, Despair and Defiance*, *supra* note 11, at 22, and Prunier, *supra* note 150, at 60. As to the percentage of Twa in Rwanda, see Prunier, *ibid*, at 5. Lewis & Knight, *supra* note 71, explain at 21: 'In 1958 the Twa were assumed to make up 1% of Rwanda's population. This figure issued by the Belgian administration is very approximate since the Twa preferred not to present themselves to censuses, and they were rarely consulted. Today [1995] the Twa probably make up between 0.2 and 0.4% of Rwanda's population.'

the Former Yugoslavia, rape and sexual slavery was widely used as a weapon of war.¹⁷¹ It is generally accepted that at least 800,000 Tutsis lost their lives in Rwanda in a period of only 100 days, from April to July 1994.¹⁷²

Between 10,000 and 30,000 Hutus who opposed the genocide, were caught assisting Tutsis, or simply had the misfortune to resemble a Tutsi, were also murdered.¹⁷³ In addition, it is estimated that between 25,000 and 45,000 Hutus were killed by the Tutsi-dominated Rwandan Patriotic Front (RPF) as it took control of the country and brought an end to the genocide.¹⁷⁴ Although the murders of Hutus do not satisfy the legal definition of genocide because they were committed without the requisite intention to destroy an entire ethnic group,¹⁷⁵ these atrocities constitute crimes against humanity, which are also prohibited under international law.¹⁷⁶

Other commentators have carefully and thoroughly documented the unique confluence of circumstances that enabled a genocide to occur in Rwanda in 1994.¹⁷⁷ I rely upon, and defer to, those commentators for a more complete history of events. Nevertheless, an analysis of women's participation in the genocide requires at least a broad understanding of Rwandan history, which in turn, helps explain the likely causes of the conflict. It is, for these reasons, necessary to cover these topics briefly below.

¹⁷¹ See *supra* note 11.

¹⁷² Prunier, *supra* note 150, at 265.

¹⁷³ *Ibid.*

¹⁷⁴ Gersony Report, as cited in *Leave None to Tell the Story*, *supra* note 157, Chapter on RPF Abuses (no page references provided in the on-line version). Also see African Rights, *Death, Despair and Defiance*, *supra* note 11, Chapter 16.

¹⁷⁵ Report of United Nations Commission of Inquiry, 4 October 1994, cited in Beigbeder, Y. *Judging War Criminals: The Politics of International Justice* (New York, St Martin's Press, 1999) at 173.

¹⁷⁶ Crimes against humanity include murder, extermination, enslavement, torture, rape and persecutions, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. *ICTR Statute*, *supra* note 169, Article 3.

¹⁷⁷ See, in particular, Prunier, *supra* note 150.

1. Pre-Colonial Period

Commentators generally agree that the Twa, who were hunters and gatherers, were the original inhabitants of Rwanda.¹⁷⁸ Although precise dates are unknown, it is believed that the Hutu pastoralists came next, and were followed, perhaps during the 15th century, by Tutsi cattle herders.¹⁷⁹ Conveniently forgetting the Twa, Hutu extremists later claimed that it was the Hutus who were Rwanda's 'indigenous' people, and that the Tutsis had 'invaded' from Ethiopia and subjugated them ever since.¹⁸⁰ However, according to more objective accounts, Rwanda's three ethnic groups lived in a symbiotic (cooperative) relationship,¹⁸¹ even after Rwanda developed into a monarchy between the 17th and 19th centuries, led by a Tutsi *Mwami* (King).¹⁸²

During this period, ethnicity was tied more to occupational differences than to any hierarchical categorizations or physical features.¹⁸³ 'Hutu' and 'Tutsi' were fluid categories, such that Hutus could rise to the status of Tutsi through acquiring cattle and a process of 'shedding Hutuness.' Similarly, Tutsis could become Hutus, by losing their cattle and being forced into agriculture.¹⁸⁴ Tutsis and Hutus could also change status through marriage, and intermarriage was not uncommon.¹⁸⁵ Moreover, some Tutsis were poor, and some Hutus were chiefs, holding, in particular, chieftaincies over land.¹⁸⁶

¹⁷⁸ Eller, *supra* note 169, at 199.

¹⁷⁹ *Ibid.*

¹⁸⁰ See, for example, the 'Manifesto of the Bahutu' of 1957, *infra*, note 203 and accompanying text.

¹⁸¹ Drumbl, M. 'Punishment, Postgenocide: From Guilt To Shame To Civis in Rwanda', (2000) 75 N.Y.U.L.R. 1221 [hereinafter *Civis*], at 1242.

¹⁸² Commentators differ as to the origins and extent of the monarchy in Rwanda. Lewis & Knight, (citing Abdulai), state that 'Rwanda was a monarchy from the seventeenth century.' Lewis & Knight, *supra* note 71, at 25. Prunier, on the other hand, cites authorities who contend that monarchic institutions originated among the Hutu population, and that Tutsi rule was not complete in Rwanda until at least the end of the nineteenth century. Prunier, *supra* note 150, at 19-20.

¹⁸³ Eller, *supra* note 169, at 201. In relation to the occupation of the Twa, by this time, following the destruction of their habitat by the Hutu agriculturalists and Tutsi pastoralists, many Twa had become potters. The Twa also provided many services to the Royal Courts, as litter-bearers, secret messengers, dancers and musicians, as well as assassins and court executioners. Lewis & Knight, *supra* note 71, at 26-27.

¹⁸⁴ *Ibid.*, at 25 (citing De Lacger). Also see: Eller, *supra* note 169, at 202-203, and Drumbl, *Civis*, *supra* note 181, at 1243.

¹⁸⁵ There was not the same degree of mobility within this structure for the Twa, for whom intermarriage with other Rwandans was rare because of their low social status. Lewis & Knight, *supra* note 71, at 26.

¹⁸⁶ Under the monarchy in Rwanda, there were three different sets of chieftaincies, over land, cattle and the military. It was common for Hutus to be chiefs over land, whereas the chieftaincies over cattle and the

The decisive period in Hutu-Tutsi relations is the rule of Mwami Kigeri Rwabugiri from 1860-95. Rwabugiri introduced a feudal system, by which he augmented the powers of the throne and diminished the role of kinship leaders and institutions in Rwandan society. Under Rwabugiri, new systems of clientship¹⁸⁷ called *bureetwa* and *buhake* developed, whereby individual clients were required to provide labour and gifts to cattle-owning patrons. Unlike previous forms of clientship,¹⁸⁸ *bureetwa* and *buhake* were exploitative systems, the burden of which fell disproportionately on the Hutu population.¹⁸⁹ Although the King's influence and 'Tutsi domination' did not extend throughout Rwanda,¹⁹⁰ this was this system that the colonizers recognized when they arrived in Rwanda shortly after King Rwabugiri's death.¹⁹¹

2. The Colonial Period

The German colonizers adopted a policy of indirect rule, whereby they provided support to existing 'traditional' structures and sought allies within the Rwandan leadership.

military were almost exclusively held by Tutsis. Prunier, *supra* note 150, at 13, and Lewis and Knight, *supra* note 71, at 25. While forty Twa are reported to have achieved the status of sub-chief, only one was ennobled and provided with land. *Ibid.*, at 26, (citing Kagame).

¹⁸⁷ Traditionally, 'clientship' (otherwise called 'clientage') involved a person or kin group of lower wealth or prestige offering his services to a person of greater status and wealth in exchange for protection. Eller, *supra* note 169, at 204.

¹⁸⁸ Clientship originally took many forms, of mutual benefit to client and patron. These ranged from direct clientship to the King, whereby local chiefs could be bypassed through offering gifts and services to the King in exchange for social status and other benefits, land clientship, or *bukonde*, whereby clients sought land from kinship groups in exchange for rent-in-kind or part-time labour, but clients were often eventually absorbed into the kinship group itself, and *muheto* clientship, whereby the client, who was usually from the same lineage, offered military service and cattle to the patron. Being a *muheto* client conveyed a certain amount of status and prestige. *Ibid.*, at 205. Sometimes the patron also offered cattle to the client in reward for bravery in battle. Prunier, *supra* note 150, 14.

¹⁸⁹ *Bureetwa* involved a low-status form of clientage, whereby the *bureetwa* client brewed beer and provided manual labour for the patron, such as a hill chief (who were, under Rwabugiri, increasingly Tutsi). *Buhake* (or *ubuhake*) involved a transfer of cattle from patron to client in exchange for personal services, labor and gifts. The client under *buhake* was particularly vulnerable, as the cattle could be reclaimed at any time, and the patron sometimes confiscated the client's own cattle. Eller, *supra* note 169, at 207-8. At the same time, *gikingi*, another form of land clientship, became more pronounced, whereby the King would give land to cattle-owning lineages. See Prunier, *supra* note 150, at 20.

¹⁹⁰ African Rights, *Death, Despair and Defiance*, *supra* note 11, at 4-5 and Eller, *supra* note 169, at 199, and Prunier, *supra* note 150, at 29, noting, in particular, that the north of Rwanda remained relatively independent of the control of the monarchy and clientage systems at the end of the 19th century.

¹⁹¹ The territory of Ruanda-Urundi (comprising modern day States of Burundi and Rwanda) was incorporated into German East Africa in 1899.

Applying the learnings of 'race science', the Germans considered that the Tutsis, who were presumed to descend from Ethiopia, Asia or Egypt and were not really 'African' at all, were the 'natural' and 'rightful' ruling race in Rwanda.¹⁹² The Germans thus cemented the rule of the Tutsi monarchy, and suppressed opposition by Hutu chiefs.¹⁹³

The most profound, long-term, effects of colonialism on Rwandan society were prompted by the Belgians, who occupied the country from 1916 to 1961 with the support of the League of Nations and United Nations.¹⁹⁴ The Belgians extended and confirmed racial stereotypes of the Hutu, Tutsi and Twa, by characterizing the Tutsi as the 'noble' race, who were even 'European under a Black skin'¹⁹⁵; the Hutu as 'an inferior race, less intelligent [and] more simple,'¹⁹⁶ and the Twa as 'members of a worn out and quickly disappearing race ... quite monkey-like and similar to the apes whom he chases in the forest.'¹⁹⁷

Deeming the Twa to be too sub-human to bother with,¹⁹⁸ the Belgians determined that they could help the Hutu 'progress', but only by working with their 'masters', the Tutsi.¹⁹⁹ In accordance with this policy, the Belgians instituted wide ranging social and political reforms. These included the abolition of many chieftancies and the eventual replacement of all Hutu chiefs with Tutsis, who were relied upon to collect taxes from the people and to administer forced labour projects.²⁰⁰ The Belgians also dissolved the more flexible forms of clientship, leaving many more Hutus dependent on the oppressive

¹⁹² See Prunier, *supra* note 150, at 7.

¹⁹³ Berry, J. & Berry, C. eds., *Genocide in Rwanda: A Collective Memory* (Washington D.C., Howard University Press, 1999) at xiv.

¹⁹⁴ Belgium held Rwanda under a League of Nations mandate from 1926, and a United Nations Trusteeship from 1945.

¹⁹⁵ Missionary Francois Menard, as cited in Eller, *supra* note 169, at 201. The Belgians claimed that the Tutsi were 'of good race [with] nothing of the Negro, apart from his colour... Gifted with vivacious intelligence, the Tutsi displays a refinement of feelings which is rare among primitive people. He is a natural-born leader, capable of extreme self-control and calculated good will.' Ministère des Colonies, *Rapport sur l'administration belge du Ruanda-Urundi* (1925), as cited in Prunier, *supra* note 150, at 6.

¹⁹⁶ Rychmans, *Dominer pour servir*, Brussels (1931), as cited in Ibid, at 11.

¹⁹⁷ *Rapport Annuel Du Territoire de Nyanza* (1925), as cited in Ibid, at 6.

¹⁹⁸ Rumiya, *supra* note 151, at 140

¹⁹⁹ Ibid, at 105.

²⁰⁰ The position of the Twa under Colonialism was more ambiguous, as those who were still aligned with the King's courts benefited from the increase in Royal power. The Twa were also given the right to own land during this period and some took up farming, but many struggled to maintain control of their land from disaffected Hutus. Lewis & Knight, *supra* note 71, at 27.

buhake system, and introduced education policies that privileged Tutsis over other 'racial' groups.²⁰¹ Most significant of all these interventions, in 1933, the Belgians established a system of ethnic identity cards, which were compulsory for all Rwandans and determined ethnic group according to the number of cattle possessed.²⁰² From that time onwards, ethnic categories were fixed according to patrilineal lines. These identity cards were to have devastating consequences during the genocide 61 years later.

3. Independence

By the early 1950s, the push for independence across Africa, combined with concerns for democracy in Europe and increasing opposition by the Tutsis to the Belgian authorities, led to a dramatic change of position by the Belgians in Rwanda. Almost overnight, the Belgian authorities, together with the Catholic Church, changed allegiance from the Tutsi minority to the Hutu majority. This change resulted in the emergence of a new Hutu 'counter elite', which became a strong political movement promoting Hutu ethnicity. In 1957, nine Hutu intellectuals issued the 'Hutu Manifesto', subtitled 'A Note on the Social Aspects of the Indigenous Racial Problem in Rwanda', stated that the social and ethnic problem in Rwanda:

*is basically the political monopoly of one race, the Mututsi ... which condemns the desperate Bahutu to be forever subaltern workers.. The ubuhake has been legislated away, but these monopolies have replaced it with an even stronger oppression.*²⁰³

²⁰¹ In Rwanda, education was mainly conducted through the missionary schools. Until the 1920s, the Hutus had been the main converts to Christianity, so had been the primary beneficiaries of the education system. This changed with the deliberate conversion of the Tutsis to Christianity, in order to train Tutsis as functionaries and clerks. This policy resulted in increasing discrimination against the Hutu, and exclusion from educational and employment opportunities. Eller, *supra* note 169, at 214.

²⁰² All persons who owned 10 or more cattle were classified as Tutsi, and any who owned fewer, were classified as Hutu, except for the Twa, who were classified according to their occupation as potters and hunters. Berry & Berry, *supra* note 193, at 33.

²⁰³ As cited in Prunier, *supra* note 150, at 45-6. Also see Eller, *supra* note 169, at 220. The Tutsi counter-response, issued by conservative Tutsi chiefs, was also dramatically founded on ethnic ideology, drawing on historical references. This document claimed that: '[t]he relations between we (Batutsi) and they (Bahutu) have always until the present been based on servitude. There is, therefore, between we and they no foundation for brotherhood ... Since it was our kings who conquered the Bahutu country and killed their petty little kings and thus subjugated the Bahutu, how can they now pretend to be our brothers?' As cited in Eller, *Ibid*, at 221. Subsequent statements by the Tutsi authorities attempted to defuse the mounting ethnic tensions. For example, a note issued by the Tutsi authorities at this time stated: 'Children of Rwanda! Subjects of Kigeri, rise up! Let us unite our strengths! Do not let the blood of Rwanda be spilled in vain. There are not Tutsi, Hutu, Twa. We are all brothers! We are all descendants of Kinyarwanda!' Quoted in

Inter-ethnic violence erupted in November 1959, and the Hutu 'social revolution' began.²⁰⁴ At least 10,000 Tutsis were killed, and others fled into neighbouring states.²⁰⁵ During the violence, the Belgian administration unseated up to 350 Tutsi chiefs and replaced them with Hutu candidates.²⁰⁶ It then decided to abolish all the chiefdoms and sub-chiefdoms and hold local elections to appoint Bourgmestres (mayors) for the newly created communes.²⁰⁷ Not surprisingly, the election campaigns were divided along ethnic lines. In July 1960, individuals aligned with the militant Hutu party PARMEHUTU won two-thirds of the votes.²⁰⁸ In January 1961, PARMEHUTU, with the support of the Belgians, staged a 'legal coup' and declared itself to be the government; a result that was confirmed by a popular referendum later that year, whereby PARMEHUTU won 78% of the vote.²⁰⁹ Grégoire Kayibanda, the first Rwandan prime minister, immediately abolished the monarchy. The Belgians departed Rwanda shortly thereafter and Rwanda became officially independent from Belgium in 1962.

Throughout the 'First Republic', between 1961 and 1973, Kayibanda employed divisive and discriminatory politics, which targeted the Tutsis.²¹⁰ Tens of thousands of Tutsis

ibid., at 223. The two Tutsi-dominated political parties – Union Nationale Rwandaise (UNAR) and the Rassemblement Democratique Rwandais (RADER) also focused on unification, democratization and the maintenance of the monarchy.

²⁰⁴ Peter Uvin has described the ideology of the social revolution as 'the notion that Rwanda belongs to the Hutu, who are its true inhabitants, but were subjugated brutally for centuries by the foreign exploiters, the Tutsi.' Uvin, P. *Aiding Violence: The Development Enterprise in Rwanda*, Connecticut (Connecticut, Kumarian Press Inc., 1998) at 26. Human Rights Watch claims that the 1959 violence began when Tutsi extremists attacked a Hutu leader, sparking waves of retaliations. Human Rights Watch, 'Rwanda', in *Playing the 'Communal Card': Communal Violence and Human Rights* (New York, Human Rights Watch, 1995) [hereinafter *Rwanda*], at 2.

²⁰⁵ Estimates of the number of Tutsis killed in 1959 vary. African Rights, for example, says 'perhaps 10,000' (*Death, Despair and Defiance*, *supra* note 11, at 11), while Beigbeder puts the figure at 'at least 20,000'. (Beigbeder, *supra* note 175, at 170). Human Rights Watch notes that some Hutus were also killed at this time. *Rwanda*, *supra* note 204, at 2.

²⁰⁶ Uvin, *supra* note 204, at 26.

²⁰⁷ See *supra* note 143 regarding Rwanda's administrative structure, which was created at this time following the Belgian model.

²⁰⁸ Prunier, *supra* note 150, at 51

²⁰⁹ *Ibid.*, at 53.

²¹⁰ Just prior to his ascent to power, Kayibanda declared that Rwanda was made up of '[t]wo nations in a single State ... Two nations between whom there is no intercourse and no sympathy, who are as ignorant of each other's habits, thoughts and feelings as if they were dwellers of different zones, or inhabitants of different planets.' Kayibanda, speech made on 27 Nov 1959, as cited in Embassy of Rwanda in Washington, 'Rwanda Reunification 2000: Remarks by H.E. Dr. Richard Sezibera Ambassador of Rwanda

were killed during this period,²¹¹ while hundreds of thousands more were forced across the borders into Uganda, Burundi, Zaire and Tanzania.²¹² Some of these refugees formed the Rwandan Patriotic Front (RPF) in exile, mounting sporadic attacks into Rwanda until 1966, which led, in turn, to renewed repression against Tutsis domestically. In a prophetic statement in 1964, Kayibanda declared that if the Tutsis sought to regain political power, they might find that 'the whole Tutsi race will be wiped out.'²¹³

4. The Habyarimana Regime and Preparing for Genocide

In 1973, General Juvenal Habyarimana, a Hutu from the northwest of Rwanda, seized power and established a one-party State controlled by the National Revolutionary Movement for Development (MRND). Consistent with the policies of his predecessor, the new President continued to support discrimination and violence against the Tutsis.²¹⁴ He also exacerbated divisions between Hutus from the North of the country and those from the South, who felt increasingly neglected by the *Akazu*, the circle of powerful Northern Hutus who were mostly from the family of Habyarimana's wife, Agathe

on the Occasion of Rwanda Reunification 2000', Los Angeles, 1 July 2000, online: www.rwandemb.org/reunif.html (date accessed: 25 Apr 2001). Kayibanda's policies were consistent with these sentiments, for example, in the introduction of an ethnic quota system in schools; a policy that was maintained until the 1990s.

²¹¹ Human Rights Watch estimates that 20,000 Tutsis were killed between 1961 and 1964, of whom 10,000 were killed between December 1963 and January 1964, following an attack by Rwandan Tutsi refugees from Burundi. *Rwanda*, *supra* note 204, at 3. Also see Prunier, *supra* note 150, at 56.

²¹² Prunier notes the numbers of Tutsi refugees recorded by UNHCR in 1962 (120,000) and late 1964 (336,000). He estimates that as at 1990, there were up to 700,000 refugees and their children who had fled Rwanda because of political persecution between 1959 and 1973 and who still identified themselves as refugees. Prunier, *ibid*, at 62-3. Human Rights Watch, on the other hand, puts the population of Tutsi émigrés, together with their children born abroad, at between 400,000 and 500,000 as at 1990. It is little known that many Twa also fled Rwanda in the post-independence period, as they were targeted by association with the Tutsi monarchy. For a discussion of this point, and the consequences of independence on the Twa who stayed in Rwanda, including an effort to wipe them out altogether through inter-breeding, see Lewis & Knight, *supra* note 71, at 30; 35-41 and 44-45.

²¹³ Kayibanda, speech, as cited in Uvin, *supra* note 204, at 37 (himself citing Eny).

²¹⁴ Habyarimana came into power at a time of waves of Hutu-Tutsi violence in Rwanda, in which Tutsi students were chased out of seminaries and schools and many were massacred. Many Rwandans believe that Habyarimana instigated the violence in order to justify the coup that he had planned. *Death, Despair and Defiance*, *supra* note 11 at 13. Institutionalized racism also meant that very few Tutsis obtained positions of power in the political and military hierarchy. Under the Habyarimana regime, there were no Tutsi Bourgmestres or Prefets (except for one Tutsi Bourgmestre in Butare towards the very end, who was killed during the genocide); in the army, there was only one Tutsi officer, and members were not permitted to marry Tutsi women; there were only 2 Tutsis out of 70 members of parliament, and only 1 Tutsi in cabinet, of 25-35 members. Prunier, *supra* note 150, at 75.

Kanzinga.²¹⁵ New outbreaks of violence led to both 'disappearances' and murders of people opposed to Habyarimana's politics, and further waves of Tutsi refugees from Rwanda. Habyarimana refused to allow those refugees to return, ostensibly due to a lack of space.²¹⁶ This in turn prompted frequent RPF incursions into Rwanda, in efforts to overthrow the regime.

Throughout the 1980s, Rwanda's economic situation sharply deteriorated as a result of natural disasters and the collapse of world coffee prices, which devastated Rwanda's main export.²¹⁷ Poverty increased even further following structural adjustment policies negotiated between Rwanda and the international financial institutions in 1991.²¹⁸ Mounting disaffection among the population, coupled with demands from both the local population and the international community to democratize, placed the Habyarimana regime under increasing pressure.

In October 1990 the RPF mounted a major offensive into Rwanda from Uganda. The 'RPF invasion' was quickly overcome by the Rwandan military with the assistance of French and Belgian troops,²¹⁹ but it nonetheless sparked the beginning of a civil war between the Rwandan government and the RPF, that would lead to further armed conflict over the next three and a half years. The attack also provided the perfect excuse for Habyarimana to try to augment support for his regime, by unifying the Hutus against the Tutsis. This unification exercise involved two fundamental aspects, which together lay the ground for genocide.

Firstly, the government mobilized the nation for war against the RPF. It substantially augmented its security forces, from 5,000 to 35,000 troops,²²⁰ and trained and armed thousands of local militia groups called the *interahamwe* (which means, in Kinyarwanda,

²¹⁵ *Ibid.*, at 85-87.

²¹⁶ President Habyarimana was apparently fond of saying: 'The glass is full and I have nowhere to put the rest of the water.' *Death, Despair and Defiance*, *supra* note 11 at 16-17.

²¹⁷ *Ibid.*, at 20. For a more detailed discussion of the economic crises in Rwanda in the early 1990s, see Uvin, *supra* note 204, Chapter 4.

²¹⁸ *Ibid.*

²¹⁹ *Rwanda*, *supra* note 204, at 6.

²²⁰ *Death, Despair and Defiance*, *supra* note 11, at 48.

those who stand together) and *impuzamugambi* (those with a single purpose).²²¹ During the genocide these two groups became indistinguishable.²²² It also imported arms on a massive scale, including thousands of machetes from China. In a campaign which began in 1991, and intensified in 1993, these weapons were distributed to 'self-defence groups' in all communes throughout Rwanda.²²³

Secondly, the government directed a propaganda campaign led by Hutu extremists, which called for the renewal of the 'Hutu ideology' of the 1959 revolution, in a fight against the 'common Tutsi enemy'.²²⁴ This campaign, which involved both the radio and the printed media, revived the myth of the original Tutsi 'invasion' and the corresponding need to throw out the 'feudal colonialists'.²²⁵ It also incited fears, inspired by the RPF invasion, that the Tutsis were brutal aggressors, who would mutilate, kill, rape, kidnap and eat alive the Hutu people.²²⁶ The Habyarimana government even fabricated attacks against its own military camps and blamed the RPF in order to justify retaliation against the Tutsis and massacres in 'self-defence'.²²⁷ Finally, the Hutu elites undermined Tutsi government ministers as 'traitors', labelled Tutsi women as 'spies' and released the names of Tutsis to be eliminated.

²²¹ *Ibid*, at 54-60.

²²² *Ibid*, at 58.

²²³ *Rwanda*, *supra* note 204, at 8, noting that 'By the end of 1993, arms were being distributed so widely that the Catholic bishop of Nyondo protested in a pastoral letter, asking what was the point of the armament campaign.' Also see *Death, Despair and Defiance*, *supra* note 11, at 61-62.

²²⁴ Hutu 'Ten Commandments', *Kangura* no 6, December 1990, as cited in Chrétien, *supra* note 156, at 141-2. The widespread use of the media as a tool of the genocide has been widely documented. See, for example, Chrétien, *ibid* generally, and particularly at 74 and 19; *Leave None to Tell the Story*, *supra* note 157 (print version), at 65-95, and 248-252. Also see *The Prosecutor v Georges Henry Joseph Riuggiu*, 'Judgment', ICTR-97-32, and *The Prosecutor v Jean Kambanda*, 'Judgment', ICTR-97-23-S, in particular, para 39(vii), referring to Kambanda's admission that he gave clear support to *Radio-Télévision des Mille Collines* (RTLM) in his capacity as Prime Minister, and his characterization of the radio station as an 'indispensable weapon in the fight against the enemy', both online: ICTR website, www.ictor.org/english/cases.

²²⁵ Hutu 'Ten Commandments', *supra* note 224.

²²⁶ See generally, Chrétien, *supra* note 156.

²²⁷ *Akayesu Judgment*, *supra* note 12, para 99. Human Rights Watch has reported four separate massacres that occurred in Rwanda during January 1991 and January 1993, which together took the lives of about 2,000 people, mostly Tutsis. The organisation claims that each massacre was provoked by government propaganda, which created fear of the Tutsi. Human Rights Watch, *Rwanda*, *supra* note 204, at 4.

Despite these events, under international pressure, in 1993 Habyarimana formally entered into a power sharing arrangement with the RPF and other political forces within Rwanda, agreed to the repatriation of the Tutsi refugees, and signed a peace agreement with the RPF, which also provided for the integration of RPF soldiers into the Rwandan armed forces. However, to preserve his own power and appease Hutu extremists, Habyarimana stalled the implementation of the 'Arusha Accords'.²²⁸ The international community continued to push the Rwandan government to democratize, in the face of internal opposition. Tensions were at their height when Habyarimana attended another meeting in Arusha in early April 1994.

When President Habyarimana's plane was shot down on 6 April 1994,²²⁹ killing both Habyarimana and President Ntaryamira of Burundi, the stage was set for genocide. The first roadblocks were set up in Kigali within hours and the massacres of Tutsis began. The self-proclaimed 'interim government', which was comprised of Hutu extremists, ensured that all leaders who opposed the genocide were removed from office or killed. The propaganda intensified²³⁰ and civilians were quickly converted to the cause. With the significant help of the ethnic identity cards originally instituted by the Belgians, the killers, who were almost exclusively Hutus (but, it should be emphasized, did not include *all* Hutus),²³¹ set about finding and massacring Tutsis, and throwing their bodies into rivers to 'send the Tutsi back to their place of origin', that is, Abyssinia.²³²

²²⁸ *Ibid*, at 7.

²²⁹ The perpetrators of these assassinations remain unidentified. Most evidence points to them being Hutu soldiers or other Hutus in opposition to Habyarimana, although Hutu extremists immediately accused the RPF. *Ibid*, at 9. Also see *Death, Despair and Defiance*, *supra* note 11, at 94-99.

²³⁰ For example, on April 12, 1994, the public authorities announced over Radio Rwanda that 'we need to unite against the enemy and the only enemy and this is the enemy that we have always known...it's the enemy who wants to reinstate the former feudal monarchy.' Cited in *Akayesu Judgment*, *supra* note 12, para 110.

²³¹ Some Hutus even demonstrated significant bravery and resistance in support of their Tutsi neighbors and friends. As Human Rights Watch claims: 'Despite enormous pressure – indeed sometimes at the cost of their own lives – many Hutu in Rwanda refused to participate in the slaughter. Countless Hutu went further and warned, hid, fed, transported, cared for and fought alongside Tutsi. Their heroism belies the simplistic notion spread by extremists that people of these two groups are bound to hate and kill one another.' *Rwanda*, *supra* note 204, at 17.

²³² *Akayesu Judgment*, *supra* note 12, para 120. Also see *Musema Judgment*, *supra* note 169, para 354.

Following a complete lack of action on the part of the international community to events in Rwanda, the genocide was only halted in July 1994 when the RPF entered militarily and took the reins of government. In fear of retaliation, approximately one million Hutu refugees then fled the country, mostly into Zaire.²³³ Some of those refugees stayed in refugee camps for years, and tens of thousands were imprisoned on their return to Rwanda. Others remain in exile, and at the date of writing this thesis, armed militias, many of which include former Interahamwe, continue to mount incursions into Rwanda from the Democratic Republic of Congo.

D. The Legal Response to the Genocide

The legal response to the Rwandan genocide is unique. It involves an international tribunal based in Tanzania, prosecutions in Europe, national trials in Rwanda and a 'traditional' justice system called *gacaca*, which should be operating across Rwanda sometime in 2002. I will consider each of these tiers of justice briefly below.

1. The International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) was created by the United Nations Security Council on 8 November 1994 by Resolution 955, following a determination by the Security Council that the situation in Rwanda constituted a threat to international peace and security.²³⁴ This mandate of this *ad hoc* tribunal is to prosecute 'persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda', as well as Rwandan citizens responsible for those crimes in neighbouring States, between 1 January 1994 and 31 December 1994.²³⁵ The overriding premises behind the establishment of the Tribunal are that prosecuting individuals for genocide and crimes against humanity will 'put an end to

²³³ *Rwanda*, *supra* note 204, at 1 and 15.

²³⁴ United Nations Security Council Resolution 955, S/RES/955 (1994) on the adoption of the Statute of the Tribunal. Online, International Criminal Tribunal for Rwanda, 'Basic Legal Texts', www.un.org/icttr/english/Resolutions/955e.htm, (date accessed: 26.11.01).

²³⁵ *Ibid.*

such crimes', 'bring to justice the persons who are responsible for them', 'contribute to the process of national reconciliation and to the restoration and maintenance of peace.'²³⁶

Although Rwanda initially requested the establishment of an international tribunal, it was the only State that voted against Resolution 955. Rwanda's main opposition to the ICTR was that the Statute of the Tribunal bars the imposition of the death penalty. In addition, Rwanda wanted the seat of the Tribunal to be in Rwanda, rather than in Arusha, and a broader temporal jurisdiction to enable the prosecution of crimes committed in the years preceding the genocide.²³⁷ Nonetheless, since the creation of the Tribunal, Rwanda has cooperated with it, even though the Tribunal has primacy over national courts²³⁸ and prosecutions at the ICTR have been excruciatingly slow.

Delays at the Tribunal are at least partly due to the fact that it has targeted the 'big fish', that is, the individuals considered to hold primary responsibility for the genocide.²³⁹

Among the 55 persons indicted by the Tribunal to date are the former Rwandan Prime Minister and several other ex government Ministers, military and media leaders, senior government administrators and religious leaders.²⁴⁰ At the time of writing, after 6 years of operation, only 8 persons have been convicted, mostly to life imprisonment, and 1 person has been acquitted. Of the 55 persons indicted by the Tribunal, there is only 1 woman, Pauline Nyiramasuhuko, whose case I will discuss in more detail in Part II below.

²³⁶ *Ibid.*

²³⁷ Beigbeder, *supra* note 175, at 174. Also see Akhavan, P. 'The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment', (1996) 90 *American Journal of International Law*, 501, especially at 505-508. For a critique of the choice of the international community to create the ICTR in Arusha, rather than support domestic trials in Rwanda, see Alvarez, J. 'Crimes of States / Crimes of Hate: Lesson from Rwanda' (1999) 24 *Yale J. of Int'l L.* 365.

²³⁸ *ICTR Statute*, *supra* note 169, Article 8(2).

²³⁹ Talk by Judge Mose to ICTR interns, International Criminal Tribunal for Rwanda, Arusha, 18.5.01.

²⁴⁰ International Criminal Tribunal for Rwanda, 'ICTR Detainees – Status on 16 November 2001, online: www.ictor.org/ENGLISH/factsheets/detainee.htm (date accessed: 19.11.01).

2. The Belgian Genocide Trial

As the abovementioned history suggests, Belgium has a particular responsibility in relation to the Rwandan genocide. It is therefore encouraging that Belgium has taken the lead in prosecuting alleged genocide suspects found on its territory.²⁴¹ I will discuss the case of the 'Butare Four', which that included two Rwandan nuns and was decided by the Belgian Court of Assizes in June 2001 ('Belgian Genocide Trial') later in this study.²⁴² For now, I will limit my discussion to a brief overview of the legal framework that made such a trial possible.

Belgium ratified the *Genocide Convention* in 1948 but it had not incorporated the *Convention* into its domestic law at the time of the Rwandan genocide. Although Belgium criminalized both genocide and crimes against humanity in February 1999,²⁴³ the principle of non-retroactivity barred it from prosecuting these crimes if committed prior to that date.²⁴⁴ Belgium had, however, criminalized war crimes committed either in international or non-international armed conflicts, when it incorporated the grave

²⁴¹ Belgium is not, in fact, the first foreign country to try Rwandan citizens in relation to the Rwandan genocide. On 26 May 2000, a military court in Switzerland condemned Rwandan Bourgmestre, Fulgence Niyonteze, to 14 years imprisonment for war crimes. Avocats Sans Frontières, 'Après le procès, ce serait fascinant de pouvoir parler avec les jurés : Interview de l'experte du Rwanda, Alison Des Forges', 21.4.01, online, www.asf.be/AssisesRwanda2/fr/fr_QUESTIONS_desforges.htm (date accessed 12.11.01).

²⁴² See Part II.C.2(c) below.

²⁴³ *Loi relative à la repression des violations graves de droit international humanitaire*, 10.2.99, online, Avocats Sans Frontières, www.asf.be/AssisesRwanda2/fr/fr_JPI_loi10fev99.htm (date accessed 12.11.01). This law changed the name of the 1993 law mentioned in note 245, *infra*, to *Loi relative à la repression des violations graves de droit international humanitaire*. *Ibid*, Article 1.

²⁴⁴ The international legal principle of non-retroactivity is set out in Article 11(2) of the *Universal Declaration of Human Rights*, which provides that 'No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.' *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810. Some commentators argue that crimes that are prohibited under customary international law, including genocide and crimes against humanity, can be prosecuted even if the legislation punishing those crimes is introduced into domestic law after the alleged infractions. See Schabas, W. 'Justice, Democracy and Impunity in Post-genocide Rwanda : Searching for Solutions to Impossible Problems', (1996) 7(3) *Criminal Law Forum* 523, at 537, and David, E. 'Principes du Droit des Conflits Armés', Bruylant, 1994, p.612, as cited in Moudiki, Avocats Sans Frontières, 'La Competence Universelle et le Proces de Bruxelles', undated, online, www.asf.be/AssisesRwanda2/fr/fr_JPI_competenceUniv.htm (date accessed : 9.10.01). [Hereinafter *Moudiki*], at note 21.

breaches provisions of the 1949 *Geneva Conventions* and the 1977 *Protocols* to those Conventions into its domestic law in 1993.²⁴⁵

In the Belgian Genocide Trial, the Presiding judge advised the jury that the Rwandan genocide satisfied the definition of non-international armed conflict (that is, a civil war) and thus fit within *Protocol II*, although this remains a point of contention.²⁴⁶ This trial also represented an historical step for the concept of universal jurisdiction, as neither the victims nor the perpetrators were citizens of Belgium, and the crimes did not occur on Belgian territory.²⁴⁷ However, Belgium was unwilling to transfer the 'Butare Four' to Rwanda where they might have faced the death penalty.²⁴⁸ Ironically, one of the individuals sentenced in Belgium, Higaniro, had already been the subject of investigations by the ICTR, which had decided there was insufficient evidence to warrant a confirmed indictment.²⁴⁹ Belgium tried and convicted Higaniro and the other three defendants at a much faster rate than would have occurred at the ICTR.²⁵⁰

2. The Rwandan Genocide Law

Rwanda has decided to prosecute all persons suspected of genocide and crimes against humanity, rather than conduct only selective trials of the individuals most responsible for

²⁴⁵ *Loi relative à la répression des infractions graves aux conventions internationales de Genève du 12 août 1949 et aux protocoles I et II du 8 juin 1977, additionnels à ces Conventions*, 16 June 1993, online, Avocats Sans Frontières, www.asf.be/AssisesRwanda2/fr/fr_JPI_loi16juin93.htm (date accessed : 9.10.01). See *supra* note 243 for the amended title of this law.

²⁴⁶ Philip Reyntjens threw into question whether there was a civil war in Rwanda at the time of the genocide, when he testified in the Belgian trial that there had been no combat between the RPF and Rwandan government forces (FAR) between August 1993 and April 1994. *Diplomatie Judiciaire*, 'Coupables en 55 Questions', 10.6.01, online, www.diplomatiejudiciaire.com/Higaniro/Higaniro28.htm, (date accessed 9.10.01). [Hereinafter *Coupables en 55 Questions*] The characterization of the Rwandan conflict is likely to be an appeal point before the Court of Cassation in Brussels. *Ibid.*

²⁴⁷ Some international lawyers argue that universal jurisdiction requires one of these links to the state in which the crime is prosecuted. See Moudiki, *supra* note 244, citing the *Yerodia* case before the International Court of Justice.

²⁴⁸ Avocats Sans Frontières, 'La Loi de 'compétence universelle' en débat : Réponses de Monsieur A. Andries, premier avocat général honoraire près la Cour militaire, Vice-président de la Commission Interministérielle de droit humanitaire', undated, online, www.asf.be/AssisesRwanda2/fr/fr_JPI_competenceUniv_Andries.htm (date accessed : 9.10.01), Question 4.2.

²⁴⁹ Avocats Sans Frontières, 'La Chapelle Ardente', and 'Alphonse Higaniro', *infra* note 573.

²⁵⁰ Avocats Sans Frontières, 'Interview de Monsieur Gerard Gahima, Procureur Général près la Cour Suprême du Rwanda,' 12.6.01, online, www.asf.be/AssisesRwanda2/fr/fr_REACTIONS_Gahima.htm (date accessed 9.10.01). [hereinafter *ASF Gahima Interview*].

the genocide or establish a truth commission as has been done in other countries undergoing post-conflict transitions. In accordance with this approach, by September 1996 (just over 2 years after the end of the genocide), Rwanda had detained 126,078 persons for genocide-related crimes, representing 1.7% of the Rwandan population.²⁵¹ Trials commenced in Rwanda in December 1996 under a law adopted by the Rwandan Parliament on 30 August that year, entitled *Organic Law on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed since 1 October 1990* ('*Genocide Law*').²⁵²

Like Belgium, Rwanda had ratified both the *Genocide Convention* and the *Geneva Conventions* prior to the genocide, but it had not provided for penalties for either genocide or crimes against humanity in its domestic law.²⁵³ Unlike Belgium, however, Rwanda has decided to prosecute those crimes, while noting that 'the exceptional situation in the country requires the adoption of specially adapted measures to satisfy the need for justice of the people of Rwanda'.²⁵⁴ It has done so by referring to the two Conventions in the *Genocide Law*, while limiting the punishments for genocide and crimes against humanity to those for crimes already provided for within the Rwandan

²⁵¹ International Committee of the Red Cross statistics, as cited in Drumbl, M. 'Rule of Law Amid Lawlessness: Counselling the Accused in Rwanda's Domestic Genocide Trials', (1998) 29 *Columbia Human Rights Law Review* 545, at 550, n.16. I have calculated the figure of 1.7% on the basis that Rwanda's population is believed to be approximately 7.5 million.

²⁵² *Organic Law on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed since 1 October 1990*, Law No. 8/96, 30.8.96, Rwanda [**hereinafter, Genocide Law**]. The *Genocide Law* provides for the creation of 'Specialized Chambers' to hear genocide-related cases. These comprise 12 Tribunals of First Instance (one in each of Rwanda's 12 Prefectures) and a military court. *Ibid*, Article 19. Article 24 of the same law provides for appeals on 'questions of law or flagrant errors of fact' to an Appeal Court. Appeals must be lodged within 15 days of receiving the original decision, a timeframe which has been strongly criticized by human rights advocates, especially because the original judgment is never available until after the appeal deadline. Moreover, appellants, who are often illiterate, usually have to prepare their appeals without legal assistance. See League Rwandaise Pour la Promotion et la Défense des Droits de l'Homme (LIPRODHOR), Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG), *Regard Rétrospectif Sur Les Procès de Génocide au Rwanda (Période : Déc. 96 – Juin 99)*, Kigali, 1999 [**hereinafter Regard Rétrospectif**] at 33 and 38; and *Deux Ans*, *supra* note 78, at 11. Despite such criticisms, the 15 day period has been retained in the *Gacaca Law* (Article 85), discussed at *infra*, notes 276 to 293 and accompanying text.

²⁵³ Nor had Rwanda incorporated the provisions of the *Geneva Conventions* relating to war crimes into its domestic law, but the *Genocide Law* makes no mention of war crimes.

²⁵⁴ *Genocide Law*, *supra* note 252, Preamble.

Penal Code.²⁵⁵ Thus, the Rwandan *Genocide Law* provides for the conviction of persons who have committed 'acts set out and sanctioned under the [Rwandan] *Penal Code* and which constitute (a) either the crime of genocide or crimes against humanity ... or (b) offences ... which ... were committed in connection with the events surrounding the genocide and crimes against humanity.'²⁵⁶

Article 2 of the *Genocide Law* defines 4 different categories of offenders. Category 1 offenders are considered to be the most serious, and if convicted, are liable to the death penalty. They include:

- a) ... the planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a crime against humanity;
- b) persons who acted in positions of authority at the national, prefectoral, communal, sector or cell level,²⁵⁷ or in a political party, the army, religious organizations or in a militia and who perpetrated or fostered such crimes;
- c) notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed; [and]
- d) persons who committed acts of sexual torture.²⁵⁸

Rwanda has established a list of Category 1 suspects, which is published periodically.²⁵⁹ At the time of writing, there were 2,898 persons on the *Category 1 List*, of whom 51

²⁵⁵ *Rwandan Penal Code*, Law No. 21/77 of 18 August 1977, as modified by Law No. 23/81 of 13 October 1981, and confirmed by Laws No. 01/82 of 26 January 1982 and 08/1983 of 10 March 1983, Université Nationale Du Rwanda Faculté de Droit, *Codes et Lois du Rwanda*, Vol.1, 2nd Edition 1995, Butare, Dec. 1994, 383 [hereinafter *Rwandan Penal Code*].

²⁵⁶ *Ibid*, Article 1. The punishments provided in the *Genocide Law* are generally consistent with, or less than, the *Rwandan Penal Code*, so as not to offend the principle of non-retroactivity.

²⁵⁷ See *supra* note 143 for an overview of Rwanda's administrative structure. LIPRODHOR has criticized the lumping together of all persons in positions of responsibility under Category 1(b). In particular, it has queried the wisdom of including Responsables and Conseillers in this category. LIPRODHOR has advocated the abolition of Category 1(b) altogether, as it considers this provision contrary to the principle of individual responsibility, and instead, the inclusion of social position as an aggravating circumstance. *Deux Ans*, *supra* note 78, at 24 and *Regard Retrospectif*, *supra* note 252, at 25 & 60.

²⁵⁸ Article 51 of the *Gacaca Law* (*infra* note 276) sets out an almost identical characterization of Category 1 suspects, except that Category 1(d) now includes rape, in addition to sexual torture.

²⁵⁹ *Genocide Law*, *supra* note 252, Article 9 requires the 'periodical' publication of the Category 1 list. The *Gacaca Law*, *ibid*, requires this list to be published twice a year, in June and December, but this has not eventuated.

(1.8%) were women.²⁶⁰ In some cases, international warrants have been issued for their arrest.²⁶¹ The majority of genocide suspects in Rwanda, however, are charged as Category 2 offenders, defined as ‘perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death’.²⁶² ‘Accomplice’ is defined in Article 3 as ‘a person who provided essential assistance in the commission of the offence or who ‘diverted criminal prosecution of persons referred to in Article 2 ... and failed to give information about them.’²⁶³ Category 2 offenders are liable to a sentence of life imprisonment, which can be compared to the usual punishment for murder under the *Rwandan Penal Code*; the death penalty.²⁶⁴

Category 3 offences, which are punishable by lesser terms of imprisonment, comprise ‘other serious assaults against the person’. These offences are so rare that some Rwandan tribunals have excluded Category 3 altogether.²⁶⁵ Category 4 offences involve ‘offences against property.’ These crimes are punishable only by civil damages or orders for

²⁶⁰ *Publication of the Updated List of the First Category Prescribed by Article 9 of Organic Law No. 8/96 of 30 August 1996 (O.G. No. 17 of 1.9.1996)*, Official Gazette of the Republic of Rwanda, Year 40, special no. of 19.3.01. [hereinafter *Category 1 List*]. The 51 women on this list comprise: 16 political leaders; 14 farmers; 5 journalists; 4 teachers; 3 military leaders; 2 business women; the 2 nuns who were recently tried in Belgium; 1 magistrate (who is also the sister of Obed Ruzindana, indicted by the ICTR); a director of a school; Agathe Kanzinga (alias ‘Kanjogera’, the wife of former President Habyarimana), and 2 women whose occupation is not identified. I will discuss the accusations against Category 1 suspect Pauline Nyiramasuhuko in Part II.A.1(a) below.

²⁶¹ For example, an international arrest warrant has been issued for Bernadette Mukarurungwa, former parliamentarian and member of the MRND, who is wanted for trial in the Butare Court. *Category 1 List*, *ibid.* No. 247.

²⁶² *Genocide Law*, *supra* note 252, Article 2. LIPRODHOR have claimed that the high number of people charged with Category 2 offences explains the high number of sentences to life imprisonment in Rwanda. *Deux Ans*, *supra* note 78, at 5.

²⁶³ Article 91(3) of the *Rwandan Penal Code*, *supra* note 252, contains a much broader definition of accomplice, namely ‘those who knowingly aided or abetted the perpetrator or perpetrator of the act, in the preparation, facilitation or commission of it.’ *Rwandan Penal Code*, *supra* note 252, Article 91(3). Under this provision, it is therefore sufficient that the act of an accomplice was *useful* to the commission of the crime, rather than *indispensable*. De Beer, D. *The Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity ... Commentary* (Alter Egaux Editions, 1997) [hereinafter *De Beer Commentaries*], at 35. LIPRODHOR has argued that this distinction creates complications for lawyers. *Regard Retrospectif*, *supra* note 252, at 30.

²⁶⁴ *Rwandan Penal Code*, *supra* note 252, Article 312. Schabas argues that this sentence modification in the *Genocide Law* is ‘a very substantial step towards the abolition of the death penalty’, and that ‘[i]t seems inconceivable that in the future Rwandan courts will impose the death penalty for “ordinary” murders when this sanction is not available in the case of genocidal murders.’ Schabas, *supra* note 244, at 540 and 541 respectively.

²⁶⁵ *Regard Retrospectif*, *supra* note 252, at 30.

restitution, although they may also be accompanied by a sentence sentence.²⁶⁶ Indeed, all defendants can be ordered to pay civil damages to victims,²⁶⁷ although to date no such order has been enforced in Rwanda.²⁶⁸

The *Genocide Law* establishes a confession and guilty plea procedure, which provides for reduced punishments for Category 2 and 3 offenders if the confession is accepted.²⁶⁹ To be valid, a confession must include

*a detailed description of all of the offences that the applicant committed, including the date, time and the scene of each act, as well as the names of victims and witnesses, if known; information with respect to accomplices, conspirators and all other information useful to the exercise of public prosecution; an apology for the offences committed by the applicant [and] an offer to plead guilty to the offences ...*²⁷⁰

If an individual confesses before his or her file is transferred to the Court, and if that confession is accepted by the Prosecutor, the offender will receive quite substantial sentence reductions. If the confession is rejected by the Prosecutors, the offender may submit another confession at trial, but the sentence reductions are lower for confessions made and accepted at this point.²⁷¹ A confession is supposed to speed up the progress of

²⁶⁶ LIPRODHOR has criticized the light treatment of Category 4 offenses, arguing that often property crimes, such as burning of homes, were committed with genocidal intent. *Regard Retrospectif*, *supra* note 252, at 30-31.

²⁶⁷ *Genocide Law*, *supra* note 252, Chapter VII, in particular, Articles 30-31.

²⁶⁸ LIPRODHOR made this claim as at June 2000. *Problématique de la Preuve*, *supra* note 10, at 3. The organisation advised me in July 2001 that the situation had not changed.

²⁶⁹ Article 5 of the *Genocide Law*, *supra* note 252, provides in part that 'persons who fall within Category 1 ... shall not be eligible to the reductions in penalties set out in Articles 15 and 16.' NB: Category 1 offenders may, however, benefit from the confession procedure if they confess prior to their names appearing on the *Category 1 List*. *Ibid*, Article 9. Category 4 offenders do not benefit from the confession program. However, if a person is charged with Category 4 crimes in addition to other crimes, and does not confess to the Category 4 crime, this could affect the acceptance of the confession for the other crimes.

²⁷⁰ *Ibid*, Article 6.

²⁷¹ See *ibid*, Article 7 regarding the limit of one confession per person prior to trial; Article 9 restricting the benefits of the confession program for Category 1 suspects only if they confess prior to their name appearing on the *Category 1 List*, and Article 11 as to the effects of a confession made at trial. The respective benefits of the confession program are set out in the following table (drawn from the Penalties set out in *ibid*, Articles 14-16):

	<i>No confession</i>	<i>Confess prior to trial</i>	<i>Confess at trial</i>
<i>Category 1:</i>	Death penalty	Placed in Category 2 <i>only if confess prior to name appearing on the Category 1 List.</i>	N/A
<i>Category 2:</i>	Life imprisonment	7-11 years	12-15 years

a case to trial, but this has not necessarily worked in practice. In addition to the regular work expected of the prosecutors, the verification of confessions can itself be very time consuming. In particular, confessions often implicate other co-offenders, whose confessions may contradict that of the accused or who may deny the accusations.²⁷²

Despite all the logistical, practical and legal problems associated with prosecuting genocide trials in Rwanda, not the least of which was the near decimation of the justice system during the genocide, including the death of many judges,²⁷³ by April 2000, the Rwandan Courts had tried 3,165 genocide suspects.²⁷⁴ Although this is a much faster rate than the ICTR has achieved during the same period, it is estimated that it would take 230 years to clear Rwanda's jails of all genocide suspects through trials in the National Courts.²⁷⁵ In recognition of this problem, Rwanda has radically modified its original approach and developed a unique system for future trials, called *gacaca*.

4. The *Gacaca Law*

Rwanda's *Gacaca Law*,²⁷⁶ passed on 15 March 2001, is revolutionary. It aims to 'revive' the traditional *gacaca* tribunals that operated in Rwanda in pre-Colonial times, and

Category 3:	Sentence according to the <i>Rwandan Penal Code</i>	1/3 the usual penalty	1/2 the usual penalty
Category 4:	Civil damages or suspended sentence	N/A	N/A

²⁷² Article 7 of the *Genocide Law (ibid)* provides that the prosecutors are to verify the accuracy and completeness of the confession within 3 months. However, many prisoners have been waiting for years to hear if their confessions have been accepted.

²⁷³ Schabas, *supra* note 244, at 533 (noting that as at August 1994, 90% of police officers and prosecutors were either dead or in exile, and only 35% of magistrates remained).

²⁷⁴ *Problématique de la Preuve*, *supra* note 10, at 23. NB : Since the end of 1998, the Specialized Chambers have opted for a system of 'group trials', which can sometimes comprise over 100 suspects. Thus, although there were 3,165 genocide suspects dealt with by the Courts by April 2000, the majority of these person were tried in group trials in the preceding 18 months. For example, for the period from 1.1.99 – 30.6.99, 634 persons were judged in 86 trials (an average of 7.4 persons per trial). From 1.1.00 to 5.4.00, a total of 585 persons were judged in 27 trials (an average of 21.6 persons per trial). See LIPRODHOR, *Regard Retrospectif*, *supra* note 252, at 6 and *Problématique de la Preuve*, *supra* note 10, at 21 respectively.

²⁷⁵ *Ibid*, at 51.

²⁷⁶ *Organic Law setting up "GACACA Jurisdictions" and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994*, Law No 40/2000 of 26/01/2001 [hereinafter *Gacaca Law*].

expand their jurisdiction to include genocide and crimes against humanity.²⁷⁷ Gacaca will therefore involve trials of genocide suspects at the community level, whereby the judges are elected from among that community, and the whole community is expected to participate in the trials. The declared basis for this model is that 'such offences [genocide and crimes against humanity] were publicly committed before the very eyes of the population, which thus must recount the facts, disclose the truth and participate in prosecuting and trying the alleged perpetrators.'²⁷⁸ Roughly 260,000 'judges', including a relatively high number of women, were recently elected from among respected members of the community and are currently undergoing training in Rwanda.²⁷⁹ They will work in 11,000 gacaca tribunals that will be established across Rwanda.²⁸⁰

Secondly, the *Gacaca Law* allows offenders who have confessed, and whose confessions are accepted, to serve up to half of their sentences (which are otherwise almost identical to those in the *Genocide Law*)²⁸¹ in community service.²⁸² If the system operates as

²⁷⁷ Gacaca courts traditionally dealt only with family and neighborhood disputes. They did not deal with serious crimes, which were handled by the Royal Courts. Seruka, *supra* note 110, at 19. Also see *Regard Retrospectif*, *supra* note 252, at 56.

²⁷⁸ *Gacaca Law*, *supra* note 276, Preamble.

²⁷⁹ New York Times, 8.10.01, 'Rwanda Elects 260,000 Judges to Try Genocide Suspects', online, www.nytimes.co (date accessed: 9.10.01). At the date of writing this thesis national statistics had not been compiled regarding the election of women as judges to the gacaca courts, but I am informed that in at least in one zone, 47% of the judges were women. Email from Alice Ndegeya, Secretary General of Seruka, Rwanda, 6.11.01.

²⁸⁰ There will be gacaca tribunals at four separate levels of the administrative structure, each having a different jurisdiction. The gacaca tribunals at the Cell level will prepare lists of victims and alleged perpetrators in the Cell, categorize suspects and forward files to the other jurisdictions. They will also try Category 4 suspects (*Gacaca Law*, *supra* note 276, Articles 33-34 and 39). The tribunals at the Sector level will hear appeals from the Cell level and try Category 3 suspects. At the District (formerly called Commune) level, tribunals will try Category 2 suspects and hear appeals from the Sector level (*ibid*, Article 40). Finally, the tribunals at the Province (formerly called Prefecture) level will hear appeals from the Commune level, but there will be no appeals from judgments based on a confession (*ibid*, Article 41). There will be 19 sitting judges at each level (*ibid*, Article 13), who may only sit with a quorum of 15 people (*ibid*, Article 26). For a useful overview of the gacaca system, see the Official Website of the Government of Rwanda, 'Genocide and Justice', online, www.rwanda1.com/government/genocidep.html (date accessed: 25.4.01).

²⁸¹ See *supra* note 271.

²⁸² The requirements of the confession and guilty plea procedure are set out in Chapter 2 (Articles 54-63) of the *Gacaca Law*. The sanctions for Category 1-4 crimes, including the possibility of community service for Category 2 and 3 offenders, are set out in Articles 68-71. Unlike the *Genocide Law*, sentences are specified in the *Gacaca Law* for Category 3 offences, i.e.: 5-7 years without confession, 3-5 years for people who confess after their name appears on the list prepared by the Cell level gacaca tribunal, with half being served in community service, and 1-3 years for people who confess before their name appears on the list. *Gacaca Law*, *supra* note 276, Articles 54-63, 68-71.

hoped, tens of thousands of people will be released into the Rwandan community within the next few years. Their community service commitments will be limited to a specified number of hours per week, to allow them both to spend time with their families and obtain paid employment elsewhere.²⁸³ The stated aims of this program, as implied by the aims of the *Gacaca* legislation generally, are twofold: (a) 'to achieve reconciliation and justice in Rwanda ... without only aiming for simple punishment'; and (b) 'to provide for penalties allowing convicted prisoners to amend themselves and to favour their reintegration into the Rwandese society without hindrance to the people's normal life.'²⁸⁴ The consequences of this mass release of prisoners into the community have not yet been adequately considered.

The *Gacaca Law* is complex, and, not being the focus of this thesis, I will limit my analysis of it to a few additional points concerning the categories of persons who will be tried by the *gacaca* tribunals. In most cases, Category 1 suspects will *not* be tried by *gacaca*, but will remain 'answerable to ordinary jurisdictions', that is, the National Courts.²⁸⁵ The National Courts will also deal with any cases that were finally processed by the prosecutors and sent to the Courts prior to the coming into force of the *Gacaca Law* (15 March 2001).²⁸⁶ All other cases are supposed to be immediately forwarded to the relevant Cell level *gacaca* tribunal for categorisation as soon as they have been 'investigated'.²⁸⁷ Realistically, many files will not be transferred to the *gacaca* tribunals for some time, while the prosecutors complete their investigations. In some cases,

²⁸³ As far as I am aware, the actual maximum number of hours to be worked under Community Service Orders is yet to be confirmed. Leanne Salel, student intern from McGill University at the Centre for Conflict Management (CCM), National University of Rwanda, summer 2000, wrote in November 2000: 'In order to enable offenders and their families to lead self supporting lives, and in light of the fact that community service work is not remunerated, the proposed administrative regulations on CSOs limit the required weekly working hours to 16.' Salel, L. Student Essay, 'Reduced Sentences And Community Service Orders As Sanctions For Genocide Perpetrators In The *Gacaca* Justice System In Rwanda', on file with author.

²⁸⁴ *Gacaca Law*, *supra* note 276, Preamble.

²⁸⁵ *Ibid*, Article 2. This policy decision clearly symbolizes the seriousness of Category 1 offences and the blame attributed to the 'bad leaders who prompted the population to exterminate one part of ...society', which has 'decayed' as a result. *Ibid*, Preamble.

²⁸⁶ Although the 'Specialized Chambers' are repealed by the *Gacaca Law*, the same courts will continue to handle genocide cases transferred to them prior to 15 March 2001. *Gacaca Law*, *supra* note 276, Article 96.

²⁸⁷ *Ibid*, Articles 47-48.

prosecutors still need to *create* such a file and identify the charges, despite the fact that the detainees in question have often been in detention for several years.²⁸⁸

The gacaca tribunals are designed to bring speedy justice and reconciliation to Rwanda. In relation to justice, it has been estimated that all trials can be completed within 2-3 years,²⁸⁹ although this projection may be optimistic. Justice is also hoped to be visible and participatory, involving almost the entire Rwandan population in one way or another. Yet, a significant question remains as to whether it will be possible to 'shift the paradigm from mass participation in genocide to mass participation in justice' in such a short period of time.²⁹⁰ While the majority of the predominantly Hutu prisoner population is looking forward to gacaca,²⁹¹ some genocide survivors are anxious that ethnic partisanship and the lack of survivors in some areas will affect the quality of justice that may be rendered.²⁹²

Despite such concerns, it is hoped that gacaca will encourage national reconciliation, through open testimonies, confessions and apologies, community service, and ultimately the development of a record about the genocide, which may in turn help to heal survivors'

²⁸⁸ As at June 2000, LIPRODHOR reported that there were still 18,000 genocide suspects in detention without files (*sans dossier*). *Problématique de la Preuve*, *supra* note 10, at 20. At the time of writing this thesis, prosecutors are working in the *cachots* (see *infra*, note 299 and accompanying text for description of the *cachots*), trying to create and verify files for all detainees. Those for whom no charges can be identified are included in a list of persons *sans dossier*. Persons on this list are then brought in groups before their communities, where the population is asked if they are aware of any charges against the accused. If so, the prisoner is returned to prison, a file is created and the charges are investigated. If not, the prisoner is released.

²⁸⁹ *Problématique de la Preuve*, *supra* note 10, stating 2 years at 44 and 3 years at 51.

²⁹⁰ Alice Karekezi, Director of Human Rights, Justice & Government program, Centre for Conflict Management, National University of Butare, meeting, 4.6.01.

²⁹¹ *Confessing to Genocide*, *supra* note 64, at 133-135.

²⁹² M. Turner, 'Rwanda aims for 'truth and reconciliation' plan' *Financial Times* (5 October 2001), online: WL (27942174), noting one genocide survivor's concerns that some people who participated in the genocide will even be elected as gacaca judges. Despite the apprehensions of many genocide survivors about gacaca, several surveys within Rwanda have found that the majority of the population, including survivors, support the initiative. See, for example, LIPRODHOR, *Juridictions Gacaca Au Rwanda: Résultats de la recherche sur les attitudes et opinions de la population Rwandaise*, Kigali 2000, (a survey of 943 Rwandans, of which 15% were genocide survivors, which found that 93% of participants were favourable to gacaca) and T. Turatsinze, 'From the Horse's Mouth', *The New Times (Rwanda)*, 24-26 September 2001 (finding, during a random survey of Kigali residents, that '91% of the interviewees believed the Gacaca courts will solve more problems than they will create', and that 'only 13% of the interviewees said that Genocide survivors have no trust in the Gacaca courts.')

wounds.²⁹³ At the moment, gacaca remains a great unknown, but it should not be written off as an impossible dream before it has even begun.

PART II – WOMEN ACCUSED OF GENOCIDE:

RESULTS OF EMPIRICAL RESEARCH

Introduction

It is widely known that there are tens of thousands of genocide suspects still in detention in Rwanda. What is little known is that this number includes several thousand women. To be precise, as at March 2001, there were 3,442 female genocide suspects detained in the Rwandan prisons, in addition to at least 103,000 men.²⁹⁴ Women therefore represented 3.2% of all genocide suspects in Rwanda. At least 3,400 of these women, like the vast majority of all genocide suspects, were awaiting trial,²⁹⁵ in most cases having spent more than 5 years in pre-trial detention.²⁹⁶

²⁹³ Most of these points were made by in a speech by the Rwandan Minister of Justice in Kigali in July 1999, as cited in *Regard Retrospectif*, *supra* note 252, at 58-59.

²⁹⁴ International Committee of the Red Cross: 'Detained population registered by the ICRC in Rwanda and present in places of detention as of March 5th, 2001', [hereinafter *Detained Population*] in bundle of ICRC documents obtained from MINIJUST (Rwandan Ministry of Justice) courtesy of Vanessa Hawkins in July 2001 [hereinafter *ICRC documents*]. This document lists a total of 108,215 genocide suspects in detention across Rwanda. Of this number, 'vulnerable populations' included: 3,442 women; 158 accompanying children (infants); 204 young adults who were less than 14 in 1994, 6 children aged 14 or less in 2001, and 1660 persons aged 70 or more in 2001. It is not clear from these statistics whether any women are also included in these other 'vulnerable populations' or if 3,442 represents the total number of female genocide suspects in detention at that date. Assuming that the vast majority of persons, even in the other 'vulnerable populations' are men, there would be roughly 104,500 male genocide suspects in detention as at 5.3.01.

²⁹⁵ According to the information I gathered in Rwanda, a maximum of 42 women in the prisons across Rwanda are serving prison sentences following Court orders. The remainder – 3,400 women – are still awaiting trial. For further discussion of the sentences that women have received in the Rwandan Courts, together with the rate of trials of women, compared to men, see Part II.D.1 below.

²⁹⁶ The vast majority of the female detainees I interviewed in the Rwandan prisons had been imprisoned for over 5 years. Specifically, 77%, comprising 55 from a total of 71, had been imprisoned since 1994-1996. This figure increases to 93% (66 women), with the inclusion of those arrested during 1997. These statistics accord with information gathered by the ICRC, according to which the vast majority of genocide suspects were arrested before 1997. International Committee of the Red Cross, 'Arrests in Rwanda from 1994 to 1999: 164,219, according to information gathered by ICRC.' In *ICRC documents*, *supra* note 294. Periods of mass arrests usually coincided with the return of refugees from the Congo who had fled Rwanda during or shortly after the genocide.

At the time of my visit to Rwanda in mid-2001, women were detained in 14 of Rwanda's 17 prisons,²⁹⁷ although almost half of the total number of female genocide suspects were detained in the Kigali, Butare and Nsinda prisons.²⁹⁸ In addition, at least as at March 2001, 822 female genocide suspects (24% of the total) were still being held in 'cachots', that is, informal detention facilities, including communal lock-ups and police cells.²⁹⁹ One hundred and fifty-eight infants were detained with their mothers.³⁰⁰

Almost all women accused of genocide are Hutus, but there are also a few Tutsis and Twas.³⁰¹ They come from all walks of life. While the majority are illiterate farmers,³⁰²

²⁹⁷ As at April 2001, the following prisons in Rwanda contained female detainees: Butare (400), Cyangugu (63), Gikongoro (72), Gisenyi (61), Gisovu (129), Gitarama (229), Kibungo (69), Kibuye (110), Kigali (823), Miyove (177), Nsinda (384), Nyanza (156), Rilima (209) and Ruhengeri (65). The 3 prisons which contained no female detainees were: Gikondo, Onatracom and Byumbal. 'Table of Detainees as at April 2001', provided to me by MININTER (Ministry of the Interior), Kigali, June 2001 (on file with author).

²⁹⁸ These 3 prisons held 823, 400 and 384 women respectively as at April 2001. *Ibid.* These figures include common law detainees, although this category represents only a very small proportion of women in prison in Rwanda. Genocide suspects are usually imprisoned in the area where they allegedly committed the crime. In the Kigali Central Prison women represent 11% of total detainees. This is well above the proportion of women among total genocide suspects, which is only 3.2%, as explained above. According to Rwandan Attorney General, Gerald Gahima, the high number of women in the Kigali prison is due to there being 'a higher proportion of educated women in Kigali, who participated in meetings and were more actively involved in the genocide, than elsewhere.' Interview with Gerald Gahima, Rwandan Attorney General, Kigali, 3.8.01.

²⁹⁹ According to ICRC statistics, of the 3,442 women in Rwandan detention facilities as at March 2001, 2,611 were in the central prisons, 9 were in military prisons, 780 in communal lock-ups and 42 in police stations. *Detained Population*, *supra* note 294. The number of women in the cachots has reduced substantially over recent years due to the continued transfer of women from the cachots into the prisons under pressure from non-governmental organizations and in preparation for the forthcoming gacaca trials. For example, as at April 1999, the ICRC recorded a total of 1,437 women in the cachots – i.e. 34% of the total number of female genocide suspects at that date: 4,278. ICRC, 'Detainee population registered by the ICRC in Rwanda', April 1999, in *ICRC documents*, *supra* note 294.

³⁰⁰ *Detained Population*, *supra* note 294.

³⁰¹ Drumbl, *supra* note 251, at 591 notes that 'the overwhelming majority of the detainees [are] Hutu.' He states further, at 608 that there are also some Tutsis in jail. The ethnicity of my interview participants was not among my interview questions, mainly because, since the genocide, ethnicity has become a very sensitive issue in Rwanda, and is rarely openly discussed. Nevertheless, I am able to estimate that at least 90% of the women I interviewed (64 of 71) were Hutu. This estimation is drawn both from cases in which women openly discussed their ethnicity with me, and those in which it became obvious as the interview unfolded. For example, some women would explain how they were able to save Tutsi children because those children did not have identity cards and could be passed off as the women's own; others mentioned that their own children were killed because their father was Tutsi, and some who just referred to Tutsis as 'them' or 'they'. These responses clearly implied that the ethnicity of the interviewees involved was Hutu. I also interviewed one Tutsi woman and two other women who I believed also to be Tutsi, on the basis of the ambiguous responses they gave to some of my interview questions. Finally, I interviewed 4 Twa women, whom I had specifically requested to meet, in accordance with one of my research priorities (see Methodology, Annexure I). Given that my research priorities affected the ethnic makeup of my interview cohort, it is likely that an even greater proportion of female genocide suspects across Rwanda - I would

their numbers also include, among others, former students, bar owners, political, religious and military leaders, judges, journalists and teachers. Three of these suspects - one former government minister and two Benedictine nuns - are detained in prisons outside Rwanda; the former in the United Nations Detention Facility in Arusha, and the latter two in prison in Belgium.³⁰³

Many issues arise in relation to Rwandan women in detention, such as their disturbing conditions in the Rwandan prisons. Given constraints of space, I have chosen to leave most of those issues to another forum. Instead, I focus in this Part of the thesis on four fundamental questions: *how* and *why* did women participate in the genocide, *how much* power did women possess to prevent the violence, and *what is happening* to Rwandan women in the domestic and international criminal justice systems?

The first question, as to how women participated in the genocide, is explored in Section A. I point out that female genocide suspects face accusations ranging from minor property offences to murder. However, I stress that the actual level of women's involvement in the genocide remains a matter of great controversy. In Section B, I consider women's possible motivations for participating in the genocide. I begin by explaining how difficult this question is to determine, in light of the low confession rate

estimate at least 95% - are Hutu. Also see *supra*, note 70 and accompanying text regarding a sub-group among Hutu women: those who were married to Tutsi men.

³⁰² Of the 71 female genocide suspects that I interviewed, 45 (63%) classified themselves as farmers, cultivating the land for domestic consumption. This figure is actually lower than the percentage of farmers among the Rwandan population generally: as at 1991, 97.9% of women and 87.6% of men worked in the agricultural sector. *Profil Socio-Économique*, *supra* note 108, at 47. The lower proportion of farmers among my interview cohort may be explained either by my research priorities, which included Category 1 suspects, who are often selected because of their leadership positions in society. Alternatively, it might be that the government is prioritizing prosecutions of people perceived to have held more responsible positions in society. This is consistent with the comment of Gerald Gahima, *supra* note 298, although it does not explain the high number of female detainees in the rural area of Nsinda. As to education levels, of the 71 women interviewed, 30 (42%) had never been to school; another 10 had received 4 years or less of primary education, while another 13 had continued on to between P5 and P8, the fifth to eighth levels of primary school. In total, 53 of the women I interviewed (75%) had no post-primary education, which is consistent with my earlier discussion about the low education level of Rwandan women generally. (See Part I.B.3 above.)

³⁰³ Pauline Nyiramasuhuko has been held in the United Nations Detention Facility (UNDF) in Arusha since July 1997. Her trial commenced in June 2001 and is expected to run for at least two years. The Rwandan nuns in Belgium were not detained prior to their conviction in June 2001. They will serve their sentences in that country. For further discussion of Pauline Nyiramasuhuko, see Part ILC.2(a) below. For further discussion of the *Belgian Genocide Trial*, see both Part I.D.2 above and Part ILC.2(c) below.

among female genocide suspects and the inadequacy of some confessions, which appear to be influenced by a desire to conform to gender expectations. I then present three such possibilities, namely: fear (which implies victimization); the effect of the anti-Tutsi hate propaganda, and simple greed and opportunism. .

In Section C, I discuss the third question, whether women had the power to prevent the genocide, or at least, to lessen its consequences. This discussion is divided into two subsections: the power of ordinary women for positive action during the genocide, either to actively save others or to prevent the men in their lives from participating in the violence, and the power of women in leadership positions. In this latter section, I present case studies of women in politics, the military and the Catholic Church, which suggest that the 'evil woman' theory has been invoked when women appear to have defied gender stereotypes.

In Section D, I consider women's encounters with the Rwandan and international criminal justice systems. In this context, I return to debate two of the theories that I raised in the early pages of this thesis, namely, the chivalry theory and the 'equal treatment' approach. I argue that there is evidence of the chivalry theory at play in women's treatment by the Rwandan courts, especially in the high acquittal rate of women. On the other hand, I contend that the 'equal treatment' model that has been formally adopted in Rwanda is disadvantaging some women. In particular, I discuss the disproportionate impact of imprisonment on female detainees, in light of their family responsibilities, and problems connected to the lack of legal representation for women, especially for Twa women. Given that gender, sometimes interacting with ethnicity, appears to be informally influencing the outcome of justice in Rwanda, I advocate that it be formally taken into account, both in progressing women's cases to trial and, where appropriate, in the courts themselves.

A. Women's Participation in the Genocide

1. Accusations Against Female Genocide Suspects

a) Pauline Nyiramasuhuko, On Trial Before the ICTR

*I can't say that she killed with her own two hands, but during the genocide there were so many ways of killing, including, for example, ordering the criminals about like she did.*³⁰⁴

In attributing responsibility for the genocide, many Rwandans draw a distinction between the 'ordinary' people who carried it out and the 'intellectuals' (Rwanda's 'Fourth Ethnic Group'),³⁰⁵ who are considered to be the masterminds of it.³⁰⁶ Most of these 'intellectuals' appear on a sub-list within the *Category 1 List*, called the 'National List', which represents 'Rwanda's most wanted'.³⁰⁷ As at March 2001, eight women appear on that List. They comprise the wife of former President Habyarimana, Agathe Kazinga (alias 'Kanjogera'),³⁰⁸ five journalists,³⁰⁹ and two former government ministers, Agnes Ntamabyaliro³¹⁰ and Pauline Nyiramasuhuko. These eight women were supposedly

³⁰⁴ Witness 'Nkusi', cited in *Not So Innocent*, *supra* note 63, at 101.

³⁰⁵ See my discussion of class distinctions at *supra* note 73 and accompanying text.

³⁰⁶ For example, according to LIPRODHOR, 'the intellectuals are another category. They really incited and tortured people.' Florian Ukizemwabo, Executive Director LIPRODHOR, Personal discussion, Kigali, 11.6.01.

³⁰⁷ There is a total of 110 persons on the National List, as at 31 March 2001. See *Category 1 List*, *supra* note 260.

³⁰⁸ See Part I.C.1 above for a discussion of this powerful Queen Mother in pre-Colonial Rwandan history.

³⁰⁹ The inclusion of journalists on the National List is consistent with the responsibility that is usually attributed to the media for the genocide. See *supra* note # above regarding the role of the media in the Rwandan genocide. The 5 female journalists on the National List are: Valérie Bemeriki, Stéphanie Nyirasafari, Agenesta Mukarutamu, Spérancie Karwera and Hélène Nyirabikari. The first 3 of these 5 women are discussed in *Not So Innocent*, *supra* note 63, at 147-153.

³¹⁰ Agnes Ntamabyaliro was the long-time President of the Kigali Court of Appeal. She entered into politics in April 1992 as Minister of Commerce, and was appointed Minister of Justice in July 1993, a position that she held under both Prime Minister Uwilingiyimana and in the interim (genocidal) government. Ntamabyaliro is alleged to have belonged to the extremist wing of the Liberal Party (PL), which helped to split the party and weaken the power of President Habyarimana's moderate political opponents. She was arrested in Zambia in May 1997, and has been charged with genocide. In particular, She is accused of having incited the murder of Tutsis and moderate Hutus who had sought refuge in the stadium in Kibuye, through a speech in which she 'rallied the population with a microphone, criticizing them for contenting themselves with killing only a few old women.' Ntamabyaliro is also attributed with the comment: 'When you begin extermination, nothing, no one must be forgiven.' *Not So Innocent*, *supra* note 63, at 108. Other information drawn from LIPRODHOR, *Le Verdict*, Dec 99.

Rwanda's most powerful women at the time of the genocide, and their role in it therefore warrants special consideration.

Again due to space constraints, as well as a relative shortage of available information on these individuals,³¹¹ I will limit my discussion at this point to a consideration of the allegations against one of these women: Pauline Nyiramasuhuko, former Minister of Family Affairs and Women's Development. At the time of writing this thesis, she is the only woman indicted by the International Criminal Tribunal for Rwanda, and as such, is clearly not an 'ordinary' genocide suspect.³¹² This justifies singling out her case, before moving on to discuss the allegations against 'ordinary' female genocide suspects in Rwanda.

Pauline Nyiramasuhuko initially trained as a social worker. In this profession her work involved activities such as promoting family planning, educating women about HIV/AIDS and encouraging the education of girls.³¹³ She qualified as a lawyer in 1990, and her political career started in 1992 with the creation of the new Ministry for Family Affairs and Women's Development, to which she was appointed Minister.³¹⁴ The primary goal of this new Ministry was to 'concern itself with the problems of women and the family in a specific manner.'³¹⁵ Its dual mission was to 'create a policy for the protection and promotion of women and the family' and to 'propose measures to reduce the inequalities between men and women in access to opportunities at different levels of education and employment and to financial and material resources.'³¹⁶

³¹¹ See *supra* notes 307 to 310 as to what information is available in relation to these women.

³¹² See comment by Judge Mose of the ICTR in Part I.D.1 above, that the ICTR has targeted the 'big fish'.

³¹³ Interview with Nicole Bergevin, Lead Defense Counsel for Pauline Nyiramasuhuko, International Criminal Tribunal for Rwanda, Arusha, 30.5.01.

³¹⁴ *Ibid.*

³¹⁵ Mukabagwiza, E., *Rapport de Stage Effectué au Ministère de la Famille et de la Promotion Feminine*, MINAPROFE, February 1994, at 9-10 (document read at the Rwandan Ministry of Gender, June 2001).

³¹⁶ *Ibid.*, at 10.

According to the Amended Indictment against her before the ICTR, Nyiramasuhuko was 'a prominent political figure in the Butare *préfecture*',³¹⁷ who maintained her position as minister in the interim government after the death of President Habyarimana.³¹⁸ At a minimum, it is alleged, Nyiramasuhuko 'knowing that massacres of the civilian population were being committed ... took no measures to stop them.'³¹⁹ To the contrary, she 'refused to intervene'.³²⁰ Yet, a much more active role is also attributed to Nyiramasuhuko, for having 'ordered, aided and abetted the acts.'³²¹ For example, it is alleged that together with the top political leaders in Rwanda, including President Sindikubwabo and Prime Minister Jean Kambanda,³²² Nyiramasuhuko conspired to exterminate the Tutsi population and its "accomplices",³²³ and 'publicly and directly' incited the people to do it.³²⁴ She is also accused of having '[o]n several occasions ... demanded weapons to distribute in [her] home *préfecture*, knowing that the weapons would be used in the massacres.'³²⁵

Other allegations in the Amended Indictment include a claim that between April and July 1994, Nyiramasuhuko and her son Arsène Shalom Ntahobali patrolled a roadblock near their home in Butare and used it 'to identify, abduct and kill members of the Tutsi

³¹⁷ International Criminal Tribunal for Rwanda, *The Prosecutor Against Pauline Nyiramasuhuko and Shalom Ntahobali*, Case No. ICTR-97-21-I, Amended Indictment, 1 March 2001 [*hereinafter Amended Indictment*], para. 4.2.

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*, para 6.55.

³²⁰ *Ibid.*

³²¹ International Criminal Tribunal for Rwanda, Case Nos. ICTR-96-8-T / 96-15-I / 97-21-I / 97-29-A/B, *Prosecutor's Pre-Trial Brief Pursuant To Rule 73bis(B)*, 10 April 2001 [*hereinafter Pre-Trial Brief*], para 30. NB: 'aiding and abetting' can also be committed by omission. *Ibid.*, para 92. However, the *Amended Indictment* and *Pre-Trial Brief* clearly imply that Nyiramasuhuko's role in the genocide was more active than a simple omission.

³²² Sindikubwabo and Kambanda succeeded President Habyarimana and Prime Minister Uwilingiyimana respectively after their deaths, in the Interim (genocidal) government.

³²³ *Amended Indictment*, *supra* note 317, para 6.52.

³²⁴ *Ibid.*, para 5.8, and *Pre-Trial Brief*, *supra* note 321, para. 23. Also see *Amended Indictment*, *supra* note 317, para. 6.38: 'Between April and July 1994, Pauline Nyiramasuhuko not only incited on [sic], but also aided and abetted the population ... to slaughter the Tutsi in Butare *préfecture*'. An almost identical statement is made at para 6.47, with the addition that this incitement was undertaken, 'to make sure that the massacres were carried out in an efficient and unflagging manner.' One of the prosecution witnesses will argue that Nyiramasuhuko 'delivered a speech on a loudspeaker', inciting the civilians to kill. See International Criminal Tribunal for Rwanda, Office of the Prosecutor, *Butare Cases: Witness Summaries Grid* (6 April 2000), [*hereinafter Witness Summaries Grid*], Witness No. 54 (QF)

³²⁵ *Amended Indictment*, *supra* note 317, para. 6.13.

population.³²⁶ They are also accused of having gone on several occasions to the *prefecture* offices ‘to abduct Tutsi refugees’, who were ‘sometimes killed outright’ by the Interahamwe and sometimes taken in Nyiramasuhuko’s vehicle to other locations to be executed.³²⁷ On these occasions, witnesses allege, Nyiramasuhuko ‘dressed in military uniform and carried a gun,’³²⁸ ‘supervised killings and violence’³²⁹ and told the Interahamwe to ‘have no mercy’.³³⁰ One witness maintains that she saw Nyiramasuhuko ‘singing and dancing on the roadblock,’³³¹ and several claim that Nyiramasuhuko made clear references to Tutsis as ‘dirt’ that had to be removed.³³²

According to the witnesses, Nyiramasuhuko’s victims were often forced to undress completely before being taken to their deaths³³³ and some Tutsi girls were raped, including by Ntahobali and unknown ‘accomplices’.³³⁴ Numerous individuals claim that Nyiramasuhuko was present at, witnessed, did not prevent, and even ordered some of those rapes.³³⁵ One witness will say that she even told the killers that they ‘needed to rape all Tutsi women because they are arrogant’, and that after this statement, some girls were immediately raped and killed.³³⁶ Such claims are supported by Rwandan NGO Avega ‘Agahozo’, according to which ‘the wickedness of Pauline Nyiramasuhuko is notoriously known and the militia she was supervising chose women for gang rapes and girls they sequestered to make them their wives.’³³⁷ Given her former role as head of the Ministry for Women’s Affairs, these allegations are tragically ironic. The Senior Trial Attorney for the prosecutors in this case intends to raise this issue – and specifically,

³²⁶ *Ibid*, para. 6.27.

³²⁷ *Ibid*, para 6.30; *Witness Summaries Grid*, *supra* note 324, Witness Nos. 8 (TK) and 27 (FAP).

³²⁸ *Ibid*, Witness No. 61 (QY). Also see Witness No. 75 (RZ).

³²⁹ *Ibid*, Witness No. 68 (RJ).

³³⁰ *Ibid*.

³³¹ *Ibid*, Witness No. 83 (SR).

³³² *Ibid*, Witness Nos. 3 (TA), 64 (RD), 83 (SR) and 86 (SU). One genocide survivor interviewed by African Rights also claimed that Nyiramasuhuko entreated the militias ‘not to spare anyone, not even the foetus or the old.’ *Not So Innocent*, *supra* note 63, at 91. The numerous testimonies collected by African Rights regarding Nyiramasuhuko are consistent with those to be provided by OTP witnesses at the ICTR, discussed above. See generally *ibid*, at 90-107.

³³³ *Amended Indictment*, *supra* note 317, para 6.31.

³³⁴ *Ibid*, para 6.37.

³³⁵ *Witness Summaries Grid*, *supra* note 324, Witness Nos. 3 (TA), 27 (FAP), 44 (QBP), 45 (QBQ), 62 (QZ) and 68 (RJ).

³³⁶ *Ibid*, Witness No. 44 (QBP).

³³⁷ Avega, *supra* note 11, at 17.

Nyiramasuhuko's gender - as an aggravating circumstance in the prosecution of the incitement charge against her.³³⁸

On the basis of these allegations, Nyiramasuhuko has been charged with a long list of crimes, including: conspiracy to commit genocide; genocide or alternatively complicity in genocide; direct and public incitement to commit genocide; murder, extermination, rape (by persons under her responsibility), persecution; other inhumane acts; and outrages on personal dignity.³³⁹ According to the Commander of the investigations section for the ICTR, based in Kigali, Maxwell Nkole, there is a strong case against Pauline Nyiramasuhuko. He listed among the evidence that his investigators had collected against her the discovery of women by the RPF in Nyiramasuhuko's basement who had been sexually abused and the exhumation of bodies from her backyard.³⁴⁰

These images of Nyiramasuhuko are hard to reconcile with the statement made by the Assistant Trial Attorney on her case, Nicolas Cournoyer, who described his client as 'very nice, a mother hen.'³⁴¹ Cournoyer himself recognized the incongruity of the situation, saying, '[i]t is difficult to imagine she is the same person who is alleged to have done the things you read about her.'³⁴² Indeed, Nyiramasuhuko herself, in an interview with the BBC in mid-August 1994, claimed that the only role she played during the genocide was to 'move around the region to pacify.'³⁴³ She reportedly also said:

*I am ready to talk to the person who says I could have killed. I cannot even kill a chicken. If there is a person who says that a woman, a mother, killed then I'll confront that person... I'm amongst those Hutu who have been to university. I studied law. All women who went to university are seen as killers.*³⁴⁴

³³⁸ Interview with Sylvana Arbia, Senior Trial Attorney, Office of the Prosecutor, ICTR, Arusha, 1 June 2001.

³³⁹ *Amended Indictment*, *supra* note 317, para 7 ('Charges').

³⁴⁰ Interview with Maxwell Nkole, Commander, Investigations section, ICTR (Kigali), 11 June 2001.

³⁴¹ Interview with Nicolas Cournoyer, Assistant Trial Attorney, Defense Team for Pauline Nyiramasuhuko, 15 May 2001.

³⁴² *Ibid.*

³⁴³ Interview with Lindsay Hilsum, BBC, mid-August 1994, as cited in *Not So Innocent*, *supra* note 63, at 106.

³⁴⁴ *Ibid.*

Nyiramasuhuko seems to have missed the point. As the individual quoted at the beginning of this sub-section said, 'during the genocide there were so many ways of killing'.³⁴⁵ And not all of them required physical strength. Nyiramasuhuko was a government minister; a respected leader of the people. She was, therefore, a woman who had a certain degree of power, at least relative to both the average Rwandan woman, and even relative to the average Rwandan man. Given that, as set out above, the allegations against her include planning, inciting and aiding and abetting genocide, the fact that she could not personally 'kill a chicken' is surely irrelevant. Could she also argue that she had no voice? This is an important point, and goes to the core of this thesis. Even if some (most, or even all) women 'did not pour blood', they might still have caused or contributed to blood being poured by others. Yet, as discussed below, even many 'ordinary' female genocide suspects appear to make a moral distinction between 'passive' and 'active' participation in genocide. I will move onto that discussion, and will revisit the question of power held by Nyiramasuhuko and other women in leadership positions in a later section.³⁴⁶

b) The 'Ordinary' Female Genocide Suspect - Accused of Murder

I am a woman. I cannot kill any person.

Female genocide suspect, Miyove Women's Prison, 29.6.01

There is no official, consolidated record in Rwanda of the charges against genocide suspects. This is not surprising, given that many suspects still remain without files, although when I was in Rwanda, the prosecutors were trying to rectify this situation.³⁴⁷ Even when a file does exist, it is not considered 'complete' until it is transferred to the Court – or in future, to the gacaca tribunals.³⁴⁸ Until that time, the file is not available to the public,³⁴⁹ and detainees are also unlikely to know if it has even been transferred.³⁵⁰

³⁴⁵ See quotation at beginning of this sub-section I.A.1(a).

³⁴⁶ See Part I.C.2 below.

³⁴⁷ See *supra* note 288 regarding the persons 'sans dossiers'.

³⁴⁸ Email from Aloys Habimana, Head of Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG), LIPRODHOR, 25.10.01.

³⁴⁹ *Ibid.*

³⁵⁰ None of my interview participants were aware if their file had been transferred to the court, except for those who had already been tried.

Genocide suspects might have the opportunity to read their file and the trial notice, which outlines the charges against them, several days before trial.³⁵¹ For accused persons who are illiterate, which category includes many women, it usually falls to the Court Registrar to read the file to them.³⁵²

In the circumstances, it is not surprising that many genocide suspects are not aware of the exact nature of the charges against them. Nevertheless, only one of the women I met in detention could tell me nothing of the charges she faced, except that they involved a broad accusation of 'genocide'. The remaining 70 women mentioned a total of 93 charges between them, all of which are presumably alleged to have been 'committed in connection with the events surrounding the genocide and crimes against humanity', in accordance with the *Genocide Law* and *Gacaca Law*.³⁵³ Those 93 charges covered almost the full spectrum of crimes, except for crimes of sexual violence.³⁵⁴ They included: 43 charges (46%) for 'killing', with her own hands or as a member of a group, which I will call 'active murder';³⁵⁵ 25 charges (27%) for exposing the hiding place of Tutsis or 'handing someone over' to the killers - which I will call 'passive murder';³⁵⁶ 9 charges (10%) for looting property; 6 charges (6%) for distributing or possessing weapons; 3 charges (3%) for directing militias; 2 charges (2%) for incitement to commit genocide, and 1 charge (1%) for wearing military uniform.³⁵⁷

³⁵¹ The trial notice must be served 8 days prior to trial according to the Rwandan *Code of Criminal Procedure*. According to Mark Drumbl, who worked as a defence lawyer for genocide suspects in Rwanda, the trial notices often do not specify exactly what criminal activity the suspect is accused of, for example, simply stating that 'he participated in genocide'. Drumbl, *supra* note 251, at 617.

³⁵² *Deux Ans*, *supra* note 78, at 11.

³⁵³ See text accompanying *supra* note 256 regarding the link between the Rwandan *Penal Code* and the Rwandan *Genocide Law*.

³⁵⁴ Reports of women's involvement in crimes of sexual violence are not, however, unheard of. Recall, for example, allegations against Pauline Nyiramasuhuko, set out in *supra* notes 333 to 338 and accompanying text. Also see the allegations that a woman named 'Maman Aline' raped another woman with a stick in *Not So Innocent*, *supra* note 63, at 40.

³⁵⁵ In fact, 43 women faced 68 'counts' for 'active murder' between them, but I will refer to 43 'charges' for the purpose of this statistical analysis.

³⁵⁶ Three of these women charged with 'passive murder' were also charged with active murder, and so are included in both the figures for active murder (43) and for passive murder (25).

³⁵⁷ The other three charges mentioned were: 'writing lists of persons to be killed' (2 charges) 'going to a roadblock' (1 charge) and non-assistance to persons in danger (1 charge).

Of course, the distinction I have drawn between ‘active’ and ‘passive’ murder is nonsensical legally, given that all forms of murder – as an accomplice or otherwise – are treated equally under the *Genocide Law* as a Category 2 crime.³⁵⁸ Indeed, the commentaries on the Rwandan *Genocide Law* specifically state that ‘showing the killers a hiding-place is an indispensable act, inasmuch as [on the condition that] pointing it out has enabled the killers to find the victims.’³⁵⁹ Nevertheless, I will maintain this distinction throughout this Part of the thesis, as I will argue that its significance lies in questions of perception about women’s responsibility for the genocide, rather than in formal legal consequences. The distinction is also important because, as will be discussed below, the large number of women charged with ‘active’ murder in my results flies in the face of anecdotal evidence, both within and outside the prisons, about the manner of women’s participation in the genocide, which is presumed to have been more of the ‘passive’ variety.³⁶⁰

This leads us to query whether my research results, which suggest that most female genocide suspects are accused of ‘active’ participation in the genocide, are representative of: (a) the charges faced by female genocide suspects generally, and / or (b) women’s participation in the genocide. I will deal with the second question shortly. In relation to (a), according to LIPRODHOR, a Rwandan human rights organization that has dealt extensively with genocide suspects, ‘most women in the Rwandan prisons are accused of having pointed out the hiding place or calling out to attract the killers.’³⁶¹ I cannot provide any definite reasons for the divergence in my own results from this conclusion, save to canvass two possible factors that may have skewed my research results towards an over-representation of ‘active murder’ charges.

³⁵⁸ See text accompanying *supra* note 263 in relation to the definition of ‘accomplice’ in Rwandan law.

³⁵⁹ *De Beer Commentaries*, *supra* note 263, at 37. NB: I have added ‘on the condition that’ as I believe it to be a better translation of the French version of the same text than ‘inasmuch’, found at *ibid*, at 36 (French version).

³⁶⁰ See Part II.A.2 below, on ‘Popular Perceptions of Women’s Participation in the Genocide’.

³⁶¹ Florian Ukizemwabo, Executive Director LIPRODHOR, Personal discussion, Kigali, 11.6.01.

The first of these possibilities is connected to my choice of interview subjects. One of my priorities in selecting women for interviews was the fact that they had confessed.³⁶² The question, therefore, is whether more women confess to 'active murder' than to 'passive murder', thus affecting the breakdown of charges against the women I interviewed. At first glance, the answer appears to be no. Eighteen of the 43 women charged with 'active murder' (42%) had confessed, but a higher proportion had confessed to 'passive murder': 14 out of the 25 women charged with this crime, or 56%.³⁶³ However, on analyzing the quality of these confessions, I found that, overall, women who were charged with 'active murder' were more likely to make an apparently genuine confession to their crimes than women charged with 'passive murder', who were more likely to use their 'confession' as an opportunity to explain why they had been unfairly accused.³⁶⁴ I will deal with the question of confessions more fully in another section of this thesis,³⁶⁵ but in sum, I consider that my choice of interview subjects could have affected my research results only to a limited extent. At the most, it explains 18 of the 93 charges I recorded.

The other factor that might have skewed my research results is the involvement of the prison 'Capitas' (the heads of the women's compounds) in the selection of my interview subjects.³⁶⁶ I believe that where the Capitas had discretion in the selection of the women I would interview, they often chose women who they thought might provide me with a 'good story', that is, involving active participation in murder rather than other allegations. I have calculated that the Capitas had some level of discretion in choosing 16 of my interview subjects. For example, in the Kigali Central Prison, I was advised that 26 women had confessed, but I only had time to meet 6 of these women in the time available, while also satisfying other research priorities.³⁶⁷ The Capita selected 5 of these

³⁶² See Methodology, in Appendix I.

³⁶³ The confession rate for possessing weapons, wearing military uniform and going to the roadblock was 100% among my interview participants, but I cannot draw any broad conclusions from these statistics, given the limited number of charges involved: only 2 for possessing weapons; 1 for wearing military uniform and 1 for going to the roadblock.

³⁶⁴ See *infra* notes 413 and 423 to 425 and accompanying text.

³⁶⁵ See Part II.B.1 below.

³⁶⁶ See Methodology, Appendix I for further discussion of the role of the Capitas in the selection of my interview subjects.

³⁶⁷ As set out in my Methodology, *ibid*, my other research priorities included: female Category 1 suspects; women who had already been to trial; female minors and Twa women. *Ibid*.

6 women for my interviews.³⁶⁸ Of this number, 3 were charged with 'active murder', including a woman who had killed three of her own children; 1 with 'passive murder' and 1 with other crimes. Similarly, in the Miyove and Butare prisons, where very few women had confessed and all of my research priorities were satisfied early in my interviews, the Capitas had the opportunity to choose 11 of my interview subjects who had not confessed. Of these 11 cases, 8 involved charges of 'active murder', 2 of 'passive murder' and 1 of other crimes.

In sum, I believe that prioritizing women who had confessed in my interviews, and the 'good story' theory impacted to some degree on my research results. However, I would argue that my data is also more representative of the female prison population in Rwanda than is generally perceived. In other words, I posit that there *are*, in fact, a relatively high proportion of women in the Rwandan prisons charged with active participation in murder during the genocide. Nevertheless, I doubt that these women are representative of women's actual overall involvement in the genocide. My reasons for this conclusion will be explained below.

2. Popular Perceptions of Women's Participation in the Genocide

The majority of women are innocent. There are some girls who were even too weak to pick up stones; others who were too old. All that women did was go and take potatoes afterwards, when people had already left.

Female genocide suspect, Butare prison, 2.8.01

I believe that women are just as guilty as men of this genocide.

Female genocide suspect, Kigali Central Prison,

3.7.01

One of the most remarkable findings of my research was the level of controversy surrounding the question of women's participation in the Rwandan genocide, both among female genocide suspects and outside the prison walls. The breadth of these responses evidences conflicting understandings of ideas of participation and responsibility, which

³⁶⁸ The Prison Director selected the other woman, on the basis of her high level of French and willingness to be interviewed.

do not always coincide with the legal definitions and punishment regime provided in Rwanda's *Genocide Law*.

At one end of the spectrum is the view that women did not participate in the genocide at all, except in a few exceptional cases. In the Rwandan prisons, I met two genocide suspects who presented this view. One of these women claimed: 'No woman participated in the genocide; maybe a dozen out of all the women in this prison [i.e. 400]. Women just stayed at home and cried whenever we heard about people killed.'³⁶⁹ A similar view was expressed by several of the Rwandan women's NGOs. For example, according to Rose Mukantabana, Executive Secretary of HAGURUKA: 'Apart from the exceptions, that is, those in positions of authority or power; some respected leaders, including some teachers and nuns, and other isolated individual cases, women did not follow the movement. The majority of women were victims of the situation and stayed at home.'³⁷⁰

Female detainees sometimes admitted that during the genocide women looted property and / or exposed the hiding places of Tutsis to the killers. As one woman stated: 'I did not see any women with the killers, but I know that if they found people hiding, they would beat them and steal their cows, or call the killers. Women also looted a lot of property.'³⁷¹ Yet, these same women often suggested that such crimes were not particularly serious, or that those responsible for them had been punished enough already. One female detainee thus declared: 'Some women looted, but now even they have spent too long in prison and I'm sure that we have all learned.'³⁷² Another stated the following:

The main thing that women did was looting because they wanted other peoples' possessions, and I saw some women going to do it. I hear that some women also called out to the killers, but I didn't see them do that. They were always watching us [Tutsis] though, to see who came to our house and what we were doing. But women should get sympathy from the Court. Women are like children. They were led into things without planning it.

(Tutsi) female genocide suspect, Butare prison, 24.7.01

³⁶⁹ Female genocide suspect, Butare prison, 26.7.01.

³⁷⁰ Interview with Rose Mukantabana, Executive Secretary of Haguruka, Kigali, 8.6.01. Judith Kanakuze, National Coordinator of Réseau des Femmes, similarly stated: 'Women were the minority of participants in the genocide. This is evidenced by the fact that it is easier now to unite women than men. Women feel less guilty.' Interview, Kigali, 8.6.01.

³⁷¹ Female genocide suspect, Gitarama prison, 17.7.01

³⁷² Female genocide suspect, Gitarama prison, 18.7.01

This latter comment was made by a Tutsi woman, who obviously had a lot of sympathy for her fellow (Hutu) inmates. While there is no guarantee that, as a Tutsi, this woman did not participate in the genocide,³⁷³ the allowance that she was prepared to make for women who *did* participate in it, at least at a certain level, indicates a greater affinity with others of her gender than of her ethnic group. The parallels between her statement and that of the person who is ultimately responsible for her imprisonment, the Rwandan Attorney General, Gerald Gahima, is also somewhat ironic. He told me: 'I think that, compared to men, women are innocent. Women were mainly led by men.'³⁷⁴

Most often, female detainees equated participation in the genocide with active 'killing', and made little or no mention of other forms of participation by women. As the following comments demonstrate, this connection was made by detainees in each of the five prisons I visited, across the country:

In my area, women did not kill anyone. The Interahamwe were all men. No women were killers or went to the roadblocks. The only thing they did was take beans.

Female genocide suspect, Kigali Central Prison, 5.7.01

No women were involved in the killings with the Interahamwe. They were mad people; no women were involved. All women were in their homes.

Female genocide suspect, Miyove prison, 10.7.01

Women did not carry pangas, so they were not as involved as the men.

Female genocide suspect, Gitarama prison, 19.7.01

Women should be released because most didn't really participate in the killings.

Female genocide suspect, Butare prison, 2.8.01

³⁷³ One Tutsi woman who is notorious for her alleged active participation in the genocide is Angéline Mukandutiye, a school inspector alleged to have been president of the Interahamwe in Rugenge sector. She is said to be 'the best known of the small group of Tutsis who played an active role in the genocide.' *Not So Innocent*, *supra* note 63, at 197. See generally *ibid*, at 196-206. Mukandutiye is on the *Category 1 List* (*supra* note 260) and is also rumoured to be on the proposed list of new indictments at the ICTR. However, to date she has avoided arrest.

³⁷⁴ Interview with Gerald Gahima, Rwandan Attorney General, Kigali, 3.8.01.

Women were not involved in the genocide because men wanted women to stay at home and not to participate in the killings.

Female genocide suspect, Nsinda prison, 6.8.01

Such comments disregard the existence of women in Rwandan prisons who have confessed to killing.³⁷⁵ Perhaps even more importantly, they reveal a perception that people who did not actually wield a machete (a *panga*) are not as guilty as others, regardless of what the law says about criminal participation. I will argue below that this perception also seems to have affected women's willingness to confess to their crimes.³⁷⁶

Outside the prisons, a much broader definition of 'participation' is often adopted. For example, Jeanne Mukamuse, from the women's survivors' organization, Avega "Agohozo", stated that: 'there is no difference between the participation of men and women in the genocide. Women were just as implicated in it as men. Women incited violence against other women, showed the hiding spots of Tutsis, and looted in particular.'³⁷⁷ Similarly, Bernadette Kanzayire, a Rwandan lawyer, claimed that:

*The criminality of women is very low in general in Rwandan society but occasionally one hears of cases of poisoning of neighbours, or of the neighbours' children. The genocide was different. I believe the majority of women participated in it, but at three different levels. Some women played an active role. For example, they may have killed people, or been members of the C.D.R [an off-shoot of President Habyarimana's party, the MRND] ... others were beside their husbands, for instance, when their husbands gave financial support to the militias. But the majority played a passive role, in refusing to hide their neighbours, and in particular, in showing out the hiding places of Tutsis.*³⁷⁸

Perhaps surprisingly, I met two female detainees who were also adamant that women's participation in the genocide was just as widespread as men's, although it may have

³⁷⁵ Admittedly, as discussed in my Methodology, as the confession procedure is confidential, detainees are often unaware of the content of other women's confessions, or even that they have confessed at all. Nevertheless, it seems incredible that female detainees are unaware of examples of at least some women who participated actively in the massacres.

³⁷⁶ See Part II.B.1(a) below, especially text accompanying *infra* notes 405 to 409.

³⁷⁷ Interview with Jeanne Mukamuse, Social Assistance and Medical Assistance Programme Officer Avega-"Agohozo", Kigali, 11.6.01.

³⁷⁸ Interview with Bernadette Kanzayire, lawyer, Kigali, 12.6.01. A similar view was expressed by Rakiya Omaar, Co-Director of African Rights, who stated: 'I think, from my work and my discussions with survivors, that the majority of women participated in the genocide, especially by refusing to hide people or by pointing out the hiding place of others... Women also widely carried out looting, and took their children with them too.' Interview with Rakiya Omaar, Co-Director, African Rights, Kigali, 13.6.01.

differed in nature. One of these women, who has confessed to brutally murdering an old woman during the genocide and was sentenced to life imprisonment for it, stated:

I think many women were involved in the genocide. I am a woman and I participated, so I think other women did too. It is true that it was mostly men who killed, but women who were out in the fields and saw Tutsis hiding called out their hiding spots. Many men and women also stole from dead Tutsis, but I did not do that.

Women have this feeling that they did not kill because they only called out, but I think it is the one who called out who killed. I believe that most of the women in this prison are guilty, or they would not be here. We cannot hide that a genocide happened and that women were involved.

Woman convicted of genocide, Gitarama prison, 2.7.01

The comments of the second detainee in this category are particularly insightful, and reveal a thorough and intellectual analysis of women's involvement in the genocide. She said the following:

I believe that women are just as guilty as men of this genocide. I think that the majority of women participated in it, but in ways different to men. Their participation was limited to three aspects:

1. Refusing to hide Tutsis

For the most part, women were not interested in participating in the genocide in a positive sense, but the vast majority did not want to help Tutsis either...

2. Assisting the killers

Women assisted the killers, by preparing the meals, fetching drinks and encouraging their men. Women brought provisions to the roadblocks and fed their men at home. No women criticized their men for being killers...

3. Information

Women knew a lot. Their eyes were open. In particular, women exposed the hiding places of Tutsis.

Female genocide suspect, Kigali Central Prison, 3.7.01

Wading through this controversy, there does, at least, appear to be a common thread: no person I interviewed claimed that women were as involved as men in violent crimes.³⁷⁹

³⁷⁹ Recall discussion at *supra* notes 16-18 regarding the debate as to whether women are less violent than men by nature, by the socialization process, or as a result of the operation of other forms of social control. As mentioned at that point, I believe it is too early to enter into this debate in respect to women's participation in the Rwandan genocide, until the extent of that participation can be the subject of more extensive research.

In light of this anecdotal evidence, I must conclude that my research results on the charges against women, which show a high proportion of women accused of 'active murder', are not representative of women's involvement in the genocide, even if they correctly represent the nature of the charges against women in detention. Rather, it seems that women's primary means of participating was at the level of looting, exposing the hiding spots of Tutsis for the killers, and supporting their men folk.

Whether it was the minority or the majority of Rwandan women who participated in the genocide in these ways is a question that can only be answered by further research. However, it does appear that women are under-represented in the Rwandan prisons relative to their involvement in the genocide. I believe that three reasons for this situation can be identified. First, as suggested above, there appears to be widespread anecdotal evidence about women's participation in looting of property. Yet, property crimes, which are Category 4 offences, are not punishable by a prison term, only damages or a suspended sentence.³⁸⁰ People who have committed property crimes should therefore not be in prison at all, unless by mistake,³⁸¹ and will theoretically eventually be tried by a *gacaca* tribunal.

The second reason why I suggest that women are under-represented among genocide suspects is that it is evident that prosecutors are deliberately targeting people charged with violent crimes that were committed overtly and are therefore easier to prove. As Rwandan lawyer, Bernadette Kanzayire, explained, 'the government has predominantly pursued those who killed. It is difficult to find proof and witnesses against people who

³⁸⁰ See text accompanying *supra* note 266.

³⁸¹ I met 9 women in detention charged with looting property. However, in 8 of the 9 cases, female detainees said that they had also been charged with other crimes. In respect to the one case where the woman claimed to be charged only with looting, to which she had confessed, Rwandan Attorney General, Gerald Gahima told me that: '[i]t is absolutely untrue that any prisoner charged only with looting is still in prison. There is no way that this is the only accusation against them. The Parquet [Prosecutors] must release them if there are no other accusations. Maybe there are other allegations that are more difficult to prove, and the detainee is only prepared to confess to looting.' Interview with Gerald Gahima, Rwandan Attorney General, Kigali, 3.8.01. Aloys Habimana of LIPRODHOR, on the other hand, stated that persons who have confessed to property crimes but who do not face any other charges are 'rarely release[d] because they think these people may be hiding other criminal acts they did commit.' Email communication from Aloys Habimana, Head of Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG), LIPRODHOR, 25.10.01.

participated in a less obvious manner. In reality, it is almost the whole society who participated at a certain level and it is impossible to pursue them all.³⁸² Jeanne Mukamusoni of Avega similarly stated: 'Victims saw and heard women committing these acts, but they were often in hiding, so it is difficult to say with certainty who was responsible.'³⁸³ These comments lend some support to the Pollak/Pearson theory about the 'masked criminality' of women being due to the more obscure nature of 'women's crimes'.³⁸⁴

Finally, and drawing once again from Pollak, there is some evidence of the chivalry theory at play. When I questioned Gerald Gahima, Rwandan Attorney General, as to whether women's representation in the Rwandan prisons, of about 3% of total detainees, could be equated with women's participation during the genocide compared to men's, he responded as follows:

*I think that 3% is too low a figure, but I can't explain it. We know that women were involved in the genocide ... I don't think the Parquet [the Prosecutor's Office] is lenient on women, but I think that witnesses are more reluctant to testify against women.*³⁸⁵

Rakiya Omaar, Co-Director of African Rights, agrees that witnesses are unwilling to testify against women. In particular, she claimed that 'the Hutus are closing ranks around their women, because it is so shameful in Rwandan society to admit that women could be responsible for genocide.'³⁸⁶ She contended that the prosecutors also have 'a general aversion to prosecuting women in Rwanda.'³⁸⁷ One female detainee that I interviewed expressed a similar view. She claimed that 'it is like a taboo, to think that women killed. Some people say it is not good to have women in prison, and that is why some women are still outside prison.'³⁸⁸

³⁸² Interview with Bernadette Kanzayire, lawyer, Kigali, 12.6.01.

³⁸³ Interview with Jeanne Mukamusoni, Social Assistance and Medical Assistance Programme Officer, Avega-"Agohozo", Kigali, 11.6.01.

³⁸⁴ See Part I.A.2 above.

³⁸⁵ Interview with Gerald Gahima, Rwandan Attorney General, Kigali, 3.8.01

³⁸⁶ Interview with Rakiya Omaar, Co-Director, African Rights, Kigali, 13.6.01.

³⁸⁷ *Ibid.*

³⁸⁸ Female genocide suspect, Gitarama Prison, 2.7.01.

The statistics of the International Committee for the Red Cross for genocide suspects in detention in Rwanda also suggest that proportionately more women than men have been released from prison without trial. Comparing the ICRC statistics between April 1999 and March 2001, at least 836 female genocide suspects were released over that two-year period (almost 20% of the 1999 number), as against almost 14,000 male suspects (12% of the 1999 number).³⁸⁹ I have not heard of any formal policy decision to favour the release of women. Therefore, in the absence of any other information, I conclude that women are being released at a higher rate than men, both because the types of crimes women committed are generally harder to prove,³⁹⁰ and because the chivalry theory is operating to the effect that neither witnesses nor prosecutors are willing to pursue women with the same enthusiasm with which they pursue men.

These factors all translate into the lower imprisonment of women and impair attempts to determine the real level of women's involvement in the genocide. Further difficulties are confronted when trying to determine women's motivations for participating in the genocide, as will be discussed below.

B. Why Did Women Participate in the Genocide?

1. The Question of Confessions

Before I discuss three possible reasons why women participated in the genocide, I must stress that discovering women's motivations for so participating is not an easy task. This is due, first, to the extremely low confession rates among female genocide suspects, and second, to the fact that even women who *have* confessed do not always reveal the real reasons for their actions, or even admit that they acted at all. Both of these factors are important, and warrant further discussion at this point.

³⁸⁹ The total number of genocide suspects in detention as at April 1999 was 123,262. International Committee of the Red Cross, 'Detainee population registered by the ICRC in Rwanda', April 1999, in *ICRC documents*, *supra* note 294.

³⁹⁰ See paragraph in text accompanying *supra* notes 382 to 384.

a) **Women Are Not Confessing at the Same Rate as Men**

There is a major discrepancy between male and female detainees. Over the four prisons I visited in Rwanda that contained male genocide suspects, 7.5% of men (2,295 out of a total of 30,634) were part of the confession program.³⁹¹ A much lower percentage of women had confessed: only 60 women, or 3.3% of total female genocide suspects in the five prisons visited.³⁹² No women had confessed in the Miyove women's prison.³⁹³ This might suggest that the culture in an all-women's prison is less conducive to confessions, but it could also be due to other factors, such as the isolation, distance from the scene of the crime,³⁹⁴ and low morale generally that was reported in this prison.

All of the women I met who had not confessed claimed to be innocent, and some, or even many, of them probably are.³⁹⁵ However, even women who had not confessed were often willing to provide their opinion as to why women were reluctant generally to admit to genocide. Six reasons were identified. The first of these, distance from the scene of the crime, was just mentioned above. I met two women who claimed that they had refrained from confessing until they were closer to their files.³⁹⁶ The second reason, namely a lack

³⁹¹ Discrepancies between the 4 prisons tend to indicate that prison culture affects confession rates. For example, the confession rate among men in the Nsinda prison was only 5%, whereas in Gitarama, it was 12.6%.

³⁹² There was a total of 1,803 female genocide suspects in the five prisons I visited, calculated according to information provided to me on the first day of interviews in each prison.

³⁹³ In fact, I discovered during my interviews in the Miyove prison, one woman who thought she was part of the confession program, but whose intention to confess was unknown to the prison authorities. This woman appeared to have 'slipped through the net' because she had confessed several times since her arrest, and believed that since her confession was recorded on her file, she would not have to bother reiterating her confession to the prosecutors in order to be part of the confession program. She clearly did not understand that she would not receive the benefits of the confession program, including a reduced sentence, unless she was formally included in it. I was able to speak with the prison director at this prison on her behalf, who said she would ensure that this woman's confession would be officially recorded.

³⁹⁴ African Rights noted in its report in June 2000 that some women in the Miyove prison were unwilling to confess because they were suspicious about confessing to crimes committed in another prefecture. According to a detainee cited from that prison, women were likely to confess once they were transferred to Kigali. *Confessing to Genocide*, *supra* note 64, at 22. I also met two women who had refrained from confessing until they were near their files. One of these women, in the Gitarama prison, said: 'I didn't want to confess until I was brought to Gitarama, where I committed the crime.' The other, in the Nsinda prison, said: 'I didn't want to confess in Byumba, where I was too far from my file. I did it as soon as I came here.'

³⁹⁵ See Part II.D.1 below regarding the high acquittal rates of female genocide suspects in the Rwandan prisons.

³⁹⁶ *Supra* note 394.

of faith in the alleged benefits of the confession program,³⁹⁷ reportedly apply to male detainees as well.³⁹⁸ Nevertheless, these reasons may concern proportionately more women than men if, as has been claimed, Rwandan women have been culturally conditioned to take fewer risks than men.³⁹⁹ In particular, female detainees may be waiting to see how others benefit from the confession program, but as so few women are proceeding to trial,⁴⁰⁰ very few positive examples are currently being set which might encourage others to confess.⁴⁰¹

The third reason why some women do not confess is concern that their confessions might implicate others, which could in turn have negative ramifications for themselves or for their children outside prison. As one woman explained:

I think it is hard for women to confess because they are scared of the other prisoners who they would implicate if they confessed. Those people might then write to their family members outside prison and tell them to gather testimonies against them.

Female genocide suspect, Butare prison, 24.7.01.

It was, however, encouraging that several women noted positive steps being taken by the Rwandan authorities to protect them and their families, which seemed to be prompting more women to confess:

All the people I included in my confession were against me. The men I mentioned in my confession even used to write letters to their families about me, who threatened and attacked my children. But I complained to the authorities and they told them to stop troubling me. The prison director wrote to the Prefet about it, who wrote to the Conseillers and Responsables, and they sorted it out.

Female genocide suspect, Gitarama prison, 2.7.01.

³⁹⁷ One interview subject in each of the five prisons I visited mentioned a lack of faith in the alleged benefits of the confession program as a reason why women do not confess.

³⁹⁸ *Confessing to Genocide*, *supra* note 64, at 2, 13-16, and 37-41.

³⁹⁹ Réseau des Femmes noted in 1991 a 'fear of risk [taking] among Rwandans in general and among women in particular.' *Profil Socio-Économique*, *supra* note 108, at 12. Vincent Karangura, Rwandan lawyer, also stated specifically in relation to women's confessions: 'I think fewer women confess because women are less adventurous and more cautious.' Interview with Vincent Karangura, Lawyer, Kigali, 13.7.01.

⁴⁰⁰ See text accompanying *infra* notes 649 to 656.

⁴⁰¹ As one woman in the Nsinda prison told me: 'We do not believe there will be any sentence reductions for those who confessed because we do not have any examples of a woman who has confessed and received those benefits. Perhaps if we had one it would help others to confess.'

We did not confess for a long time because we were frightened that if we gave out the names of others, there would be problems for us or for our children. But now we are not so concerned about that, because the prison authorities here told us that if anyone tries to hurt our families, they will be pursued.

Female genocide suspect, Gitarama prison, 17.7.01.

A greater deterrent appears to be pressure from fellow prisoners, or from spouses who are sometimes also in detention. This problem is reported to be more widespread among female detainees than among male detainees.⁴⁰² Pressure from fellow female inmates was described to me in the following terms:

When I confessed, some women in the prison gathered together against me. Some of them just hated Tutsis and said that those who confess must be friends of the Tutsis. Others jeered at me because I have confessed to being a killer and they said they were not killers.

Female genocide suspect, Kigali Central Prison, 6.7.01

In the Commune [the cachot], I told them everything. But when I got to this prison, the other prisoners told me there would be problems for me if I confessed. They said that the people from the government who told us our sentences would be reduced were lying to us, and that it was wrong to confess because it would implicate others. So, I was scared, and when the Parquet [the prosecutors] interviewed me, I changed my story and I did not tell them everything. But I realized that I could not be free with God until I confessed, even if I was killed for it, so I confessed.

Female genocide suspect, Gitarama prison, 16.7.01⁴⁰³

One woman in the Gitarama prison said that pressure from *both* fellow inmates and from her husband, who was also accused of genocide and detained in the same prison, had discouraged her from confessing for a long time:

I did not confess until last month, just before the gacaca hearing here in prison, because my husband had always pressured me not to. He would write to me and tell me not to confess, because it would be bad for him ... Since I have confessed, my husband has refused to speak to me.

⁴⁰² *Confessing to Genocide*, *supra* note 64, at 2 and 5.

⁴⁰³ Another detainee in the Gitarama prison said: 'Nobody says anything to me even though they know I have confessed, but they don't look at me or smile. Sometimes they say 'look at that killer', but some of them are also killers. They just do not want to confess.' Female genocide suspect, Gitarama prison, 18.7.01. In contrast to such statements, two women in the same prison who had confessed expressly told me that there was no pressure among female detainees not to confess. One of these women declared: 'Here, there is no pressure not to confess. Each person can make her own decision. After the interviews with you, the others want to know what we discussed, but we don't tell them anything. It doesn't scare me at all.' Female genocide suspect, Gitarama prison, 19.7.01

Even the other prisoners told me not to testify against my own husband, especially my husband's relatives who are in this prison with me. They were always telling me not to confess and that I should lie and say that I was not with those people [whose deaths we are implicated in]. These women will never tell the truth, even before gacaca.

Even today, when I was coming to speak to you, they told me that you were just trying to trick me, and that the government will kill me if I tell you what I know. They said that the government is building a women's prison here, and that I will be taken there to be killed.

Female genocide suspect, Gitarama prison, 16.7.01

I found this woman to be very brave, as she had not only confessed to her crimes, but denounced her own husband, despite all of the pressures against her not to. The point is, though, that had I interviewed her only one month earlier, she would presumably have denied any involvement in the genocide. Other women I met who had recently confessed openly admitted that they would have lied to me, had I interviewed them prior to the making of their formal confessions.⁴⁰⁴

The fifth and sixth explanations as to why women do not confess to genocide are more obviously gender-specific. One of these is a belief that the crimes committed by women are not as serious as those committed by men; a view that is tied directly to the perception that 'participation' in the genocide should be equated only with 'killing'.⁴⁰⁵ One woman who had confessed to exposing the hiding place of a Tutsi child, which led to the death of both the boy and his father, explained why other women accused of similar crimes had not confessed:

*Some women here in prison think that if they did not kill with their own hands with a panga, or if they only looted, they are not killers. That is why they do not confess, even though we all know that the law will treat us [who gave out the hiding spots] also as killers. But we have all done something.*⁴⁰⁶

Others made similar observations, but seemed to agree with those who refuse to confess that it is not appropriate for the law to hold women as responsible for the genocide as the 'killers', that is, as men. One woman thus stated:

⁴⁰⁴ As one woman in the Nsinda prison told me, 'If you had come last year, I would have told you I was innocent.'

⁴⁰⁵ See Part I.A.2 above, especially the text and quotations following *supra* note 374.

⁴⁰⁶ Female genocide suspect, Gitarama Prison, 16.7.01.

*Women will not confess because no women went with the killers. Those in prison were either hiding people who were caught, called out because they were frightened, or just went to see what was happening and someone saw them there. No one wanted to go and kill, although some wanted to take possessions after others had left or been killed.*⁴⁰⁷

This statement raises several gender issues, about women's role in hiding others, their claims to have acted in fear, and their willingness to loot property, all of which I will return to explore further below.⁴⁰⁸ It also suggests a variance between legal notions of criminal responsibility and female genocide suspects' ideas of 'justice'. As the first comment demonstrates, this divergence is not due to a lack of information. Several other women also reassured me that they are aware of the legal implications of complicity in a crime. Nevertheless, some female genocide suspects appear to be defying a law that they believe to be unjust, because it insists on holding them equally responsible with those who physically carried out the genocide. I will suggest in the final part of this thesis that the courts might also be vindicating this view in their willingness to acquit women.⁴⁰⁹ For current purposes, suffice to say that women might be refusing to confess because they are not willing to accept the consequences that will follow from such a confession. Instead, they might be prepared to 'take their chances' in the court.

The other, gender-specific, reason why some women do not confess, according to female detainees, is shame. As one woman said: 'it is hard for women to go before the survivors and admit what they have done. They are too ashamed.'⁴¹⁰ The same woman, who had confessed, was particularly concerned about the possibility of rejection by her family, stating that 'if our families know we confess, they renounce us.'⁴¹¹ Consistent with my analysis of women's role in pre-genocide Rwandan society, another detainee observed that 'It is difficult to accept in Rwanda that women are killers. In our tradition, women are supposed to be humble people, to welcome visitors at home and show a good image. So, women would be ashamed to be found guilty.'⁴¹²

⁴⁰⁷ Female genocide suspect, Nsinda Prison, 6.8.01.

⁴⁰⁸ In relation to the issue of fear and property crimes, see Part II.B.2(a) and (c) below. On women's role in protecting others, see Part II.C.1 below: 'The Power of Women for Positive Action.'

⁴⁰⁹ See Part II.D.1 below.

⁴¹⁰ Female genocide suspect, Gitarama Prison, 16.7.01.

⁴¹¹ *Ibid.*

⁴¹² Female genocide suspect, Gitarama Prison, 2.7.01.

b) Incomplete Confessions

All of the abovementioned issues - a lack of faith in the alleged benefits of the confession program; the location of imprisonment; concern about the possible ramifications of confessing; pressure from fellow prisoners and spouses; doubts as to the seriousness of 'women's crimes', and shame - play a role in discouraging women from confessing, and thus limit access to knowledge about women's motivations for participating in the genocide. What compounds this problem is that even some women who *have* 'confessed' deny all involvement in the crime they are accused of committing, and use the confession procedure merely as an opportunity to explain how they were denounced by mistake.⁴¹³ This seems paradoxical, given that the law requires an admission of guilt before a confession can be accepted.⁴¹⁴ Presumably, when the prosecutors receive such a 'confession', they must either reject it, or, as the person confessing would hope, use it to conduct further investigations and perhaps release the detainee.

More often, genocide suspects who have confessed - women and men alike - admit to limited involvement in the crime, but try to downplay their responsibility for it, or deflect responsibility away from themselves onto others.⁴¹⁵ In the process, they may indicate little remorse for their role in the genocide and offer few insights into the motivations for their crimes.⁴¹⁶ One female detainee, who I have placed in this category, claimed to have confessed 'because as a religious person, it is important to tell the truth, even if you are

⁴¹³ Among the examples in this category was a woman charged with 'active murder' who told me that she was seen burying a Tutsi woman, but that she did not kill her: she just followed her neighbors to the graves, on the orders of the Responsible to bury dead bodies in the area. She said that prior to burying the woman, she had turned the woman's body over with a hoe, to check if she was really dead. Two other interviewees charged with 'passive murder' claimed to have been seen with the Interahamwe, but said that this was only during their efforts to save people hiding in their houses.

⁴¹⁴ See *supra* note 269 and accompanying text with respect to the confession requirements in the *Genocide Law*. The confession requirements set out in the *Gacaca Law* are almost identical. See *Gacaca Law, supra* note 276, Article 54.

⁴¹⁵ African Rights also reported this occurrence with respect to the male and female genocide suspects they interviewed who had confessed. See *Confessing to Genocide, supra* note 64, at 6 and 44.

⁴¹⁶ Several of my interview subjects who I placed in this category had confessed primarily to seek the reduced sentences offered by the confession program, or in the hope that their confession would speed up action on their file. Thus, some female detainees explicitly told me: 'I confessed last year because they said our punishments would be reduced' (Gitarama Prison, 19.7.01); 'I only confessed because they were telling us that if we confessed they would look for our files' (Nsinda Prison, 7.8.01), and 'I confessed just a couple of weeks ago because I wanted them to speed up my case (Nsinda Prison, 7.8.01).

punished for it'.⁴¹⁷ She recounted the following story in relation to her involvement in killing a Tutsi man, as part of a group led by her neighbour (another woman):

*I wanted to leave, and I started heading home, but the others teased me. I thought that maybe if I hit him too, they would let him go. So, I slapped him twice, not even hard, with a stick, then I sat down. But they did not release him. Then another boy came along with a panga and cut him on the neck ... Later I heard that the man had died and that another boy was wearing his shoes. I confessed because I was there and I played a role in killing him, but Satan works in strange ways...*⁴¹⁸

At most, this woman seems to be admitting that she succumbed to peer-group pressure, although she contends that her role in the violence was all for a good cause: helping to ensure the release of the victim. Perhaps such re-creations of history (which I believe it to be) are inevitable. According to Pearson: 'Criminals are compelled to reconstruct events in such a way that the aftermath is bearable ... Announcing to themselves in the mirror "I am evil" is not a popular option.'⁴¹⁹

This option seems to be particularly unpopular for women. As feminist criminologist Francis Heidensohn has pointed out, conducting research among female offenders can be difficult because 'women reject a criminal identity with especial rigour.'⁴²⁰ In Heidensohn's view, '[t]he strong denials of their criminality by some women is probably, then, linked to 'appropriate' gender-role behaviour.'⁴²¹ My research results were almost entirely consistent with this observation. Thus, many women insisted upon the fact that they had tried to *help* Tutsis, whether or not it was relevant to their alleged crime.⁴²² In other cases, women who had confessed to 'passive' murder tried to attribute their

⁴¹⁷ Religion was the most widely cited motivation among my interview participants for their confessions. Nine of the women I interviewed specifically mentioned that they had confessed for religious reasons, to enable them 'to be free with God.' Some of the women in this category had 'discovered the word of God in prison' and said that 'the Holy Spirit pushed me to confess.' Although some people might be cynical about the genuineness of such recent transformations, and despite the example I cite above, I considered that many of the women who have confessed for religious reasons demonstrated a genuine desire to repent. For further discussion of the influence of religion in encouraging (or discouraging) genocide suspects to (from) confess(ing), see *Confessing to Genocide*, *supra* note 64, at 109-113.

⁴¹⁸ Interviewee details deliberately withheld, for reasons of confidentiality.

⁴¹⁹ Pearson, *supra* note 5, at 41. Also see *supra* note 415, as to the general tendency among genocide suspects to downplay their involvement in the genocide.

⁴²⁰ *Ibid.*, at 23.

⁴²¹ Heidensohn, *supra* note 7, at 19.

⁴²² For a discussion of women's role in helping others during the genocide, and the fact that even female Category 1 suspects insist upon their role as 'savior', see Part II.C below.

involvement in the crime to an 'accident' or a mistake of judgment on their part. While in some of these cases, I believed that these women were, indeed, victims of circumstance, rather than intentional wrongdoers,⁴²³ more often, I felt that the women involved used such arguments as excuses for their actions, rather than confront their own moral responsibility for the choices they had made.⁴²⁴

I include in this latter category two women who claimed that the people who would later become victims of the genocide had frightened them; one by 'jumping out of the plantation', the other by threatening to beat her when he caught her stealing his potatoes. In response, each woman had run calling for help, but said that she had not intended for her 'attackers' to be killed. In another case, a woman said she had called a neighbour to help a Tutsi man hiding in her banana plantation, but to her surprise, the neighbour had called the Interahamwe instead. Two other interviewees claimed that they had asked the Interahamwe to show Tutsis safe hiding places, not knowing of their bad intentions at the time. I had strong reservations about the veracity of these stories,⁴²⁵ but the relevant point for current purposes is that no information came to light in these 'confessions' regarding women's motivations for participating in the genocide.

4. Possible Motivations

Having canvassed all the reasons why it is difficult to determine women's motivations for participating in the genocide, I now turn to the insights I was able to gather about this subject during my interviews with female genocide suspects. I discuss below some of the

⁴²³ In one case, for example, a detainee said that she had boasted to a neighbor about how she had saved a sick child by healing her in her house, but the neighbor betrayed her by calling the Interahamwe. Another woman explained how she was followed by the Interahamwe in the refugee camp, after her husband had told them she was protecting Tutsis. She therefore unwittingly led the Interahamwe to the very Tutsis she was hiding. On my assessment, these women did not think through the consequences of their actions at the time, but they intended no harm. In legal terms, they did not have the necessary genocidal intention to be convicted of genocide.

⁴²⁴ My conclusion in this respect is consistent with Kelly's finding that 'inmates could not explain what they did in terms of their own moral choices; they had to explain it in terms of forces beyond their control.' Kelly, as cited in Pearson, *supra* note 5, at 41.

⁴²⁵ It is difficult to explain to the reader why these cases were any different to those discussed in the above note, save to say that my categorization is based on my own assessment, formed during personal interviews with the women involved. For further discussion of my approach to questions of truth in my interviews with female genocide suspects, see my Methodology, Annexure I, at notes 19-20 and accompanying text.

elements that appear to have prompted women's involvement in the genocide: fear; the effect of the propaganda and the associated dehumanization and jealousy of Tutsis; greed and opportunism.

a) Fear

If you do something bad, you should be punished, even if you are a woman. But if I wasn't a woman, maybe I would have helped this man. Because I am a woman, I was afraid and I shouted out.

Female genocide suspect, Gitarama prison, 2.7.01

The argument that fits most appropriately within the 'victimization' approach to women's crimes proposed by some feminists,⁴²⁶ is that women's involvement in the genocide was motivated by fear of men. The problem with this argument is that many male genocide suspects also claim that they were expected to participate actively in the genocide and risked their lives if they refused to do so.⁴²⁷ Moreover, arguably, the social expectations upon women in Rwandan society, which dictated that women's proper place was in the home and not as combatants in war,⁴²⁸ endured even during the genocide.⁴²⁹ If this hypothesis is true, women might not have been under the same pressure as men, overall, to participate in the violence.

My research results indicate that nevertheless some women, particularly those who were caught trying to help Tutsis, were motivated to participate in the genocide through fear. Specifically, 11 of the 32 women who had confessed to either 'active' or 'passive' murder among my interviewees told me that they had been forced by soldiers or the Interahamwe

⁴²⁶ See Part I.A.4 above.

⁴²⁷ Drumbl discusses reports of coercion from Human Rights Watch and others, although he ultimately doubts that coercion was a major factor, even among male genocide participants. See Drumbl, *Civis*, *supra* note 181, at 1247-1248 (in particular, note 108). African Rights, on the other hand, reports detailed testimonies of persons, including women, who participated in the massacres under threat. See *Death, Despair and Defiance*, *supra* note 11, at 995-1000.

⁴²⁸ Recall the legend of Ndabaga, discussed in Part I.B.1 above.

⁴²⁹ Recall the comment by one female detainee mentioned above, that 'men wanted women to stay at home and not to participate in the killings.' Female genocide suspect, Nsinda prison, 6.8.01. However, see the testimonies of female offenders in *Death, Despair and Defiance*, *supra* note 427.

to commit their crimes.⁴³⁰ Some of these women recounted being threatened with death if they refused to help in the massacres, claiming, in most cases, something along these lines: 'They said that if I did not do it, I would be killed with them [the Tutsi children I was protecting] in my home. I really thought they would kill me because I had heard about them killing people who were hiding Tutsis. I was scared...'⁴³¹

Provided that the judges believe their stories, these women should be able to benefit from the defence of 'irresistible compulsion' (similar to the common law defence of duress), which is set out in Article 70 of the *Rwandan Penal Code*.⁴³² That provision provides that '[t]here is no criminal responsibility when the accused ... was constrained by a force he could not resist.'⁴³³ According to the *De Beer Commentaries* on that provision, '[o]nce this [irresistible compulsion] is established, the judge must absolve the defendant from his criminal responsibility and therefore free [him] from any punishment.'⁴³⁴ A clear case of irresistible compulsion according to those same *Commentaries* is 'when, without reasonably having been able to foresee or avoid it, a person finds himself in a situation where his life is threatened if he does not commit a criminal act of this kind (for instance, 'You kill, or I kill you').'⁴³⁵ This particular application of the defence should work equally for both male and female genocide suspects alike.

The legal questions are more complex in other cases, as the pressure that the accused was subjected to might have been of a more subtle form. Sometimes, for example, women were not subjected to direct threats, but nonetheless spoke of substantial fear of what might happen to them if they refused to cooperate. Consider the following account:

I was working in my sorghum plantation. Another woman found the boy hiding there and called out, so everyone knew there was a Tutsi around. The boy came running towards where I was working and hid near me. Then two Interahamwe came running after him and asked me where he was hiding. When I didn't respond, they took out pangas. They scared me, so I told them where he was.

⁴³⁰ Women who had confessed to other charges also sometimes claimed to have been motivated by fear. However, I will limit my discussion in this section to women who have confessed to murder.

⁴³¹ Interviewee details deliberately withheld, for reasons of confidentiality.

⁴³² *Rwandan Penal Code*, *supra* note 252, Article 70.

⁴³³ *Ibid.*

⁴³⁴ *De Beer Commentaries*, *supra* note 263, at 39.

⁴³⁵ *Ibid.*, at 38.

These were very violent men. They were the ringleaders of the Interahamwe ... They had been killing people and telling us in the community to kill as well. They had also been saying that if they found anyone hiding a Tutsi, they would kill him. So, I thought they would hurt me if I did not cooperate, even though I cannot say if they would have killed me.

I did not believe this child had to die. I was just scared. I was hiding three of his family members in my home, and one of those Interahamwe knew about it... Two of those three people are still alive, and the other one died a natural death. But they are still very hurt about what I did... ⁴³⁶

Once again, the *Commentaries* on the Rwandan Penal Code provide some assistance in determining whether the defence of irresistible compulsion is applicable to such a factual situation. Those *Commentaries* provide that for the defence to apply, the compulsion 'may be physical or mental [psychological] but it must be powerful. Nonetheless, the strength of the compulsion is ... assessed in taking account of the personality of the person under the compulsion, and of the situation in which he finds himself.'⁴³⁷ Moreover, the person affected by the compulsion must be 'totally convinced ... that he risks serious and immediate harm, from which he can escape only by committing the criminal act which is demanded of him.'⁴³⁸

This test of irresistible compulsion, like those in many other legal systems, contains both an objective element (that the compulsion be 'strong') and a subjective element (that the personality of the person affected be taken into account in determining the strength of the compulsion, and that the person must be 'totally convinced' of the risk of harm). However, a question that arises in determining the strength of the compulsion is which of the particular individual's characteristics should be taken into account? I would argue that a woman's gender, informed by a history of discrimination and subordination generally in Rwanda, is relevant to this issue.

This is not to claim that there should be a presumption that *any woman* would be less capable of resisting compulsion than *any man*, as there are strong women (for example, the military officer I discuss below),⁴³⁹ and there are nervous men. However, given the

⁴³⁶ Interviewee details deliberately withheld, for reasons of confidentiality.

⁴³⁷ *De Beer Commentaries*, *supra* note 263, at 38.

⁴³⁸ *Ibid.*

⁴³⁹ See Part II.C.2(b) below.

force of gender relations in Rwandan society, it should not be inconceivable that the fact that ‘these were very violent men’ – that is, both violent, and men – is likely to have been persuasive in a woman’s determination of the level of risk she faced and her options to avoid it. Gender should therefore be one factor, among many, that the court should take into account.

One of the problems that women are likely to face in making any such argument is that, where there was no direct threat, it might be particularly difficult for a (male) judge to identify with a woman’s fear, in which case he might be less inclined to find that the force was ‘strong’ enough to constitute irresistible compulsion. Similarly, the requirement that the person affected by the irresistible compulsion be ‘totally convinced’ that she faced a risk of ‘serious and immediate harm’ may present a problem. This implies a very high level of certainty, which perhaps a woman, faced with such a situation, might not feel, even though she was nonetheless frightened.

Arguably, in this particular case, the woman was not ‘totally convinced’ that she faced a risk of ‘serious and immediate harm’. As she stated, she *did not know* if she would have been killed had she refused to cooperate with the killers. Moreover, ‘objective’ factors might sneak into an analysis of the veracity of the woman’s claims. Other female detainees told me, for example, that in fact they knew of no cases of Hutus – women or men alike – being harmed for refusing to join the killers.⁴⁴⁰ Rather, people who had refused to participate were sometimes forced to pay money, or simply had to allow the Interahamwe to take the Tutsis they were hiding from their homes.⁴⁴¹ If the Court is

⁴⁴⁰ Four of my interview participants told me that Hutus who either refused to participate in the massacres or were caught hiding Tutsis were not killed, but had to pay money to the killers.

⁴⁴¹ Indeed, none of the women who claimed fear as their motivation for acting spoke of any adverse consequences for them after being caught assisting Tutsis. In one case on point, a Hutu woman and her brother who had been protecting a Tutsi girl along the route to Tanzania during the genocide were approached by a ‘big group of Interahamwe’, claiming that they knew the siblings were hiding a Tutsi. The brother resisted, denying that the girl was a Tutsi, but the woman, ‘frightened that they would kill me’, identified the girl as a Tutsi. The girl was then taken away and killed. The woman and her brother moved on that night ‘because there was fighting in the camp’, not because she feared the Interahamwe would return to kill her (although she said that this was ‘another reason why we left’ when I asked her directly about it).

presented with such evidence from other *women*, it might be even more likely to hold that the particular accused could not have been ‘totally convinced’ of the harm she faced.

Yet, this is a rather illogical form of argument. It ignores that there may be Hutu (or Twa) women who resisted the Interahamwe or soldiers and have not lived to tell the tale. Moreover, is it fair to expect women to have demonstrated more courage during the genocide than they did? Certainly, the women in Rwandan folklore remained hospitable, diplomatic (recall Nyabunyana), and courageous (recall Ndabaga and Robwa) to the very end. The story of Robwa even suggests that women should be prepared to sacrifice themselves and their children for the good of the Nation, rather than succumb to pressure by evil forces. But, we should consider if, in similar circumstances, we would have withstood the demands of the Interahamwe and acted any differently.

Other, more direct, parallels with the legend of Robwa can be seen in the two following examples, which were among the most tragic accounts I heard from female detainees. In both cases, the women feared not what might happen to them if they did not cooperate, but what might happen to others. In one of these cases, a woman poisoned and killed her own four children, who were Tutsis (on account of their father’s ethnicity), because she feared that the Interahamwe would otherwise kill them with a machete. This woman also took poison herself, but survived. In the other case, a young woman admitted that she took an old Tutsi woman to be killed, after being threatened that if she did not do so two Tutsi girls that she was protecting in her home would be murdered instead. This young woman made a conscious decision that the life of an ‘old woman, who was already sick and might not have survived anyway’, should be sacrificed in order to save the others, as she ‘wanted to protect the two girls’ lives, and, besides, [she] couldn’t protect all the Tutsis around.’⁴⁴²

⁴⁴² Interviewee details deliberately withheld for reasons of confidentiality. Ultimately, this woman has decided: ‘I regret a lot what happened, what we did to that old woman. Even if she was an old woman, she was still God’s creation, and even if I couldn’t have saved her, I shouldn’t have accompanied [the Interahamwe] to kill her. If they had then killed the two girls, at least it wouldn’t have been my responsibility.’

Whatever one now thinks of the moral choices that these two women made, it is clear that they were confronted with near impossible dilemmas, which required them to decide between potentially deadly options. However, unlike Robwa, who became a martyr for her actions, these women are imprisoned, charged with genocide. In all likelihood, the first woman (who killed her own children) will be convicted, if not for genocide, because she appears not to have had the requisite genocidal intention, for murder. At best, she might benefit from a reduced sentence if her confessions are accepted.

The second woman might, however, be entitled to invoke the irresistible compulsion defence. The *De Beers Commentaries* specifically provide that '[t]he risk of meeting with serious and immediate harm can affect someone other than the person under compulsion. This may be his children, members of his family, even other persons.'⁴⁴³ However, the facts of this case will need to be closely examined to determine if the accused really believed that the Interahamwe would carry out their threat to kill the two girls had she not participated in killing the old woman. It appears that the relationship that she had with those Interahamwe was ambiguous at best, as she later became 'friends' with some of them. The boy who had made the threat to kill the girls even eventually accompanied one of them with the accused, when they fled together to a safer part of Rwanda, upon the arrival of the Rwandan Patriotic Front. This case demonstrated to me more than any other the complexities of some women's role played during the genocide.

There is one other case that I wish to discuss within the context of women's 'victimization'. In this case, the woman participated in killing an old woman. Yet, according to her own version of events, she suffered no specific fear, for herself or for others. It is useful to reproduce this woman's story at length:

I am a widow. My husband was a Tutsi. He was killed during the genocide. I had 7 children. Three of them were poisoned by the Interahamwe before the genocide, two in November 1993 and one in January 1994. Those Interahamwe are now in prison because they continued killing during the genocide. Three more of my children were killed during the genocide. I have only one child left. All my husband's family also died, except for the woman who denounced me.

I am accused of killing my brother-in-law's wife. I have confessed.

⁴⁴³ *De Beer Commentaries*, *supra* note 263, at 38, n.4.

The Interahamwe from another sector had attacked this woman and her son. They killed her son, but the woman wasn't yet dead. Her other sons brought her to her dead son's house, then her grandson (my nephew) came and told me what had happened. I took them some porridge, which I was boiling for my husband who was in hiding.

She was in a coma. Her scalp had been pulled off so I could see her brains, which were also coming out her nose. She could barely eat, just a small amount that I fed her with a spoon.

The Interahamwe were always running all over, up and down, looking for survivors. Five days later, a group of them came and found her. My nephew was not there then, as he used to go out and hide during the day. They found my cup and spoon with some left over porridge and potatoes that I had been feeding the boy. The Interahamwe knew it was me who had been feeding them because I was the only one left in the whole compound. All the others had been killed.

They dug a grave in the yard and took the woman out there. Then they came and found me in my courtyard making porridge. They abused me for keeping Tutsis alive, and said if it wasn't for people like me they wouldn't have to come and finish them off. Then they started beating me and telling me to go away, but I refused. So, they dragged me out to the grave and told me to beat the woman with a hoe handle.

I tried to refuse. I even tried to bribe them with 400 Francs but they wouldn't take it. I was only a woman and they were three men, so I had no power over them. And I wasn't myself by then. My whole family had been killed. I wasn't scared. I was just being used.

I hit her once with the stick and they started to bury her. I went back to my house but I had no home to go to, as by then they had pulled down all the houses. I went outside and started boiling porridge for my husband who was still alive...⁴⁴⁴

In my confession, I have asked for forgiveness. I would also like to ask the woman who denounced me - the old woman's daughter-in-law - directly for forgiveness. Still, I only hit her once, and do you really think it was me who killed her? I was forced to do it. I didn't plan it. If I had hated her, I wouldn't have been feeding her. I have no family left to come and visit me in prison. Do you think that is easy?

Evidently, it is not easy. But in the absence of some highly creative thinking on the part of the judges who will determine her case, no legal defence will protect this woman.

Although she had already been beaten at the time she committed the crime, there was no evidence that she risked further 'serious and immediate harm' had she refused to participate in the crime. Indeed, the accused herself said that she 'wasn't scared' at the

⁴⁴⁴ The rest of this woman's story was equally tragic. Soon after this incident, she learned that her three children had been killed in Kigali. Her husband was then also killed, at which time she was beaten again. She spent a week recovering in a friends' house, but was forced by the Interahamwe to leave there. Over the next few months, she traveled throughout Rwanda and Burundi, trying to avoid the conflict. Finally, she spent two years in a refugee camp in Zaire, before returning to Rwanda and being arrested for her role in killing the old woman.

time, although she was clearly in a traumatized state of mind (but not insane).⁴⁴⁵ Perhaps even more fatal, as explained in the *De Beer Commentaries*, '[f]or the compulsion to remove the criminal responsibility of the person committing the offence, it is necessary that, within reason, he had not been able to avoid it. He could not knowingly have taken the risk of placing himself in a situation where he was compelled to commit a criminal offence.'⁴⁴⁶ The killers had in fact told this woman to 'go away' and leave the scene of the impending crime, but she had refused to leave the woman she had been caring for. It was only at this point that they involved her in the crime.

Although the defence of irresistible compulsion would not be available to this woman, the apparent sincerity and completeness of her confession (assuming that the formal version was as complete as the account she gave to me) should entitle her to sentence reductions under the confession program. As a category 2 offender, this should already mean a sentence reduction to 7-12 years, half of which could be served in the community, if her case is one that is tried by the gacaca courts. This woman might also benefit from attenuating circumstances, which the court is permitted to consider under Article 82 of the *Penal Code*. An attenuating circumstance that appears to perfectly encapsulate the circumstances of this crime is that of 'non-irresistible compulsion'. This applies where '[t]aking into account the circumstances of fact and of [sic] the psychological state of the person, the judge assesses that the threat was not immediate or not sufficiently serious for there to be compulsion within the meaning of Article 70. Or again, the compulsion was real, but the person could reasonably have avoid putting herself in that situation.'⁴⁴⁷ Provided that the Court accepts that there was a 'threat' in the first place, which I would argue, once again, should take account of gender differences, then it should further reduce her sentence. Given that she has been imprisoned since 1998, she might even be released as soon as her case gets to trial.

⁴⁴⁵ Article 70 of the *Rwandan Penal Code* (*supra* note 252), also absolves a person of criminal responsibility when the accused was 'in a state of dementia' at the time of the offence. I do not believe that the facts of this case warrant an insanity defence.

⁴⁴⁶ *De Beer Commentaries*, *supra* note 263, at 38.

⁴⁴⁷ *Ibid*, at 40.

b) The Effect of Anti-Tutsi Hate Propaganda

Despite the sympathy that the above stories invoke, the 'victimization' theory cannot explain all cases where women were involved in the genocide. For example, in two cases presented to me in the course of my interviews with female genocide suspects, it was not men, but other women, who encouraged the offenders to commit a crime. These female instigators were not soldiers, nor were they members of the Interahamwe. They were, in both cases, simply neighbours who apparently had a personal vendetta against the person to be killed. One of these cases was mentioned above (the case of the woman who 'slapped [a Tutsi man] twice with a stick' because her neighbour had 'teased her').⁴⁴⁸ In the other case, a woman who has confessed to beating an old woman to death said that although her neighbour, who was 'the ringleader of the group', 'had so much power, she even used to fight with men', the accused did not feel threatened by her.⁴⁴⁹ In neither of these two cases did the women involved claim that their participation was motivated through fear.

What *did*, therefore, motivate these, and other, women, to participate in the genocide, particularly at the level of murder? I believe that one answer might lie in the effect of the propaganda disseminated in the period leading up to, and during, the genocide. As discussed earlier, this propaganda sought to dehumanize Tutsis, and cleverly created a 'threat' of a 'Tutsi invasion', which appeared to justify a call for self-defence.⁴⁵⁰ It also sowed divisions between women in Rwanda, by claiming that Tutsi women were 'working for the interest of their Tutsi ethnic group',⁴⁵¹ and threatened to steal the jobs and husbands of Hutu women.⁴⁵²

⁴⁴⁸ See *supra* note 418 and accompanying text.

⁴⁴⁹ This woman added, in describing her neighbor, 'She was very enthusiastic and strong. She didn't have a husband, and didn't even want to take one because she was so strong. There were other women in the Hutu Power, but she was the worst.' Female genocide suspect, Gitarama prison, 2.7.01.

⁴⁵⁰ See Part I.C.4 above.

⁴⁵¹ Hutu 'Ten Commandments', *supra* note 224, Commandment 1: 'Every Hutu should know that a Tutsi woman, wherever she is, works for the interest of her Tutsi ethnic group.' In July, 1991, the extremist newspaper *Kangura* further warned that Tutsi men 'will not hesitate to transform their sisters, wives and mothers into pistols ... and conquer Rwanda.' *Kangura* no 19, July 1991, as cited in *Chrétien*, *supra* note 156, at 161. In June 1994, radio broadcasts by *Radio-Télévision des Mille Collines* (RTL) alleged that Tutsi women were prostitutes who 'are preparing to sleep around ... to transmit AIDS.' The *Prosecutor v Jean-Bosco Barayagwiza*, ICTR-97-19, 'Supporting Material', 14 April 2000, para. 6.9, citing RTL

Once again, there was a high level of controversy among the people I interviewed, both inside and outside the Rwandan prisons, about the impact of the propaganda on Hutu women. On the one hand, Rwandan lawyer, Bernadette Kanzayire, said: 'In general, women had less information than men and were less exposed to the propaganda, thus less convinced by it'.⁴⁵³ On the other hand, Jeanne Mukamusoni, of the genocide survivors' organization Avega asserted: 'There is no difference between men and women. Everybody was convinced by the propaganda.'⁴⁵⁴ Judithe Kanakuze, of Réseau des Femmes, gave a more nuanced opinion:

*Some women were affected by the hate propaganda, especially those who already had an inferiority complex in relation to Tutsi women – that they would really steal their husbands, jobs etcetera. But women are more intuitive. They do not react in the same way as men, who react more immediately and violently.*⁴⁵⁵

Probably the most detailed response to this question came from a female detainee in the Kigali Central Prison, who told me:

Women believed in the need to kill Tutsis for 3 reasons:

1. *Tutsis were perceived to be associated with the RPF.*⁴⁵⁶ *Women, like men, believed the propaganda. Most women had confidence in what they heard on the radio. Even if they did not hear the radio broadcasts themselves, they were informed about them by others in the community.*
2. *Hutu women hated and were jealous of Tutsi women.*
3. *Hutu women were jealous of Tutsis' wealth. Women wanted their goods.*⁴⁵⁷

broadcast, 13 June 1994. Also see RTLM broadcasts, 11-18 May 1994 and 19 June 1994, referring to Tutsi prostitutes, also cited in *ibid*, para. 6.9.

⁴⁵² In January 1992, *Kangura* alleged that Tutsi women monopolized positions of employment in both the public and private sectors, thereby contributing to the unemployment of Hutus, particularly Hutu women. *Kangura* no 29, Jan 1992. Also see Hutu 'Ten Commandments', *supra* note 224, Commandment 2: 'Every Hutu should know that our Hutu daughters are more suitable and conscientious in their role as woman, wife and mother of the family. Are they not beautiful, good secretaries and more honest?' and Commandment 3: 'Hutu women, be vigilant and try to bring your husbands, brothers and sons back to reason'.

⁴⁵³ Interview with Bernadette Kanzayire, lawyer, Kigali, 12.6.01.

⁴⁵⁴ Interview with Jeanne Mukamusoni, Social Assistance and Medical Assistance Programme Officer Avega-"Agohozo", Kigali, 11.6.01.

⁴⁵⁵ Interview with Judithe Kanakuze, National Coordinator, Réseau des Femmes, Kigali, 8.6.01.

⁴⁵⁶ See discussion in Part I.C.3 to 4 above regarding the Rwandan Patriotic Front (RPF), the Tutsi-dominated armed force that had formed in exile outside Rwanda.

⁴⁵⁷ Female genocide suspect, Kigali Central Prison, 3.7.01.

This particular woman said that she had personally believed in the propaganda at first, and thought that the Hutus needed to defend themselves from the RPF. However, after the genocide started, she changed her mind:

*When I saw so many children, women and old people killed, who could not have been part of the RPF, I began to understand that it was not a war, but a genocide, that was planned in advance. I think that the genocide was possible because of pre-existing hatred between Tutsis and Hutus, but that the politicians used these sentiments to achieve their goals.*⁴⁵⁸

During my interviews in the prisons, I heard several other instances of such transformations after women had reflected upon what had really transpired during the genocide. One young woman, who was a minor at the time of the genocide, was particularly frank about her involvement in ‘uncountable’ killings. She made a macabre admission that the times when she went along with a group of people to massacre Tutsis, it were ‘fun, like playing a game’. She attributed her participation in the genocide primarily to the influence of others, especially of her brother, who had initially refused to participate in the genocide, but soon became convinced by the genocidal ideology, and ended up being a particularly enthusiastic killer. Her confession demonstrates the level to which Tutsis had been dehumanized by the media propaganda, as well as the role of local authorities in inciting violence. The positive aspect of this story is that this young woman has demonstrated significant remorse for her role in the genocide. She said that:

*I confessed of my own accord after I had a baby, because I started to think about the babies I saw killed and how I would feel if someone slaughtered mine. I knew then how bad it was, what I had done, and that I had to tell what I had seen.*⁴⁵⁹

Several persons, both inside and outside the prisons, commented that women in leadership positions were particularly influenced by the hate propaganda. Bernadette Kanzayire, for example, said: ‘Some women were convinced by the mentality of the genocide. And when a woman believes in something, she gives all her force to that cause! Agnes Ntamabyaliro [ex Minister of Justice]⁴⁶⁰ and Valerie Bemeriki [former

⁴⁵⁸ *Ibid.*

⁴⁵⁹ Interviewee details withheld for reasons of confidentiality.

⁴⁶⁰ See *supra* note 310 for a brief discussion of Agnes Ntamabyaliro.

journalist with radio station RTL] are two examples.’⁴⁶¹ Maxwell Nkole, ICTR investigator based in Kigali, expressed a similar opinion about Pauline Nyiramasukuh, ex Minister of Family Affairs and Women’s Development:

*I believe that Pauline Nyiramasuhuko was convinced by the propaganda, especially the propaganda that caused divisions between women. The myth of the beautiful, arrogant Tutsi woman led to jealousy by Hutu women, and an inferiority complex among Hutu women. This seems to have come through in the way she treated Tutsi women.*⁴⁶²

Although none of the Category 1 suspects I interviewed had confessed,⁴⁶³ I tend to agree that many of these women were, and probably still are, strong believers in the ideology of the genocide. For example, none of the 7 Category 1 suspects I met were prepared to accept there was a genocide of Tutsis. Rather, 2 women described it as a ‘double genocide’; 3 believed it to be a ‘war’, and the 2 women with legal training refused to offer any opinion on this issue, save to say, in one case, that the legal classification of this ‘drama’ was a question to be determined by the Courts, and in the other case that genocide was just a political term. These responses should be compared with my overall research results in relation to this question, in which 73% of the women interviewed agreed that there had been a genocide of Tutsis,⁴⁶⁴ even if they also believed that some, or even many, Hutus had also been killed by the RPF in revenge.⁴⁶⁵

Comments like the following also revealed the level to which some Category 1 women still reject the former government’s responsibility for the genocide:

⁴⁶¹ Interview with Bernadette Kanzayire, lawyer, Kigali, 12.6.01.

⁴⁶² Interview with Maxwell Nkole, ICTR Investigator, Kigali, 11.6.01.

⁴⁶³ Category 1 suspects who already appear on the published *Category 1 List* receive no sentence reductions if they confess. See *supra* note 271. Nevertheless, the two local political leaders that I interviewed, who were both included in the *Category 1 List*, had both confessed to relatively minor charges, which I discuss in Part II.B.2(a) below.

⁴⁶⁴ Responses to this question covered a wide range. The overall breakdown of those responses was as follows: 52 persons (73%) believed there was a genocide of Tutsis; 17 persons (24%) did not believe there was a genocide of Tutsis (this number included the 7 Category 1 suspects), and I did not ask the question of 2 interviewees (3%). If we exclude the 7 Category 1 suspects from my interview cohort, the proportion of women who accepted there was a genocide increases to 85%.

⁴⁶⁵ Of the 52 women who agreed there was a genocide of Tutsis, 25 (35%) said that the only Hutus who died were those protecting Tutsis; 16 (23%) said that some Hutus also died, killed by the RPF in revenge; 8 (11%) said that although there was a genocide of Tutsis, equal numbers of Hutus were killed by the RPF in revenge, and 3 (4%) said that more Hutus were killed by the RPF in revenge than Tutsis died in the genocide. Nevertheless, all of these women saw a distinction between the genocide of the Tutsis and the revenge killings of the Hutus – which were aimed at Hutus who had participated in the genocide, even if the RPF sometimes ‘made mistakes’ about their victims’ identity or level of actual participation in the violence.

*I do not understand how people can accuse President Habyarimana of genocide. I saw all that he did for the country to unify people of both ethnic groups. Also, how can people, especially women, be charged with category 1 crimes, when they were just doing their job?*⁴⁶⁶

It is not only Category 1 women who were influenced by the propaganda and continue to refuse to believe there was a genocide of Tutsis. In particular, some other educated women in detention expressed a rather extraordinary version of history. One former school teacher in the Butare prison, for example, provided the following account:

It is very sad what happened in this country, but 'genocide' is a very political term. I do not accept there was a genocide. It was a war. After President Habyarimana died, the Tutsis celebrated. One of my neighbours rejoiced, saying, 'now the Tutsis are going to rule forever.' So, the Hutus were very angry.

Inside the Tutsis' homes, the Hutus found weapons and documents from the RPF with plans to rule the country, although they had changed the names of villages targeted, to confuse any Hutus who read them. Hutus also found graves destined for them, as marked in the documents. I saw some of those graves. The Tutsis intended to start killing the most influential people, who opposed the RPF. Then, they were going to kill all Hutus who had more than 5 years of primary school, leaving only peasants to look after their cows.

So, you see, the Hutus were angry, and wanted to ensure that the Tutsis were killed before they killed the Hutus. Even while the Tutsis were being killed, they told the Hutus that they got them just in time.

I think more Hutus were killed than Tutsis. If one million Tutsis were killed, 4 million Hutus were killed, in Rwanda and in the Congo ...

*This war was not necessary. It was the RPF's fault. They invaded in 1990 and pushed the refugees throughout the country. Why couldn't they have stayed in the North? Why did they need to come right to the South, into Butare? Their intention was not just to allow the Tutsi refugees to return to Rwanda; they wanted to kill the Hutus. So, when the Hutus discovered the Tutsis' plans to kill them, they were already overtaken by events in the country. What else could they have done?*⁴⁶⁷

Other detainees now scoff at such versions of history and, in particular, recognise the propaganda behind the tales about graves being dug by Tutsis for Hutus.⁴⁶⁸

⁴⁶⁶ Interviewee details deliberately withheld for reasons of confidentiality.

⁴⁶⁷ *Ibid.*

⁴⁶⁸ One female detainee in the Gitarama prison, for example, said: 'The leaders told us that the Tutsis had prepared graves to put the Hutus in and that we had to kill the Tutsis first before they killed us. We believed them because they were educated people. The one who led in out area was a teacher. I believed him, and that is why I killed that woman.' Female genocide suspect, Gitarama prison, 2.7.01.

Unfortunately, it appears that very few of the same educated women who propagated such rumours in the first place have reflected upon the veracity of the information they were passing on. It should also be noted that the woman who provided the above account hopes that upon her release from prison she can resume her profession, teaching religion and morals to secondary school students.

These are extreme cases, but Josee Mukandamage, Vice President of the Rwandan Supreme Court and former ally of ex Prime Minister Agathe Uwilingiyimana, provided an important insight into the mentality of the average Rwandan woman during the genocide. She explained:

I think that women's participation in the genocide was more subtle than men's. Women were not usually part of the death squads, but they only went so far for others. Women had been conditioned by then to think it was normal for Tutsis to die. So, even if they tried to help someone, they would not resist if someone came searching for that person, and they would not risk their lives for others.

It is the same thing today. If we see someone being beaten on the street, especially if we think that person is a thief, are we going to intervene to help him? I think not.⁴⁶⁹

I think this comment goes a long way to explaining women's participation in the genocide. Many women I met in prison claimed that they had tried to help Tutsis, and some appear to have made considerable efforts to do so. However, it was difficult to find examples, inside or outside the prison, of women who took a strong stand against the genocide. Certainly, there are issues of power at play, including gender dynamics, which I will consider further in the next Section.⁴⁷⁰ Nevertheless, it seems that the anti-Tutsi propaganda had infiltrated into many households in Rwanda, including into the hearts and minds of many women, such that, at worst, women believed that Tutsis had to die; at best, it was simply not considered to be any of their business.

⁴⁶⁹ Interview with Josee Mukandamage, Vice President of the Supreme Court, 23.7.01.

⁴⁷⁰ See Part II.C.1 'The power of women for positive action', below.

c) **Poverty, Greed and Opportunism**

The third possible motivation for women's involvement in the genocide that I wish to offer is probably the least complex of the three. It rejects any argument that women were motivated by poverty, and proposes instead that some women were motivated by simple greed and opportunism. As discussed earlier in this thesis,⁴⁷¹ many Rwandan women were substantially poor at the time of the genocide, and more so than men. Yet, during my interviews, I heard no evidence that Rwandan women were stole, either before or during the genocide, in order to satisfy their basic needs.⁴⁷² Rather, some women took to looting during the genocide through opportunism and greed.

I heard six confessions to looting from female detainees. One was from a woman who had confessed to looting blankets from an old woman's home while she was in hiding. This woman told me:

I did not even need the blankets. It was like the devil had got into us. We saw that those people were not there and that others were looking for them to kill, so we women went to take their property to sell and buy beer. I took 10 blankets, and I sold 3 of them. I was planning to sell the others, but I went for refuge and when I came back, they were gone.

Female genocide suspect, Butare prison, 24.7.01

This woman had been imprisoned since September 1994, and is obviously regretting her actions. Another of my interview participants who had confessed to looting said:

I was at home making beer when my neighbours were killed in their home. That night I went with two other women and a man to take their property. Their bodies were still there, but we did not take the clothes off their bodies. I took a blouse and a skirt; the other women took a sarong and shoes. By then, that was all that was left, because others

⁴⁷¹ See Part I.B.4 above 'Women's Economic Situation' in Pre-Genocide Rwanda.

⁴⁷² My conclusions in this section are drawn from information gathered during my interviews with female genocide suspects detained in the Rwandan prisons. As discussed earlier in this thesis, most perpetrators of property crimes (where presumably the impact of poverty would be most likely to be felt) are not in prison, because these are Category 4 crimes. (See discussion in text accompanying *supra* note 266.) Nevertheless, there is no reason to expect that women inside the prison had any different motivations for participating in property crimes to women outside the prison who committed similar crimes. NB: Lewis and Knight argue that some Twa participated in the genocide because of poverty. They say: 'The political message was not what attracted the Twa, but rather the opportunity for food, some money and political protection.' Lewis & Knight, *supra* note 71, at 58. I was unable to test this theory because all of the Twa women I met, like many other detainees, denied that they had participated in the genocide at all.

had looted everything else, including the iron sheeting off the roof. The man did not take anything, but he found a pig in another house and slaughtered it and we shared the meat.

I looted because others were doing it, and because those people did not need their belongings anymore, since they were dead. But it was bad. I sinned, and that is why I had to ask for forgiveness from all Rwandans.

Female genocide suspect, Nsinda prison, 6.8.01.

A third woman did go the extra step, and looted clothing off the bodies of dead Tutsis, following a massacre in the local Parish. She told me:

People started looting the belongings of Tutsis who had been killed in the Parish. My neighbour suggested I go to loot with her. She said that if ever we had any problems with the neighbours, or if the government changed, we could say we were going back to get some clothes that her sister [a Hutu woman, who had escaped the massacre] had left behind.

We went to the Parish. I do not know what made me go there, because I already had everything I needed. I took 3 wraps from the bodies and my neighbour took some blankets and towels. There were other women there, also taking things... I have confessed to looting, but that is the only thing I did.

Female genocide suspect, Gitarama prison, 19.7.01.

These stories suggest that greed, opportunism and a 'group mentality', together with a belief in impunity, motivated some women to commit property crimes during the genocide. Another hypothesis is that similar factors, but more specifically, an opportunity to 'settle scores', motivated women to commit more serious crimes as well. The reason why I give this hypothesis some credence is found not in the confessions, because no woman I met confessed to participating in the genocide through vendetta, but in the explanations that some women who had *not* confessed provided for their imprisonment. In over half the cases where such an explanation was provided, it related to perceived acrimony or revenge exhibited by the denouncer, who was almost always a genocide survivor, towards the genocide suspect. Usually, detainees alleged that their denouncer had accused them of genocide because they wanted to access their property while they were in prison. Others spoke of bitter land disputes and of misunderstandings and jealousies dating back well before the genocide.

Examples of false denunciations, made in order to acquire the property of the accused person, have been reported by several persons working in Rwanda. For example, the

international human rights monitoring organisation Human Rights Watch has claimed that '[i]nnocent people have been accused particularly by those who seek to get hold of their property or to even the score from some prior conflict.'⁴⁷³ Aloys Habimana, of the Rwandan human rights organization, LIPRODHOR, also advised me that: 'I think there is some basis to women's allegations that they have been falsely accused due to property disputes. We have investigated some cases, and found this to be true.'⁴⁷⁴

Nevertheless, in many of the cases that detainees described to me, such claims sounded unlikely. One woman, for example, claimed that she had been denounced simply because she refused to give free beer to a neighbour; another said she had been imprisoned in the place of her father, because he was accused of being a killer but was dead. Even in respect to alleged property disputes, the patent bitterness displayed by some women towards the person who had denounced them gave me the impression that in at least some of these cases, that very bitterness might have explained the detainee's involvement in the genocide.⁴⁷⁵ In a situation in which Tutsis were devalued generally, and there was apparent impunity for their actions, it is not implausible that some women committed crimes simply to settle old scores.

5. Conclusions

I have raised several factors that seem to have motivated women to participate in the genocide: fear, the effect of the anti-Tutsi hate propaganda, greed and opportunism. In most cases, however, female genocide suspects provide very little insight into their true reasons for participating in the genocide. It is possible, now that gacaca is forthcoming, that more women will confess and more truths will then come to light. Yet many women have now been imprisoned for so long that they have lost faith in all promises made to

⁴⁷³ *Rwanda*, *supra* note 204, at 13. Rwanda expert Gerard Prunier, has similarly noted that 'Denunciations of Hutu as former *Interahamwe* were common, just to get somebody out of the way and appropriate his house or land.' *Prunier*, *supra* note 150, at 323.

⁴⁷⁴ Discussion with Aloys Habimana, Head of Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG), LIPRODHOR, Kigali, 7.8.01.

⁴⁷⁵ Of course, anyone who has been wrongly accused and had passed several years in prison would also feel great bitterness towards their accuser. My statement above, therefore, is based more on a hunch, than clear, objective factors. Once again, see my Methodology for further discussion of my approach to questions of 'truth'. Methodology, Annexure I, at notes 19-20 and accompanying text

them, including about gacaca.⁴⁷⁶ Moreover, even if more confessions arise in the face of gacaca, as long as gender expectations continue to influence women's portrayal of their involvement in the genocide, it will be difficult to construct a complete picture of that involvement.

I move now from general claims about women's participation in the genocide to a more specific discussion about the level of power that women possessed to act against the genocide.

B. Issues of Women's Power

1. The Power of Ordinary Women for Positive Action

I couldn't do anything to stop them. They were like beasts. Even if people wanted to hide Tutsis, the Interahamwe came and searched their homes and took people away, and there was nothing that could be done.

Female genocide suspect, Gitarama prison, 19.7.01

Whether women could have done more to prevent the genocide, or at least to lessen its consequences, is a controversial topic in Rwanda. Most Rwandan women's NGOs argue that women had no power to prevent the genocide, which was planned and carried out by men.⁴⁷⁷ According to this perspective, 'If women could have stopped the violence, they would have done so.'⁴⁷⁸ As Rwandan women are 'subordinate to their husbands', they did not have the power to advise their men folk against participating in the genocide.⁴⁷⁹ Nor could they act to help Tutsis if their husbands did not allow it.⁴⁸⁰ As explained by Oswald Samvura of Seruka: 'Women could not do anything to stop the genocide. Even men could not protect their Tutsi wives. How could women have protected people?'⁴⁸¹

⁴⁷⁶ As one woman said, 'Nowadays, people don't really want to confess. They say that if their cases really look like they'll start, they will confess... Some prisoners confess to other prisoners, just to be free with God. That's how we deal with it now.' Kigali Central Prison, 6.7.01.

⁴⁷⁷ Interview with Rose Mukantabana, Secretary General, Haguruka, Kigali, 8.6.01.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ Interview with Alice Ndegeya, Executive Secretary, Seruka, Kigali, 25.6.01.

⁴⁸⁰ *Ibid.*

⁴⁸¹ Interview with Oswald Samvura, Chief of Programme Seruka, Kigali, 25.6.01.

Not everyone agrees with these sentiments. Rakiya Omaar of African Rights, for instance, maintains that 'the argument that women were helpless to act against the genocide is bullshit. Women were not helpless.'⁴⁸² A third, intermediate, view acknowledges that Rwandan women are subordinated to men, but maintains that women should still have acted more benevolently, within the limits of the power they actually had. Rwandan lawyer, Bernadette Kanzayire, thus claimed:

*Before the genocide, women were not very active in the political arena, neither as politicians, nor as lobbyists. They followed the orders of their husbands and their families. But it has been stated that if women had played their 'true role' as the centre of the family, the genocide would not have taken place. Women could have advised their husbands and sons, or refused to prepare meals for them. Even if women did not have much power in Rwandan society, they should have at least tried to do something.*⁴⁸³

The same view was expressed by a female detainee in the Kigali prison:

*If women had resisted the genocide and helped people, there would not have been so many deaths. Some women did not have power to help, but even ... I had occasions to help people, especially women, to plead on their behalf. And these men were soldiers! Imagine the influence that women could have had if they had tried to advise their husbands. One problem is that Rwandan women have not been educated to do that. We were taught not to contradict men.*⁴⁸⁴

My interviews, both inside and outside the prisons, revealed that many women did assist others during the genocide. In particular, women's willingness to hide Tutsi children may partly explain the high number of orphans in Rwanda today.⁴⁸⁵ The problem is that sometimes the same persons who helped some Tutsis to survive also participated in the killing of others. For genocide survivors, these people should not be rewarded, as 'even during a genocide, it is normal to want to help your friends'⁴⁸⁶ Yet, some female

⁴⁸² Interview with Rakiya Omaar, Co-Director, African Rights, Kigali, 13.6.01.

⁴⁸³ Interview with Bernadette Kanzayire, lawyer, Kigali, 12.6.01.

⁴⁸⁴ Female genocide suspect, Kigali Central Prison, 3.7.01.

⁴⁸⁵ As Alice Ndegeya, of Seruka, explained: 'The fact that many women did try to help others is evidenced by the number of orphans in Rwanda today. Children were easier to hide because their ethnicity was not obvious. So, people could pretend that they were the children of that family. It was much more difficult to hide adults.' Interview with Alice Ndegeya, Executive Secretary, Seruka, Kigali, 28.6.01.

⁴⁸⁶ *Ibid.* Another woman I met in Kigali explained, 'It is likely that survivors would resist any study on the role of women in helping others during the genocide, as it may take the focus off the fact that a genocide occurred. They are very reluctant to see any reduction in the emphasis on the suffering of survivors.' (Interviewee details deliberately withheld, for reasons of confidentiality).

detainees bitterly remark there was no obligation upon them to assist anyone during the genocide,⁴⁸⁷ and feel that they have been imprisoned for their efforts.⁴⁸⁸

The second issue raised in the quotations set out above is whether women should have advised their men folk not to participate in the genocide, or at least have defied them within the home when they did so. One problem with this theory is that, according to the Rwandan government in its report to the Beijing Women's Conference in 1995, even outside a conflict situation, '[Rwandan] women are not taken seriously when they speak.'⁴⁸⁹ Secondly, most of the female detainees I spoke to said that they knew nothing about their husbands' activities during the genocide, except that some of the men had been 'keeping security' at the roadblocks.⁴⁹⁰ Women told me time and time again that 'women did not move with men', or 'it was not women's place to question' their husbands' actions. I would suggest that even taking into account cultural considerations and the effect of patriarchy in Rwandan society, given that nobody was unaware that a genocide was taking place, these detainees demonstrated a high degree of wilful blindness to the actions of their husbands.

A few female detainees were nonetheless willing to consider the possibility that their husbands participated in the genocide. One woman, for example, said the following:

People say that my husband was at the roadblocks and killed people. I cannot lie. He did go there to keep security, especially to prevent the people who were burning houses in other sectors from coming into our sector ... Our husbands really tried to help those Tutsis. They even went to see them when they were on the hill, to console them and take

⁴⁸⁷ If fact, there is such an obligation under Rwandan law, expressed through the criminal charge of 'non-assistance to persons in danger.' The elements of this crime are threefold, namely; (1) The will and intention to do nothing to save someone; (2) the existence of a certain or foreseeable danger; and (3) the lack of prejudicial circumstances preventing the person from acting. LIPRODHOR, *Regard Retrospectif*, *supra* note 252, at 42. LIPRODHOR explains that the doctrine does not expect acts of heroism, just that those with the power to dissuade others should have done so. *Ibid*, at 43-44. NB: This charge is rarely pleaded alone, and rarely succeeds when combined with other charges, as the same set of circumstances cannot give rise to both a crime of 'positive' participation and to a non-assistance offence. See, for example, the case of Major Anne Marie Nyirahakizima, *infra* note 549.

⁴⁸⁸ However, this feeling was not universal. Several female detainees expressed no regrets for having tried to help Tutsis, and claimed that they wish they could have done *more* to help them, even though, in some instances, their imprisonment was connected to these efforts.

⁴⁸⁹ *Report to Beijing*, *supra* note 98, at 17.

⁴⁹⁰ Women made this claim in each of the Kigali Central Prison, the Gitarama prison and the Butare prison.

their property to them. But somehow the men became convinced that the Tutsis had to die, so they joined the killers. To this day, I cannot understand how they changed.

I really do not know what my husband did at the roadblock. He used to move at night and I was a married woman, his wife, at home. I never went there. I cannot say if he killed or did not kill, given what was happening at that time. But if he killed, it would be right for him to be punished. Even as his wife, I could not forgive him, unless he confessed and sought forgiveness. Unfortunately he died in prison before he could confess.⁴⁹¹

Other women spoke more directly about their husbands' or sons' actions during the genocide, but denied they could do anything to stop them. Thus, one woman said:

*'Women could not try to stop their husbands from going out to kill because women did not have any power [over them], and they certainly could not stop a whole group.'*⁴⁹²

This statement seems to be supported by that of another woman, who claimed that her husband and son brutally killed her daughter-in-law (the same son's wife). She recounted the following tale:

It was the Bourgmestre who told them to do it, because he said Tutsi women were lazy and did not want to work on the land. I saw the letter from him, in which he told my husband and son to kill her. So, I went to warn her, but she said that since she had built that house with her husband, she was not leaving it.

I had to go and hide in the bush, because I was in a Basinga clan that had some Tutsis in it, and people said that my ancestors were Tutsis. Even my own husband was complaining about me ... I would go home at night to sleep, but my husband would complain because I had not prepared him food, and say that I had been supporting the Tutsis. My husband said he knew all about me and my clan, and that he would kill me himself or bring someone else to do it...

My husband got up one night to kill her [my daughter-in-law]. I tried to stop him, saying it was bad, since she had children and her aunt was married to someone in his family, but he would not listen to me. He beat me and threatened to kill me, but I followed him, trying to stop him. He went to my son's house and my husband grabbed the woman by the neck, while my son started stamping on her stomach, because she was pregnant. One of her children was crying, so I took care of him. My son's co-wife was also there.

After they had killed her, they argued about where they would bury her. My husband wanted to take her body away, but my son said that even though they had killed her, she was still his wife and they had built that house together, so they should bury her in the garden. So, they buried her there and planted a banana tree on top...

My husband's family denounced me, saying it was me that had killed my daughter-in-law, because my husband used to sleep with her, but that never happened... My husband also said it was me who did it. He said he was sick at the time so he could not do anything to

⁴⁹¹ Female genocide suspect, Butare prison, 25.7.01

⁴⁹² Female genocide suspect, Nsinda prison, 6.8.01

stop me, but it was not true! Where are the medical records? When I see him, I want to kill him.

*My son was also in the Interahamwe, but he left Rwanda ... All my sons went around with the Interahamwe, but I could not have done anything to stop them. They were like beasts then, going around with pangas. I was so ashamed...*⁴⁹³

The situation had been even more complex for another woman, who eventually admitted that she knew her husband had killed during the genocide. She explained that she felt she was obliged to keep silent about his activities as an implicit trade-off for being permitted to protect a Tutsi woman:

When I married my husband, people used to say he was a good man, but the truth is that he was never good. He was a thief, even before the genocide. During the genocide, he used to go with the other men to steal cows and bring the meat home for me to cook, which I did. All the men used to boast that they had killed people. Even my husband once boasted that he had found people praying and killed them, then taken their cows.

*Those men had become animals and we [women] could not stop them. Sometimes I was even afraid that he would kill me. Also, I was hiding a Tutsi woman in our house during the genocide. My husband was always arguing with me, telling me not to feed her, and that she knew too much about us, so we could not keep her there. Because I was hiding her, I could not argue with him about what he was doing during the day.*⁴⁹⁴

These accounts provide important insights into gender relations within some Rwandan households during the genocide. They also suggest that the reality was far more complicated than simply whether or not women had power to advise their husbands against participating in the violence. Nevertheless, it appears that women sometimes *could* have done more to resist the genocide, even in the face of their subordination. The following woman's account is on point. First, in recounting her role in the murder by her husband of their three neighbours, she spoke of her relationship with her husband in these terms:

I knew what my husband was doing, but I couldn't even warn them [the Tutsi neighbours], or my husband would have hurt me ... Even after he came back from killing them, I told him he had done a bad thing, but he looked at me with eyes like an animal and told me it was not proper to speak to him like that.

⁴⁹³ Interview details deliberately withheld for reasons of confidentiality. It should be noted that this woman was convicted to life imprisonment, in a trial in which she had no legal assistance. Her husband received a sentence of only 3 years (for not stopping her from acting), which indicates that the Court believed his story, rather than hers. This woman attributed her lengthy sentence to corruption of the judges by her husband's family.

⁴⁹⁴ Female genocide suspect, Gitarama prison, 16.7.01.

*It was impossible to counsel my husband. Even before the war he was a bad man, who had five other 'wives' (people like me, who he had children with). I was the sixth. We even separated for five years because he used to beat me, but I had returned to him three months before the war. My husband was killed by the RPF before he could kill anyone else...*⁴⁹⁵

Later, however, the same woman made a rather ambiguous admission, saying, 'In fact, I did not even think to warn them. That is why I am in this prison, and why I feel I have some responsibility for their deaths.'⁴⁹⁶ Moreover, although she said she had 'felt bad when I saw my husband taking them away because I didn't have any grudges against them,' she has nonetheless admitted that she went willingly with her husband to loot their property after he had killed them.

In sum, the argument that women had 'no power' vis-à-vis men during the genocide is partially true. Patriarchy was not put on hold during the genocide and some women were obviously seriously constrained in their ability to counsel their husbands against participating in the violence. In these circumstances, it seems unreasonable to expect women to have shown extraordinary courage and to have defied their husbands. On the other hand, some, and probably many, women were able to help Tutsis when the will was there. This suggests that women had at least a limited power for positive action during the genocide, which they did not maximize. Rwandan women's lack of confidence generally,⁴⁹⁷ combined with the uncertainties of the conflict, and at least a partial belief in the genocidal ideology, probably deterred many women from going that extra step to save others.⁴⁹⁸

⁴⁹⁵ Female genocide suspect, Nsinda prison, 7.8.01.

⁴⁹⁶ *Ibid.*

⁴⁹⁷ See *supra* note 144 and accompanying text.

⁴⁹⁸ Recall the comment by Josee Mukandamage, regarding the 'conditioning' of women to think that it was 'normal for Tutsis to die'. *Supra* note 469 and accompanying text.

2. The Power of Women in Leadership Positions

I am a woman, I had no power.

Female Category 1 genocide suspect, Kigali Central prison, 27.6.01

As discussed earlier in this thesis, according to most sources, the Rwandan genocide was motivated from the highest level.⁴⁹⁹ Before attributing women with responsibility for the genocide as ‘planners, organizers, instigators, supervisors and leaders ... [or as those who] acted in positions of authority at the national, prefectural, communal, sector or cell level, or in a political party, the army, religious organizations or in a militia,’ that is, as Category 1 offenders,⁵⁰⁰ there is a need to assess the level of power that women in leadership positions actually exercised in Rwanda during the genocide. Bearing in mind my earlier discussion of the ‘evil woman theory’ in Western feminist criminology,⁵⁰¹ it is also important to be alert to the representation of female Category 1 suspects in the criminal justice system, both by witnesses and by the women themselves. Within this framework, I will consider briefly below the power and behaviour of women in politics, the Rwandan military and the Catholic Church during the genocide.

a) Women in Political Power

Some Rwandan women’s NGOs argue that as the genocide was planned and directed by political powers, it might have been avoided had women held more political power in Rwanda. Judithe Kanakuze, of Réseau des Femmes, for example, states: ‘Women have a different nature to men. They are not violent. My hypothesis is that if there had been more women in power, the genocide would not have taken place.’⁵⁰² The problem with this hypothesis is that some women who *did* hold leadership positions during the genocide were allegedly also ardent supporters of it.⁵⁰³ Venuste Bigirama, of ASOFERWA, explained this apparent contradiction as follows:

⁴⁹⁹ See Part I.C.4 above.

⁵⁰⁰ *Genocide Law*, Article 2, as set out in Part I.D.3 above (text following *supra* note 256). Also see *supra* note 258 regarding the equivalent provisions in Article 51 of the *Gacaca Law*.

⁵⁰¹ See Part I.A.3 above.

⁵⁰² Interview with Judithe Kanakuze, National Coordinator, Réseau des Femmes, Kigali, 8.6.01.

⁵⁰³ Recall, for example, the accusations against Pauline Nyiramasuhuko discussed in Part I.A.1(a) above. .

*I think that women who held positions of power, who were in the minority, were dominated and influenced by men. If there had been more women in power, the atmosphere would have been different and these women could have prevented the others from participating in the genocide. I really think that if there had been more women in leadership positions, the genocide would not have occurred. Women are more sentimental.*⁵⁰⁴

Were women in positions of power ‘dominated and influenced by men’? This is a complex question, which, in my view, comprises two separate enquiries. Firstly, were women in power ‘dominated’ by men, such that they had no, or less, power than men, to act in similar circumstances? Secondly, were women ‘influenced’ by men, even to the point that they became ‘like men’ and lost sight of their ‘feminine’ traits and objectives? I will focus in this section on the first enquiry, which goes more directly to the issue of dominance and power, and return to consider the second enquiry towards the end of that discussion.

Let us consider first the power of the two female government ministers, Pauline Nyiramasuhuko and Agnes Ntamabyaliro. Certainly, these two women were in the minority in the Rwandan government at the time of the genocide.⁵⁰⁵ They were also both relatively new to politics, both being appointed only in 1992.⁵⁰⁶ Moreover, Nicole Bergevin, Pauline Nyiramasuhuko’s lawyer, was quick to insist that Nyiramasuhuko ‘had no power’ in the genocidal government.⁵⁰⁷ Without knowing the internal power dynamics of that government, it might be true that Nyiramasuhuko was not one of the *primary planners* of the genocide, at least relative to the other government ministers. Nevertheless, that would not have restricted her from *implementing* the genocidal plan

⁵⁰⁴ Interview with Venuste Bigirama, Technical Advisor, Association for Solidarity between Rwandan Women (ASOFERWA), Kigali, 11.6.01. Rose Mukantabana, of Haguruka, expressed a similar view about other female ‘respected leaders’ who participated in the genocide. She said: ‘I think, in respect to teachers and nuns, that there was a group mentality, influenced by the leaders within these institutions. Women just followed the group.’ Interview with Rose Mukantabana, National Executive Secretary Kigali, Haguruka, 8.6.01.

⁵⁰⁵ Nyiramasuhuko and Ntamabyaliro, together with Agathe Uwilingiyimana comprised 15% of government ministers immediately prior to the genocide: 3 women, compared to 17 men. *Prise de Décision*, *supra* note 89, at 38.

⁵⁰⁶ See Part I.B.5 above.

⁵⁰⁷ Interview with Nicole Bergevin, Lead Defense Counsel for Pauline Nyiramasuhuko, International Criminal Tribunal for Rwanda, Arusha, 30 May 2001.

through incitement, aiding and abetting, as set out above.⁵⁰⁸ Moreover, the achievements of Prime Minister Agathe Uwilingiyimana prior to her death, despite the challenges that she faced by reason of her gender,⁵⁰⁹ suggest that female ministers in the Rwandan government were not completely dominated by men. Indeed, it seems patronising to women to argue that they were. Finally, in addition to the testimonies set out earlier,⁵¹⁰ anecdotal evidence, such as that of Josée Mukandamage, current Vice President of the Rwandan Supreme Court, defies the image of Pauline Nyiramasuhuko as a powerless victim of fate. According to Mukandamage, 'it is not true that Nyiramasuhuko had no power. She did. She was extreme and she loved her party.'⁵¹¹

It is reasonable to assume that Nyiramasuhuko and Ntamabyaliro could not have acted unilaterally to prevent the genocide or to recover peace in Rwanda. It would be unfair to expect them to have done so, simply because women are assumed to be good 'peacemakers'.⁵¹² Still, in light of their position as government ministers, it seems difficult to accept that these two women did not wield a relatively large degree of power, regardless of their sex.

The degree of power held by female political administrators at levels lower than government ministers seems less clear. As noted earlier, at the time of the genocide, no

⁵⁰⁸ See Part I.A.1(a) above.

⁵⁰⁹ See *supra* notes 154 to 161 and accompanying text.

⁵¹⁰ See Part I.A.1(a) above.

⁵¹¹ Interview with Josée Mukandamage, Vice President of the Supreme Court, Kigali, 23 July 2001.

Mukandamage described how during the genocide she had heard Nyiramasuhuko on the radio, encouraging massacres of Tutsis. She said 'I was shocked when I heard that, especially from someone in her position.' Mukandamage also described an event which she and other women were trying to organize in March 1994 at the sports stadium in Kigali, to celebrate National Women's day. Of Nyiramasuhuko, she said, 'even as minister for gender, she could not bypass politics and let women join together, without distinction based on ethnic or political group. Instead, she turned it into a political event, inviting all her party members, plus the singer Bikindi [known for his songs which incited hatred against Tutsis. See *Death, Despair and Defiance*, *supra* note 11, at 75-76.] We were very disappointed. We did not even go.' Interview with Mukandamage, *ibid*. On the other hand, Mukandamage doubts the veracity of the allegation that Nyiramasuhuko incited her son to rape (see *supra* notes 333 to 338 and accompanying text), claiming '[t]hat's going too far. Can a woman really tell her son to rape? That's not her decision.' *Ibid*.

⁵¹² That women are good peacemakers is one of the bases for Rwandan umbrella organization ProFemme / Twese Hamwe's program 'action for peace'. One project effected by member organization Seruka has worked to encourage women to adopting roles in *gacaca*. Specifically, Seruka states that 'considering its development program in favour of Rwandan women, and convinced that this objective cannot be achieved until women play their natural role, primarily in policies of unity and reconciliation...' Seruka, 'Program Description', proposed project regarding the integration of women into *gacaca*, approximately May 2001.

women held positions as Prefets or Bourgmestres in Rwanda; ranks that have been attributed with substantial responsibility for the genocide.⁵¹³ Moreover, of the 1,472 Conseillers at the Sector level, only 17 were women (1.2%).⁵¹⁴ In addition to this group, some women also held positions as 'Responsables'; the administrative leaders at the Cell level.⁵¹⁵ If these women did not actually hold any political power, the automatic placement of all persons who held 'positions of authority' in the first Category of the *Genocide Law*, subject to the death penalty, may ignore important gender dimensions.⁵¹⁶

The Economic Commission for Africa has observed that women councillors across Africa 'sometimes gain some power at the local level but claim they are left out at the country and district levels where strategic policy and budgetary decisions are made.'⁵¹⁷

Nevertheless, there is no doubt that at least some female Conseillers in Rwanda, like Euphrasie Kamatamu, former Conseiller of the Muhima sector in Kigali, held substantial power during the genocide.⁵¹⁸ Kamatamu was convicted in 1998 as a Category 1 offender and sentenced to death.⁵¹⁹ Her crimes comprised: genocide (both as a planner as executor);⁵²⁰ murder;⁵²¹ 'directing the Interahamwe and other killers who helped her in her crimes' (technically, forming an association of criminals);⁵²² illegal distribution of

⁵¹³ In recognition of this, the current government has embarked upon a decentralization process, the objective of which is to 'bury the prestige and authority of the former Commune leaders, the *Bourgmestres*, who bore much of the responsibility for implementing the genocide.' International Crisis Group, 'Consensual Democracy' in Post-Genocide Rwanda: Evaluating the March 2001 District Elections', *Africa report no. 34*, Nairobi/Brussels, 9.10.01, at 5.

⁵¹⁴ See *supra* note 143 and accompanying text.

⁵¹⁵ I was unable to locate exact statistics on the number of female Responsables, but anecdotal evidence, both inside and outside the Rwandan prisons, made frequent references to them. I met 2 female former Responsables during my interviews with female genocide suspects.

⁵¹⁶ See *supra* note 257 regarding LIPRODHOR's criticism of the categorization of all persons who held leadership roles during the genocide as Category 1 offenders.

⁵¹⁷ *African Women's Report*, *supra* note 144, at 45.

⁵¹⁸ Rose Karushara is another former Conseiller who is alleged to have actively participated in the genocide. See *Not So Innocent*, *supra* note 63, at 111-124. The photograph of Karushara on page 112 of this report, surrounded by 'her future Interahamwe', is one of the most potent images of women's power in relation to the genocide that I have seen.

⁵¹⁹ Tribunal of First Instance of Kigali, in the case of KAMATAMU Euphrasie, NDAGIJIMANA Innocent, IRAGENA Alphonse Marie and HABYALIMANA Thomas; Case nos. RP014/CSK/97 and RP032/CS/KIG, Decision 17.7.98. [*Hereinafter Kamatamu judgment*] Thomas Habyalimana was Kamatamu's husband, and president of the CDR in the Muhima sector. The two are alleged to have operated together during the genocide, together with others.

⁵²⁰ *Genocide Law*, *supra* note 252, Article 2(1)(a).

⁵²¹ *Rwandan Penal Code*, *supra* note 252, Article 312.

⁵²² *Ibid*, Articles 281-282.

firearms,⁵²³ devastating the country and directing massacres in the Muhima sector.⁵²⁴ Kamatamu lost her appeal,⁵²⁵ but died in prison in September 2001 of natural causes, prior to the death penalty being carried out against her.

Witnesses at Kamatamu's trial painted a very unpleasant picture of her, which seems to give credence to the 'evil woman theory' discussed earlier.⁵²⁶ They testified that Kamatamu had installed and controlled roadblocks in Muhima sector, which she patrolled regularly with her son; ordered the death of at least one man, and wandered through bodies, turning them over with a baton.⁵²⁷ Kamatamu, on the other hand, proclaimed her innocence and said that she had had no capacity to prevent the massacres in her sector. Like Nyiramasuhuko, she specifically argued that she *had no power* to prevent the genocide.⁵²⁸ Kamatamu also said that she was unable to resign from her position, as the Prefet would not have allowed it. At least on this point, the Court seemed to agree with her. It found that:

*The genocide was planned and it could not have taken place in the sector that she directed without her knowledge and participation. Otherwise, she would not have continued to exercise her function as Conseiller, because any leader at this level who refused to cooperate lost [his or her] job or was killed.*⁵²⁹

In relation to the charge of devastation, the Court concluded that Kamatamu had 'directed the massacres in the Muhima sector, where [the Interahamwe] pillaged and scoured in search of Tutsis and so-called accomplices, victims who were executed as soon as they were discovered, which brought the whole of Muhima to fire and blood.'⁵³⁰

⁵²³ Decree-law No. 12/79 of 7.5.1979 on the regime of firearms, Article 13.

⁵²⁴ Rwandan Penal Code, *supra* note 252, Article 168. NB: the verdict on each of these crimes is found in the Kamatamu judgment, *supra* note 519, at 12-13.

⁵²⁵ Kamatamu's appeal was decided on 2 May 2000 in the Kigali Court of Appeal. The appeal was rejected. LIPRODHOR, CDIPG, *Draft Report* 2001.

⁵²⁶ See Part I.A.3 above.

⁵²⁷ Kamatamu judgment, *supra* note 519, at 9 and 7 respectively. These testimonies are consistent with reports in *Not So Innocent*, which claim that Kamatamu 'toured the roadblocks at Muhima', stored and distributed weapons at her house, and supervised the writing of lists of Tutsis to be killed. *Not So Innocent*, *supra* note 63, at 134. Witnesses in that text describe Kamatamu as 'cruel', and claim that 'her whole house was full of assassins'. *Ibid*, at 140 and 142 respectively.

⁵²⁸ Kamatamu judgment, *supra* note 519, at 8. See quotation from Nicole Bergevin, lawyer for Pauline Nyiramasuhuko, *supra* note 507 and accompanying text.

⁵²⁹ Kamatamu judgment, *supra* note 519, at 12.

⁵³⁰ *Ibid*, at 13.

During my interview with Kamatamu in the Kigali Central Prison on 27 June 2001, she admitted involvement only in the distribution of weapons, but said:

*Regarding the guns, I agree, I did that. I gave out guns to the citizens to protect themselves, but not to kill Tutsis. The guns were provided to me by Habyarimana's soldiers. At trial, I pleaded guilty to this charge, but I asked for forgiveness, because I had had no choice. I just did what I was told.*⁵³¹

Kamatamu continued to maintain that she was innocent in respect to the other allegations. She also insisted upon the fact that she had 'tried to protect Tutsis' in her house, and that 'up until now, they come to visit me in prison.'⁵³² She said that if she were released: 'I would thank God and go the people who accuse me of killing, to ask for forgiveness and seek reconciliation. I would say sorry and I hope that they would also say sorry. I have already forgiven them.'⁵³³ However, when I asked to what she would seek forgiveness, given that she claims not to have committed any crime, she said, 'It would not come from my heart, because I did not do anything to them.'⁵³⁴

At the next level down in the political hierarchy in Rwanda were the head administrators at the Cell level, the Responsables. One female detainee, speaking about women's participation in the genocide, made no distinction between the responsibility of female Conseillers and Responsables. She said: 'the women who were Conseillers or Responsables are guilty because they used the Interahamwe and told us what to do.'⁵³⁵ I interviewed two former Responsables in detention. The fact that one of these women is on the *Category 1 List*⁵³⁶ and the other is not shows that the Rwandan prosecutors have retained some discretion as to the classification of genocide suspects, and are not

⁵³¹ Interview with Euphrasie Kamatamu, Kigali Central Prison, 27.6.01. Given that Kamatamu died in prison on 7 September, 2001 after exhausting all appeal options, in this instance, I no longer feel obliged to maintain the confidentiality of our interview. It is not clear from reading the judgment whether Kamatamu had admitted to the distribution of weapons or not. This issue was raised, but in the context of other admissions that Kamatamu had made to the prosecutors and withdrawn at trial, claiming that her confession had been made under duress, as a result of beatings by the judicial police.

⁵³² *Ibid.*

⁵³³ *Ibid.*

⁵³⁴ *Ibid.*

⁵³⁵ Female genocide suspect, Kigali Central Prison, 5.7.01.

⁵³⁶ There are 4 former Responsables on the *Category 1 List*, *supra* note 260.

automatically placing all former political leaders on the *Category 1 List*.⁵³⁷ These two women explained their duties as Responsables in the following terms:

*The Responsable is elected by the citizens and their role is to get information from the Bourgmestre, mainly about roads and sanitation, and tell the citizens, and vice versa. A Responsable is not as important as a Conseiller. The Responsable takes the information to the Conseiller, who takes it to Bourgmestre, and vice versa.*⁵³⁸

...

*My roles as Responsable were recording births and deaths, making people pay taxes, and taking care of security (reporting on fights in the cellule) ... There were very many women in government at the level of Responsable, but very, very few women as Conseillers or any higher up. As Responsable, I did not have much power. I just made reports for the Conseiller, who then took them to the Bourgmestre.*⁵³⁹

In emphasizing the lack of power that she had during the genocide, one of these two women said: 'I am really surprised they put me in the first category. I am a woman. I did not kill anyone. I just took orders.'⁵⁴⁰ These comments have obvious gender implications, which are consistent with my discussion earlier in this thesis of the assumption that women are not killers.⁵⁴¹ They also suggest that at least some female detainees do not accept that it is reasonable to include women among Category 1 suspects. This same woman, like Kamatamu, has confessed to knowledge about the distribution of guns in her Cell. However, consistent with her argument about 'just taking orders', she claims a low level of responsibility for this exercise:

I admit that there were guns in my area. It was in fact the Conseiller who brought them into the Cell and spread them out to the young men who were around. He did not even pass through me in doing it, but I did not stop him. I have confessed to not stopping him handing out the guns, but it was also not possible for me to stop him. He was the head of the Sector.

It is difficult to determine whether this account merely demonstrates regular operations within the political hierarchy in Rwanda at the time of the genocide or if gender issues

⁵³⁷ Cf. criticism of Article 1(b) by LIPRODHOR, *supra* note 257.

⁵³⁸ Female genocide suspect and former Responsable, 6.7.01 (Further interviewee details deliberately withheld for reasons of confidentiality).

⁵³⁹ Female genocide suspect and former Responsable, Gitarama prison, 17.7.01 (Further interviewee details deliberately withheld for reasons of confidentiality).

⁵⁴⁰ Interviewee details withheld, for reasons of confidentiality.

⁵⁴¹ See Part I.A.2 above, especially the text and quotations following *supra* note 374.

also come into play. In any event, my impression was that this woman's claim that she 'had no power' to prevent the genocide was made in an effort to claim immunity from responsibility for her actions.⁵⁴² On the other hand, I found the story provided by the second ex-Responsible, who was not categorized as a Category 1 suspect, totally credible. The allegations against this woman have nothing to do with her leadership role, and in fact, she argued that her power had been removed before she had a chance to use it either way. She explained:

On 7 or 8 April 1994, the new government removed the whole committee of five Responsables in our Cell, including me, and replaced us with three people who were wealthy and friends of the Interahamwe. I did not know that they were planning a genocide. If I had known, I would have fled with my husband [who was a Tutsi]. I really do not know how it erupted. It was like cinema.

This story confirms the comment in the Kamatamu case above, that women who did not adhere to the genocidal ideology were not permitted to retain their leadership positions.

Bearing in mind each of these examples, my tentative conclusion as to the level of political power held by Rwandan women at the time of the genocide is as follows. At the level of government Minister, there should be a presumption that women, like men, held substantial power. Any argument that they did not, simply because they were women, should be treated with scepticism. Although female Conseillers were subordinate not only to government ministers, but also to the Prefets and Bourgmestres, the case of Euphrasie Kamatamu suggests that at least some women at this level also wielded a large degree of power and actively participated in the genocide. Female Responsables held the lowest rank in the political hierarchy.⁵⁴³ Yet, those Responsables who retained their positions throughout the genocide also appear to have played their role in it, and to have held at least more power than the average citizen.

⁵⁴² This woman also claimed that 'during the war, I stayed at home. Even though I was Responsable, I did not go out. I worked from home, except for once in a while when I had to go out to check the roads or meet with the citizens. I was unconvinced by this version of events.

⁵⁴³ There is one level under that of Responsable, which is that of Nyumbakumi, an individual who is elected responsible for 10 houses. Interview with female genocide suspect and former Responsable, Gitarama prison, 17.7.01, *ibid*.

Of course, there may be exceptions to this rule, and each case still needs to be analyzed individually, within the broader context of patriarchy, to determine the actual degree of power that each woman possessed. Nevertheless, I support wholeheartedly Pearson's warning that:

*We [feminists] cannot insist on the strength and competence of women in all the traditional masculine arenas yet continue to exonerate ourselves from the consequences of power by arguing that, where the course of it runs more darkly, we are actually powerless. This has become an awkward paradox in feminist argument.*⁵⁴⁴

This paradox is further exemplified by the study of Rwandan women in the military, as discussed below.

b) Women in the Military

Consistent with the legend of Ndabaga, which symbolized the inappropriateness of women in combat in Rwanda,⁵⁴⁵ female soldiers were relatively rare in pre-genocide Rwanda.⁵⁴⁶ In addition, even 'those who embraced a military career never attained positions of High Command.'⁵⁴⁷ However, these 'preconceptions were breached during the recent war in Rwanda where one saw military women engaged in battle alongside men.'⁵⁴⁸ And some of those women held substantial power, as demonstrated by a case that came before the Kigali Military Court in 1999. At the end of her trial, Major Anne Marie Nyirahakizima, a 46 year old mother of three children, was convicted, together

⁵⁴⁴ Pearson, *supra* note 5, at 32.

⁵⁴⁵ See Part I.A.1 above. According to Rwanda's report to the Beijing Conference on Women, Rwandan tradition provides that women were not *capable* of combat during war. *Report to Beijing*, *supra* note 98, at 67. On the other hand, there is another well-known female army commander in Rwandan history, who attacked a Belgian expedition, which came across her and others drinking. The Belgians called on the King Musinga to whip the culprits. Rumiya, *supra* note 151, at 166.

⁵⁴⁶ *Report to Beijing*, *supra* note 98, at 67.

⁵⁴⁷ *Ibid.*

⁵⁴⁸ *Ibid.* Although female soldiers are reported to have participated in the genocide, Taylor notes that, to his knowledge, no woman was involved in actual combat operations against the Rwandan Patriotic Front. Taylor, *supra* note 148, at 154. There were also female soldiers in the RPF, to which has been attributed the apparently low rate of sexual violence against women committed by the RPF in Rwanda. *Shattered Lives*, *supra* note 11, at 14.

with a Pastor of the Episcopal Church of Rwanda, as a Category 1 offender and sentenced to death.⁵⁴⁹

The Court found Nyirahakizima guilty of an extensive list of crimes. These included: genocide and crimes against humanity;⁵⁵⁰ incitement;⁵⁵¹ several separate counts of murder, committed either with her own hands or by her subordinates;⁵⁵² forming an association of criminals,⁵⁵³ and unlawful entry and destruction of homes.⁵⁵⁴ It is not my intention to consider each of these crimes in detail. Rather, the most interesting aspect of this case is Nyirahakizima's attempt to represent herself both as powerless and a saviour, and thus defy the image of 'evil woman' that was being constructed in the Court.

Nyirahakizima's response to the incitement charge is illustrative of this approach. This charge related to an incident in early April 1994, soon after the death of President Habyarimana. On that day, according to the judgment, Nyirahakizima was in Kigarama, Gikondo Commune, where she found a group of Interahamwe grilling cow meat. She asked the group: 'What have you done since the death of the Father of the Nation? [i.e. President Habyarimana]. Your greed has no limits. Kill the people first, then their goods will be yours. You are eating their cows while their owners are still alive.'⁵⁵⁵ The Court held that these words, which were aimed at dividing the population and inciting Hutus to kill Tutsis,⁵⁵⁶ were the cause of the massacres of Tutsis in Gikondo, as 'it was after the discourse pronounced by Major Anne Marie Nyirahakizima that the persons who had been in that place spread out over rural areas, killing and pillaging.'⁵⁵⁷

⁵⁴⁹ Military Court of the Kigali Specialized Chamber, Case No. R.P. 0001/C.M.C.S./KGL /99, 3 June 1999, Decision, Major GD Anne Marie Nyirahakizimana and Pastor Athanase Nyirishuti.

⁵⁵⁰ *Ibid.*, at 55, para. 49.

⁵⁵¹ *Ibid.*, at 51, para. 14.

⁵⁵² *Ibid.*, at 55, paras. 43-48. For background to these crimes of murder, see pages 51-54, paras. 17-42. In one case, murder followed betrayal by Pastor Athanase Nginshuti who advised Nyirahakizimana that two Tutsis were seeking refuge in his Parish. See *Ibid.*, at page 54, para. 41

⁵⁵³ *Ibid.*, at 52, para. 22.

⁵⁵⁴ *Ibid.*, at 51, para. 15-16, and page 52-53, paras. 25-26.

⁵⁵⁵ *Ibid.*, at 50-51, para. 11.

⁵⁵⁶ *Ibid.*, para. 11.

⁵⁵⁷ *Ibid.*, para. 12.

Nyirahakizima, however, insisted throughout her trial that these allegations were false. She claimed that she had never collaborated with the militias,⁵⁵⁸ although at one stage a soldier had loaned her a weapon because she suffered from hyper-tension.⁵⁵⁹ She admitted that she was with the Interahamwe on the day of the alleged incitement offence, but argued that this was because she was *forced* to go with them, after she had prevented them from searching her (Tutsi) neighbours' homes, and they had accused her of being an accomplice of the RPF.⁵⁶⁰ She argued that the Interahamwe militias were strong, that they had even killed many soldiers, and that she, as a woman, could not help but be frightened of them.⁵⁶¹

Nyirahakizima did not limit her imagery to her alleged powerlessness. She also tried to foster an image of herself as kind, caring, and misunderstood. In the face of allegations that she directed military attacks⁵⁶² and was even at the centre of the Rwandan power structure as a member of the *Akazu*,⁵⁶³ Nyirahakizima consistently insisted that her role during the genocide was not as a killer, but as a saviour. Thus, she called witnesses to testify that she had saved them during the genocide, by hiding them in her home.⁵⁶⁴ She also maintained that she had not been involved in the murder of a young boy and other refugees at the Centre St Joseph in Kabgayi, as at the relevant time she had been busy exercising her profession as a doctor, caring for people in the hospital.⁵⁶⁵ She claimed further that she had rushed to prevent her bodyguard, who had an 'aggressive character', from killing a man, but had arrived too late to save the victim.⁵⁶⁶ Finally, although

⁵⁵⁸ *Ibid*, at (page) 10.

⁵⁵⁹ *Ibid*, at 18.

⁵⁶⁰ *Ibid*. at 10, and repeated at 37.

⁵⁶¹ *Ibid*, at 14.

⁵⁶² *Ibid*, at 59, para. 74. Also see page 51, paras. 15-16 and page 52, para 20.

⁵⁶³ *Ibid*, at page 40. See *supra* note 215 and accompanying text for an explanation of *Akazu*. NB: The Court made no finding in respect to this allegation.

⁵⁶⁴ According to the judgment, Nyirahakizima's claims that she had saved her Tutsi neighbors were confirmed by her witnesses, but those witnesses, who were in hiding, could still not testify to what Nyirahakizima had done during the day. See, *ibid*, at 58, para. 71(b) and at 59, para. 72(b). For the claims by Nyirahakizima, see, *ibid*, at 11 and 15. NB: The Prosecutor argued in relation to this claim, 'even criminals have friends.' *Ibid*, at 44.

⁵⁶⁵ *Ibid*, at 24 and 26. In particular, Nyirahakizima stressed that she had been caring for her niece who had undergone an operation for a caesarean. *Ibid*, at 33. In relation to one of the other murder charges, Nyirahakizima argued that she was not even in the vicinity of the alleged crime at the relevant time, as she was ill and had been hospitalized following an abortion. *Ibid*, at 9.

⁵⁶⁶ *Ibid*, at 39.

Nyirahakizima admitted that she had sent a Tutsi man and his wife from the Shyogwe Parish to the military camp, where they had later been killed, she claimed to have done so for their own protection.⁵⁶⁷

None of these claims were accepted by the Court, which denounced, in particular, Nyirahakizima's contentions that she had tried to save her neighbours, as being irrelevant to the charges.⁵⁶⁸ The Court further concluded that:

*The eulogies in the conclusions of the lawyer for Major Anne Marie Nyirahakizimana regarding the heroic and intelligent character and humanitarian behaviour of his client must be denounced in view of the savage acts of genocide that she committed, which place her in the first category among the authors of the genocide and other crimes against humanity.*⁵⁶⁹

The Court ultimately convicted Nyirahakizima as a Category 1 offender, in light of the position of authority she held as a Major at the centre of the army, and the role she had played both in committing and in inciting genocide and crimes against humanity.⁵⁷⁰ It also held both the Rwandan State and the Episcopal Church jointly liable with the defendants.⁵⁷¹ As will be seen below, the type of imagery that arose in this case was equally present in the recent case of the two Rwandan nuns tried and convicted in Belgium for war crimes.

c) Women in the Catholic Church

According to many historians and political analysts, the role of the Catholic Church in Rwanda in the period leading up to, and during, the genocide was just as important as the

⁵⁶⁷ *Ibid*, at 9 and 26. Majors Nyirahakizima and Kankwanzi had both come to Shyongwe to seek temporary refuge. However, one of the witnesses in relation to other massacres in the Parish claimed that both women were considered by the other refugees to be powerful, because they were armed. *Ibid*, at 35. Both women were also said to have gone around at night, 'knocking on doors'. *Ibid*, at 27. Another alleged female genocide perpetrator mentioned in this judgment was a woman who was said to have stabbed people to death in the hospital. Nyirahakizima claimed that the witness was mistaken in believing this was her, as the relevant individual was a woman who accompanied the Minister of Defense. *Ibid*, at 34.

⁵⁶⁸ *Ibid*, at 59, para. 78, and at 61, para. 88.

⁵⁶⁹ *Ibid*, at 60, para. 83.

⁵⁷⁰ *Ibid*, at 55, para 50.

⁵⁷¹ *Ibid*, at 63, paras 105-108, and at 65, para. 122.

role of the State.⁵⁷² Consequently, any discussion about the power of women during the Rwandan genocide should include consideration of women in leadership roles in the Catholic Church in Rwanda. The case of two Rwandan nuns tried before a popular jury in Belgium provides a useful opportunity for such a study.

Consolata Mukangango (Sister Gertrude), the former Mother Superior of the Convent in the Sovu Monastery in Butare, and her more junior colleague, Julienne Mukabutera (Sister Maria Kizito), were both seeking asylum in Belgium at the time of their arrest. On 8 June 2001, they were convicted by the Belgian Court of Assizes, together with a former government minister and tea factory owner, and a former professor of the National University in Butare,⁵⁷³ of grave breaches of the Second Protocol to the *Geneva Conventions* relating to internal armed conflicts.⁵⁷⁴ Sister Gertrude was sentenced to a 15-year term of imprisonment and Sister Kizito received a 12-year sentence. In a short written judgment, the Court found the two nuns guilty of intentional homicides of identified individuals and 'undetermined numbers of unidentified persons', as well as attempted homicides, committed on 22 and 25 April 1994, and 6 May 1994. The judgment itself does not go further into the facts, given the unique nature of trials in this

⁵⁷² Filip Reyntjens, as cited in *Avocats Sans Frontières*, 'Revue de presse du 13 au 26 avril – Le Rwanda: jugé dans les détails, commenté dans les grandes lignes', online, www.asf.be/AssisesRwanda2/fr/fr_PRESSE_0426.htm, date accessed : 9.10.01. Also see Linden, I. 'The Church and Genocide: Lessons from the Rwandan Tragedy', in Baum, G. & Wells, H., eds, *The Reconciliation of Peoples: Challenges to the Churches* (New York, Orbis Books 1997), 43; Budde, M. 'Pledging Allegiance: Reflections on Discipleship and the Church after Rwanda' in Budde, M. and Brimlow, R. eds., *The Church as Counterculture* (New York, State University of New York Press, 2000), 213; and McCullum, H. *The Angels Have Left Us: The Rwanda Tragedy and the Churches* (Geneva, Risk Book Series, 1995, especially Chapter 5, 'The Church: Problems and Promises'.

⁵⁷³ Alphonse Higanro is considered one of the ideologues of the genocide. He was a member of the 'Akazu', close to the family to the President. A former professor in mathematics, he held various positions in the Rwandan Ministry of Education before being named Minister of Transport and Communication in 1991. He was removed from that position in 1992, following a dispute with the brother-in-law of President Habyarimana, and sent to the South of the country. At the time of the genocide, Higanro was a factory owner, and allegedly barred his staff from any other work than participating in the genocide. Vincent Ntezimana held a doctorate in physics from Louvain University in Belgium, and taught for several years at the National University in Butare. He was alleged to have, among other things, written a list of Tutsi professors trying to flee Butare during the genocide. The files of these two men were joined with those of the two nuns, in a joint trial, essentially for 'economies of justice'. See *Diplomatie Judiciaire*, online, 'Alphonse Higanro: Directeur d'usine à Butare', www.diplomatiejudiciaire.com/Higanro/Higanro.html; 'Vincent Ntezimana: Professeur d'université', www.diplomatiejudiciaire.com/Higanro/Ntezimana.html, and 'La Chapelle Ardente', 27.6.01, online, www.diplomatiejudiciaire.com/Higanro/Higanro.html (all date accessed 9.10.01).

⁵⁷⁴ *Belgian Genocide Trial Judgment*, *supra* note 1. See Part I.D.2 above, for an explanation of why the Rwandan nuns were not tried for genocide or crimes against humanity in the Belgian Courts.

jurisdiction,⁵⁷⁵ but media reports surrounding this case shed some light on the nuns' alleged participation in the genocide.

The accusations against Sister Gertrude begin with claims that she deliberately refrained from feeding some 3,500 refugees who had fled to the Sovu Health Centre when the massacres began in Butare on 17 April 1994.⁵⁷⁶ When the Health Centre was under attack two days later, the refugees fled to the Sovu Monastery, but found the doors locked. Some of those refugees forced their way into the Monastery, but Sister Gertrude allegedly threatened them and called them 'dirt'.⁵⁷⁷ Eventually, she brought a communal policeman and 6 soldiers, who forced the refugees to leave on the basis that the Monastery must not be destroyed on account of Tutsis.⁵⁷⁸ These refugees were all forced back to the Health Centre, except for around 80 people, who were mainly relatives of Tutsi nuns living in the Convent, and who remained hidden inside.

On 22 April 1994, it is alleged that Sister Kizito, whom Survivors nicknamed 'animal',⁵⁷⁹ participated in a massacre at the Health Centre, directly assisting the militias by handing out jerry cans of petrol emanating from the Monastery, which were then used to burn people alive.⁵⁸⁰ She is also accused of having written a list of remaining refugees to be killed, stealing possessions from the corpses to distribute among the Interahamwe, and even cursing the dead Tutsis because they had torn up their money before dying.⁵⁸¹

⁵⁷⁵ No reasons are required for judgments in the Belgian Court of Assizes. Instead, the decision of the jury was based simply on a 'yes' or 'no' response to a list of 55 questions relating to the four defendants. See *Diplomatie Judiciaire*, 'Quatre Coupables', 10.6.01, online, www.diplomatiejudiciaire.com/Higaniro/Higaniro27.htm (date accessed 9.10.01) [**Hereinafter *Quatre Coupables***].

⁵⁷⁶ Testimonies against the two nuns are provided generally in *Not So Innocent*, *supra* note 63, at 155-185. Specifically, in relation to Sister Gertrude's refusal to feed the refugees, witnesses claim that Sister Gertrude locked 12 bags of rice into storage that were sent by Church administrators, rather than feed the refugees as she had promised them. *Not So Innocent*, *supra* note 63, at 183, 158 and 163. Also see *Diplomatie Judiciaire*, 'Diaboliques icônes', 3.6.01, online, www.diplomatiejudiciaire.com/Higaniro/Higaniro22.htm (date accessed 9.10.01) [**Hereinafter *Diaboliques icônes***].

⁵⁷⁷ *Not So Innocent*, *supra* note 63, at 173 and 180.

⁵⁷⁸ *Ibid.*, at 160-161, 164 and 185.

⁵⁷⁹ *Ibid.*, at 168-169.

⁵⁸⁰ *Ibid.*, at 161, 169, 172, 176 and 181-182.

⁵⁸¹ *Ibid.*, at 169 and 176-7. NB: There is a reference in the commentaries surrounding the Belgian genocide trial that Sister Scholastique wrote a list. It is not clear if this is the same list that *Not So Innocent* reports was written by Sister Kizito. See *Diplomatie Judiciaire*, 'Une Peur Diabolique', 3.6.01, online, www.diplomatiejudiciaire.com/Higaniro/Higaniro23.htm (date accessed 9.10.01) [**Hereinafter, *Une Peur Diabolique***].

Survivors said that on 25 April, Sister Gertrude chased more people out of the Monastery into the hands of the militias.⁵⁸² However, probably the most damning evidence against her is a letter dated 5 May 1994 to the Bourgmestre and signed by her, asking him to clear the convent of the remaining refugees. In this letter, Sister Gertrude requested that 'people who come in a disorderly manner and insist on staying here should be told politely to return to their homes so that the usual work of the Monastery can continue without disruption.'⁵⁸³ The Bourgmestre complied, and on 6 May 1994, the remaining Tutsis were removed from the Monastery and killed.

The imagery used during this trial suggests that if ever the 'evil woman theory' was at play, this was the case. Not only were these two defendants women, they were also nuns! How could their apparently abominable behaviour be explained? According to the lawyer for the civil claimants, the answer was simply that: 'These nuns have never been servants of God. They are monsters.'⁵⁸⁴ Like Eichmann, he claimed, Sister Gertrude 'did not 'act by order, but to order',⁵⁸⁵ whereas Sister Kizito 'exploits the unhappiness of her victims without pity. [Such a person] is a vulture. Here, this terrible word has found its feminine form.'⁵⁸⁶

Not surprisingly, the lawyers for the two sisters strongly criticized the 'demonization' of their clients.⁵⁸⁷ Thus, the lawyer for Sister Gertrude described one witness' claim, which was not previously mentioned in the court documents, that the Mother Superior had driven over corpses, as 'a piece of theatre' for the courtroom.⁵⁸⁸ One of Sister Kizito's lawyers also claimed that his client had been 'lynched by the press before the trial had

⁵⁸² *Not So Innocent*, *supra* note 63, at 184.

⁵⁸³ *Une Peur Diabolique*, *Ibid.*

⁵⁸⁴ Diaboliques icônes, *supra* note 576.

⁵⁸⁵ *Ibid.*

⁵⁸⁶ *Ibid.*

⁵⁸⁷ Avocats Sans Frontières, 'Serge Wahis, un des deux avocats de soeur Kisito, confie ses réflexions sur le procès et la compétence universelle', 12 June 2001, online, www.asf.be/AssisesRwanda2/fr/fr_REACTIONS_Wahis.htm (date accessed : 9.10.01). [Hereinafter, *Serge Wahis Interview*]; *Une Peur Diabolique*, *supra* note 581.

⁵⁸⁸ *Ibid.*

even started. And this lasted until the end.’⁵⁸⁹ The other lawyer on the team described the claims by the witnesses as ‘inventions’, and asked the jury to imagine ‘the soldier Kizito, subordinated to the authority of [Sister] Gertrude.’⁵⁹⁰

As in the cases discussed above, the two nuns also played down their power to have acted any differently during the genocide. They argued in their defence that their actions had been motivated by a desire to help others; their fellow nuns. Sister Gertrude spoke of fear and chaos, and argued that she had wanted to save her religious community.⁵⁹¹ This contention was supported by a psychiatrist called as an expert before the Court, who had initially reported that Sister Gertrude was afflicted by ‘perversity’, but retracted from his analysis at trial, saying instead that she was not perverse, ‘simply fragile, motivated by compassion and love for others’.⁵⁹² Sister Kizito similarly claimed: ‘I was a novice at Sovu. I did not know how to respond to the attacks on the nuns at Sovu... I never did anything with the militias to cause any harm. I stayed together with my fellow nuns. I helped them as best as I could, during three months of suffering.’⁵⁹³

The lawyers for the nuns contended that they had acted under an irresistible compulsion, that is, through fear.⁵⁹⁴ They admitted that the two women ‘showed signs of cowardice, and they did not act as we may have expected them to, but that does not in itself constitute any breach of the law.’⁵⁹⁵ According to one of the lawyers for Sister Gertrude,

⁵⁸⁹ *Serge Wahis Interview*, *supra* note 587.

⁵⁹⁰ *Diplomatie Judiciaire*, ‘Une novice à l’ombre de la prieure’, 5.6.01, online, www.diplomatiedjudiciaire.com/Higaniro/Higaniro25.htm, (date accessed 9.10.01).

⁵⁹¹ *Diplomatie Judiciaire*, ‘La parole aux accusés’, 6.6.01, online, www.diplomatiedjudiciaire.com/Higaniro/Higaniro26.htm (date accessed 9.10.01) [*Hereinafter La Parole aux accusés*]

⁵⁹² *Diplomatie Judiciaire*, ‘Les Quatre de Butare’, 19.4.01, online, www.diplomatiedjudiciaire.com/Higaniro/Higaniro5.htm (date accessed 9.10.01). NB: ‘Perversity’ is a particularly interesting word to have been chosen in respect to a nun. ‘Perverse’ is defined in the Webster’s online dictionary as ‘turned away from what is right or good’, with synonyms listed as ‘corrupt’, ‘improper’ or ‘incorrect.’ Merriam-Webster’s Collegiate Dictionary, online, <http://www.m-w.com/cgi-bin/dictionary> (date accessed: 12.11.01). The Robert dictionary provides an even stronger definition of ‘perversity’, as ‘a liking for causing pain’ (with synonyms listed as corruption and depravation); or ‘a pathological tendency to commit immoral and aggressive acts; a systematic hostility.’ *Le Robert Micro* (Paris, 1998).

⁵⁹³ *La Parole aux accusés*, *supra* note 591.

⁵⁹⁴ *Une Peur Diabolique*, *supra* note 581; *Coupables en 55 Questions*, *supra* note 246. ‘*Contrainte irrésistible*’ is a defence under Article 71 of the *Belgian Penal Code*. *Une Peur Diabolique*, *supra* note 581. For further discussion of this defense, see Part II.B.2(a) above.

⁵⁹⁵ *Serge Wahis Interview*, *supra* note 587

'She was not a heroine, but I believe fundamentally that she was not a criminal.'⁵⁹⁶ One of the lawyers for the civil claimants refuted this argument, stating that to satisfy this defence:

they must show that their free will was negated. It would be foolish to say that they were not under any pressure [but] the notion is subjective. Were they constrained to the point that that they had no choice? ... The tone of the letter [of 5 May] is incompatible with someone paralysed by fear.⁵⁹⁷

Indeed, the active role that both nuns took against the refugees, and their apparent alliances with both the local Bourgmestre and the soldiers and militias, seem very difficult to reconcile with any notion that they were in fact powerless. To the contrary, these women appear to have held substantial power, not only over their religious colleagues, but also over the lives of thousands of Tutsi refugees.

Both women are on Rwanda's list of Category 1 suspects. Therefore, had they been tried in Rwanda, it is possible that they might have received the death penalty, rather than the relatively short sentences they received from the Belgian Court.⁵⁹⁸ In these circumstances, they would now be in detention in Rwanda, rather than in the relative luxury of a Belgian jail.⁵⁹⁹ On the other hand, at least the lawyer for Sister Kizito claims to be convinced that if his client had been tried in a Rwandan Court, she might have even

⁵⁹⁶ *Une Peur Diabolique*, *supra* note 581.

⁵⁹⁷ *Diaboliques icônes*, *supra* note 576.

⁵⁹⁸ These sentences took into account as an attenuating circumstance the absence of any prior criminal record. *Belgian Genocide Trial Judgment*, *supra* note 1. Interestingly, Gerard Gahima, the Rwandan Attorney General, said in an interview with *Avocats Sans Frontières* that: 'Contrary to the criticisms of a large number of my compatriots, I place little importance on the fact that the sentences are relatively light. What matters is the fact that justice has been rendered and that the truth has come out ... The ideal is, of course, that people are tried in Rwanda. But if that is not possible, what matters is that they are tried ... Each country applies its own sentences. That does not cause us any problem.' *ASF Gahima Interview*, *supra* note 250.

⁵⁹⁹ According to one Rwandan lawyer, the other prisoners in Rwanda are very angry about the discrepancies between the justice system in Belgium and in Rwanda for genocide suspects. He stated: 'The maximum sentences that can be incurred in Belgium are less heavy than those in Rwanda. That means that a peasant, simple executor of the genocide, is punished more harshly than a planner [of it]! And what's more, he has to serve his sentence in conditions have really nothing in common with the prisons in Belgium, where detainees are fed, housed, and have a television in their room ...' In his opinion, 'Belgium can try these four, but at least they should be sent to Rwanda to serve their sentences.' *Avocats Sans Frontières*, 'Interview d'un Auditeur Juriste au Rwanda', (undated), online, www.asf.be/AssisesRwanda2/fr/fr_VUES_interview.htm (date accessed : 9.10.01).

been acquitted.⁶⁰⁰ Such an assertion may not be as fanciful as it sounds, given that just several months before the judgment in the Belgian trial, two Rwandan nuns from Cyangugu were acquitted of genocide charges in Rwanda.⁶⁰¹ Although there are many differences between the two cases, I will explore the possibility in the following Chapter that some female genocide suspects in Rwanda are being acquitted by virtue of the chivalry theory.

Putting that debate aside for the moment, the case of the Sovu nuns raises a host of important issues. Firstly, it appears to confirm that no person was immune from the pressures and uncertainties of the genocide, including those in religious orders. To the contrary, it stands as an important testimony to the power of church leaders, including women, during the genocide. The case also raises the question of the level of bravery expected of women, church leaders, and perhaps the Rwandan people in general, when faced with an opportunity to save the lives of others, especially on such a large scale. Added to that is a confirmation of the ability of women to hold and use power in devastating ways. Finally, the case suggests that the 'evil woman theory' is alive and well in the criminal justice system, and should remain an ongoing feature of feminist criminological analysis.

d) Conclusions

Many feminists will be uncomfortable with these female Category 1 offenders (or suspects, in the case of some of the political leaders discussed above), who appear not only to have wielded considerable power, but to have used that power in very detrimental ways. To explain such behaviour, some feminists might argue that these women were simply 'influenced by men', as claimed by Venuste Bigirama.⁶⁰² Others might contend

⁶⁰⁰ Serge Wahis, who practiced law in the National Courts in Rwanda with *Avocats Sans Frontieres*, attributes his client's conviction at least partly to the inexperience of the Belgian jury in relation to genocide cases, and in particular, to their inability to imagine that some of the Rwandan witnesses lied. *Serge Wahis Interview*, *supra* note 587.

⁶⁰¹ Tribunal of First Instance, Specialized Chamber, Cyangugu, case no. RP51/S2/CHCY/2000, Decision 22.1.01, NYIRAMAZAYIRE, Elisabeth and UWAMUGIRA, Chantal [*Hereinafter Cyangugu nuns decision*]. See *infra* note 629 regarding the basis of the acquittals.

⁶⁰² See *supra* note 504 above.

that women in positions of power were not 'real women' at all.⁶⁰³ This seems consistent with Judithe Kanakuze's appraisal of Pauline Nyiramasuhuko, whom, she argued 'is not a woman. She always acted like a man.'⁶⁰⁴

The claim that powerful female genocide suspects are 'non-women' is also adopted in some of the testimonies provided by witnesses in the African Rights publication, *Not So Innocent*. For example, Rose Karushara, former Conseiller and nicknamed the 'butcher of Kimisagara',⁶⁰⁵ is described by genocide survivors as 'a very authoritative woman, a giant, almost a man.'⁶⁰⁶ To support their claims, witnesses consistently emphasize Karushara's 'terrible physical strength',⁶⁰⁷ claiming she 'often beat up the men who came to her house for beer.'⁶⁰⁸ They also stress that Karushara's children were all involved in the genocide, clearly suggesting that she had also failed as a mother.⁶⁰⁹ Similarly, in a genocide trial in Rwanda in 1999, there was a bizarre debate between the Prosecutor and two of the female accused as to whether or not one of those accused, Alexia Kankundiye, was considered in her neighbourhood to be 'like a man'.⁶¹⁰ In the same decision, the Court allowed Kankundiye's son (a minor) to benefit from attenuating circumstances, because 'it appears that he received a bad example' from his mother.⁶¹¹

In the face of such representations, as the case studies discussed throughout this section demonstrate, female genocide suspects, both Category 1 suspects and those charged with

⁶⁰³ Some Western feminist scholars have observed that in order to attain positions of power in a male-dominated political world, women are expected to, and do, abandon their feminine traits, such as sentimentality and caring, and adopt the 'masculine' attributes required for leadership, such as rationality, bravery and perhaps even physical strength. In this context, feminists have often discussed the apparently contradictory behavior of the former British Prime Minister, the 'Iron lady', Margaret Thatcher.

⁶⁰⁴ Interview with Judithe Kanakuze, National Coordinator, Réseau des Femmes, Kigali, 8.6.01.

⁶⁰⁵ *Not So Innocent*, *supra* note 63, at 111.

⁶⁰⁶ *Ibid*, at 118.

⁶⁰⁷ *Ibid*, at 122.

⁶⁰⁸ *Ibid*, at 112. Also see the comment at 115: 'Rose Karushara was a woman who was stronger than many men and she knew it very well. She always put men down.'

⁶⁰⁹ See, for example, *Ibid*, at 115: 'All her children became Interahamwe.'

⁶¹⁰ Tribunal of First Instance, Specialized Chamber, Gitarama, Case no. RP61/GIT/CH/2/98, decision, 24.7.99, against, *inter alia*: KANKUNDIYE Alexia, MUKVENARI Therese, UWERA Alphonse and VUGUZIGA Concilia. NB: The Court impliedly acknowledged the power of Kankundiye and her co-offender Mukavenari when it acquitted the other two co-accused, even of the charge of non-assistance to persons in danger. It found that even though these two women saw Kankundiye and Mukavenari mistreating the old woman, they did not have the means to prevent them from acting. See *Ibid*, at 18.

⁶¹¹ *Ibid*, at 18.

lesser crimes, regularly insist that they are, indeed, 'real women'. Thus, throughout both the judgments and the testimonies provided to me during my interviews, we see accused women insisting upon the fact that they were good mothers and carers, and otherwise lived up to the expectations of Rwandan women, regardless of what else they are accused of doing during the genocide.⁶¹²

This tension between those who argue that apparently powerful female genocide suspects are not 'real women' at all, and the discourse of the women themselves, who insist on their femininity, suggests that the arguments about power and gender that are made by both feminists and female genocide suspects alike are often too simplistic. Despite the context of patriarchy, which limits women's freedom and power, and demands certain behaviour of women, female genocide suspects must accept, where appropriate, their own responsibility for their actions. On the other hand, feminists must confront the fact that female genocide suspects, including women who held positions of power *are* still women, even if they acted in destructive, rather than positive ways. The challenge for both feminists and the law is to deal with the complexity of these issues in a non-stereotypical manner.

Returning to one of the questions with which I opened this debate, I believe it is still too early to conclude what might have happened had more women held positions of power during the genocide. As the Rwandan government, in its report to the Beijing Women's Conference, stated:

⁶¹² Another pertinent example is the 1998 trial of Venantie Kabarere, a Rwandan woman who was accused of planning the genocide of orphans in Gikongoro, for whose well being she was responsible. Confronted with damning testimonies against his client, Kabarere's lawyer emphasized that 'since her studies, [Kabarere] dedicated herself to the education of children'. He asked the Court to acquit Kabarere and restore her reputation 'as a mother, worthy of the children to whom she had always shown love, which made the population adore her.' Kabarere was acquitted by the Court for lack of evidence, but was convicted on appeal and sentenced to life imprisonment. See Tribunal of First Instance, Specialized Chamber, Gikongoro, case no. RP0016/1/GIRO, Decision 22.4.98, in particular at 34. Also see Court of Appeal, Nyabisindu, RPA 39/1/NZA, Decision 24.11.98.

*War is essentially a political affair, [as is] the search for peace. If women do not manage to gain decision-making positions in society, they cannot play a decisive role in the political-diplomatic, or even military, decisions, where peace is at stake.*⁶¹³

Given that so few women held leadership positions at the time of the genocide, we can only speculate as to whether the violence could have been avoided, had more women held positions of power. Until women are given such an opportunity, we will never know.

D. The Chivalry Theory and 'Equal Treatment' Model Revisited

1. Are Women 'Getting Away With Murder'?

My understanding of the justice system is that if someone is guilty they will be punished; if they are innocent they will be released and it doesn't make any difference if they are a man or a woman.

Female genocide suspect, Miyove Women's Prison, 10.7.01

Earlier in this thesis, I proposed that one of the reasons why so few women are detained in the Rwandan prisons when compared to men was that some women who participated in the Rwandan genocide were benefiting from the chivalrous attitudes of prosecutors and witnesses towards women.⁶¹⁴ The chivalry theory also seems to be at play in the treatment of women in the Rwandan Courts. I have recorded 104 first instance judgments against women since the genocide trials began in Rwanda in 1996.⁶¹⁵ Of these, 10

⁶¹³ *Report to Beijing*, *supra* note 98, at 66. UNIFEM notes that a World Bank study on corruption in government found that a higher participation of women in government leads to lower corruption (suggesting that women are more concerned with the common interest than men): UNIFEM, *supra* note 115, at 76.

⁶¹⁴ For the definition of the chivalry theory, see Part I.A.2 above. Regarding the apparent resistance of prosecutors and witnesses alike in Rwanda to prosecute women, see *supra* notes 382 to 390 and accompanying text.

⁶¹⁵ These statistics, which were compiled primarily from judgments listed by LIPRODHOR, from the 12 Rwandan Courts at First Instance and the Rwandan Military Court, relate to the period from December 1996 (the date of the first genocide trials in Rwanda) to approximately July 2001. According to my data, there have been 104 judgments against women, from a total of 3,809 judgments since 1996. These figures were calculated as follows:

<i>Year</i>	<i>Men</i>	<i>Women</i>	<i>Total</i>
1996-1998	1235	41 (3.2%)	1275
1999 (to 30.6.99)	616	18 (2.8%)	634
2000*	1270	24 (1.9%)	1293
2001 (to approx. July 2001)**	<u>586</u>	<u>21 (3.4%)</u>	<u>607</u>
Totals	3707 (97.3%)	104 (2.7%)	3809

women (10%) received the death penalty, 15 (14%) were sentenced to life imprisonment, 19 (18%) were sentenced to imprisonment for terms less than life, and 7 (7%) were ordered only to pay damages or to provide restitution of property.⁶¹⁶ Most importantly, 51 (49%) of these women were acquitted.⁶¹⁷

The high acquittal rate for female genocide suspects is one of the most significant findings of my research in Rwanda, as it sits in stark contrast to the overall acquittal rate for genocide suspects, which is only 18%.⁶¹⁸ Why is there such a disparity between the acquittal rates for women and men? The first possible reason is one that I averted to earlier in this thesis, namely, that the distinctive nature of women's offending operates to women's benefit. This is because women's crimes are, relative to men's, more often of the 'passive' variety of criminal participation,⁶¹⁹ and are more difficult to prove than their 'active' counterparts.⁶²⁰ Exacerbating this problem is the apparent unwillingness of witnesses to testify against women, even (or especially) before the courts.⁶²¹ This is the reason offered by Rwandan Attorney General, Gerald Gahima, to justify the high acquittal rate of women.⁶²²

The two practicing lawyers that I interviewed in Rwanda went one step further. They claimed that male judges in the Rwandan courts are also infected by chivalrous attitudes towards women.⁶²³ According to Bernadette Kanzayire, 'in Rwandan society there is a

* Data incomplete. Missing Gitarama, Kigali & Rushashi, 1st & 2nd trimesters & Ruhengeri entire year.

** Data incomplete – Missing Butare. NB: Statistics for Kibuye are to September 2001.

⁶¹⁶ The other 2 women (2%) died either before or during trial, so the criminal actions against them were dismissed.

⁶¹⁷ The proportion of women acquitted of the total number of women tried each year was almost constant throughout the entire period, fluctuating between 45% and 52%.

⁶¹⁸ This statistic is accurate to 5.4.00. LIPRODHOR, *Problématique de la Preuve*, *supra* note 10, at 23 (reporting 583 acquittals from a total of 3,165 persons tried to 5.4.00). A more precise comparison would be to take the acquittal rates for women until 30.6.99 (47%, according to my statistics), and compare that figure to the overall acquittal rates to that same date (19%). See *Regard Retrospectif*, *supra* note 252, at 14.

⁶¹⁹ It will be recalled that 27% of my interview cohort was charged with 'passive' murder. (See *supra* note 356 and accompanying text). On the basis of anecdotal evidence, it is almost certain that a substantially smaller number of men are accused of similar crimes.

⁶²⁰ See *supra* notes 382 to 384 and accompanying text.

⁶²¹ See *supra* notes 385 to 387 and accompanying text.

⁶²² Interview with Gerald Gahima, Rwandan Attorney General, Kigali, 3.8.01.

⁶²³ Only 17 out of 184 of the magistrates in the Tribunals of First Instance, which include the Specialized Chambers to hear genocide cases, are women – i.e. 9%. In the Appeal Courts, there are only 3 women, from a total of 30 magistrates – i.e. 10%. 10 of these 20 women have law degrees. A policy now in place

certain sympathy for women, including among the judges.’⁶²⁴ Vincent Karangura agreed. He provided an insightful analysis, which identified the operation of both the chivalry and ‘evil woman’ theories in the Rwandan Courts:

I do not believe that the level of acquittals for women really represents their lack of participation in the genocide. That is, I do not believe they are all innocent. I think that the high acquittal rate of women is due to the indulgence of the judges, who look for reasons to acquit them. They usually say there was not enough evidence.

It is psychological. There is a presumption that women are good by nature, that is, hospitable, welcoming, mild, and incapable of committing atrocities. So, women who really participated, that is, those who were violent or surpassed the expectations of them, and who cannot be explained away as innocent, are not understood. They are treated, not like men, not like women, but something else, like monsters.’⁶²⁵

Mr Karangura’s observation that some female genocide suspects are treated as ‘non-women’ or ‘monsters’ is consistent with the imagery invoked in respect to powerful women accused of genocide that I discussed in the previous section of this thesis. It also evokes the claims made by some Western feminists that a dehumanization process is necessary before courts can sentence women to death.⁶²⁶ This might help explain how 10 Rwandan women have been sentenced to death,⁶²⁷ and one has been executed.⁶²⁸

in Rwanda favors the appointment of female magistrates. That policy has resulted in the relative increase in female magistrates over the past year, despite an overall reduction in the total number of magistrates across the country. Thus, as at 6.10.00, there were 86 women out of 816 functioning magistrates in Rwanda, most of whom worked at the Canton level, more like justices of the peace. This figure, which equated to 10.5% of total magistrates, increased to 11.9% as at 7.8.01, at which date there were 92 women, from a total of 770 functioning magistrates. Documents provided by the Secretariat of the Supreme Court of Rwanda on 7 August 2001, entitled: ‘Liste des Magistrats (Sexe Feminin)’, dated 6.10.00, ‘Effectifs de Magistrats Assis’ and Liste de Magistrats Femmes (latter two both effective as at 7.8.01).

⁶²⁴ Interview with Bernadette Kanzayire, lawyer, Kigali, 12.6.01.

⁶²⁵ Interview with Vincent Karangura, lawyer, Kigali, 13.7.01.

⁶²⁶ See *supra* note 45 and accompanying text.

⁶²⁷ This figure is based on my statistics gathered to mid 2001, in which I noted that 10% of judgments against women had resulted in the death penalty (10 cases). See *supra* note 616 and accompanying text. This percentage should be compared to the overall percentage of cases in which the death penalty has been ordered. According to LIPRODHOR’s statistics to 5.4.00, this rate is 13.7% (434 persons, of a total number of 3,165 judged to that date). *Problématique de la Preuve*, *supra* note 10, at 23. A more precise comparison would be to take the death penalty rates for women until 30.6.99 (8 women, from 59 women judged, or 13.6%) and comparing that figure to the overall figure (296 persons, from a total of 1,908, or 15.5%). See *Regard Retrospectif*, *supra* note 252, at 14. Thus, it appears that the death penalty has been ordered against women at only a slightly lower rate than against men, despite the high acquittal rate of women compared to men.

⁶²⁸ Virginie Mukankusi was sentenced to death on 28.2.97 by the Gitarama Court (Case no. RP002/GIT). She lost her appeal on 11.3.98 and was executed on 22.4.98, together with 21 others. For a list of the persons executed on that day, see LIPRODHOR, Centre CDIPG, ‘Proces de Genocide au Rwanda: Deux Ans Apres (Dec. 96 – Dec. 98)’, 1999, at 29. I was unable to locate a copy of the first instance decision

Regarding acquittals, as a lawyer working in the Rwandan National Courts, Mr Karangura is in a much better position than I am to assess whether there has been sufficient evidence before the judges to warrant a conviction of female genocide suspects, or if, as he suggests, women have been 'indulged' by the judges. I can comment, however, that upon reading some Rwandan judgments, I have been surprised at the frequency with which the Courts have acquitted women on the grounds that the evidence against them is contradictory, instead of determining which evidence is more convincing, or if a 'reasonable doubt' has really been raised. The case of the two nuns who were acquitted by the Cyangugu Court in January 2001 seems to be a case in point.⁶²⁹

In cases where the evidence is stronger, it might be that women nonetheless receive a shorter sentence than their male counterparts. Without a thorough comparative analysis of the Rwandan case law, it is impossible to determine this issue either way. However, I note one case, dating from September 1999, in which a Rwandan Court reduced the sentence of a female offender, in circumstances where it is difficult to find any real justification for it to have done so.⁶³⁰ In that case, Patricie Mukakalisa was convicted of being an accomplice to genocide and the murder of two children, who were raped and killed by the Interahamwe. The Court found that the two children had come to Mukakalisa's house to request water, which she refused to provide. The children then continued running down the road, but Mukakalisa pointed out their path to the Interahamwe who were chasing them. She then told a young (Hutu) girl who was living in her house not to tell anyone about what she had done. When sentencing Mukakalisa,

against Mukankusi. The short appeal judgment provides no indication of the evil woman theory at play. Rwanda has not executed any person since that round of executions in April 1998. However, the Rwandan Attorney General told me that Rwanda does intend to execute again although it will not be in the 'foreseeable future'. with Gerald Gahima, Rwandan Attorney General, Kigali, 3.8.01

⁶²⁹ *Cyangugu Nuns Decision*, *supra* note 601. In this case, the Court held that 'no probative force can be attributed to the witnesses because there is doubt [as to their testimonies]... [D]oubt must benefit the accused... The testimonies provided by prosecution witnesses are contradictory and there is no incontestable proof of the guilt of the accused.' *Ibid*, at 17-18. On my reading of the judgment, the contradictions in the testimonies appear not to have been as great as the Court suggests. Further, the Court made no mention of the obvious contradictions in the testimonies of the two nuns themselves.

⁶³⁰ Tribunal of First Instance, Specialized Chamber, Kibungo, MUKAKALISA, Patricie, Case no. RP0036/EX/R1/S8/KGO, Decision 6.9.99.

the Court reduced her sentence from life imprisonment to 18 years, by virtue of the following attenuating circumstance:

*Mukakalisa showed regret when she asked Immaculée [the child living in her house] not to tell anyone that it was she who had delivered up the children [to the killers]. This shows that she had come to understand the gravity of the crime that she had committed, even if it was impossible for her to retract her actions.*⁶³¹

It should be noted that Mukakalisa denied any involvement in the crime and even denied that she knew the child Immaculée, whom the neighbours confirmed had been living in her home at the time of the incident.⁶³² In these circumstances, the Court's willingness to imply 'regret' from Mukakalisa's attempt to conceal her actions is extraordinary.

Such a decision leads me to query whether some judges in Rwanda might be accommodating, perhaps unwittingly, a divergence between popular perceptions of justice and the strictness of many legal notions and penalties required by the *Genocide Law*. In this case, it was the notion of criminal participation at stake. As I have discussed at several points throughout this thesis, many Rwandans see a moral distinction between the 'passive' and the 'active' forms of participation in the genocide, even though legally the two are to be treated equally.⁶³³ Perhaps Rwandan judges are also not immune to such sentiments.

Judges know that the law demands a conviction for 'passive' participation. They also know that the penalty for such a crime is usually life imprisonment, unless the accused can benefit from the confession program.⁶³⁴ However, if judges still *feel* that life imprisonment for someone who 'only' pointed out the hiding place of a couple of persons, without actually wielding a machete, is unjust, they might search for ways to

⁶³¹ *Ibid.*

⁶³² *Ibid.*

⁶³³ See *supra* note 263 and accompanying text regarding the definition of 'accomplice' in the *Genocide Law*.

⁶³⁴ As discussed elsewhere in this paper, on the basis of my research results, women charged with 'passive' participation rarely make a confession that would satisfy the requirements of the confession program. Perhaps this is because women in this category of offenders do not view their participation in the genocide as warranting even the lesser penalties provided in the *Genocide Law* for people who have confessed. See Part I.B.1 above regarding confessions generally.

avoid imposing severe punishments on the offender. Arguably, the judges in the Mukakalisa case did precisely that. In other cases, where a finding of attenuating circumstances is an even less realistic option for the court, or where even a reduced punishment appears unfair, the court might actually prefer to acquit the offender than convict her. The fact that the offender also happens to be women probably makes this task more imperative, given the seeming reluctance of judges to convict women in the first place.

The effect of this process is likely to be that despite, and perhaps *because of* the rigours of the law, some women will be granted impunity for their actions. Assuming that this is not a desirable goal even for feminists,⁶³⁵ the Rwandan government should seriously consider whether the legal regime should be modified to accord better with popular perceptions of justice that distinguish between the 'passive' and the 'active' forms of criminal participation. For example, if shorter sentences were to be stipulated for accomplices to genocide than for principal perpetrators, perhaps the courts, witnesses and even defendants themselves, would not feel the need to downplay or obscure the true nature of (women's) crimes, where they are of the 'passive' variety.

Although this would be a large step to take as it defies traditional notions of criminal responsibility, I propose that it might be better than the current system, in which formal equality is not operating in practice. If, however, such a proposal is considered too abhorrent, and Rwanda wishes to maintain equal blame for principal perpetrators and accomplices in the law, then the least that should be done is an extensive education campaign on this issue, especially for the newly appointed *gacaca* judges, so that they be alert to the risks of succumbing to chivalrous attitudes towards women. If nothing at all is done, on the other hand, then it appears that some women will, indeed, continue to 'get away with murder.'

⁶³⁵ See *supra* note 36 and accompanying text for a brief overview of the 'feminist dilemma' posed by the chivalry theory. In my view, if the chivalry approach represents a policy decision that there is more social value in not prosecuting women than, for example, in leaving their children without support, then this *might* be a worthy feminist goal, to be weighed against other justice considerations and its potential impact on reconciliation in Rwanda. In any event, the question should at least be openly debated.

2. Equal Treatment Model – Issues And Concerns

Having discussed my view that in the courts women appear to be benefiting from the chivalrous attitudes of men, or at least by a failure of the formal ‘equal treatment’ model to account for popular notions of justice in respect to criminal participation, let me now turn to discuss cases where I believe that the same ‘equal treatment’ model is operating to disadvantage women. The two issues that I wish to address briefly in this section are the impact of lengthy detention on women, in light of their family responsibilities, and the question of legal representation for women, especially those belonging to ethnic minorities.

a) Family Responsibilities and the Slow Pace of Justice

They should process our cases. We are hurting too much.

Female genocide suspect, Gitarama prison, 18.7.01

Two issues arose incessantly throughout my interviews with female genocide suspects: concern by women about their families, and delays in getting their cases to trial. Both issues have gender implications. In relation to the first issue, several Western feminists have commented that imprisonment impacts differently upon women to men because women are still the primary caretakers of their children.⁶³⁶ Rwandan women’s family responsibilities are probably even greater than those of many Western women, given the cultural factors set out earlier in this thesis and the lack of alternative childcare.⁶³⁷ It should also not be forgotten that Rwanda has experienced a genocide, and many men are either dead, in prison or in exile.⁶³⁸ As a result, children whose mothers are in prison, like

⁶³⁶ Roberts, *supra* note 51, at 12, stating: ‘Few men in prison are primary caretakers of children; most women in prison are primary caretakers. Moreover, while the children of most male offenders remain in the care of their mother, incarcerated mothers can rarely rely on the father to care for their children. Thus, it is far more likely that the incarceration of a woman will disrupt her relationship with her child. The gender disparity in childcare generally makes a particular term of imprisonment more harsh of a penalty for women than for men.’ Also see Heidensohn *supra* note 7, at 75: ‘The argument that women find prison harder to take and that its effects are more traumatic for them than men has quite widespread support,’ and at 79: ‘[t]he deprivation of family and social ties seem most acute.’

⁶³⁷ See Part I.B.2 above.

⁶³⁸ My interview results were consistent with this reality. Almost 50% of my interview participants (34 women) reported that their husband was dead, and an additional 13% (9 women) had husbands in prison also charged with genocide. Another 5 women said that they were unaware of their husband’s present

orphaned genocide survivors, are often left unsupported, in the care of siblings, or having to fend for themselves.

This knowledge is a significant burden on female detainees, who sometimes do not know the whereabouts of their children,⁶³⁹ or even if they are alive or dead.⁶⁴⁰ Some women also feel that they are a burden to their children. As one woman said, 'We women think a lot about the children we left behind [outside], and how they have to bother to bring us food.'⁶⁴¹ Several detainees also expressed concern that contact with their children was diminishing over the years, as their families 'are getting tired of visiting us.'⁶⁴² My interview participants described not seeing their children as among their greatest problems in prison, as indicated by the following comments:

*Nowadays, we do not have so many problems ... But women have a simple heart, so we think more about our families than men.*⁶⁴³

*My biggest problem is not having seen my children for 4 years and not knowing where they are.*⁶⁴⁴

*A woman thinks about her children more than a man does. A woman thinks about her problems more than a man. A man tries to control his problems.*⁶⁴⁵

*The main problem for women is not getting news from our families.*⁶⁴⁶

whereabouts. Although 10 women were not married, and 3 women were separated or divorced, 12 of these 13 women had children. Only 10 women said they had husbands at home.

⁶³⁹ Except for two women, all of my interview participants had children. Between them, they had given birth to a total of 311 children, which equated to an average of 4.4 children per woman interviewed. Women did not know the whereabouts of 51 of their children (21% of the surviving number, of 238).

⁶⁴⁰ My interview participants reported that 83 of their original 311 children (27%) were dead. They said that 78 children (33% of the surviving number, of 238) were staying with relatives or their siblings, some of whom were not themselves of majority age. In other cases (22 children, or 9%), the children were still at home with their father, although some women reported concerns about the quality of care those children were receiving. Another 54 children (23%) were living independently; 7 were with friends, 1 was in an orphanage; 3 infants were in detention with their mothers and 12 (5%) were also in prison, but accused of genocide in their own right. (Many of these 'children' were adults by now.)

⁶⁴¹ Female genocide suspect, Gitaraman prison, 19.7.01.

⁶⁴² Female genocide suspect, Gitaraman prison, 16.7.01. More often, women claimed that their children did not have the means to visit them in prison. Others mentioned that their children were too frightened to visit them in prison, although in the Gitarama prison, one woman praised a project by UNICEF, which had once collected children from their homes and brought them to visit their parents, in order to help them overcome their fear of the prisons. In another case, a woman who had one adult daughter, who had a family of her own, stated that 'none of them visit me because I am now called a killer.' Female genocide suspect, Nsinda prison, 7.8.01.

⁶⁴³ Female genocide suspect, Gitarama prison, 18.7.01.

⁶⁴⁴ Female genocide suspect, Butare prison, 25.7.01

⁶⁴⁵ Female genocide suspect, Butare prison, 26.7.01

*Another problem is that you miss your kids and don't get to see them. Women miss their kids more than men*⁶⁴⁷

Some Western feminist criminologists have argued that women's family responsibilities should be taken into account in sentencing guidelines. Others have responded that to do so would reinforce gender stereotypes and disadvantage women who do not conform to those stereotypes.⁶⁴⁸ In Rwanda, this debate is somewhat of a moot point, given that so few cases are even proceeding to trial. As one woman stated: 'We get enough food, firewood and water. The main problem is that we don't get to Court.'⁶⁴⁹ Male genocide suspects are also frustrated with the long delays in the Rwandan justice system,⁶⁵⁰ but female detainees still believe that they are disadvantaged compared to men. According to one woman in the Butare prison, 'every month men are acquitted; women are not. Women do not even get the chance to go to Court.'⁶⁵¹

This perception appears to be verified by the statistics. Although most female genocide suspects, like male suspects, have been in detention awaiting trial for over five years,⁶⁵² proportionately fewer women than men get to trial. Women represent 3.2% of total genocide suspects.⁶⁵³ Yet, judgments against women represent only 2.7% of the total genocide-related judgments recorded since 1996.⁶⁵⁴ Over this period, there has been an average of only 25 judgments against women each year.⁶⁵⁵ When I asked the Rwandan Attorney General, Gerald Gahima, why cases against women are being prosecuted at a slower rate than those against men, he replied: 'Prosecutors take the easiest cases to Court: the most brutal, horrific crimes that occurred in public. A weak case takes longer

⁶⁴⁶ Female genocide suspect, Nsinda prison, 7.8.01.

⁶⁴⁷ Female genocide suspect, Gitarama prison, 16.7.01.

⁶⁴⁸ For a discussion of both sides of the argument, see Roberts, *supra* note 51, at 11-13. For two writers who ultimately advocate gender-neutral sentencing, see, Denno, *supra* note 7, at 85 and 153-161, and Carroll, *supra* note 32, at 1447.

⁶⁴⁹ Female genocide suspect, Gitaraman prison, 16.7.01.

⁶⁵⁰ *Confessing to Genocide*, *supra* note 64, at 37-42.

⁶⁵¹ Female genocide suspect, Butare prison, 25.7.01

⁶⁵² See *supra* note 296 and accompanying text.

⁶⁵³ See *supra* note 294 and accompanying text.

⁶⁵⁴ See *supra* note 615 and accompanying text.

⁶⁵⁵ I calculate this average, on the basis that the trials effectively started in 1997 (Dec 96) and I have recorded judgments until mid-2001, but I am missing data for the second half of 1999. Thus, I have averaged my statistics over a period of 4 years. (1997-2000). For breakdown of figures, see *ibid*.

to prepare and it is counter productive to prosecute a case where there is a lack of evidence.⁶⁵⁶ This response is of great concern, as it suggests that cases against women will be the last to get to court, even though women are more likely than men to be acquitted.

I therefore proposed to Gahima that rather than allow women to remain in prison without trial, perhaps the high acquittal rate for women, coupled with their family responsibilities, warranted that their cases be processed faster than men's. His response was: 'This is debatable. Men would say it is discrimination. It is very hard to focus on any one group ahead of others.'⁶⁵⁷ It is clear, however, that the government's policy of formal equality is impacting disproportionately upon women. Substantive equality on the other hand, would require that women's differences be taken into account, even if it means adopting measures that on their face appear to be favouring women.

b) Lack of Legal Representation

Although the Rwandan justice system was devastated during the genocide, there are now 64 members of the Rwandan bar who work in all areas of law, including in the defence of genocide suspects.⁶⁵⁸ Avocats Sans Frontières, who have conducted legal defence work in Rwanda for several years claim that 90-95% of all genocide suspects, men and women alike, are now represented by a lawyer at trial.⁶⁵⁹ I was unable to verify these figures, but I am sceptical of them, given that A.S.F. also stated in its 1998 Annual Report that in accordance with its policy to provide legal representation to vulnerable populations, it represented 90% of women tried for genocide that year.⁶⁶⁰ According to my statistics, only 53% of those women (16 out of 30) had legal representation.⁶⁶¹

⁶⁵⁶ Interview with Gerald Gahima, Rwandan Attorney General, 3.8.01.

⁶⁵⁷ *Ibid.*

⁶⁵⁸ Interview with Jean-Bosco Kazungu, President of the Rwandan Bar Association, Kigali, 11.6.01.

⁶⁵⁹ Interview with Jean-Jacques Badibanga, Chief of Mission, Avocats Sans Frontières Rwanda, Kigali, 8.6.01.

⁶⁶⁰ Avocats Sans Frontières, Annual Report 1998, *Justice pour Tous Au Rwanda*, at 30.

⁶⁶¹ LIPRODHOR listed 37 women tried during this period, but it appears that 7 of them (tried in Gitarama) were representing others, not themselves. Hence, 30 appears to be the accurate number. *Deux Ans, supra* note 78, at VI-XIX. (NB : The statistics listed at *ibid*, page 7, which list 26 women judged between 1996-1998, are incorrect). In Avocats Sans Frontières' 1998 Annual Report, *supra* note 660, it lists the provision

It would appear that women's need for legal representation is even stronger than men's, due to women's disadvantaged position in Rwandan society. I have explained elsewhere in this thesis that women have higher illiteracy rates and lower levels of education generally than men.⁶⁶² It is therefore more difficult for women to read their files or to prepare for trial. Moreover, women's low confidence levels generally affect their ability to deal with the court process, which can be very intimidating. One woman, for example, provided the following account about her interactions with the Rwandan justice system:

The reason why I got such a long sentence is that the Court said I was not helping it with my confession. But because I cannot read or write, I did not really understand what they wanted of me. When it came to my turn to speak in Court, I could not do it.

I had a good lawyer, but she went to give birth in the middle of the trial. She was replaced by someone I did not know, and he did not explain anything to me. Also, when the Court made their investigations, he did not tell them to go to the site where we beat the old woman, so they only went to the hospital where this old woman died.

I had no lawyer for the appeal. A fellow prisoner helped me write the appeal. The appeal court sent for us twice but I did not have the money to pay for transport, so I could not go. Even though [my co-offender] was the ringleader, because she had money and could go to the appeal, her sentence was reduced to 10 years, but mine was kept at life imprisonment.⁶⁶³

No genocide suspect, woman or man, Hutu, Tutsi or Twa, will be entitled to legal representation before the gacaca tribunals. Although the aim of gacaca is to create a less formal environment than in the National courts, and most female genocide suspects would prefer to be tried by gacaca than by the courts,⁶⁶⁴ human rights organizations have pointed out that the power of prosecutors will not be diminished before gacaca and have argued that the ban on legal representation should be lifted in relation to all genocide

of legal advice to only 16 female genocide suspects that year. Therefore, only 53% of women were represented.

⁶⁶² See Part I.B.3 above, in particular around *supra* note 126.

⁶⁶³ Interviewee details deliberately withheld, for reasons of confidentiality.

⁶⁶⁴ I asked a total of 63 female genocide detainees whether they would prefer to be tried by the courts or by gacaca. Of this number, 28 (44%) said they would prefer gacaca, 11 (17.5%) preferred the Court, 11 (17.5%) said they would take whichever came first, 12 (19%) expressed no preference in the matter, and 1(2%) did not want either.

suspects.⁶⁶⁵ In the circumstances, the cases seems even stronger in relation to women, who will continue to be affected by the absence of legal representation more than men.

In fact, the lack of legal representation might impact most detrimentally on Twa women. This sub-group is not only the most disadvantaged socially; they might also have reason to fear that they might not receive a fair hearing in the gacaca courts. When I asked the 4 Twa women among my interview participants whether they would prefer to be tried by the courts or by gacaca, only 1 said she would prefer gacaca. This can be compared with the overall response to this question by my interview participants, who were in favour of gacaca.⁶⁶⁶ Two others refused to express any preference at all in the matter, with one declaring, 'It does not make any difference. We [Twa] are always treated as inferior anyway.'⁶⁶⁷ The fourth woman was adamant that she would prefer to be tried in the Court, rather than by a gacaca tribunal, because:

*People follow the law in the Courts. I don't have any confidence in gacaca because the judges will be from the community, which has not treated us well in the past because we are Twa. If I was tried by gacaca, I would not be treated fairly because the Twa have never been treated as real people.*⁶⁶⁸

The only woman who openly admitted to being Tutsi also expressed a preference for the Court. She said, 'With gacaca, the person who denounced you can try to gather other people against you. But in the Court, the judges hear all sides and follow the law.'

⁶⁶⁵ Human Rights Watch, 'Rwanda: Backgrounder', (Human Rights Watch press release, New York, 1.2.2001), stating 'In the past, gacaca operated independently of the state with neither contending party enjoying the advantage of official support. The new gacaca jurisdictions can be provided with the "assistance of legal advisers," appointed by the Supreme Court. In addition, the public prosecutor participates by investigating cases, providing files to the jurisdictions, and appearing as a witness against the accused, if requested to do so. Faced with this power of the state, the accused has no defense but his or her own wits and the support of family and friends. He or she has no right to legal counsel.'

⁶⁶⁶ See *supra* note 664 above. African Rights cites one woman who said she believed that *gacaca* will be particularly favourable to women, because men will not want to implicate them publicly. *Confessing to Genocide*, *supra* note 64, at 134.

⁶⁶⁷ Female (Twa) genocide suspect, Kigali Central Prison, 5.7.01.

⁶⁶⁸ Female (Twa) genocide suspect, Kigali Central Prison, 3.7.01.

It is important that persons working within the Rwandan justice system be aware that despite the stated policy of ethnic neutrality behind current government policy,⁶⁶⁹ ethnic issues might come into play before the gacaca tribunals. This is particularly likely to be the case if the majority of judges are Hutu, which they are likely to be on the simple basis of the country's ethnic breakdown. The effect might be to disadvantage both male and female persons of minority groups. Special measures should be adopted to protect the interests of these persons. At a minimum, they should have access to legal representation before the gacaca tribunals.

Conclusions

I pray for this country, for peace. There have already been some changes ... When we were first imprisoned, we thought the Tutsis would kill us any day and we were too nervous to even talk to them. But we are still alive, and there is hope. Once, I explained everything to a Tutsi soldier who used to be my neighbour and whose family were all killed, and he brought me clothes, which I wear even to this day.

Female genocide suspect, Gitarama prison, 16.7.01

In this thesis, I have attempted to reveal the diverse experiences of women accused of genocide in Rwanda. I have demonstrated that women participated in the genocide at all levels, although anecdotal evidence supports the view that they committed fewer acts of overt violence than men. I have argued that women's motivations were various. Some were convinced by the genocidal ideology, and in particular, by the propaganda that fuelled hatred against Tutsi women. Others acted through fear, for their own lives, or for the lives of others. Greed and opportunism, combined with a history of impunity, also played a role, especially in women's commission of property crimes.

My analysis suggests that some female genocide suspects can be appropriately characterized as 'victims', while others participated deliberately and vigorously in the

⁶⁶⁹ The transitional Government of National Unity refuses to allow any divisions in Rwanda on ethnic grounds and has vowed to 'expunge ethnic ideology from community life' United Nations, Economic and Social Council, Commission on Human Rights, *Report on the situation of human rights in Rwanda submitted by the Special Representative Mr. Michel Moussalli, pursuant to Commission resolution 1999/20*, U.N. Doc E/CN.4/2000/41, 25 Feb 2000, online: www.unhcr.ch/Huridocda (date accessed 14.4.01). Also see *Leave None to Tell the Story*, *supra* note 157, under heading ' "Not Hutu, Tutsi, nor Twa": The Ideology of National Unity'.

genocide, even if that participation took a 'passive' form. The situation of many women also probably lay somewhere in between. The task of the law is to take account of these complexities and make suitable distinctions, without perpetuating stereotypes against women or allowing women impunity for their actions. I have suggested that a useful tool for the courts in judging female genocide suspects is for gender to be treated as a relevant factor when considering notions of irresistible compulsion or the attenuating circumstance of non-irresistible compulsion. However, all of the factual circumstances must be considered, and the courts, including the gacaca tribunals, must recognise that women are also capable of rational, and destructive, actions.

I have further contended that gender expectations continue to influence women's interaction with the criminal justice system in Rwanda. This is evident in the low confession rates of women, in the quality of confessions, and in the representation of women in the Rwandan courts. Even the most powerful women therefore invoke and rely upon gender stereotypes in an appeal to chivalrous treatment by the Courts. In this regard, I have suggested that Rwanda needs to tackle the question of 'active' versus 'passive' participation in the genocide and how it relates to the law of criminal participation. More specifically, an evaluation should be made of whether the law is representative of popular opinion, and if not, whether it nevertheless embodies worthy values and will be enforced in the intended manner.

While justice is moving slowly for most genocide suspects in Rwanda, I have advocated that women's family responsibilities, combined with their high acquittal rate, warrants the faster processing of women's cases to trial. This is necessary, not only for the benefit of the specific women concerned, but for broader social justice issues and reconciliation in Rwanda. Unfortunately, it appears that precisely the opposite will occur, as prosecutors will focus on cases that are 'easier to prove', which in turn disadvantages women. I have also recommended that the automatic ban on legal representation before the gacaca tribunals be reconsidered for women, and especially for Twa women, and that legal representation be ensured for all women before the Rwandan courts.

In sum, I have recommended that Rwanda openly address questions of gender in its prosecutions for genocide. While this appears to subvert the 'equal treatment' model that is formally applied in Rwanda, in favour of the 'special treatment' of women, such an approach would simply acknowledge a process that is already occurring, and allow for more direct discussion and debate. Most importantly, perhaps, it would help to end the silence regarding women's participation in the genocide. Until that takes place, only half the story will be heard.

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ANNEXURE I

METHODOLOGY

A. Research in Arusha at The International Criminal Tribunal for Rwanda

I spent a total of 4 weeks in Arusha, Tanzania between May and June 2001, on 2 separate trips. The purpose of these trips was to examine the case of Pauline Nyiramasuhuko, former Rwandan Minister of Family Affairs and Women's Development and the only woman indicted to date by the International Criminal Tribunal for Rwanda (ICTR). I wished to obtain the relevant legal documents pertaining to the case, such as the indictment, which were not available on-line. I also intended to interview people involved in the case, particularly Nyiramasuhuko's defense counsel, members of the prosecution team involved in the case and, if possible, Nyiramasuhuko herself. Finally, I hoped to be able to enter inside the United Nations Detention Facility (UNDF), so as to be in a position to make comparisons with the conditions in the Rwandan prisons.

My trip was timed to coincide with the scheduled commencement on 14 May, 2001 of the trial of the 'Butare Group', comprising six defendants including Nyiramasuhuko¹. Upon arrival in Arusha on 13 May, 2001, I was informed that due to the unexpected death of the presiding judge, Judge Laity Kama, the preceding week, the Butare Group trial had been postponed to a date to be fixed. Thus, I was not initially able to witness the trial.

Formally classified as an ICTR intern during my period of stay in Arusha, I was able to use the ICTR's library facilities and move between floors of the building without security escort. I was also granted restricted access to the U.N.'s internal database, called 'TRIM', which contains most of the legal documents. From this database, I obtained all the relevant legal documents pertaining to Nyiramasuhuko. During my initial three weeks at the ICTR, I also met several members of the Butare Group team from the Office of the Prosecutor (OTP), including Chief Prosecutor, Ken Fleming and Senior Trial Attorney, Silvana Arbia. In addition, I interviewed Nicole Bergevin, Chief Counsel for Nyiramasuhuko, and met other members of the defense team. I had no opportunity to

¹ ICTR case no. ICTR-98-42-T.

Speak with Nyiramasuhuko directly, however, as Bergevin denied me access to her client. I was also unable to enter the UNDF, apparently due to a strictly regulated agreement between the United Nations and the Tanzanian government. Apparently, even U.N. staff and academic experts are denied access to this facility, which does little to encourage openness and education about conditions inside the U.N. facility.

Between interviews and dealing with the inevitable U.N. bureaucracy, I searched the ICTR library for materials relevant to my topic, to no avail. This confirmed my prediction that nothing had yet been written on the topic, save for one book that I already possessed by African Rights.² I was also able to see how the ICTR operated in practice, by observing the 'Media Trial' in Trial Chamber 1,³ the appeal against former tea-factory owner Alfred Musema⁴ and the handing down of the decision in the historic case against former Bourgmestre of the Taba commune, Jean-Paul Akayesu.⁵

I left for Kigali on 3 June 2001, to commence my Rwanda-based research (see below). Two weeks later, I returned to Arusha, as the Butare Group trial had then commenced. The purpose of this trip was to hear the testimony of prosecution witness TA, which was scheduled to take place in the week commencing 18 June. According to the OTP's Witness Summaries, TA is a Tutsi rape survivor who was raped by Ntahobali (Nyiramasuhuko's son) and over fifteen other men on four separate occasions, and who witnessed the rape of other Tutsi girls in the presence of Nyiramasuhuko. TA is also going to testify that Nyiramasuhuko was Ntahobali's superior, issued orders and chose people to be killed.⁶ All of the accused were present in Court, including Nyiramasuhuko, but the trial progressed very slowly and cross-examination of the ICTR investigator had not yet terminated by the time the trial closed for the summer break. Hence, I returned to Kigali on 24 June 2001.

² African Rights, *Rwanda - Not So Innocent: When Women Become Killers*, African Rights, London, 1995.

³ Case no. ICTR-99-52-T (Hassan Ngeze, Ferdinand Nahimana and Jean-Bosco Barayagwiza).

⁴ Case no. ICTR-96-13-A, appeal heard on 28-29 May 2001. (Appeal decision rendered 16.11.01)

⁵ Case no. ICTR-96-4-A, appeal decision 1 June 2001, dismissing appeal.

⁶ Witness TA, Witness Summaries Grid, 6 April 2001, attached to Prosecutor's Pre-Trial Brief Pursuant to Rule 73bis(B), ICTR Judicial Records, filed 11 April 2001. NB: Witness TA gave oral testimony to the ICTR in November 2001. At the time of writing this thesis, I have not yet been obtained a copy of the transcript.

B. Research in Rwanda

1. Outline of goals and research methods

There were three broad goals of my field research in Rwanda, which was conducted between June and August 2001. First, I sought basic information about women accused of genocide-related crimes, including data on the number and location of female genocide suspects in detention, the profile of female genocide suspects, information about the types of crimes these women are accused of committing, confession rates among female detainees, and the main problems faced by women in prison. Second, I hoped to obtain at least preliminary information concerning the level of women's participation in the genocide and their motivations for participating in it. Finally, I wished to explore whether gender has affected the treatment of women in the Rwandan criminal justice system.

My empirical research in Rwanda was based primarily on interviews with two distinct categories of respondents: female detainees in the Rwandan prisons accused or convicted of genocide-related crimes (71 women interviewed), and representatives of Rwandan and international governmental and non-governmental organizations, as well as individuals, working in the criminal justice field (discussed below).

In addition, I obtained documentation including the *Genocide Law*, the *Gacaca Law* and the list of Category 1 genocide suspects from the Office of the Prime Minister (PRIMATEUR) and statistical information about persons detained in the Rwandan prisons from the Rwandan Ministry of the Interior (MININTER). I also gathered data about women tried for genocide from La League Rwandaise pour la Promotion et la Défense des Droits de l'Homme (LIPRODHOR), Avocats Sans Frontières (ASF), and the registries in the Gitarama and Byumba courts, from which I prepared a list, itemizing the result in each case. With the kind assistance of LIPRODHOR, which provided a vehicle, I attended one day of a trial in a Rwandan Court in Murambi commune, Umutara prefecture in eastern Rwanda, which involved 52 Accused, including 5 women. I also spent half a day with the prosecutors in the Gitarama prefecture, traveling to a cachot

(informal lock up) in the Kigoma Commune with the only female prosecutor in Rwanda and spending several hours with one of her staff, learning about the prosecutions procedure in general, and visiting the interior of the cachot.

2. Empirical research

a) Interviews with persons working in the Rwandan criminal justice system

During my stay in Rwanda, I conducted a range of interviews and informal meetings with lawyers and representatives of the Rwandan government, and Rwandan and international non-governmental organizations, as well as individuals, working in the criminal justice field. The primary aims of these interviews were to discover whether others had already carried out any research relevant to my topic and to identify perceptions among people in the Rwandan community about women's involvement in the Rwandan genocide, although my research did not allow for a detailed empirical study of this aspect.

To these ends, I met with: Rwandan Attorney General, Gerald Gahima; the Vice President of the Rwandan Supreme Court and two magistrates of the Sixth Chamber (Gacaca Tribunals); the heads of both the Rwandan Bar Association and the Belgian NGO *Avocats Sans Frontières*; 2 other lawyers working in the Rwandan Courts; United Nations staff, including the Commander of the Investigation Section of the ICTR in Kigali; staff from the Center for Conflict Management (CCM) at the National University for Rwanda (UNR) in Butare; representatives of 7 Rwandan NGOs, most of whom specialized in women's issues, and representatives of 5 international NGOs working in Rwanda.

These interviews confirmed that there had been no studies carried out on women accused of genocide, save for the work done by African Rights, discussed elsewhere in this paper.⁷ Many of these meetings were very useful, however, both for collecting

⁷ See *supra* note 2.

documents on the role of women in pre-genocide Rwandan society,⁸ and for obtaining perspectives on women's involvement in the genocide. As explained in this thesis, those results were extremely diverse.⁹

b) Interviews with female detainees

i) Preparing for the interviews and obtaining authorization to enter the prisons

The most fruitful set of interviews was with 71 female genocide suspects in detention in the Rwandan prisons. Preparing for those interviews involved the following steps. First, I prepared a list of interview questions, which were divided into seven broad categories, ranging from the basic details of the detainee to their perceptions of the genocide and the Rwandan justice system. Within these categories there were a total of 24 questions. My aim was not to conduct a straightforward 'survey', but to let the interviews unfold within the general structure of my prepared questions, while ensuring sufficient responses to a number of 'core questions' to enable a comparison of results.

Second, I selected the prisons that I intended to visit. This was done with the assistance of the Centre for Conflict Management based at the National University of Rwanda in Butare (C.C.M.), with whom I maintained a loose relationship throughout my stay in Rwanda. My choice of prisons to be visited was based primarily on the number and proportion of female detainees in each prison. Another relevant concern was to involve a range of prefectures across Rwanda. Due to security concerns in the North-West and South-West regions of Rwanda (Ruhengeri / Gisenyi and Cyangugu respectively) at the time of my visit, I chose not to conduct any interviews in those regions, even though this choice limited, to some extent, the regional representation in my research.

I selected the following five prisons: (i) Miyove women's prison, which contains exclusively female detainees (190 women in total) and is situated in Byumba prefecture in northern Rwanda, close to the Ugandan border; (ii) the Kigali Central Prison, or PCK,

⁸ See Part I.B of this thesis.

⁹ See Part II.A.2 of this thesis.

which is in the Kigali Ville prefecture, Central Rwanda. There are 879 women in this prison; (iii) Butare Central Prison, which contains 413 women and is located in Butare, in southern Rwanda; (iv) Nsinda Prison, in the Kibungo prefecture in eastern Rwanda, and which contains 403 women; and (v) Gitarama prison, which has 244 female detainees and is located in Gitarama, in Central Rwanda.¹⁰

Third, I sought an interpreter, through referrals from international NGOs, including a news agency in Rwanda. I specifically wanted a female interpreter, as I anticipated that some women to be interviewed might have experienced sexual violence, which they would probably be less willing to discuss with a man. My first preference was for a Kinyarwanda-English interpreter, although I would have also been able to work with a Kinyarwanda-French interpreter if necessary. In this regard, I needed to be conscious of the ethnic issue – that is, that many English speaking interpreters would be Tutsi, because they were likely to have studied in an Anglophone country in exile, prior to the genocide. I was warned of the possibility that if my interpreter appeared to be ‘too Tutsi’ (that is, sporting the typical physical characteristics or mannerisms perceived to be associated with Tutsis, or speaking Kinyarwanda with an accent typical of Tutsis having lived outside Rwanda in Uganda or Burundi), this may affect the willingness of Hutu detainees to speak openly during interviews.¹¹

Another connected problem that arose was that one female (Hutu) interpreter decided that she was unwilling to work with me, principally because she was nervous about providing her name to the Rwandan authorities, which was a condition of my obtaining official authorization for her to accompany me into the prisons. Ultimately, I found an excellent Kinyarwanda-English interpreter, with experience in interpreting in the Rwandan prisons.

Finally, I sought an official authorization from the Rwandan Ministry of the Interior (MININTER) to enter the prisons to conduct my interviews. The Ministry provided the

¹⁰ These figures are derived from data provided by the Rwandan Ministry of the Interior, or MININTER, as at April 2001, which in turn, is based on statistics provided to the Rwandan government by the International Committee for the Red Cross. See thesis, *supra* note 207.

¹¹ For a discussion of the use of interpreters during interviews with genocide suspects in detention in Rwanda, see Drumbl, M. ‘Rule of Law Amid Lawlessness: Counselling the Accused in Rwanda’s Domestic Genocide Trials’, (1998) 29 *Columbia Human Rights Law Review* 545, at 618.

authorization relatively quickly (approximately three days after submitting the request), although it was initially limited to a four-day period. Following the submission of a second request clarifying my requirements, I was granted a full authorization to enter my selected prisons on the requested dates, with the only reservation being that the taking of photographs within the prisons was prohibited. The openness of the Rwandan government in this respect, and the efficiency with which they dealt with my request, is commendable. However, I was denied an authorization to enter the cachots, which, according to the Director of Prisons, Charles Uwihoreye, 'are not even supposed to be there'! I decided not to push the point.

ii) Procedure upon entering the prisons and my interview priorities

Over a seven-week period, I spent an average of 2.5 days per week inside the prisons, conducting interviews with female detainees (a total of 18 days). The procedure upon arrival in each prison on the first day was identical, with subsequent days being less formal. My authorization would be checked by the prison guards, who would point to the prison director or person otherwise responsible for dealing with such requests. He or she¹² would then provide me with the statistical information that I was seeking (the number of detainees charged with genocide and the number who had confessed, divided by sex, as well as the number of infants in the prison), which they maintained in their office. Each prison director was professional, helpful and friendly, save for one instance of rather blatant corruption, which resulted in the loss of approximately \$10 USD.

After meeting the prison director, a guard would bring me the female 'Capita Générale' of the prison. She is the head detainee in the women's compound of the prison, who is voted in by her fellow inmates. Her responsibilities include providing information to outsiders like myself, acting as liaison between female detainees and the authorities, and trying to resolve problems among detainees with the assistance of the authorities and the 'Capita Sociale' (the female detainee responsible for social affairs in the women's compound). The Capita Générale would provide me with any other general information

¹² The prison director at the Miyove prison was a woman, although I dealt principally there with a woman in charge of social affairs of detainees. All of the other prison directors that I met were men

that I sought and accommodate my request for selected interview participants. I had clear priorities in selecting interview participants, which were, more or less in order of preference:

- *Women on the list of Category 1 suspects.* I wanted to meet some of the alleged planners and instigators of the genocide or persons who held positions of authority, to try to assess their actual former level of power and to view how they represented themselves to me;
- *Women who had confessed.* I hoped that this category of women would provide the most information about the level and degree of women's participation in the genocide and their motivations for participating in it;
- *Twa women.* As members of Rwanda's most disadvantaged ethnic group, I wanted to explore whether the manner in which Twa women participated in the genocide or their problems in prison differed in any way from other female genocide suspects;
- *Women already convicted by the Rwandan courts for genocide.* I wanted to meet these women, in order to report their perceptions of the trial process;
- *Minors, who had confessed or otherwise.* I wished to explore any particularities relative to this group; and
- *A cross-section of other woman.* These included female Tutsi detainees, if there were any, and both peasants and educated women.

The breakdown of my interviewees, according to these categories is set out in the attached table. As I discuss in my thesis, my choice of particular categories of interview participants, and the need to go through the *Capita Générale* in selecting individuals

within those categories, might have influenced the results of my research.¹³ My categories were helpful, in that they created some parameters for my research. However, as I usually did not have time to meet all women who fell within each category, and was unaware of the personal histories of all detainees, the Capita often had a degree of discretion as to whom she called out of the compound for interviews. It is difficult for me to know the basis on which she selected candidates (within the boundaries of the above categories), as I was never present during that time, due to the fact that I deliberately avoided entering the women's compound until the end of my interviews.

iii) Interview conditions

I conducted my interviews with detainees in an interview room within each prison, but outside both the women's compound and the prison administration offices. I believed it to be critical, both to the success of my interviews and to adhering to ethical considerations, to ensure the confidentiality of those interviews. However, due to shortages of space, it was rare that these rooms were dedicated solely to my interviews, and they usually doubled as storage rooms for documents and equipment such as typewriters or wool and sewing materials. The result was that occasionally people – usually other male prisoners, or guards in the case of Butare – would enter the room to place or remove items. Each time this occurred I would stop the interview until confidentiality could once again be maintained. The only prison in which these interruptions became a problem, apparently more so for me than for the women I was interviewing, was in Butare, where the curiosity of the prison guards led to their rather obvious lingering in the corner, such that I needed to insist to the authorities on some privacy, and was eventually permitted to use the kindergarten!

The Capita would call at least two women out of the women's compound at a time. I would conduct a personal interview with one of them over the space of between one to two hours, while the other(s) waited outside, sufficiently far from the doorway so as not to be able to hear the content of the other interview. After each interview, I asked that the

¹³ See thesis, notes 366-368 and accompanying text.

interviewee return directly to the compound, so as not to have the opportunity to speak to, and influence, the other women to be interviewed. This was not always possible, due to logistical constraints such as the need to wait for an escort by a guard or for the compound be unlocked before they could return inside.

Usually the women, especially those who had confessed, insisted that they did not discuss the substance of their interviews among themselves, although it was difficult for me to assess the genuineness of such statements. I suspect that some such discussion took place, at a minimum, to reassure others as to the purpose of my interviews. In one case, a woman pre-empted my question with her response, which indicated that she had had some briefing from others prior to her interview. Nevertheless, I doubt that any discussion among detainees greatly influenced the spontaneity of responses to my questions, as I selected interview participants daily, and it was very rare that a woman knew that she would be selected on any given day.¹⁴

iv) The interview process and ethical issues and potential research bias

I began each interview by explaining the purpose of my visit, and emphasizing that I was not a journalist, an employee of the ICTR, nor a representative of any government or non-governmental organization. I also explained the role of my interpreter and assured the confidentiality of the interview. I did not use a written consent form, as this was inappropriate in a culture based on oral history and where, due to the vestiges of colonialism, such formalities are likely to increase suspicion. Further, the mere recording of a name on a consent form may have also undermined the confidentiality of the interview. However, I made it clear that the interviews were to be conducted on a completely voluntary basis, and offered each interviewee the opportunity not to respond to any given question, or to withdraw from the interview at any time. Some women then asked for clarification of certain aspects of the anticipated interview process, of my role, or of the subsequent use of the material, but all agreed to continue with the interview.

¹⁴ The only times when a detainee was forewarned that she would be interviewed was if she had been waiting for an interview on a selected day, and I had had insufficient time to interview her, and had to return the following day.

The following ethical issues and possibilities of research bias arose during the context of my interviews. One initial question was the willingness of interview participants to participate in the interviews. Despite my reassurances of the voluntary nature of the interview, I was aware that some women may have felt obliged to participate, which could have been linked to a culturally ingrained respect for educated people, particularly white people, and the relative powerlessness of detained persons. In order to counteract any such influence, if at any time I saw that a woman was uncomfortable with a particular question (several women were in tears during the interviews), I reminded them that they did not need to respond if they did not wish to. Even in these circumstances, in very few cases did women choose not to respond to any given question. I attribute this primarily to a desire on their part to cooperate and to 'tell their story' to someone who was willing to listen.

This leads us to another potential problem with the interviews, namely the hope among some women that I could help them, either materially or in moving their case forward. Such hopes became clear towards the end of some interviews, usually when we were discussing the problems these women experienced in prison, despite my emphasis on my role as an independent researcher and student writing a master's thesis. Some women, for example, seemed to associate white people, and more specifically, women, with aid organizations such as the Red Cross, and asked if I could give them soap or moisturizer for their skin. Others asked me to follow up their cases for them, which, in all but one case, I stated I was unable to do.¹⁵ These types of requests raised concerns that some women may have been trying to present a 'good front', or exaggerate their problems, in order to receive personal assistance from me. Nevertheless, my instinct is that such instances were rare.

¹⁵ In this one case, I agreed to try and find an organization who might be prepared to try and help the detainee reconcile with the family of the victim she murdered. The circumstances of this case were unique, in that this woman was one of the few I met who seemed to have accepted complete moral responsibility for her role in the genocide and demonstrated a genuine desire to reconcile with her victim's family. Although a reconciliation program will be part of the gacaca trials, this woman will not have had the opportunity to access this program, as she had already been convicted to life imprisonment.

The most important ethical issue to my mind arose unexpectedly, as I began to ask to speak with women who had confessed. As discussed in my thesis, I learned within the prisons that there is enormous pressure on detainees not to confess, and that some women who have confessed are harassed by fellow detainees. Most women who have confessed have done so privately by arrangement with the prison authorities, and their fellow inmates are not necessarily aware of their confession. Given that at least one researcher before me (African Rights) had specifically asked to speak with genocide suspects who had confessed,¹⁶ female detainees often also automatically presumed I was selecting women for interviews on the basis of a confession. In many cases this was in fact true, however, as set out above, my research priorities also included other categories of detainees as well.

In an attempt to counteract this presumption and to lessen the likelihood of the harassment of my interview participants after my interviews, I deliberately mixed my interview participants, for example, by selecting a convicted person or a Twa woman in between those who had confessed, or by just asking the Capita to occasionally select people randomly. If a woman had confessed, I also sought a reassurance from her before proceeding with the interview that she was not concerned about subsequent pressure from fellow detainees, and that if so, she should feel free to return. Finally, I insisted to my interview participants that they had not necessarily been selected only on the basis of their confession, and that I was interested in a whole range of persons.

One of the fundamental methodological bases of feminist research is to listen to women and to believe their stories.¹⁷ While I bore this in mind, I also felt the need to maintain a healthy level of skepticism during my interviews and I was not so naïve as to assume that all my interview participants were completely honest with me in respect to every question. This is not to say that all women accused of genocide are liars, nor that Rwandans lie generally, although Rwandans themselves have sometimes reported this to

¹⁶ The results of African Rights' work on confessions are set out in their publication, *Confessing to Genocide: Responses to Rwanda's Genocide Law*, (London, African Rights, 2000).

¹⁷ See, for example, Naffine, N. *Feminism and Criminology* (Philadelphia, Temple University Press, 1996), especially at 45-47, Bartlett, K. 'Feminist Legal Methods' (1990) 103(4) *Harvard Law Review* 829, and West, R. 'The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory', (1987), 3 *Wisconsin Women's Law Journal* 81.

be the case.¹⁸ There are simply too many issues at play, including a desire to conform to social expectations, as discussed in my thesis.

I therefore needed to rely on my own impressions and to make my own assessments about the honesty and reliability of responses. Such an approach, with its inherent subjectivity, obviously involves a risk of error. However, having worked with refugee claimants over a 4-year period in Australia, I have at least had some experience in such issues.

Moreover, many of my interview questions were directed towards 'objective' responses and the collection of basic data. Further, in all cases, my intention was to report what women detainees said for themselves, and any interpretation placed on that material by me is secondary.

On this aspect, there is no question that my choice of interview participants, and specifically my prioritizing of women who had confessed, would have influenced both my research results, and my overall perception of female detainees. I am aware that this report may often present my interview participants in a rather sympathetic light, and I, like the reader, should be reminded that many women in the Rwandan prisons are probably much more 'extreme' in their views than the majority of the women I

¹⁸ The Rwandan organisation LIPRODHOR, for example, cited approvingly in June 2000 a statement by Emy that 'For many Rwandans, 'ubwenge' intelligence means to be cunning, clever, to employ ruse and finesse; qualities which permit one to avoid trouble at the expense of another, to remove oneself from embarrassment, to become established or to succeed... A mastery of intrigue and the art of lying form an integral part of the life of the MUNYARWANDA.' LIPRODHOR thus advises Rwandans that they must 'learn to speak the truth and nothing but the truth without searching for means to smother or hide it.' League Rwandaise Pour la Promotion et la Défense des Droits de l'Homme (LIPRODHOR), Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG), *Problématique de la Preuve dans les Procès de Génocide: L'Institution Imminente des Juridictions Gacaca Constituerait-Elle Une Panacée?*, Kigali, 2000, at 27-28. Expert on Rwanda, Filip Reyntjens, gave evidence during the Belgian Genocide Trial about how communication is used in Rwanda in a strategic manner, oriented according to the goal to be reached. Avocats Sans Frontières, 'Serge Wahis, Un Des Deux Avocats De Soeur Kisito, Confie Ses Réflexions Sur Le Procès Et La Compétence Universelle', 12 June 2001, online, www.asf.be/AssisesRwanda2/fr/fr_REACTIONS_Wahis.htm, date accessed : 9.10.01. During that same trial, the Belgian media reported comments such as 'In Rwanda, lying is considered to be speaking well' (*La Libre* 19 Apr, 2001); 'Rwandans, culturally, are used to proceeding by ellipse and not being direct.' (Alison DesForges, as cited in *La Libre* 19 April, 2001), and 'It is not exactly the truth, but rather what is useful or convenient to say so as not be caught with the hand in the bag,' (*Le Soir*, 24 April 2001) All reported in Avocats Sans Frontières, 'Revue de presse du 13 au 26 avril: Le Rwanda: jugé dans les détails, commenté dans les grandes lignes', online, www.asf.be/AssisesRwanda2/fr/fr_PRESSE_0426.htm, date accessed : 9.10.01. . Other Western commentators have also described Rwandans as 'distrustful, lying and dissimulating'. See Cart, as cited in Uvin, P. *Aiding Violence: The Development Enterprise in Rwanda*, Connecticut, Kumarian Press Inc., Connecticut, 1998, at 215.

interviewed. This view stems from anecdotal reports by women detainees interviewed and the logic that most women who have confessed to their crimes are more likely than others to have developed at least a certain degree of remorse.

There were also some very practical issues that may have affected my interview results. These included the limited time I spent in Rwanda and the fact that my knowledge about the genocide was gained mostly outside the country from written material. Evidently, this knowledge increased throughout the course of my stay in Rwanda, although I often remained unaware of regional differences before I conducted my first interviews in a new location. Each individual interview lasted only between one to two hours, which sometimes felt insufficient time to document all relevant facts and understand the complexities of each situation.

Finally, questions may be raised in relation to the number of interviews conducted – only 71 from a total number of over 3,000 female detainees in the Rwandan prisons. This amounts to a very small percentage of the total number, and obviously affects any conclusions that I can draw about the participation of women in the genocide. On the other hand, feminist criminologists have drawn broad conclusions in the past about female crime, on the basis of studies involving much fewer interview participants.¹⁹ While I am well aware that my research leaves many questions unanswered, ultimately, I hope that it is but the beginning of further work in this field.

¹⁹ Two famous studies that are often cited by feminist criminologists involved only 21 and 26 interview participants respectively. See discussion of Pat Carlen's 1983 study, *Women's Imprisonment: A Study in Social Control*, in Davies, S. and Cook, S. 'The Sex of Crime and Punishment', in Cook, S. and Davies, S. *Harsh Punishment: International Experiences of Women's Imprisonment*, Northeastern University Press, Boston, 1999, 53, at 68-71, and Rosenblatt and Greenland's study on violence and dangerousness, as discussed in Shaw, M. 'Conceptualizing Violence by Women', in Dobash R.E., Dobash R. and Noaks (eds.) *L. Gender and Crime*, University of Wales Press, Cardiff, 1995, 115, at 121. Shaw herself studied 85 women convicted of murder or manslaughter in Britain. See Shaw, M. 'Issues of power and control: women in prison and their defenders', discussed in *ibid*.

BREAKDOWN OF INTERVIEW PARTICIPANTS – PRISON INTERVIEWS

Prison	Confessed					Not confessed					Total
	Twa	Cat. 1 suspects	Tried (not Cat. 1)	Minors	Other	Twa	Cat. 1 suspects	Tried (not Cat. 1)	Minors	Other	
Kigali PCK	-	1	-	-	6	3	4*	-	-	1	15
Gitarama	-	-	2	2	14	-	1	2	-	-	21
Miyove	-	-	-	-	1	-	-	3	2	4	10
Butare	-	-	1*	-	4	1	1	-	1	9	17
Nsinda	-	-	-	-	7	-	-	1	-	-	8
Sub-totals	0	1	3**	2	32	4	6	6	3	14	71
Totals	38 (54%) * Confessed at trial (not part of confession program) ** Confessions not accepted					33 (46%) * Two tried					