

## Constitutionalism as Framework for Post-Conflict Society Reconstruction in Rwanda\*

*The only thing necessary for the triumph of evil is for good people to do nothing.*

*A State without the means of some change is without the means of its conservation.*

*Whenever a separation is made between liberty and justice, neither is in my opinion safe.*

*People will not look forward to prosperity, who never look backward to their ancestors.*

Edmund Burke<sup>1</sup>

### *Introduction: Genesis of the 1994 Genocide in Rwanda*

The historical evolution of man and of interstate relations is one of perpetual state of war where a period of peace merely seems an anomaly. Interstate wars are often characterized by massive assaults on the sensibilities and physical existences of the warring parties by often unseen and unknowable enemies. Intrastate conflicts on the other hand tend to be fought between allied groups, and because of their familiarity with each other, such conflicts/wars tend toward more bitter outcomes as all respect and recognition of the other group's humanity are often ignored and unacknowledged in pursuit of the conflict objective. Genocide, "... the deliberate and systematic destruction of a racial, political, or cultural group<sup>2</sup>" is particularly exemplary of this kind virulent conflict that seeks nothing short of total erasure of one group by the other. Such was the goal and tactic of the Hutu Power Authority from April 6 to July 15, 1994 when over

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\* Kelechi A. Kalu teaches in the Department of Political Science, University of Northern Colorado, Greeley, CO 80639. Thanks to Lisa Mitchell for research assistance on this paper.

<sup>1</sup> Edmund Burke, *Reflections on the Revolution in France*, edited, with an introduction by Thomas H.D. Mahoney (New York: The Liberal Arts Press, Inc., 1955).

<sup>2</sup> Merriam-Webster Dictionary

800,000 Tutsi and moderate Hutu's were murdered, erased, mutilated and/or simply violated in the small African state of Rwanda. The most obvious questions for social scientists and other pundits is this: what caused the tensions in Rwanda, the size of Vermont, to boil over and to become the site of one of the most brutal assaults and negation of the concept of humanity in the 20th century? While history often provides a guide to this type of question, it generally fails to illuminate the path for those seeking to avoid a repeat of the past. Rather, it paves the way for those desirous of lessons for a more complete crime without judicial accountability. However, the Rwandan genocide is among those historical events whose origins guide analysts to the intellectual sites of its genesis. But excavating such sites for clues about what happened in 1994 only reveals hidden memories that are potentially fraught with future troubles, especially for small states like Rwanda, whose political and economic structures and progress are often externally mediated. For our purposes, it is important to pay attention to the impact of Belgium's colonization of Rwanda, its decolonization arrangement of powers and how the lack of popular trust in the legitimacy of the post-independence Rwandan government laid the foundation for the genocide against over 800,000 Rwandese by their fellow citizens, neighbors and family members without regard to their common humanity. Understanding the foregoing will yield particular insights on the origin and perhaps the reason for the 1994 genocide, and hopefully lay the ground work for how to avert such future assaults on Rwanda and its people.

Initially, Rwanda was a nation of two groups, the Tutsis and Hutus, with a shared language, Kinyarwanda,<sup>3</sup> which is also the language of the numerically small Twa

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<sup>3</sup> Kissi Edward, "Rwanda, Ethiopia and Cambodia: links, fault lines and complexities in a comparative study of genocide," *Journal of Genocide Research* (2004) March, 115-133

Rwandese. While German colonization of Rwanda was very brief and without serious fragmentation of the indigenous governance structures, the Belgians, following World War I and Germany's loss of its colonies, took over Rwanda in 1916 and proceeded to remap and restructure the social formation. Belgian racial superiority complex was exported to Rwanda and using the Hamitic hypothesis, which was based on the warped racial science assumptions of European scientists, the Tutsi were assumed to be descendants of the European race and were therefore placed in positions of power and control, consequently elevating the Tutsis in educational and employment policies<sup>4</sup> at the expense of the Hutus. Thus, the seed of resentment supported by denial of access on the basis of racial superiority was sewn among the Tutsi by Belgium in Rwanda. The seeds of hatred began to take root in the late 1950s when the Tutsis intensified their demand for political independence. As punishment for agitating Tutsis, the Belgians stood by and indeed, may have aided the Hutus organize extermination of at least 20,000 Tutsis<sup>5</sup> in 1959. Thus began the process of removing and/or forcefully encouraging the Tutsis to flee from their country; consequently, hundreds of thousands migrated and settled in neighboring countries like Uganda, Burundi and Tanzania. After the Belgian colonial system in Rwanda collapsed and independence reverted to Rwandans in 1962, the Hutus, under the leadership of President Kayibanda, assumed control of the state with the strong help and guidance of the Belgians who in the dying days of colonialism reversed their earlier policies of privileging Tutsis to new policies that favored the Hutus.

With political independence and the machinery of state in the firm control of the Hutus in the early 1960s and with hundreds of thousands of Tutsis in exile, tensions

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<sup>4</sup> BBC News, UK Edition, "Rwanda: How the genocide happened," Thursday, April 1, 2004

<sup>5</sup> Kissi Edward, "Rwanda, Ethiopia and Cambodia: links, faultlines and complexities in a comparative study of genocide," *Journal of Genocide Research* (March, 2004): 115-133

began to escalate between the Hutus and Tutsis due mainly to the “nationalist ideology of the Hutu revolution.”<sup>6</sup> This ideology was based on exclusionary and unfair public policies characterized by social, political and economic inequities that privileged the Hutus over the Tutsis in 1962. Clearly, Rwanda is a quintessential example of where two wrongs never make right. While the Tutsis did not object to their privileges under Belgian rule, there is no evidence of Tutsi strategic policies for exterminating the Hutus in Rwanda. However, as early as the 1960s, policies of intimidation and outright state-sponsored violence against the Tutsis forced many to flee their country and effectively increased the proportion of Hutus to Tutsis in Rwanda. Consequently, this intensified process of intra-civilizational internecine conflicts rendered the Rwandan state economically weak, politically fragile and in constant search of nation-building leaders. As is always the case, especially in Africa, disorder and instability often constrain the private and public spaces of hopes, dissent and progress—a condition that invariably yields individual or group emergence of persons with claims to knowledge of both the puzzles and solutions to state problems. Uncertainties that should normally yield insight on reliance on tradition, merits and collective interests often result in certainties of the sources of state problems and their solutions. In the case of Rwanda, and many African states such as Nigeria, the Democratic Republic of the Congo, Sierra Leone, Liberia and Sudan, the outcome leaves lasting memories that if not well managed through institutional process of conflict management, these uncertainties often lead to future conflicts. Rwanda under Kayibanda was in the throes of such disorder and instability in the early 1970s when “...groups promising security, prosperity and social change” came

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<sup>6</sup> Ibid.

to power<sup>7</sup> through a military coup d'état under the leadership of General Juvenal Habyarimana on 5 July 1973. And as has invariably been the case in much of Africa, the new “messiahs” in Rwanda failed to rescue their state from political and economic decay, rent seeking actors and patrimonialists. Instead, under President Juvenal Habyarimana,<sup>8</sup> and following the coup, Rwanda experienced significant economic decline characterized by sharp drops in gross domestic product (GDP), an unsustainably high level of inflation and consequent deterioration in economic conditions in Rwanda.

Increased economic crisis and political fragility in Rwanda resulted in Habyarimana regime's loss of legitimacy, which arguably weakened the citizens' perceived Hutu dominated leadership capacity for finding solutions to Rwanda's economic and political problems. As a result, the Hutu government was confronted by an effectively organized and focused Rwandan Patriotic Front (RPF) composed of exiled Tutsis and their supporters in Uganda with the aim of overthrowing the Habyarimana's administration. And, given the Belgian-supported historical animosity between the Tutsis and the Hutus, the emergence of the RPF only escalated and intensified the clashes between the two groups. However, one of the outcomes of the intensified violent conflicts was the decision to restructure the political system in Rwanda away from a one party to a multi party system in 1991 with the French President Mitterand<sup>9</sup> as vector to avoid what seemed an inevitable defeat of French-supported Habyarimana's administration. Part of the political brokering by France resulted in the expansion of Habyarimana's government to include previously marginalized Rwandans, especially the

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<sup>7</sup> Ibid.

<sup>8</sup> Stacey Gibson, “The role of structure and institutions in the genocide of the Rwandan Tutsi and the Armenians of the Ottoman Empire” *Journal of Genocide Research* Vol. 5, Number 4 (Dec 2003): 503-522

<sup>9</sup>Ibid. p. 20

Tutsis whose return and sharing in the power of the government “signaled an end to Hutu dominance and hegemony in the system.”<sup>10</sup> The conflict between the RPF and the Hutu extremists resulted in the outbreak of a civil war, which ended with the signing of the Arusha accords in 1992. A bittersweet peace ensued until President Juvenal Habyarimana’s plane was shot down on April 6, 1994; an event that was unsubstantially blamed on the Tutsi by the French and was used as justification by the Hutus to perpetrate a crime against humanity by exterminating over 800,000 Tutsis and moderate Hutus simply because of who they were. Understanding the foregoing is necessary for articulating and/or imagining other possibilities for a peaceful and stable Rwanda devoid of future temptations to resort to the type of convulsive conflicts witnessed in 1994.

### *The Argument*

The underlying framework of this paper is that the extent to which intrastate conflict such as the Rwandan genocide can be prevented from reoccurrence largely depends on the nature and scope of conflict management and prevention mechanisms in the country. In this respect, (1) the process through which the law is made to be progressively inclusive (i.e., the constitution) and, (2) how post-conflict reconciliation institutional structures are negotiated will greatly yield insights on the extent to which conflict will reoccur or be reduced to more permanent, formal institutional resolution mechanisms that favor peaceful outcomes. Analytically, I argue that the Rwandan genocide was meticulously planned and executed by government officials who failed in their central functions to ensure liberty and justice for the citizens of Rwanda. The failure of government officials to protect the citizens is a direct function of the failure of pre-colonial leaders in Rwanda

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<sup>10</sup> Ibid. p. 514

to establish a sustainable institutional structure for leadership transition. Thus, the death of Mwami Rwabugiri in 1895 exposed the leadership transition vacuum, which the Germans promptly filled consistent with the nature of colonial politics where Europeans exploited, dominated and subordinated African state structures to Europe's preference of violence as a strategy for conflict resolution, especially with African peoples. This legacy of violence eventually interrupted institutional development of liberal democratic governance in Africa.

The main effect of European interference in Africa as exemplified in the case of Rwanda, specifically with the involvement of the Belgians, was the stunting of social formations and institutional developments, which most post-colonial African leaders, including the post-independence Rwandan leaders were unable or unwilling to reform to serve the collective interests of their citizens. It is not difficult to understand what needs to be done to prevent a reoccurrence of the small-self interested elites' – the *akazu* – manipulation of the instruments of state power, the media, and the poorly educated to carry out the 1994 genocide in Rwanda. However, without careful attention to conceptual analysis, most scholars were quick to explain the genocide either as a consequence of state failure and/or the rehashing of ancient passions in a failed state consumed by chaos.<sup>11</sup> What is not in dispute is that in spite of numerous intrastate conflicts in Africa, the neocolonial state remains intact and continues to be used as an instrument of violence against the citizens. Because of the instrumentalization of state apparatus as a vehicle of violence by post-colonial African leaders, transformation of the state has never been on the agenda of those who inherited the mantles of leadership

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<sup>11</sup> The Economist, "The Road out of hell – Rwanda since the genocide" Vol. 370, Issue 8368 (March 27, 2004): 25

following decolonization; and post-colonial Rwanda was no exception. Thus, what happened in Rwanda and is in need of rethinking is how the nature of governance, its complementary institutions absolutely collapsed into a process of extermination of a section of Rwandans. In this respect, it is not state failure, or indeed failure of authority, or ethnic differences that resulted in the genocide; rather, it is the failure to use the instruments of governance for the good of all Rwandans,<sup>12</sup> and the outright manipulation of state institutions for the interest of a few. The Rwandan state did not fail; rather, it remains an abstract idea whose power was temporarily hijacked by very rational individuals led by Colonel Theoneste Bagosora and his Hutu Power associates in positions of power who misused the instruments of governance at the expense of all Rwandans. And as Victor-Yves Ghebali aptly states:

In Rwanda, contrary to current popular beliefs, there is just one ethnies: the Rwandans. Although *initially* coming from different origins (as in the case of practically all Nation-States), Tutsis, Hutus and Twas speak the same language, practice the same religion and claim the same mythical common ancestors. It must be stressed that the basic distinction between Tutsis and Hutus (not counting the Twas who represent 1% of the global population) has traditionally been socio-economic and not ethnic. The Tutsis formed the wealthy minority ruling elite. Tutsis who loose their cattle could be downgraded to a Hutu status, while Hutus who acquire cattle could be upgraded to a Tutsi status. In any event, mixed marriages were not infrequent between Tutsis and Hutus. For the practical purposes of colonial administration, the Germans and more particularly the Belgians (when they took over) ethnicized this traditional socio-economic cleavage of the Rwandese society. Accordingly, the Tutsis were legitimized as proxy rulers of Rwanda on the ground of an alleged “racial superiority” over the Hutus. When, in the 1950’s the Tutsis began to claim independence, the Belgians re-instrumentalized ethnicity in the other way around. In order to slow down the decolonization process as long as possible, they supported the Hutus’ claims for power-sharing and transformed a basically political problem into a fierce ethnic

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<sup>12</sup> As I have argued in Kelechi A. Kalu, “Ethnicity and Political Economy of Africa: A Conceptual Analysis,” in E. Ike Udogu, editor, *The Issue of Political Ethnicity in Africa*. (Aldershot, UK: Ashgate Publishers, 2001): 35-58, ethnicity is not inherently conflictual; it is the instrumental use of ethnicity that is the problem in Africa. Thus, counterfactually, what would Rwanda look like today if the Belgians had not instituted the identity cards that became the instruments of categorizing Rwandans into Hutus, Tutsis and Twa, which later served as a basis for first excluding the Hutus, and later, the Tutsis?

antagonism. Since then, and though forming a single ethnies, Tutsis and Hutus have been ruthlessly hating each other in the name of purely “imagined communities.”<sup>13</sup>

Consequently, it is the instrumentalization of ethnicity by rational and politically motivated individuals that planned the Rwandan genocide that ultimately has implicated everyone within the Rwandan state as either a victim or victimizers. And, the question that goes to the root of effective strategy of rebuilding and reconstituting Rwandan society is why did ordinary individuals allow themselves to be compromised into becoming killers? And what can be done to heal the memories of the victims and the victimized members of the Rwandan nation? Or put differently, to what extent can the institutions of state governance and nation-building be reconstituted to ensure that they serve the interests of the leaders and the led in a transparent and judicially fair process?

#### *Constitutionalism as Framework for Post-conflict Reconstitution*

Methodologically, while the absence of strong institutional structures within the Rwandan state partially explains the genocide; the enabling condition and therefore explanation of the violence is also to be found in the transition that the international system was undergoing in the early part of the 1990s. Analytically, the Post-Cold-War-induced political and economic liberalization across the globe encouraged prodemocracy

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<sup>13</sup> Victor-Yves Ghebali, “Ethnicity in International Conflicts: Revisiting an Elusive Issue,” *Working Papers* <http://www.ciaonet.org/wps/ghv01/ghv01.htm> (CIAO Date: 5/99): p. 5 accessed 2/18/2005. As Ghebali epistemologically notes, ethnicity, ethnies, race, nation and people have a long history that is devoid of conceptual clarity. But, he uses ethnies, which came into the lexicon of social science in 1986, to denote the primordial form of the nation...that represents the basic cultural unit of human diversity predating the nation. In this respect, ethnies as the true form of nation is a trend that moves away from modernity-induced individualism to community-based social formation with structured traditional vertical leadership form. In the case of Rwanda as a nation, that foundation was Mwami Rwabugiri and his passing as I have argued above created a vacuum, which the modern Rwandan state failed to fill, making room for the instrumentalization of ethnicity and difference.

groups and citizens in general to insist on transparent governance within the framework of law and order as a strategy for mediating various intrastate conflicts in various regions, including Africa. The end of the Cold War, and therefore the absence of clear ideological divisions, statements of rules, their violations and consequences, which led some to perceive multilateral framework of governance in the international system such as the United Nations as impotent, encouraged the perpetrators of the Rwandan genocide to proceed without fearing prompt international resistance to their evil decision to kill off the Tutsis and their sympathizers.<sup>14</sup> However, it is not important here to consider whether the genocide would have been prevented if Rwanda was a democracy with a constitutional framework of governance, because the desire for a constitutional system of governance goes beyond having a legitimately written and legally ratified constitution (constitutionality) or even the demarcation between the public and the private spheres. If those entrusted with the power of the state fail to act decently, the importance of the system of governance is immaterial; it is the ideological presuppositions of the leadership that determines the outcome of public policies. Thus, elections like the 2003 elections in Rwanda tend to offer rays of hope for a transitional process toward transformational outcomes that ensure the rule of law, protection for private property, economic development and institutional structures that protect all citizens for a sustainable system of governance devoid of a “final solution” option for either the majority or the minority.

To achieve such outcomes the Rwandan Patriotic Front leadership led by Paul Kagame

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<sup>14</sup> Indeed, the end of the Cold War, which also meant the end of ideological divisions and supports of autocrats by various western and former soviet governments, encouraged simultaneous democratic transitions without strong institutional structures, especially in Africa and, at the same time, provided an opportunity for African dictators and strongmen in Nigeria, Sierra Leone, Democratic Republic of the Congo, Cote' d'Ivoire, Central Africa Republic, Sudan and Liberia to go after those they considered enemies of the state—with the intrinsic knowledge that there will be no accounting for their actions; especially after the United States and the United Nations bungled their efforts at intervention in Somalia in 1993.

will have to embed *constitutionalism* in practice such that the integrity and probity of public officials from the President to the office clerk is unquestionable. Undoubtedly the process adopted in any constitution making will ensure the integrity of the final document and its popular legitimacy; but it is exemplary, strategic and visionary leadership that paves the path for subsequent leaders to maintain such integrity. In that respect, the agitations by some Hutus and former members of the government that the current regime is increasingly becoming authoritarian should be cause for some concern, not only for what it might lead to now, but also what it might remind citizens about the past and the implications for the future.<sup>15</sup> The inclusive process discussed below, is relevant in the case of a post-conflict state like Rwanda, will help to establish *politics* as an institution for civil resolution of differences. Only when formal politics is established as a framework for social interactions will the intensity of political movements (political parties formation and memberships) lead to a popularly accepted constitution that is invested in the citizens result in a democratic consolidation that ensures the integrity of the political process in various aspects of national policies that heal more rather than they injure the national psyche. For now, it is not sufficient to conduct elections; public and private leaders must ensure that public and private spaces in Rwanda are relatively safe and secure. This will enable the citizens to begin the process of rebuilding their private lives, regain the self-confidence and trust necessary for effective participation in public affairs within the framework of viable political, judicial, social, cultural and economic institutions.

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<sup>15</sup> For a detailed account of the allegations against the policies of the Kagame Administration, see for example, Filip Reyntjens, "Rwanda, Ten Years on: From Genocide to Dictatorship," *African Affairs* (2004), 103, 177-210. Also, see Amnesty International Report on "Rwanda: The enduring legacy of the genocide and war," <http://web.amnesty.org/library/print/ENGAFR470082004> accessed on 4/24/2005.

Thus, rebuilding the Rwandan institutions of governance will require a revolution of concrete visual transformations capable of cleaning citizens' spirits and soiled memories, symbols of the state and the land. Although this is a difficult task, but it is one that has to be attempted within the framework of constitutionalism and governance processes that transparently establish: (1) security as the central function of government and the right of the citizens; (2) institutionalizes a transparent and accessible system of justice as a framework for conflict management and resolution; (3) a transformative public policy decision processes that meets the basic needs of the citizens—education, healthcare, employment—and socio-economic policies that uplift the pride and spirits of the citizens; and (4) a transparently transformative governance system that actively invites every Rwandan to live up to their civic and social responsibilities to the state and to each other within a framework of a liberal constitutional representative form of government. The foregoing is grounded in three critical assumptions: first, that political order is a *sine qua non* to any viable state and nation-rebuilding efforts in Rwanda and in any post-conflict state situation; second, that the state must have a developmental capacity to enable it translate citizens' desires and aspirations into viable public policies that can be efficiently implemented to benefit all; and third, that post-conflict rebuilding in Rwanda requires that the social, economic, and political institutions not only be legitimate, but must be perceived as legitimate by the citizens to enable their full participation in the process. As the basis for post-conflict rebuilding, these assumptions will be plausible if the leaders base economic and political rebuilding efforts on rational calculations that establish benchmarks for costs and expected benefits to all citizens as stakeholders. For example, education as a foundation for state and nation-building

policies is easily measured in terms of the number of citizens enrolled in primary to post-secondary institutions. It is also evaluated in terms of the number of students trained in the social sciences, humanities, natural sciences/technology fields and further disaggregated on the basis of social class and gender. Similarly, public health policies should result in measurable outcomes in terms of the number of citizens who have access to primary healthcare facilities and the proportion of the national income that is allocated toward healthcare as well as government programs that train, retrain and retain indigenous medical professionals in Rwanda. As the bases for nation-(re)building and post-conflict state reconstruction these measurable indicators are useful only to the extent that the government and citizens are working within a framework of law and order.

Based on the above, political order is essential for rebuilding state and government capacity for the protection of the citizens and the territory especially in a post-conflict situation produced by the type of mass violence that Rwanda experienced in 1994. In this respect, if the government lacks the capacity to maintain law and order, a characteristic of weak states, it will equally lack the capacity for establishing and implementing legislations, economic plans and policies that will help the country emerge from crises to a stable political and economic order. In a sense, a state's capacity for political order is largely judged by the extent it is able to enforce its own laws/policies consistent with the established rule, i.e., its national constitution. Ultimately then, the capacity of a government to protect its people and establish viable economic order through a verifiable enforcement of its laws devoid of arbitrary and exclusive protection of some at the expense of others are necessary and essential factors that lead to a government's, and therefore a state's, legitimacy with the citizens and the larger global

community. Similarly, such stabilizing policies ensure effective and productive interactions between the government, the citizens and non-governmental organizations such as religious, economic and cultural organizations that are essential forums for galvanizing both the interests and aspirations of ordinary citizens for nation-building efforts.

While political order ensures that the state and the citizens are able to go about their routine business, it is the extent to which the state is able to engage in productively transformative development policies that will ensure its viability and sustainability in the long run. In this respect Brian Smith<sup>16</sup> argues that, "... a crucial requirement for a developmental state is a unified and competent bureaucracy, based on merit recruitment and offering stable and rewarding careers relatively free from political interference" by sectional or class interests such as religious or military institutions "that might compromise the pursuit of economic growth."<sup>17</sup> Equally important, especially for post-conflict states such as Rwanda, is the confidence and reliance that meritocratic recruitment provides—"professional, technical, and managerial talent, enabling economic planning to be placed in the hands of capable personnel with a sense of common purpose oriented towards national policy objectives and attracting the cooperation of business elites."<sup>18</sup> The foregoing is more likely to be possible if the efforts of a "... determined set of nationalistic political and bureaucratic elites, relating to each other in shifting coalitions but all committed to developmental objectives ..." establishes a foundation for the government's "... sustaining power based on an autonomous capacity to transcend the

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<sup>16</sup> For a conceptually informed discussion on state-building, see Brian Smith, "State-Building," in Peter Burnell & Vicky Randall, *Politics in the Developing World* (New York: Oxford University Press, 2005): 155-170.

<sup>17</sup> *Ibid.* p. 161.

<sup>18</sup> *Ibid.*

interests of classes and other social forces ...,”<sup>19</sup> in the process of creating viable institutional structures, rules of governance, processes of social interactions, and conflict management in post-conflict environments.

Post-conflict state and nation-rebuilding in Africa, especially in states like Rwanda require hegemonic institutional structures with the power and legitimacy to constrain the tendencies of selfish actors to use official positions for personal rather than public gain. Substantively, serious and viable/sustainable efforts at nation and state building in post conflict states have to involve strategic policies that ensure that power and therefore wealth are not concentrated at the national government level. Such strategic decentralization of power should result in less emphasis on the state as a source of wealth and therefore the focus of political/power competition with all the attendant irreconcilable and retrogressive conflicts as evidenced in such states as Nigeria, Angola, Zimbabwe, Congo, and several other African States where government officials have become the wealthiest and meanest citizens. Strategically, creating competent and viable bureaucracies that recruit on the basis of merit should result in legitimizing the central functions of the state as both protector and mediator of security and conflicts in society rather than the object of class conflicts and competition that sometimes result in the hijacking of state apparatus for protecting illegally accumulated wealth and status. Such institutional structures or, more specifically, strong and efficient bureaucracies are essential for generating and implementing sound policies that lead to the eradication or alleviation of poverty, establishing functional public health policies as well as serving as visual concrete symbols of rules/law enforcement irrespective of individual wealth and/or social standing in society. Ultimately, it is the extent to which the government is able to

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<sup>19</sup> Ibid. p. 162.

constrain itself, make and enforce fair and just policies, bring citizens into the nation rebuilding processes as both economic and political participants working within the framework of law that will determine the future of Rwanda as a haven or a threat to its citizens. The rest of the paper addresses how viable security, justice, socio-economic and governance policies determine whether or not sustainable post-conflict reconstruction is viable in Rwanda.

*Ensuring the Future against Genocide in Rwanda: Getting security and justice right*

The existence of conflict is not inherently indicative of the absence of protective structures that citizens can reliably depend on for their physical existence. It is the capacity and nature of existing institutions that determine whether such conflicts are resolved through force or by peaceful means. Getting the security and justice right is based on the assumption that security without justice is autocracy, which is in the long run, inherently unstable. Thus, how the arrangements of power—institutionally these include a process of leadership transition—are structured will greatly impact the extent to which conflicts are seen as routine or as opportunities for violent resolutions. As Robert Dhal notes, "... the likelihood of peaceful adjustment to a conflict is increased if there exist institutional arrangements that encourage consultation, negotiation, the exploration of alternatives, and the search for mutually beneficial solutions. Conversely, the prospects of deadlock and coercion are increased if institutional arrangements severely inhibit such activities."<sup>20</sup> In this respect, the post-genocide government of Rwanda has already presided over the ratification of a new constitution that derives its just powers

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<sup>20</sup> Robert A. Dahl, *Modern Political Analysis* Second Edition (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1970): 62

from the people on the basis of equality of citizenship; elections as the basis for leadership transitions; sweeping respect of human rights to the extent that constitutionally, Rwandans have the right to defy superior orders that is in violation of human rights and public freedoms.<sup>21</sup> Similarly, to ensure that power is not concentrated in any one institution, it is innovative that the Rwandan Constitution (Article 58) provides that, “The President of the Republic and the Speaker of the Chamber of Deputies shall belong to different political organizations”; and (Article 59) that “Judges, prosecutors as well as members of the armed forces, police and National Security Service shall not be permitted to be members of political organizations.” These provisions serve both as checks and balances as well as complementary institutional structures to ensure that the government and the state of Rwanda protects its citizens’ rights, the territorial integrity of the state as well as against future genocidal tendencies.

The critical question here is: how does one reconstruct an internally fragmented state to enhance the safety and security necessary for the development of viable infrastructures that promote peace rather than violence? In this respect, while *order* and *stability* are essential in post-conflict Rwanda, they are not the same as *security*—the absence of fear that prevents the most vulnerable citizens—women, children, the elderly and the minorities (however defined)—from engaging productively in their daily existence. For at least a generation, effective security in Rwanda will require a certain level of benevolent dictatorship whose central mission is the reconstruction of various sites of memories like schools, community buildings, bridges, roads, places of worship and overall confidence-building that will collectively institutionalize the process of

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<sup>21</sup> *The Constitution of the Republic of Rwanda* in effect since June 2003. For this argument, see article 48, which states that “Every citizen has the right to defy orders received from his or her superior authority if the orders constituted a serious and manifest violation of human rights and public freedoms.”

preventing and denying any individual or group the opportunity for such large scale illegitimate and inhumane use of violence that visited Rwandans in 1994.

The Rwandan genocide was helped by the weak institutional structures, especially conflict resolution institutions and leadership transition structures that made it possible for the genocidaires to hijack the institutions to advance their cause. Unarguably, the current Rwandan Constitution provides for all the necessary protections that should ensure security, justice and equity without regard to religion, physical attributes, gender or social class. What is not clear is the extent to which government officials and the economic elites in Rwanda are willing to subject their interests and therefore actions to the same legal processes as ordinary Rwandans. More specifically, to what extent does the law effectively constrain the potential arbitrary exercise of power in the name of the Rwandan state and its custodians without weakening it in its central function of protecting the citizens? Arguably, Article 64 of the Rwandan Constitution, which states that “Every Member of Parliament represents the whole nation and not just those who elected or nominated him or her or the political organization on whose ticket he or she stood for election,” should indicate to Parliamentarians that their first duty is to serve all Rwandese irrespective of religion, social class or ideological proclivities. However, such an assumption presupposes that individuals—including legislators have no personal or group interests outside of the national interest that might be in conflict in specific situations—for example, policy situations that have potential for differential outcomes for Hutus and Tutsis.<sup>22</sup> It is such potential conflicts of interest situations that are likely to test the strength of the legal and other institutional structures in Rwanda.

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<sup>22</sup> Clearly, the Rwandan Constitution (2003) is more sensitive to gender equality than any other existing constitution to the best of my knowledge. However, irrespective of the provisions in Article 54 that

Also, as Amnesty International research shows, “The pre-genocide Rwandese judicial system was weak, possessing limited resources, insufficiently trained personnel and a lack of judicial independence. The flawed judicial system was destroyed during the genocide: court buildings were ruined and the few qualified professionals were either killed, had participated in the genocide or had fled the country.”<sup>23</sup> Reconstructing the judicial system, which the Kagame Administration has undertaken, will require harmonizing the community-based justice system – *gacaca* -- with the formal judiciary of state apparatus in a way that relieves the members of the community from the burden of judging their neighbors in public and therefore risking future retribution while sowing seeds of discord that will germinate with time. As some of the reports note, active participation of community members that are necessary for effective *gacaca* has not always been available. In some instances, it has been difficult to form a quorum of community members. More importantly, “... there is minimal participation during *gacaca* sessions. Community members appear to be afraid of providing a truth account of what they know about the genocidal crimes committed. This is the result of intimidation faced by both survivors and defence witnesses, corruption, the lack of support from local elites and authorities and a general lack of trust and confidence in the

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“Political organizations are prohibited from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination,” and that “Political organizations must constantly reflect the unity of the people of Rwanda and gender equality and complementarily, whether in the recruitment of members, putting in place organs of leadership and in their operations and activities,” do not necessarily ensure that individuals as rational and self-interested people will entertain complete erasure of either gender, cultural or religious memories just because the constitution says so. But how well the law and its practice—constitutionalism—are part of the educational experiences from kindergarten to post-secondary school over generations will determine the strength and sustainability of Article 54 of the Rwandan Constitution.

<sup>23</sup> Amnesty International, “Rwanda: The enduring legacy of the genocide and war,” <http://web.amnesty.org/libraryprint/ENGAFR470082004> accessed 4/24/2005.

Rwandese criminal justice system.”<sup>24</sup> Further, rather than relying on the memories of members of the community, some of whom are victims and/or victimizers, to recount and recollect the traumatic experiences, while therapeutically helpful will be unlikely to change citizens’ perception of the government and the constitution as effective sources of security and justice. Professionalizing the Rwandese judicial system is essential for long term security of the post-colonial, post-conflict state and its citizens. Professional structures can be effectively achieved through regional security arrangements, local and international support with scholarships for training lawyers and judges, infrastructural developments, good governance that progressively transforms the lives of the Rwandese, and more importantly, a government that ensures that the primary responsibility for reconstructing, reconstituting and reforming of the security apparatus in Rwanda is fully undertaken by Rwandese. Consistent with the 2003 Rwanda Constitution, external support should not dictate the content of the reform; the policies and their implementations must be owned by Rwandan citizens for full measure.

#### *Transformative Socio-economic and Governance Policies*

The defeat of Hutu Power Ideology and the ascendancy of the Rwandan Patriotic Front into power remain temporary and will only become irreversible when the core issues that led to the genocide are effectively addressed to the satisfaction of most Rwandans. Relevant issues include the weak institutions of the judiciary as conflict resolution mechanisms, the absence of institutionally structured mechanisms of leadership transition, which offered the Hutu Power Ideology (with the support of Belgium and France) the opportunity to instrumentalize ethnicity as a weapon for the genocidal crimes

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<sup>24</sup> Ibid.

and the reliance on the state's apparatus of violence rather than on its apparatus of justice and security which would have productively guided citizens out of poverty. In this respect, while international support with foreign aid (before the genocide this was about 60% of government budget) is essential in this yet temporary effort, without effective transformative and progressive public policies, the Rwandan state may yet experience large scale violence because idleness, unemployment and lack of hope remain ingredients for strategic manipulation by the few who will not hesitate to sell their private agenda as that of the collective. Put differently, prevention of future genocide in Rwanda demands effective domestic institution building that will serve as framework for sustained domestic economic activities, respect for human rights and dignity, eradication or serious reduction in the level of poverty, access to effective educational opportunities and a strong state with the capacity for protecting individual rights and private and communal property. Depending on how fairly the laws are made and implemented using the 2003 Rwandan Constitution and how economic gains are distributed, and how well the bureaucracy is structured to demand the best of those that are privileged to be part of it, Rwandans will move forward with ease as citizens of the same state or dance to conflicting tunes.

The task for scholars and policy makers in post-genocide Rwanda is to analyze and prescribe how to achieve viable and sustainable economic growth and political stability. This task is at the core of public policy—that which the government or decision makers choose to do or not.<sup>25</sup> It involves the managing of political space to ensure that

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<sup>25</sup> For different definitions of public policy, see Thomas Dye, *Understanding Public Policy*, Eight Edition (New Jersey: Prentice Hall Publishers, 1995): 3-4. Dye argues that definition of public policy in the tradition of David Easton, Harold Lasswell and/or Charles Jones all boil down to decision makers' authoritative allocation of values; therefore, there is no need for elaborate definition of public policy

scarce economic resources are adequately utilized to achieve the most efficient government delivery of social and infrastructural services, which would enable individuals and/or groups to engage in entrepreneurial activities that add value to government efforts to ensure economic growth and political stability in Rwanda. Within this context, and given persistent problems with achieving the right mix of ideas and policies for economic growth and political stability in post-genocide Rwanda<sup>26</sup>, it would make sense that the government of Rwanda receives a breathing space in post-conflict reconstruction by its creditors' forgiving of Rwanda's debt by directly utilizing the value of the debt in infrastructural developments in healthcare delivery, educational, development of the tourism industry, sustainable justice system and regional security arrangements that forestall future violent conflicts. Such efforts will leave the government with the main project of guiding the state and the citizens toward Rwandese-based confidence and capacity building projects that ultimately result in both stable and sustainable political and socio-economic spaces that invite Rwandans from all over the world as well as foreign entrepreneurs to invest and reinvest their resources and energies in a welcoming and vibrant country.

As I have argued elsewhere, change and transformation do not occur in a vacuum and definitely change that appears randomly is often that which has been initiated to achieve strategic outcomes to the benefit of the initiator. Change and transformation are generated by individuals either in positions of power—broadly conceived to include

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beyond whatever governments choose to do or not do. My view of public policy is consistent with Dye's perspective, but goes further to specifically probe whether or not the decision makers understand the structure and relevance of ideas that inform their choice of decision in a given domestic reality. In this sense, ideas are not simply important but central to agenda setting in public policy.

<sup>26</sup> See "Rwanda—Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding," Kigali, May 20, 2004, which is available at <http://www.imf.org/External/NP/L01/2004/rwa/01/index.htm>

intellectual and economic power—or by committed patriots who desire and want to enable positive change in the lives and conditions of the citizens in a given society. Paul Kagame and his RPF colleagues continue to do this since they helped end the genocide and continue to initiate a constitutionally-based system of governance. Thus, public officials have to be receptive to new ideas, and responsible private individuals have to be willing to think through and offer such ideas and insights that will ensure improvement in the economic and political conditions of the people. As Thomas Dye argues, public policy is an art as well as a craft. “It is an art because it requires insight, creativity, and imagination in identifying societal problems and describing them, in devising public policies that might alleviate them, and then in finding out whether these policies end up making things better or worse.”<sup>27</sup> The craft of public policy is in the management of ideas, which are often embedded in the technical knowledge base of decision makers and their associates who then translate the abstract ideas in governance, social structure and statistical data into practical and pragmatic policies for society. Thus, for the policies to be relevant to domestic realities, and for such technical knowledge to have its desired effect in changing the lives of people for the better, analysts and decision makers must be cognizant of the fact that changes are derived from preconceived ideas about how to correct perceived problems or enhance existing good in society.<sup>28</sup> The presupposition here is that decision makers will not adopt an incremental approach to all policy issues

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<sup>27</sup> Thomas Dye (1995): 15. Also, see Yehezkel Dror, *Public Policy Making Reexamined* (New Brunswick: Transaction Publishers, 1989): xii-xxii. Dror argues that public policy making is informed by the expert knowledge of decision makers, but is greatly improved on if grass-roots initiatives and localization are accommodated (p. xvii). In this sense, sources of ideas and the domestic realities where the policies are supposed to enhance the lives of people become important, especially where transformative change is desired as is the case in Africa.

<sup>28</sup> See Kelechi A. Kalu, “The Global Political Economy and African States,” Kieh and Agbese (forthcoming), and, also see, Mahmood Mamdani, “The Politics of Democratic Reform in Contemporary Uganda,” *East African Journal of Peace & Human Rights*, Vol. 2:1 (1995): 91-101

because they are either uncertain about the likely impact of proposed new policies on policy elites and/or their associates. What is necessary therefore, especially in the case of Rwanda is that policy makers be clear and transparent in their efforts to progressively transform the state to an outcome that enhances the well-being of all citizens. Efforts that marginalize or suffocate some citizens in the policy and implementation process on the basis of identities other than citizenship only create room for future alternative preferences that may not augur well for the state. Conversely, policies that aim to change the citizens through erasure of historical memories as the Kagame Administration has done with regard to eradicating any form of ethnic identities in order to create a one-Rwandan identity should also raise questions and public concerns—especially in the context of a constitutional democratic system. The logic of erasure of multiple identities, especially ethnic identities in Rwanda, because of the ethnic dimensions of the 1994 genocide, is based on the assumption that incremental policy changes will ultimately lead to solidifying nationalist identities. However, trying to implement an ideological/nationalist identity of one Rwanda without ethnic differences may not in the long run be helpful or even practical.

In public policy, incrementalism is a strategy in which decision makers use existing or previous policies or programs as bases for modifying new policies.<sup>29</sup> That is the case with the identity harmonizing policy in Rwanda. Such incrementalism in the existing condition of post-conflict reconstruction that demands effective and rapid policies that will move citizens away from intimidation and toward a desire for collectively rebuilding their society needs to be rethought because incrementalism is not only conservative, it is complacent; and as shown in the case of other African states, this

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<sup>29</sup> Thomas Dye (1995): 31

approach has not worked. In the case of Rwanda it may sow the seed of future division as today's children will become tomorrow's adults with questions from their grandchildren that may not be easily answered by reference to an abstract law that ignores history and experience. Ensuring that the educational system is functional and that teachers engage students on the basis of critical and analytical thinking skills may in the long run, help to lay the foundation for a national discourse on whether or not Rwandans want to erase identifying themselves in multiple terms without the unnecessary baggage of disabling differences. While new ideas in military technology are often deployed quickly for destruction, new ideas in cultural and economic development (until now with information technology) are often denied the same rapid approaches to activate and use them for improving the lives of ordinary people. France, China and South Africa under the apartheid regime did not hesitate to supply weapons without questions about what the intended use of the weapons were and the consequences are there for the world community to see. Similarly, these states, especially France, United States and China (members of the UN Security Council that looked the other way before and during the Rwandan genocide) should lead the effort of post-conflict reconstruction of Rwanda by providing the capital and technical knowledge necessary for a net-worked Rwandan state. Such resources should be used to establish and sustain educational institutions that will enable Rwandans educate every citizen, give them the opportunity to earn decent living and participate in public life—all efforts that will ensure that April 1994 never arrives again in Rwanda.

Clearly, ideas conceived for correcting problems in one context may not be relevant for another situation. Hence, paying attention to ideas and their origins will

greatly help clarify why and how the intellectual paradigm from western ivory towers designed for utmost efficiency in advanced democratic and industrialized states (such as the aid driven proliferation of NGOs in post-genocide Rwanda) may not always be relevant for progressive and productive change in places where efficient institutional structures are yet to materialize; especially in weak state institutional structures that made genocidal crimes possible. For example, conceptualizing economic development for Rwanda in the context of industrialization based on privatization policies that depend on external funds, without first having viable and enforceable land ownership laws and strategies for domestic revenue mobilization, only creates conditions of dependency on external influences without hope of deep structural transformation of the Rwandese economy. Thus, developing the institutional structures with attention to land reform will greatly enhance the process of ownership and economic participation by all Rwandans in the reconstructed nation. Land reform that is effectively enforced within the framework of a reformed judicial system as mechanism for conflict resolution is *sine qua non* to all other strategies of economic viability, development and maintenance of security as well as other strategies that are industrially-minded to ensure that citizens never fall victims to promises of land and property in order to participate in genocide or other forms of intimidation by fellow citizens.

Further, the international financial institutions are not independent institutions from the governments of industrialized countries whose national interests are consistently served by these institutions and whose national interests also led them to ignore the news before and during the genocide in Rwanda. As such, ideas on the policy agenda of the IMF and its sister institutions are specifically set to advance, first and foremost, the

interests of both industrialized countries and their corporate elites. It was that focus on the perceived national security interests of France, United Kingdom, Belgium and the United States (among others) that led them to look the other way while Rwanda bled. While apologies (Clinton) and remorse (Kofi Anan) are good, both must be followed by active participation in reconstructing Rwanda and this can be substantively done by concretely helping the government and the people along the lines suggested above. Contrary to past tendency by African leaders, Paul Kagame and his Administration must not blindly implement contextually and externally derived, but irrelevant, policies in Rwanda without harmonizing those policies with the realities on the ground. This is significant because, conceptually, the genocide started with the Belgians' fascination with instrumentally measuring and categorizing the Rwandans along perceived ethnic differences following the First World War. How ideas form and change, and how decision makers ensure that such ideas inform public policies is the engine of governance. Consequently, how ideas are generated and how new ideas become part of existing political and therefore policy discourses in a state, organization and society should concern scholars and policy makers in Rwanda.<sup>30</sup> Given that new and contextually relevant ideas have to be institutionalized to ensure that they percolate through a society, irrespective of the sources of such ideas, we must ask: do those who generate ideas have to be part of a government or policy agency? If the response is no, then Paul Kagame's Administration should build sustainable institutional structures for socio-economic policies by also sourcing ideas from Rwandans irrespective of their ideological or regional origins as long as the ideas lead to serious debates and policy

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<sup>30</sup> For example, see Sheri Berman, "Ideas, Norms, and Culture in Political Analysis," *Comparative Politics* (January 2001): 231-250

frameworks that progressively advance the cause of Rwandan society. The major requirement in this instance must be that such advancement should be away from genocidal and other forms of mass violence and firmly towards the use of state apparatuses for conflict management and resolution on the basis of the issues at stake rather than on the basis of the people involved.

*Conclusion: The Future is Pregnant in Rwanda*

Articles 76.2 and 82 of the 2003 Rwanda Constitution provides for significant representation of women in government; for example 30% of the Senate seats are reserved for women. This is significant because to the extent that the majority of the citizens who happen to be women are party to making public policies that directly affect the contributions and conditions of women in society, to that extent will such a society give birth to effectively nurse and empower its children. To the extent that a society's women (whether they desire to give birth or not) are respected for their capacity for participation in human creativity and development, to that extent will the society's children—male and female respect each other and develop a collective sense of belonging to the same community. However, this sense of optimism can only be secured at the national level through the purposeful actions of government officials; especially the actions of civil servants whose implementation of public policies, health, education and infrastructural projects more directly affect the citizens. Thus, an efficient and fair Rwandan government will establish an effective socio-economic and governance structures. It will manage scarce resources transparently and inclusively based on verifiable criteria and effectively institutionalize its functions to regulate private

entrepreneurial activities without concentrating power and wealth production at the center and without undermining the capacity of the state as a mediator and guarantor of fair competition. It will use its capacity for building an effective educational system that directly engages the mind—liberal arts education—enabling citizens to be creative in structuring issues that are relevant for nation-building in Rwanda. An effective government's public policies will target post-conflict reconstruction in Rwanda rather than responding to external economic conditionalities that serve the interest of International Financial Institutions. All these will enable and ensure that the 2003 Rwanda Constitution lives as a conflict management and resolution instrument as well as the effectiveness of the government in its transformational/transactional visions and roles.

In the end, how effective the government is in the management of public resources—both material and human—and the extent to which the citizens are brought into that process as participants and beneficiaries of government policies will determine citizens' support and consolidation of stable political spaces in Rwanda. In this respect, a governing strategy that is diffused horizontally and vertically with accountability throughout Rwanda to deliver basic services like education, healthcare, energy, water and other infrastructural developments will ensure social cohesion, community involvement and individual civic responsibility consistent with the vision inherent in the 2003 Rwanda Constitution. More significantly, the Paul Kagame Administration has tremendous challenge and opportunity to ensure that Rwanda, with the lessons of its recent history, marches forward with hope and determination for full and effective state and nation-building.

The government has already started well (albeit not to everyone's satisfaction) by presiding over the ratification of the constitution and engaging in major rebuilding efforts. History will be kind to Paul Kagame and his RPF colleagues to the extent that they present themselves and act as mediators of genocide and post-genocide Rwanda by seeing themselves as a transitional administration whose task is to re-build essential and sustainable institutions for development within the foregoing framework of democratic and constitutional governance. The Kagame Administration can leave these legacies to future Rwandans by ensuring that its approaches to crafting and ratifying the constitution is followed by a transparent and consistent enforcement/implementation of both the spirit and letter of the constitution they will bequeath to all Rwandans. Put simply, constitutionalism here is understood to mean that no one will be above the law; and that it is recognized by all that the Rwandan state is as legitimate, strong, and effective as the custodians of that state power and its authority. Further, all elected officials must be desirous and capable of carrying out relevant central functions of security and economic development to the benefit of all citizens. In this respect, the administration has to ensure that horizontally and vertically, all institutional structures that are part of the government adopt stated and implied constitutional processes in conflict resolution and management. Substantively, this is more likely if effective training—both formal education and administrative workshops—results in a bureaucracy that is staffed by committed Rwandans on the basis of merits. However, the government must also ensure that consistent with the 2003 Rwanda Constitution<sup>31</sup> meritocracy does not result in the establishment of another level of class structure that could potentially undermine

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<sup>31</sup> The Constitution of the Republic of Rwanda, 2003, (Article 10) states that “The human person is sacred and inviolable. The State and all public administration organs have the absolute obligation to respect, protect and defend him or her.”

individual or collective sacred and inviolable human essence that is cherished by Rwandans. An effective governance system that is based on a liberal constitutional democratic process that ensures that government officials are competent in the performance of their offices and are committed to the well-being of the Rwandan state and its citizens, and that supports zero-tolerance for corruption by all officials, will be an exemplary governance system that lays a strong foundation by consolidating state in which all Rwandans will live without fear of the return of a genocidal ideology.

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