

# NGO Justice: African Rights as Pseudo-Prosecutor of the Rwandan Genocide

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### ABSTRACT

A London-based start-up NGO named African Rights became famous overnight in 1994 by publishing a detailed 750 page volume about the Rwandan genocide less than three months after it had ended. The report and subsequent African Rights publications named hundreds of names of alleged *génocidaires* and purported to lay the groundwork for their criminal prosecution. Based on numerous interviews, the article shows that African Rights was coopted in the first weeks of the genocide by the Rwandan Patriotic Front (RPF) and that the report was produced with its active support. The article further shows that after 1994, African Rights gradually became a single-issue NGO (focused on the Rwandan genocide) and proxy for the new RPF-dominated Rwandan government. In 2003, African Rights became an outright RPF-front organization funded by and working closely with the RPF's intelligence apparatus. Besides telling the untold story of African Rights, the article demonstrates the impact of its publications on the International Criminal Tribunal for Rwanda, on scholarship, and on mass media. It concludes that African Rights was instrumental in shaping and spreading an easily consumable one-sided narrative of the Rwandan conflict and that the resulting *pensée unique* contributed to RPF impunity.

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## I. INTRODUCTION

The most important source of publications about the Rwandan genocide is the NGO African Rights (AR). Virtually unknown before April 1994, this London-based human rights organization published approximately forty titles ( $\pm$  4,500 pages) on the genocide and its aftermath.<sup>1</sup> No single institution or individual published more.

African Rights publications on Rwanda can be divided roughly into three categories: oral history reports, policy papers, and “human rights reports.” The latter brought notoriety to AR because they named names and purported explicitly to lay the groundwork for criminal prosecutions. As its 1997 activity report stated, one of AR’s goals was “to document the genocide, expose the perpetrators and encourage the work of national tribunals and the United Nations International [Criminal] Tribunal [for Rwanda].”<sup>2</sup> Thus, AR saw itself as *pseudo-prosecutor* of the Rwandan genocide.

Being a pseudo-prosecutor of the genocide even became AR’s *raison d’être*. Of a total of some fifty reports published between its founding in December 1992 and its going dormant in 2009, nearly forty deal with Rwanda. For reasons explained later, the “life” of AR can be divided in three periods: December 1992 to April 1994: five reports on Somalia and Sudan, none on Rwanda; May 1994 to 1998: twenty-one reports of which twelve were on Rwanda; 1999–2009: some thirty reports, all but one on Rwanda. Hence, despite its broad name, AR for most of its existence was a single issue and single country NGO.

This article focuses on the period May 1994–1998 and the publication that made AR a sensation, viz. *Rwanda: Death, Despair and Defiance* (hereinafter *Death, Despair and Defiance*). The first edition of this massive volume (750 pages) came out in September 1994, and a second expanded edition (1200 pages) was published in August 1995. African Rights clearly was far ahead of everyone else. Classics like Gérard Prunier’s *The Rwanda Crisis: History of a Genocide*, Philip Gourevitch’s *We Wish to Inform You that Tomorrow We Will Be Killed With Our Families*, and Human Rights Watch and Fédération Internationale des Ligues des Droits de l’Homme’s *Leave None to Tell the Story: Genocide in Rwanda* did not come out until 1996, 1998, and 1999 respectively. Meanwhile scholars, journalists and writers, diplomats, and aid workers eagerly read *Death, Despair and Defiance*. In the Office of the Prosecutor of the fledgling International Criminal Tribunal for Rwanda (ICTR), *Death, Despair and Defiance* became known as “the Bible.” One would be hard pressed to find a more influential NGO report.

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1. Based on a WorldCat search. I did not double count translations or second editions.  
2. African Rights, *Report and Financial Statement 2* (31 Jan. 1997) (on file with author).

This article is the second part of an attempt to explain why the ICTR failed to prosecute any member of the victorious Rwandan Patriotic Front (RPF). In the first part, *Let's Be Friends: the United States, Post-Genocide Rwanda, and Victor's Justice in Arusha*,<sup>3</sup> I argue that Washington's relationship with the new RPF-dominated Rwandan government—from an almost accidental support to nearly unconditional backing—goes far in explaining RPF impunity. In the present article I suggest a second reason: the RPF's enormous political and moral capital after “ending the genocide against the Tutsi.” This “genocide credit,” I further submit, was the result of a *pensée unique* according to which heroic Tutsi rebels fought a just war against Hutu *génocidaires*. To trace the origins of this *pensée unique*—which has been crumbling for some years now due to declassification of documents, some stunning ICTR judgments, and a string of defections of top RPF officials—I began revisiting early Rwanda reports and literature, including *Death, Despair and Defiance*. As I was reading the latter, my attention began to shift to the NGO behind it.

The remainder of the article is organized as follows. Section II identifies numerous red flags about African Rights and *Death, Despair and Defiance* that went unnoticed at the time. Section III tells the untold story of AR as a “London-based NGO” and the circumstances in which *Death, Despair and Defiance* was produced. Section IV speculates about the reasons why AR did what it did and why we missed or ignored so many red flags. Section V considers *Death, Despair and Defiance's* impact and argues that it contributed to RPF impunity. Section VI concludes the article.

I want to emphasize that my criticism is directed against the foreign directors of African Rights, not against its Rwandan staff whose important contribution to oral history I acknowledge.

## II. RED FLAGS MISSED OR IGNORED

The Rwandan civil war and genocide against the Tutsi minority began in April 1994<sup>4</sup> and ended in July when the Tutsi dominated RPF declared victory. Barely two months later, African Rights published *Death, Despair and Defiance*, also known as “the yellow book” because of its yellow cover and telephone book size.

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3. Luc Reyndams, *Let's Be Friends: The United States, Post-Genocide Rwanda, and Victor's Justice in Arusha*, Institute of Development Policy and Management (IOB) of the University of Antwerp Discussion Paper (1 Jan. 2013).
  4. The civil war actually had started in October 1990. An internationally monitored ceasefire was in place from August 1993 until 7 April 1994.

This section consists mostly of a content analysis of *Death, Despair and Defiance*<sup>5</sup> and identifies numerous red flags: *Death, Despair and Defiance's* methodology is most obscure; the AR field investigator enjoyed *unusual privileges* and conducted *hundreds of in-depth interviews* in a short time; the authors of *Death, Despair and Defiance* had access to an *instant archive*; *Death, Despair and Defiance* contains a *grand narrative* of the conflict and at the same time *overwhelms by its details*; AR publications *echoed* RPF positions and systematically *defended* the RPF against criticism; and finally, *Death, Despair and Defiance* was *endorsed* by the RPF. I begin, however, with red flags about the authors of *Death, Despair and Defiance* and African Rights as an organization.

### A. Start-Up NGO

The reader who picked up a copy of *Death, Despair and Defiance* in 1994 or 1995 probably had not heard of African Rights before. Amnesty International (AI), Human Rights Watch (HRW), Lawyers Committee for Human Rights, and the Fédération Internationale des Ligues des Droits de l'Homme (FIDH) dominated the world of professional international human rights organizations, and only they seemed to have the resources and expertise to produce a volume like *Death, Despair and Defiance*.

Who was this new player? The front page of *Death, Despair and Defiance* simply states "A Publication of African Rights." Then follow an address in London and a telephone and fax number. On the back of the front page are the names of two "co-directors," Rakiya Omaar and Alex de Waal, plus a mission statement:

*African Rights* is an organization dedicated to working on issues of human rights, conflict, famine and civil reconstruction in Africa. The urgent motivation for setting up African Rights is that we have become acutely aware of the limitations upon existing human rights, humanitarian and conflict-resolution approaches to Africa's most pressing problems.

Any solution to Africa's problems—the emergency humanitarian needs just as much as the long-term political reconstruction of the continent—must be sought primarily among Africans. International organizations should see their role as primarily facilitating and supporting attempts by Africans to address their own problems. It is Africa's tragedy that the existing institutions for addressing these problems have not looked to the African people for answers. African Rights tries to give a voice to those concerned with these issues, and to press for more accountability from the international community in its various operations in Africa.<sup>6</sup>

5. All references are to the first edition of September 1994. AFRICAN RIGHTS, RWANDA: DEATH, DESPAIR AND DEFIANCE (1994) [hereinafter DEATH, DESPAIR AND DEFIANCE].

6. This text appears on the back of the front page of most African Rights publications between 1993 and 1999.

The mission statement indicates that AR, although based in London, sets itself apart from Western NGOs and that it advocates “African solutions” to “African problems.” This is all African Rights discloses about itself. *Death, Despair and Defiance* does not mention any staff other than Omaar and de Waal nor does it say when, how, or where AR is incorporated. The lack of organizational transparency is compounded by a lack of financial transparency. NGOs usually need money but AR appears to be an exception. *Death, Despair and Defiance* does not solicit or acknowledge financial support, leaving readers guessing how the organization is financed.<sup>7</sup> This would have mattered less had it published an annual report.

Readers also might have confused African *Rights* with *Africa Watch*, then one of the regional divisions of Human Rights Watch. One would indeed have expected a volume like *Death, Despair and Defiance* to come from a powerhouse like HRW. Venturing into the field of humanitarian law, HRW had published *War Crimes in Bosnia-Herzegovina* in 1992. This was a double volume of nearly 800 pages and the first of its kind for a human rights NGO.

Adding to the possible confusion with HRW was the fact that, prior to founding African *Rights*, Omaar and de Waal had worked for *Africa Watch* as director and associate director respectively. Omaar’s public opposition against *Operation Restore Hope*, a US-led, UN-sanctioned military intervention in her native Somalia, led to her abrupt dismissal in December 1992. “[HRW] policy was to call for intervention, but when it was announced she completely reversed herself without consulting anyone. She switched publicly.”<sup>8</sup>

## B. Overnight Rwanda Experts

Who is this activist, entrepreneurial duo that parted from HRW and established a rival NGO? Rakiya Omaar, born in Somalia, is a naturalized British citizen with degrees in history (Oxford), law (Cambridge), and political science (Geneva). In 1988, she became executive director of the newly established *Africa Watch*. People who know her invariably describe her as passionate, highly intelligent, a workhorse, and outspoken. “Faced with even mild disagreement, she does not concede, but presses home her argument with even greater force.”<sup>9</sup>

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7. AFRICAN RIGHTS, RWANDA: WHO IS KILLING; WHO IS DYING; WHAT IS TO BE DONE 6 (1994), available at <http://www.francerwandagenocide.org/documents/WhosKillingMay1994.pdf> [hereinafter WHO IS KILLING; WHO IS DYING] (acknowledges financial support from Dutch Interchurch Aid, but the acknowledgment is not repeated in DEATH, DESPAIR AND DEFIANCE, *supra* note 5).

8. Richard Dowden, *Somali Lawyer Sacked for Dissent*, INDEPENDENT, 13 July 1993.

9. *Id.*

Alex de Waal, despite his Dutch name, comes from a prominent British intellectual family. Having earned a Ph.D. in social anthropology from Oxford, he joined Africa Watch in 1989 and became a regular contributor to *The Times Literary Supplement*. When HRW fired Omaar for insubordination, de Waal resigned “in solidarity.” Omaar and de Waal did not leave quietly and argued their case in the opinion section of *The New York Times*.<sup>10</sup> Together they founded a new NGO whose mission statement is a permanent reminder of their tumultuous departure at HRW.

The former Africa Watch director and associate director undoubtedly brought talent, human rights expertise, media connections, and arguably also credibility to AR. What they did *not* bring to their new organization was Rwanda expertise (see Section III B)—but only insiders would have known this.

### C. Obscure Methodology

“This report is based on seven weeks of research in Rwanda by African Rights, and additional research in Burundi, Tanzania, Nairobi and Europe” is all *Death, Despair and Defiance* reveals about methodology.<sup>11</sup> Even an amateurish NGO report usually contains a paragraph on methodology, and a professional report generally contains a section if not a chapter.<sup>12</sup> For a massive volume like *Death, Despair and Defiance*, the statement is almost a mockery because it fails to provide the most basic information: Who conducted field research? When was the AR researcher in Rwanda and where? Under what conditions did he or she travel inside Rwanda? To whom did he or she have access, and to whom not? Did he or she hire local intermediaries? How were the persons interviewed selected? In what conditions were interviews conducted? How were they recorded? How many persons were interviewed? What language was used? Who conducted “additional research in Burundi, Tanzania, Nairobi and Europe”? Who did the documentary research? *Death, Despair and Defiance* leaves its readers guessing about all these questions.

The main text is equally vague: it merely states that “African Rights interviewed,” “African Rights visited,” or “a representative of African Rights

10. Rakiya Omaar & Alex de Waal, *Letters to the Editor: The UN and Somalia*, N.Y. TIMES, 17 Dec. 1992.

11. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at ii.

12. Compare e.g. with the joint FÉDÉRATION INTERNATIONALE DES LIGUES DES DROITS DE L’HOMME (FIDH), AFRICA WATCH, UNION INTERAFRICAINÉ DES DROITS DE L’HOMME ET DES PEUPLES (UIDH) & CENTRE INTERNATIONAL DES DROITS DE LA PERSONNE ET DU DÉVELOPPEMENT DÉMOCRATIQUE (CIDPDD/ICHRDD), REPORT OF THE INTERNATIONAL COMMISSION OF INVESTIGATION ON HUMAN RIGHTS VIOLATIONS IN RWANDA SINCE OCTOBER 1, 1990 (Alison Des Forges, trans. 1993), available at <https://www.hrw.org/sites/default/files/reports/intlhrviolations393.pdf>.

witnessed." Only an attentive reader of *The Times Literary Supplement* had a chance to discover the identity of the "representative." In an article of July 1994, Alex de Waal referred to his colleague "Rakiya Omaar [who] recently returned from six [sic] weeks in Rwanda."<sup>13</sup>

#### D. Unusual Privileges

The red flag that caught my attention was a statement in AR's interim report *Rwanda: Who is Killing, Who Is Dying, and What is to be Done*: "African Rights has travelled extensively in RPF-controlled areas of Rwanda, *unescorted* by RPF soldiers or civilian members."<sup>14</sup> Any foreigner who had been to Rwanda in the period 1990–1994 would have asserted that the RPF *never* allowed him or her to travel freely in the zone under its control. Here is what a Human Rights Watch representative experienced:

When a researcher from Human Rights Watch, accompanied by a journalist, was investigating the June 19, 1994 massacre at Mukingi, she was interrupted by twenty-five [RPF] soldiers armed with rocket-propelled grenade launchers and machine guns who arrived in two vehicles from one direction while a foot patrol of another ten soldiers came on the double from the other. The commanding officer, who would not give his name, directed the two women to get in his vehicle. He questioned them, including about the identities of persons whom they had talked with, and then escorted them from the area. When the researcher returned to her lodgings in the evening, an officer of the DMI [Rwandan Directorate of Military Intelligence] was waiting to question her further about her work that day.<sup>15</sup>

Why would the RPF have treated the African Rights representative differently? The claim that Omaar traveled unescorted is not repeated in *Death, Despair and Defiance*, perhaps because it was too implausible. Another question is how Omaar could travel *so much*. If we piece together the dates and places mentioned in the footnotes we can trace where and when she went in April–June 1994: arrival in Nairobi on or about 24 April (date of first interview); travel to Ngara (Tanzania) on or about 2 May; crossing into Rwanda at Rusumo on 5 May; back to Nairobi on or about 10 May; back to Rwanda (via Kampala) on or about 13 May; crossing into Burundi on 4 June; back to Rwanda on 5 June; crossing again into Burundi on 9 or 10 June; back to Rwanda on 11 June; and an interview in Kigali on 19 June. That's

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13. Alex de Waal, *Ethnicity and Genocide in Rwanda*, *TIMES LITERARY SUPPLEMENT*, 22 July 1994.

14. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 26, emphasis added. The claim is not repeated in *DEATH, DESPAIR AND DEFIANCE*, *supra* note 5 (see Section III D of this article).

15. ALISON DES FORGES, HRW & FÉDÉRATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME (FIDH), *LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA* 723–24 (1999).

a lot of travel and border crossings in a short time, especially for someone who arrived in the region without any preparation (see Section III B).

### E. Hundreds of Interviews

Plowing through *Death, Despair and Defiance*, one realizes that Rakiya Omaar's first visit to Rwanda was exceptionally productive. She writes that she collected "sufficient testimonies on the massacres alone to fill a large book."<sup>16</sup> *Death, Despair and Defiance*, in other words, presumably contains only a selection of her recorded interviews. I indexed them by name, date, and place and counted 220 over forty-four days, or five per day. That is a lot of interviews under any circumstances.

The quality and length of the interviews is also remarkable given that most survivors, understandably, "were still in a state of shock."<sup>17</sup> *Death, Despair and Defiance* itself describes the testimonies as "detailed, compelling and consistent. They fit precisely with the concrete evidence available and they concur with one another."<sup>18</sup> The average length appears to be approximately one to one-and-a-half pages, which means that 250–300 pages of *Death, Despair and Defiance* is testimony.

*Rwanda 1994: a Report of the Genocide* by Physicians for Human Rights (UK) provides a useful comparison. Two delegates spent twelve days in Rwanda in July 1994, "examining and recording evidence from witnesses and sites of massacres."<sup>19</sup> Their mission had similar objectives and the situation on the ground was still chaotic. Together they collected twenty interviews and had brief chats with children in a hospital.<sup>20</sup> This is just a fraction of the interviews recorded by African Rights.

Finally, it is noteworthy that Omaar was able to interview a broad range of Rwandan officials and politicians but, for some reason, none from the RPF. The only RPF official quoted is Theogene Rudasingwa speaking at a press conference in Nairobi.<sup>21</sup> The conspicuous absence of interviews with RPF officials coupled with the claim that African Rights had traveled unescorted in RPF territory suggests an attempt by the authors to avoid the impression of any association with the rebel army.

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16. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at 208.

17. *Id.* at 740

18. *Id.* at vii.

19. PHYSICIANS FOR HUMAN RIGHTS (UK), RWANDA 1994: A REPORT OF THE GENOCIDE (1994).

20. See *id.* One of the delegates, Peter Hall, told me that he and his colleagues used all their interviews for their report. Email from Peter Hall (12 Feb. 2015).

21. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at 682.



## F. Instant Archive

Neither Omaar nor de Waal had shown any particular interest in Rwanda before 1994.<sup>22</sup> Their terrain was Somalia and Sudan, not this tiny franco-phone country. And yet, *Death, Despair and Defiance* quotes or references sources which only a few Rwanda experts might have had on file at the time. Somehow African Rights managed to obtain in five months' time—before the Internet—translated copies of crucial documents, Rwandan radio and TV broadcasts, and “grey literature” on the political and human rights situation in Rwanda since the late 1980s. I indexed them and counted some fifty documentary sources that could not be traced via the then conventional channels. I also counted about twenty radio and TV broadcasts whose content was not ordinarily transcribed and not carried by international press and news agencies.

Before Omaar and de Waal could even begin chasing these documents and transcripts, they had to know that they existed. Even if one assumes they did have this information, it is still unlikely that either had the time to collect them themselves. De Waal in London was crash studying the (recent) history of Rwanda—he published a review essay of Catharine Newbury's 1988 standard work in *The Times Literary Supplement* of 1 July 1994<sup>23</sup>—and intensively monitoring the contemporary media coverage of the conflict. That summer AR also published a report on sexual harassment and violence in schools and universities in Africa. Omaar, as we have seen, was roaming across the Great Lakes region and interviewing nonstop.

The authors of *Death, Despair and Defiance* at least acknowledge receiving help with collecting sources. In the foreword they thank the “many Rwandese . . . in Rwanda and abroad, [who] went to great lengths to provide us with invaluable material and information [and] to translate documents.”<sup>24</sup> The question is *who* these Rwandese were and *why* they would rush—in the midst of war and slaughter—to find, copy, and translate all sorts of documents and transmit them to Omaar in Rwanda or de Waal in London. And however impressive AR's Rwanda archive, there is not a single reference to an RPF document or statement. How could its antennas not have picked up the important RPF press releases of April, May, and June 1994?

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22. The author researched the archives of Africa Watch/Human Rights Watch for the period 1988–1993 and did not find any indication that either had worked on Rwanda. The archives are available at the Butler Library of Columbia University in New York.

23. Alex de Waal, *The Genocidal State: Hutu Extremism and the Origins of the “Final Solution” in Rwanda*, *TIMES LITERARY SUPPLEMENT*, 1 July 1994.

24. *DEATH, DESPAIR AND DEFIANCE*, *supra* note 5, at ii.

## G. Grand Narrative

Besides detailed accounts of the massacres at the local, regional, and national level, *Death, Despair and Defiance* also contains an elaborate two-pronged grand narrative of the conflict.

The first prong is that the genocide was planned years in advance (the “genocide-as-conspiracy” narrative). After just three weeks in Rwanda, AR’s investigator had compiled “extensive evidence” indicating that the massacres were “a carefully planned and deliberately orchestrated attempt to kill all actual and potential opposition to the Hutu extremists who assumed power following the death of President Habyarimana on 6 April.”<sup>25</sup> Four months later, extensive evidence has become “overwhelming evidence,”<sup>26</sup> enough for a fifty-page chapter “Preparing for the Apocalypse.” The mastermind of the genocide is also known: Colonel Théoneste Bagosora. *Death, Despair and Defiance* quotes a witness who had heard him say after the signing of the Arusha Accords in August 1993 that he was returning to Kigali to “prepare for the apocalypse.”<sup>27</sup> AR even knows how, why, and by whom the president was assassinated. “Three missiles were fired at the President’s French Mystère Falcon aeroplane, either from Kanombe military base or immediately adjacent to it. Two missiles exploded, and the plane crashed in the grounds of the Presidential palace.”<sup>28</sup> AR further claims that there is “strong evidence” that the missiles were of French origin<sup>29</sup> and that “powerful circumstantial evidence” suggests the attack was the work of the Presidential Guard “as part of a coup attempt to bring hard line politicians to power and to destroy the peace process and transition to democracy.”<sup>30</sup> And to leave no doubt about Bagosora’s role, *Death, Despair and Defiance* adds that he is “widely attributed to have been responsible for the downing of the Presidential plane.”<sup>31</sup>

The second prong of the grand narrative is that the “international community” stood by and abandoned Rwanda (this “bystanders-to-genocide” narrative is captured by the title of the book’s eighteenth chapter: “The International Response: Hear No Evil, See No Evil”) and that the RPF fought to stop the genocide (for example, Chapter 16 is titled “The Rwandese Patriotic Front Offensive”). There is not one word, however, about the RPF’s categorical rejection of any sort of armed humanitarian intervention (see Section II I).

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25. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 10.

26. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at 42.

27. *Id.* at 79 (*internal quotations omitted*).

28. *Id.* at 88.

29. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 38.

30. *Id.* at 10.

31. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at 105.

## H. Overwhelming Details

*Death, Despair and Defiance* overwhelms not only by its scope but also by its details. The testimonies, the description of the preparations for the massacres, the biographical information of alleged “killers”—everything is extraordinarily detailed. Like a real yellow book, *Death, Despair and Defiance* contains *thousands* of names of persons, places, hospitals, schools, parishes, political parties, newspapers, magazines, companies, NGOs, etc. An index with just the names would be another book.

Then there is the list of killers, more than 200 in the first edition and more than 600 in the second. Most names are followed by detailed biographical information. For example:

Noël Hitimana is a former journalist at Radio Rwanda. He was fired for alcoholism. He was unemployed for some years and later recruited by RTLM. He did his training in Zaire. He is believed to have been wounded when the RPF attacked RTLM.<sup>32</sup>

Kantano Habimana. He studied journalism in Leningrad. His previous jobs included working as a journalist at the Rwandese Office of Information, at *Imvaho*, a government weekly and at *Umurwanashyaka*. He was also the founder of the newspaper *Shishoza*. He was a cadre of MRND at the préfecture of Butare.<sup>33</sup>

Col. Pierre-Célestin Rwagafirita, retired, was chairman of the MRND in Kibungo. His command post had been Kabarondo. African Rights has collected a number of testimonies from the préfecture of Kibungo which implicate him directly in the massacres in that region. He ensured that the interahamwe of Kabarondo were well-armed and led the attacks carried out by gendarmes in Kabarondo and Kayonza.<sup>34</sup>

So much detail reeks of the work of an intelligence apparatus. The RPF itself had published a list of 220 “masterminds” in July, and the first twenty-five names on that list are without exception on the AR list.<sup>35</sup> That is a *striking coincidence*.

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32. *Id.* at 125.

33. *Id.* at 123.

34. *Id.* at 107.

35. The RPF list of “masterminds” is included in ANDRÉ GUICHAOUA, *LES CRISES POLITIQUES AU BURUNDI ET AU RWANDA (1993–1994)*, at 723–27 (1995); *DEATH, DESPAIR AND DEFIANCE*, *supra* note 5, makes no mention of the RPF list.

## I. Echoing the RPF

Another red flag are the similarities between RPF and AR views and positions. Here are some examples:

On the massacres:

RPF: The massacres were carefully planned in advance and systematically executed to ensure the complete extermination of those perceived as opponents of the regime.<sup>36</sup>

AR: [The] killings of April–May 1994 were a carefully planned and deliberately orchestrated attempt to kill all actual and potential opposition.<sup>37</sup>

On what *not* to do:

RPF: The time for U.N. intervention is long past. The genocide is almost completed.<sup>38</sup> The Rwandese Patriotic Front declares that it is categorically opposed to the proposed U.N. intervention force and will not under any circumstances cooperate in its setting up and operation.<sup>39</sup>

AR: It is too late for the United Nations to have a major positive impact in terms of saving lives in Rwanda'.<sup>40</sup> [Should the UN use] Chapter VII of the UN Charter to send troops to enforce a cease-fire . . . the results would be disastrous.<sup>41</sup>

[I]t is the Rwandese themselves who have the capacity to halt the killing.<sup>42</sup>

On what to do:

RPF: The United Nations should take a leading role in ensuring that the members of the regime responsible for the massacres are not accorded legitimacy by any government or International organisation.<sup>43</sup>

AR: [A]ll [Rwandan] ambassadors should be expelled from their embassies around the world. Rwanda should be expelled from the Security Council of the United Nations. No representatives of the government should be allowed to visit abroad on official or personal business.<sup>44</sup>

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36. Statement by the Political Bureau of the Rwandese Patriotic Front on the Proposed Deployment of a U.N. Intervention Force, 30 April 1994, at 1, available at <http://nsarchive.gwu.edu/NSAEBB/NSAEBB117/Rw29.pdf> [hereinafter Statement by RPF].

37. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 10.

38. Statement by RPF, *supra* note 36, at 4.

39. *Id.*

40. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 53.

41. *Id.* at 51.

42. *Id.* at 44. African Rights later put the blame for “blocking and slowing down UN attempts to become re-involved in Rwanda during May and June” on the US government. See DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at xv.

43. Statement by RPF, *supra* note 36, at 3.

44. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 53.

On US Ambassador David Rawson:

RPE: Rawson was a disaster as an Ambassador for the United States in this country . . . If the Ambassador had provided better counsel to Washington, the genocide might have been prevented.<sup>45</sup>

AR: David Rawson . . . bears great responsibility for the formulation of US policy—or lack of it—on Rwanda.<sup>46</sup>

On democracy and multi-partyism:

RPE: Democracy—it's definitely one answer. . . . But what kind of democracy? . . . Certainly there is a problem with forcing multi-partyism. If you rush into elections, the winner takes everything and you get back to the same questions. First you have to politicize the population. They have to understand what the process means to them.<sup>47</sup>

AR: Democracy and peace are certainly the aims a future government should aspire to, but time should be taken to explore new formulae that may promise greater stability. . . . In a situation of actual or potential communal violence, a multi-party system may become merely a means of mobilizing communities for violence. Thus there is a strong case—as in Uganda in 1986—for severely restricting party political activity, at least for a while.<sup>48</sup>

Coming from an NGO founded on the belief that African problems require African solutions, some of these views do not surprise. More suspicious, however, are the similarities of views about the political future of Rwanda and Ambassador Rawson. There is no reason why Omaar or de Waal would have known about Rawson's diplomacy, unless the RPF told them.

## J. Defending the RPF

Human rights reports usually do not *defend* a warring party. Yet, *Death, Despair and Defiance* does exactly that. The RPF's resumption of the war is presented as humanitarian intervention and, therefore, a ceasefire was out of the question:

The RPF launched a military offensive on 7 April with two stated aims: to relieve its battalion stationed in Kigali . . . and to save Tutsi and opposition Hutu from being massacred. These motives are *doubtless genuine* [sic].<sup>49</sup> The RPF sees its

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45. Raymond Bonner, *Top Rwandan Criticizes U.S. Envoy*, N.Y. TIMES, 8 Nov. 1994.

46. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at 692.

47. Mark Huband, *Church of the Holy Slaughter*, OBSERVER, 5 June 1994.

48. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 47.

49. *Id.* at 4 (emphasis added).

military advance as a form of humanitarian intervention—as it controls more territory, it stops the genocide. United Nations proposals to halt the advance by obtaining a ceasefire appear to amount to an attempt to recognize the government and enable the extremists to continue the killing.<sup>50</sup>

Allegations that the RPF was massacring civilians were “hysteria” and journalists who ran such “stories” were not doing their work properly:

The interim government has frequently alleged massacres of civilians by the RPF. . . . There is no substance to these accusations. Of more concern are the claims by international agencies and journalists that the RPF has engaged in widespread and indiscriminate killing of civilians. In early May, officials of the UNHCR . . . began to publicize allegations of atrocities by the RPF. . . . Certain media outlets repeated UNHCR’s allegations without any verification or independent, credible witnesses. The result was highly inflammatory reporting that discredits both UNHCR and the journalists who ran the stories without doing their homework. . . . More detached observers were quick to appreciate the extent to which the hysteria was being manufactured and manipulated by the killers.<sup>51</sup>

Proven killings by the RPF were downplayed as “vengeance” by individual troops.<sup>52</sup> A well-known case is the murder in early June of Archbishop Vincent Nsengiyumva and thirteen Catholic priests. Alex de Waal, who would not visit Rwanda until 1998 (see Section III G), reassured the readers of *The Times Literary Supplement* that these murders were “an unsanctioned act by individual soldiers acting contrary to orders.”<sup>53</sup>

## K. RPF Endorsement

Only visitors to Rwanda could have noticed the final red flag. *Death, Despair and Defiance* was displayed and sold in the two most strategic places in Kigali, viz. the airport and Hotel des Mille Collines. For a government known for its obsessive control of information, this was tantamount to an endorsement. *Death, Despair and Defiance* thus became the semi-official primer on the genocide for the many internationals who streamed into Rwanda after the war (see Sections III G and V).

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50. *Id.* at 43.

51. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at 645–47.

52. *Id.* at 648–50.

53. de Waal, *Ethnicity and Genocide in Rwanda*, *supra* note 13.

The conclusion of this section is that *Death, Despair and Defiance* was *unusual* in every regard. Put bluntly, it had RPF written all over it and should have raised suspicion from the start. I now move on to the untold story of African Rights and the circumstances in which *Death, Despair and Defiance* was produced.

### III. THE UNTOLD STORY OF AFRICAN RIGHTS

For years there have been rumors that African Rights was a front of the RPF. The issue occasionally came up in extradition, deportation, or criminal proceedings in European countries against *génocidaires*.<sup>54</sup> If the dossier contained an AR document or statement, defense lawyers would argue that African Rights was not an independent human rights organization but an instrument of the regime. The issue also came up in at least one case before the ICTR. In *Prosecutor v. Elizaphan and Gérard Ntakirutimana* the defense stated that the “charge sheet” published by African Rights “reeks with propaganda against the accused” and that AR “worked closely with [survivors’ organization] IBUKA and the RPF.”<sup>55</sup> The first hard evidence of some cooperation between AR and the RPF was a leaked letter of 23 June 2008<sup>56</sup> from the National Commission for the Fight Against Genocide to Rakiya Omaar at African Rights (carbon copied to “H. E. The President of the Republic,” among others) discussing payment of \$100,159 for a “book”—but really a Word document converted to a PDF and available for free on the Internet—about the genocide in Murambi.<sup>57</sup>

That was 2008. The question is whether there was also a *quid pro quo* for *Death, Despair and Defiance* and other early AR Rwanda reports. I wrote to the former co-directors and expressed my concerns about *Death, Despair and Defiance* and the conditions in which it was produced. Alex de Waal, now at the Fletcher School for Law and Diplomacy at Tufts University, responded immediately and at length. Rakiya Omaar, who lives and works in Kigali since the early 2000s, was much less forthcoming. I told both that

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54. Dr. Thijs Bouwknegt, a researcher at the Netherlands Institute for War, Holocaust, and Genocide Studies, sent me a non-exhaustive list of seven such cases in the Netherlands alone in which African Rights is referenced.

55. *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10 & ICTR-96-17-T, Judgment and Sentence, ¶ 755.

56. Letter from Jean de Dieu, Exec. Sec’y, National Commission for the Fight Against Genocide, to Ms. Rakiya Omaar (23 June 2008), available at [http://musabyimana.net/wp-content/uploads/2015/03/Letters\\_Mucyo\\_Rakiya.pdf](http://musabyimana.net/wp-content/uploads/2015/03/Letters_Mucyo_Rakiya.pdf).

57. AFRICAN RIGHTS, MURAMBI: “GO. IF YOU DIE, PERHAPS I WILL LIVE”: A COLLECTIVE ACCOUNT OF GENOCIDE AND SURVIVAL IN MURAMBI, GIKONGORO, APRIL–JULY 1994 (2007). The publication does not acknowledge any financial support. I contacted Rachel Ibreck who co-authored the “book,” but she declined to comment on the payment to African Rights.

I was working on a book on the politics of international justice and that I was in contact with their former partner. All communications with them were via email.

Rwandan sources for this section are a former African Rights collaborator with intimate knowledge of the organization's Kigali office; Theogene Rudasingwa, former Secretary General of the RPF and Ambassador to the United States (1996–1999); Gerald Gahima, Chief of Staff to the Rwandan Minister of Justice (1996–1999) and Attorney General (1999–2003); and Noël Twagiramungu, former Secretary General of the Rwandan League for Promotion and Defense of Human Rights (LIPRODHOR). I interviewed them in person in their exile countries, or through Skype.

Other sources are two former ICTR investigators; journalists who were in Rwanda in April–May 1994; David Rawson, US Ambassador to Rwanda (1993–1996); and Timothy Longman, head of the Human Rights Watch office in Butare (1995–1996). Additionally, I conducted archival research in New York (Human Rights Watch) and London (Companies House).

The untold story of African Rights unfolds as follows. First I show that AR until late 1994 was an *unincorporated, self-financed, two-person association*. Then I reveal how in late April 1994, before going to Rwanda, Omaar had a *crucial meeting* in Nairobi with a senior RPF official. Next, I adduce evidence that suggests that an *RPF vehicle* brought Omaar to RPF headquarters in Mulindi and that contrary to her claim, she constantly was *escorted* by RPF officers. Then I examine the RPF's *active role* in collecting evidence and testimony for *Death, Despair and Defiance*. Thereafter, I report that while Omaar was in Rwanda, de Waal *met senior RPF officials in London*. Next, I describe how in early 1995 the RPF *helped with setting up AR's Kigali office*. In the penultimate subsection, I discuss how AR gradually became a single issue NGO and *proxy for the new regime*. Finally, I show that when African Rights lost its Western donors in the late 1990s, *the RPF took over the funding*.

## A. Incorporation and Funding

One of the first issues I brought up with Alex de Waal was the lack of organizational and fiscal transparency of African Rights. He responded that AR was founded “virtually overnight” in December 1992 and that while publishing activity or financial reports may be common *today*, this was not the case in the early 1990s. Even so, he continued, the accounts of AR during his time there (1993–1998) were “fully transparent.” “We submitted them to Companies House [. . .]. You should be able to find those reports through Companies House.”<sup>58</sup>

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58. Email from Alex de Waal (19 Aug. 2014).



I checked the practice of Amnesty International and Human Rights Watch and could only notice that both did publish annual reports with financial information in the early 1990s. I also ordered from Companies House in London copies of *all* documents on file from African Rights. They show that AR did not incorporate until November 1994.<sup>59</sup> From its founding in December 1992 until November 1994, AR functioned as an unincorporated association. Its first annual report (fiscal period November 1994–January 1996) dates from January 1996.

Given that an unincorporated association cannot raise or receive funds, and that the time between a grant application and disbursement typically is more than a year, African Rights presumably was self-financed in 1993 and 1994. The Rwandan genocide and the success of *Death, Despair and Defiance* changed everything. AR raked in over £1.3 million in grants over the next four years: £306,441 in 1995; £293,629 in 1996; £419,960 in 1997, and £305,757 in 1998 (the last report on file with Companies House).<sup>60</sup> When AR ventured into Rwanda and published *Death, Despair and Defiance*, however, it legally was not an NGO but an unincorporated two-person association.

## B. Change of Plans

Omaar and de Waal readily concede that they had not been to Rwanda before 1994 and that they were hardly “experts.” They were “planning” to work on Rwanda when things exploded there in early April 1994, but that was it. In fact, Omaar even had no intention of going to Rwanda when she boarded a flight to Nairobi. “It was on a trip to Hargaisa [Somalia], in which she got as far as Nairobi, in April 1994, that Rakiya diverted to Rwanda,” de Waal explained.<sup>61</sup>

“What happened in Nairobi that made you change plans?” I asked Omaar.

There [in Nairobi] were daily briefings on Rwanda for diplomats, NGOs, journalists at the Intercontinental or Hilton, I forget. At the first meeting I attended, I met a senior official from the ICRC who had liked our work on Somalia and who I had been in touch with. He immediately arranged for me to meet Rwan-

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59. AR’s articles of association are dated 1 February 1994, but the first annual report and other documents state that it was incorporated on 28 November 1994 as company # 2995746. (Documents on file with Author; copies made available to the editors of this journal.)

60. Despite its anti-Western rhetoric, African Rights accepted major funding from Western governments and foundations. The biggest donor country in these four years was the Netherlands: £134,098 through NOVIB and an identical amount (£134,098) through the Ministry of Foreign Affairs. A Dutch private group, Interchurch Aid (nowadays ICCO, a government subsidized NGO) gave a total of £86,559. See also *infra* note 102.

61. Email from Alex de Waal (30 Aug. 2014).

dans and foreigners who had been evacuated, introduced me to others, and my work on Rwanda began.<sup>62</sup>

The story shows how improvised things sometimes are. However, it appears that Omaar had two other fortuitous encounters in Nairobi. On 24 April, she chanced on Aidan Hartley at the Reuters office. “I had just returned from Rwanda when Rakiya dropped in. I knew her from covering the conflict in Somalia in 1992. She said she was on her way to Somalia. I told her that she should go to Rwanda because people were being massacred there. I had to *convince* her.”<sup>63</sup> Reuters Bureau Chief Jonathon Clayton has a similar recollection: “She turned up in the Reuters office as the Rwanda genocide was breaking—she had come for something to do with Somalia. Rather like a journalist, she switched to what was a much bigger story and went off to Rwanda.”<sup>64</sup>

After visiting Reuters, Omaar began attending UN briefings and press conferences on the Rwanda crisis.<sup>65</sup> One was by RPF Secretary General Theogene Rudasingwa.<sup>66</sup> “I met [Omaar] at a press conference in Nairobi and put her in touch with our field commanders. I played a vital role in bringing her into the RPF network.”<sup>67</sup> “What did you see in her?” I asked. “She sounded very smart and very anti-Western NGOs/human rights groups. That in itself was sufficient to bring her into the RPF orbit. She got a blank check and unrestricted access to RPF leaders. The return on investment for the RPF has been enormous.”

### C. Getting to Rwanda

Omaar traveled twice to Rwanda in the following weeks. On or around 2 May, she joined a group of journalists on an ICRC flight to the Tanzanian/Rwandan border near Rusumo.

We spent the first few days talking to [Rwandan] refugees, and NGO workers etc. . . . Then some of the journalists suggested we cross the border into Kibungo which had fallen to the RPF. They were interested primarily in a press conference Kagame was due to give. They went to the press conference, but I asked to talk to survivors and was taken to Gahini Hospital which was the main shelter for survivors.

Whom she asked and who took her to Gahini, Omaar did not tell.

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62. Email from Rakiya Omaar (15 Sep. 2014).

63. Skype Interview with Aidan Hartley, Journalist (30 Oct. 2014).

64. Email from Jonathon Clayton, Reuters Bureau Chief (4 Nov. 2014).

65. DEATH, DESPAIR AND DEFIANCE, *supra* note 5, at 682.

66. Donatella Lorch, *Rwanda Aide Calls Truce “Last Chance,”* N.Y. TIMES, 27 Apr. 1994.

67. Email from Theogene Rudasingwa (12 Dec. 2014).

After ten days, she traveled back to Nairobi “to get a change of clothes and food.”<sup>68</sup> “[Then] I flew with a Reuters crew to Kampala, and from there we drove into Mulindi and Byumba [in northern Rwanda].” “You crossed the border with a crew of foreign journalists, without a journalist card?” I asked.

I didn’t have any problem and the Reuters crew treated me like one of them and made the practical arrangements for all of us as a group. There were literally hundreds of journalists in Uganda at the time going into Rwanda. It was quite overwhelming for the Ugandans and the urgency of the human situation meant that normal bureaucracy was not the order of the day.

“Hundreds of journalists” struck me as implausible because it was RPF policy to strictly supervise all journalists,<sup>69</sup> and monitoring so many would have stretched its resources. Moreover, a review of the major news agencies’ wires shows that in May at most a dozen journalists filed from the RPF zone. So I asked Omaar for a name of the Reuters crew with whom she allegedly drove all the way from Kampala to Mulindi (450 km). When I did not get an answer I contacted the Reuters journalists known to have worked in Rwanda in May 1994. They all responded but none remembered giving a ride to Omaar, or to anybody else for that matter. Rudasingwa intimated to me that it is very possible, and even likely that the RPF organized her transport because, at the time, an RPF vehicle shuttled between Mulindi and Nairobi via Kampala.

A reconstruction of Omaar’s itinerary shows that at the end of her trip she was again in Mulindi, and for a whole week. Why she spent more time in this small town near the Ugandan border than anywhere else in Rwanda becomes clear when one knows that it was the base of the RPF high command.

#### D. Roaming Around Rwanda

One of the red flags mentioned in the previous section is the claim that “African Rights has travelled extensively in RPF-controlled areas of Rwanda, *unescorted* by RPF soldiers or civilian members.”<sup>70</sup> I asked Alex de Waal why his colleague would have been allowed to roam around without RPF minders. His answer was surprising:

Of course anyone in a war zone would be supervised. One of the RPF commanders who was responsible for her safety was Okwir Rabwoni. I came to

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68. *Id.*

69. Lindsey Hilsum, *Reporting Rwanda: The Media and the Aid Agencies*, in *THE MEDIA AND THE RWANDA GENOCIDE* 167, 172 (Allan Thompson ed., 2007). Hilsum was a prosecution witness in the trial of Jean-Paul Akayesu before the ICTR.

70. WHO IS KILLING; WHO IS DYING, *supra* note 7, at 26 (emphasis added).

know Okwir quite well in 2001 when he fled to the UK. . . . I had some long talks with him about those days . . . and he didn't say anything that contradicted what Rakiya had told me earlier, which is that she was escorted but not interfered with. Everything she was doing was known to the RPF and they could have stopped her had they wanted, but for obvious reasons they had no reason to.

Okwir Rabwoni, it turns out, was an *aide de camp* to Paul Kagame.<sup>71</sup> I pursued the issue with Omaar. "This Okwir was not involved in my travels. Every journalist in Rwanda in 1994 had to travel with people who could facilitate travel and security. I was treated as a journalist. I only ever had one person, and his name was Peter Karake."

### E. Interviewing Survivors

Another red flag in *Death, Despair and Defiance* are the hundreds of long and extraordinarily detailed testimonies. I remarked to de Waal that Rwanda was in chaos and that communications must have been very difficult. "How could your partner gather information, organize that information in field notes, type everything up and transcribe the interviews, and send it to London?" I asked. "For you to write a book of 750 pages in such short time, you must have received from her a massive amount of well edited field notes." The answer:

Rakiya was just behind the front line of the RPF. . . . She is remarkably energetic and a good interviewer. . . . What she did was write up the interviews in her own hand and give the stack of papers to someone who went daily to the Ugandan border who faxed them to me in London. Each morning when I came into the office, our fax machine, which was an old style continuous roll fax, had spewed out a vast curl of papers across the floor. . . . So I typed them up and organized them as I typed, constructing the outline of the report as I went along.

In a follow-up email, de Waal wrote that it was an RPF vehicle that took his colleague's notes across the border and that "[t]hey could have read [them], if they could read her handwriting."

Rakiya Omaar remembers things differently.

I literally spent the entire day interviewing in places where survivors were gathered in very large numbers. . . . I was not sending notes on a daily basis, but quite regularly. Here I was helped by the fact that there were a huge number of Nairobi/London-based journalists who were very helpful. There was a strong sense of camaraderie [. . .]. So I gave my handwritten notes to them, and they would send them by DHL from Nairobi to our London office.

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71. See, e.g., Okwir Rabwoni, *Africa's Child Soldiers*, PROJECT SYNDICATE, 24 May 2002, available at <http://www.project-syndicate.org/commentary/africa-s-child-soldiers>.

I asked Omaar where her raw interview notes are now and whether I could see them. "I have my Rwanda field notes. I have not been requested to give them to anyone." "Can you scan and send me some?" I replied. She never did and that was the end of our communication. Two former ICTR investigators separately told me that they had asked Omaar in vain for copies of her field notes. The former African Rights collaborator described what he knows about the interviews:

Rakiya was always *en seconde ligne* in the company of RPF political cadres. The RPF would bring a dozen survivors or witnesses to her at a time and she would "process" them with the help of RPF translators. The RPF insisted that all interviews be conducted in Kinyarwanda, even those that Rakiya could have done in French, because they [the RPF handlers] didn't understand French. Complicating things even more was the fact that the RPF people and Omaar did not know Rwanda, they were all foreigners, so nothing was evident and everything had to be explained.<sup>72</sup>

"Could she have conducted all interviews herself?" I asked. "I doubt it," he said. "How many could you do on good day?" "Not more than three, one in the morning, one in the afternoon, and one in the evening." "And that was without a translator?" "That's correct," he said.

## F. Creating a Narrative

I asked Alex de Waal to explain the similarities between the views of African Rights and the RPF (see Section II I). My assumption was that the former was a conduit for the latter but to my surprise he claimed a role in creating the narrative of the conflict. In spring/summer 1994, he met senior RPF officials in London, including Theogene Rudasingwa and Patrick Mazimpaka, the RPF commissioner for external relations. According to de Waal:

The dominant narratives in the media for the first part of April were tribal killing and chaos. Journalists and quite a number of aid workers were contributing to this. The point of the "Who is killing, who is dying" report, and an article I wrote in the Times ("Rwanda genocide took three [sic] years to plan") was to remedy that. I also wrote a piece "The genocidal state" for the TLS at the same time but they held on to it until July and only published it then (to my enormous frustration as it was the most serious piece.) It was quite an uphill struggle, and in order to do it, as you will see, I decided it was necessary to craft an alternative narrative. When I first discussed it with Rwandese in London (almost all Tutsis; some were RPF and some not) their focus was on the politics of the interim government and a different set of narratives. One of them was Mazimpaka: he was flailing.

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72. All quotes of the former African Rights collaborator are from interviews conducted by the author at an undisclosed location in Europe (22 Oct. 2014 and 14 Feb. 2015).

They provided me with documents such as the Hutu Ten Commandments but said they weren't that important. When the genocide-as-conspiracy narrative took off, the RPF took it up, for obvious reasons.<sup>73</sup>

There is no reason to doubt that de Waal met Mazimpaka and others but he may be overstating his role in creating the genocide-as-conspiracy narrative. An RPF statement of 30 April<sup>74</sup> and May interim reports by Amnesty International<sup>75</sup> and Human Rights Watch<sup>76</sup> all claimed that the massacres were planned in advance. While he may not have created the genocide-as-conspiracy narrative, he certainly has helped in "documenting"<sup>77</sup> and spreading it (see Section V).

### G. Opening Shop in Kigali

Rakiya Omaar returned to Rwanda in December 1994 for research for an expanded edition of *Death, Despair and Defiance* (the first edition had sold out quickly) and to open an office in Kigali. However, the housing and office market in Kigali were extremely tight due to the influx of UN agencies, foreign NGOs, and hundreds of thousands of Tutsis from the diaspora. Fortunately there was the RPF. "I instructed my assistant to give her everything she wanted," Rudasingwa told me. African Rights received free phone and fax, free transportation and security, and free office space in the former Muhima *gendarmarie caserne*.

Then foreign visitors—journalists, ICTR investigators, aid workers, and others—began streaming into Kigali and some wanted to visit the NGO that seemed to know everything. There was only one problem: the former *gendarmarie* was now a RPF camp guarded by RPF soldiers, and visitors might notice. In October, African Rights moved to an office building near the central bus station, a space that was no longer free but certainly more neutral. The American writer Philip Gourevitch would become a regular visitor. (See Section V C).

With cash from Western donors, AR hired investigators (statement takers) and expanded its premises. Omaar herself continued to work from London but would visit regularly. "Every other week, I would take an *open* envelope with handwritten field notes to the office of RPF Secretary General Rudasingwa," the former AR collaborator told me.

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73. Email from Alex de Waal (16 Aug. 2014); see also Alex de Waal, *Rwanda Genocide Took Four Years to Plan*, *TIMES*, 18 June 1994.

74. Statement by RPF, *supra* note 36, at 1.

75. Amnesty Int'l, *Rwanda: Mass Murder by Government Supporters and Troops in April and May 1994*, at 13 (30 Apr. 1994) AI Index AFR 47/11/94.

76. HRW, *Genocide in Rwanda, April–May 1994* (Vol. 6 1994).

77. See *DEATH, DESPAIR AND DEFIANCE*, *supra* note 5, ch. 2.

There the envelope was weighted and sealed and I received cash for sending it to London with DHL. On my way back from DHL I would drop off a copy of the receipt. By late 1995, after we had published several new reports, we were allowed to ship our notes without inspection. This is how AR operated for years. We collected testimonies and “London” selected, translated [from French to English], edited, and turned them into a report or story, without further consultation.<sup>78</sup>

Alex de Waal never visited the Kigali office—until he showed up unannounced in 1998. “We were excited to finally meet the other half of African Rights. Rakiya was not there when he dropped by. When we told her about the visit she went ballistic,” the former collaborator told me. “Why was that, you think?” “Well, first of all, we were not allowed to talk to any foreigner without her permission.” “But de Waal was not *any foreigner*?” “Yes, but they had parted ways and de Waal came to explore opportunities for his new NGO. Rakiya did not like that.”<sup>79</sup>

“What kind of boss was she?” “She treated us like slaves. She exercised total control and demanded absolute obedience.” “Why did you stay with AR?”

I loved the work. I had written down my own story and wanted to record the stories of other *rescapés* [Tutsi survivors]. I wanted to document what had happened. At another NGO I could not have done this. . . . It was a silent pact. She used us and we used her. We needed a job and she had the money, although she paid very little compared to other international NGOs. I knew about the deal with the RPF but that didn’t bother me as long as I could do what I felt I had to do.<sup>80</sup>

“Was Rakiya Omaar *personally* close to the regime?”

Absolutely. She quickly became part of the new *akazu*. Once *l’homme fort* [Paul Kagame] himself called the office to speak with her. She would always go see him before returning to London and would dress up for the occasion. She was proud of her relationship with Kagame. We called her “the queen of Kigali.” There is a funny anecdote in this regard. We were on a field trip together and stayed at a hotel. Her RPF chauffeur was sleeping in my room but when I woke up in the middle of the night he was gone. I got up and found him lying in front of the door to her room. “What are you doing here?” I asked him. “If something happens to *her*, I am dead,” he responded.<sup>81</sup>

In one of my interviews with former US Ambassador to Rwanda David Rawson I asked if he had any recollection of Omaar. “We never met or talked but that didn’t prevent her from writing about me. But I did see her.

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78. African Rights Collaborator Interview, *supra* note 72.

79. *Id.*

80. *Id.*

81. *Id.*

This must have been 1995. I remember her stepping out of a plane [at Kigali Airport] and being whisked off like a VIP in an official vehicle.”<sup>82</sup>

## H. Showing Colors

After opening the Kigali office African Rights gradually became a single issue, single country NGO and proxy for the new regime. In 1995, it published a scathing report about the United Nations Human Rights Field Operation in Rwanda,<sup>83</sup> an expanded second edition of *Death, Despair and Defiance*, and *Not So Innocent: When Women Become Killers*.<sup>84</sup> AR also launched the oral history series *Witness to Genocide* and the controversial *Charge Sheet* series which “exposed” alleged *génocidaires* living abroad.<sup>85</sup>

I asked Timothy Longman, who headed the office of Human Rights Watch in Butare at the time, what he thought about African Rights and *Death, Despair and Defiance* in particular:

My understanding is that Rakiya got a LOT of help from the RPF. Rwandan friends told me that the RPF basically handed her interviews already written up. . . . The first version [of *Death, Despair and Defiance*] was full of inaccuracies. . . . When they released a revised edition a year later, rather than making corrections, they simply reiterated their claims in stronger terms wherever they had been challenged.<sup>86</sup>

My own particular concern was always less about *Death, Despair and Defiance* than about the role of African Rights in the years following the genocide. Their ongoing work in Rwanda specialized in trying to prove the genocide complicity of any critics of the RPF. In a series of reports that they issued—once a month for a while—they systematically attacked human rights activists, both Rwandan and international, moderate judges, civil society activists, and others. While I was head of the HRW office in Rwanda 1995–1996, I got calls several times from Rwandans who were panicked because they had been targeted by African Rights on made up or flimsy evidence. They systematically targeted André Sibomana and the Association Rwandaise pour la Defense des Droits de la Personne et Libertes Publiques (ADL), Association Rwandaise des Droits de l’Homme (ARDHO), Ligue Rwandaise pour la Promotion et la Defense des

82. Interview with David Rawson, Former US Ambassador to Rwanda, Manitou Beach, Michigan (14 Nov. 2014).

83. AFRICAN RIGHTS, RWANDA: “A WASTE OF HOPE”: THE UNITED NATIONS HUMAN RIGHTS FIELD OPERATION (1995).

84. AFRICAN RIGHTS, RWANDA: DEATH, DESPAIR AND DEFIANCE (1995); AFRICAN RIGHTS, RWANDA: NOT SO INNOCENT—WHEN WOMEN BECOME KILLERS (1995).

85. See, e.g., AFRICAN RIGHTS, DR. SOSTHÈNE MUNYEMANA: THE BUTCHER OF TUMBA, AT LIBERTY IN FRANCE (1996); AFRICAN RIGHTS, CHARLES MUNYANEZA: EVADING JUSTICE IN BRITAIN (2006); AFRICAN RIGHTS, VINCENT NZIGIYIMFURA IN MALAWI: A PILLAR OF THE 1994 GENOCIDE (2009); AFRICAN RIGHTS, MAJOR PIERRE-CLAVER KARANGWA ACCUSED OF GENOCIDE IN RWANDA: TODAY LIVING IN THE NETHERLANDS (2010).

86. Email from Timothy Longman (12 Oct. 2014)



Droits de l'Homme (LIPRODHOR), Human Rights Watch, Amnesty International, and many others for supposed complicity in some way with the genocide. My Rwandan friends at the time referred to African Rights as the propaganda wing of the RPF, because they served to legitimize the RPF and undermine its critics.<sup>87</sup>

African Rights did not relent in its attacks on mainstream human rights NGOs. In an article in *The Times Literary Supplement* under the slightly ironic title *Becoming Shameless: the Failure of Human Rights Organizations in Rwanda*, Alex de Waal—in his capacity as co-director of AR—stopped short of blaming them for the Rwandan tragedy:

It's embarrassing to be a professional human-rights activist in Africa. For ordinary people across the continent, talk of human rights is hollow. This is not only because gross abuses continue virtually unchecked across the continent, but also because most of the work of human-rights organizations is considered irrelevant or worse.

The impotence of these organizations in the face of the genocide of the Rwandese Tutsi was the *coup de grâce*. But for some years before, it was increasingly evident that human-rights groups did not offer the key to a more peaceful, just and democratic future. . . . The arrogance of the deracinated intellectual is at its most pronounced among the liberal lawyers who prescribe doses of "human rights" and "democratization" to poor and often war-ravaged countries. . . .

[S]ome of the Rwandese human-rights activists honoured and promoted in the West have themselves been revealed as extremist sympathizers, and in at least one case, a participant in the slaughter. They have been protected by colleagues and employers. This is the most blatant abuse of humanitarian discourse and the privileged position of human-rights NGOs for regressive political ends.<sup>88</sup>

The last paragraph was a reference to the case of Joseph Ruyenzi, a journalist whom Amnesty International had adopted as a prisoner of conscience.<sup>89</sup> AR responded with *Joseph Ruyenzi: Prisoner Without a Conscience*. Rakiya Omaar wrote the foreword:

The case of Joseph Ruyenzi is just one example of how readily some members of the international community have sidelined the genocide. . . . Amnesty International and Reporters Sans Frontières publicized his arrest, suggesting that he was the victim of a government campaign against journalists. . . . Neither organization investigated the charge of rape and sexual mutilation which had been made against him, or made a serious inquiry into his activities during the genocide.

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87. *Id.*

88. Alex de Waal, *Becoming Shameless: The Failure of Human Rights Organizations in Rwanda*, *TIMES LITERARY SUPPLEMENT*, 21 Feb. 1997. The piece prompted a response by Kenneth Roth from Human Rights Watch, *Human-Rights Abuses in Rwanda*, *THE TIMES LITERARY SUPPLEMENT*, 14 Mar. 1997.

89. Amnesty Int'l, *Fear for Safety / Fear of ill-Treatment*, AI Index: AFR 47/04/96 (2 Apr. 1996).

African Rights has conducted an inquiry which took eight months to complete. . . . We believe [this report] provides strong evidence of his participation in the genocide and hope it will be used by the Government of Rwanda to broaden its own investigation.

Moreover, our findings highlight the consequences of a lack of thorough research, raising fundamental questions about the criteria by which international human rights organizations define abuses. Their methods of assessing, the significance of the information they gather, and the political conclusions they draw from their findings, are in need of review.<sup>90</sup>

No NGO was immune from attack. In *Trocaire Development Review*, de Waal accused “certain NGOs” (read: Médecins Sans Frontières) of making

premature, highly public and highly distorted claims for what had occurred—[an RPF massacre in Kibeho in April 1995] exaggerating the deaths to eight thousand, arguing that this indicated a systematic RPA campaign against innocent civilians, and advocating suspending all aid to Rwanda. An independent commission of inquiry put the record straight, but the agencies responsible for the fabrications have yet to be called to account. Humanitarian impunity therefore remains the order of the day.<sup>91</sup>

He failed to mention, however, that the Kibeho Commission had *refrained* from giving a casualty number. Médecins Sans Frontières subsequently was expelled from Rwanda.<sup>92</sup>

In a full page op-ed in *The Guardian* of 15 November 1996 titled “No Bloodless Miracle,” de Waal—as co-director of AR—defended the Rwandan army’s invasion of Zaire (now Congo) and attack against Hutu refugee camps there: “These men and women murdered 800,000 Rwandese Tutsis in 1994. . . . It is not possible to accommodate to them: they must be removed from the political scene if there are to be any prospects for Central Africa.” A ceasefire would be a “chimera” and the Zairean rebels (in reality Rwandan proxies) should be allowed to “complete the job.”<sup>93</sup>

Two weeks later, de Waal lambasted Médecins Sans Frontières and Oxfam on BBC for having “screamed that a million of Rwandese refugees [in eastern Zaire] were going to die of starvation because they were cut off from aid.”<sup>94</sup> Why had MSF and Oxfam “screamed” so loud? “They grow if

90. Rakiya Omaar, *Foreward to AFRICAN RIGHTS, JOSEPH RUYENZI: PRISONER WITHOUT A CONSCIENCE* 2 (1997).

91. Alex de Waal, *Humanitarianism Unbound: The Context for the Call for Military Intervention in Africa*, *TROCAIRE DEV. REV.* 29, 44 (1995), available at <http://www.trocaire.org/sites/trocaire/files/resources/policy/1995-military-intervention-africa.pdf>.

92. Communiqué de Presse de Médecins Sans Frontières Rwanda, 7 Dec. 1995, available at [file:///C:/Users/entns/Downloads/155-19951222MSFPRExpulsion3volunteers%20\(1\).pdf](file:///C:/Users/entns/Downloads/155-19951222MSFPRExpulsion3volunteers%20(1).pdf).

93. Alex de Waal, *No Bloodless Miracle*, *GUARDIAN*, 15 Nov. 1995.

94. *Viewpoint*, BBC, 27 Nov. 1996 (transcript on file with author).

they are good at raising funds, from the public and from governments. Many agencies cannot survive unless they have regular high-profile appeals, and competition is getting sharper.”<sup>95</sup> As fundraiser for African Rights, de Waal knew what he was speaking about. That year AR raked in £293,629 from governments and foundations.

AR’s campaign against Western NGOs further escalated after Amnesty International published a report titled *Rwanda: Ending the Silence*.<sup>96</sup> In a counter-report,<sup>97</sup> AR denounced Amnesty for relying on “rumors” and “biased sources” and affirmed that its own investigation had produced *no evidence* to support the accusations against that Rwandan government.<sup>98</sup>

These publications show how the AR directors identified with the RPF: they and the RPF were the only ones who *did* something in 1994; all others stood by or left and have lost their right to speak or intervene. “The failure of most international human rights groups,” they wrote, “to visit Rwanda during the genocide, and their focus on current violations rather than the genocide has, justifiably, encouraged a corrosive cynicism that questions the very value of human rights organizations.”<sup>99</sup> De Waal concluded his *Times Literary Supplement* piece by calling for “a reinvention of human-rights professionalism.”<sup>100</sup> A year later he left African Rights and set up a new NGO, Justice Africa. His parting does not seem to have been motivated by Omaar’s compromising relationship with the new regime because his next book, published in 2000, was prefaced by “President Paul Kagame.”<sup>101</sup>

## I. New Sponsor

African Rights fell in disarray without de Waal. Whatever activity was left in London was moved to Kigali and the two-person NGO became a one-woman show. However, on paper AR remained “London-based” until 2003, when it was struck off the company register for failing to file any statements since 1999.<sup>102</sup>

95. *Id.*

96. AMNESTY INT’L, RWANDA: ENDING THE SILENCE (1997).

97. AFRICAN RIGHTS, RWANDA: THE INSURGENCY IN THE NORTHWEST (1998). The report includes a chapter titled “Sounding a Note of Caution: Human Rights Reporting on the Insurgency.”

98. Amnesty took the unusual step to react publicly to the AR report, noting that “the criticisms by African Rights echo in many respects criticisms made by the current Rwandese government and its allies.” Amnesty Int’l, *Rwanda Public Statement, Response to Criticisms of Amnesty International in the African Rights Report “Rwanda: The Insurgency in the Northwest”* (Mar. 1999), AI Index: AFR: 47/07/99.

99. RWANDA: “A WASTE OF HOPE,” *supra* note 83, at 7.

100. de Waal, *Becoming Shameless*, *supra* note 88.

101. JUSTICE AFRICA & INTERAFRICA GROUP, WHO FIGHTS? WHO CARES?: WAR AND HUMANITARIAN ACTION IN AFRICA (Alex de Waal ed., 2000).

102. Notice of Dissolution, 19 Aug. 2003 (on file with author; copy made available to the editors of this journal).

“Our funding dried up,” explained the former Rwandan collaborator.

There was no accounting, Rakiya ran AR like a cash operation. We received in 1998 a grant of almost 500,000 ECU from the European Union to help *rescapés* rebuild their lives. But only a fraction went to them, about one twentieth [25,000 ECU]. The EU mission in Kigali kept asking for a report. Rakiya wanted me to sign off on a draft but I refused. She sarcastically thanked me for complicating her life.

In a subsequent conversation I pointed out that AR’s report for fiscal year 1998 lists a grant of £31,156 ( $\pm$  49,000 ECU) from the European Commission. “I know it was close to 500,000 ECU. I saw the correspondence,” he replied.<sup>103</sup>

I obtained a copy of the award letter from the European Commission to Rakiya Omaar at African Rights in London. The document shows a grant of 464,135 ECU for a twelve-month program.<sup>104</sup> Further analysis of AR’s report for fiscal year 1998 shows that only £16,751 ( $\pm$  25,000 ECU) was transferred to Rwanda. (Note that my source never had access to the reports filed by the London office with Companies House.) In another follow-up conversation I asked whether he has an idea where the  $\pm$  440,000 ECU went.<sup>105</sup> “Rakiya bought a lake front house in Jinja (Uganda) and a plot in Nairobi. That’s where I think the money went. . . . They are all the same,” he sighed, “the foreigners who came to Rwanda after the genocide. They primarily served themselves.”<sup>106</sup>

In 2000 the European Commission requested an independent evaluation of the human rights and democracy measures funded by the Commission under budget line B7-7020 in Rwanda. According to the final report, auditors spent a week in Kigali but found no evidence “of the project executed since 1998 by the NGO ‘African Rights.’ . . . Because of the lack of information . . . the project, which was awarded 464,135 ECU for the Support to Survivors and Survivors Organizations, is not included in the evaluation.”<sup>107</sup>

“What happened with African Rights when the funding dried up?” I asked my Rwandan source.

The RPF stepped in, but Rakiya did not tell us. She did as if we were still funded by European donors. I looked the other way because I needed an income and thought our work was important. . . . We moved to a complex that housed the

103. African Rights Collaborator Interview, *supra* note 72

104. Letter of 25 March 1998, Project RW/PS/20/98, Project line B7-7020 (on file with author; copy made available to the editors of this journal). If we add this undeclared grant to the declared revenue, African Rights amassed more than two million US dollars in four years, not counting the revenue from sales of publications.

105. African Rights failed to file any reports with Companies House after 1998 (see above).

106. African Rights Collaborator Interview, *supra* note 72.

107. EUROPEAN COMMISSION, MISSION REPORT: REPUBLIC OF RWANDA 5 (26 June 2000), available at [http://edz.bib.uni-mannheim.de/daten/edz-h/az/00/951518\\_rwand.pdf](http://edz.bib.uni-mannheim.de/daten/edz-h/az/00/951518_rwand.pdf). The report is in French, the translation by author.

Directorate of Military Intelligence. Patrick Karegeya [the DMI chief] gave us a brand new Toyota 4X4 Double Cab.<sup>108</sup>

Gerald Gahima, the former chief of staff to the Rwandan Minister of Justice, confirmed that the RPF put African Rights on its payroll in the late 1990s. “I had planned a fundraiser but Kagame’s personal assistant told me to drop it. He [Kagame] would come up with the money himself. And he did.”<sup>109</sup>

Around 1999 AR also rewrote its mission statement:

African Rights *does not claim to be “neutral”*: we advocate on behalf of those suffering injustice and oppression. . . . With a focus firmly on the interests of ordinary people whose lives have been damaged by violence, at African Rights we are *not afraid of controversy*.<sup>110</sup>

The new version, which stated the obvious, was a sort of coming out, although AR maintained its NGO façade until the late 2000s when a Rwandan government document was leaked discussing payment of \$100,159 to “Ms. Rakiya” for a book (see introduction Section III). African Rights has been dormant since and Omaar now publishes as a consultant to the Rwandan government.<sup>111</sup>

\* \* \*

To conclude the untold story of African Rights, the partnership between the London-based NGO and the RPF was accidental and opportunistic. Without some fortuitous encounters in Nairobi in April 1994, Rakiya Omaar might never have gone to Rwanda. Keen judgment on the part of Theogene Rudasingwa played an important role “in bringing her into the RPF orbit.” My sense is that Paul Kagame too understood quickly that Omaar and de Waal could be allies and assets. The two shared ideological affinities with the RPF and their London address automatically gave them credibility and, even more important, access to donors and the most influential media outlets. The former Rwandan collaborator of African Rights called Omaar a “perfect catch” for the RPF because she represented a London-based NGO and her co-director was white. “Without that London address and white face, African Rights could never have had that kind of impact.”<sup>112</sup>

108. African Rights Collaborator Interview, *supra* note 72

109. Skype interview with Gerald Gahima (25 Jan. 2015).

110. AFRICAN RIGHTS, CONFESSING TO GENOCIDE: RESPONSES TO RWANDA’S GENOCIDE LAW (June 2000), emphasis added.

111. See, e.g., RAKIYA OMAAR, THE LEADERSHIP OF RWANDAN ARMED GROUPS ABROAD WITH A FOCUS ON THE FDLR AND RUD/URUNANA (2008), available at <http://www.francwandagenocide.org/documents/LeadershipOfRwandeseArmedGroupsInDRC.pdf>.

112. African Rights Collaborator Interview, *supra* note 72.

Going back to the question whether there was a *quid pro quo*, the answer is yes. *Death, Despair and Defiance* was produced with full and active support of the RPF. It is noteworthy that two decades later, de Waal seems to disown the famous “yellow book” on his Fletcher webpage by listing it among his articles, with this comment: “While Rakiya Omaar was in Rwanda during the genocide conducting interviews and doing research, Dr. Alex de Waal was in London compiling, editing and writing this article.”<sup>113</sup> When I asked why he reduces a 1200 page book to an *article*, he said he was “not aware of that entry on his webpage.”<sup>114</sup>

I should like to make clear that all my Rwandan sources appreciate the oral history part of *Death, Despair and Defiance*. The interviews are real; there was no need to make them up. Ordinary Rwandans had the chance to tell their story. However, this does not mean that the interviews are complete or truthful, or that the translations and transcriptions are complete or truthful.

#### IV. WHY AFRICAN RIGHTS DID WHAT IT DID—AND WHY WE DID NOT SEE IT

This section tries to answer why African Rights did what it did and why we did not see it. As for the first question, I suggest that Omaar and de Waal were driven by a mix of idealistic and not-so-idealistic motives. I also suggest that once they had crossed the line it was difficult to go back because the Rwanda program was the goose that was laying the golden egg for their fledgling NGO.

The following scenario is a reconstruction based on facts established earlier. AR was created overnight. Its founders had not had the time to lay the financial foundation for their new enterprise. Then the lid comes off in Rwanda and genocide is being committed. In transit in Nairobi on her way to Somalia, Omaar seeks out journalists and diplomats dealing with the Rwanda crisis and senses an opportunity. In 1992, Human Rights Watch had published the much talked about two-volume *War Crimes in Bosnia-Herzegovina*, and in March 1993 it had published (together with FIDH) a report on Rwanda with great political impact. For African Rights, Rwanda was *the* chance to best the Amnesties and Human Rights Watches and plant its flag in Africa.<sup>115</sup>

Still in Nairobi, Omaar runs into a senior representative of the rebels who are fighting “to stop the genocide” and “liberate” Rwanda. The rep-

113. WORLD PEACE FOUNDATION, “de Waal publications,” available at <http://fletcher.tufts.edu/World-Peace-Foundation/About/Staff/de-Waal-publications>.

114. Email from Alex de Waal (8 Oct. 2014).

115. HUMAN RIGHTS WATCH, *WAR CRIMES IN BOSNIA-HERZEGOVINA* (1992), available at <https://www.hrw.org/reports/pdfs/y/yugoslav/yugo.928/yugo928full.pdf>; FIDH, ET AL., *supra* note 12.

representative, too, sees an opportunity (see Section III B). Omaar convinces herself that this is an exceptional situation—hundreds of thousands are being slaughtered—and that the normal rules of human rights fact finding and reporting do not apply. The last thing she wants is to be another bystander. Off she goes to Mulindi where the RPF briefs her and provides everything she needs. Being on the frontlines and bearing witness always had been her calling. While others left, she went in. She understands and accepts that RPF hospitality comes with certain expectations. Neutrality would not save any lives in this situation.

De Waal in London realizes the stakes and signs on. Fundraising suddenly proves easy. Dutch Interchurch Aid provides an emergency grant of £30,000.<sup>116</sup> Omaar and de Waal work around the clock, knowing that the RPF and their donor expect results. De Waal publishes in May the interim report *Rwanda: Who is Killing, Who is Dying, and What is to be Done* and launches an all-out media campaign (see Section V C).<sup>117</sup>

The RPF liked what it saw and thus began an affair that was contingent on AR publishing “friendly” reports. For AR, losing its privileges or being barred from entering Rwanda would hurt because the Rwanda program quickly became a cash cow. De Waal was very well aware of the dilemma: “The cost of objectivity can be the inability to operate in a certain country or region. A human rights organization must always be prepared to run the risk of being declared *persona non grata*.”<sup>118</sup> At least one NGO did, but it was not African Rights. Médecins Sans Frontières, which de Waal had lambasted for exaggerating the death toll of the Kibeho massacre, was expelled in December 1995 (see Section III H).

Researchers and journalists faced the same choice. For example, Gérard Prunier in the first edition of *The Rwanda Crisis: History of a Genocide* (1995) was, in the words of a reviewer, “remarkably soft” on the RPF.<sup>119</sup> In the second edition (1997) Prunier admitted error and recognized that “what we knew . . . in late 1994 was only a small part of the truth.”<sup>120</sup> As a senior tenured researcher,<sup>121</sup> he could afford to be declared *persona non grata* in Rwanda, and he promptly was.<sup>122</sup> The lesson and signal was that friendly writers were rewarded with exclusive access to the RPF leadership and “critical” ones denounced and barred. Friendly writers often were freelanc-

116. Email from Alex de Waal (19 Aug. 2014).

117. WHO IS KILLING; WHO IS DYING, *supra* note 7.

118. de Waal, *Humanitarianism Unbound*, *supra* note 91, at 38.

119. GÉRARD PRUNIER, *THE RWANDA CRISIS: HISTORY OF A GENOCIDE* 356 (1997) (explaining criticisms of the 1995 edition).

120. *Id.* at 359.

121. Prunier was tenured at the French *Centre National de Recherche Scientifique*.

122. The RPF accused Prunier of no less than being “indirectly responsible for the 1994 genocide.” See FILIP REYNTJENS, *POLITICAL GOVERNANCE IN POST-GENOCIDE RWANDA* 125 (2013) (internal quotation marks omitted).

ers with little or no knowledge about Rwanda before 1994. For them it was particularly tempting to present the RPF in a favorable light, lest they lose a big story (see also Section V C).

Why did we not see that *Death, Despair and Defiance* had RPF written all over it? I suggest four reasons. First, most of us in Europe and North America were blinded by the fog of genocide. In the weeks and months before April 1994, the world's attention had been focused on the first free elections in South Africa. When the genocide started we knew as much about Rwanda as, say, Haiti. When it was over all we knew was that Hutus had been killing Tutsis, that "the international community" had walked away, and that the good guys (Tutsis) ultimately defeated the bad guys (Hutus). *Anything* that could tell us more was welcome. Two months later we got a telephone book sized report that confirmed the little we knew and answered all the big questions. We now knew why and how it happened and who was responsible politically, morally, and criminally. The fog of genocide had cleared.

Second, some readers might have confused African *Rights* with *Africa Watch*; others (including myself) were reassured by the London address and the familiar sounding name of de Waal. A London-based NGO surely was legitimate. Moreover, leading English-language media outlets discussed *Death, Despair and Defiance* (see below) and *The Guardian* referred to African Rights as an "authoritative" NGO.<sup>123</sup>

Third *Death, Despair and Defiance* overwhelmed by its size and detail. Most readers could just skim through it or read a few chapters, which was fine because it has an excellent summary and table of contents. But a reader who skims or skips cannot criticize. Those who read all 750 (later 1,200) pages probably had no time or energy left to question it. Besides, who argues with a book of that size? Where does one even begin?

Fourth, *Death, Despair and Defiance* also humbled its readers and put them on the defensive. It was not written for those to whom it is dedicated, viz. ordinary Rwandans (they could neither read nor afford it), but for "the international community" which, according to *Death, Despair and Defiance*, bears great responsibility for what happened. European colonizers, the United Nations, UNAMIR, France, the United States, Belgium, international media which portrayed the conflict as primordial—"the West" was collectively responsible. Questioning *Death, Despair and Defiance* would be trying to evade or deflect responsibility. The fact that roughly half of *Death, Despair and Defiance* consists of victim testimony also made it more delicate to criticize the work as a whole. Questioning the circumstances of the interviews easily could have been interpreted as doubting their substance.

Best placed to know that things were not quite what they seemed were the people of Human Rights Watch and Amnesty International. Why did they

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123. Chris McGreal, *Women Turned Killers*, *GUARDIAN*, 26 Aug. 1995.



remain silent, especially after AR attacked them publicly (see Section III H)? I think that senior staff at HRW and AI were afraid that criticism could be interpreted as rivalry and jealousy toward a human rights organization that was challenging them. HRW was in an especially tricky situation because AR was a breakaway. Criticism could be seen as settling accounts and was bound to revive personal antagonisms.<sup>124</sup> The two establishment NGOs probably judged that it was wiser to ignore the noisy start-up.

## V. IMPACT AND POLITICAL CONSEQUENCES

I have established that *Death, Despair and Defiance* was produced in partnership with the RPF. I also have offered explanations for why African Rights did what it did and why we did not see it. The question now is whether “the yellow book,” which was self-published and self-distributed, had an impact and whether this translated into political capital for the RPF. For former RPF Secretary General Rudasingwa, there is no doubt: “the return on investment for the RPF has been enormous.”<sup>125</sup> This section tries to understand what he meant. I first discuss the *impact* of *Death, Despair and Defiance* on respectively the fledgling International Criminal Tribunal for Rwanda, scholarship, and mass media. Then I consider the *consequences* in political terms. The distinction between scholarship and mass media admittedly is rather tenuous because they influence and reinforce each other. For analytical purposes, however, it is useful to treat them separately.

### A. Impact on ICTR

“The Bible,” as *Death, Despair and Defiance* was referred to in the early years of the ICTR, came out before there even was an international tribunal. The UN Security Council and the new Rwandan government had been wrangling since August over issues such as temporal jurisdiction and the death penalty. The ICTR eventually was established on 8 November 1994 and the next January the Prosecutor opened an office in Kigali.

Among the first persons to drop in there was African Rights co-director Rakiya Omaar, who herself had just opened shop in Kigali.<sup>126</sup> A few months later investigators began to arrive. They came predominantly from Anglophone countries (Australia, Canada, the UK, and the US) and the Netherlands. With

124. Janet Fleishman, who succeeded Omaar at HRW, did not respond to my many emails asking her to comment on African Rights and *DEATH, DESPAIR AND DEFIANCE*, *supra* note 5.

125. Email from Theogene Rudasingwa (12 Dec. 2014).

126. *LA JUSTICE INTERNATIONALE FACE AU DRAME RWANDAIS 125* (Jean-François Dupaquier & William Bourdon eds., 1996).

the exception of the Canadians, they did not speak or read French, which meant that most literature on Rwandan history and the recent crisis was not accessible to them. Available in English were four reports by the UN Special Rapporteur on Rwanda,<sup>127</sup> the Final Report of the Commission of Experts established by the Security Council,<sup>128</sup> and two NGO reports.<sup>129</sup> The goal of these reports, which together total just over 100 pages, was to provide prima facie evidence of serious violations of international humanitarian law, not to expose individual perpetrators.

Then there was *Death, Despair and Defiance* with over a thousand pages and the names of hundreds of “killers” and detailed interviews with survivors and witnesses. The book seemed of much more practical value than the other reports. “The African Rights report was on every desk in the Office of the Prosecutor of the ICTR,” a frequent visitor of the tribunal told me.<sup>130</sup> In a long interview in 1996, Rakiya Omaar asked Chief Prosecutor Richard Goldstone: “Do you think that the work of independent organizations such as African Rights [sic] and others has been helpful to the Tribunal?” “Absolutely. Your field investigations and collected testimonies gave us direction.”<sup>131</sup>

Since Goldstone was not the most hands-on prosecutor, I put the same question to a former investigator. His answer: “When I joined the ICTR in 1995 (around September), *Death, Despair and Defiance* was in the hands of every investigator, it was the only book published at the time and looked very serious. Lots of investigators were Dutch, and they considered it as their bible.”<sup>132</sup> “How useful was it really?” I asked.

After a few months, we realized that *Death, Despair and Defiance* was not so accurate, some incidents (not the major ones though) were impossible to verify; the accounts in the book, very precise, were not confirmed by our witnesses. At that time, *Death, Despair and Defiance* was seen as not very reliable and clearly Rakiya Omaar was not considered an expert witness who could be used in court. To my recollection, she was met by ICTR investigators at the early beginning of the work in 1995. The request to access her sources was never successful and the relation with her became difficult. She did not shy from criticisms against the ICTR. Her links to RPF became quite obvious in subsequent reports on protection of witnesses and other stuff, with no words at all on the RPF’s own crimes. For the investigators (including myself) who had read other

127. U.N. Doc. E/CN.4/1995/7 of 28 June 1994; U.N. Doc. E/CN.4/1995/12 (12 Aug. 1994); U.N. Doc. E/CN.4/1995/70 and E/CN.4/1995/71.

128. United Nations Security Council, Letter Dated 9 December 1994 From the Secretary-General Addressed to the President of the Security Council, U.N. Doc. S/1994/1405 (9 Dec. 1994).

129. Amnesty Int’l, *Rwanda: Mass Murder*, *supra* note 75; HRW, *Genocide in Rwanda*, *supra* note 76.

130. Interview with Professor Filip Reyntjens, expert witness for the prosecution in the first ICTR trials; Antwerp (14 Feb. 2015).

131. LA JUSTICE INTERNATIONALE, *supra* note 126, at 137. Goldstone did not seem to know that Omaar refused to share her field notes with ICTR investigators. See Section III E.

132. Email from former ICTR Investigator who requested not to be identified (19 Oct. 2014).

stuff and did some work on the RPF, Rakiya had lost all credibility and her book was left on the shelf from that time (late 1996 and after). However, even if Rakiya was not very objective and not very rigorous, she did publish fast a book which reported the main massacres, so *Death, Despair and Defiance* was to a certain extent useful at a time when most publications were in French.<sup>133</sup>

Although the practical contribution of *Death, Despair and Defiance* to the work of the ICTR seems to have been modest, the first generation of investigators and possibly also the first Chief Prosecutor were “primed” by it. I wonder, moreover, whether Chapter 2—titled “Preparing for the Apocalypse”—did not trigger the ambition in the Office of the Prosecutor to prove a grand conspiracy with Colonel Théoneste Bagosora at the center. The first report to allege and “document” a conspiracy and identify Bagosora as the mastermind was in fact *Death, Despair and Defiance*. (See Section II G above). “There is overwhelming evidence that the extermination of the Tutsi and opposition Hutu was planned well in advance of 7 April 1994” stated the first edition.<sup>134</sup> In almost identical terms the Final Report of the Commission of Experts confirmed two months later: “Overwhelming evidence indicates that the extermination of Tutsi by Hutus has been planned months in advance of its actual execution.”<sup>135</sup> One of the sources of the UN Commission was *Death, Despair and Defiance*.<sup>136</sup>

From then on the story of Bagosora as arch villain took on a life of its own. Prunier in *The Rwanda Crisis* claimed that Bagosora was the leader of a coup and coordinator of the “final solution.” “The same names crop up again and again,” he wrote, “whether in reports of human rights groups or in the testimony of independent observers of various political persuasion.” The accompanying footnotes refer to *Death, Despair and Defiance* among the human rights reports and to Rakiya Omaar among the “independent observers.”<sup>137</sup>

In March 1998, Goldstone’s successor Louise Arbour prepared for a Nuremberg style trial by issuing a joint indictment against “Bagosora and 28 others” for conspiracy to commit genocide. When the pretrial chamber dismissed the indictment on technical grounds<sup>138</sup> she scaled down her plans and requested smaller joint trials. Meanwhile the story kept snowballing in the media and even inspired the titles of some books.<sup>139</sup>

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133. *Id.*

134. *DEATH, DESPAIR AND DEFIANCE*, *supra* note 5, at 42.

135. U.N. Doc. S/1994/1405, *supra* note 128, ¶ 58.

136. *Id.* ¶ 48.

137. Prunier, *supra* note 119, at 240.

138. *The Prosecutor v. Théoneste Bagosora and 28 Others*, Case No. ICTR-98-37-I, Dismissal of Indictment.

139. LINDA MELVERN, *CONSPIRACY TO MURDER: THE RWANDAN GENOCIDE* (2004); LIEUTENANT-GENERAL ROMÉO DALLAIRE WITH MAJOR BRENT BEARDSLEY, *SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY IN RWANDA* (2003). The title is a reference to Dallaire’s meeting with Bagosora during the first days of the killings.

Bagosora and three others stood trial from 2002 to 2008 in the “Military I” case. But “Rwanda’s Himmler,” as *The Guardian’s* Chris McGreal called him, eventually was acquitted of conspiracy and any direct role in the genocide.<sup>140</sup> No one, for that matter, has been convicted of conspiracy before 7 April 1994.<sup>141</sup> The genocide-as-conspiracy narrative, which African Rights helped to propagate, failed to convince the judges.

## B. Impact on Scholarship

*Death, Despair and Defiance* is cited in at least 363 academic publications<sup>142</sup> and reviewed in at least four. These are extraordinary numbers for a self-published and self-distributed book. The first “review,” which appeared as early as the September 1994 issue of the *Review of African Political Economy*, is no more than a summary of the summary provided by *Death, Despair and Defiance*. Thus we are again told that “[t]here have been reprisal killings by individual RPF soldiers; there is no credible proof for RPF policies aimed at systematically killing civilians.”<sup>143</sup> A very short but equally uncritical “review” appeared in the influential *Foreign Affairs* in 1996.<sup>144</sup> Just being mentioned there is an important recognition. The author of a review essay in the August 1999 issue of *Third World Quarterly* simply quotes another author about *Death, Despair and Defiance*. “*Death, Despair and Defiance* needs 1,200 pages to report exactly what happened in each of the 143 communes during the genocide.”<sup>145</sup> Only the fourth review, *Treacherous Waters: The Politics of History and the Politics of Genocide in Rwanda and Burundi* (2000)<sup>146</sup> by Villia Jefremovas, was critical but by then *Death, Despair and Defiance* long had trickled down in numerous publications, such as Prunier’s widely read *The Rwanda Crisis: History of a Genocide*.

140. Chris McGreal, *Rwanda’s Himmler: The man Behind the Genocide*, *GUARDIAN*, 18 Dec. 2008.

141. Claudine Vidal, *Le fait d’entente en vue de commettre le génocide”: entre le judiciaire et l’historique au Rwanda*, in *L’AFRIQUE DES GRANDS LACS: ANNUAIRE 2014–2015*, at 269 (Filip Reyntjens, Stef Vandeginste, & Marijke Verpoorten eds., 2015).

142. As revealed by a Google Scholar search. See Google Scholar, “Rwanda Death, Despair and defiance,” available at [https://scholar.google.com/scholar?cites=4553851291005093376&as\\_sdt=5,36&scioldt=0,36&hl=en](https://scholar.google.com/scholar?cites=4553851291005093376&as_sdt=5,36&scioldt=0,36&hl=en).

143. *Documents: Rwanda, Mozambique and Kenya*, 21 *REV. AFRICAN POL. ECON.* 471 (1994).

144. Gail M. Gerhart, *The Rwanda Crisis: History of a Genocide; Rwanda: Death, Despair, and Defiance*, revised edition; *Rwanda Not So Innocent: When Women Become Killers; Rwanda and Genocide in the Twentieth Century*, 75 *FOREIGN AFF.* 156 (1996), available at <https://www.foreignaffairs.com/reviews/capsule-review/1996-05-01/rwanda-crisis-history-genocide-rwanda-death-despair-and-defiance>.

145. Elaine Windrich, *Revisiting Genocide in Rwanda*, 20 *THIRD WORLD Q.* 855, 858 (1999).

146. Villia Jefremovas, *Treacherous Waters: The Politics of History and the Politics of Genocide in Rwanda and Burundi*, 70 *AFRICA: J. INT’L AFRICA INST.* 298 (2000).

It is noticeable that the first persons to publish books and articles about the genocide were persons who knew little or nothing about Rwanda before 1994. Rwanda experts, like Jefremovas and Alison Des Forges,<sup>147</sup> were aware of the “treacherous waters” and took their time. Others, like Jan Vansina, chose to remain silent altogether. “The clamor for ‘immediate history,’” he wrote,

has led to the publication of survey histories by a spate of scholars. . . . Such books are likely to exert strong long-term effects because they define what is relevant and preempt the agenda for future discussion. . . . The most pressing task for historians now is to ask questions, to widen the agenda imposed by the historiography of the present, and to counteract the effects of . . . preemptive histories.<sup>148</sup>

Vansina did not mention *Death, Despair and Defiance* but if there is one book that fits the label “preemptive,” it is *Death, Despair and Defiance*.

### C. Impact on Mass Media

During the genocide Alex de Waal had launched an all-out offensive in the British media<sup>149</sup> and fast publishing academic journals,<sup>150</sup> so the gist of *Death, Despair and Defiance* already had percolated before it was published. *Death, Despair and Defiance* itself was discussed in *The Guardian* on the day of its release<sup>151</sup> and a bit later in *The Christian Science Monitor*.<sup>152</sup> Subsequent African Rights Rwanda reports were also picked up by British media. Raymond Bonner briefed *Guardian* readers about a report accusing religious figures<sup>153</sup> while Chris McGreal briefed them about *Not So Innocent: When Women*

147. LEAVE NONE TO TELL THE STORY, *supra* note 15, (Des Forges is the main author of *Leave None to Tell the Story: Genocide in Rwanda* published in 1999 by Human Rights Watch and FIDH. This work replaced DEATH, DESPAIR AND DEFIANCE, *supra* note 5, as “the bible” in the Office of the Prosecutor of the ICTR.) However, the former cites the latter forty-two times and also identifies Bagosora as the mastermind of the genocide. On the framing of the Rwandan conflict by Human Rights Watch, see KLAUS BACHMANN, THOMAS SPARROW-BOTERO & PETER LAMBERTZ, WHEN JUSTICE MEETS POLITICS: INDEPENDENCE AND AUTONOMY OF AD HOC INTERNATIONAL CRIMINAL TRIBUNALS 166–71 (2013).

148. Jan Vansina, *The Politics of History and the Crisis in the Great Lakes Region*, 45 AFRICA TODAY 37, 41 (1998).

149. de Waal, *Rwanda Genocide Took Four Years to Plan*, *supra* note 73; de Waal, *The Genocidal State*, *supra* note 23; de Waal, *Ethnicity and Genocide in Rwanda*, *supra* note 13.

150. Alex de Waal, *Genocide in Rwanda*, 10 ANTHROPOLOGY TODAY 1 (1994). He also published Alex de Waal, *Rwanda, Letter to Editor*, 345 LANCET 322 (1995); Alex de Waal & Rakiya Omaar, *The Genocide and the International Response*, 94 CURRENT HISTORY 156 (1995).

151. Chris McGreal, *UN Failing to Pursue Mass Murderers*, GUARDIAN, 29 Sept. 1994.

152. Robert M. Press, *Some Hutus Aided Their Countrymen*, CHRISTIAN SCIENCE MONITOR, 14 Nov. 1994.

153. Raymond Bonner, *Clergy Joined in Rwandan Massacres*, GUARDIAN, 10 July 1995.

*Become Killers*. By feeding their reports to the media, de Waal and Omaar managed to influence public opinion in the United Kingdom.

*Death, Despair and Defiance* also primed the author of another bible of sorts on the Rwanda genocide. It never occurred to me that there could be a link, but his name unexpectedly came up in one of my interviews with the former Rwandan collaborator of African Rights. "Philip Gourevitch regularly dropped by our office. He and Rakiya got along well."<sup>154</sup> Kigali being a small city, it would have been a surprise had their paths not crossed. Google turned up an interview in which Gourevitch praises Omaar and lists *Death, Despair and Defiance* among the best reads on Rwanda:

There's an organisation called African Rights that I admire, run by a woman called Rakiya Omar [sic]. . . . And she really made it her mission, in the immediate aftermath of the genocide, to start documenting the experiences of survivors. . . . And, while other human rights organisations have largely devoted themselves to holding the post-genocide government to account for its treatment of accused perpetrators of genocide, and for its various shortcomings, African Rights has kept its eye on the injustices suffered by the victims of the genocide . . . Rakiya Omar [sic] wrote one of the first books that came out after the genocide. . . . It's a huge fat book and everyone just calls it "the yellow book." *Death, Despair and Defiance* was a tremendous documentation effort.<sup>155</sup>

I wanted to know whether his own views had been shaped by the yellow book and contacted him. "How important were AR publications for your research? Did you draw on them for *After the Genocide* and *We Wish to Inform You*? Did you consult with de Waal or Omaar?" Gourevitch:

I did pick up a copy of African Rights' yellow book in Kigali in 95, but I didn't have any contact with de Waal or Omaar, or read anything else of theirs then. I can't say, either, that I ever read the yellow book in its entirety. Rather I remember finding it particularly helpful at times when I was traveling around in rural Rwanda, or visiting prisons, as a kind of field-guide-reference work at the very initial phase of making inquiries about what happened on a very local level.<sup>156</sup>

In a subsequent email he recalled stopping by the AR Kigali office "on a couple of occasions." When I asked whether African Rights or *Death, Despair and Defiance* ever raised any red flags with an investigative reporter like him he became testy and broke off the communication. It was too late to ask why he denied meeting Omaar.

Even if they never met, the Rwandan journeys of Gourevitch and Omaar show interesting similarities and provide further insight into the way the RPF

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154. African Rights Collaborator Interview, *supra* note 72.

155. *Philip Gourevitch on Rwanda*, FIVE BOOKS (Oct. 2009), available at <http://fivebooks.com/interviews/philip-gourevitch-on-rwanda>.

156. Email from Philip Gourevitch (30 Jan. 2015).

enlisted ambitious, talented, and well-connected foreigners. Gourevitch traveled to Rwanda in May 1995 as a *freelance* journalist with a contract for a story for *The New Yorker* and, as he said himself, “an attitude of relative ignorance.”<sup>157</sup> His first Rwanda article begins as follows:

Members of the Hutu majority group began massacring the Tutsi minority in early April, and at the end of the month dead Tutsis were easier to find in Rwanda than live Tutsis. The hunt continued until mid-July, when a rebel army conquered Rwanda and brought the massacres to a halt. That October, a United Nations Commission of Experts found that the “concerted, planned, systematic and methodical” acts of “mass extermination perpetrated by Hutu elements against the Tutsi group” in Rwanda “constitute genocide.”<sup>158</sup>

When Gourevitch wrote the article the most often quoted number was 800,000 victims, of which at least 500,000 Tutsis, and the rest “moderate” Hutus. The subtitle and introduction of *After the Genocide* suggest a different reality: a million killed, all Tutsi. (This later became the official version in Rwanda.) Even after reading the whole story one could still believe that only Tutsis were killed in 1994. This brings us to the next point. *After the Genocide* omits the second part of the conclusion of the UN Commission of Experts, in other words, that the RPF had committed war crimes and crimes against humanity. Also noteworthy is that *After the Genocide* generously quotes top RPF officials such as Paul Kagame, Claude Dusaidi, Tito Rutaremara, and Charles Murigande. Finally, the article mentions *en passant* that “international investigators” believe that the assassination of President Habyarimana was “a job sponsored by members of the Hutu Power entourage.”<sup>159</sup>

Kagame liked what he saw and, at a time when Rwandan journalists were silenced, reciprocated with an open invitation to the American writer. “I went to see [Paul Kagame] every time I went to Rwanda.”<sup>160</sup> The return for the RPF and Kagame personally was enormous. In the following years, Gourevitch published a *thirty-three* page interview article with the Rwandan strongman,<sup>161</sup> several more *New Yorker* stories, and *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories From Rwanda*.<sup>162</sup>

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157. Brian Lamb Interview with Philip Gourevitch, C-SPAN BOOKNOTES, 22 Nov. 1998, available at <http://www.booknotes.org/Watch/115511-1/Philip+Gourevitch.aspx>.

158. Philip Gourevitch, *After the Genocide: When a People Murders up to a Million Fellow-Countrymen, What Does it Mean to Survive?*, NEW YORKER, 18 Dec. 1995, available at <http://www.newyorker.com/magazine/1995/12/18/after-the-genocide>.

159. *Id.*

160. Brian Lamb Interview with Philip Gourevitch, *supra* note 157.

161. Philip Gourevitch, *After Genocide*, 72 TRANSITION 162 (1996).

162. Philip Gourevitch, *The Mean Streets of Laredo*, NEW YORKER, 7 Oct. 1996; Philip Gourevitch, *The Return*, NEW YORKER, 20 Jan. 1997; Philip Gourevitch, *Kabila's March*, NEW YORKER, 19 May 1997; Philip Gourevitch, *Continental Shift*, NEW YORKER, 4 Aug. 1997; PHILIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA* (1998).

The book, which undeniably has literary qualities, won numerous awards and became required reading for a generation of US college students and anyone interested in Rwanda, Africa, genocide, or journalism. The strategy of giving privileges to a few while restricting others had worked again. Or as Johan Pottier pointedly observed: “The insider offers enlightenment to the outsider; the outsider returns the gift by offering the prospect of international recognition and legitimacy.”<sup>163</sup> For the RPF, Gourevitch was an even bigger catch than Omaar and de Waal because his stories from Rwanda landed on the desk of President Bill Clinton<sup>164</sup> and he had the ear of the Department of State. James Rubin, the assistant secretary of state for public affairs and chief spokesperson for the Department under Madeleine Albright, told Howard French of *The New York Times* that “a lot of my take . . . comes to me directly. Philip Gourevitch is my sister’s boyfriend.”<sup>165</sup> *We Wish to Inform You* was a gift that kept giving because it was translated into Italian (2000), French (2002), Portuguese (2006), German (2008), Spanish (2009), and Swedish (2009).

#### D. Political Consequences

*Death, Despair and Defiance* had an impact where it mattered: the ICTR, the academy, and mass media in the UK and US. It primed the first generation of ICTR investigators as well as newcomer academics and journalists, whose work in turn primed public opinion. The result was a *pensée unique* about Rwanda that lasted long enough for Kagame and the RPF to gain absolute power. Newspaper editors were reluctant to publish negative stories about the “new Rwanda”<sup>166</sup> and guilt-ridden Western countries pleaded with the new leaders “to let us help you.”<sup>167</sup> If there was ever a chance for the ICTR to indict RPF commanders, it was in 1995–1996 during Richard Goldstone’s tenure as Chief Prosecutor. The latter, however, refused even to contemplate the idea.<sup>168</sup> By the time Louise Arbour ordered an investigation into RPF

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163. JOHAN POTTIER, *RE-IMAGINING RWANDA: CONFLICT, SURVIVAL AND DISINFORMATION IN THE LATE TWENTIETH CENTURY* 207 (2002).

164. Samantha Power, *Bystanders to Genocide*, ATLANTIC (Sept. 2001), at 84, ¶ 2, available at <http://www.theatlantic.com/magazine/archive/2001/09/bystanders-to-genocide/304571/>.

165. HOWARD W. FRENCH, *A CONTINENT FOR THE TAKING: THE TRAGEDY AND HOPE OF AFRICA* 243 (2004).

166. Interview with Stephen Smith, Montreal (26 Sept. 2014). Smith was Africa Editor of the French newspaper *Libération* from 1986 until 2000 and reported from Rwanda during the genocide.

167. See Reyndams, *Let’s Be Friends*, *supra* note 3.

168. Filip Reyntjens, *Prosecutorial Policies in the ICTR: Ensuring Impunity for the Victors*, available at [http://www.eurac-network.org/web/uploads/documents/20090902\\_11747.doc](http://www.eurac-network.org/web/uploads/documents/20090902_11747.doc):

During a conversation with the first Prosecutor, Richard Goldstone, in July 1996, I asked him whether he intended to prosecute RPF suspects. Irritated, he replied he saw no reason for doing so. When I told him that there was compelling *prima facie* evidence of these crimes, he got even more irritated and stated emphatically that there was no such *prima facie* evidence.



crimes, Kagame had consolidated his power and rearmed his troops. When they invaded Zaire (Congo) in late 1996 and massacred Hutu civilians, African Rights urged the international community to stay out and let them “complete the job” (see Section III H). No one from the RPF has ever been held accountable before an international tribunal.<sup>169</sup>

## VI. CONCLUSION

What started as an inquiry into the origins of the long dominant narrative of the Rwandan genocide turned into an investigation of the NGO that made it its mission to document the genocide and bring the perpetrators to justice. The NGO became famous overnight with the publication in 1994 of *Rwanda: Death, Despair and Defiance*. This was a time when NGOs were booming and received Nobel Peace Prizes, a time of easy money and few questions asked, a time when two persons with some name recognition could open shop in London, call themselves a human rights “group” [sic],<sup>170</sup> and challenge the establishment NGOs in the biggest market for liberal human rights activism, Africa. This was also before the Internet when an NGO could hide behind a London address and avoid scrutiny.

Today there is Google and Skype, NGOs no longer are beyond criticism, and the RPF narrative of the Rwandan conflict has been challenged<sup>171</sup> to the point that a journalist who once held RPF sympathies wrote: “In 1994 a genocide was committed against the Tutsi minority in Rwanda. All else about this small East African country, ‘the land of a thousand hills,’ is open to question and, indeed, bears re-examination.”<sup>172</sup> How much things have changed is further demonstrated by the fact that the United States Institute of Peace, which has funded numerous Rwanda (research) projects (including Gourevitch’s), was willing to fund this study about the politics of international justice and impunity.

In this article I have shown that the RPF successfully coopted a fledgling London-based, “antiestablishment” NGO and that it mobilized resources to help the NGO produce the first comprehensive report about the Rwandan genocide. I have drawn attention to the RPF’s modus operandi in winning over well-connected foreigners and the mutually beneficial relationships to which this led. I have further revealed that the RPF bailed out African Rights in 1999, that the “NGO” became part of the “RPF state,” and that

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169. Note, however, that Bosco Ntaganda, a Congolese Tutsi who fought with the RPF in 1994, is indicted by the International Criminal Court for crimes committed in the DRC in the 2000s: the Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06.

170. See, e.g., de Waal & Omaar, *The Genocide and the International Response*, *supra* note 150.

171. *Rwanda’s Untold Story*, BBC: THIS WORLD, (2014), available at <https://vimeo.com/107867605>.

172. Stephen Smith, *Rwanda in Six Scenes*, 33 LONDON REVIEW OF BOOKS (2011).

its director developed a close personal relationship with the leader of that state. Finally, I have explained why African Rights did what it did and why we did not see it.

As for the original objective of my study, I have shown that *Death, Despair and Defiance* was instrumental in shaping and spreading an easily consumable one-sided narrative of the Rwandan conflict. The co-directors of African Rights fed the report to journalists and editors who uncritically relayed its content. They also used their access to British media to publish pro-RPF pieces and attack RPF critics. Reputable outlets like *The Times Literary Supplement* and the *BBC* unwittingly served as vehicles for RPF propaganda. *Death, Despair and Defiance* also “primed” academics, writers, aid workers, and the first generation of ICTR investigators. The book’s successful preemption of the historiography of the conflict produced long-term effects. One of them was that it became politically *unthinkable* to hold the RPF accountable before an international jurisdiction. Thus, *Death, Despair and Defiance* contributed to RPF impunity.

African Rights was not alone. The director of a US NGO with deep political connections in Washington D.C. played a similar role. He worked tirelessly and in concert with the RPF to “educate” US politicians and opinion makers about Rwanda. In the second week of the genocide, he argued that “international military action . . . should be limited to the quick evacuation of expatriate nationals.”<sup>173</sup> When it was all over, he called on every peace-keeper, aid worker, diplomat, etc. deploying to Rwanda to read *Rwanda: Death, Despair and Defiance*. His lobbying earned him Rwanda’s National Liberation Medal and Campaign Against Genocide Medal.<sup>174</sup>

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173. Roger Winter, *Power, Not Tribalism, Stokes Rwanda’s Slaughter*, *THE GLOBE & MAIL* (Canada), 14 Apr. 1994.

174. *Citations to 2010 Medal Recipients*, *THE NEW TIMES* (Rwanda), 5 July 2010, available at <http://www.newtimes.co.rw/section/article/2010-07-05/21575/>.