Power Ethnicized: The Pursuit of Protection and Participation in Rwanda and Burundi

Linda Maguire

The Fletcher Forum of World Affairs
The Hutu-Tutsi conflict is a relatively recent phenomenon... not composed of ancestral hatreds and supposed supremacy, but of modern politics.
René Lemarchand¹

There's never been any ethnic conflict between the groups on the level of the village. There was no ethnic war before independence. It's the politicians who transfer their political conflicts onto the hillsides. If the leaders say nothing then the killings don't happen.

Maj. Pierre Buyoya
President of Burundi (1987-1993)²

INTRODUCTION

"TERROR CONVULSES RWANDAN CAPITAL AS TRIBES BATTLE," the front page headline of the *New York Times* announced on April 9, 1994. A companion piece went on to describe the history of Rwanda as one replete with inter-ethnic contention and violence, implying that senseless "tribal" warfare has existed there from time immemorial and should thus come as no surprise now. Such reporting at best gives an overly simplistic view of a complex situation; at its worst it perpetuates prevalent stereotypes which obscure far greater intricacies. Recent accounts of violence in both Rwanda and Burundi clearly fit the latter category.

In reality, the central African nations of Rwanda and Burundi defy neat categorization. These two countries remain enigmatic or unknown in the West, in part because they have not figured prominently in geopolitical struggles, and in part because they are small and remote. Each is roughly the size of Vermont, yet their combined populations number over thirteen million people. Rwanda and Burundi are thus two of the most densely populated countries in Sub-Saharan Africa (Rwanda is currently number one with 256 people per square kilometer), and both are characterized by extremely high birth rates. Most of the population is rurally concentrated and engaged in subsistence farming of cash crops, of which coffee and tea are the largest.

For many Westerners, knowledge of this area is confined to the experiences of the American Diane Fossey, who was killed in Rwanda while studying the gorillas indigenous to the mountain jungles there. A comprehensive understanding of the region is thwarted by the fact that virtually every time Rwanda and Burundi appear in the news, it is in relation to a new outburst of violence. However, the experiences of Rwanda and Burundi speak volumes about the distinction between group and individual rights, the challenges of accommodating minority and majority interests, and the root causes

---

5 The Economist Intelligence Unit (EIU), *Country Reports for Burundi and Rwanda (4th Quarter 1993)*, at 4 and 6.
of ethnic conflict.

Despite claims to the contrary, the ethnic polarization within Rwanda and Burundi is neither historic, nor intractable. The violence this polarization engenders is likewise largely a recent phenomenon perpetrated by specific elements of society for very definable reasons. To cast the conflict in terms of tribal warfare and ancestral enmities is to miss its underlying causes, and thereby eliminate any chance at an effective solution to it. This paper will study the histories and inter-ethnic relations of both countries and the attempts various other states have made to respond to the needs of the majorities and minorities within their borders. It will also offer some prescriptive recommendations for the future.

I. RACE, TRIBE AND ETHNICITY

No discussion of Rwanda and Burundi can advance very far without mentioning the extreme ethnic stratification which characterizes both countries. The three major ethnic groups which comprise both populations are the Hutu, the Tutsi and the Twa. Despite the lack of a reliable census since 1962, it is thought that Rwanda's population is eighty-nine percent Hutu, ten percent Tutsi and one percent Twa, while Burundi's are eighty-five percent Hutu, fourteen percent Tutsi and one percent Twa. There are some slight physiological differences between groups: the Tutsi are generally tall and thin with facial features resembling those of Ethiopians or Somalis, while the Hutu tend to be shorter and stouter. The Twa, traditionally forest dwellers, hunters and pottery crafters, are even shorter than the Hutu, and, when first encountered by Europeans, were labelled as "pygmies." Physical distinction among groups in Burundi and Rwanda is an extremely sensitive issue and justifiably so. In the past, these differences have been used to create psychological divisions where none had previously existed, and also to justify oppression of the majority by the minority. What should be remembered, however, is that despite some differences in physical appearance, the Hutu, Tutsi and Twa are culturally homogeneous: they speak the same Bantu languages, profess the same religions and have common traditions. A more extensive discussion of inter-ethnic relations between these groups appears below, but at this point it may be useful to define some terms.

The terms "race," "ethnicity" and "tribe" are problematic in their ambiguity. Human rights documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the

Genocide Convention and the Convention on the Elimination of All Forms of Racial Discrimination, tend to lump "race," "ethnicity" and "color" together when prohibiting grounds of distinction in the entitlement to human rights, yet none of these documents defines the terms. This is undoubtedly deliberate, as the virtual impossibility of reaching a consensus on their meaning would probably preclude any progress whatsoever in codifying human rights norms. This is not to say attempts have not been made to clarify what constitutes a "race", "ethnicity" or "tribe".

Until 1950, the term "race" was used interchangeably with that of "ethnicity" (from the Greek word ethos, or nation), to define a group which both subjectively and objectively constitutes a "people." Eventually, however, the term "race" came to signify the physiological and genetic similarities among peoples, while "ethnicity" came to signify the more subjective, cultural links which a group perceived as common to all its members. Thus, "ethnicity" came to connote the widest group, within which different "races" could fall.

For the purposes of this paper, the term "race" is used to define a people belonging to a common broad anthropological group, possessing traits which are transmissible from generation to generation, and unified by common interests, habits or characteristics. "Ethnicity," a racial transcendent, is used here to refer to large groups of people who share a common, often ambiguous, combination of tribe, religion, language or culture. On a much smaller scale, the term "tribe" describes a social group made up of numerous familial and generational subgroups which are united by common interests, occupation or political affiliation. From the preceding definitions, it is clear that the term "tribe" is inadequate and potentially confusing if used to describe the respective groups of Hutu, Tutsi and Twa. While these three groups might conceivably be classified as "tribes", the term does not clarify

---

10 Thornberry, supra note 8, at 159.
11 Thornberry, supra note 8, at 159-60. A UNESCO Committee of Experts charged with studying race problems, came up with a definition of what distinguishes race from ethnicity. In the UNESCO Statement on Race (1950), the Committee stated that the term "race" describes physical differences between peoples, particularly their color, while "ethnicity" describes a cultural entity with or without distinct physical characteristics.
matters since there are also many different subgroups within each "tribe". Each of these, in turn, could qualify as a "tribe". The distinctions between "clan" and "tribe", and "tribe" and "ethnicity", are often impossible to delineate. What is clear, however, is that what distinguishes Hutu from Tutsi from Twa hinges on differences greater than merely those of "tribe". Further, the term is problematic for its negative connotations. Too often the word has been associated with regressiveness and senseless combat.\(^{12}\)

The term "race" is equally unhelpful. While the Hutu, Tutsi and Twa do possess some physiological traits capable of transmission from generation to generation, they all belong to a common broad anthropological group and are unified by common interests, habits and characteristics. To label the distinction between these groups as "racial" then, is akin to claiming that a southern Italian who possesses a dark complexion belongs to a different racial group than her fairer-skinned northern compatriot. Emphasizing the differences between race and ethnicity within the context of Rwanda and Burundi, is academic, in that the major ethnic groups are all composed of a single race.

We are thus left, with "ethnicity," which is probably the most appropriate label for what distinguishes Hutu, Tutsi and Twa from one another. Hutu, Tutsi and Twa are distinct groups whose members share a subjective perception of their common culture. However, one qualification needs to be noted. In many, if not most, societies in Africa, ethnic stratification evolved horizontally, not vertically.\(^{13}\)

That is, ethnic groups existed side by side, separated entirely by differences in language or culture. In Rwanda and Burundi, however, ethnic stratification took on a vertical configuration in which culturally and linguistically homogeneous ethnic groups were arranged in a complex hierarchical power structure. How this arrangement came into being, and how the colonizing Europeans reacted to it, are both essential to understanding the present tension between Hutu, Tutsi and Twa.

II. HISTORICAL POLITICAL ANALYSIS

A. Pre-colonial

\(^{12}\) Dr. Conor C. O'Brien, Remarks at *Ethnicity, Religion and Nationalism, An Education for Public Inquiry and International Citizenship (EPIIC)* symposium held at Tufts University, (March 2-6 1994).

The modern day States of Rwanda and Burundi are unique among African nations in at least three respects: they were populated by a single people in each instance -- the Kinyarwanda in Rwanda and the Barundi in Burundi; their borders have remained essentially unchanged throughout their histories; and they were both relatively late arrivals on the colonial scene. Bordered by mountains in the West and North and swamps in the East, and armed with a reputation of fierce inhabitants, the area which became known as Ruanda-Urundi remained isolated until the late nineteenth century. It was not until 1892 that the first German-led expeditions penetrated the interior. The establishment of military outposts quickly followed, and by 1899, the Germans exercised de facto control of the area they called Mittel Afrika.

B. German East Africa (1899-1916)

German policies during the colonial era differed sharply between Rwanda and Burundi. In Burundi, a policy of non-intervention became one of power consolidation, and eventually evolved into a "divide and rule" strategy. Where the use of violence was fairly common in the German attempt to solidify control of Burundi, the conquest of Rwanda was more peaceful. The fact that Rwanda was, at the turn of the century, a far more centralized state certainly helped matters because, once the center was conquered, the parts were easier to control.

From 1899 until World War I, Rwanda and Burundi formed part of the colonial bloc of Deutsche Ost Afrika, which was administered from Dar es Salaam. There was never a large-scale settlement of the region by German

---

14 Both the Banyarwanda and the Barundi include members of the Hutu, Tutsi, and Twa ethnic groups.
16 Although the nomenclature "Ruanda-Urundi" did not enjoy wide usage until the Belgian occupation, it is used here to signify the region of present-day Rwanda and Burundi during the entire colonial era.
18 Id. at 104
20 Id. at 57.
nationals partly because it was inaccessible and already overpopulated. While human rights abuses on the part of the colonizers undeniably occurred, the German tenure is looked upon as a relatively peaceful, easily forgotten interlude during the colonial age.\textsuperscript{21}

C. The Belgian Mandate (1919-World War II)\textsuperscript{22}

The same cannot be said of the Belgian occupation, however. In the peace settlement following World War I, the victorious powers ceded the area of Ruanda-Urundi to Belgium, in part as payback for Belgian losses in the war, and in part because Belgium was already in the Congo territory to the West.\textsuperscript{23} Ironically, Belgium did not want the two territories. Its real objective was to control the southern bank and source of the Congo river, which was located in territory then controlled by Portugal, and it thought staking a claim in Ruanda-Urundi would advance this goal.\textsuperscript{24} In the end, it was the British, not the Belgians, who wound up with the large land grants. The Milner-Orts Agreement of May 30 1919 ceded to Belgium only that portion of German East Africa which comprised Ruanda-Urundi, and rendered it a Belgian mandate to be administered in conjunction with the Congo territory.

The Belgian history in Ruanda-Urundi is a long and complicated one and the space here limited. Thus, any description of political tactics during this period must be summarized in an abbreviated form. In short, the Belgian residency resembled the German because it embraced a policy of indirect rule. However, the Belgians went one step further and actually redefined the ruling elite. Hutu chiefs and sub-chiefs were replaced by Tutsi, and the Hutu were systematically eliminated from participation in political, educational and judicial institutions.\textsuperscript{25} Apparently, this was done with the rationale that the Tutsi were "... better qualified, more intelligent, more active, more capable of appreciating progress and more fully accepted by the people."\textsuperscript{26} Leadership positions, missionary education, and economic advancement were some of the advantages members of the Tutsi ethnic group enjoyed during the Belgian occupation.

\textsuperscript{21} \textit{Louis}, supra note 17, at 254.
\textsuperscript{22} In 1916, the area was conquered by the British and occupied by British and Belgian troops until 1919.
\textsuperscript{23} \textit{Brogan}, supra note 7 at 15.
\textsuperscript{24} \textit{Louis}, supra note 17, at 255.
\textsuperscript{25} \textit{Lemarchand}, supra note 19, at 73.
\textsuperscript{26} \textit{Id.} at 73 (quote from Monseigneur Classe, a Catholic missionary in Rwanda (1930)).
mandate. Once again, however, the situation was not identical in both re-

gions.

In Rwanda, the Belgian policy of preferential treatment resulted in a
far more pronounced polarization between Hutu and Tutsi. Educational
requirements for admission into secondary schooling, for example, were
skewed to favor almost exclusively Tutsi. In Rwanda, the political system
had always been more centralized and thus greater power was concentrated in
the individual leaders. The Tutsi of Rwanda, having experienced the benefits
of power, felt a considerable desire to retain that acquired position of privi-
lege. In Burundi, however, the dichotomy between Hutu and Tutsi was less
pronounced. Admittedly, the Belgian policy there also favored the Tutsi,
however this was done within the context of a more decentralized political
system. There were far more Hutu classified as chiefs and as belonging to the
aristocracy, and the percentage of Hutu children in secondary schooling was
considerably higher than in Rwanda.\footnote{Id. at 75.}

D. The Belgian Trust (World War II-1962)

Following World War II, mandated territories such as Ruanda-
Urundi became trust territories under the auspices of the United Nations.
With the new administrative framework also came new responsibilities on the
part of administering States, namely, "to promote the political, economic,
social, and educational advancement of the inhabitants of the trust territories,
and their progressive development towards self-government or indepen-
dence."\footnote{U.N. CHARTER art. 76, ¶ b.} Thus, it was incumbent upon Belgium to negotiate its trust territo-
ries towards independence as well as to submit annual reports to the General
Assembly, detailing the "political, economic, social, and educational advance-
ment" of the inhabitants of the territories.\footnote{U.N. CHARTER art. 88.} The process of constitution
building was slow, yet there was some significant progress made toward
independence from 1952 to 1962. Not all of the steps taken to advance that
goal, however, were positive. Where the Belgians had once clearly favored
the Tutsi, the post-World War II policy attained a more fomenting quality.
Increasingly, Hutu were encouraged by the Belgians to rise up against the
politically dominant Tutsi. In Rwanda, constitutional reforms and Belgian
encouragement of Hutu discontent led to the abolition of the monarchy and
the institution of a majority-led government. In Burundi, however, precisely the opposite occurred.

E. Independence and Beyond: The Parting of the Ways

In Rwanda, early constitutional reforms which were designed to give Hutu greater representation in government, in fact only reinforced a Tutsi lock on power. Despite the surface reforms, Tutsi still held all forty-three of chiefdoms, 549 of 559 sub-chief positions, and eighty-two percent of posts in the powerful judicial and agricultural departments. This resulted in rising Hutu disillusion and impatience so that, by 1959, the so-called "Rwandan Revolution" had begun.\textsuperscript{30} Led primarily by the Hutu-dominated, anti-monarchy Parti du Mouvement de l'Emancipation Hutu (PARMEHUTU), the push for majority-rule resulted in local elections in 1960, which PARMEHUTU won overwhelmingly. These developments accelerated the U.N. timetable for Rwandan independence, and by 1962, PARMEHUTU forced the international community's hand by abolishing the monarchy and declaring Rwanda a republic.\textsuperscript{31}

A bloodless coup in 1973, led by Juvénal Habyarimana, the Minister of Armed Forces and Police (and a Hutu), overthrew the existing administration and installed a civilian government dominated by his party, the Mouvement Républicain National pour la Démocratie (MRND). By far the greatest challenge to Habyarimana's authority was the Rwandan Patriotic Front (RPF), a group of mostly Tutsi refugees who had fled to Uganda and who formed an army of expatriates and Ugandan army deserters. After years of planning, this army invaded northern Rwanda in 1990. The civil war this attack touched off lasted three years and cost thousands of lives. On August 4, 1993, however, the Rwandan government and the rebel forces signed a power sharing peace accord in Arusha, Tanzania. The accord allotted the MRND six of the twenty-two ministerial posts in the new government, while the RPF was to have five. The remaining eleven posts were reserved for other coalitions. Despite all the careful drafting, this fragile peace accord was shattered immediately thereafter. On April 6, 1994, President Habyarimana was assassinated and Rwanda plunged headlong into anarchy as rebel RPF forces took Kigali.

Burundi's road to independence was quite different from that of

\textsuperscript{30} \textsc{lemarchand, supra} note 19, at 82-85.

\textsuperscript{31} \textsc{watson, supra} note 6, at 5.
Rwanda's, in large part due to the different forces at play. As René Lemarchand points out in his seminal history, *Rwanda and Burundi*, in contrast with what happened in Rwanda, where the major point of tension lay in the opposition between Hutu and Tutsi, in Burundi the ethnic struggle tended to coexist with, and cut across, a social conflict between a privileged oligarchy [the monarch and his relatives] and a newly-emergent elite of mixed origins whose grievances against the regime expressed their sense of revolt in the face of a socio-political advancement to which they considered themselves entitled.\(^3\) In Burundi then, the fault lines of conflict lay in issues of class and economics as much as ethnicity. Illustrative of this phenomenon is the widespread Hutu support of the Parti de l'Unité et du Progrès National (UPRONA), a political party comprised largely of Tutsi monarchists, and which won the legislative elections of 1961. Hutu support for this party has been explained as a factor of intra-Hutu communal "discontinuities."\(^3\) In Burundi's loose, decentralized system which emphasized loyalty to the local chief, UPRONA leaders were revered. Thus, the severe ethnic polarization seen in Rwanda was not immediately an issue in Burundi.

Another difference between the transition to independence in Rwanda and Burundi was the continuance of the monarchy in Burundi until the coup of November 28, 1966. Led by an army captain, the coup resulted in the overthrow of the monarch and declaration of the Republic of Burundi.\(^4\) For the next twenty-seven years, Burundi was ruled by three Tutsi men, two of whom were from the exclusive Hima subgroup, a clan favored by the colonial powers and dominant in the army. The period from 1966 until 1993, was characterized by widespread persecution and periodic massacres of Hutu, especially in 1972 and 1988.

Constitutional reforms set in motion by President Buyoya (1987-1993), legalized political parties by 1992, after which time a multitude of parties rapidly formed in anticipation of the country's first-ever presidential elections. On June 29, 1993, Melchior Ndadaye won seventy-one percent of the vote to become Burundi's first (and to date, only), democratically elected president.\(^5\) He was also the first ever Hutu President. Ndadaye, a former refugee who had been educated abroad, was a member of the Front Pour la

\(^{32}\) Lemarchand, *supra* note 19, at 290.

\(^{33}\) Id. at 346.

\(^{34}\) The army captain who led the coup was Michel Micombero, Prime Minister under the last reigning king of Burundi. Micombero was in power from 1966-1976; he was succeeded by President Bagaza (1976-1987).

Démocratie au Burundi (FRODEBU), a party formed by returning Hutu refugee intellectuals who had fled the massacres of 1972. Top on the new president's agenda, which was heavily influenced by contemporaneous events in Eastern Europe, was the fostering of a civil society in Burundi to diffuse power from the ethnicized military.\footnote{EIU, \textit{Country Report on Burundi}, supra note 5, at 30.}

Ndadaye promptly appointed a mixed Tutsi and Hutu cabinet, took measures to address the refugee crisis in Burundi, and sought to reassure Tutsi and Hutu alike that his government would pursue an agenda of social reconciliation. Unfortunately, Ndadaye never had the chance to institute the systemic changes he envisioned, or to see his policies of compromise come to fruition. On October 21, 1993, barely three months after his inauguration, Melchior Ndadaye was assassinated by a group of Tutsi army officers in an abortive coup attempt.

The reasons for the coup attempt lay in the pace at which Ndadaye's government tried to institute change and the corollary fear on the part of some Tutsi that Burundi would be "Hutuized" so much so as to place the Tutsi in an intolerably vulnerable position socially, economically and politically.\footnote{Burundi Assessment Mission Trip Report, National Democratic Institute for International Affairs, Jan. 1994, at 2-5, [hereinafter NDI Report].} When support for the coup did not materialize, a backlash ensued among Hutu, loyal to the slain President as well as hardliner Hutu who seized the opportunity to purge Tutsi from positions of power and influence. The inter-ethnic reprisal violence which followed Ndadaye's death claimed thousands of lives, the majority of them Tutsi.\footnote{Estimates of the death toll following the October 1993 coup attempt, range from a relatively low figure of 30,000 (Human Rights Watch/Africa), to an almost certainly incorrect figure of 200,000 (Africa Report).}

The political climate in Burundi since Ndadaye's assassination has been unstable and violent. Under an agreement reached between the Organization of African Unity (OAU), the United Nations, the Burundian Army and the Burundian civil society, Cyprien Ntaryamira, former Minister of Agriculture and Livestock, became President of Burundi on February 5 1994 via a special election by the National Assembly. Also a Hutu, Ntaryamira was expected to carry on with Ndadaye's policies and indeed, he began by appointing twelve Tutsi as ministers in his cabinet (out of a total of twenty-six positions).\footnote{NDI Report, \textit{supra} note 37, at 1.} Less than two months after he became President, however, Ntaryamira became another victim of assassination.
F. Destinies Converge: The Assassinations of April 1994

While the paths of Rwanda and Burundi may have diverged at independence, the events of April 1994, have reinforced the axiom that the two countries share destinies. On April 6, 1994, Presidents Habyarimana and Ntaryamira were killed when the plane carrying them from a peace conference in Tanzania crashed near Kigali, allegedly as a result of an alleged mortar fire. It is thought that the intended target was Habyarimana and, while the identity of those responsible is not yet known, there is strong suspicion that it was hardliner Hutu in Habyarimana's government who felt threatened by his move to grant a larger role to the Tutsi in Rwanda. The violence which followed Habyarimana's death was primarily incited by these hardliners in the military and presidential guard, and has resulted in hundreds of thousands of deaths, as well as unprecedented refugee flows from the country. Burundi, on the other hand, has remained quiet since the assassinations, yet tensions are building there too.

While the disparity in reactions between Rwandans and Burundians to the deaths of the Presidents may seem anomalous on its face, it is in fact quite explicable. The violent reaction within Rwanda and the corresponding calm in Burundi are more easily understood when studying interethnic relations in Rwanda and Burundi from a historical perspective.

III. INTER-ETHNIC RELATIONS

A. Pre-Colonial

Relatively little is known about the region of Ruanda-Urundi prior to the 1890s, and thus an accurate picture of pre-colonial ethnic relations necessarily relies heavily on oral testimony of Rwandans and Burundians as recorded and interpreted by scholars. The fact that these scholars differ considerably in their analyses depending on their agendas, further complicates matters. This section, therefore, draws on several sources in an attempt to gain a more balanced view.

The first dwellers in the region of Rwanda and Burundi, and the closest thing to an indigenous population, were the Twa.40 These pygmy-type people have, until quite recently, been forest dwellers, potters and ironworkers. The common perception is that they have inhabited the land "from time

Next on the migratory time line were the Hutu, a short, stocky people, who tilled the land until the arrival of the Tutsi sometime between the 14th and the 17th centuries. The Tutsi, taller and slimmer than either the Twa or the Hutu, migrated into the area in successive stages, bringing with them herds of longhorn cattle. Of the three ethnic groups, the greatest controversy surrounds the origins of the Tutsi. Some claim the Tutsi migrated into Rwanda and Burundi from the East and the west, along with other Bantu-speaking peoples, while others claim the Tutsi migrated from the northern reaches of modern Egypt and Somalia.

Regardless of their origins, once the Tutsi arrived in the area, they established between themselves and the Hutu a clientage system of rights and corresponding obligations, roughly resembling the feudal societies which characterized Europe during the Middle Ages. The Hutu, who outnumbered the Tutsi eight to one, harvested crops on parcels of land and paid tribute to the Tutsi cattle-owners. The Tutsi, in turn, protected the Hutu. The Hutu thus played the role of the peasant, and the Tutsi that of the lords; the Twa, being forest dwellers, were essentially unaffected by this system.

Demographics played a central role in defining the terms of the social contract between Hutu and Tutsi. Resources were scarce, and the economic need was greater for agriculturalists than for pastoralists. Correspondingly, there were more Hutu agriculturalists than Tutsi pastoralists. The fact that wealth, and thus prestige, emanated from the ownership of cattle meant that the small group which controlled this scarce resource (the Tutsi), enjoyed a more privileged place in the society. It also meant that the system defined itself in ethnic terms from the outset. Although the clientage system rested on a "premise of inequality," and social or political mobility was rare, there were tangible benefits to the arrangement. The political structure provided the Hutu with security from the raids of neighboring villages, while the Tutsi benefitted from Hutu hard labor. Because the Tutsi relied on Hutu labor for survival, and the Hutu relied on Tutsi protection for survival, neither group sought to eradicate the other. There is no history of inter-ethnic massacres or

---

41 Louis, supra note 17, at 103.
43 Maquet defines a feudal system as one "... based on an agreement between two [parties] who unequally partake in the symbols of wealth and power culturally recognized in their society," Maquet, supra note 40, at 133.
44 Id. at 144-145.
45 Id. at 158.
even widespread violence in Rwanda or Burundi prior to the colonial era. On the contrary, the climate was characterized by "ethnic coexistence." Mutual disdain and repulsion impeded the formation of a fully integrated society, but a caste system functioned efficiently nonetheless.

The clientage system in place in Rwanda and Burundi up until the arrival of the first Europeans, was fairly decentralized. A multitude of suzerains controlled several fiefdoms each, and the suzerains in turn owed allegiance to one monarch. The fact that whoever controlled the sovereign could essentially control the provinces, was immediately recognized and exploited by the colonial powers.

B. The Germans and The French

No doubt the Tutsi regarded themselves as superior to the Hutu and the Twa long before the Europeans reinforced the notion. Indeed, according to their own legends, the Tutsi came from another world to settle the land of Ruanda-Urundi and dominate the people there. As previously noted, there is still much controversy surrounding the origins of the Tutsi people. This controversy stemmed in large part from the reaction of the Europeans who first observed inter-ethnic relations among the groups.

Of all the peoples in the region, it was the Tutsi who bore the strongest resemblance to the Europeans. Upon first seeing the Tutsi, the Germans noted their height, the narrowness of their facial features and their lighter complexion. They also remarked on the nature of the social system, framing it in familiar, European terms: the Tutsi were the aristocrats, the Hutu were the commoners and the Twa were the pariahs. The fact that the Tutsi

---

46 Recent Violence in Burundi: What Should Be The US Response?, supra note 1. While the widespread interethnic killing that we witness today clearly was not in evidence prior to the colonial era, there did exist ethnic awareness. Old Kirundi proverb warn, "If you teach a Hutu to shoot a bow, he'll shoot an arrow into your stomach," and "If you polish the teeth of a Tutsi, tomorrow he'll bite you." Catharine Watson, The U.S. Committee for Refugees, Transition in Burundi: The Context For A Homecoming, at 5 (1993).

47 LEMARCHAND, supra note 19, at 98, 476.

48 MAQUET, supra note 40, at 19.


50 MAQUET, supra note 40, at 10.
looked vaguely Aryan in comparison to other ethnic groups, combined with their superior socio-economic and political position, led the Germans to conclude that the Tutsi were innately superior as well.  

At the beginning of the twentieth century, there even arose in European academic circles what became known as the "Hamitic Myth." Reasoning that the Tutsi must have migrated from somewhere to the north (Egypt, Somalia or even Israel), the Europeans speculated that these people were in fact descendants of the biblical tribes of Ham and were thus inheritors of a culture far superior to the local Hutu or Twa. In reality, there is no evidence whatsoever that the Tutsi are descendants of Abyssinians or Egyptians, or even that they migrated from the north. There is also significant modern nutritional evidence that the increased stature of the Tutsi has largely been a result of their superior, milk-rich diet. Further, by the time the Germans had arrived in the final years of the 19th century, the area from Lake Victoria to Lake Tanganyika represented a single, coherent cultural whole. The people, tall and short, were all Bantu-speakers, and they all shared a common religion.

Despite the existence of this cultural whole, the Germans, and after them the Belgians, heavily relied on the Tutsi in Rwanda and Burundi to liaise with the respective monarchies. Tutsi were given positions of power, prestige and trust, and the colonists turned a blind eye to increasing Tutsi mistreatment of their Hutu clients. The comments of R. Kandt, the first German Résident du Rwanda in 1905, are indicative of the prevalent contempt the Europeans had for the plight of the Hutu,

Les Wahutus se plaignent de l'oppression qu'ils doivent subir et de leur privation totale de tout droit. A plusieurs reprises je leur ai dit de se débrouiller eux-mêmes, je me suis même un peu moqué d'eux en leur disent que eux, qui sont 100 fois plus nombreux que les Watutsi savent seulement gémir et se plaindre comme des femmes.

European colonists and missionaries brought with them their own notions

51 Nyagahene, supra note 49, at 31.
53 B. Lugan, Sources Écrites Pouvant Servir à l'Histoire du Rwanda, 5 ETUDES RWANDISTES 30 (1980).
of race and superiority, and these could not help but impact upon how the different ethnic groups regarded one another. Stereotypical qualities were ascribed to the Tutsi, Hutu and Twa whereby the first group was described as intelligent, refined and courageous leaders; the second as hardworking, unmannerly and obedient laborers; and the last as gluttonous, lazy and unrestrained hunters. As J.J. Maquet notes, such socially accepted conceptions about inequality tend to become self-perpetuating and tyrannical, because those who occupy the superior positions in most of the social relations in which they are involved, tend to develop a permanent authoritarian behavior. This leads to intolerance.

The Belgian policy toward inter-ethnic relations in Ruanda-Urundi was consistent with that of the Germans for roughly forty years. The Belgians favored the Tutsi in the areas of education, politics, and economics. In Rwanda, where favoritism was far more extreme, a greater number of Hutu chiefs were replaced by Tutsi and education was for Tutsi only. When independence loomed, however, the Belgian policies abruptly changed. For years the Belgians had assured the Tutsi that they were the born leaders, yet by the 1950s the Belgians began to suspect some Tutsi of leftist leanings. This prompted the Belgians to switch their focus from Tutsi to Hutu, since the latter were considered a better counterbalance to communism. The Belgian policy was quite successful in inspiring resentment among the Hutu, who challenged the status quo in both countries. The Hutu challenge, however, resulted in majority rule in only Rwanda at the time of independence.

C. Since Independence

The post-independence histories of Rwanda and Burundi read like a manual on how to identify human rights abuses. The litany of massacres, reprisals, genocides, and massive refugee flows defies description and has been a constant source of instability in the region.

Rwanda's turbulence began in earnest in 1959, when the Hutu majority rose up against the Tutsi rulers and began a widespread campaign of ethnic cleansing which lasted until 1961. After independence, another large wave of violence swept the country in 1963, when Hutu killed an estimated

---

54 Maquet, supra note 40, at 164.
55 Id. at 168.

Burundi's post-independence suffering has been just as brutal. In 1972, inter-ethnic violence erupted and, while the details remain unclear, most observers think the killings were precipitated by hardliner Hutu refugees from the PALIPEHUTU movement who infiltrated into Burundi and attacked Tutsi, killing between 10-15,000.\footnote{Catharine Watson, *The Death of Democracy*, 38 AFRICA REPORT 28 (1993).} The Tutsi then responded by killing 100-200,000 Hutu in what seems to be a clear-cut case of genocide.\footnote{Murder Within Sovereign Borders, N.Y TIMES, Sept. 5, 1988, at 20.} The pattern of violence and was clearly evidenced by the events of 1988, when, fearing violence on account of military manoeuvres, Hutu launched a "preemptive" massacre of 2-3,000 Tutsi.\footnote{Id.} The Tutsi-dominated army then responded with the "retributive" killing of 5-10,000 Hutu. In 1991, reformatory liberalization programs instituted by the Tutsi leadership from 1988 until 1991 ironically led to greater Hutu unrest. Once again the cycle of Hutu attacking Tutsi, followed by Tutsi army reprisals, was set in motion. Approximately 1,000 people died in the violence, mostly at the hands of the army, and almost all of them Hutu. Finally, following the assassination of Hutu President Ndadaye in 1993, there was widespread killing of Tutsi by hardliner Hutu who were against any reconciliation with the Tutsi, as well as by those Hutu loyal to Ndadaye.\footnote{It is significant that during the abortive coup of 1993, the army remained loyal to the government. This factor virtually insured that the coup would fail. It is significant because, despite the move to a majority government in Burundi, Tutsi still dominate the military forces. Burundi's army is one of the best equipped and trained in Africa and it is ninety-five percent Tutsi, many of whom are members of the small Hima subsect of the Tutsi tribe.}

Rarely has ethnicity been so effectively manipulated by the few to influence the many as in Rwanda and Burundi. These two countries, and the Hutu, Tutsi and Twa who live within their borders, together constitute an almost archetypical example of the underlying causes of ethnic conflict. Contrary to the attractive simplicity offered by some news accounts of massacres in which thousands die, such violence is not spontaneous or provoked without design. Nor is it inevitable. The recent assassinations of the Presidents of Rwanda and Burundi are cases in point. Whether responsibil-
ity lies with a small group of hardliner Hutu (a distinct probability), or with the rebel Rwandan Patriotic Front forces, the implication is the same: a small group of individuals acted in a calculated manner to achieve a specific political end. Ethnic tensions had been effectively manipulated by Habyarimana during his presidency, and they needed little fanning to ignite anew. In fact, there is every reason to believe that hardliner Hutu in Habyarimana's administration killed the President and then pointed the finger at the Rwandan Patriotic Front, knowing full well such a move would ignite Hutu violence against Tutsi.

Seen in this light, the explosion in Rwanda set along side the calm in Burundi is easy to explain. Burundi's president was essentially an incidental victim in the affair; it was never the aim of the Burundian government to create inter-ethnic rifts among the populace, and the army remained neutral. It is not surprising, therefore, that Hutu did not start massacring Tutsi by the thousand. This fact further discredits the racist notion that ethnic violence in Rwanda (or Burundi) is something which the people are compelled by their very nature to commit. Of course, this is not to say that tensions do not currently exist in Burundi between Tutsi and Hutu. Tutsi refugees have crossed the border where in huge numbers and some have brought with them profound fear, mistrust and hatred of Hutu, whether from Rwanda or Burundi. The situation in Burundi is therefore extremely tenuous, and should political agents choose to manipulate strained inter-ethnic relations, Burundi too could very well explode.

The periodic ethnic clashes in Rwanda and Burundi are in some ways akin to the war in the former Yugoslavia. None of these is a historic conflict; each is a modern struggle for the future. There is an even more tragic similarity between Yugoslavia, Rwanda and Burundi, however. While ethnic hatred was clearly not the cause of these conflicts, it has certainly become a residual effect of them.

The preceding outlined briefly the political and inter-ethnic histories of Rwanda and Burundi. Both countries are now governed by majority rule, yet both have legacies of minority domination. Burundi still has strong state institutions which are controlled by the minority, whereas in Rwanda, the minority is underrepresented in state institutions but powerful


63 Misha Glenny, remarks at the "Ethnicity, Religion and Nationalism," An Education for Public Inquiry and International Citizenship (EPIIC) symposium at Tufts University (Mar. 2-6, 1994).
in religious and economic sectors. As with any ethnic conflict, the challenge in Rwanda and Burundi lies not in containing the violence so much as in addressing its root causes. In both Rwanda and Burundi, the difficult questions of minority versus majority rule and group versus individual rights must first be resolved before any prescriptions can be made for the future.

IV. LEGAL ANALYSIS

A. Minority Rights

As the recent massacres of Tutsi in both Rwanda and Burundi reveal, the legal provisions in place for human rights protection and cooperative governance are clearly inadequate to contain the enormous ethnic and political pressures within both countries. Rwanda and Burundi are unique in that while they resemble other notorious African examples of minority rule, such as Zimbabwe, Namibia, and South Africa, they do so outside of the colonial context. This presents singular problems as both countries seek recourse to domestic and international legal provisions for insuring completion of the transition from minority to majority rule.

Just as "race," "ethnicity" and "tribe" are virtually impossible terms to define, so too is that of "minority." In the past, international organizations such as the League of Nations and the United Nations have attempted to provide for the rights of minorities. Yet they only approximated a definition of the groups they sought to protect, while trying to avoid an overly general definition which would include virtually everyone.

The League of Nations sought to protect the rights of minorities, particularly ethnic, linguistic and national groups, who lived in various parts of Europe. The League members thus drafted a series of "minorities treaties" after the conclusion of World War I. While these treaties offered the most comprehensive civil, political and cultural rights to date, they did not contain an explicit definition of the term "minority," rather referred to the "full and complete protection of life and liberty to all inhabitants without distinction of birth, nationality, language, race or religion."65

64 U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993, 103rd Cong., 2d Sess. (1994) [hereinafter COUNTRY REPORTS].
Following World War II, the United Nations rejected the League's approach of focusing on the special rights of particular groups and instead concentrated on protecting universal human rights enjoyed by all individuals. Thus, the Universal Declaration of Human Rights contains no special provisions concerning minorities. Article 27 of the International Covenant on Civil and Political Rights (1966) applies to "those States in which ethnic, religious or linguistic minorities exist," but again, does not define exactly what it envisions a minority to be.

Perhaps the most comprehensive treatment of the concept of "minority", as well as the most precise definition of the term, has been offered by Professor Franco Capotorti, who, in 1971, was appointed a Special Rapporteur on Minorities by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. Capotorti submitted his final report to the Sub-Commission in 1977, and employed within it the following definition of a "minority":

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members -- being nationals of the State -- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

More recent attempts to clarify the concept of minorities have attempted to downplay the numerical requirement and focus instead on the nondominance

---

67 Although, Article 27 implicitly would appear to give individuals certain rights in relation to his community if he is in conflict with it. The Article's use of the language, "...in which ... minorities exist ..." also seems to exclude new arrivals such as migrants and immigrants. The restrictive reference to "ethnic, religious, or linguistic" qualifiers would also appear to exclude indigenous peoples.
68 Thomberry, supra note 8, at 152.
69 Id. at 167.
component. For example, Jay Sigler defines a "minority" as:

[a]ny group category of people who can be identified by a sizable segment of the population as objects for prejudice or discrimination or who, for reasons of deprivation, require the positive assistance of the state. A persistent nondominant position of the group in political, social, and cultural matters is the common feature of the minority.70

This definition makes the significant leap from numerical nondominance to political, social, and cultural nondominance. The attempt to incorporate an element of "powerlessness" into the definition of a "minority" is, however certain to blur any meaningful distinction between "minority" and "majority", and to confuse the concept of minority rights with that of self-determination.71

Indeed, if Sigler's more inclusive definition were applied to Rwanda and Burundi, the Hutu, the Tutsi and the Twa would each qualify as a "minority". The numerically superior group, the Hutu, would qualify given its long history of discriminatory treatment at the hands of the European colonial powers and of the Tutsi. Also, despite advances in Burundi since the advent of majority rule, Hutu are still underrepresented in education, civil service, and the armed forces. The Tutsi, too, would qualify, although the case for classifying them as a "minority" under Sigler's definition is a far less controversial one than it is for the Hutu. The Tutsi's numerical inferiority and the severe backlash discrimination they now face in Rwanda and Burundi as Hutu in both countries demand fewer Tutsi in positions of power and wealth, would clearly qualify them as "objects for prejudice or discrimination."72 Finally, the Twa are the clearest, least controversial case of a "minority" by any definition, restrictive or otherwise. The Twa are numerically inferior to the Hutu and the Tutsi, and remain completely marginalized in social and political life. In sum, it is clear from the preceding discussion, that a definition of "minority" which includes Burundi's and Rwanda's minority and majority groups alike, is too wide.

For the purposes of this paper, a variation on Capotorti's more restrictive definition will be used, whereby the term "minority" connotes a nondominant group of less than fifty percent of a given population, which

72 SIGLER, supra note 70, at 5.
recognizes itself as united by some objective characteristics such as race, religion, language, nationhood, culture, or ethnicity, and wishes to continue its common traditions. Self-recognition is a key element, as are numerical inferiority and nondominance. Under this definition, the Tutsi and the Twa are the only ethnic groups in Rwanda and Burundi which qualify, at the present time, as minorities.

B. Group v. Individual Rights

The debate over group versus individual rights goes to the heart of how best to protect basic human rights. Proponents of group or minority rights argue that it is only by singling out a group which has been the object of discriminatory treatment in the past that the playing field can be levelled so that all citizens enjoy their basic human rights in relative equality. Others insist that group rights are of dubious legality in that they grant to groups special rights which are by their definition not enjoyed by all individuals. By definition, the argument goes, minority rights are not applicable to all and therefore cannot be considered universal human rights. Another argument against the concept of minority rights is that, if carried too far, the attempt to protect these rights risks being applied ad absurdum. Every individual, at some level, is a member of some minority. Definitions become problematic when group distinctions are made minutely rather than broadly.

What also prevents easy classification of minority issues is the fact that the demands of minorities vary. Some ethnic, linguistic or religious groups seek simple equality with the majorities in their states, and some seek active governmental policies of rectification to redress past grievances. As demands by minorities within states vary, so too do the international responses to them. States have traditionally been reluctant to bring the minority issues of other states into the international arena, since these problems are perceived as being "essentially within the domestic jurisdiction" of the states.

---

73 THORNBERY, supra note 8 at 165; Capotorti regarded the element of common ethnic, religious and linguistic characteristics and traditions as essential to the definition of a minority. The criteria of nondominance and group desire to preserve traditions, in his view, were more contentious elements.
75 Id.
76 LAWSON, supra note 66, at 1070.
77 U.N. CHARTER, art.2, ¶7: "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the
in which the minorities exist. The United Nations too has traditionally chosen to protect the rights of all citizens within a state through the promotion of individual civil and political rights rather than through minority rights.

Clearly, the issue of group versus individual rights is a difficult and often emotional one. While it may be possible for the purposes of this paper to fix upon an approximate definition of "minority," it is far more difficult to determine whether the Tutsi and Twa minorities in Rwanda and Burundi would be more effectively protected via individual or group human rights. Equally difficult is the question of how to ensure that the historically disadvantaged, yet majority, Hutu also enjoy their civil and political rights, something which is not always apparent. Such difficulties are too great to be resolved by group rights alone and they point to a fundamental inadequacy of the concept of groups rights to comprehensively address the problems facing Rwanda and Burundi.

This is not to say that the entire concept of minority rights is flawed. Rather it suggest merely that minority rights are probably not the most effective means through which to address the social imbalances in Rwanda and Burundi. Minority rights are typically most effective when they provide a means for a historically disadvantaged group to exercise its own culture, speak its own language and practice its own religion. In Rwanda and Burundi, however, all ethnic groups share an approximate culture and identical religion and language. The historically disadvantaged group in both countries, moreover, happens to be the majority, further muting the relevance of minority rights.

Given the multitudinous nature of the historical and political circumstances of Rwanda and Burundi, and given the fact the minority and majority alike need protection, minority rights are relevant when speaking of protecting the Tutsi and the Twa. Nonetheless, minority rights are essentially unhelpful when speaking of a comprehensive solution. It is clear that the Tutsi and the Twa in Rwanda and Burundi need protection, just as it is clear that the Hutu in Burundi need to play a greater role in the government and the military. But protection and participation would be best effected through the promotion of individual human rights and through changes in domestic law and policy to insure greater participation of, and less systemic discrimination against, all groups.

domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter ..."
C. Domestic

Majorities and minorities alike usually seek two things above all others: to protect their existence and identity, and to effectively participate in society and governance. The dual goals of protection and participation are most efficiently realized in a state's domestic constitutional arrangements and in its social policies (on education and employment, especially). Given the frequency of inter-ethnic violence in Rwanda and Burundi, and given the still prevalent institutional discrimination against Tutsi in Rwanda and Hutu in Burundi, the constitutional protection of human rights and provisions for representative are unquestionably inadequate. Of course, a healthy civil service and a strong, independent judiciary are also needed to insure those protections and provisions are meaningful.

On June 10, 1991, Rwanda promulgated a new, amended text of its constitution, the first article of which now declares the country to be a "democratic, social and sovereign Republic." The new constitution provides for the introduction of political parties and of separation of powers between the executive, legislature and judiciary, and has resulted in a mixed coalition government in which the president still retains considerable power. Another feature of the amended text is the creation of the position of prime minister. Suffrage is universal and officials are elected by an absolute majority of votes. There is no constitutional system of weighted voting. Of obvious concern to the drafters of the constitution was the volatile combination of ethnicity, political parties and the military. The attempt to divorce politics from the military is evident in the prohibition on members of the military from joining political parties. Despite this prohibition, however, the military remains dominated by Hutu affiliated with the Republican Movement for Democracy and Development (MRND).

Likewise, despite the constitutional prohibition against ethnic discrimination, a policy is still in place which requires all individuals to carry

---

80 RWANDA CONST. art. 44 creates the position of Prime Minister and dictates that that individual be appointed by the President of the Republic.
81 RWANDA CONST. art. 40.
82 RWANDA CONST. art. 16 provides that, "[a]ll citizens shall be equal in the eyes of the law, without any discrimination, especially in respect to race, color, origin,
identity cards indicating their ethnic origin. The 1993 Arusha Peace Accord (between the government and the RPF), called for an end to this policy, but in practice it remains in force. Prior to the advent of the present coalition government, a quota system limited Tutsi access to education, training, and government employment. This ethnic quota system provides access and employment to members of ethnic groups in proportion to their numbers, and insures the "virtual absence" of Tutsi from all security forces. As for the Twa, they are not a part of the ethnic quota system, and therefore neither gain nor lose from it. They remain isolated from opportunity and representation in all spheres.

In Burundi, the political scene is currently one of paralysis. Attempts to separate politics from ethnicity have met with mixed results, and the progress toward democracy is still tentative. The conciliatory policies set in motion by Ndadaye have been placed in limbo while Burundi awaits the filling of its leadership vacuum. Political parties are now legal, but FRODEBU, a still chiefly Hutu party, dominates the National Assembly, with sixty-five out of eighty-one seats; UPRONA, the Tutsi-controlled and formerly sole legal party, is the next most dominant group. Under Article 57 of the Burundian Constitution, political parties are forbidden to identify themselves "in form, action, or any other manner," with a particular ethnic group, yet in practice, ethnic affiliation of political parties is common. Burundi's Constitution, like Rwanda's, also provides no explicit formula for weighted voting along ethnic lines; but instead grants the right of proportional representation based on the number of people in each prefecture, not on their ethnicity. The civil society President Ndadaye tried to engender is probably the sole means by which politics and ethnicity could be separated, but,
Unfortunately, this nascent civil society, like the political scene in general, is in a state of limbo.

As concerns the executive branch of government, there is in place a quota system under which the ruling FRODEBU government grants forty percent of government ministerial posts to Upronists. This is not a constitutional arrangement, rather a political settlement reached between FRODEBU and UPRONA.

Despite the prohibition against discrimination based on race, sex, religion, disability, language, or social status, and governmental attempts to remedy such bias, widespread discrimination against Hutu and Twa in Burundi continues. Hutu are still effectively excluded from careers in the military, judiciary and civil service, at least partially due to blocked access to secondary education. The Twa remain completely marginalized, without access to schools, government services, or health care.

There are no provisions to "level the playing field" in either Rwanda's or Burundi's Constitutions; distinction of any kind based on ethnicity is prohibited. While this, in theory, prevents discrimination against members of groups, in practice it has prevented the amelioration of entrenched systemic discrimination, whether it be of the minority or the majority. As the antecedent discussion illustrates, the domestic legal and political provisions in place in Rwanda and Burundi are inadequate to provide for the necessary protection and participation of all ethnic groups. The international provisions in place are similarly inadequate. They do not include any additional tangible safeguards and do little to shed light on how to harmonize conflicting rights and interests.

D. International

There are several pertinent international conventions for the protection of group interests, some of which, in theory, provide a means of enforcement. Among these are the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Covenants on Civil and

---

90 NDI Report, supra note 37, at 6. Although this arrangement is not a provision for Tutsi representation, rather for opposition representation, implicitly the effect is ethnic as well as political since Upronists are largely Tutsi.

91 COUNTRY REPORTS, supra note 64 at 30.

92 Burundi is not a signatory.
The Genocide Convention defines "genocide" as the commission of murder, serious bodily or mental harm, and other grave offenses, with the intent "to destroy, in whole or in part, a national, ethnical, racial or religious group . . . ." Enforcement provisions are contained in Article 6, which prescribes that persons charged with genocide shall be tried under the domestic law of the place of the offense, or by an international criminal tribunal, should one ever be instituted. Under Article 9, disputes between Contracting Parties relating to the Convention are to be submitted to the International Court of Justice "at the request of the parties to the dispute." This language has provoked heated debate over whether third parties have standing to bring Contracting Parties before the ICJ on charges of genocide, or whether such action is limited to signatories to the Convention who are also parties to the dispute over the interpretation, application or fulfillment of the Convention. This debate is potentially relevant, given that Rwanda is a signatory to the Convention while Burundi is not, and given the apparent commission of genocide in both countries. On the other hand, there has never been a case of a state, contracting party or otherwise, submitting to the ICJ a dispute regarding the Convention, aside from the lone recent example of Bosnia filing against Serbia.

As discussed above, Article 27 of the International Covenant on Civil and Political Rights contains a reference to ethnic (and religious or linguistic) minorities, yet the real enforcement mechanism in that treaty is found in the Optional Protocol, to which neither Rwanda nor Burundi is a signatory. Absent the interstate complaint procedure outlined in Article 41, the Covenant lacks any true enforcement provisions for the protection of ethnic groups.

Similarly, the International Covenant on Economic, Social and

93 Both States have signed the Covenant, but neither has ratified the Optional Protocol, granting to the Human Rights Committee the authority to examine interstate complaints made under Article 41 of the Covenant.
94 Both States have ratified the Covenant.
95 Both States are signatories.
96 Both States have ratified the Charter.
Cultural Rights provides that parties must undertake to guarantee the rights of all peoples to social, economic and cultural development without regard to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Again, however, there is no enforcement mechanism for States which fail to "undertake measures" to guarantee these rights. Moreover, the Article 1 references to self-determination are unhelpful to the peoples of Rwanda and Burundi, since that term, and all its implications, are most resonant within the colonial context.

The International Convention on the Elimination of All Forms of Racial Discrimination defines "racial discrimination" as

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Under this definition, current societal and institutional discrimination against the Hutu in Burundi, against the Tutsi in Rwanda, and against the Twa everywhere, would undoubtedly qualify as racial discrimination within the meaning of the Convention. The Convention also calls on states to protect comprehensive rights of access to education, health service, and employment. Again, however, the language of the Convention is aspiratory and the enforcement provisions have proven weak. Under Article 9, states have an obligation to submit reports, and the Committee on the Elimination of Racial Discrimination (CERD) has the authority to make suggestions and recommendations to the General Assembly of the United Nations upon examination of the reports. Thus far, however, CERD has not fulfilled its considerable potential, in large part due to underfunding.

Finally, the African [Banjul] Charter on Human and Peoples' Rights, does not refer to "ethnic groups" or "minorities", only to "peoples," and there is much debate as to whether this means "nations", "races" or "groups". The Banjul Charter is remarkable in that it simultaneously manages to say a great deal without saying very much. The first 19 articles all contain clawback provisions allowing states to derogate in cases of emergency from the sub-

---

98 International Covenants on Civil and Political Rights, 1966, art. 2[2].
stance of the protections contained therein. Likewise, references to domi-
nation and self-determination are made solely within the context of colonial-
ism.\textsuperscript{100} The Charter is unique in combining civil and political, and social,
economic and cultural rights, and in prescribing rights as well as duties.\textsuperscript{101} Nonetheless, the enforcement mechanism whereby states or non-state actors
file complaints for review by a commission, has proven to be restrictive,
conservative, and extremely political in practice.\textsuperscript{102}

The international legal framework for the protection and effective
participation of ethnic groups in Rwanda and Burundi is largely aspiratory in
nature. The various regimes created via international covenants and conven-
tions also lack the strong enforcement mechanisms required to persuade states
to comply with the treaty provisions. Some suggestions on how to change the
domestic legal landscape, as well as that of the regional and international
scenes, are outlined below.

\textbf{V. PRESCRIPTIVE LEGAL ANALYSIS}

To resolve ethnic conflicts, one must first address systemic human
rights abuses. There must be more than nominal equality before the law;
there must also be institutional safeguards in place. There must be effective
means for minority and majority participation in politics, education and civil
administration. As always, however, the challenge is not discerning \textit{what} to
do, but \textit{how} to do it. Settling on the means is inevitably more difficult than
on the ends to be achieved.

The complexities of Rwanda and Burundi do not lend themselves to
most of the popular solutions to ethnic conflict which are proffered by aca-
demics and policy makers. Ethnic partition, the redrawing of boundaries,
autonomy and secession are each inadequate or simply improper courses of
action for Rwanda and Burundi. The history and culture of the ethnic groups
in these two countries are inextricably linked, and so are their futures. While
there are regions in each country which contain concentrated ethnic pockets,
the phenomenon of secessionary ethnic enclaves is not in evidence. Also

\begin{itemize}
  \item \textsuperscript{100} African Charter on Human and Peoples' Rights, 1981, arts. 19 and 20.
  \item \textsuperscript{101} Justice Ebu Lihau, \textit{Comments on the Banjul Charter}, 11 HRI Reporter,
  \item \textsuperscript{102} Dr. Abdullahi An-Na'im, Executive Director of Africa Watch: Human Rights
      in Africa, Informal Talk Given at the Fletcher School of Law and Diplomacy, in
\end{itemize}
absent are calls for the unification of the two countries. As similar as Rwanda and Burundi may be demographically, historically, culturally and otherwise, these two countries apparently want to remain distinct, whole and independent from each other.

The question thus becomes, one of how to reconcile conflicting rights. Is it better to seek protection and participation through domestic law or through international law?

A. Domestic

A prime motivator of inter-ethnic discrimination in Rwanda is Hutu fear of Tutsi returning to a position of dominance, while a prime motivator of inter-ethnic discrimination in Burundi is Tutsi fear of sharing the plight of their brethren in Rwanda. Such embattled minorities are not unique to Rwanda and Burundi. It is useful, therefore, to examine the constitutional safeguards103 afforded to minorities by other countries which have effected the transition from minority to majority rule and have sought the means by which to protect and include minorities which were overwhelmingly outnum-
bered and largely despised. Three African countries which fit these criteria are Zimbabwe, Namibia and South Africa. The first has managed to safe-
guard the rights of its white minority fairly well for over thirteen years; the second and third cases are far more recent and therefore less conclusive. All are different in at least two major respects from Rwanda and Burundi: the ruling minority and ruled majority were of different races, and the domination was colonial in form. Although these differences limit the usefulness of the comparison, they do not negate it completely.

1. Zimbabwe. The Lancaster House Constitutional Conference of 1979 attempted to negotiate a workable post-independence government for Rhodesia by addressing the concerns of the white minority, the black majority, and the British (the former colonial power). The resulting constitution contained ceasefire provisions to end the guerrilla war for independence, created a highly centralized, unitary state loosely based on a British Parlia-
mentary model, and provided for a provisional interim period of British

103 Constitutional "safeguards for minorities" are a narrower concept than that of "minority rights." The former speaks only to the protection and participation of minorities on par with the rest of society, while the latter includes, *inter alia*, the specialized rights of a historically disadvantaged group to practice its religion, enjoy its culture, and speak its language in addition to what is afforded the rest of society.
administration until elections. The Zimbabwean constitution is unique among African constitutions in several respects: it clearly defines the term "discriminatory;" it establishes a distinction between "common rolls" and "white rolls;" and it provides for a strong, independent judiciary.

Article 23[2] defines treatment or legislation as... "discriminatory" if... as a result of that law or treatment, persons of a particular description by race, tribe, place of origin, political opinion, colour or creed are prejudiced:

(a) by being subjected to a condition, restriction or disability to which persons of another such description are not made subject; or
(b) by the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description; and the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, place of origin, political opinion, colour or creed of the person concerned.

Discrimination, therefore, includes either disadvantage to a group, advantage to another, or both. Zimbabwe's constitution proscribes discrimination of any kind for any reason, and forbids the passage of any provision that is discriminatory either in its nature or in its effect.

Also unique to the Zimbabwean Constitution are its legislative provisions calling for the House Assembly to be composed of mixed members, eighty percent of which are elected by voters from common rolls, and twenty percent of which are elected by voters on the white roll. These rolls are formed from different constituencies, the limits of which are defined by a Delimitation Commission. When determining constituencies, the Commission must take into account, inter alia, the geographical distribution of voters registered on the common rolls or the white roll, and the community of interest as between voters registered on the common rolls or the white roll. This arrangement for representation in the legislature is not based on absolute

---

105 Zimb. Const. art. 23[1][b].
106 Id. at art. 23[1][a].
107 Id. at art. 38.
108 Id. at art. 60.
109 Id. at art. 60[c][d].
group percentages (whites comprise between one and three percent of the population), but rather reflect an effort to reassure the white populace that its interests and civil and political rights will be insured.

A strong, independent judiciary is likewise an essential element to any society hoping to develop a legal tradition. In Zimbabwe, as in many African states, a strong, central executive damaged the system of public accountability to a great degree. While the Zimbabwean judiciary has shown considerable independence when faced with political cases, a culture of authoritarianism has left its imprint.110

The view that Zimbabwe's constitution is a positive example to be emulated is by no means universal. Currently, the country is struggling with land reform issues between white landholders and black claimants. Many feel that the unitary system contained in the Lancaster House Constitution was ill-suited for a newly independent heterogeneous society in which the competition for power was, and is, intense.111 Whether or not this is valid, Zimbabwe still offers some useful lessons for Rwanda and Burundi as they seek ways in which balance the interests of conflicting groups.

The Constitutions of Rwanda and Burundi could benefit from Zimbabwe's clear, comprehensive definition of "discrimination" which includes both disability and privilege components. Also beneficial would be stronger, more independent judiciaries, for the rule of law is impossible to engender without a disinterested judicial branch. Zimbabwe's system of weighted voting is more problematic but still worth examining. It is significant that following independence, Zimbabwe experienced no large-scale backlash violence against whites. How much of this was due to constitutional provisions and


111 Jeffrey Davidow, A Peace in Southern Africa: The Lancaster House Conference on Rhodesia 13 (1984). Davidow speculates that a federalist system would have been more appropriate and enduring for such a heterogeneous society. He implies that if a federalist model were used, Zimbabwe's current transition to multiparty democracy would not be as difficult as it is today. René Lemarchand takes the opposite view, at least with respect to Burundi, and argues that, "the merits of federalism as a strategy for conciliation are largely irrelevant to the Burundi situation .... In theory the argument carries conviction, but where none of the federal units are ethnically homogeneous ... one wonders how devolution could effectively mitigate conflict." René Lemarchand, Burundi in Comparative Perspective, in The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts 169, (John McGarry and Brendan O'Leary, eds., 1993).
how much to the colonial element is uncertain. The fact that Zimbabwean independence was a self-determinative movement from white, colonial, minority rule, to black, indigenous, majority rule, limits its usefulness as an analogy to Rwanda and Burundi. In Zimbabwe, there was no colonial power to incite ethnic hatred between majority and minority; rather the colonial power was a central character which subsequently remained on the scene.

Nevertheless, if the Tutsi in Rwanda and Burundi were guaranteed a certain percentage of seats in the National Assembly, this might lessen their fears of discrimination and violence at the hands of the Hutu, and convince them to invest in real structural changes granting greater Hutu participation in traditionally Tutsi-dominated spheres. This arrangement might convince RPF rebels in Rwanda that Tutsi interests are represented, and it may convince still powerful Tutsi in Burundi that "Hutuization" does not spell the end of the Tutsi people. As for the Twa, any system of representation, however minimal, would be an improvement on the present situation.

2. Namibia. Namibia's experience is akin to that of Zimbabwe's in that it too moved from minority to majority rule within a colonial and racial context. Like Zimbabwe, Namibia also provides a useful precedent for accommodating conflicting interests. Although the country only became independent in 1990, it did so peacefully and has remained calm during the intervening years. Namibia resembles Rwanda and Burundi in that the majority/minority ratio is eighty-five percent to fifteen percent. Of course, Namibia is sparsely populated compared to Rwanda and Burundi; it is over fifteen times the size of the latter two countries combined, yet its population is only one thirteenth that of Rwanda's and Burundi's combined.112

Namibia's constitution, which came into force upon independence on March 20, 1990, contains most of the relevant human rights norms and references several international human rights treaties in force.113 Article 10 of the constitution prohibits discrimination of any kind based on sex, race, color, ethnic origin, religion, creed or social or economic status. An individuating feature of the document is the "affirmative action" provision, contained in Article 23[2]. This provision states,

112 Country Reports for Burundi, Namibia, and Rwanda, Economist Intelligence Unit, 4th Quarter, 1993.
nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically, or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defence force and the prison service.

While this provision, does not explicitly call for measures to "level the playing field," makes clear that such affirmative action policies are not considered discriminatory within the meaning of Article 10. It is interesting that the term "minority" is deliberately avoided so that this provision can be read to apply to minority and majority alike. Clearly, the drafters had in mind the black majority, a historically disadvantaged group.

Were such a provision written into Rwanda's constitution, the effect might well be to pave the way to increased access of Tutsi to education, the public service, the police force, and the military. In Burundi, the article would do the same for the disenfranchised Hutu. Significantly, however, Article 23[2] does not provide any specific affirmative action programs to redress discrimination. It simply guarantees that such action, if taken, would be legal.

Aside from this unique feature of Namibia's constitution, the document takes the view that human rights are protected and exercised through the individual, not the group. There are no weighted voting provisions and no references to special protections for minorities; The Namibian Constitution, like the Zimbabwean Constitution, seeks to guarantee the participation of the majority and the protection of the minority. It simply does so in a slightly different way. In Namibia, the twin goals of protection and participation are achieved by combining constitutional "affirmative action" provisions with individual human rights norms, while in Zimbabwe, this is done through a combination of weighted voting provisions and individual human rights norms.

3. South Africa. The constitution for the new South Africa is still in the making, therefore any prescriptive value of this example is necessarily qualified. South Africa, like Zimbabwe and Namibia before it, is moving from a white minority government to a majority black government. It, too, is struggling to find ways to convince the majority that representation is finally
a reality, while at the same time reassuring the minority that its rights will be also protected.

The old system vested power in the executive and in the parliament, which was split into three houses: white (178 seats), mixed race (eighty-five seats), and Indian (forty-five seats). The Parliament had the power to amend the constitution by a majority and was free from judicial review. Under the proposed legislative structure, however, the parliament is reduced to two houses: the National Assembly (400 seats elected by proportional party representation), and the Senate (ninety seats elected by provincial legislatures). The new system vests lawmaking power in the parliament, charges it with the responsibility of electing a new president and drafting a permanent constitution, and allows it to amend the constitution by a majority.

A hopeful sign that violent political fractionalization along ethnic lines such as that in Rwanda and Burundi will not develop in South Africa, is the fact that political parties are springing up everywhere and are mixing race, religion and fringe causes. In short, political parties are dividing along ideological rather than ethnic lines. In this, there is an important example for Rwanda and Burundi.

Whatever course the new South Africa takes, its rulers must address the fears of whites and the expectations of blacks. Reforms need to be completed in education, taxation, land ownership and the police forces, in order to boost the living standards and the representation of blacks in these institutions. On the other hand, whites need to be reassured that the reform policies will not be patently discriminatory or arbitrary.

4. Other Models of Minority Representation. One controversial concept for minority representation which is currently attracting attention in the United States is that of "cumulative voting." Traditionally, the rallying cry of democracies has been, "one person, one vote." Cumulative voting turns that maxim on its head and instead allocates each voter a bundle of votes which can then be distributed among candidates as desired. For example, in an election where fourteen candidates are vying for seven seats, each voter is given the choice of casting one vote for each candidate, seven votes for one candidate, or some variation between the two extremes. In areas of the

---

114 After 300 Years, Blacks Vote in a South African Election, N.Y. TIMES, Apr. 27, 1994, at A1, A8.
115 Id. at A8.
116 David Van Biema, One Person, Seven Votes, TIME, Apr. 25 1994, at 42-43.
United States where cumulative voting is established, the system has resulted in greater representation of minorities, whether they be black or white.

Another interesting and perhaps imitable arrangement is that of Mauritius. There, the "best loser" system provides for most members of its parliament to be elected through a simple majority of votes, but reserves eight seats for the eight most popular losing candidates from "underrepresented communities." In practice, this has meant greater representation of minority interests on a partially proportional basis.

In sum, Rwanda and Burundi need some way to insure majority participation and minority protection. Political parties must be divided along ideological, rather than ethnic lines. There needs to be more competition at all levels in order to reduce the impact of ethnicity on politics. This means more grassroots movements, evolving into political parties. Civil society, of course, needs nurturing to become a force commensurate with the military, and this is best accomplished through equal access to education and to employment.

Also important, and often overlooked, is the problem of development. The role of overpopulation and resource depletion in Rwanda's and Burundi's woes should not be underestimated. When competition for resources is fierce, emotions are more easily stirred against "the Other," who then becomes a convenient scapegoat for society's ills. Overpopulation has the added complexity of being a politicized issue. Members of historically persecuted groups are naturally suspicious of any initiative to lower population growth. Yet some measures clearly need to be taken to control the rate of population growth and to raise the standard of living. Focusing on the developmental aspect of the inter-ethnic relations in Rwanda and Burundi then is of paramount importance in any long-term domestic solutions.

B. International

---

117 These are Chilton County, Alabama; Alamogordo, New Mexico; and Peoria, Illinois.
118 Van Biema, supra note 116, at 43.
120 Id.
As we have seen through the preceding examination of current international mechanisms in place, the arrangements for minority and majority participation and protection in Rwanda and Burundi are largely aspiratory in nature and lack enforcement provisions. Part of the problem is a lack of any sort of regional focus. In light of this deficiency, one possibility is to strengthen the Banjul Charter to resemble an African version of a successfully functioning regional system, such as that instituted by the Conference on Security and Co-operation in Europe (CSCE). Also desirable, would be a set of principles similar to those contained within the CSCE's Copenhagen Document on minorities.

One suggestion, however. Even though the European system offers an instructive model applicable to the Rwandan and Burundian situations, it does focus exclusively on minorities. This is problematic given the fact that exclusive focus on minorities is not what Rwanda and Burundi need. Therefore, in light of the inadequacy of the concept of minority rights to encompass all of Rwanda's and Burundi's challenges, it would be more germane to substitute the term "minorities" with that of "historically disadvantaged groups," when discussing the protections, rights and enforcement mechanisms of the European system. By substituting the term "historically disadvantaged groups," the technical definition of "minority" can be avoided, without losing the very applicable substance of the protective provisions included in these documents.

The CSCE has proven an effective regional forum for political dialogue. The Copenhagen Conference on the Human Dimension of the CSCE (1990), contains a comprehensive set of principles calling for states to adopt special measures, where necessary, to ensure that persons belonging to national minorities are able to use their languages, have equal access to education, and participate politically. Article 33 of the document provides that states

will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the

---


promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

The provisions, especially as to political participation, are vague, and leave wide discretion to individual states, however the language of "will protect," rather than, "shall undertake to protect," is an emphatic improvement over most international human rights documents. In addition, the CSCE arrangement also affords States the opportunity to critique the adherence of other participating states to the obligations of the Conference. Thus, the treatment a state affords its national minorities may be brought to the attention of an international forum.

In its Report of the Meeting of Experts on National Minorities, dated July 19, 1991, the CSCE stated that Article 31 of the Copenhagen Document requires participating states to take measures to prevent discrimination against individuals on the basis of belonging, or not belonging, to national minorities; this certainly has positive implications for Rwanda and Burundi, where discrimination has often resulted from the lack defining national minorities. Also relevant to the Rwandan and Burundian situations is the Report's recommendation that an international mechanism for the monitoring and mediation of minority/majority relations within participating states be instituted. Such permanent bilateral or regional mixed commissions envisioned by the Report would be helpful within the context of Rwanda and Burundi, where there has been neither a regional nor an interstate policy regarding the protection of national minorities.

Also interesting is the CSCE Declaration and Decisions from the Helsinki Summit; the document calls for the establishment of a High Commissioner for National Minorities who would assess, at the earliest possible stage, the nature, parties and implications of any conflict involving national minorities. The Commissioner would make visits with the notification and compliance of the states concerned and employ quiet diplomacy,

125 Id. at 1699.
127 Id. at §11 (b).
with a view to a peaceful, political settlement. A section which shows particular promise, is that of reporting. The High Commissioner can receive and collect information regarding the situation of national minorities and the role of the parties involved, from any source whatsoever, so long as the communications are in writing and are not anonymous.\[^{128}\] In this way, the process bears some similarity to the Banjul Charter provisions regarding receipt of information.\[^{129}\]

Copenhagen's blend of individual rights and group rights is a useful example for Rwanda and Burundi. Although the principles are not legally binding, they provide an example of a functioning regional approach to the protection of historically disadvantaged groups. The idea of a High Commissioner for National Minorities, vested with a preventive mandate and the power to receive information about the situation of minorities from any source, also has positive implications for the Central African region; although the scope of such a Commissioner's mandate would have to widen beyond just "minorities" to include all persecuted peoples. Altering the Banjul Charter or even instituting an entirely separate system resembling that of the CSCE, is worth considering. Although the past unwillingness of African States to open their domestic relations to scrutiny could prove an insurmountable obstacle to such a regional arrangement.

Finally, a word about multilateral intervention. The possibility of any further U.N. Security Council protective initiatives to ameliorate the current crisis in Rwanda (beyond the cursory peacekeeping force now in place), is remote so long as the United States continues to view the crisis as lying beyond the realpolitik notion of what constitutes U.S. national interests. The United Nation's role therefore, is likely to be restricted to one of negotiation and mediation. Some threshold bona fide willingness of the parties to reach a settlement must be in evidence for negotiation to work, of course, but multilateral efforts to engender such conciliation should not be underestimated. In Rwanda, neither the political will, nor the multilateral effort, is forthcoming at the present time.

CONCLUSION

*The democratic problem in a plural society is to create political institutions which give all the various groups the opportunity to participate in decision-making, since only thus can they feel that*

\[^{128}\] *Id.* at §23.

they are full members of a nation, respected by their more numerous brethren, and owing equal respect to the national bond which holds them together.

W. Arthur Lewis

Participation and protection for all are two essentials of any democratic process and both are lacking in Rwanda and Burundi. The cases of Zimbabwe, Namibia and South Africa offer some useful examples of states which responded relatively well to the same sorts of intrastate pressures. Rwanda and Burundi would do well to study how South Africa managed to inspire ideologically defined political parties. They should also consider imitating Zimbabwe's Constitutional definition of discrimination, or Namibia's affirmative action provisions. And, they should avoid usage of the term "minority" when trying to protect and provide for historically disadvantaged groups, be they Hutu, Tutsi or Twa.

Thus far, Rwanda and Burundi have attempted to include minorities at the ministerial level only, something which has clearly proven inadequate in such strongly centralized states. More systemic changes are needed to devolve powers and create more substantive legislatures and judiciaries. Once this is accomplished, the next step will be to consider changes to the parliamentary selection process. This could entail use of one (or a combination) of the models discussed, be it weighted voting, cumulative voting or the best loser system.

In light of the domestic nature of most minority/majority conflicts, international law is a limited means by which to effect protection or participation, and may therefore be most useful as a repository of standards and principles. Also on an international level, a regional approach to the protection of human rights, akin to that of the CSCE, probably offers the greatest promise for Rwanda and Burundi, although enforcement will remain a major hurdle.

What is most important, above all, in considering the experiences of Rwanda and Burundi, is to look beyond facial classifications. Only by addressing the root causes of inter-ethnic conflict, can one hope to arrive at durable solutions to end such conflict. It is crucial to remember that the violence between Hutu and Tutsi is not historic (unless historic is defined simply as subsequent to independence), it is not tribal, and it is not racial. The inhabitants of Rwanda and Burundi share common languages, common religions, a common culture, and a common past. Attempts to distort history and paint the current conflicts as age-old rivalries, have been made by Hutu
and Tutsi alike to advance political goals. The tragedy is that genuine inter-ethnic hatred is often the real result of such mythical, historical constructs.

The story of Rwanda and Burundi is one of competition for resources, for power over those resources, and for a voice in governance. It is not, at its base, an ethnic conflict. In other words, were there adequate food, land, and opportunity for all groups, it is unlikely there would be inter-ethnic conflict at all. Therefore, solutions which call for ethnic partition, voluntary population transfers, or federalism, would not work because they do not take into account the reasons why people behave as they do. Lasting change in Rwanda and Burundi must insure the continuity of the present boundaries and cooperation among existing populations. The dual goals of protection and participation for minorities can best be achieved through a combination of changes in constitutional and political arrangements, coupled with an improved regional system.

Fundamentally what all individuals and groups want is access. As Claire Palley, the United Kingdom representative to the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities noted in the presentation of her working paper to that body in 1989, one must judge the situation of national minorities (or historically disadvantaged groups) by the extent to which they

- are recognized in States' legal/political institutions;
- enjoy educational or cultural institutions specifically designed to meet their needs;
- have been able to achieve improvements in their social and economic conditions, relative to national society as a whole;
- benefit from positive measures or affirmative action, and the experience gained from the use of such measures;
- maintain contacts with other members of their group across State borders;
- enjoy direct representation in national legislative bodies and participate in elections, holding public office, and public service generally;
- participate in planning, implementation and benefits of development activities; and
- have benefited from agrarian reform or resettlement.
programmes.\textsuperscript{130}

By analyzing these criteria in the context of Rwanda and Burundi, it is clear that such provisions are lacking for minority Tutsi as well as for majority Hutu. These are countries where minority and majority alike need affirmative action policies to redress past discrimination, protection from discrimination, and guarantees of representation and participation of all. Discrimination and apprehension in Rwanda and Burundi transcend ethnic lines or precise definitions of minority and majority. Indeed, the complexity of challenges facing these two countries necessitate an equally comprehensive solution which incorporates domestic and international law, and minority and individual rights.