

Opinion

Beyond the Single Story: Rwanda's Support to the March 23 Movement (M23)

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Introduction

Since the news broke about the mutiny of some of the Congolese Armed Forces - *Forces Armées de la République Démocratique du Congo* (FARDC) in April 2012 and their subsequent creation of the March 23 Movement (M23), we have been consistently supplied with one story about the eastern part of the Democratic Republic of the Congo (DRC). A story that puts much emphasis on allegations that the government of Rwanda and later to some lesser extent that of Uganda are supporting M23 against the government of the DRC. This narrative was reinforced when the UN Group of Experts for the DRC (GoE) issued an Addendum of 48 pages on June 25, 2012¹ making allegations similar to those already made in Human Rights Watch's (HRW) report of June 3, 2012², that the government of Rwanda was providing direct support in terms of recruitment, encouraging desertion of FARDC soldiers, providing weapons, ammunitions, intelligence, political advice to the M23, violating measures concerning the freezing of assets and collaborating with certain individuals. In response, the government of Rwanda issued a 131-page rebuttal on July 27, 2012, in which it denied all allegations and challenged the evidence given in support of each claim.³ On November 15, 2012, the GoE submitted its previously leaked report in which, in addition to the allegations made earlier, it claimed that the effective commander of M23 is Gen. James Kabarebe, Rwanda's Minister of Defence, and that the senior officials of the government of Uganda had provided troop reinforcements, supplied weapons, offered technical assistance, joint planning, political advice and external relations.⁴ The alleged support provided by Ugandan officials was described as "subtle but crucial", and the evidence against Rwanda was described as "overwhelming and compelling". In fact, Steve Hege, the former coordinator of the GoE, described Rwanda in his testimony to the US House of Representatives, House Committee on

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¹ UN Security Council, 'Addendum to the interim report of the Group of Experts on the Democratic Republic of the Congo (S/2012/348) concerning violations of the arms embargo and sanctions regime by the Government of Rwanda' [S/2012/348/Add.1, distr. 27 June 2012].

² DR Congo: Rwanda Should Stop Aiding War Crimes Suspects: Congolese Renegade General Bosco Ntaganda Receives Recruits and Weapons from Rwanda (June 3, 2012) <http://www.hrw.org/print/news/2012/06/03/dr-congo-rwanda-should-stop-aiding-war-crimes-suspect-0> (accessed on December 21, 2012); Anneke Van Woudenberg, 'Rwanda is hindering justice for Congo's atrocity victims: Rebel leader Thomas Lubanga may now be in jail, but Rwanda continues to support his co-accused, Bosco Ntaganda' [HRW, July 11, 2012 first published in [the Guardian](http://www.guardian.co.uk)] <http://www.hrw.org/news/2012/07/11/rwanda-hindering-justice-congos-atrocity-victims> (accessed on December 21, 2012).

³ The Government of Rwanda, 'Rwanda's Response to the Allegations contained in the Addendum to the UN Group of Experts Interim Report' [Kigali, 27th July 2012, N°499/09.01/CABMIN/2012].

⁴ UN Security Council, 'Final report of the Group of Experts on the DRC submitted in accordance with paragraph 4 of Security Council resolution 2021 (2011)' [S/2012/843 of 15 November 2012].

Foreign Affairs, Subcommittee on Africa, Global Health, and Human Rights on 11 December 2012 as the sole creator of the M23⁵. Before Rwanda could respond to those accusations, some western donors had already either withdrawn or suspended their development aid.⁶

While reporting on the alleged role of Rwanda and Uganda, the media fail to elaborate on the broad context. The media do not give enough details for the public to formulate their own conclusions - except maybe for those who are interested in reading the whole report of the GoE and the rebuttals of the governments in question (Rwanda and Uganda). There is little information about what exactly constitutes the evidence on Rwanda's or Uganda's support or about what the two governments have said to deny those allegations. Having only one side of the story makes it difficult to understand the real complexities of the eastern DR Congo. As Chimamanda Ngozi Adichie, a Nigerian novelist, puts it: "[t]he single story creates stereotypes, and the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the only story."⁷ The purpose of this article is to shed light on some of the realities that go beyond that single story. It presents the evidence against Rwanda as found in the UN GoE report in a parallel comparison with the rebuttal of the government of Rwanda, and attempts to place the two in a historical context of the conflicts in the eastern DRC.

I. A Brief Introduction to the Contextual and Historical Events

The first military confrontation between the current Rwanda Defence Forces (RDF) and the FARDC soldiers began in October 1990 when RDF was the Rwandese Patriotic Army (RPA) and DR Congo was Zaire. When RPA attacked Rwanda, President Mobutu of Zaire sent his soldiers of the *Division Spécialise Présidentielle* (DSP) to fight alongside the former *Forces Armées Rwandaises* (ex-FAR, the army of the former regime) together with French and Belgian troops. In June 1994, when the ex-FAR and genocide militia groups were losing ground in Rwanda, Goma served as a strategic entry point for the French soldiers under the controversial *Opération Turquoise*. This event is crucial to Rwanda's later involvement in DRC. Through the French controlled zones, ex-FAR soldiers, genocide militia groups together with about two million civilians managed to settle in Goma and other areas near the border with Rwanda. The proximity of the ex-FAR and genocide militia groups to the border with Rwanda combined with their continued support from Zaire, France and networks from other countries, allowed them to prepare and launch attacks inside Rwanda. From November 1996 to May 1997, RPA soldiers together with some Congolese troops attacked Zaire with the support of Uganda, which resulted in Mobutu being overthrown. When Laurent Désiré Kabila came into power, Zaire was renamed the DR Congo. Even if this war – often called the first Congolese war – is viewed among most of the Congolese as a liberation war, since

⁵ Steve Hege 'Rwanda schemed M23 rebellion for its benefit, says UN expert report' *The East African*, December 15, 2012] <http://www.theeastafrican.co.ke/OpEd/comment/-/434750/1644632/-/2ymk3dz/-/index.html> (accessed on December 21, 2012).

⁶ 'Germany Latest to suspend Aid to Rwanda Aid: Kigali under pressure to end its alleged support for the rebellion in DR Congo as several donors halt planned support' *Aljazeera*, 28 July 2012 <http://www.aljazeera.com/news/africa/2012/07/20127281579389961.html> (accessed on December 21, 2012); Wilson, G. "Pleb row Andrew Mitchell is blasted over Rwanda millions: Decision to give £21m aid to African nation is scrapped over the country's continuing support for killers in DRC" *The Sun*, 1 December 2012, at <http://www.thesun.co.uk/sol/homepage/news/politics/4675651/UK-aid-to-Rwanda-suspended-amid-criticism-of-Andrew-Mitchel.html> (accessed on December 21, 2012).

⁷ C. Adichie: The danger of a single story (TED Talk July/October 2009), at http://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story.html (accessed on January 3, 2013).

they were tired of Mobutu's dictatorship, many still were sceptical about Rwanda's and Uganda's involvement. It is believed that Laurent Désiré Kabila decided to turn against his main former allies (Rwanda and Uganda) to gain popularity among other tribes in Kinshasa and other areas. However, Kabila's decision to cut ties with Rwanda came when the ex-FAR and genocide militia groups, the major security concern for Rwanda, were still active in the forests of the DR Congo. From August 1998, the second Congolese war began with Uganda supporting the *Mouvement pour la Liberation du Congo* (MLC), and Rwanda and Burundi supporting the *Rassemblement Congolais pour la Démocratie* (RCD) against the Government of the DR Congo, which in its turn was supported by Angolan, Zimbabwean, Namibian, Chadian and Sudanese soldiers.⁸ The war continued even after the assassination of Laurent Désiré Kabila on January 18, 2001 and his subsequent replacement with his son Joseph Kabila, until the Pretoria Agreement was signed on 30th July 2002, between Rwanda and the DRC. Rwanda agreed to "withdraw [its troops] from the territory of the DRC as soon as effective measures [were put in place to ...] address its security concerns, in particular the dismantling of the ex-FAR and Interahamwe forces".⁹

The weaknesses of security institutions in the DR Congo since its independence combined with those aforementioned armed conflicts have resulted in different communities creating their own ethnic-based militia groups (*mai mai*) for protection and control of resources. Following the Lusaka ceasefire agreement of July 1999, the United Nations Security Council on 30 November 1999 adopted resolution 1279 (1999) establishing the UN Mission in DRC (MONUC) which as of 1 July 2010 became the UN stabilisation mission in the DRC (MONUSCO).¹⁰ However, both the government of the DRC and MONUSCO have been unable to bring peace. Currently, the eastern DR Congo is comprised of several militia/rebel groups, foreign and local, notably the *Forces démocratiques de libération du Rwanda* (FDLR) whose leadership is accused of participating in the 1994 genocide in Rwanda, the Allied Democratic Forces (ADF) and Lord's Resistance Army (LRA) from Uganda, the *Forces Nationales de Liberation* (FNL) and the *Front du peuple murundi* both from Burundi and local armed groups such as M23, *Alliance des Patriotes pour un Congo Libre et Souverain* (APCLS), *Forces de Resistance Patriotiques en Ituri* (FRPI), Nyatura, Sheka, Mai-Mai Yakutumba, Raïa Mutomboki, *Union des Patriotes Congolais pour la Paix* (UPCP) and other criminal networks/groups.¹¹ It is in that same context that the *Congrès National pour la Défense du Peuple* (CNDP) had also been created mainly to protect Congolese Tutsi communities against the FDLR attacks. When CNDP attempted to take over Goma in late 2008, the DR Congo government accepted negotiations which resulted in the March 23, 2009 peace agreement.

⁸ For further information about these events read Gérard Prunier (2nd ed.), *The Rwanda Crisis: History of A genocide* (C. Hurst & Co. Publishers, 1999) 93ff; Human Rights Watch, 'Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide' [May 1995]; Gérard Prunier, *Africa's World War: Congo, The Rwandan Genocide, and the Making of A Continental Catastrophe* (Oxford University Press, 2009); Organization of African Unity: "International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events", *Rwanda: The Preventable Genocide International panel of eminent personalities*, at http://www.africa-union.org/official_documents/reports/report_rowanda_genocide.pdf (accessed on December 29, 2012).

⁹ Article 5 of the Peace Agreement Between the Governments of the Republic of Rwanda and the Democratic Republic of the Congo on the Withdrawal of the Rwandan Troops from the Territory of the Democratic Republic of the Congo and the Dismantling of the Ex-Far and Interahamwe Forces in the Democratic Republic of the Congo (Pretoria, July 30, 2002).

¹⁰ Resolution 1925 (2010) adopted by the Security Council at its 6324th meeting, on 28 May 2010 (S/RES/1925 (2010)); Resolution 1279 (1999) Adopted by the Security Council at its 4076th meeting, on 30 November 1999 (S/RES/1279 (1999)).

¹¹ S. Van Damme, 'Commodities of War: Communities speak out on the true cost of conflict in eastern DRC' [164 Oxfam Briefing Paper, November 2012], at <http://www.oxfam.org/sites/www.oxfam.org/files/bp164-commodities-of-war-drc-protection-201112-en.pdf> (accessed on December 29, 2012); UN Security Council 15 november 2012, *supra* note 4, paras. 94-138.

Parties agreed among other things to (art.1) the transformation of CNDP into a political party and reintegration of its forces into the FARDC, (art.3) adoption of amnesty, (art.4) facilitation of national reconciliation, (art.5) resolution of local conflicts, and (art.6) return of refugees.¹² M23, whose name stems from that peace agreement, accuse the DRC government of “failure to restore security in the Kivu, failure to return refugees, discrimination in the army, and the killing about 50 of their colleagues who were transferred to Dungu in the Orientale Province.”¹³ The eastern DR Congo has been under the control of those different armed groups for a very long time now. Together with FARDC and sometimes the United Nations Organization Stabilization Mission in the DR Congo (MONUSCO),¹⁴ they are being accused of various violations of human rights. The paradox of the current storyline in the news is that it has given an impression that the M23 is the only armed group operating in the area, and that if it were taken out of the equation, maybe the eastern DRC would become peaceful. According to Steve Hege “A rebellion which displaces over 500,000 can hardly defend the rights of 50,000 refugees.”¹⁵ I personally do not condone war and the purpose of this paper is not to establish whether M23 is justified in its actions or not, but I have to disagree with Hege’s suggestion that M23 cannot claim to be fighting for the return of their people who have been in refugee camps for over 15 years now. If decisions for going to war were arithmetically made in such a rational manner, maybe many of the current wars would not be happening. Having noted that, I do understand why such a suggestion is made, as Nathanson argues, “our feelings about these things also depend on who the victims and perpetrators are. We have less sympathy for some victims than for others as well as varying positive or negative attitudes towards perpetrators.”¹⁶

It is a fact that the DRC reneged on the March 23, 2009 agreement.¹⁷ Probably the government thought that since it had reached an agreement with Rwanda it would be fine to overlook its agreement with CNDP (return of refugees, reconciliation, governance and land ownership). As the International Crisis Group had warned, the gains made since November 2008 were doomed to fail “if there is not a concerted international effort to craft a strategy that addresses both the short- and longer-term causes of the instability.”¹⁸ According to the UN Security Council mission report in DRC of May 2010, there was already “little progress on the implementation of the 23 March 2009 agreements ...’ [and] ‘in April of 2010, CNDP [had] expressed concern that the Government had failed to appoint CNDP officials to

¹² DRC: Peace Agreement between the Government and the CNDP Goma, March 23, 2009, at http://www.iccwomen.org/publications/Peace_Agreement_between_the_Government_and_the_CNDP.pdf (accessed on December 31, 2012).

¹³ Colette Braeckman interview Gen. James Kabareba, Rwanda’s Minister of Defence, French being the original version (Colette Braeckman, ‘Rwanda’s Defense Minister speaks out on DRC, M23’ *The New vision*, 4 September 2012, at <http://www.newvision.co.ug/news/634879-rwanda-s-defense-minister-speaks-out-on-drc-m23-rebels.html> (accessed on December 30, 2012).

¹⁴ HRW ‘[MONUC: A Case for Peacekeeping Reform](http://www.hrw.org/news/2005/02/28/monuc-case-peacekeeping-reform): Testimony of Anneke Van Woudenberg before the U.S. House Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations, March 1, 2004’ <http://www.hrw.org/news/2005/02/28/monuc-case-peacekeeping-reform> accessed on February 5, 2013.

¹⁵ Hege 2012, supra note 5.

¹⁶ S. Nathanson, ‘Are Attacks on Civilians Always Wrong?’ in D. W. Lovell and I. Primoratz (eds.) *Protecting Civilians during Violent Conflict: Theoretical and Practical Issues for the 21st Century*, Ashgate Publishing Limited 2012, p.18.

¹⁷ Current negotiations between DRC and M23 in Kampala acknowledge the fact that some of the elements of 2009 agreement remain unfulfilled. Gaaki Kigabo, ‘DRC peace talks now focus on four key issues’ *The EastAfrican*, 19 January 2013, at <http://www.theeastafrican.co.ke/news/DRC-peace-talks-now-focus-on-four-key-issues/-/2558/1669940/-/qhwqivz/-/index.html> (accessed on March 1, 2013).

¹⁸ International Crisis Group, ‘Congo: Five Priorities for a Peacebuilding Strategy’ Africa Report N°150, 11 May 2009, at [http://www.crisisgroup.org/~media/Files/africa/central-africa/dr-congo/Congo%20Five%20Priorities%20for%20a%20Peacebuilding%20Strategy](http://www.crisisgroup.org/~/media/Files/africa/central-africa/dr-congo/Congo%20Five%20Priorities%20for%20a%20Peacebuilding%20Strategy) (accessed on January 2, 2013).

national-level posts or to reappoint former CNDP territorial administrators.”¹⁹ This shows that the international community was aware of the dissatisfaction two years before the outbreak of the conflict in 2012. Its failure to seize that opportunity to push both parties to honour their respective obligations to some extent contributed to the ongoing crisis.

II. Evaluating the Evidence of Rwanda’s support for the M23 rebellion

Most of the information contained in the report of the UN GoE is largely based on testimonies. The Group claims to have interviewed over 150 individuals, comprising unnamed DRC government officials (mainly military, intelligence, politicians and civil servants), civil society, villagers, alleged deserters of M23, ex-CNDP officials, diplomats and regional intelligence sources. The government of Rwanda claims that the group’s overreliance on testimonies from anonymous individuals falls short of the required standard on which serious allegations can be made against a UN member state. Rwanda states that most of the group’s eye witnesses such as “the FARDC intelligence and other DRC officials have obvious motivations to fabricate, manipulate or distort information about Rwanda” and that “deserters and the said captured rebels, have been interrogated under unclear circumstances.” Rwanda also doubts that the said unnamed captured foot soldiers could possibly possess specific high-level military operational details.²⁰ In contrast, the GoE argues that testimonies from its eye witnesses are reliable because it used three to five separate independent sources before coming to its conclusions. It notes that its standard of information gathering “adheres to a rigorous investigative methodology that ensures the greatest degree of accuracy of its assertions and conclusions.”²¹ In the GoE’s final report, it is emphasised that the reason for using anonymous sources is the Group’s strict adherence to “the confidentiality of its sources.” Which in the Group’s view is even more necessary “[i]n light of the highly sensitive nature of the government of Rwanda’s violations of the arms embargo (...).”²² Relying on testimonies from unnamed individuals poses difficulties to those interested in conducting a counter-investigation into the allegations. The government of Rwanda has stated that the use of unverifiable sources is the major weakness of the entire report because it puts Rwanda in a situation of ‘logical blindness’. It cannot definitively disprove the allegations.²³

Certainly, safety of witnesses is very important in order for the GoE to obtain further information, but this reality in itself does not take away Rwanda’s suspicion that the investigation is in fact a witch hunt, because in addition to methodological concerns, the government of Rwanda also claims that the GoE is not neutral. Firstly, Rwanda claims that the GoE has been under the influence of international media, HRW and its sister organisations for their “long-standing anti-Rwanda rhetoric”,²⁴ a claim which was denied by the GoE by noting that it has never been under such pressure.²⁵ The second claim of GoE bias emerged when Inner City Press reported about two publications under the name of Steve Hege, the group coordinator, suggesting that he is a sympathiser of the FDLR’s agenda against

¹⁹ UN Security Council, ‘Report of the Security Council mission to the Democratic Republic of the Congo (13 to 16 May 2010)’ (S/2010/288 of 30 June 2010).

²⁰ The GoR notes that ‘deserters and captives’ have interest in providing ‘fictitious evidence to suit the interests of their captors/handlers’, The Government of Rwanda, *supra* note 3, para. 7.

²¹ UN Security Council, *supra* note 4, para. 1; UN Security Council, *supra* note 1, para. 6.

²² UN Security Council, *supra* note 4, para. 27 of Annex 3: The text of the Group’s written response to the Committee, dated 2 October 2012, concerning the Government of Rwanda’s rebuttal to the Addendum (S/2012/348/Add.1).

²³ Paraphrased, The Government of Rwanda, *supra* note 3, para. 3.

²⁴ The Government of Rwanda, *supra* note 3, paras. 12-19.

²⁵ UN Security Council, *supra* note 4, paras. 18-19 of Annex 3.

the Rwandan government.²⁶ In one of the documents, FDLR is described as a legitimate force which must be viewed “in light of the regional history of armed rebellions formed by refugees and/or political exiles who have eventually taken power back from undemocratic regimes.” In conclusion, that document notes that “[t]he FDLR have not constituted a military threat to Rwanda for over five years” [and that it] “would rather wait for political negotiations when international opinion eventually sours on the Rwandan regime.”²⁷ Based on these statements, the government of Rwanda claims that putting Steve Hege in a position of coordinating the GoE gave him an opportunity to effectively change international opinion on Rwanda. In its final report, without expressly denying whether Hege is the author of that document, the GoE argues that in its previous reports, it has been independent in reporting on all militia groups in the DR Congo including FDLR in full cooperation with Rwandan military intelligence.²⁸

The GoE insists that it is simply doing what is required of its mandate, which is to monitor and report on the violations of the arms embargo in the DR Congo. It may also be argued that in a body composed of six individuals, one member cannot influence the total outcome of their entire report. However, such an argument becomes less persuasive when you consider the fact that all GoE reports against Rwanda have been leaked to the media before their actual submission to the UN Security Council. Such kinds of practices reinforce the idea that the GoE is not a mere team of investigators. That became apparent when the final report was leaked on October 16, 2012, just two days before the election of Rwanda to a non-permanent member position of the UN Security Council.²⁹ It cannot be proven that it was the GoE that leaked its reports, but since they were the ones who wrote and kept the reports, and (to my knowledge) they never distanced themselves from that conduct, these leaks reinforced Rwanda’s perception of GoE’s bad faith.

Furthermore, on careful examination of some of the testimonies, you will find that some conclusions were either hastily drawn without any efforts to find some other possible theories, and sometimes eye witnesses were used whose credibility or motives are questionable. For example, between July 23rd and 25th, 2012, the GoE went to Kigali to give Rwanda an opportunity to respond to the allegations contained in the June Addendum. The GoE reports that Rwanda’s Minister of Defence told them that if RDF soldiers were indeed in Congo, “people would easily identify them based on their discipline, style of patrolling and their Kinyarwanda accent”. In their final report of November 2012, the GoE managed to find witnesses who testified exactly on what the Minister had told them. They report that “[n]ot only did ex-combatants, politicians, FARDC, and M23 members themselves confirm the RDF participation, but also over ten villagers in Rutshuru stated that the RDF troops were very visible because of their *distinct uniforms, equipment, patrolling style and accent when speaking*

²⁶ M. R. Lee, ‘Exclusive: As French M23 Draft Awaits Araid, DRC Group of Experts Hege Scrutinized for FDLR Views’ *Inner City Press*, 31 July 2012, at <http://www.innecitypress.com/rwanda1hege073112.html> (accessed on December 21, 2012); M. R. Lee, ‘Exclusive: Rwanda Article Is Removed Then Reposted Online, As Expert Hege Scrutinized’ *Inner City Press*, 1 August 2012, at <http://www.innecitypress.com/rwanda2hege080112.html> (accessed on December 21, 2012).

²⁷ Peace Appeal Foundation, ‘*Understanding the FDLR in the DR Congo: Key Facts on the Disarmament and Reparation of Rwandan Rebels*’ [Contact person: Steve Hege, 24 February 2009], at <http://www.therwandan.com/wp-content/uploads/2012/08/steve-hege-understanding-the-fdlr-in-the-dr-congo-fact-sheet-feb-09.pdf> (accessed on December 21, 2012).

²⁸ UN Security Council, *supra* note 4, paras. 89-94 of Annex 3.

²⁹ D. Smith, ‘Rwanda joins UN security council despite damning Congo report’ *The Guardian*, 18 October 2012, at <http://www.guardian.co.uk/world/2012/oct/18/congo-rwanda-un-security-council> (accessed on December 21, 2012); UN News Centre ‘Argentina, Australia, Luxembourg, Republic of Korea and Rwanda obtain non-permanent seats on UN Security Council’, at <http://www.un.org/apps/news/story.asp?NewsID=43320> (accessed on December 21, 2012).

in Kinyarwanda”³⁰. The question of curiosity is not answered here; the GoE does not tell us what constitutes that style of patrolling or discipline in comparison to that of M23 that is so obvious to the villagers.

GoE’s justification of the allegations is found throughout the entire final report, in a manner that is consistent with Rwanda’s rebuttal. In the Addendum to the June Interim report, the GoE simply provided evidence in the form of alleged intercepted radio communications between RDF and M23. That piece of evidence showed that “an RDF officer had acknowledged the visit of M23 officers on Rwandan territory and that the M23 had acknowledged the reception of about 500 soldiers of reinforcement and was seeking additional support.”³¹ In its rebuttal, Rwanda provided an analysis of that allegedly intercepted radio communication and concluded that, “[t]he so-called signal interception by FARDC indicating the reception of RDF troop reinforcements by M23 (...) is one of the most demonstrably false pieces of fabrication” because the RDF does not use the alleged mode of radio communication.³² In the final report, while the GoE accepts that RDF does not own the alleged intercepted radio communication equipments, it further claims that M23 shared theirs with RDF junior soldiers and that commanders of the Congolese armed forces are capable of intercepting them.³³ The rejection of Rwanda’s defence here can mean one of two things: either the GoE checked what they had written in the Addendum report and tried to clarify it in the final report, or the GoE is simply dismissive because they have no further evidence beyond unnamed witnesses to make yet another claim; that there was an exchange of communication equipment between RDF and M23. The GoE further notes that one of their group members witnessed the M23 Commander communicating with RDF soldiers on a radio asking for reinforcement.³⁴ The report however does not tell us what made that member of the group believe that the M23 commander that was overheard communicating on a radio was indeed speaking to RDF soldiers. Or why such a sensitive mode of communication would be used in the presence of an outsider when both Rwanda and M23 had denied the accusations of Rwanda’s involvement. In such a circumstance, the (lack of) credibility of the UN GoE report depends on the reader’s subjective position: on whom the reader chooses to believe. It comes down to whether you trust the government of Rwanda more than the UN GoE or vice versa.

In situations where the accused Rwandan officials presented evidence of alibis, the UN GoE reverses the burden of proof. For example, Gen. Jack Nziza challenged the GoE claim that he was deployed in Ruhengeri to oversee the operations of the M23 by giving a list of meetings with different individuals, including foreign visitors he met with at his office in Kigali as a chief administrator in the Ministry of Defence. In the response, the GoE simply notes that; “[t]he town of Ruhengeri, where most of the RDF support for the M23 has originated, is situated less than two hours by road and twenty minutes by helicopter from Kigali.”³⁵ The GoE does not indicate to the reader exactly when Gen. Nziza was supposed to be in Ruhengeri and by which mode of transport (helicopter or road) he travelled, so that we could check such facts against the accused’s detailed *list of alibi witnesses*. A similar response was given to Lt. Col. Jomba Gakumba when he provided a list of courses and a list of visitors he

³⁰ UN Security Council, *supra* note 4, paras. 9 & 39 of Annex 3 (author’s italics).

³¹ UN Security Council, *supra* note 1 (Image 10: Extract from M23 radio intercepts requesting external reinforcements).

³² The Government of Rwanda, *supra* note 3, para. 50.

³³ UN Security Council, *supra* note 4, paras. 15 & 67 of Annex 3.

³⁴ *Ibid*, para. 12.

³⁵ *Ibid*, para. 81; The Government of Rwanda, *supra* note 4, para. 44(a) and Gen. Nziza’s response is Annex 1, the list of meetings can be found in appendices 1 & 2.

met at Gako Military Academy in Eastern Province, where he is based.³⁶ Shifting the burden of proof makes it difficult for the accused individuals to defend themselves. Normally, when someone produces an alibi, it is the accuser who has to prove that the accused was either not at the place he or she claims to have been or that she or he was at those two different places at different times.

In addition to testimonies, the GoE provides some pictures of items allegedly obtained from M23 captives or deserters, or found in areas under the control of M23 or after attacks of M23. First there are pictures of three uniforms and one pair of gumboots which the GoE claims to belong to RDF soldiers, meaning that the government of Rwanda is providing them to the rebels. Secondly there are pictures of three AK-47s, an anti-tank round, a 7.62mm tracer round, 75mm canon rounds, a 60mm mortar round and three grenades. The conclusion of the GoE is that since such kinds of weapons and ammunitions were not given to the FARDC soldiers, nor found in their stockpiles, such weapons must have come from Rwanda. Thirdly there are identification documents: three pictures of Rwandan National Identity Cards, the documents of certain demobilised soldiers, a document replacing a lost national identity card, a copy of a document given to repatriated former FDLR fighters, and a provisional driving permit.

The government of Rwanda states that those pictures do not meet any standard of credible evidence for the following five reasons:

- (i) Countries in the region tend to get their weapons from the same sources;
- (ii) After Rwanda operated in the DRC for about seven years, it wouldn't be a surprise if they left some rifles there;
- (iii) A picture of a pair of gumboots is not a 'signature of RDF soldiers'. Rwanda instead claims that the DRC bought those same pictured gumboots for the UMOJA – WETU operation;
- (iv) Camouflage pants and uniforms cannot be attributed to RDF soldiers without their serial numbers. In addition, Rwanda notes that uniforms with all sorts of stripes can be found in the region.
- (v) The AK-47 pictures show a larger 'barrel muzzle', the purpose of which is to fire grenades; such weapons are possessed by both armies (FARDC and RDF).

In addition, Rwanda states that it does not possess 75mm cannons and it has never purchased them or their ammunitions. It counter-claims that it has credible information to establish that "75mm canons and anti-tank rifle grenades" are found in DRC.³⁷ Rwanda also showed that Captain Saddat Janvier, one of the alleged RDF soldiers captured in the eastern DRC was instead an FARDC soldier with the FARDC ID number 166964208920. The document used as evidence to prove that he was an RDF soldier must therefore have been a fabrication.³⁸

The GoE does not explain how it came to the conclusion that Rwanda is providing weapons to M23. It does not show any purchase order or receipt for those weapons because Rwanda

³⁶ UN Security Council, *supra* note 4, para. 83, read in conjunction with the rebuttal by Rwanda *supra* note 3, para. 44(d), Lt. Col. Jomba's response (annex N).

³⁷ The Government of Rwanda, *supra* note 3, paras. 6, 39-40.

³⁸ [E. Akugizibwe](http://www.chimpreports.com/index.php/news/news-as-it-happens-around-the-east-african-region/5585-scandal%3A-fabricated-evidence-against-rwanda-found-in-un-experts%E2%80%99-report.html), 'SCANDAL: Fabricated Evidence against Rwanda Found in UN Experts' Report' *Chimpreports*, August 20, 2012 <http://www.chimpreports.com/index.php/news/news-as-it-happens-around-the-east-african-region/5585-scandal%3A-fabricated-evidence-against-rwanda-found-in-un-experts%E2%80%99-report.html> (accessed on January 10, 2013); Hatahuhwe ibimenyetso mpimbano muri raporo ya Loni ishinja u Rwanda gufasha M23' *Igihe*, 21 August 2012, at <http://www.igihe.com/amakuru/u-rwanda/hatahuhwe-ibimenyetso-mpimbano-muri-raporo-ya-loni-ishinjwa-u-rwanda-gufasha-m23-26600.html> (accessed on January 10, 2013); James Kabareba 2012, *supra* note 13.

does not produce any weapons or ammunitions, neither does it show evidence to prove that such weapons came from Rwanda's military storage. Let us assume for a moment that it is indeed true that those weapons and ammunitions have never been supplied to the FARDC soldiers. This fact alone proves one thing: that the M23 could not have obtained them from the DRC but it does not prove the actual origin. It means that such weapons might have come from somewhere else outside DRC, including possibly Rwanda, but this does not mean that Rwanda has to be the *only* suspect. Further evidence contradicts the report itself. First, the report states that "the Democratic Republic of the Congo has yet to embark on a programme of marking State-owned arms."³⁹ Therefore, the GoE cannot conclusively establish a list of weapons that belongs to the DRC. Second, the GoE reports the smuggling of weapons into the DR Congo by FARDC soldiers including Gen. Amisi, the FARDC Land Forces Commander, who then sells them to different rebel and armed militia groups.⁴⁰ Certainly, this says nothing about whether Rwanda does (not) provide weapons to the M23; it simply indicates difficulties in establishing the origin of certain weapons found in the territory of the DR Congo.

It is one of the least contested facts that M23 soldiers have relatives in Rwanda as either refugees or as Rwandan citizens and that as a result M23 has been recruiting from these communities.⁴¹ This reality however does not necessarily mean that Rwanda is providing direct support to the M23. Since the start of this conflict, the border between Rwanda and DR Congo has remained open and the porous border between the two countries can facilitate clandestine recruitment of fighters from Rwanda. This reality is a double-edged sword: Rwanda could use it to hide its possible support to the M23, or the UN GoE could manipulate this fact to make false accusations against Rwanda. If the UN GoE does not interpret FDLR's recruitment from refugees in Uganda⁴² as direct support from the Ugandan government, why does it reach this conclusion in the case of M23's recruitment from Rwanda?

According to Rwandan officials, the build-up to the conflict began immediately after the November 2011 elections in the DRC. After Joseph Kabila's controversial victory, some actors within the international community started putting pressure on him to arrest Gen. Bosco Ntaganda for the International Criminal Court (ICC). In order to arrest him, the Kinshasa-based government wanted to first reduce his power base by deploying former CNDP soldiers to other areas outside the Kivus, but when those soldiers started refusing, Kabila sought the support of Rwanda's military. The government of Rwanda refused and instead advised them to organise negotiations, as Rwanda argues that a conflict in the eastern DRC benefits FDLR because it takes sides and rearms itself. For Rwanda, the accusations by the UN GoE are a punishment for its refusal to cooperate with the international community in the arrest of Gen. Bosco Ntaganda, while the government of the DRC can blame Rwanda to explain their failure to win the war.⁴³

³⁹ UN Security Council, *supra* note 4, para. 139.

⁴⁰ *Ibid.*, paras. 121, 138 & 139.

⁴¹ [RDC - Sultani Makenga: "Plus de fédéralisme peut aider à résoudre les problèmes du Nord-Kivu"](http://www.jeuneafrique.com/Article/ARTJAWEB20121126110456/), at <http://www.jeuneafrique.com/Article/ARTJAWEB20121126110456/> (accessed on January 2, 2013).

⁴² UN Security Council, *supra* note 4, para. ⁹⁴.

⁴³ Speech of President Kagame of 23 July 2012 for the future graduates of Rwanda Defense Force Command and Staff College at Nyakinama, at http://www.paulkagame.tv/podcast/?p=episode&name=2012-07-23_kagamespeechnyakinama_.mp3 (accessed on December 30, 2012); Speeches of Rwanda's Ministers, James Kabarebe, Ministers of Defence, Louise Mushikiwabo, Minister of Foreign Affairs and Cooperation and John Rwangombwa, Minister of Finance and Economic Planning in the two chambers of the Parliament on December 4, 2012; Alex Perry interview Rwandan President Paul Kagame September 14, 2012 <http://world.time.com/2012/09/14/qa-rwandan-president-paul-kagame/#ixzz26Qvqd85d> (accessed December 30, 2012); Louise Mushikiwabo, Rwandan Foreign Minister interview with France 24, on

III. A word of reflection on a controversial issue

Even those who disagree with Rwanda's version of events at least agree that there was an attempt to arrest Gen. Bosco Ntaganda preceding the mutiny.⁴⁴ In the words of Human Rights Watch: "General Ntaganda led the mutiny following the Congolese government's attempts to weaken his control and increased calls for his arrest and surrender to the ICC, in accordance with Congo's legal obligations to cooperate with the court."⁴⁵ Although the UN GoE does not put much emphasis on this event, which played a crucial role in the outbreak of the conflict, it still recognises that Gen. Ntaganda escaped "from Goma following immense pressure for his arrest."⁴⁶

Let us face reality for a moment: in a situation such as the one in the eastern DR Congo where there is little expectation for a definite military solution, it is unrealistic to expect a good outcome. If we truly think that the only practicable solution will come from peaceful negotiations, we should give a chance to parties involved in the conflict to decide for themselves how that outcome should look without setting preconditions. Otherwise we risk creating a deadlock which at the end will only prolong the suffering of the very innocent individuals we all claim to want to defend. I am sure that those who support the view that the time of impunity for international crimes is over will disagree. My point is that regardless of international law developments, the reality is that those suspected individuals have power and constituencies within their communities, and assuming that Gen. Bosco Ntaganda was going to surrender to the ICC or wait for his arrest without putting up a fight is simply unrealistic. However much I may agree that the dead deserve that justice is done, I also think that justice should consider the concerns of the living. If it is true that the insistence on arresting Gen. Ntaganda comes at the expense of breaching a relatively peaceful situation and in fact contributed to the current crisis, then surely it is not an overreaction to conclude that the ICC is to a certain extent responsible for the current deaths and suffering. Those who believe that the South Africa Truth and Reconciliation approach was the best alternative also agree that had the African National Congress insisted on achieving punitive justice, the 'whites' would have made it very difficult to reach a peaceful outcome. As Haldemann notes, "senior generals of the security threatened to make a peaceful election totally impossible if they had to face compulsory trials and prosecutions following the elections".⁴⁷ It is very difficult to build the trust that is needed for any meaningful negotiation when the leadership of one party is under threat of sanctions or prosecution; this reality has little to do with developments in international law. For example, the Afghan government understands that to win the trust of the Taliban, it has to encourage Pakistan to free their top officials.⁴⁸ A recent survey from

September 6, 2012 <http://www.france24.com/en/20120905-louise-mushikiwabo-rwanda-foreign-minister-democratic-republic-congo-crisis> (accessed on December 30, 2012); James Kabareba 2012, *supra* note 13.

⁴⁴ J. Stearns, 'From CNDP to M23: The evolution of an armed movement in eastern Congo', Rift Valley Institute, 2012.

⁴⁵ "[DR Congo: M23 Rebels Committing War Crimes](http://www.hrw.org/news/2012/09/11/dr-congo-m23-rebels-committing-war-crimes): Rwandan Officials Should Immediately Halt All Support or Face Sanctions" (HRW, 11 September 2012), at <http://www.hrw.org/news/2012/09/11/dr-congo-m23-rebels-committing-war-crimes> (accessed on December 31, 2012).

⁴⁶ UN Security Council, *supra* note 4, para. 40.

⁴⁷ F. Haldemann, 'Drawing the Line: Amnesty, Truth Commissions and Collective Denial' in R. Letschert and other (eds.) *Victimological Approaches to International Crimes: Africa*, Cambridge: Intersentia 2011, pp. 278-279.

⁴⁸ J. Boone, 'Pakistan to free Taliban prisoners to start Afghan peace process'. *The UK Guardian*, 14 November 2012, at <http://www.guardian.co.uk/world/2012/nov/14/pakistan-free-taliban-prisoners> (accessed on February 5, 2013); S. Carvalho, 'Pakistan says it will free all Afghan Taliban detainees.' *Reuters*, 18 January 2013, at <http://www.reuters.com/article/2013/01/18/us-pakistan-afghanistan-taliban-idUSBRE90H0SG20130118> (accessed on February 5, 2013).

Northern Uganda partly concludes that “[t]he ICC arrest warrants for the LRA commanders increased security fears of the LRA high command and thus contributed to the failure to conclude the Juba talks with a final agreement”.⁴⁹ If this is the case, the ICC should reconsider how it pursues the interests of justice in dealing with ongoing conflicts. This suggestion should not be seen as another form of belittling the Court’s work. It should instead be seen as a reminder to observe the interests of justice as enshrined in the Rome Statute.⁵⁰ It is equally important to note that the insistence on punishing one side of the conflict over the other seems not to originate from the ICC alone. On 31 December 2012, UNSC added FDLR and the M23 along with its two other leaders (Lt. Col. Eric BADEGE, a military commander, and Jean-Marie LUGERERO Runiga, the political leader) to the list of sanctioned individuals and entities even though the ongoing ICGLR blocked negotiations.⁵¹ This decision in my opinion will reduce the government’s incentives to make concessions and increase the rebels’ frustrations. I am not trying to be naive – I am not saying that it is fine for rebels to get away with terrorising communities for whatever reason⁵² – the point here is that punishing those individuals does not answer the fundamental question: Why is it so easy for either foreign or local rebel and militia groups to operate freely in the DRC? If the LRA can still survive in the jungles of the DR Congo after having been under sanctions for several years, I am not sure whether punishing M23 will magically make them disappear back into their communities and I doubt if making them more discrete is a good thing to do for the ordinary people of the eastern DRC. It is true that the issue of ‘justice versus peace’ is still controversial. However, before lawyers, scholars or activists, we are human beings and these issues are beyond mere theoretical debates: they affect people’s lives, in particular those of the most vulnerable. I find it absolutely unacceptable that we choose to bet on other people’s lives for the advancement of principles of law. And if prosecution is what will bring an end to the current madness in the DRC, then the ICC should prosecute all parties. Rape is just the same crime irrespective of whether it was committed by FARDC or M23 soldiers. Prosecuting the leadership of one party while leaving others go free is worse than not prosecuting anyone at all.

IV. Rwanda’s International Conspiracy ‘paranoia’

Post-genocide Rwanda has got a sizeable group of passionate critics who see nothing positive in Kagame’s government. NGOs, in particular Human Rights Watch (HRW), accuse Rwanda of all forms of human rights violations and disagree with its path to reconciliation and governance. In turn, Rwanda accuses them of bad faith and lack of alternative solutions. The accusations and counter-accusations have been going on endlessly in a tit-for-tat kind of game. International media, including Reporters without Borders, which describe Kagame as the Media Predator,⁵³ have played a major role in discrediting Rwanda. Kenneth Roth, the Executive Director of Human Rights Watch, published in the Los Angeles Times that:

“Kagame’s strategy is shortsighted and dangerous. He claims to be building a society in which citizens are only Rwandans, not Tutsi or Hutu, but his repression of civil society means that avenues to forge alternative bonds among people are limited.

⁴⁹ Refugee Law Project, ‘Ambiguous Impacts: The Effects of the International Criminal Court Investigations in Northern Uganda’ [Working Paper N^o.22, October 2012], at http://www.refugeelawproject.org/working_papers/RLP.WP22.pdf (accessed on December 31, 2012).

⁵⁰ L. Moreno-Ocampo, ‘Keynote Address: Integrating the Work of the ICC into Local Justice Initiatives’ (2006), *American International Law Review*, 2006:21(4), p. 501.

⁵¹ The Security Council SC/10786 of December 31, 2012 (The sanctions Committee Concerning the Democratic Republic of Congo adds two individuals, two entities to sanctions list).

⁵² I. Sawyer, ‘Ending the Cycle of Abuse in Congo’, *Los Angeles Times*, 2 January 2 2013, at <http://www.hrw.org/news/2013/01/02/ending-cycle-abuse-congo> (accessed on January 3, 2013).

⁵³ Reporters Without Borders, ‘Predators: Paul Kagame, President, Rwanda’, at <http://en.rsf.org/predator-paul-kagame,42472.html> (accessed on January 2, 2013).

That makes it more likely that in moments of tension Rwandans will resort to their ethnic identity, as so often happens in repressive societies.”⁵⁴

This criticism is placed on Kagame as an individual, when in fact the issue of ethnicity was partly negotiated as part of the Arusha Peace Agreement before the genocide when Kagame and RPF were not even aware of their possible victory. The Arusha Peace Agreement stated that, “national unity implies that the Rwandese people, as constituent elements of the Rwandese nation, are one and indivisible.”⁵⁵ HRW undermines Rwanda in all possible international forums. For example, when Rwanda was about to become a member of the commonwealth, London Director of HRW Tom Porteous published an article in the UK Guardian entitled *The Commonwealth is a Jamboree of Repression: The Commonwealth has developed a 21st-century role – as a haven for serial human rights abusers*. He then went ahead to state that “... the Commonwealth is actively encouraging applications by repressive governments such as [Rwanda](#) which do not meet the Commonwealth's own criteria for membership as set out in the 1991 Harare declaration.”⁵⁶ HRW has been tirelessly opposing Rwanda’s demand for the extradition of suspected genocide perpetrators⁵⁷ until recently when the International Criminal Tribunal for Rwanda (ICTR) and the European Court of Human Rights (ECHR) started ruling in favour of Rwanda. On 28 June 2011, the ICTR ordered that the case of Jean Uwinkindi be referred to Rwanda⁵⁸ and October 27, 2011, the ECHR approved the extradition of Sylvere Ahorugeze despite HRW’s opposition to both requests.⁵⁹ It is also true that Rwanda has responded with similar vigour; it has been accused of denying entry or visa to two of HRW’s staff.⁶⁰ In addition to NGOs and some journalists of foreign media, there are some critical individual researchers⁶¹ and a group of former defence attorneys of genocide suspects attired by the ICTR whose writings and opinions about the history of the 1994 genocide are considered revisionist in Rwanda.⁶² This kind of relationship is certainly a source of concern for Rwanda because it considers these critics as sworn enemies whose main purpose is to undermine its progress. For example, when Rwanda reported that it had been attacked by FDLR (November 27, 2012 and December 2, 2012), killing and injuring some of its civilians, which was confirmed by Laforge Fils Bazeye, the spokesperson of FDLR, Reyntjens – a Belgian academic - suggested that it must be a Rwandan staged prank to deflect the international pressure against its support for M23 or that Rwanda was intending to create

⁵⁴ HRW, ‘The power of horror in Rwanda, Fifteen years ago, efforts at genocide killed about 800,000 Rwandans. Now that tragedy is providing the government with a cover for repression’, 11 April 2009, at <http://www.hrw.org/en/news/2009/04/11/power-horror-rwanda> (accessed on January 10, 2013).

⁵⁵ Article 2, Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law, Done at Arusha, signed on 18th August 1992.

⁵⁶ T. Porteous, ‘The Commonwealth is a Jamboree of Repression, The Commonwealth has developed a 21st-century role – as a haven for serial human rights abusers’, at <http://www.hrw.org/en/news/2009/11/24/commonwealth-jamboree-repression> (accessed on January 2, 2013).

⁵⁷ A. Evans (designated District Judge), In the City of Westminster Magistrates’ Court, *The Government of the Republic of Rwanda v. Vincent Bajinya, Charles Munyaneza, Emmanuel Nteziryayo, Celestin Ugirashabuja* [June 6, 2008], paras. 452-539.

⁵⁸ *Prosecutor V. Jean Uwinkindi*, Decision on Prosecutor’s Request for referral to the Republic of Rwanda, 28 June 2011, case n^o.ICTR-01-75-RII bis,

⁵⁹ *Ahorugeze v. Sweden*, (Application no. 37075/09), 27 October 2011, ECHR.

⁶⁰ HRW, ‘[Rwanda: Allow Human Rights Watch to Work](#): Government Denies Visa to Rights Researcher in Crackdown on Critics’, 23 April 2010, at <http://www.hrw.org/news/2010/04/23/rwanda-allow-human-rights-watch-work> (accessed on January 2, 2013).

⁶¹ F. Reyntjens, ‘Rwanda, Ten Years On: From Genocide to Dictatorship’, *African Affairs* 2004_103, pp. 177-210; S. Straus and L. Waldorf *Remaking Rwanda: State Building and Human Rights After Mass Violence*: University of Wisconsin Press 2011.

⁶² E. Kagire & P. Condon, ‘P. Erlinder, American Lawyer, Arrested by Rwandan Police’, *Huffington Post*, 28 May 2010, at http://www.huffingtonpost.com/2010/05/29/peter-erlinder-american-l_n_594440.html (accessed on January 3, 2013).

an excuse to openly send soldiers to the DRC.⁶³ This is a sign of mistrust that sacrifices minimum efforts for searching possible alternative theories, because either side is inclined to believe anything negative against the other.

Another reason for Rwanda's fear of a possible international conspiracy might be found in France's conduct during and after the 1994 genocide. Rwanda accuses France of having aided and abetted the 1994 genocide, and claims that France has been undermining Kagame's government ever since.⁶⁴ France hosts a large number of genocide suspects whom it has not extradited to Rwanda or prosecuted itself. In addition to ignoring Rwanda's extradition requests, France has also failed to prosecute genocide cases transferred by the ICTR.⁶⁵ Despite the fact that, in 2004, the European Court of Human Rights condemned France for its slowness in the case of Wenceslas Munyeshyaka,⁶⁶ almost 9 years later the case is still pending. For Martin Ngoga, the Prosecutor General of the Republic of Rwanda, France's judicial process protects genocide suspects. He argues: "Laurent Bucyibaruta, [one of the cases transferred by ICTR to France, is a] former prefect of Gikongoro, in the area controlled by the French army. I conclude that this is a way of protecting him. I don't have all the evidence, but we know how to read between the lines."⁶⁷ Post-genocide Rwanda has never had a 'normal' diplomatic relationship with France; in 2006, Rwanda severed all diplomatic ties with France following Jean-Louis Bruguiere's controversial indictments against senior leaders of Rwanda.⁶⁸ Even after the reopening of embassies in 2010,⁶⁹ the relationship has not been smooth. In February 2012, France recalled its ambassador to Rwanda, Laurent Contini, after the government of Rwanda rejected the nomination of H el ene Le Gal, because of what the media described as her close ties to Alain Jupp e, who is among the French officials Kigali accused of aiding the commission of the 1994 genocide.⁷⁰ The fact that the Socialist Party, which is accused of collaborating with the Habyarimana government in the 1990s under President Francois Mitterrand,⁷¹ is currently back in power under Fran ois Hollande increases

⁶³ 'FDLR Yemeza ko "Yateye mu Rwanda', *BBC Gahuzamiryango*, 28 November 2012, at http://www.bbc.co.uk/gahuzamiryango/2012/11/121128_fdlr_rwanda_attack.shtml (accessed on January 3, 2013).

⁶⁴ Republic of Rwanda, National Independent Commission Charged with the Collection of Evidence on the Involvement of the French State in the Genocide committed in Rwanda in 1994, Final Report (Kigali, 2007); G. Prunier, *The Rwanda Crisis: History of a Genocide* (2nd ed., Fountain Publishers, 1999) 281ff; N. McMillan, 'Our' Shame: International Responsibility for the Rwandan Genocide', *Australian Feminist Law Journal* 2008-28: pp. 3-28; R. Dallaire, K. Manocha, and N. Degnarian, 'The Major Powers on Trial', *Journal of International Criminal Justice* 2005-3: pp. 861 – 878.

⁶⁵ 'The Rwandan Cases: France should arrest Wenceslas Munyeshyaka, Laurent Bucyibaruta and Dominique Ntawukuriryayo immediately!', at <http://www.fidh.org/France-should-arrest-Wenceslas> (accessed on January 3, 2013).

⁶⁶ *Ibid.*

⁶⁷ "Kigali slams Paris over Rwanda genocide suspects" *Hirondelle News Agency*, 22 January 2013, at <http://allafrica.com/stories/201301221476.html> (accessed on February 5, 2013).

⁶⁸ "Aljazeera agencies, Rwanda cuts ties with France: Rwandans demonstrate after France issues arrest warrants over 1994 plane crash", *Aljazeera*, 26 November 2006, at <http://www.aljazeera.com/news/africa/2006/11/200852513744507851.html> (accessed February 6, 2013).

⁶⁹ I.R. Mugisha, 'Rwanda officially reopens Embassy in France', *The New Times*, 23 February 2010, at <http://www.newtimes.co.rw/news/index.php?i=14180&a=26201#> (accessed on February 6, 2013).

⁷⁰ 'France recalls Rwanda ambassador from Kigali', *RFI*, 20 February 2012, at <http://www.english.rfi.fr/africa/20120220-france-recalls-rwandan-ambassador-kigali> (accessed on February 5, 2013).

⁷¹ V. Jaboeuf, 'French Complicity in the Rwandan Genocide: An Interview with Jean-Paul Gouteux', *World Politics Review*, 15 April 2008, at <http://www.worldpoliticsreview.com/articles/1940/french-complicity-in-the-rwandan-genocide-an-interview-with-jean-paul-gouteux> (accessed on February 5, 2013); see also Human Rights Watch, 'Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide' [May 1995].

that suspicion. Whether it was the institutional structure of the party or some individuals within the party that supported Habyarimana's government, it does little to dispel the worries of the Rwandans. Such concerns are heightened when it becomes clear that it was France that was behind the moves to sanction Rwanda in the UN Security Council.⁷² For Rwandans, this is proof of France's continued hostilities towards the current government of Rwanda.

V. Motivation for Rwanda's Support for M23

RDF was operating inside the DRC together with the FARDC under an agreement between Rwanda and the DRC to fight the FDLR rebels, which meant eliminating security concerns for Rwanda. The government of Rwanda asked the GoE to explain what it would "achieve through M23 that it could not achieve through other means?"⁷³ In response, the GoE states that its previous reports "provide sufficient findings, including on the regional trade in natural resources (...)"⁷⁴ The notion of smuggling minerals as a motive for Rwanda's support to M23 is very difficult to examine because we cannot know for sure the total yield of the smuggled minerals in relation to Rwanda's own minerals. However, we can use some scant facts to make a cost-benefit analysis (possible profits in relation to the possible costs of war). The following facts are important to our estimations. Firstly, Rwanda has no mineral processing factory, which means it can only benefit from minerals as a mere passage route to outside dealers. Secondly, according to Rwanda's Ministry of Trade and Industry, the cross-border trade between Rwanda and the DRC "accounts for \$17 million annually, which is 70 per cent of Rwanda total cross border exports" which is mostly comprised of agricultural goods.⁷⁵ Thirdly, even if we assume that all minerals exported from Rwanda are smuggled from the DR Congo, still Rwanda's tourism is the biggest source of foreign currency for the government of Rwanda, and going to war would risk reducing the number of tourists.⁷⁶ Fourthly, in addition to protecting its international image, Rwanda was aiming at gaining a seat on the UN Security Council on behalf of Africa, and going to the DR Congo would have undermined that objective. Fifthly, going to war in the DR Congo would risk Rwanda's international development aid which makes up 40% of its total budget.⁷⁷ These costs should be factored in together with the direct costs of war - human casualties (possible killing and injuring of its soldiers), the hosting of Congolese refugees which increases pressure on

⁷² '... according to a Western diplomat with knowledge of the meeting, Ms. Rice objected strongly to a call by the French envoy (...) Helene Cooper, 'U.N. Ambassador Questioned on U.S. Role in Congo Violence', *The New York Times*, 9 December 2012, at http://www.nytimes.com/2012/12/10/world/un-envoy-ice-faulted-for-rwanda-tie-in-congo-conflict.html?pagewanted=all&_r=0 (accessed on January 3, 2013); F. Krause-Jackson and I.A.R. Lakshmanan, 'A steady ascent, though controversies linger', *Bloomberg News*, 13 December 2012, at <http://www.bendbulletin.com/article/20121213/NEWS0107/212130334/> (accessed on January 3, 2013).

⁷³ The Government of Rwanda, *supra* note 3, para. 8.

⁷⁴ UN Security Council, *supra* note 4, Annex 3: para. 33.

⁷⁵ A. Ngarambe, 'DRC conflict hurts cross border trade with Rwanda', *The East African*, 12 July 2012, at <http://www.theeastafrican.co.ke/Rwanda/Business/DRC+conflict+hurts+cross+border+trade+with+Rwanda+/-/1433224/1453166/-/xijeof/-/index.html> (accessed on January 3, 2013).

⁷⁶ Whereas Rwanda's mineral revenues totals to \$128 million, tourism is at \$232 million (H.E Paul Kagame, President of the Republic of Rwanda, 'The State of Nation Address of December 31, 2012').

⁷⁷ Rwanda would not have expected otherwise because some western countries (Sweden and the Netherlands) suspended development aid to Rwanda in 2008 based on the UN Group of Experts accusations for supporting CNDP, accusations that Rwanda also denied.

Rwanda's limited resources and financial costs related to weaponry.⁷⁸ Based on these considerations, I do not think that Rwanda would have risked a war with the DR Congo at the time of the conflict. In fact, as already noted, the beginning of the conflict depended on other reasons beyond Rwanda's control, such as the DRC government's attempt to arrest Gen. Bosco Ntaganda and its desire to deploy CNDP soldiers in other provinces. Those making allegations that Rwanda created the instability fail to explain the connection between Rwanda's alleged motives and those other reasons.

VI. Conclusion

This article does not claim that Rwanda is not supporting the M23. It shows that the report of the UN Group of Experts alone is not convincing enough to reach that conclusion. The evidence provided is comprised of unverifiable anecdotes and contradictions. The sociological nature of the eastern DRC and Rwanda's past involvement makes it easy to assume that Rwanda must be involved somehow, but lack of a clear motive combined with the fact that the beginning of the conflict depended on facts beyond Rwanda's control make it difficult to explain why Rwanda would be interested in destabilising the eastern DRC at the time that it happened. It has been shown that the timing of the conflict was not favourable for two reasons: (a) Rwanda was pursuing economic development which is best achieved through stability and (b) its international image was at stake, especially with its application for the UN Security Council seat. Solutions that ignore addressing the fundamental problem of the weakness of the DRC's state security and administrative institutions risk preserving the current *status quo*: if we think this way, we will be arresting one warlord each year, keep millions of refugees in camps, condone the smuggling of weapons and minerals, and maintain the ineffective UN mission.

⁷⁸ See also A. M. Mwenda, 'The myth of Congolese wealth: The arguments that Rwanda is in Congo to exploit that country's mineral wealth are misinformed' *Andrew Mwenda's blog*, 27 January 2013, at <http://andrewmwendablog.blogspot.nl/2013/01/the-myth-of-congolese-wealth.html?spref=fb> (accessed on February 5, 2013).