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ABBR EVIATIONS

BBC: British Broadcasting Corporation
FDLR: Democratic Forces for the Liberation of Rwanda
FM: Frequency Modulation
GoR: Government of Rwanda
ICTR: International Criminal Tribunal for Rwanda
ICTY: International Criminal Tribunal for Yugoslavia
ICCPR: International Covenant for Civil and Political Rights
MINALOC: Ministry of Local Government
ORINFOR: Office Rwandais d'Information
PALIR: Party for the Liberation of Rwanda
RDF: Rwanda Defence Forces
RPF: Rwanda Patriotic Front
RTLM: Radio Télévision Libre des Milles Collines
RURA: Rwanda Utilities Regulatory Authority
UNSC: United Nations Security Council
EXECUTIVE SUMMARY

On November 3, 2014, Rwanda Utilities Regulatory Authority (RURA), the body that, among other things, is mandated with regulating the media in Rwanda set up a five member committee to look into allegations suggesting that the documentary titled “Rwanda’s Untold Story” aired by the British Broadcasting Corporation (BBC) on 1 October 2014 denied the genocide, abused international instruments, journalistic standards and the BBC’s own editorial values.

The Committee’s task was to examine whether in the process of gathering and the eventual telecasting of the documentary on channel BBC2, the BBC aided abuse of press freedom and free speech; transgressed its own journalistic standards; violated Rwandan laws and the agreement with the Government of Rwanda to broadcast its programmes on the FM frequency in the country.

Specifically, the mandate of the Committee was to study, reflect on and determine whether the BBC violated Rwanda’s law on genocide denial, revisionism, inciting hatred and divisionism, as well as ascertaining whether the documentary met the BBC’s own set and cherished values of ensuring, in all its broadcasts, impartiality, accuracy, fairness, decency and informing its varied audiences truthfully. Further, the Committee was also tasked with looking into allegations of previous journalistic transgressions committed by the BBC’s Kinyarwanda program over the years.

For four months, the committee met, studied, learnt from varied sources, analysed, deliberated on, and made conclusions about the aforementioned allegations against the BBC.

In inquiring into the allegations and making conclusions on each allegation as explained in this report, the Committee relied on, and was guided by, a methodology that is inclusive, independent, internally participatory and evidentially qualitative. As a result, all the conclusions made on each allegation against the BBC are informed by evidence from varied sources. These are: documents, books, and reports about the fact of the genocide against Tutsis in Rwanda in 1994, case law on the subject of genocide, Rwandan law, international conventions and norms, journalistic standards, BBC’s editorial guidelines, and witness testimonies.

Structurally, the report has nine sections. The first section is the general introduction. It introduces the process that led to the establishment of this Committee of Inquiry and the mandate it was given, the methodology used to gather evidential material and facts about each allegation against the BBC as well as limitations and delimitations. Sections two through nine contain analyses and provide evidence relied upon to make conclusions on each of the terms of references and appropriate recommendations.
The evidence collected and analysed led the Committee to conclude that the BBC, in general, abused press freedom and free speech, violated its own editorial guidelines, transgressed journalistic standards, and violated Rwandan law, with particular reference to genocide denial and revisionism, inciting hatred, and divisionism among Rwandans.

The above conclusions led the Committee to make the following recommendations:

1. That the agreement between the Government of Rwanda and the BBC be terminated.

   This recommendation is based on the identified and recurrent transgressions on the part of the BBC. Moreover, the BBC was invited to appear before this Committee but it declined. Instead, it chose to conduct its own internal inquiry whose findings entirely exonerated itself and its producers of any professional or legal wrongdoing.

   In view of the above, therefore, to restore any future formal relationship, we recommend that the Government should require the BBC to commit to adhering to not only agreed professional and legal principles but also in practice in the letter and the spirit of the agreement.

2. That respective organs of the Rwandan Government initiate criminal and civil processes to deal with identified offenses and compel the BBC to disclose the information in reference to the recommendation number 1. The former process is based on serious evidence of criminal offenses, as established by this inquiry while the latter is premised on the Committee’s inability to access key information that is in the hands of the BBC, which, we have reason to believe, can shed more light on a number of pertinent issues surrounding the origin, purpose, and source of funding for the documentary.

3. That the Government of Rwanda should establish an effective and cohesive national communication strategy, as a permanent instrument for tracking, identifying, and addressing manifestations of genocide denial in all its forms and wherever it may be found, as well as for spreading values of national interest.
I. General Introduction

1. On 3 November 2014, the Rwanda Utilities Regulatory Authority (RURA), the national body mandated with regulating the media, among other responsibilities, established an independent Committee of Inquiry to look into the allegations brought to its attention arising from the BBC’s documentary titled “Rwanda’s Untold Story” aired on 1 October 2014 on BBC2 in the United Kingdom.

2. The Committee was given the task to examine a number of complaints by Rwandans against the BBC’s conduct in the production of the aforementioned documentary and transgressions, some spanning a number of years, in its Kinyarwanda programs broadcast on the FM frequency in Rwanda. Overall, the Committee’s mandate was to look into:

i) Whether the BBC abused press freedom and free speech;
ii) Whether the BBC was in compliance with its own journalistic standards;
iii) Whether there was deliberate misconduct on the part of the producers of the documentary and the BBC in airing the documentary
iv) Whether there were violations of Rwandan law on the part of the BBC
v) Whether there were violations with regards to the particular offenses of genocide denial and revisionism, as well as those inciting hatred and divisionism
vi) Whether there were previous journalistic transgressions committed by the BBC’s Kinyarwanda broadcasts
vii) Whether there was a breach of agreement on the part of the BBC in relation to the license it had been granted to broadcast its radio programmes on the FM frequencies in Rwanda

1.1. Methodology

3. To achieve its mandate, the Committee adopted a qualitatively descriptive, interactive and participatory methodology built on five key tools: defining and clarifying key terms related to the inquiry—such as “media freedom” and “free speech”; the method of evidence collection; the ethics that guided the committee; and finally, the approach used in making sense of, interpreting, and analyzing the evidence in order to reach the conclusions and recommendations in this report.

4. To assemble the evidence, the Committee relied on four sources. The documentary itself and programs aired on BBC’s Gahuzamiryango (Kinyarwanda-Kirundi); the witnesses; secondary documents—such as UN reports; case law—like ICTR judicial rulings and legal instruments—both domestic and international—including International Covenant on Civil and Political Rights of 1966, as well as the Universal Declaration of Human Rights of 1948; and the
examination of BBC’s internal editorial guidelines as well as the Code of Ethics for Rwanda Journalists and Media Practitioners.

5. Further, the committee collected evidence from several witnesses. The objective being to extract a diversity of views, witnesses came from in and outside the country. Witnesses included representatives of institutions, researchers, academics, and genocide survivors. The Committee made a public announcement inviting willing witnesses, individuals and institutions, to appear and testify.

6. Some of the witnesses were purposively selected and invited due to their expertise on the subject matter while others wrote requesting to appear and testify. Experts in media, journalism and law from different countries were invited to testify on some of the values at issue— their informed views on principles of impartiality, truth, objectivity, and their perspectives on other universal values like press freedom and free speech.

7. Individuals who appeared in the documentary were not considered for appearance before the Committee on the grounds that the mandate of this inquiry was to examine the conduct of the BBC and its responsibility in handling the claims that were made by the participants in the “Rwanda’s Untold Story” documentary.

8. In interpreting and analyzing the documentary, discourse analysis was used—a method that deconstructs journalist Corbin’s narrative method where, discursively and through the use of words, images and numbers, promises and introduces her viewers to what she terms an “untold story” and the “truth” about the 1994 genocide in Rwanda. Essentially, what Corbin’s approach promises and does is that, through the discursive reconstruction of what happened in 1994, an “untold story” is able to emerge alongside what she terms the “official story” of the Government of Rwanda.

9. Further, the Committee triangulated the four sources of evidence to discursively assess the claims that were made in the documentary, which helped the Committee to meet its mandate in determining whether, in her approach, journalist Corbin and the BBC met requirements from their own set of ethical values, international standards and Rwandan law. This entire methodological approach is the basis of this report.

10. This report has nine sections. The first section is the general introduction. It contains the executive summary, introduces the process that lead to the establishment of the Inquiry Committee and its mandate, as well as the methodology used to gather and interpret the evidence to respond to the mandate. Sections two through nine are tailored along the Committee’s terms of reference and upon which this committee derived its mandate. The final section is composed of the Committee’s conclusions and recommendations.
Limitations

11. As due process demands, the Committee felt that it was important to give the BBC the opportunity to respond to the complaints and allegations made against it by the public that gave rise to the inquiry. A formal invitation was sent to its leadership, but, regrettably, the opportunity was turned down.
II. Whether the BBC abused press freedom and free speech

2.1. Press freedom and freedom of speech

12. In discerning whether the BBC violated its duties and responsibilities under the provisions of press freedom and freedom of speech, the Committee considered the relevant international norms and conventions as well as legal instruments in Rwanda’s domestic jurisdiction.

13. In terms of definition, press freedom and free speech are related concepts. Freedom of the press establishes the right for journalists to gather and report news, for media outlets, like the BBC, to freely report and transmit such news, information and opinion without interference and for the public to receive news as well as diversified views. Free speech – or freedom of expression – refers to an individual’s freedom to hold and express opinion without interference. While the former advances the latter, the two are considered fundamental freedoms and are therefore guaranteed and protected in national laws and international conventions.

14. For instance, article 19 of the Universal Declaration of Human Rights (1948) states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

15. However, neither press freedom nor free speech is absolute. For instance, the above provision is subject to limitations that “shall be determined by law solely for the purpose and respect of the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

16. Further, article 10 of the European Declaration on Human Rights states that, “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licencing of broadcasting, television or cinema enterprises.”

17. The same provision, like the aforementioned Article 19, is also subject to limitations.\(^1\) It states that: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or

\(^1\) Similarly, article 10 of the European Convention of Human Rights protects the right to free expression. The European Convention is almost verbatim phrasing of that of ICCPR: this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Where the ICCPR is silent, the European Convention is explicit on its target in regards of who is likely to constrain that freedom, the “public authority
morals, for the protection of the reputation or rights of others, for preventing the disclosure of
information received in confidence, or for maintaining the authority and impartiality of the
judiciary.”

18. In addition, article 19 of the International Covenant on Civil and Political Rights (ICCPR)\(^2\) establishes the right of individuals to ‘hold opinions without interference’ as well as to free
expression, which includes the ‘freedom to seek, receive and impart information and ideas of all
kinds, regardless of frontiers,’ and that this information can be transmitted “orally, in writing or
in print, in the form of art, or through any other media” of choice. The same right is also
articulated and provided for in the African Charter on Human and Peoples Rights.\(^3\) Article 9 of
the African Charter of Human and People Rights states that everyone has the right to, “receive
information” as well as to “express and disseminate” opinions, within the law.

19. From the foregoing, therefore, the Committee understands that while both international and
regional conventions provide for free speech and press freedom, these instruments also establish
a set of limitations.

2.1.1. Applications of international instruments in national contexts

20. International instruments are subject to a contextual application from member-state laws.
Rwanda’s obligations in regards to international instruments on press freedom and freedom of
speech/expression are found in articles 33 and 34 of the 2003 Constitution of the Republic.
Article 33 provides for freedom of “thought, opinion, and conscience” whereas article 34
 guarantees freedom of the press. The application and exercise of these freedoms, however, is
subject to conditions that are determined by the law. Article 43 suggests the purpose of those
conditions verbatim thus:

“In the exercise of rights and enjoyment of freedoms, every person shall only be
subjected to the limitations set by the law in order to ensure the recognition and respect
of others’ rights and freedoms, good morals, public order and social welfare, which
characterizes a democratic society”.

21. To operationalise the above provisions of the constitution, particularly those of article 34,
the media law was adopted in 2013.\(^4\) This law provides in Article 9 limits to freedom of opinion
and information. It states thus: “… the freedom of opinions and information shall not jeopardise
the general public order and good morals, individual rights to honour and reputation in the public
eye, and to the right to inviolability of a person’s private life …”

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\(^2\) Art 19 of ICCPR adopted by the General Assembly of the United Nations on 19 December 1966
\(^3\) Art 9 of African Charter of Human and Peoples Rights adopted on 27 June 1981
\(^4\) Official Gazette no. 10 of 11, March 2013, law no 02/2013
22. Article 9 of the Fundamental Principles of the Constitution establishes a number of values that are worth pointing out in respect to the subject under consideration. The first two principles, respectively: i) Fighting the ideology of genocide and all its manifestations ii) Eradication of ethnic, regional and other divisions and the promotion of national unity.

23. Restrictions on press freedom and freedom of speech as provided for in the ICCPR in preserving the ‘respect of the rights and reputations of others’ and in the ‘protection of national security or of public order or of public health or morals,’ mirror article 43 of the Rwandan Constitution.

24. For ICCPR, however, the relevant article that guarantees freedom of the press and freedom of expression is followed by article 20 that excludes from such protection the promotion of ‘propaganda for war’ as well as any form of ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.’

25. Finally, the European Convention recognizes the duties and responsibilities that accompany the exercise of freedom of the press and freedom of speech, which is elaborated rather extensively, and combines most of the restrictions noted above. It states, “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.”

26. Defamation is also legally considered as a limit to press freedom and free speech. Article 2 (clause 1) of the above media law defines defamation as the “intentional false communication, either through oral or written statements, visual elements, photographs, or gestures, with intention to harm a person’s reputation and respect.”

27. Further, journalists have an ethical responsibility and legal obligation to respect laws. In terms of professional ethics, the Rwanda Journalists and Media Practitioners’ Code of Ethics recognises and sets standards that journalists in Rwanda must adhere to. Article 2 on honesty and search for the truth, notably paragraph 2, states that: “They [journalists] shall consider slander, abuse, libel, defamation and groundless accusations against individuals … as the most dangerous professional misconduct.”

28. In principle, therefore, international and domestic legal instruments as well as ethical practices also apply to foreign journalists operating in, or accredited to, Rwanda.

5 Art 20 of ICPPR, adopted by the General Assembly of the United Nations on 19 December 1966
7 Art 2 Rwanda Journalistic Code of Ethics
2.1.2. Evidence on whether BBC limitations set on press freedom and free speech were respected

29. The Committee heard evidence to the effect that the BBC and the program producers ignored restrictions provided for in international conventions and in Rwanda’s national laws. A selection of excerpts shows disregard for restrictions on press freedom and freedom of speech—specifically as they relate to respect for the reputation of others, the prohibition to promote war propaganda, genocide denial, divisionism and hatred. The excerpts below provide a snapshot of some claims in the documentary that reflect this shortcoming.

30. Referring to those perceived as being close to the Rwandan government and its leadership Professor Reyntjens and Kayumba Nyamwasa state:

   Reyntjens: Their closeness is a closeness with what I call the most important war criminal in office today.

   Nyamwasa: We have a dictator; we have a man who is a serial killer, who enjoys killing his citizens.

31. Press freedom and free speech recognise the importance of people’s rights to a good reputation. Neither does press freedom nor free speech take away this right. Therefore, freedom of the press and free speech do not accord anyone the right to impute criminality on another when that person has never been pronounced as such by a competent court of law.

32. Witnesses informed the committee that it is not the role of journalists to pass judgement. Nor is it ethical for them to invite and allow individuals to discuss the alleged criminality of an individual or subject in the news when the person making the claims is not competently empowered to do so and for the journalist to allow such claims to pass unchallenged. This journalistic ethic, witnesses affirmed, is a requirement from the BBC’s own editorial standards for ensuring “accuracy, impartiality, fairness, and respect for standards of taste and decency.”

More examples from the documentary emphasise this journalistic flaw.

   Bamutese claims:

   It was only really 10% of what we call the Interahamwe who committed massacres, who killed Tutsis. But when the RPF arrived, they wrought havoc on everyone. Even the innocent Hutus that I knew, they were killed too.

33. Considering that the BBC commits to report the truth and to verify the veracity of claims, witnesses concluded that it is indefensible that the journalist in the documentary and her
producers could allow an unchallenged statement by an interviewee giving statistics and percentages of the militia that participated in the genocide against Tutsis as if that is something that can physically be experienced rather than a conclusion that can be reached upon conducting a scientific study. The omission is even made more suspect in view of the fact that the person in question says in the documentary that she was only 12 years old at the time of genocide.

34. Professionally, statistics and figures about how many committed genocide or how many were killed can only be relied upon, in a professional journalistic sense, when attached to a scientific or authoritative source. In addition, it is the responsibility of any professional journalist to crosscheck that the figures claimed reflect the truth. It is important to emphasise that this standard is also endorsed by the BBC in its editorial values for ensuring “accuracy, impartiality, fairness...”

More flaws in the use of figures appear in the documentary.

Stam states: If one million Rwandans died and 200,000 of them were Tutsi that means that 800,000 of them were Hutu.

35. The question of how many Tutsis were killed during the genocide has been extensively discussed by credible scholars and researchers. Further, the International Criminal Tribunal for Rwanda (ICTR) has addressed this issue repeatedly, without attracting substantive challenge. It has also taken a conclusive and binding judicial notice to that effect.⁸

36. That the BBC can entertain, for the first time and without challenge, that the number of individuals killed in the genocide is completely different from records that are abundantly available in the public domain is a deviation from the broadcaster’s own principles of how it treats sensitive subjects and goes against its claim to value truth and accuracy. Analytically, this claim is related to the discourse that presents the theory of double genocide; the figures that compare the number of Hutus killed relative to Tutsis inform such a claim. For the journalist to air such a claim is to directly promote the theory of double genocide, itself a form of denial.⁹

37. Interpretively this claim is also related to a statement the journalist makes at the start of the documentary that the story hitherto known may not be the real story and that her documentary represents the “untold story.”

38. Lack of sensitivity to the subject of genocide and genocide survivors is further illustrated by Corbin’s question and observation directed towards Gaspard Mukwiye, the Director of Murambi Genocide memorial site and a genocide survivor. She asks why preserving genocide remains is important and goes on to offer her interpretation.

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Corbin asks and affirms, respectively: Why is it important to keep these bodies? People would find this *macabre and strange*.

Then Gaspard responds: There are those who don’t want proof to be seen, so these are tangible proofs of genocide against the Tutsi in 1994

39. Corbin is not convinced; she proceeds to offer what she thinks is the real reason the bodies have been preserved: for political use. She claims the memorials are preserved because they are politically helpful to the RPF as they help, she argues, to reinforce the official story that it was overwhelmingly Tutsis who died and Hutus who killed them. By implication, according to Corbin, such memorials and bodies are only important for supporting the “official story,” the story the documentary sets out to contest in its entirety.

40. In reality, however, what Corbin refers to as the Rwanda Government’s “official story” is in fact the position consciously taken by the United Nations Security Council as well as the International Criminal Tribunal for Rwanda. In terms of journalistic professionalism, Corbin is questioning the decisions of established entities such as the Security Council and the binding decision of the International Criminal Tribunal for Rwanda, for instance, without reference to any credible source, except herself. This means that she becomes a source on to herself, a practice that is journalistically unethical and therefore professionally unacceptable.

Corbin further states: They are holding a candlelit vigil in the stadium. A new generation is listening to the official genocide story.

And then she adds: The international community is represented by many supporters of Paul Kagame. And among them, a former British Prime Minister. A Foreign Secretary. The head of the United Nations is also here to apologise for the failure of the UN to intervene and save innocent lives.

41. On the surface, the above statements may seem innocent. However, witnesses testified that Corbin is insinuating that the vigil is part of a grand political scheme to brainwash yet another generation of young Rwandans into believing the ‘official genocide story’. However, to the documentary’s producers, the young generation are not the only ones being brainwashed. They suggest that the world has also been hoodwinked. They question why dignitaries have come from outside Rwanda to attend the 20th commemoration of the genocide.

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42. Considering that Corbin is questioning what she calls the ‘official genocide’ story – which amounts to the denial of genocide – the statement is at odds with both international and national laws as well as BBC’s own set editorial standards of impartiality and accuracy.
III. Whether the BBC complied with and respected its own set journalistic standards

3.1. Due Diligence on the part of the BBC

43. The BBC, like other professional media houses of its calibre, is expected to ensure that the enjoyment of the freedoms of the press and speech does not exclude the duties and responsibilities that are intended to safeguard the enjoyment and the exercise of these rights. Indeed, such institutional responsibility and moderation to ensure professional journalistic conduct is important for the general enjoyment of these rights. This is why, witnesses testified, most, if not all, respected media outlets have internal codes of conduct.

44. In the same spirit, the BBC’s Editorial Values require and promise “accuracy, impartiality, fairness, and respect for standards of taste and decency”.¹¹ It requires all its producers and reporters to adhere to these values and to ensure that all its programs and stories aired, telecast or broadcast meet these standards.

45. It is worth emphasising that the BBC demands that its reporters, journalists and correspondents handle sensitive subjects with “respect for standards of taste and decency” and to be “fair and open-minded when examining evidence and weighing material facts.”¹²

46. Genocide is without doubt a sensitive subject. Such a subject, going by BBC’s own set standards, requires an approach that places a premium on accuracy, taste and decency.

3.2. Accuracy, impartiality, and fairness

47. It is difficult to comprehend how a documentary that purports to be telling a story about the 1994 genocide against the Tutsi is allowed to broadcast despite the blatant omission of a number of well established, known, available, and verifiable facts that are central to any understanding of this human tragedy. The section below presents some of these salient facts.

3.2.1. Facts about the genocide against the Tutsi

48. On 8 November 1994, the United Nations Security Council (UNSC) established that “genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda.”¹³

¹¹ BBC Editorial Values Charter
¹² BBC Editorial Values Charter, 2006
¹³ UNSC resolution S/RES/955 (1994)
49. Further, in 1994 the United Nations Security Council established a Commission of Experts on…\(^{14}\) which concluded that: “There exists overwhelming evidence to prove that acts of genocide against the Tutsi group were perpetrated.”\(^{15}\) In addition, the Rene Degni-Segui Commission concluded: “The qualification of the genocide has to be already retained in regards to Tutsis. It is different in regards to the killings of Hutus.”\(^{16}\)

50. Furthermore, on 16 June 2006, the ICTR Appeals Chamber judicial notice stated that it was “a fact of common knowledge” that “between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.”\(^{17}\) Clarifying this truth, the 1998 ICTR judgement *Prosecution v. Akayezu* says it becomes clear that the massacres in Rwanda in 1994 were aimed at a specific goal: to exterminate the Tutsi, especially chosen because they belong to the Tutsi ethnic group not because they were RPF combatants (…) This genocide was committed in Rwanda in 1994 against the Tutsi as a group.\(^{18}\)

In the documentary, Corbin states: The senseless barbarity of the genocide still shocks us. We think we know the story, but do we?

And then Stam responds: What the world believes and what actually happened are quite different.

51. The statements “*What the world believes*” and “*We think we know the story*” by Corbin and Stam above question three well-established facts: that the genocide against the Tutsi took place in Rwanda in 1994; that it was stopped by the RPF; and finally, that it was perpetrated by Hutu hardliners.

52. However, according to Stam and Corbin, “what actually happened” is “quite different.” Witnesses informed the committee that what viewers of the documentary can infer from these passages is that something different took place other than what the world believes happened, especially since Stam proceeds to explain what he believes to have happened.

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\(^{15}\) UNSC resolution S/1994/1405


\(^{18}\) Jean-Paul Akayesu, ICTR-96-4-T, Trial Chamber 1, 2 September 1998 … In each *paragraph* charging genocide, a crime recognized by Article 2 of ICTR Statute
This discourse is captured in the following excerpts:

Stam states: The violence was committed in 1994, by almost every side and every participant in this war and breakdown of social order. Random violence happened and 100s and 1,000s of people died for no particular purpose.

Then Corbin interjects: There were political murders on both sides.

Stam states: If one million Rwandans died and 200,000 of them were Tutsi that means that 800,000 of them were Hutu.

Corbin conversationally puts it to Stam: That’s completely the opposite of what the world believes happened in the Rwandan genocide.

Stam responds: What the world believes and what actually happened are quite different.

Then Reyntjens affirms: Those who have won the war have enjoyed total impunity, that’s the RPF and those who’ve lost the war have been prosecuted.

53. All the above excerpts reinforce each other towards and are captured in an excerpt where Stam refers to “The violence...committed in 1994, by almost every side and every participant in this war and breakdown of social order” and “Random violence” in which “…people died for no particular purpose”. To call what happened in Rwanda in 1994 as “random violence for no particular purpose is a direct denial of the genocide against Tutsis. This is because this particular genocide had a purpose already established by the ICTR—which is the intent to exterminate the Tutsi ethnic group.

54. It is worth noting that the journalist’s promise at the outset of the documentary to tell an “untold story” cannot be differentiated from Stam’s claim of “what actually happened” as “random violence for no particular purpose” illustrated above because genocide is a preconceived, systematically organised, and carried out with a specific purpose entailed in the very intent for which it is committed. To state that what happened was “random violence for no particular purpose” is negation of intent, which is central to the crime, and this is what constitutes denial.

55. This reliance on a single and uncorroborated source to dismiss established and credible facts on a sensitive subject such as genocide, originally defined by Raphael Lemkin as “the crime of crimes”19 and previously by Winston Churchill as “the crime with no name,”20 amounts to grave professional misconduct on the part of the journalist and the BBC.

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3.2.2. The Plane Crash

56. With regard to President Habyarimana’s plane crash, Corbin asks:

   But who pulled the trigger and what was their motive? It quickly became part of the accepted story that Hutu extremists shot down the plane. They wanted to unleash a wave of ethnic killing and rid the country of Tutsis. But over the years, more and more evidence has come to light that questions that assumption.

57. From the above narrative, the journalist informs her viewers that, “over the years, more and more evidence has come to light that challenges...the accepted story that Hutu extremists shot down the plane” that killed President Habyarimana. However, without a reliable basis, this “more and more evidence” that is meant to challenge the ‘accepted story’ is more of a communication technique to convince viewers to believe what is being said and is not a revelation of incontrovertible evidence of what the truth is, since only thin and questionable information from unreliable sources are used as the basis of the entire claim. This is illustrated in the experts below.

   Corbin asks: Who do you believe was behind the shooting down of the plane?

   Nyamwasa responds: Paul Kagame, undoubtedly.

   Corbin probes further: Paul Kagame?

   Nyamwasa affirms: Oh, yes. Oh, yes.

   Corbin: You know that?

   Nyamwasa: 100%.

   Corbin: Were you at meetings when it was discussed?

   Nyamwasa: I know. I was in a position to know and he knows I was in a position to know, and he knows that.

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Corbin then informs her viewers that: Ten years later, a French judge investigated the deaths of the plane crew. He concluded Paul Kagame and the RPF were responsible and indicted nine officers.

58. When the journalist asks Nyamwasa how he knows who shot the plane, he simply answers: “I know.” This is also treated as fact. Moreover, the journalist does not challenge him for details on how he knows. Indeed, Nyamwasa may claim to have been in a position to know at the time. However, his present circumstances as a member of the political opposition and as a criminal convict in Rwandan courts constitute reasonable grounds for influencing his present position.

59. A professional journalist would be expected to exercise scepticism in regard to such a claim and treat it as a matter for further investigation and verification instead of accepting it at face value.

60. Indeed, further investigation would have led her to understand that other investigations and inquiries had reached different findings and that these are already in the public domain. For instance, the findings of the Mutsinzi Independent Commission and those of the ballistics specialists from the UK’s Cranfield Defence College in their report of 2008 confirmed that President Habyarimana’s plane was downed by missiles fired from Kanombe Military Barracks at the time controlled by the then government forces.

61. On the question of the investigations carried out by the French judge, Louis Bruguiere, and the subsequent indictments alluded to by the journalist, and going by the same standards, the journalist should have known that some key witnesses in the investigations recanted their testimonies due to the improper circumstances under which they had been given. The journalist should also have known that upon the retirement of Judge Bruguiere, a new judge Marc Trevidic, whose preliminary findings of January 2012 contradict Bruguiere’s findings.

62. That this fact was also ignored by the journalist goes against the standards of the BBC’s Editorial Values of impartiality, accuracy, and fairness. It is the view of the Committee that, to meet its own standards, these findings in reports should have been mentioned to enable the viewers to arrive at their own conclusion.

63. Therefore, the sources relied upon in the documentary to reach such claims, which are used to reach conclusions, have a common relationship – of self-declared political opposition to the Government of Rwanda or renown critics of the RPF – that was likely to influence the respective positions they took on the subject. Such a common denominator, witnesses told the committee, required the exercise of some scepticism on the part of the journalist, to prod the potential motive for the claims they were making and to subject the claims to some verification prior to presenting them to the audience as if they are truths.
64. Moreover, the duty to ensure that the information received and passed on represents the truth is central to the media’s role of informing the public so that they can take informed decisions.

65. These are not only universal values within the journalism profession, but are also endorsed by the BBC’s editorial guidelines. Indeed, on the principle of accuracy, the BBC requires that its reporters “must be accurate and must be prepared to check, crosscheck…”

66. However, there is disregard for these values in the documentary, with the journalist relying solely on interested parties and questionable sources, and by ignoring well-established facts on the genocide against the Tutsi.

3.2.3. Flaws in the use of figures

One of the interviewees in the documentary, Bamutese makes the claim that:

   It was only really 10% of what we call the Interahamwe who committed massacres, who killed Tutsi. But when the RPF arrived, they wrought havoc on everyone.

67. By her own confession, Bamutese was 12 years old at the time of the genocide. A 12-year-old witness may, of course, be able to remember and recount her personal experience. However, a professional journalist would have no reason to believe in her ability to arrive at a percentage of the militia that participated in the genocide throughout the country. This kind of information and conclusion can only be arrived at with the support of a systematic study, with appropriate; otherwise, the reporter would have to exercise her professional duty in regards to the veracity of claims by cautioning her audience to treat such information as speculation.

68. In the context within which the documentary was set, however, the information given by Bamutese was treated as if it is factual and therefore constituting truthful and accurate information. Yet, BBC journalists are supposed to verify the accuracy of any such information before it is broadcast or telecast. This duty cannot be delegated to viewers.

69. If, for instance, the journalist had checked Gacaca records and testimonies of Interahamwe leaders she would have learnt that Ms Bamutese’s claim was untenable. Moreover, Bamutese alleges that when the RPF arrived “they killed everyone”. No probing question or corroborative witness is sought to ascertain the veracity of this claim.

70. By ignoring to do so, the journalist allowed a gross generalisation, without any reasonable, basis to go unchallenged. Moreover, the journalist remains silent in the face of Ms Bamutese’s claim that “only 10 per cent” of the Interahamwe were killers while the RPF apparently “killed everyone.” Therefore, it is significant that the journalist saw no partisan motive in Bamutese’s
refusal to use the term genocide, her reference to what the Interahamwe did as ‘massacres’, and her claim that only a few Interahamwe killed, while the RPF “killed everyone.”

3.2.4. Inverting Justice

In the documentary, the following exchange takes place:

Corbin says: But when she persisted in pursuing the RPF, she found her next meeting with the President wasn’t so cordial.

Carla Del Ponte elaborates: He yelled at me, “How dare you continue Madam Prosecutor. How dare you persist with these investigations?” He said, “You’re finished being Prosecutor at the Rwanda Tribunal.

Corbin claims: Carla Del Ponte appealed to UN headquarters not to let Kagame block her investigation.

Carla Del Ponte says: I spoke to the UN Secretary General, Kofi Annan.

Corbin states: The Tribunal is about to close. It’s found 63 people guilty of crimes committed during the genocide. They’re all Hutus.

Reyntjens claims: This has become, unfortunately, a pathetic instance of victor’s justice. Those who have won the war have enjoyed total impunity, that’s the RPF and those who’ve lost the war have been prosecuted.

71. The documentary approaches the subject of justice from the logic of war, an attempt to create a moral equivalence on the subject of the genocide against the Tutsi. It can only be the logic of genocide denial that finds problematic the idea that the courts established to try perpetrators of genocide against the Tutsi reached verdicts in which those sentenced for those crimes “are all Hutus.”

72. It is this same logic that is used to question the 63 convictions by the Arusha-based International Criminal Tribunal for Rwanda (ICTR) and the incarceration of the 1,000 convicts currently serving time for genocide in Rwandan prisons.

73. That those found guilty of committing genocide against the Tutsi are all Hutus is interpreted in the documentary as victor’s justice. However, this interpretation is only possible if based on the premise that the grounds for their prosecution were not their participation in the genocide against the Tutsi but their defeat in war. Underlying the notion of ‘victor’s justice’ is the claim that those who were taken to court were prosecuted only because they lost the war, and that those who won walked off scot-free. This is stated in the documentary: “Those who have won the war have enjoyed total impunity, that’s the RPF and those who’ve lost the war have been
prosecuted.” It is only from this perspective that the notion ‘victor’s justice’ can be made comprehensible in reference to Rwanda.

Corbin claims: As long as she investigated Hutu crimes, Carla Del Ponte says she had Kagame’s cooperation

Del Ponte says: I spoke to the UN Secretary General, Kofi Anna. He said, “Listen to me, Carla, it’s all politics. You’re totally right but it’s the Security Council, it’s made a political decision.

74. Moreover, in the documentary Carla Del Ponte, the former Chief Prosecutor of the ICTR claims she was summoned to the United Nations Headquarters and told that she would not continue being the ICTR Prosecutor as a result of her persistence to investigate crimes allegedly committed by the RPF. She claims that Kagame had influenced the UN Security Council to terminate her job.

75. The journalist was in a position to know that there was a Security Council Resolution that changed the structure of the Office of the Prosecutor. While the Office of the Prosecutor for the ICTR and ICTY had been fused initially, this resolution separated the two Offices, appointing a new prosecutor for the ICTR and reappointing Ms. Del Ponte as Prosecutor for the ICTY.

76. The UN Secretary General wrote to the Security Council on 28 July 2003 and asked it to “separate prosecutors for the ICTR and ICTY” because “separating the job was in the interest of efficiency and effectiveness as the courts attempt to complete their work by year 2008 as requested by the UN Security Council.” This decision took effect a month later on 28 August 2003 when the Security Council passed a resolution amending article 5 of the ICTR Statute. Subsequently, through resolution number 1504 and 1505 of September 2003, the Security Council appointed Ms. Del Ponte and Mr. Boubacar Hassan Jallow as Prosecutors for the ICTY and ICTR, respectively.

77. The critical error, however, was the failure by the journalist to recognise that the powers of the Prosecutor of the ICTR reside in the empowering statute not the person individually. And that while the relevant Security Council Resolution replaced the Prosecutor upon the expiration of her first term in office, and changed the structure of that particular office, the statute was not amended in such a way as to support Ms. Del Ponte claims.

78. For accuracy, the journalist would have known to challenge Ms. Del Ponte on the facts of the mandate and whether the new Prosecutor was carrying out the mandate in line with the statute. Or, indeed, the new prosecutor should have been approached by the journalist to verify whether

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21 ICTR Newsletter Vol. 1, No.5, October 2003
22 Resolution 1503 (2003), adopted by the Security Council at its 4817th meeting on 28 August 2003
or not he was carrying out his mandate in line with the statute. That this was not done is in contrast with the BBC’s requirement for its journalists to seek and represent all relevant views to a story.

3.2.5. Memorials and commemoration
Corbin informs her viewers: Feelings of collective guilt still haunt the West

Reyntjens adds: Rwanda has been benefiting from what I call a genocide credit. That gives the RPF such a high moral ground, that they are nearly unchallengeable.

Corbin alleges: Paul Kagame keeps the flame of genocide burning at memorial sites across country. These places [genocide memorials] reinforce the official story that it was overwhelmingly Tutsis who died and Hutus who killed them

Corbin asks: Why is it important to keep these bodies?

Gaspard responds: There are those who don’t want proof to be seen, so these are tangible proofs of genocide against the Tutsi in 1994

Corbin states: They are holding a candlelit vigil in the stadium. A new generation is listening to the official genocide story.

Corbin continues: Hutu opposition leader, Victoire Ingabire, returned from exile in 2010 to stand against the President in the last election. She asked why there were no memorials to the Hutus who died. She never made it to the polls. She got eight years in prison for genocide ideology.

79. After building on the claims of revenge killings, double genocide, and what the journalist insists is injustice against the ‘real victims’ of 1994, she embarks on questioning the need for genocide memorials, considering them more of a sham aimed at serving a political goal.

80. In one scene, the journalist asks Gaspard Mukwiye, the genocide survivor, why preserving the remains of the victims is important, to which the survivor responds: “There are those who don’t want proof to be seen, so these are tangible proofs of genocide against the Tutsi in 1994.”

81. The journalist is not convinced, however. She offers what she thinks is the real reason the bodies have been preserved: for political use. She claims the memorials are politically helpful to the RPF because they help to reinforce “the official story” that it was overwhelmingly Tutsis who died and Hutus who killed them. By implication, such memorials and bodies are only important for supporting the official story, which is being contested entirely in the documentary.

82. Finally, the documentary ventures into the subject of reconciliation. Its producers find it problematic that reconciliation would be a central theme of the period of genocide
commemoration. Moreover, upon establishing the argument that runs in the entire documentary that trades places between victims and perpetrators, the journalist wonders as to who is reconciling with whom.

83. The exchange undermines reconciliation. It promotes the idea that efforts directed at pursuing and achieving reconciliation are based on a lie about the true story of the victims of genocide, and that this story is being perpetuated through commemoration, memorialisation, and vigils.

84. Finally, the journalist indicates that donors are supporting the government of Rwanda because of “collective guilt”\(^\text{23}\) and that Rwanda is benefiting from the “genocide credit.” The assertion minimizes the genocide and is an affront to the memory of the victims. Further, it undermines efforts aimed at reconciliation, and misinforms viewers.

85. While the issue of whether Rwanda is a democracy and what standards should be used to assess its credentials could be valid points for discussion, the idea that genocide denial can be considered legitimate political dissent is unacceptable.

86. All these are instances of unsupported claims made in the documentary for which the journalist failed to live up to the standards in the BBC’s \textit{Editorial Values} of impartiality, accuracy, and fairness. The respect for standards of taste and decency, also required by the BBC’s values, is similarly not met.

IV. \textbf{Whether there was deliberate and or intentional abuse of press freedom, non-compliance with BBC’s editorial guidelines, journalistic standards and relevant laws}

87. The BBC’s \textit{Editorial Values}, by way of emphasis, require “accuracy, impartiality, fairness, and respect for standards of taste and decency.”\(^\text{24}\) They demand that their journalists be fair and to treat the subjects of their inquiry with acceptable norms in respect to standards of decency.

88. Expert witnesses who appeared before the committee submitted that a media-house of the calibre of the BBC would have stringent internal mechanisms that filter output to meet its set standards, values and guidelines. These mechanisms also ensure compliance with relevant laws.

89. However, a review of who the documentary’s respondents are, as one glowing example, reveals that they all share a common perspective that is reinforced throughout the documentary.

\(^{23}\) The idea that the failure to intervene by the international community led to guilt  
\(^{24}\) BBC Editorial Values Charter
This cannot reasonably be said to be by mistake. The selection of interviewees in a documentary of this nature normally requires the conscious and well informed decision of the journalist and/or the producer.

90. Considering that producing a documentary is expensive, and the idea is pitched and assessed by the media outlet executives before its qualification for funding, it was the view of most of the witnesses that appeared before the Committee that the manner in which the interviewees in the documentary were selected was deliberate. In addition, witnesses said that it cannot be an oversight that a product violating laws and journalistic guidelines can bypass the BBC’s internal control mechanisms undetected.

91. Moreover, the professional profiles of Mr. John Conroy and Ms. Corbin—the producer and journalist, respectively—the voice behind the product shows that they are vastly experienced. The extent of their experience implies that they do not qualify for benefit of doubt in terms of omission. However, that they would produce an output that did not respect accuracy, impartiality, fairness, and respect for taste and decency as is required of their profession and their media outlet cannot qualify as an honest omission; rather, it was deliberate.

92. Having not interviewed academics or researchers who might contradict Stam and Davenport’s narrative, the documentary’s claims of accuracy and impartiality are transparently false. To better understand the voices given the platform to air their views in the documentary, the table below gives the names and profiles of the individuals interviewed as well as the time allocated to each. The amount of time illustrates the importance and value attached to each voice while the profile helps in gaining a deeper understanding of the relationship or possible relationship between the preferred voices.

Table 1: Name, profile and approximate time allocated to each respondent in the documentary

<table>
<thead>
<tr>
<th>Names</th>
<th>Time allocated</th>
<th>Profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kayumba Nyamwasa</td>
<td>4:50 minutes</td>
<td>Exiled opponent of GoR&lt;br&gt;Convicted by Rwandan courts</td>
</tr>
<tr>
<td>Profs. Stam and Davenport</td>
<td>3:30 minutes</td>
<td>Academic &amp; former defense investigators at ICTR</td>
</tr>
<tr>
<td>Dr. Theogene Rudasingwa</td>
<td>2:50 minutes</td>
<td>Exiled opponent of GoR&lt;br&gt;Convicted by Rwandan courts</td>
</tr>
<tr>
<td>Prof. Philip Reyntjens</td>
<td>2:10 minutes</td>
<td>Academic &amp; renown GoR critic</td>
</tr>
<tr>
<td>Marie Bamutese</td>
<td>3:00 minutes</td>
<td>12 year old at the time of genocide</td>
</tr>
<tr>
<td>Luc Marchal</td>
<td>1:00 minute</td>
<td>Former Belgian paratrooper &amp; renown critic of GoR whose evidence at ICTR was rejected\textsuperscript{25}</td>
</tr>
</tbody>
</table>

\textsuperscript{25} Dismissed as unreliable witness at ICTR (ICTR-98-41...T, Judgement and sentence 18 December 2008}
Aloys Ruyenzi 1:15 minutes Exiled RDF deserter
Carla Del Ponte 1:25 minutes Former Chief Prosecutor, ICTR
Robert Higiro 1:05 minutes Exiled former RDF officer
Jim Lyons 0:40 seconds Former UN investigator
Gregoire Nyirimanzi 0:40 seconds Genocide convict
Gaspard Mukwiye 1:00 Genocide survivor

93. In a balanced impartial documentary one would expect interviewees of differing opinions to be given a chance to present their perspectives. From the table above, however, it is evident that individuals opposed to the Rwandan government or those that are critical towards it were given a disproportionately more airtime while those with contrary views were completely ignored. For instance, since this is a documentary about the genocide and what is referred to as the “untold story” about the genocide, it is instructive to note that out of 12 interviewees, taking up 23.25 minutes, the only genocide survivor is accorded a single minute in the entire documentary.

94. It is also important to emphasize that this survivor is not given this minute to express or recount his personal experience and suffering during the genocide. Rather, he is used, as the Director of the memorial, to question the legitimacy of the memorial site.

95. To give a disproportionate amount of airtime to exiled opposition figures and critics of the Rwandan government and exclude genocide survivors, credible academics on the subject matter, as well as government officials cannot be taken as impartial or truth-seeking journalism of the kind the BBC charter demands. Nor can the claim made by the journalist that she sought to speak to the President but was unable be taken to be in good faith considering that she could have spoken to other government officials, especially because the documentary crew filmed in Rwanda and had, according to witnesses who spoke to the Committee, been given access to information and contacts they had requested for.

96. Moreover, the journalist was dealing with a subject of immense national interest that cannot just be reduced into an individual matter in the person of the president. In any event this would not mitigate or remove the responsibility for her professional shortcomings.

97. Equally important is the need for journalists to give all relevant information when introducing interviewees in order to ensure that viewers get detailed profiles of the interviewees in order to ensure adherence to the values of fairness, impartiality and truth. Important information, for instance, may include their background, past and present political affiliations—if any — to help viewers to contextualise the views presented so that the audience does not simply accept them at face value. Therefore, the failure to introduce the interviewees appropriately served a prejudicial purpose, illustrating partiality intended to mislead.
98. Further illustrations point to the conclusion that the omissions were deliberate. One such illustration is the correspondences between the producer and a would-be participant in the documentary.

99. The documentary’s producer contacted a British academic to discuss her possible involvement in its making. At the time of the initial contact, the producer confessed that they knew almost nothing about Rwanda and were interested in gaining some insights from her. They also asked the academic to provide advice on experts on Rwanda who would help them to better understand the country and the subject of the genocide. The academic drew up a list of both respected and accomplished academics as well as those she considered less credible. A year later, when the documentary was aired, the witness testified, only individuals she described as polemical and controversial were included.

100. From this choice, the Committee is led to conclude that the journalist also made a deliberate decision to avoid views that would contradict the story she wanted to tell. Moreover, it is a fact that the BBC had been present in Rwanda in 1994. The committee has reason to believe that their internal archives have information to contradict some of the unsubstantiated claims made in the documentary. The BBC had a number of journalists who covered and reported the genocide. Some later wrote books26 and even testified at the ICTR.

101. In view of the foregoing, the BBC presents an institutional contradiction: on the one hand it is a witness, by virtue of what its journalists witnessed and reported during the genocide and since 1994. On the other hand, through Jane Corbin and her “untold story” documentary that denies the genocide against the Tutsi, its previous reporting is contradicted and in a way questioned. With this, then a question must be posed, does the BBC believe in its reporting during the genocide, or the “untold story” that denies much of what happened in 1994?

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V. Whether there were violations with regards to Rwandan laws in general and the laws relating to offenses of genocide denial and revisionism, as well as those inciting hatred and divisionism in particular

102. This section relates to term of reference number four and five that requires the Committee to look into “allegations of violations of Rwandan law by [the] BBC” as well as “allegations of commission of the offences of Genocide denial and revisionism, inciting hatred and divisionism,” respectively.

103. By definition, genocide denial is “a continuing attempt to destroy the victim group psychologically and culturally, to deny its members even the memory of the murders of their relatives.” Genocide denial is also said to be a “continuation of the genocide”. A British High Court acknowledged that in practice: A denier makes unsupported assertions which are offensive to survivors and are contrary to historical record. A denier has ideological reasons to persistently and deliberately misrepresent and manipulate historical evidence.

104. Relatedly, genocide denial is understood in Rwandan statutes as “negation of genocide” and in this report these two terms shall be understood similarly.

105. According to Gregory Stanton, the tactics of denying genocide include, among others, the following:

1. Questioning and minimising the statistics of the victims;
2. Blaming the victims;
3. Claiming the killings were in self-defence;
4. Claiming that ‘both groups’ suffered many deaths and;
5. Claiming that there is ‘another side’ to the truth.
6. Claiming that the deaths were inadvertent
7. Rationalising the deaths as a result of tribal conflict

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28 ibid.
106. These tactics can be discerned from a selection of excerpts from the documentary outlined below:

Corbin states:

The world knows that what happened in Rwanda is genocide against Tutsis. Two American academics came to Rwanda and conducted exhaustive fieldwork up and down Rwanda, and found a different side of the story.

Stam states:

As we looked more closely, a totally new understanding of what had taken place became very clear.

Stam adds:

If one million Rwandans died and 200,000 of them were Tutsi, that means that 800,000 of them were Hutus.

Stam then concludes:
If one million people died in Rwanda in 1994, and that’s certainly possible, there’s no way the majority of them could be Tutsi.

Corbin then interjects:
That’s completely the opposite of what the world believes happened in the Rwandan genocide.

Stam responds:
What the world believes and what actually happened are quite different. Every person we talked to, their story was exactly the same. That told us something was wrong with the story-- that the story was made up.

Davenport states:
We would start going out to different villages, a lot of sites of political violence, to get some general sense of what was taking place

Bamutese states:
It was only really 10% of what we call the Interahamwe who committed massacres, who killed Tutsis

Corbin rhetorically asks:
But if his plane hadn’t been shot down, would there have been a genocide?
Rudasingwa responds:

What if President Habyarimana had not died? In those types of circumstances? **I do not think there would have been the genocide** as we know it.

Nyilimanzi states:
I took part in the activities that led to the killings of at least 2,000 Tutsis. I held meetings and distributed weapons used to kill them. Power is sweet, it feels good. So as a leader, **I had to protect my area against the people invading the country.**

Corbin asserts:
There were **political murders on both sides**

Corbin states:
The advancing RPF **made no distinction** between innocent and guilty Hutus

Stam states:
The **violence was committed by almost every side** and every participant in this war and breakdown of social order

Stam asserts that:
**Random violence happened** and 100s and 1000s of people died **for no particular purpose**

107. The above statements made in the documentary directly relate to the legal definition of negation of genocide, revisionism, inciting hatred and divisionism. To better understand the relationship, below we provide excerpts from Rwandan laws.

- **Article 5 (2) of the Law n° 84/2013 of 11/09/2013 on the crime of genocide ideology and other related offences** stipulates:
  
  o **The Negation of genocide shall be any deliberate act committed in public aiming at:** deliberately misconstruing the facts about genocide for the purpose of misleading the public.

- **Article Article 5 (3) (4) of Law n° 84/2013 of 11/09/2013 on the crime of genocide ideology and other related offences** provides, among others that:
  
  - (3) Supporting a double genocide theory for Rwanda [...]
  - (4) Stating or explaining that genocide committed against the Tutsi was not planned.
• Article 6(1) of Law n° 84/2013 of 11/09/2013 on the crime of genocide ideology and other related offences stipulates that:

  o The minimization of genocide shall be any deliberate act, committed in public, aiming at (1) downplaying the gravity or consequences of [the] genocide [...]

• Article 7 of Law n° 84/2013 of 11/09/2013 on the crime of genocide ideology and other related offences states that:

  o justifying genocide shall be any deliberate act committed in public, aiming at:

    ▪ 1° glorifying genocide;
    ▪ 2° supporting genocide
    ▪ 3° legitimizing genocide.

108. The Committee also assessed the subject of genocide denial in other foreign jurisdictions and found that it is a crime in several countries. These countries include Switzerland, Andorra, Lithuania, Luxemburg, Liechtenstein, Macedonia, Malta, and Italy. Similarly, nations such as Austria, Spain, Germany, Belgium, France, Czech Republic, Romania, Slovakia, Sweden, and Montenegro criminalise Holocaust denial.

109. As noted earlier, there is also European case law in the same direction. More particularly, while Great Britain does not criminalise Holocaust denial or other genocides, it prosecuted a case that involved Holocaust denial in 1996 in a case involving David Irving and Professor Deborah Lipstadt. The trial judge ruled thus:

  My conclusion [is] that Irving displays all the characteristics of a Holocaust denier. He repeatedly makes assertions about the Holocaust, which are offensive to Jews in their terms and unsupported by or contrary to the historical record.... Irving has for his own ideological reasons persistently and deliberately misrepresented and manipulated historical evidence...³¹

110. Further, the Council of European Union framework Decision on Racism and Xenophobia adopted on 28 November 2008 provides punishment in European states anyone “who publicly condoned, denied, or grossly trivialised crimes of genocide...”³²
4.1. Claims of Spontaneous Killings

111. The documentary describes the conditions that led to “the massacres”. Gregoire Nyilimanzi, the genocide convict interviewed in the documentary, “I took part in the activities that led to the killings of at least 2,000 Tutsis. I held meetings and distributed weapons used to kill them. Power is sweet, it feels good. So as a leader, **I had to protect my area against the people invading the country.**”

112. By according Mr. Nyilimanzi a platform to justify committing genocide because he had to “protect” power that he says is “sweet” and “protect my area...” is to facilitate genocide denial.

113. From the excerpts above, Stam is also allowed to contradict established facts with dramatically opposing and questionable claims in which he characterises the genocide as “random violence … for no particular purpose” and “political murders,” respectively.

114. A journalist of Corbin’s stature should have been aware of the description defined by legal instruments and for which there should be no substitute. The characterisation of genocide as ‘political murder’ and ‘random killings without a purpose’ is essentially to deny it.

4.2. Victims and perpetrators: Trading Places

Corbin explains that: Questioning the official story of the Tutsi genocide is now a crime in Rwanda. It is called genocide denial.

Stam: What the world believes and what actually happened are quite different.

Corbin: Estimates of the number of Tutsis and Hutus killed during the genocide vary greatly.

Stam: One million people died and 200,000 of them were Tutsis and 800,000 were Hutus. If one million Rwandans died and 200,000 of them were Tutsi, that means that 800,000 of them were Hutus.

Stam: If one million people died in Rwanda in 1994, and that’s certainly possible, there’s no way the majority of them could be Tutsi.

Corbin: That’s completely the opposite of what the world believes happened in the Rwandan genocide.

Stam: What the world believes and what actually happened are quite different.
Stam: As we looked more closely, a totally new understanding of what had taken place became very clear.

Stam: We don’t deny a genocide happened but that’s only part of the story.

115. The number of Tutsis killed in the genocide as quoted by various authors usually varies between 500,000 and 1,000,000. The 2002 Ministry of Local Government report puts the numbers of persons killed during the genocide at 1,074,017. The report also lists their names, residence at the time of their death, and details on how they were killed. The ICTR Appeals Chamber also issued a judicial notice on 16 June 2006 stating the “fact of common knowledge that between 6 April and 17 July 1994 there was a genocide in Rwanda against the Tutsi ethnic group,” in which “more than a million people were killed during the genocide.”

116. The fact that Stam’s figures have never been published in any peer reviewed journals and the existence of well-established figures from authoritative sources should have guided the journalist to give more credence to the latter than the former. That this was ignored constitutes deliberate revisionism and minimisation, both of which constitute genocide denial.

117. From the foregoing, it is the Committee’s considered view that the documentary denies and revises the genocide against the Tutsi and therefore contravenes the relevant Rwandan law.

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33 MINALOC, Denombrement des victimes du genocide, rapport final, novembre 2002
34 See UNSC Resolution 2150 (2014)
35 See UNSC Resolution 2150 (2014)
VI. Whether there were previous journalistic transgressions committed by the BBC’s Kinyarwanda broadcasts spanning a number of years

118. BBC *Gahuzamiryango* program started in the aftermath of the genocide and in the context of providing accurate news and information about the country to Rwandan refugees in neighbouring countries. Without access to accurate information from inside Rwanda, refugees would not know the prevailing conditions and developments in the country, information that would be important in their decisions to return home.

119. Due to this need, the Government of Rwanda entered into agreement\(^{36}\) with the BBC for purposes of providing the refugees with important news and information about missing family members who had been located.\(^{37}\) With time however, evidence shows, instances emerged of disagreements between the government and the BBC on the content of the broadcasts in general and on the particular issue of giving a platform to convicts of the genocide against the Tutsi.

120. Examples below illustrate areas of contention, disagreements, recommitments, and broken promises and other issues in the relationship between the Government of Rwanda and the BBC.

121. In a letter dated 17 June 1998 the Director of ORINFOR, Wilson Rutayisire, wrote to the then head of the Africa Service division, Ms. Kari Blackburn, to register displeasure after the BBC aired an interview in which an individual who claimed to be the spokesperson for the Party for the Liberation of Rwanda (PALIR) appeared. In the letter, Rutayisire, on behalf of the Rwandan Government regretted that the BBC could give a platform and “sanctuary” to the organisation believes in and advances the genocide ideology.

122. The complaint prompted adjustment in the agreement between the Government of Rwanda and the BBC, on the basis of which the latter was granted a licence to broadcast its radio programmes in Rwanda. This agreement amendment inserted article 1.3.3 which provides that “The BBC shall in respect of its broadcast of programmes not broadcast any material which is likely to incite hatred, violence or division” among Rwandans. The clause was adopted against the background of complaints that the BBC Great Lakes Section had “on more than one occasion, broadcast material prejudicial to the Rwandan people’s vision of National Unity and Reconciliation”, to quote one of the protest letters to the BBC.

123. In 2000, another letter to the BBC noted an interview on its programme in which an interviewee claimed that Radio Rwanda was not different from the notorious Radio Television

\(^{36}\) Dated 29 September 1997 as amended to date

\(^{37}\) Ibid.
des Milles Collines (RTLM) known for its hate content and incitement to kill the Tutsi during the genocide in 1994.

124. On this occasion, the BBC apologised. In a letter dated 20 June 2001, Ms Blackburn expressed regret thus:

   We have looked closely at the text of what was said and would like to apologise for the way in which the interview was broadcast. The linkage between ORINFOR and RTLM was inappropriate and should have been challenged by our interviewer.

125. It is worth emphasising that while Ms. Blackburn acknowledged the interviewee’s right to exercise his freedom of speech by saying what he wished; she also, most crucially, recognised the duty and responsibility of the BBC to handle appropriately how this freedom is exercised by having the interviewer challenge the views of the interviewee. This is as it should be.

126. In the letter to the BBC dated 29 March 2004, Rwanda’s Minister of Information raised concern over a show that had aired on 20 March. With disbelief, the minister regretted that four genocide convicts of the ICTR serving prison sentences in Mali had been hosted on the Imvo n’Imvano program. The complaint named the four convicts as Mr. Jean Kambanda, the country’s Prime Minister at the time the genocide was carried out and a man who confessed that it was organized, Mr. Clement Kayishema, Obed Ruzindana, Omar Serugendo, and Jean Paul Akayezu. The convicts used the platform offered by the BBC to reassure the audience in Rwanda that they were “enjoying good life” in the Malian facility as they await to “get back” to power in Rwanda in the near future.

127. Rwanda’s complaint noted with consternation how persons convicted of the crime of masterminding the genocide could be afforded such a platform, moreover on the eve of the commemoration of 10 years after the tragic events.

128. This particular letter to the BBC ended with a warning in which the government stated that it could be forced into “reviewing the terms of the agreement” should the BBC persist with the transgressions.

129. In a meeting of 13 November 2007 between the representatives of the BBC and those of the Government of Rwanda, the latter raised concerns over the continued appearance on the BBC Kinyarwanda talk-show program Imvo n’Imvano, of persons “known to be associated with a genocidal organisations” operating in the Great Lakes Region.

130. Shortly thereafter, in a letter dated 5 March 2008, the Minister of Information, Professor Laurent Nkusi, wrote to the Head of the Great Lakes Region, Mr. Tim Cooke, in an effort to
“bring to your attention the trends that we consider detrimental to our interests.” The Minister noted that he was disturbed by the fact that despite the meeting of November 2007, more shows had been broadcast in which members of the Democratic Forces for the Liberation of Rwanda (FDLR), persons listed internationally as terrorists, appeared.

131. The minister explained:

We are particularly disturbed that despite many letters and meetings that we have clearly shown our concerns, the leadership of FDLR, a known terrorist organisation, continue to enjoy access and coverage on the BBC. Dr. Ignace Murwanashyaka and more recently, Calixte Mbarushimana, have featured prominently on the BBC’s Imvo n’Imvano programme. I would like to point out Article 1.3.3 of the Agreement between the BBC and the Government of Rwanda which took in effect from 1st April 2003.

132. The Minister went on to point out the clause that calls on the BBC “not to broadcast material which is likely to incite hatred, violence or division” among Rwandans. Further, the Minister reiterated why Rwanda considers that clause important in general and in its relationship with the BBC in particular in the following words:

This clause is important because in view of our history that culminated into the 1994 genocide, we found it necessary to guard against any unforeseen broadcasts that could undermine the efforts of the Government and People of Rwanda towards national unity and reconciliation. Moreover, the role the media played in the unfortunate events of 1994 is well known to all of us.

133. Imvo n’Imvano programs were particularly cited for lacking balance in the selection of the participants appearing on it. They were often a collection of persons with “one shade of opinion” against the Government of Rwanda. Further, he clarified:

As a country we take exception to persistent access to your media to persons who are bent on advancing an agenda aimed at creating instability in our country by spreading falsehoods through the BBC.

134. Finally, the government emphasised that it valued the work of the BBC in general. However, it implored the organisation to respect the terms of the agreement with particular respect to the professionalism on its Kinyarwanda program.

135. On 25 April 2009 Rwanda’s Minister of Information, Ms. Louise Mushikiwabo, wrote to the BBC’s Director for the Middle East and Africa Department, Mr. Jerry Timmons, stating as follows:
I am writing to inform you that all local language (Kinyarwanda) BBC radio programs are suspended with immediate effect, due to the total disregard they have consistently shown for Rwanda’s unity and reconciliation efforts, despite our repeated written and verbal protests. The divisive and disparaging nature of these programs – as they stand today – is no longer acceptable, in light of the hard-earned peaceful coexistence of the people of Rwanda over the last 15 years.

136. The Minister of Information went on to remind the BBC of its “stark breach” of article 1.3.3 of the April 1 2003 agreement between the concerned parties.

137. After reminding Mr. Timmons of the relevant article, the Minister registered the government’s displeasure thus:

Mr. Timmons, I wish to state with utmost gravity the disappointment and shock we felt last night when we heard on a trailer for this morning’s show “Imvo n’Imvano” interview subjects arguing a new history of the genocide committed against the Tutsi in Rwanda.

138. The Minister gave the example of two offensive clips from the trailer:
1. There are several people who committed serious atrocities, and they are the ones punishing those with less serious crimes. An example is in Eastern Province where many Tutsi were killed but when the RPF reached the area, they equally killed so many people, most of whose bodies were thrown into Lake Victoria…Why was the Rwandan genocide approved by the UN changed to: ‘The Genocide Committed against the Tutsi’? I am thinking that those changes aim at negating the deaths of the Hutu.
2. If one critically analyses Gacaca [community justice] courts, only one side of the Rwandan community has been targeted, most of whom are the Hutu. We have information that since the early 90s, the Tutsi equally committed atrocities.

139. The Minister emphasized the continued and “blatant denial” of the 1994 genocide against the Tutsi, how it constitutes “unacceptable speech liable to incite hatred,” and how that could not be protected by the BBC’s editorial independence.

140. In the same letter, the Minister recalled a 15 May program involving a “perverted conversation” where someone told the interviewer that he had fled restorative community justice (gacaca) in Rwanda because he feared being killed by his Tutsi leaders and neighbours. In this particular conversation, the Minister pointed out, “the journalist acts surprised time and time again by the responses, yet keeps asking, to deliberately elicit more anti-Tutsi sentiment,”

The leadership forces us to farm for Tutsi women survivors from Monday to Saturday, without pay, without food… I fled the country because we were told that we would be hit
repeatedly on the head with small axes...[if the Hutu fails to farm for the Tutsi] There is also that the Tutsi asks the Hutu to carry him/her on the back. It’s very difficult. Of course it happened. What would you do if the law prescribes it? Try to imagine this whole crowd gathered here to farm for one man...we, men, finish around 2 o’clock, then we are asked to chop the firewood, my wife goes to the filed I plowed [sic] earlier and plants sweet potato for the Tutsi. So we had decided that if they [Tutsi] come after us with axes, we will also ready our own and crack each other’s heads.

141. The Minister also pointed at the tendency by the BBC to shift its own responsibility to the listeners. In this sense, Hon. Mushikiwabo noted that while she appreciated the value of giving space for ‘letters to the editor’ and a platform for the political opposition in exile to express their views as part a “healthy democratic” debate, which letter to read and which opposition member to select is the responsibility of the BBC, it should also take responsibility for the content aired.

142. In emphasising the point, the Minister gave an example of a June 2, 2007 letter to the editor that read:

In the community housing [known locally as “umudugudu”] where I live, all homes belonging to Hutu are inventoried, especially those who have money. The Hutu must keep a low profile, while the Tutsi – even the poor ones – walk with their head high...

143. The Minister also points to a 30 March 2009 Gahuzamiryango program where a platform provided for the political opposition to advance healthy democratic views, was abused “when this opposition alarms Rwandans by implying that if they don’t access power quickly, another genocide should not be ruled out.”

If things do not change [in Rwanda] in the next 2, 3, 4 or 5 years, we might have another 1994...

144. In the same letter, the Minister reminded Mr. Timmons of the number of times the government of Rwanda “continued to seek common ground,” thus:

• “We sent BBC leadership a letter referenced no.456 of March 29, 2004;
• We held a meeting with BBC Great Lakes Chief in Kigali on November 13, referenced 254/03.10;
• A meeting was held between the Minister of Information and BBC World Service Planning Editor in Kigali on April 17, 2008;
• Three meetings took place between the UK Ambassador to Rwanda and the Minister of Information, including one where the Ambassador was accompanying the UK Minister for Africa, Asia and the UN on November 20, 2008;
• In May 2008, officials of the Government of Rwanda decided to boycott Gahuzamiryango, hoping for more responsible coverage.
• Finally, on April 24, 2009, the gravity of tampering with genocide by BBC’s “Gahuzamiryango” was conveyed, as a message to BBC Great Lakes leadership, in a telephone call from the Minister of Information to the UK Ambassador to Rwanda – and repeated in a subsequent telephone call from the Editor of the show to the Minister of Information; yet, the show went on and aired this morning.”

145. On 21 May 2009 the government of Rwanda and the BBC held a meeting in Kigali to discuss their differences. Following this meeting, Jerry Timmons wrote to the Minister on 26 May 2009 stating that (see appendix for details):

We have an obligation to seek every opportunity to ensure that we are sensitive to our audiences and the circumstances they face. **For my part, I am committing in this letter to redouble our efforts in this regard** and I lay out below some concrete steps we will take to achieve this.

146. Starting with a commitment that **the BBC will not broadcast material which breaks its published guidelines on incitement**, Mr. Timmons also committed to the fact that:

1. “The BBC has producer guidelines which emphasize that the BBC is not to be a platform for incitement to hatred or violence. We shall re-emphasize that to producers and Editors, who have responsibility for our output to the Great Lakes Region and specifically Rwanda.
2. The BBC will strengthen the Editorial oversight of the output for the Great Lakes Region. This will reflect the approach, outlined in the BBC Producer guidelines, which ensures that where there is the potential for violence or where sectarian or ethnic divisions could be inflamed, programme content is thoroughly checked to avoid any such consequences.
3. I agree that I will invite from Rwanda some key people, who are engaged directly in the Reconciliation process, to take part in a workshop with BBC journalists in London. This will ensure that BBC journalists, working in this area, are up to date with the sensitivities around reconciliation and genocide.”

147. These guarantees from Mr. Timmons led to lifting the suspension of the BBC’s programmes in Rwanda.
VII. Whether there was breach of the agreement relating to the granting of a license to broadcast radio programmes of the BBC on FM frequencies in Rwanda

148. The BBC signed an agreement with the Government of Rwanda on 29 September 1997 (with amendments subsequently). The relevant article to the foregoing is 1.3.3 which states in part: ‘The BBC shall, in respect of its broadcast programmes, not broadcast any material which is likely to incite hatred, violence, or divisionism.’

149. The Committee finds that the BBC was on numerous occasions in breach of the existing agreement as noted in the transgressions detailed in the previous section.

150. The Committee understands that the agreement related to the use of radio programmes on the FM frequency in Rwanda whereas the documentary was telecast on BBC2 in the United Kingdom. However, on 4 October 2014, the BBC relayed contents of the documentary on its Kinyarwanda language program in which individuals who had appeared in the documentary were invited to provide commentary in which they emphasised their positions and repeated claims that had originally aired in the original “Rwanda’s untold story” documentary.

151. The Committee is of the view that the interpretation of the aforementioned agreement should be broad and include the spirit embedded in the international convention on genocide and the fact that genocide is a crime against humanity and denial thereof where it has been established accepted as such by relevant laws is an affront on human decency and international law. Denial of genocide by any media outlet whether print or electronic breaches international law and limitations specified in international covenant on civil and political rights of 1976 as well as chapter 19 of the Universal Declaration of Human Rights. These values are part of the body of laws of Rwanda and for that reason no government agency would have powers to enter into agreement that validate their violation.

152. In addition, the spirit of the agreement can be discerned in article 2 which states that, “the BBC shall defend and hold harmless the government against any action of authors of, and contributors to, the Programmes resulting from the broadcast of any of the Programmes pursuant to this Agreement.”

153. The Committee finds that the above paragraph could not be interpreted in a limited manner that would allow the use of reach of the BBC’s infrastructure to violate what is otherwise prohibited in this particular agreement when, as a party to the agreement, it is a single entity.

154. The Committee finds that the documentary was contrary to the spirit of the agreement entered between the Government of Rwanda and the BBC.
VIII. CONCLUSION

155. The documentary made a litany of claims and assertions that are problematic in a number of ways and which we consider to violate Rwandan law, the BBC’s own ethical guidelines and limitations to press freedom.

156. We also find the documentary to be minimising and denying genocide contravening domestic and international laws. Moreover, the denial of genocide is a criminal offense in a number of countries around the world.

157. The transgressions are deemed deliberate because the BBC failed to use the mechanisms it has established to moderate the output of its journalists to ensure that it is in line with what it expects from its journalists and producers in order for the institution to retain trust and credibility among its viewers.

158. Finally, there is lack of goodwill on the part of the BBC towards its partner in the agreement that stipulates due diligence particularly when dealing with subjects that are likely to incite hatred and violence. The documentary was produced contrary to this spirit.

IX. RECOMMENDATIONS

159. The Committee recommends:

1. That the agreement between the Government of Rwanda and the BBC be terminated.

   This recommendation is based on the identified and recurrent transgressions on the part of the BBC. Moreover, the BBC was invited to appear before this Committee but it declined. Instead, it chose to conduct its own internal inquiry whose findings entirely exonerated itself and its producers of any professional or legal wrongdoing.

   In view of the above, therefore, to restore any future formal relationship, we recommend that the Government should require the BBC to commit to adhering to not only agreed professional and legal principles but also in practice in the letter and the spirit of the agreement.
2. That respective organs of the Rwandan Government initiate criminal and civil processes to deal with identified offenses and compel the BBC to disclose the information in reference to the recommendation number 1. The former process is based on serious evidence of criminal offenses, as established by this inquiry while the latter is premised on the Committee’s inability to access key information that is in the hands of the BBC, which, we have reason to believe, can shed more light on a number of pertinent issues surrounding the origin, purpose, and source of funding for the documentary.

3. That the Government of Rwanda should establish an effective and cohesive national communication strategy, as a permanent instrument for tracking, identifying, and addressing manifestations of genocide denial in all its forms and wherever it may be found, as well as for spreading values of national interest.