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On my honor as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

Sarah Lee Schuster

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Abstract

This thesis examines the role and impact of the International Criminal Tribunal for Rwanda (ICTR) in addressing the legal and moral imperatives of genocide accountability and the integration of justice for victims into international legal frameworks. Through a comprehensive analysis of landmark ICTR cases, Akayesu, Media, and Military II, this study explores how the tribunal has contributed to defining and prosecuting genocide, with a particular focus on the inclusion of sexual violence as an act of genocide. In addition, the research delves into the complexities of victim participation within the tribunal proceedings, assessing the role of victims as witnesses and active contributors to the tribunal proceedings.

Based on a combination of legal analysis, evaluations of literature, and review of the tribunal's findings, the thesis assesses the ICTR's successes in advancing international legal precedent and its limitations, particularly in terms of achieving reconciliation and comprehensive justice for victims. This study also addresses the interplay between international and domestic justice mechanisms, exploring how the ICTR's efforts complemented with Rwanda's own judicial responses to the genocide.

The findings highlight the critical role of the ICTR in shaping global jurisprudence on genocide and underscore the challenges of integrating effective justice for victims into the tribunal's mandate. The thesis concludes with recommendations for future international tribunals, emphasizing the need for more robust victim support systems, greater integration of restorative justice principles, and enhanced measures to ensure the safety and dignity of victims participating in international legal proceedings. This research contributes to the broader discourse on justice for victims, offering perspectives on the balance between retributive and restorative justice approaches in post-conflict societies.

Abstrakt

Diese Arbeit untersucht die Rolle und den Einfluss des Internationalen Strafgerichtshofs für Ruanda (ICTR) bei der Auseinandersetzung mit den rechtlichen und moralischen Erfordernissen der Rechenschaftspflicht bei Völkermord und der Integration der Gerechtigkeit für die Opfer in den internationalen Rechtsrahmen. Anhand einer umfassenden Analyse der bahnbrechenden ICTR-Fälle Akayesu, Media und

Military II wird in dieser Studie untersucht, wie das Tribunal zur Definition und strafrechtlichen Verfolgung von Völkermord beigetragen hat, wobei ein besonderer Schwerpunkt auf der Einbeziehung sexueller Gewalt als Akt des Völkermords liegt. Darüber hinaus befasst sich die Studie mit den komplexen Aspekten der Beteiligung von Opfern an den Verfahren des Tribunals, wobei die Rolle der Opfer als Zeugen und aktive Mitwirkende an den Verfahren des Tribunals untersucht wird.

Auf der Grundlage einer Kombination aus juristischer Analyse, Literaturlauswertung und Überprüfung der Ergebnisse des Tribunals werden in dieser Arbeit die Erfolge des ICTR bei der Durchsetzung internationaler rechtlicher Präzedenzfälle und seine Grenzen bewertet, insbesondere im Hinblick auf die Erreichung von Versöhnung und umfassender Gerechtigkeit für die Opfer. Die Studie befasst sich auch mit dem Zusammenspiel zwischen internationalen und nationalen Justizmechanismen und untersucht, wie sich die Bemühungen des ICTR mit Ruandas eigenen juristischen Reaktionen auf den Völkermord ergänzen.

Die Ergebnisse heben die entscheidende Rolle des ICTR bei der Gestaltung der globalen Rechtsprechung zum Völkermord hervor und unterstreichen die Herausforderungen, die sich bei der Integration einer wirksamen Gerechtigkeit für die Opfer in das Mandat des Tribunals ergeben. Die Arbeit schließt mit Empfehlungen für künftige internationale Gerichtshöfe, wobei die Notwendigkeit robusterer Opferhilfesysteme, einer stärkeren Integration von Prinzipien der wiederherstellenden Gerechtigkeit und verstärkter Maßnahmen zur Gewährleistung der Sicherheit und Würde von Opfern, die an internationalen Gerichtsverfahren teilnehmen, betont wird. Diese Forschungsarbeit leistet einen Beitrag zum breiteren Diskurs über die Gerechtigkeit für Opfer und bietet Perspektiven für das Gleichgewicht zwischen retributiven und restaurativen Gerechtigkeitsansätzen in Gesellschaften nach Konflikten.

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This thesis is in acknowledgment and honor of the innumerable victims of genocide throughout history. Their lives and legacies remind us of the disastrous consequences of intolerance, hatred, and alienation. Their suffering has pushed my commitment to understanding the process of justice and reconciliation. May such atrocities never be repeated.

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I. Introduction

The International Criminal Tribunal for Rwanda (ICTR) emerged as a response to the horrific events which occurred during the Rwandan Genocide in 1994. Between 7th April and 19th July 1994, more than one million people, primarily of Tutsi descent or moderate Hutus, were killed and up to 250,000 women were victims of sexual assault and rape (United Nations n.d.). The ICTR was established by the United Nations Security Council in November 1994 upon receiving the request to establish an international tribunal by the Government of Rwanda (United Nations Security Council 1994). The ICTR saw the indictment of 93 individuals, including high-ranking military and government officials, politicians, and other community leaders, and the sentencing of 62 of these individuals. It was the first international tribunal to ever deliver verdicts related to the act of genocide as well as the first international tribunal to interpret and clarify the definition of genocide as taken from the 1948 Geneva Convention.

The ICTR significantly contributed to the world of international criminal law by recognizing rape and sexual violence as an international crime and rape as a tool to perpetrate genocide. The ICTR further declared rape as a war crime as well as a crime against humanity (United Nations 2014). Alongside these instrumental new interpretations of the Genocide Convention, the ICTR reinforced the concept of command responsibility in holding military commanders accountable and responsible for the crimes committed by their subordinates under their responsibility. The tribunal also rejected military officials' immunity from prosecution based on their official status, further reinforcing individual criminal responsibility in this case. A further revolutionary takeaway from the ICTR is the holding responsible for members of the official media for inciting the public to commit acts of genocide by using official media, in this case, the Radio Télévision Libre des Mille Collines (RTLM), a radio station, and the Kangura Magazin, a print publication. By addressing the atrocities that occurred in 1994 and how the ICTR has held perpetrators accountable, this thesis aims to provide a deeper understanding of the complexities surrounding the interpretation of the crime of genocide, the role of victims in tribunals, and how they can achieve justice. Although the ICTR faced many challenges, its contributions not only had significant implications during the tribunal itself but also had influence on future international criminal tribunals.

II. Literature Review

In the literature review of this thesis, the key aspects of the Rwandan genocide, from its historical context to international and local judicial responses will be addressed. Issues such as the definition and responsibility for genocide, the role of victims in international tribunals, and post-conflict reconciliation efforts are discussed. This section integrates legal theories and practices to inform the analysis of the impact of the ICTR, assessing how it has contributed to justice and reconciliation, and highlighting both its achievements and limitations.

Historical background

In an effort to understand the horrific acts that occurred between 7th April and the 15th July 1994, the historical context and background must be known. It is important to note that contrary to the Western media's belief at the time, the genocide was not simply deep-rooted tribal hatred culminating nor just in retaliation for the assassination of the Rwandan President Juvénal Habyarimana on 6th April 1994 (Lemarchand, *The Rwanda Genocide* 2004). The Rwandan Genocide was a devastating event that marked the 20th century and touched individuals worldwide.

Rwanda, a small nation in East Africa, carries the legacy of the colonial era through to today. While under German and later Belgian rule, the divisions between the three main ethnic groups in the country, the Hutu, Tutsi, and Twa, were exacerbated. Tensions between the ethnic groups rose, particularly under Belgian rule, with the Hutu finding the Tutsi elite to be favored (Newbury 1998). Initially known as German East Africa, alongside Burundi and Tanzania and a small region of today's Mozambique, Rwanda was officially a German colony from 1885 until 1919 when Imperial Germany was defeated during World War I (Deutsch 2006). The region was occupied by Belgian troops after an invasion in 1916 and stayed under military occupation until 1922. Rwanda-Burundi would remain under Belgian rule until it achieved independence in 1962 after a 3-year revolution after which Rwanda and Burundi became independent states (Carney 2013). Gaining independence did little to lighten the tensions between the ethnic groups.

An important aspect that would also add to fire to the ethnic tensions in Rwanda is the events that took place in Burundi prior to the 1994 genocide. During the steady rise of Hutu-Tutsi tensions and multiple attempts to overthrow one regime or another throughout the 1960s, a nearly systematic exclusion of the Hutu majority gave way to a Tutsi-led elite and government. The Ikiza, also known as the Scourge, of 1972 saw the killing of anywhere between 150,000 and 300,000 people of Hutu origin by, primarily, perpetrators of the Tutsi minority in the country (Lemarchand 2008). 21 years later in 1993, the roles switched when President Melchior Ndadaye, the first president of Burundi of Hutu descent won the elections, resulting in many of the Hutu who had fled during the 1972 Ikiza returning to Burundi. A coup d'état in October of that year ended with the Hutu majority attacking and killing Tutsis throughout the country and became the catalyst for the Burundian Civil War which ended in 2005 (Reyntjens 1993; Mercier, Ngenzebuke and Verwimp 2020).¹

The conflicts and tensions within Burundi did little to aid Rwanda's social strain between the two ethnic groups. Further exacerbating issues in the country, Rwanda's economic stability had been questionable prior to 1994, but the primarily agrarian country was particularly hit by an increasingly sinking coffee price in the late 1980s (Ngabitsinze 2012). This set off a period of politically charged instability and political extremism which exacerbated the already highly divisive tensions between the Hutu and Tutsi people. Whilst periodic killings of unarmed Tutsi individuals would occur, the horrific acts that would take place in the fateful 100 days in 1994 took many Rwandans by surprise. While some extremist politicians had previously referenced that the Tutsi people deserved what was coming for them, these innuendos and comments were not taken seriously by the majority of society (Hintjens 1999).

In summary, the historical context of the Rwandan genocide showcases the complex interconnection between ethnic tensions, colonial impact, and economic destabilization that all culminated in this devastating atrocity that would impact not only the country and continent but also have effect globally.

¹ While both Rwanda and Burundi experienced similar colonial histories and ethnic tensions, their postcolonial paths diverged significantly, particularly in terms of the handling of ethnic conflicts. For a comparative study of Rwanda and Burundi's post-colonial developments and ethnic conflicts, see Filip Reyntjens, *The Great African War: Congo and Regional Geopolitics, 1996–2006* (Cambridge: Cambridge University Press, 2009).

Understanding the background of the Rwandan genocide provides a basis to acknowledge the humanitarian horrors that took place and hopefully provides a way forward for reconciliation and peace.

Genocide

The following segment will go through the definitions of genocide used for this thesis as well as additional multifaceted interpretations and examinations of the crime of genocide beyond the legal framework used.

The 20th century saw many atrocities happen, including what many would call genocides. The term genocide is aptly defined in different ways but for the purpose of this research, the term will be defined as understood in Article 2 Statute of the ICTR.² Article 2 of the Statute of the ICTR defines genocide as any one of 6 acts that is committed with the intention to destroy or eradicate, either partly or in its entirety, a group of people. Article 2 of the ICTR Statute established the following (Statute of the ICTR 1994):

1. *“The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.*
2. *Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*
 - a. *Killing members of the group;*
 - b. *Causing serious bodily or mental harm to members of the group;*
 - c. *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
 - d. *Imposing measures intended to prevent births within the group;*
 - e. *Forcibly transferring children of the group to another group.*

² Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 adopted on 8th November 1994

3. *The following acts shall be punishable:*

- a. *Genocide;*
- b. *Conspiracy to commit genocide;*
- c. *Direct and public incitement to commit genocide;*
- d. *Attempt to commit genocide;*
- e. *Complicity in genocide.”*

Essential in the examination of the crime are the elements of genocide pertaining two the objective element, *actus rea*, and the subjective element, *mens rea*. According to this understanding, the crime itself is consistent with a physical act, as defined in Article 2 of the ICTR Statute, and the psychological element of deliberate intention (Statute of the ICTR 1994). Aydin (2014) mentions that prior to the ICTY and ICTR, this mental element of the crime of genocide was not discussed, neither in the Nuremberg trials nor in the UN Genocide Convention from 1948.³ The elements for the crime of genocide as found in the ICTR Statutes had been derived from the definition under Article 2 of the beforementioned UN Convention (Aydin 2014). Greenawalt (1999) however highlights that in this interpretation the deliberate intention of the perpetrator is key, as genocide is viewed as a crime of “special intent”.

Madley (2015) furthermore acknowledges that although restricted, the Genocide Convention does provide an analytical framework to evaluate not only current events but also events prior to 1948 and compare them. Moreover, Greenawalt (1999) questions whether in specific contexts, principal culpability could be extended to include those who may not personally have had a specific intent but regardless of this still committed genocide in awareness of the destructive effects their actions would have. Here the ambiguity of genocidal intent comes into place. Whether the intention is to destroy the group as a whole or rather individuals for belonging to a particular group, allows for different interpretations. Such differences can be found in differentiating between burglary and larceny, where in the case of the former the crime is done with the intention of breaking and entering and to then commit a felony while the latter is done with the

³ United Nations Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9th December 1948

intent of depriving a person of their property. Here the specific intent in the act of larceny is crucial in distinguishing it from the more general intention behind burglary (Greenawalt 1999).

A more common and non-legal definition of genocide would be the one coined by Raphael Lemkin in which he observes that the term genocide includes not only the ending of life but also the prevention of it by employing various methods such as abortion and sterilization. He further details the endangering of life through the use of various methods seen during the Holocaust, such as labor camps and artificial infections (Lemkin 1947). A further interpretation is Dadrian's (1975) in which he describes genocide as being successfully attempted by a dominant group, with formal authority or resources of power, to reduce the number of a minority through coercion or lethal violence. This is done as the ultimate destruction is seen as useful for the dominant group. Here Dadrian notes that the two elements in place are the perpetrator and the victim (Dadrian 1975). Horowitz (2017) further emphasizes the structural and systematic aspect of genocide by a state apparatus. Simon (1996) expands on the idea by finding that when implicating state structures, a distinction is created between so-called "discriminate forms of killing and indiscriminate forms of killing" (Simon 1996, 250). However, genocide itself cannot occur randomly, or accidentally, as an indiscriminate form of killing would suggest. Thus, individuals within the state apparatus with specific intentions come into play, once again creating a link between individual involvement and the state system (Simon 1996).

In conclusion, the crime of genocide as examined through various lenses, including scholarly and legal, is seen as shaped by many historical, political, and legal contexts. This highlights the need for a more nuanced approach to understanding the frameworks used when prosecuting crimes committed in relation to genocide.

Genocide Accountability

The concept of genocide accountability is central in the efforts of the international community to acknowledge, address, and prevent atrocities that violate humanitarian fundamental rights. The following section of the Literature Review will provide some insights into the mechanism behind holding the

perpetrators of genocide accountable while exploring the roles of national courts, international tribunals, and other judicial systems in ensuring justice is served and someone is held accountable for their crimes.

There are many ways for the international community to respond to an act of genocide. One of the most frequent responses has been to do nothing and stand-by while such atrocities take place. Sometimes, however, the international scene takes on the task of assisting in domestic prosecutions, creating truth commissions/hybrid courts, or granting amnesty to facilitate transitions to democracy. In a few cases, like in the case of post-genocide Rwanda, where the country seeks out international help in the search for genocidal accountability, the international community responds accordingly (Scharf 1999). All these alternatives are mentioned by Scharf (1999) as ways of achieving accountability in different ways and to varying degrees.

Kamatali (2007) highlights the importance of accountability needing to take on an integrated and victim-centered approach to be successful. In order to do so, justice has a duty to prosecute, to establish the truth, to give reparations, and to prevent. Here, the question regarding who needs to take on these duties arises. The foundation for the duty to prosecute can be found in the Geneva Convention, alongside international customary law. The duty to truth, or the right to know the truth, finds its foundation in Articles 32 and 33 of the 1977 Additional Protocol to the 1949 Geneva Conventions, recognizing “the right of families to know the fate of their relatives”. Furthermore, this is reflected in the practice and *opinio juris* of the subjects of international law, providing a solid basis for the right to know. Among other backgrounds, the duty to reparation finds its recognition in the UN Basic Principles for Protection and Promotion of Human Rights and the Articles 68 and 75 of the Rome Statute of the ICC. The duty to prevent violations of human rights is enshrined in the foundations of the UN Charter and continuously reiterated by the UN Security Council, like in Resolution 1366 (Kamatali 2007). All these duties come together in ensuring accountability for genocide is achieved.

Overall, it can be said that the pursuit of accountability for genocide is undertaken when the perpetrators of these crimes are prosecuted. Whether through international tribunals or domestic courts, the necessity for an integrated and victim-centric approach remains to ensure that justice is delivered to the victims of these crimes as well as to deter future atrocities from occurring.

Role of victims in International Tribunals

The following section provides insights on how the role of victims has developed in international tribunals throughout history as well as pertaining specifically to the role the victims took on during the ICTR. Furthermore, it gives some context to the issues and difficulties victims may face when participating in such tribunals.

The ICTR provided a stage for victims and witnesses of the atrocities which occurred in 1994, to testify before the judicial authorities and while the ICTR Statute does not provide the victims with the right to compensation, it does allow for the conversation regarding reparations for victims to take place. Particularly the monetary aspects of aiding and assisting witnesses who testified before the tribunal showcased the desire of the tribunal to help victims to be heard (Nsanzuwera 2005).

The breakdown between the public and private divide in both human rights law and international criminal law has allowed for a progressive stance on allowing the victims of crimes to take on a more active role in international tribunals. This is a development that is very welcomed in the efforts to further empower victims and has allowed them to seek enforceable substantive rights like those for victims of abuse of power (Doak 2003). While no material request for the Rwandan victims was met, the ICTR recognized their suffering. Nsanzuwera (2005), highlights the importance of recognition in the efforts to maintain the victims' dignity.

Doak (2003) argues that the corrosion of the traditional restrictions between the state vs. offender duality allows for a broader interpretation of how victims play a role in the search for justice. This sheds new light on the impact of victimology on government policy as well as contemporary legal and political frameworks. Not only does the acknowledging of the role of the victims allow for more rights to be granted to them but also for greater protections to be granted to ensure their safety (Elias 1986).

The role of victims in international tribunals has evolved significantly over time, reflecting a growing recognition of their rights and the importance of their participation in the pursuit of justice. The literature explores various aspects of the involvement of victims in international tribunals, focusing on their rights, modes of participation, challenges faced, and the impact of their involvement on the proceedings and the

victims themselves. Victims play a crucial role in international criminal trials, not only as witnesses but also as parties seeking justice and reparations for their suffering. International criminal courts, especially the International Criminal Court (ICC), are often described as victim-friendly, aiming to provide justice not only by prosecuting and punishing perpetrators but also by recognizing and addressing the rights and needs of victims through participation and reparations (Zegveld 2019)

Challenges Faced by Victims and Impacts

Despite the theoretical framework that supports victim participation, several challenges hinder their effective involvement. Victims often struggle to have their individual suffering and claims recognized due to the courts' tendency to treat them as collective entities rather than individuals. This collective approach can dilute the attention each victim's claim needs, potentially impacting the reparations they receive (Zegveld 2019). Moreover, the process of recognizing individuals as victims eligible for participation is complex and can be daunting for victims. The need for applications to be submitted in one of the court's working languages and the requirement for additional information can create barriers to participation. The court's chambers have the final say on who qualifies as a victim and the manner of their participation, which can lead to uncertainties and inconsistencies in the treatment of victims' rights (González 2006).

The involvement of victims in international tribunals can have a profound impact on both the victims and the proceedings. For victims, participation in the justice process can provide a sense of recognition and validation of their suffering. It can also contribute to their healing process by giving them a voice in the pursuit of justice against those responsible for their suffering. From a procedural standpoint, the active involvement of victims can enrich the proceedings by providing personal accounts and insights that may not be otherwise available. This can contribute to a more comprehensive understanding of the crimes and their impact, leading to more informed and just outcomes. The role of victims in international tribunals is multifaceted and evolving. While significant strides have been made in recognizing and facilitating their participation, challenges remain in ensuring that their involvement is meaningful and effective. Addressing these challenges requires ongoing attention to the procedural frameworks governing international tribunals

and a commitment to respecting and upholding the rights of victims throughout the justice process (Schwöbel-Patel 2018).

In conclusion, the participation of victims in international tribunal proceedings can occur at various stages, including the investigation phase, trial proceedings, and reparations stage. Victims may deliver information to initiate investigations, submit observations during the trial, and appeal orders for reparations. This participation allows victims to contribute to the proceedings actively, ensuring that their voices are heard and that their interests are represented (González 2006). However, it is essential to mention that although many possibilities for victim participation exist, these processes can be lengthy and often hinder active participation in the proceedings, relegating victims to the sidelines.

Victims' Justice in International Tribunals

The section below offers an insight into how international tribunals can offer justice to victims. The literature on victims' justice in international tribunals reveals a complex landscape where the quest for restorative justice intersects with the mechanisms of retributive justice. Scholars have critically examined the role and efficacy of international tribunals in delivering justice to victims, highlighting both advancements and significant gaps.

One of the key themes is the contrast between the desire for retributive justice, which focuses on punishing perpetrators, and restorative justice, which aims to repair and heal the harm suffered by victims. This tension is evident in the operational frameworks of institutions like the International Criminal Court (ICC), where the emphasis has historically been on prosecuting individuals for international crimes such as genocide, war crimes, and crimes against humanity. While the ICC has mechanisms for victim participation and reparations, these often fall short of fully addressing the needs and rights of victims (Yang 2023; Moffett 2015). Although victims have the right to participate in trials and seek reparations after sentencing, the legal structure of the ICC has consistently prioritized punishment over reparations, leading to a gap between theoretical protections for victims and their practical realization (Moffett 2015). The ICC's reparations system is complex and constrained by various factors, including the safeguarding of the identities

of victims and internal ICC factors, which can lead to hierarchical relationships among victims and tensions between individual and collective compensation types. These dynamics contribute to a disconnect between the theoretical protection of victims' rights and the actual reparations they receive, leaving many victims isolated and their needs unmet (Yang 2023).

Yang (2023) also delves into the historical context of international tribunals, comparing the approaches of earlier tribunals like the Nuremberg and Tokyo tribunals, and the ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), with the ICC. This historical perspective helps in illuminating how concepts of justice and reparations have evolved over time and how these earlier tribunals have influenced the development of the ICC's approach to victim justice. Furthermore, Yang explores the procedural aspects of the ICC that impact victims' justice, such as the participation of victims in trials, the limitations of such participation, and the protection of victims' safety. These procedural elements are crucial for understanding how the ICC attempts to provide justice and reparations to victims and where it falls short. The literature suggests that while victim participation can contribute significantly to addressing compensation issues, there are still significant challenges and limitations that need to be addressed (Yang 2023). In Article 68 and Article 75 of the Rome Statute the ICC specifies the role victims can take on in proceedings. Article 68 establishes the protection of witnesses and their participation (International Criminal Court 1998):

1. *“The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*
2. *As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the*

proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. *Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.*
4. *The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.*
5. *Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*
6. *A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information“*

Article 75 tackles the issues of reparations to victims (International Criminal Court 1998):

1. *“The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances,*

determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

- 2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.*
- 3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.*
- 4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.”*

Based on articles such as the beforementioned, it is clear that although victims are to be included in the judicial proceedings of the ICC, their role is kept minimal and primarily symbolic. While crucial, the involvement of victims is not an active role but rather an acknowledgment of them without giving them influence over the outcomes of the trial. The symbolic role of victims as found in Articles 68 and 75 highlights the tensions within the legal system between a victim-centered approach and one of traditional prioritization of punishment. In the 2010 Policy Paper on Victims’ Participation, the ICC highlights Objective 4 of its strategy (International Criminal Tribunal 2010):

“To ensure that victims are able to fully exercise their right to participate in ICC proceedings, in a manner that is sensitive to their rights and interests and consistent with the rights of the Defence and the need to ensure a fair trial”

While the ICC provides mechanisms for the participation of victims and ways for them to receive reparations, it fails to facilitate these processes which are often lengthy and cumbersome for the victims. This further minimizes the direct impact the victims have on court proceedings, showcasing the retributive justice framework. Furthermore, the role of victims is consigned to one of the observers and not of participants actively seeking justice (Cuppini 2021; Waardt and Weber 2019)

In summary, the literature on victims' justice in international tribunals uncovers a multidimensional debate that grapples with the balance between retributive and restorative justice, the effectiveness of the ICC's reparations system, and the procedural complexities that impact the realization of justice for victims. Despite the progress made by international tribunals in recognizing and addressing the rights of victims, there remain substantial gaps and challenges that necessitate ongoing research and reform efforts.

Domestic Proceedings in Rwanda

The upcoming section provides an overview of the domestic proceedings within Rwanda intertwined with the ICTR, offering an additional element of accountability and a form of reconciliation at the domestic level. The literature on Rwandan domestic trials following the genocide primarily focuses on the Gacaca courts, which were a form of community justice aimed at reconciling and rebuilding the Rwandan society post-genocide. These courts were unique in their approach, blending traditional Rwandan dispute resolution mechanisms with the need to address the massive scale of the genocide's aftermath. While there has been significant scholarly interest in the Gacaca system, comprehensive studies comparing the impact of these domestic trials with international efforts, such as those by the ICTR are less common.

In the aftermath of the genocide, the Rwandan government allowed for the establishing of, the so-called, “new” Gacaca courts as a transitional measure.⁴ These new courts were based on the traditional and

⁴ The new Gacaca courts were a revitalized and adapted form of the traditional community courts that were prevalent prior to and during the Belgian occupation of Rwanda. This by the Rwandan government to deal with the massive number of genocide cases in a bid to promote national reconciliation and expedite the justice process. For a comprehensive history, see Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge: Cambridge University Press, 2010)

communal “old” courts and enhanced with greater prosecutorial powers. Where previously, these traditional courts were used primarily for minor dispute resolution at community levels, the newly formed Gacaca courts were able to try more serious crimes, including murders. An additional difference to the old courts was that while the traditional Gacacas aimed to restore community harmony and focused on community healing based on consensus and dialogue, the new courts were created with the functionality of being punitive with the most extreme sentences including life in prison (United Nations: Office of the High Commissioner for Human Rights 2016).

The domestic legal response to the genocide in Rwanda, running concurrently with the International Criminal Tribunal for Rwanda (ICTR), was multifaceted and included both the Gacaca community courts and the national court system. The national courts, in particular, played a crucial role in prosecuting individuals accused of planning, leading, and executing the genocide, focusing on those bearing the greatest responsibility that fell outside the ICTR's jurisdiction or capacity to prosecute. Rwanda's national court system undertook the prosecution of a wide range of genocide-related cases, from high-ranking officials and intellectuals who orchestrated the genocide to individuals who played more direct roles in the killings. These courts operated under the Rwandan legal framework, which was significantly reformed post-genocide to incorporate specific crimes related to genocide, crimes against humanity, and war crimes, aligning the domestic legal system with international legal standards.

The Rwandan government amended its legal code to ensure that it could effectively prosecute genocide and related crimes. This included the introduction of new laws that defined genocide in line with international conventions and established the penalties for such crimes. The legal reforms aimed to facilitate the prosecution of genocide cases while ensuring that the principles of justice, accountability, and fair trial were upheld. The national courts faced substantial challenges, including a massive backlog of cases, limited judicial infrastructure, and a shortage of trained legal professionals. The enormity of the genocide meant that the number of cases far exceeded the capacity of the judiciary, leading to delays and prolonged pre-trial detentions. To address these challenges, Rwanda received international assistance in the form of financial aid, legal expertise, and capacity-building programs aimed at training judges, lawyers, and court staff to handle genocide cases effectively (Labuda 2020).

The national court trials were pivotal in Rwanda's journey towards justice and reconciliation. By holding individuals accountable for their roles in the genocide, these trials sought to provide a sense of closure to survivors and contribute to the rebuilding of the Rwandan legal and societal fabric. However, the Gacaca trials also faced criticism regarding due process, the rights of the accused, and the overall fairness of the proceedings.⁵ Concerns were raised about the influence of the executive on the judiciary, witness intimidation, and the use of the genocide ideology law to suppress dissent. Particularly in regard to Gacaca courts, where accused people were not allowed to be represented by proper defense lawyers, there was much cause for concern regarding fair proceedings (United Nations: Office of the High Commissioner for Human Rights 2016).

In conclusion, the national court trials, alongside the Gacaca courts, formed a comprehensive approach to transitional justice in Rwanda. By addressing the legal and moral imperatives of prosecuting genocide crimes, these domestic proceedings complemented the efforts of the ICTR, contributing to a broader framework of accountability and reconciliation in the aftermath of the genocide. The trials represented a critical component of Rwanda's legal and societal recovery process, balancing the imperatives of justice, reconciliation, and the reconstruction of the national identity. The Gacaca courts themselves were dissolved in 2012 after having tried over a million cases in relation to the genocide. The national courts on the other hand had tried 1,290 cases (United Nations: Office of the High Commissioner for Human Rights 2016; Labuda 2020).

Reconciliation

The process of reconciliation after a traumatic event, like a genocide, is one that touches upon many facets of moral, ethical, legal, and political discussions. Reconciliation plays an integral part within victims' justice. The idea of reconciliation itself is to simply achieve an improved relationship than prior.

⁵ Differing from formal judicial systems, Gacaca courts were typically presided over by locally elected lay judges known as 'Inyangamugayo,' which means 'those who detest dishonesty.' This community-based justice mechanism was designed to handle lower-level crimes committed during the genocide, focusing on truth-telling and community healing. For a detailed analysis, see Lars Waldorf, 'A Mere Pretense of Justice: Complementarity, Sham Trials, and Victor's Justice at the Rwanda Tribunal,' *Fordham International Law Journal*, vol. 33, no. 4 (2010), pp. 1221-1277."

Reconciliation does not account for how this outcome is to be achieved but rather focuses on the end result by seeking to establish more peaceful and just relationships whilst leaving the injustices and conflicts in the past (Radzik and Murphy 2015). Rigney (2012) gives a more concrete example of how reconciliation can work. It incorporates remembering and recalling what has occurred in the past and involves coming to terms with what has occurred (Rigney 2012).

The roles that the legal framework can take on in the reconciliation process can vary. As an example, the Gacaca courts established in the aftermath of the genocide aimed to provide a sense of communal reconciliation by focusing on sentences like community service for minor crimes, alongside more punitive measures such as life in prison. The approximately 12,000 newly established Gacaca courts maintained their traditional values of community healing and harmony, paving the way for reconciliation within the affected communities themselves (United Nations: Office of the High Commissioner for Human Rights 2016). Here it is important to note that reconciliation in the African context often takes shape in more than mere peaceful coexistence, it entails a relationship both between affected parties and also in terms of social relations within a community. The traditional courts achieved this through their restorative nature and by being embedded into the communities themselves (Clark 2007). A further, yet controversial way, in which the Gacacas maintained a community-centric approach was through the exclusion of lawyers from the hearings. This looked to enhance the communities' "sense of ownership over the process", so Clark (2007). However, the reconciliatory aspects of these traditional courts can, for some victims, undermine their sense of justice as they may find these community-centered sentences to be disproportional and not punitive enough. Here the subjective aspects of justice and reconciliation play a significant role in determining whether reconciliation and justice have taken place (Parent 2010).

The ICTR itself seems to have had a less direct impact on reconciliation itself and more so on the aspects of victims' justice. Its contributions to reconciliation within communities came into place primarily through its influence on legal reforms and the national reconciliation process. By shedding light on the atrocities, the ICTR was able to highlight and raise awareness for the suffering of the victims on an international scale (Nsanzuwera 2005). Kamatali (2003), compares two arguments in which one sees tribunals, such as the ICTR, as direct threats to the process of reconciliation as the search for justice and achievement

of retribution does not allow for peace and reconciliation, while the other argues that the precondition for reconciliation is justice. These differing schools of thought show the complexity of the issue itself. While traditional community courts, particularly the Gacacas due to their historical context within communities, are seen as a way to achieve reconciliation, tribunals and sometimes even national courts are not always perceived in the same light (Kamatali, *The Challenge of Linking International Criminal Justice and National Reconciliation: The Case of the ICTR* 2003). However, it is of importance to acknowledge that the ICTR was very much so created with the idea of aiding in the process of reconciliation for Rwanda as found in the Preamble of Resolution 955 with the UN Security Council (UN Security Council 1994): ⁶

“Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace”

A question that Kamatali (2003) takes on is whether the success of the ICTR is dependent on whether it is able to deliver national reconciliation to Rwanda. Furthermore, if the idea behind reconciliation is to better and heal the community, justice must be served directly within the communities. In the case of the ICTR, this is not possible as it only prosecuted the individuals who took on key roles in the genocide either within society or in the government and military and not those accused of lesser crimes or in non-official capacities who were prosecuted through national and Gacaca courts (Kamatali, 2003). A further argument against ICTR contributions to national reconciliation is the lack of victim participation in the proceedings. The nature of reconciliation demands the participation of victims throughout the judicial proceedings which is not the case with the ICTR (Cuppini 2021; Kamatali 2003). Cuppini (2021) further expands upon the interconnections of reconciliation and international court systems by engaging whether these systems can even be labeled as restorative at all. This also touches upon whether they can even take part in the reconciliation process when their purpose is to focus on the prosecution and punishment of perpetrators with victims taking on a very minimal role (Cuppini 2021).

⁶ Resolution 955 on the Establishment of an International Tribunal and adoption of the Statute of the Tribunal

Overall, this segment has highlighted the complexities surrounding reconciliation and how the ICTR can provide some form of reconciliation to the Rwandan population. While the ICTR's efforts have set a legal precedent for genocidal accountability, it also shows the difficulties of combining reconciliatory efforts with its aims of achieving justice. Furthermore, it sheds light on the differences and interplays between reconciliation, healing, and justice.

III. Methodology

Throughout this thesis, the International Criminal Tribunal for Rwanda, the ICTR, will be analyzed in its addressing of the crime of genocide. This analysis will encompass the historical background and context as well as the impact of the tribunal, in the aftermath of the Rwandan genocide of 1994. Furthermore, the analysis will delve into the legal framework, legal definitions, and application of the legal framework in the context of the Rwandan genocide. Alongside this, the challenges faced during the tribunal in regard to working in a post-genocidal setting, the role of witnesses, and cooperation with national authorities will be elaborated upon.

This thesis will focus on answering the main research question below.

“To what extent has the International Criminal Tribunal for Rwanda (ICTR) contributed to accountability for genocide in Rwanda, considering the role of victims in the tribunal?”

In order to effectively answer the previously mentioned main research question additional research questions will be considered. These research questions are the following.

1. *“How did the ICTR contribute to the legal understanding of the term “genocide”?”*
2. *“What role did victims take on in the ICTR and how can victims' justice be accomplished?”*

The central aim of this thesis is to illuminate the impact of the ICTR. With this aim in mind, the effectiveness of the prosecution through the tribunal as well as its role in delivering justice to the victims

of the genocide will be examined. Through the assessment of the tribunal's role in delivering justice for the victims of the genocide and the contribution made towards reconciliation efforts, the thesis looks to examine the long-term legacy of the ICTR in shaping international criminal justice. An emphasis will be placed on the legal precedents and the ethical implications the tribunal has as well as its role in shaping international law and human rights. Throughout this thesis, the ICTR and its impacts as well as the precedents set will be researched and identified through qualitative descriptive analysis. This method of qualitative research allows for the opportunity to describe rather than just explain the phenomena identified. Furthermore, descriptive analysis takes on a more journalistic approach, with the aim to give comprehensive and detailed summaries of events while also allowing for diversity in the methods of data collection (Ayton 2023).

With genocidal acts and violations of the Rome Statute continuing to occur on a global scale, the legacy, and lessons of the ICTR are relevant in the modern efforts to prosecute these crimes. By analyzing the tribunal's impacts, the current addressing of genocide can be informed, while also contributing to more accountability and justice. Studying the ICTR's impact allows for further understanding of its implications in international criminal justice and its influence on the development of legal frameworks.

It must be mentioned however, that due to the vast amount of information pertaining to the cases, the analyses will be generalized rather than focused on specific testimonies in an attempt to emphasize the overall outcomes and judicial interpretations of the court without having to dive into the details of each individual statement. In certain instances, specific remarks have been highlighted to give some more context. This approach allows for a broader perspective of the tribunal's proceedings and sheds light on the contributions the ICTR has made to international criminal law. Furthermore, this method allows for more accessibility and relevance to broader audiences.

IV. Analysis of Cases

The following chapter will analyze three pivotal ICTR cases: the Akayesu, Media, and Military II Cases. These cases were specifically selected due to their distinctive contributions to the legal and

historical understanding of the 1994 Rwandan genocide. Each of these cases provides insights into the complexity of the acts committed between April and July 1994.

The Akayesu Case was chosen for being the first instance of the ICTR convicting an individual of genocide and recognizing rape as a means of perpetuating genocide. The Media Case, addressing the role of incitement and hate propaganda through the power of media, was chosen for its crucial understanding of how media can be weaponized to promote acts of violence. Lastly, the Military II case explores the extent and influence of military command control and responsibility. These cases serve as cornerstones of international law, having set precedent for the legal interpretation of genocide, command responsibility, and incitement.

By analyzing these cases, this chapter aims to shed light on the importance of having witnesses and victims as active participants in tribunal proceedings. This form of involvement allows for the personal and societal impacts of genocide to be brought forward, offering a way to deliver justice for the victims.

Akayesu, Jean Paul (ICTR-96-04)

The Akayesu Case was monumental as Jean Paul Akayesu, the former mayor, also known as bourgmestre, of the Taba commune in Rwanda, was the first person to be convicted by the ICTR. He was found guilty of crimes against humanity pertaining to murder and torture alongside rape, extermination, and other inhumane acts. Furthermore, Akayesu was convicted of his role in the acts of genocide, in particular incitement to commit genocide. This case became essential in the interpretation of genocide as sexual violence was for the first defined as an integral part of the crime of genocide.

It is important to note that with his authority as mayor, the most powerful position in the commune, Akayesu had exclusive control over the communal police as well as the responsibility to maintain law and public order in his commune. This must be taken into account, as during the events that took place between April and June 1994 when at least 2,000 Tutsis in the Taba commune were openly killed, Akayesu never made any attempt to prevent the killings of these individuals, nor did he help refugees who came to him

looking for help.⁷ Here the testimonies of a multitude of witnesses, who testified on the power and authority of the position of the bourgmestre, play an important role. An expert witness testified that the position of mayor could be seen as the highest authority within a commune.⁸ Another witness spoke about how every order made by the mayor would have been respected and a further witness went as far as to say that the orders of the mayor would have been followed even if they had been illegal.⁹

Regarding the killings committed in Taba, Akayesu himself admitted to having known of their occurrence and knowing that Tutsis were being killed.¹⁰ This was corroborated by multiple witnesses who also testified having witnessed Akayesu also partaking in the killings himself. While no direct eyewitnesses stated having seen Akayesu himself committing rape, there are witnesses who testified having seen him overseeing, at various points in time, acts of rape and sexual violence which were carried by others in the area of the communal bureau and throughout the commune.¹¹ These witnesses testified that Akayesu went as far as inciting and encouraging acts of rape, using his authority and influence, thus creating an environment where such acts of sexual violence became systemic and used against women, and sometimes men.

⁷ ICTR-96-04, 1998, 93, ¶ 191- “There is also evidence indicating that after 18 April 1994, there were people who came to the Accused for help, and he turned them away, and there is evidence to that came that the Accused witnessed, participated in, supervised, and even ordered killings in Taba. Witness JJ testified that after her arrival at the bureau communal, where she came to seek refuge, she went to the Accused on behalf of a group of refugees, begging him to kill them with bullets so that they would not be hacked to death with machetes. She said that he asked his police officers to chase them away and said that even if there were bullets he would waste them on refugees.”

⁸ ICTR-96-04, 1998, 45, ¶ 73

⁹ ICTR-96-04, 1998, 45, ¶ 74

¹⁰ ICTR-96-04, 1998, 90, ¶ 182 – “The Indictment alleges that the killings in Taba were openly committed and so widespread that the Accused must have known about them. A number of witnesses, including Witness PP and Witness V, testified that they informed the Accused of the killings which were taking place in Taba. Others, such as Witness NN, testified that the Accused was present at the bureau communal and elsewhere when killings took place, and that he witnessed these killings. Others, including Witness KK, Witness NN, Witness G, Witness W, Witness J, Witness C, Witness JJ, Witness V, have testified that the Accused supervised and actively participated in the killings. The Accused himself acknowledged that he knew such killings were taking place. He testified that he was told that there were killings everywhere in Taba, and that it was the Tutsi who were being killed. He stated that on 19 April 1994, killings spread to most of the commune of Taba. The issue is not contested, and it has been establishing that the Accused knew that killings were taking place and were widespread in Taba during the period in question”

¹¹ ICTR-96-04, 1998, 176, ¶ 429 – “Witness KK also recalled seeing women and girls selected and taken away to the cultural center at the bureau communal by Interahamwe who said they were going to “sleep with” these women and girls. Witness KK testified regarding an incident in which the Accused told the Interahamwe to undress a young girl named Chantal, whom he knew to be a gymnast, so that she could do gymnastics naked. The Accused told Chantal, who said she was Hutu, that she must be Tutsi because he knew her father to be a Tutsi. As Chantal was forced to march around naked in front of many people, Witness KK testified that the Accused was laughing and happy with this. Afterwards, she said he told the Interahamwe to take her away and said “you should first of all make sure that you sleep with this girl.” [...]”

Akayesu's actions alongside his authority made him responsible for the acts that were committed under his command.

In the case of the Akayesu, the Court unanimously found him (ICTR-96-04, 1998, 293)

- *“Guilty of Genocide*
- *Not guilty of Complicity in Genocide*
- *Guilty of Crime against Humanity (Extermination)*
- *Guilty of Direct and Public Incitement to Commit Genocide*
- *Guilty of Crime against Humanity (Murder)*
- *Not guilty of Violation of Article 3 common to the Geneva Conventions (Murder)*
- *Guilty of Crime against Humanity (Torture)*
- *Not guilty of Violation of Article 3 common to the Geneva Conventions (Cruel Treatment)*
- *Guilty of Crime against Humanity (Rape)*
- *Guilty of Crime against Humanity (Other Inhumane Acts)*
- *Not guilty of Violation of Article 3 common to the Geneva Convention and of Article 4(2)(e) of Additional Protocol II (Outrage upon personal dignity, in particular Rape, Degrading and Humiliating Treatment and Indecent Assault)*

Overall, it is clear that Akayesu had effective control over local forces, including the police and militias and it was in his responsibility to maintain public order. Despite this, he not only failed to prevent violence, including rape, but also encouraged and facilitated these acts. His ability to influence and his active participation in inciting violence were crucial in establishing his criminal responsibility. This case established a significant precedent by recognizing that sexual violence can be systematically used as a tool of genocide. The court found that the rapes and other forms of sexual violence perpetrated under his regime were deliberate acts intended to destroy, in whole or in part, a specific group, in this case, the Tutsi. This interpretation of the court rendered the Akayesu trial as innovative in legally defining rape in the context of international law. The court described rape as a physical invasion of a sexual nature committed in

coercive circumstances, broadening the understanding of what could be considered sexual violence and coercion in contexts of armed conflict and genocide.

Nahimana et al. (ICTR-99-52)

The following case, known as the Media Case, is an emblematic example of the role of the media in incitement to genocide and represents a turning point in international post-genocide justice. The main defendants in this case were Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze. These key figures were convicted for their active participation in the promotion of violence and genocide through the media, specifically through Radio Télévision Libre des Mille Collines (RTLM) and the Kangura newspaper.

Ferdinand Nahimana, founder of RTLM, used the radio to incite hatred and violence against Tutsis, describing the media fight as complementary to the fight with bullets. Jean-Bosco Barayagwiza, as a senior official at RTLM, and Hassan Ngeze, Editor-in-Chief of Kangura, also played significant roles in inciting genocide by disseminating propaganda and providing essential logistical information to carry out acts of violence. Both were founding members of the official and founding members of the CDR.¹² While Nahimana and Ngeze were sentenced to life imprisonment, Barayagwiza received a 35-year sentence. Ngeze's charges were mainly in relation to the Kangura newspaper, while the other two were charged primarily concerning their action with the RTLM radio station. The sentences reflected the gravity of their crimes, which included genocide, incitement to genocide, and crimes against humanity. The Court highlighted how they used their influence and media platforms to promote an atmosphere of extreme hatred that facilitated genocide.¹³

¹² Coalition for the Defence of the Republic

¹³ ICTR-99-52, 2003, 343, ¶ 1035 – “As found in paragraph 276, Jean-Bosco Barayagwiza was one of the principal founders of CDR and played a leading role in its formation and development. He was a decision-maker for the party. The killing of Tutsi civilians was promoted by the CDR, as evidenced by the chanting of "tubatsembatsembe" or "let's

A key example of the success of RTLM was its incendiary broadcast messages and pushing its listeners to action including being known as “Radio Machete” after 6th April 1994.¹⁴ Kangura went even as far as publishing 123 names of suspects in its 40th issue, informing people that they needed to organize their own self-defense in order to protect themselves from these individuals as the government would not. RTLM did something similar by also providing its listeners with names and using the term “be vigilant” as a coded term for so-called self-defense.¹⁵ Overall, the language used in both RTLM and Kangura was directly implicated in the incitement of genocide and violence not only during the genocide but also at times prior to April 1994. The anti-Tutsi sentiments aimed to dehumanize the Tutsi population and portray them as the enemy.

Having considered all the evidence, the verdict for the three men was as follows (ICTR-99-52, 2003, 361, ¶ 1091):

Ferdinand Nahimana

- *“Guilty of Conspiracy to Commit Genocide*
- *Guilty of Genocide*
- *Guilty of Direct and Public Incitement to Commit Genocide*
- *Not Guilty of Complicity in Genocide*
- *Guilty of Crimes Against Humanity (Persecution)*

exterminate them”, by Barayagwiza himself and by CDR members and Impuzamugambi in his presence at public meetings and demonstrations. The reference to “them” was understood to mean the Tutsi population. The killing of Tutsi civilians was also promoted by the CDR through the publication of communiques and other writings that called for the extermination of the enemy and defined the enemy as the Tutsi population. The Chamber notes the direct involvement of Barayagwiza in this call for genocide. Barayagwiza was at the organizational helm of CDR. He was also on site at the meetings, demonstrations and roadblocks that created an infrastructure for the killing of Tutsi civilians. [...]”

¹⁴ ICTR-99-52, 2003, 342, ¶ 1031 – “RTLM broadcasting was a drumbeat, calling on listeners to take action against the enemy and enemy accomplices, equated with the Tutsi population. The phrase “heating up heads” captures the process of incitement systematically engaged in by RTLM, which after 6 April 1994 was also known as “Radio Machete”. The nature of radio transmission made RTLM particularly dangerous and harmful. as did the breadth of its reach. Unlike print media, radio is immediately present and active. The power of the human voice; heard by the Chamber when the broadcast tapes were played in Kinyarwanda adds a quality and dimension beyond words to the message conveyed. In this setting, radio heightened the sense of fear, the sense of danger and the sense of urgency giving rise to the need for action by listeners. The denigration of Tutsi ethnicity was augmented by the visceral scorn coming out of the airwaves - the ridiculing laugh and the nasty sneer. These elements greatly amplified the impact of RTLM broadcasts.”

¹⁵ ICTR-99-52, 2003, 342, ¶ 1028

- *Guilty of Crimes Against Humanity (Extermination)*
- *Not Guilty of Crimes Against Humanity (Murder)”*

Jean-Bosco Barayagwiza:

- *“Guilty of Conspiracy to Commit Genocide*
- *Guilty of Genocide*
- *Not Guilty of Complicity in Genocide*
- *Guilty of Direct and Public Incitement to Commit Genocide*
- *Guilty of Crimes Against Humanity (Extermination)*
- *Not Guilty of Crimes Against Humanity (Murder)*
- *Guilty of Crimes Against Humanity (Persecution)*
- *Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II*
- *Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II”*

Hassan Ngeze

- *“Guilty of Conspiracy to Commit Genocide*
- *Guilty of Genocide*
- *Not Guilty of Complicity in Genocide*
- *Guilty of Direct and Public Incitement to Commit Genocide*
- *Not Guilty of Crimes Against Humanity (Murder)*
- *Guilty of Crimes Against Humanity (Persecution)*
- *Guilty of Crimes Against Humanity (Extermination)”*

This trial was one of the first to recognize the power of the media in fostering genocide, placing the responsibility of media leaders on the same level as military or political leaders directly involved in acts of violence. The ICTR stressed that although the defendants did not commit physical violence directly, their contribution to the genocide was equally devastating and deadly. This set a significant precedent in international law, demonstrating that media leaders who incite mass violence can be held accountable for genocide and crimes against humanity, highlighting the need for responsible media management during periods of political and social instability.

Ndindiliyimana et al. (ICTR-00-56)

The case known as Military II was focused on four senior Rwandan military officers: Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye, and Innocent Sagahutu. The case became crucial in establishing the responsibility of military leaders during the genocide.

Augustin Bizimungu, who was the Chief of Staff of the Rwandan Army, was sentenced to 30 years in prison. He was found guilty on six counts, including genocide and crimes against humanity for murder, extermination, and rape, as well as violations of Article 3 common to the Geneva Conventions and its Additional Protocol II. Bizimungu was aware that his orders and failure to prevent attacks as a superior formed part of the systematic attacks against the civil population. An interesting point made by the Chamber highlights that following his promotion to Chief of Staff, the killing of Tutsis throughout the country accelerated, establishing an aggravating factor for his failure to prevent the atrocities and instead further inciting the killings.¹⁶

¹⁶ ICTR-00-56, 2011, 492, ¶ 2180 – “The Chamber notes that following Bizimungu's promotion to Chief of Staff, the killings in Rwanda did not slow down, but actually accelerated in certain regions of the country. This acceleration could be explained, at least in part, by his refusal to address the killings. It is clear from Bizimungu's own evidence that he was focused on waging war against the RPF and was not concerned about the killings of civilians. His obstinate refusal to stop the killings is further evidenced by his failure to heed the persistent calls on him from representatives of foreign governments and international organizations to take action to protect the Tutsi. His indifference to the killings was so extreme that one might reasonably conclude that he saw the killings of Tutsi to be an extension of the war against the RPF.”

François-Xavier Nzuwonemeye, commander of the Reconnaissance Battalion, and Innocent Sagahutu, deputy commander of the same battalion, were each sentenced to 20 years in prison. They were found guilty of crimes against humanity and violations of Article 3 common to the Geneva Conventions, specifically murder. In addition, both were also found responsible for the murder of Prime Minister Agathe Uwingiliyimana and Belgian UNAMIR soldiers who had been dispatched to escort the Prime Minister.¹⁷ Sagahutu was found to bear superior responsibility for the crimes committed due to having instructed two soldiers to “put down the resistance” the UNAMIR soldiers were putting up in the UNAMIR building. These two soldiers went on to participate in the attacks that ultimately killed the Belgian soldiers.¹⁸ Although Nzuwonemeye was not present during the attacks against the Belgian soldiers, he failed to punish his subordinates for the crimes committed once he became aware of what was occurring, allowing this to become part of the systemic and widespread attacks.¹⁹

Augustin Ndindiliyimana, Chief of Staff of the National Gendarmerie, was acquitted of most charges and sentenced to time served since his arrest in 2000, due to mitigating factors such as his limited command over the Gendarmerie after April 6, 1994, his consistent support for the Arusha Accords and his opposition to the massacres.²⁰ However, it is important to note that the gendarmes who had been assigned to guard his family participated in the killings of many Tutsis.²¹ Although Ndindiliyimana exercised control

¹⁷ ICTR-00-56, 2011, 467, ¶ 2063

¹⁸ ICTR-00-56, 2011, 474, ¶ 2099 – “Regarding Sagahutu, the Chamber has found that on 7 April 1994, while at the RECCE Headquarters, Corporals Nzeyimana and Masonga reported to Sagahutu that Belgian soldiers were putting up a resistance in the UNAMIR building. Sagahutu instructed them to put down the resistance, and in his presence the two soldiers took a MGL from his office and went to participate in the attack during which the remaining Belgian soldiers were killed. Based on this evidence, the Chamber has found that Sagahutu bears superior responsibility for the crimes committed against the Belgian peacekeepers under Article 6(3). The direct perpetrators and Bizimungu were aware that these attacks formed part of a widespread and systematic attack against the civilian population on ethnic and political grounds.”

¹⁹ ICTR-00-56, 2011, 474, ¶ 2098

²⁰ ICTR-00-56, 2011, 494, ¶ 2189

²¹ ICTR-00-56, 2011, 289, ¶ 1288 – “Witness GFS provided a credible account that following the death of President Habyarimana, she saw that six gendarmes were stationed at Ndindiliyimana’s house. On 21 April, she witnessed two vehicles carrying gendarmes and Interahamwe visit Ndindiliyimana’s Nyaruhengeri residence for a short period. Witness GFS then expressly testified that she saw the six gendarmes stationed at Ndindiliyimana’s residence, together with the gendarmes and Interahamwe who had just arrived, board the vehicles and driveaway in the direction of Kansi Parish. She subsequently heard the sound of gunshots coming from the direction of Kansi Parish. Witness GFS further testified that the gendarmes who had arrived at Ndindiliyimana’s residence in the vehicles distributed weapons to Interahamwe. Witness GFS did not personally witness gendarmes at Ndindiliyimana’s house distribute any weapons. She did, however, testify that she was later told that the gendarmes guarding Ndindiliyimana’s Nyaruhengeri residence were providing weapons for the purpose of killing Tutsi.”

over these gendarmes, he failed to punish them or prevent them from continuing their involvement in various killing sprees.²²

The verdict for all three of the accused goes as follows (ICTR-00-56, 2011, 486, ¶ 2163):

Augustin Ndindiliyimana

- *“Not Guilty of Conspiracy to Commit Genocide*
- *Guilty of Genocide*
- *Dismisses the charge of Complicity in Genocide*
- *Guilty of Crime against Humanity (Murder)*
- *Guilty of Crime against Humanity (Extermination)*
- *Guilty of Murder as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II”*

Augustin Bizimungu

- *“Not Guilty of Conspiracy to Commit Genocide*
- *Guilty of Genocide*
- *Dismisses the charge of Complicity in Genocide*
- *Guilty of Crime against Humanity (Murder)*
- *Guilty of Crime against Humanity (Extermination)*
- *Guilty of Crime against Humanity (Rape)*
- *Guilty of Murder as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II*
- *Guilty of Rape as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II”*

François-Xavier Nzuwonemeye

²² ICTR-00-56, 2011, 470, ¶ 2080

- *“Not Guilty of Conspiracy to Commit Genocide*
- *Guilty of Crime against Humanity (Murder)*
- *Not Guilty of Crime against Humanity (Rape)*
- *Guilty of Murder as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II*
- *Not Guilty of Rape as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II”*

This trial is notable for its length and complexity, with the prosecution presenting 72 witnesses, while the defense presented 134 witnesses, highlighting the extensive deliberation required to address the multiple facets of military responsibility during the genocide. The Military II case underscores the importance of command and control in the perpetration of war crimes and genocide.

Role of Witnesses and Victims

In the previously analyzed cases, the victims played a crucial role in providing detailed accounts of the events that occurred. Particularly in the Akayesu Case these very detailed, and at times graphic, testimonies a pivotal in the Court recognizing rape as an act of genocide. These witness testimonies provided a foundation that helped to define what could constitute a genocidal act. In the Media Case, witnesses were able to describe how the publications and broadcasts influenced the behavior of individuals, creating a clear link between the content put out by these media sources and the acts of violence being carried out in response to them. Witness testimonies helped the Court establish the extent of control the military leaders had over their troops and subordinates in the Military II Case.

Overall, it can be said that the victims and witnesses played a pivotal role beyond that of providing evidence to the specific cases. Their statements became historical records and set legal precedents. The testimonies established:

- direct evidence of the whereabouts and actions of the accused during specific events

- the systemic and widespread nature of the atrocities that took place
- the intention of the accused in their participation in the crimes or failure to punish subordinates for these crimes
- the influence the accused had over subordinates or people throughout society
- the incendiary effect the accused had in inciting and encouraging acts of violence
- the various roles the accused took on in the propagation and execution of genocide

In conclusion, the victims and witnesses played a significant role in ensuring that justice was served by shedding light on the atrocities that were committed and by contributing to the interpretation, development, and enforcement of international legal standards in the prosecution of genocide, crimes against humanity, and war crimes.

V. Discussion and Recommendations

The following chapter examines the key findings of the analysis, addressing both the main and additional research questions outlined previously in the Methodology. Through examining and focusing on specific cases and literature, this study explored the implications surrounding the crime of genocide and pertaining to the role of victims.

Legal Understanding of Genocide

“How did the ICTR contribute to the legal understanding of the term “genocide”?”

The ICTR played a crucial role in developing the definitions and legal interpretations of genocide, crimes against humanity, and war crimes. By applying and interpreting the statutes defining these crimes, the ICTR contributed significantly to international jurisprudence. Beginning with the Akayesu case, the ICTR became the first international tribunal to convict someone of genocide and found that rape and sexual violence could constitute acts of genocide. The Akayesu case is a landmark for its definition of genocide, particularly the inclusion of acts of sexual violence within the framework of genocidal acts. The Court explicitly recognized that sexual assault and rape could constitute acts of genocide if committed with the

intent to destroy, in whole or in part, a protected group. This broadened the legal understanding of what actions can be classified as genocidal beyond physical acts of killing individuals and further set a significant precedent that influenced subsequent international legal proceedings, ensuring that sexual violence is recognized and prosecuted as a serious violation of international law allowing for justice to be served on behalf of the victims of sexual violence and rape.

The ICTR also refined the doctrine of command responsibility, which holds leaders and commanders responsible for crimes committed by their subordinates when they knew or should have known about the acts and did nothing to prevent or punish them. The ICTR clarified the levels of evidence required to establish command responsibility. It established standards for what constitutes “effective control” over subordinates, requiring proof that the accused had the material ability to prevent or suppress the commission of the crimes or to submit the matter to the proper authorities for investigation and prosecution. In cases such as *Military II*, the ICTR applied this doctrine to high-ranking military and political leaders, establishing a precedent that leaders can be held criminally responsible for the actions of their subordinates, even if they did not directly participate in the crimes. The ICTR's application and interpretation of command responsibility have influenced subsequent international criminal proceedings, solidifying the accountability of military and political leaders for atrocities committed under their command.

Although the focus of the ICTR was more specifically on genocide and crimes against humanity, its rulings also made contributions to the understanding of war crimes, especially in terms of individual criminal responsibility and the role of leaders in the perpetration of such crimes. Furthermore, the ICTR clarified how crimes against humanity do not necessarily require a connection to armed conflict, distinguishing them from war crimes.²³ This interpretation helped broaden the scope of what constitutes crimes against humanity, making the legal concept more applicable to a variety of contexts, including peacetime atrocities. These contributions of the ICTR have had significant and lasting impacts on international criminal law, shaping how atrocities are prosecuted and how justice is delivered in international contexts.

²³ ICTR-96-04, 1998, 229, ¶565

Victims in the ICTR and Victims' Justice

“What role did victims take on in the ICTR and how can victims' justice be accomplished?”

The role of the victims in the ICTR was a very multifaceted process revolving around their participation as witnesses, alongside expert witnesses, testifying in a multitude of cases tried by the tribunal. To fully understand the role of the victims of the atrocities, the practical aspects of their involvement in the court proceedings must be understood.

The firsthand accounts and testimonies the victims provided were a vital component in the prosecution of the convicted individuals. These testimonies laid the foundation and factual basis for the varying charges. Particularly in the Akayesu Case, the victim statements were decisive in recognizing sexual violence and rape as an act of genocide. The evidence provided by these detailed accounts sheds light on the extent of the crimes committed and the influence and power of the accused.

In addition, the active participation of victims as witnesses within the ICTR offered an opportunity to humanize the abstract setting of law and justice by highlighting the real-life consequences of the atrocities that were committed. The experiences shared influenced the judicial outcomes and offered an opportunity to acknowledge the impact the genocide had on the victims and Rwandan society as a whole. This participation was pivotal in enhancing the impact of the judicial process as it allowed for the victims to actively contribute ensuring that the first steps in justice for them are undertaken. Moreover, the trials of the ICTR underscored the importance of witness and victim protection programs and highlighted the need for sensitive handling of testimony related to sexual violence. This influenced subsequent courts to adopt more robust measures to protect and support victims during their testimony.

In order to answer the second part of this research question, it is important to understand that victims' justice and reconciliation are two aspects of transitional justice that are interlinked and mutually reinforcing. While justice seeks to address the legal dimensions of the crimes committed by holding perpetrators accountable, reconciliation focuses on restoring relationships and creating harmony. In the post-genocide Rwandan context, it is crucial to comprehend that justice for many of these victims cannot be separated from reconciliation, as it is deeply ingrained in the cultural and historical traditions of Rwandan

society. This is seen particularly through the influence and importance of the Gacaca courts in communities. The focus here is very much so put on the victims recovering and healing from the conflict and less so on ensuring punitive sentences are carried out.

In efforts to further achieve a sense of justice and reconciliation for victims and within Rwandan society, the National Commission for Unity and Reconciliation was established in 1999. This commission is responsible for creating various programs and activities aimed at education, balancing justice, and maintaining peace and security. To achieve these objectives, the commission developed several initiatives (United Nations n.d.).

- Ingando camps serve as immersive educational settings where participants learn about the causes and consequences of the 1994 genocide. This program aims to promote a comprehensive understanding of Rwanda's history to prevent future conflicts. By emphasizing a sense of national pride and solidarity, Ingando helps to rebuild the social fabric that was torn apart by the genocide. The program encourages participants to view themselves as integral parts of a unified nation, working towards common goals of peace and development.
- Itorero focuses on training leaders within the Rwandan communities. These leaders are instilled with the knowledge and skills needed to foster development and promote positive social values. The program emphasizes traditional Rwandan values such as unity, integrity, and mutual respect. By reinforcing these values, Itorero aims to create a more cohesive and forward-looking society.
- Seminars with the aim to empower community leaders, political figures, youth, and women by equipping them with the skills and knowledge needed to tackle diverse societal problems. Participants are taught techniques for reducing and resolving conflicts within their communities thus making important contributions to a more harmonious society. Furthermore, the creation of procedures for early detection of potential conflicts is a crucial component, enabling proactive measures to prevent escalation.
- National summits, which provide a platform for discussing critical issues facing the nation, including justice, human rights, national security, and governance. By addressing topics such

as national history and governance, the summits look to contribute to the development of informed policies that support sustainable peace and development. This is achieved through continuous engagement with these important topics, fostering a culture of open dialogue and collective problem-solving.

These programs makeup crucial components of Rwanda's ongoing efforts to foster national unity and reconciliation. They contribute to the broader goals of justice and peace by addressing the root causes of conflict and promoting a shared national identity. Through these initiatives, the National Commission for Unity and Reconciliation plays a pivotal role in the country's recovery and development.

ICTR Contributions to Genocide Accountability

“To what extent has the International Criminal Tribunal for Rwanda (ICTR) contributed to accountability for genocide in Rwanda, considering the role of victims in the tribunal?”

The ICTR was established in response to the Rwandan genocide that took place between April and July 1994, where in a span of 100 days numerous atrocities relating to genocide, crimes against humanity, and sexual violence occurred. The tribunal's task was to prosecute the individuals responsible for the most serious violations of international law committed during that time. The mandate itself was based on achieving accountability and delivering justice. Evaluating to what extent the ICTR contributed to genocide accountability, particularly when including the participation of victims, involves assessing the achievements and challenges of the tribunal.

When looking at the achievements of the ICTR, the first aspect to note is that the tribunal successfully prosecuted and sentenced 62 of the originally 93 indicted individuals. This was a big step forward in ensuring the responsible figures for the genocide were held accountability. Particularly in relation to holding individuals accountable for acts of sexual violence and rape the tribunal set significant precedents with its rulings in the Akayesu Case, among others. Another significant achievement is the importance of the tribunal related to the victims who participation. Having the opportunity to give their testimonies allowed the victims to feel acknowledged and that justice was being served. Furthermore, it allows for certainty that

the judicial process was done correctly and that the responsible were being held accountable for their crimes in the eyes of the victims.

As previously discussed, when looking at how international tribunals link to reconciliation and victims' justice, the ICTR unfortunately falls short in a number of ways including its inability to prosecute all individuals responsible for genocide, allowing for many of the lower-level perpetrators to be prosecuted by national or traditional courts. On the other hand, as established through the literature, in some cases this might have even aided in allowing for accountability and justice in the eyes of the victims, as these courts were more in line with their traditional values of justice. A challenge faced by victims who perhaps looked to testify at the ICTR, was the geographical distance as the tribunal was located in Arusha, Tanzania. This alongside the prolonged time period it took for the first of the trials to start posed a significant psychological impact on victims. Having to recount and relive the traumatic experiences from 1994, years later, would have deterred many from stepping forward. Such aspects, hinder the ICTR from fully holding those responsible for their crimes.

A final and momentous achievement that speaks in favor of the ICTR having achieved significant steps in the direction of genocide accountability is its role in setting global precedents in the prosecution of crimes of genocide, thanks its monumental contributions to the interpretations of the term "genocide" itself and elaborating the interpretations of the previously used terms such as "command responsibility" and "crimes against humanity". By clarifying these interpretations, the tribunal allows for more opportunities to achieve accountability in.

Recommendations

The following segment presents recommendations based on the insights derived from the previous analyses as well as based on the limitations that emerged throughout the process and the analysis of the literature, this chapter will also offer recommendations with the aim to enhance future research as well as contribute to the discourse surrounding the role of victims.

To effectively bridge reconciliation and justice for victims with accountability in post-conflict contexts, it is essential to adopt a holistic approach that addresses both the legal and the emotional and social needs of affected communities. While there is extensive literature on the Rwandan genocide and its historical background as well as on the ICTR itself, there are certain gaps in the literature on victim's justice as well the role of victims during the tribunal itself. The literature that does exist, unfortunately often revisits a core set of sources. This indicates a need for further research and evaluation of certain topics such as the interplay between justice and reconciliation, the active participation of victims in tribunal proceedings and how these elements will influence long-term community healing and can prevent future conflicts. There is also a need for further research how the examples of community justice systems can be used in more settings to promote reconciliation and restore community harmony.

Furthermore, the changing social dynamics in Rwanda make it difficult to properly assess how the reconciliation efforts post-genocide as well as the ensuring of victims' justice have been affected. It is crucial to ensure that victims have a voice and a vote in justice processes. This could include the implementation of truth commissions that encourage both prosecution and reconciliation, allowing victims to share their experiences and recommendations.

VI. Conclusion

In conclusion, this thesis has thoroughly examined the profound impact and lasting legacy the International Criminal Tribunal for Rwanda has had in not only international legal precedents but also increasing accountability in the aftermath of the Rwandan genocide. Through detailed analysis of landmark cases such as Akayesu, Media, and Military II, we have seen how the ICTR not only brought justice to victims of atrocity crimes, but also contributed significantly to the development of international criminal law. The Tribunal's groundbreaking interpretations of genocide, its pioneering recognition of sexual violence as an act of genocide, and its elaboration of the doctrine of command responsibility have established vital precedents that continue to influence international legal practice to this day. It is important to note that

alongside the ICTR, the national courts and traditional Gacaca courts in Rwanda have also taken on significant steps in achieving justice for victims as well as reconciliation within Rwandan society.

In addition, the participation of victims in the ICTR's proceedings has highlighted how critical of a role that testimonies and statements play in the pursuit of justice and the healing process for communities affected by conflict. Although the ICTR faced challenges, including problems of geographic and psychological distance from affected communities and criticisms about selectivity in prosecutions, its overall contributions to justice and accountability are undeniable.

The lessons learned from the ICTR experience are invaluable for the future of international criminal justice, suggesting ways to improve the effectiveness of international tribunals and ensuring more comprehensive approaches to justice that include reparations, victim support and social reconciliation. By reflecting on these lessons and their application to current and future international legal frameworks, the legacy of the ICTR stands as a testament to the possibilities and challenges of achieving justice on a global scale. This thesis underscores the importance of continuing to strive for a world where accountability for genocide and other serious crimes is not just an aspiration, but a reality, ensuring that no victim's suffering is forgotten in the pursuit of a just and humane international order.

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