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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: A STUDY

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Abstract:

Rwanda Criminal Tribunal is also referred as “The International Criminal Tribunal for Rwanda.” The International Criminal Tribunal for Rwanda (ICTR) is having the authority to bring charges against those who violate international humanitarian law on Rwandan soil and against Rwandan nationals who violate the same standard on neighboring states. The meaning of ‘genocide’ along with the various phases of genocide has been discussed in the paper. The current paper also emphasizes on the establishment and mandate of ICTR. The reflection on the composition as well as jurisdiction of ICTR has been analyzed. In great detail, the jurisdiction types of International Criminal Tribunal for Rwanda have also been explained. Further, the landmark cases related with ICTR has been elucidated following the jurisprudential role played by the International Criminal Tribunal for Rwanda has been illustrated. The tribunal has suffered various failures which has impaired its ability for providing justice and those failure has been discussed in the paper. It is stated that prosecution of those purportedly accountable for the Rwandan Genocide in 1994 is the aim of this tribunal.

Keywords: Genocide, humanitarian, Rwanda, Tribunal

Introduction

The 1994 Rwandan Genocide against the Tutsi began on April 7. The United Nations hosts anniversary ceremonies at its headquarters and offices worldwide on or near that date.¹ In less than three months, nearly a numerous people – mostly Tutsis, but also Hutus and others involved in opposing the genocide – were methodically killed.

The question that usually asked that why understanding genocide is important? So, the answer to this is that because Genocide is a gradual process that does not occur suddenly. Indeed, it is a calculated tactic. Genocide has an impact on people’s safety and security in neighboring places, hence its repercussions extend beyond the boundaries of the victimized nation.² Genocide has a profound effect on future generations. The

genocide in Rwanda continues to have a wide range of repercussions today, both within the nation and in its neighboring countries.

Rwandan society faced broad atrocities during 1994 when genocide combined with extensive flagrant violations of ‘international humanitarian law’ persisted throughout the territory. The Security Council of the United Nations (UN) reaffirmed its established resolutions about Rwanda’s situation through its Chapter VII authority under UN Charter provisions to determine that such conditions threatened global peace.³ Accepting the serious conditions in Rwanda the Security Council took a step to create an international tribunal at the request of the Rwandan government.

The tribunal existed exclusively to pursue criminal prosecution of people who carried

out genocide along with serious violations of international humanitarian law within the Rwandan territory. The body held the authority to try Rwandan perpetrators of genocide and additional serious violations both in Rwanda and any neighboring countries.⁴ The newly formed body received mandate to end these criminal acts while finding culpable individuals and support national harmony and maintain continued peace.

The International Criminal Tribunal for Rwanda (ICTR) serves history as the first dedicated tribunal of international law that prosecuted high-level officials for their wrongdoing against humanity on African soil.⁵ The establishment of this tribunal came after both the United Nations Commission on Human Rights and its Secretary-General and Special Rapporteur presented reports about international humanitarian law violations in Rwanda. Union members thanked the experts commission tasked by resolution 935 (1994) for their work especially their initial findings regarding reported violations.⁶ The 'Statute of the International Criminal Tribunal for Rwanda (ICTR)' functioned as an attached document to the Security Council's security measure.

Before proceeding further, it is necessary to know the meaning as well as various phases involves in the genocide and these are as follows:

Genocide: Components and Phases:

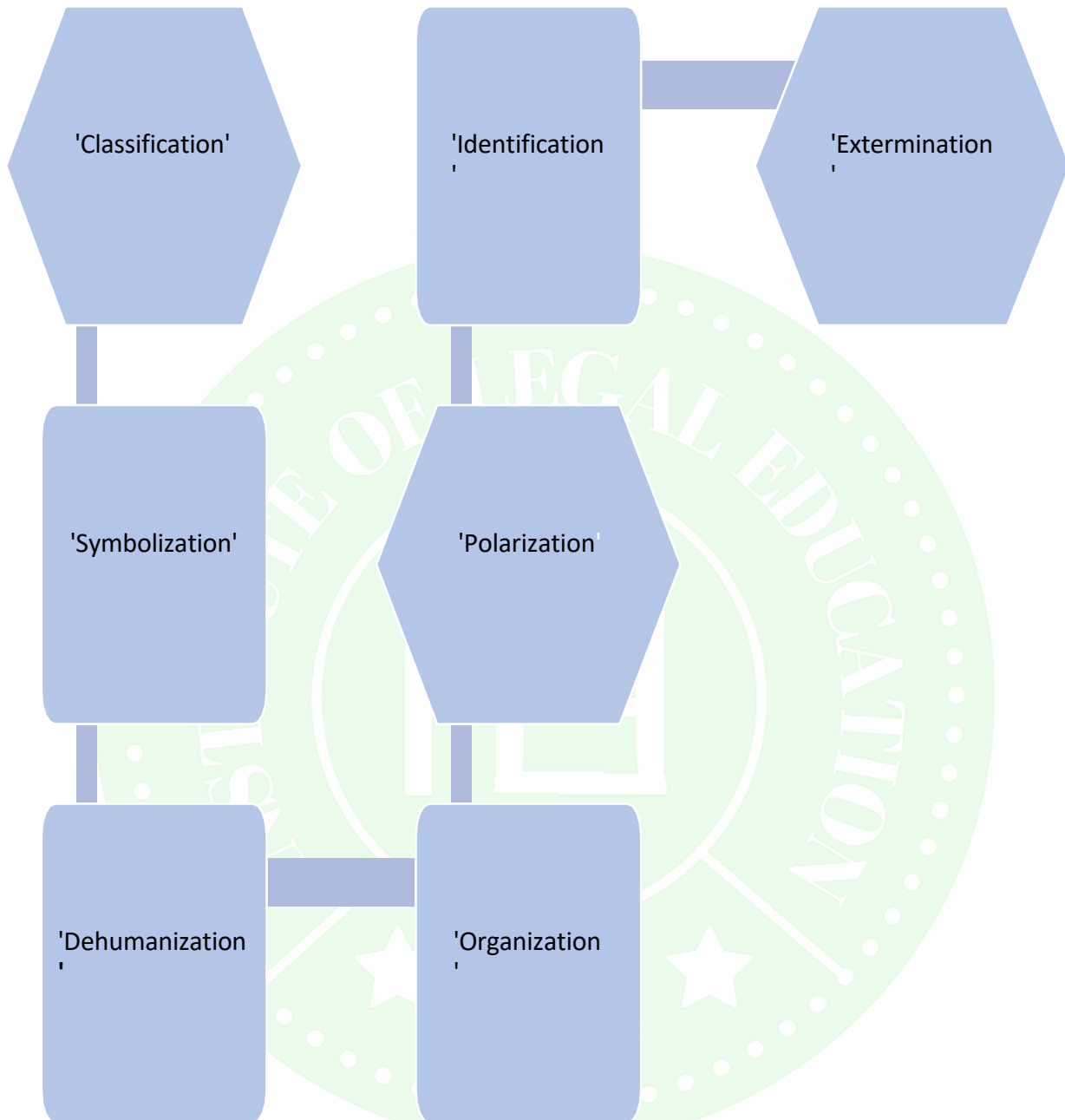
The definition of "genocide" can be examined directly from 'Article 2' of the "Convention on the Prevention and Punishment of the Crime of the Genocide," (CPPCG). This article defines the essential elements of genocide starting with 'mens rea' then adding 'group which is victimized' followed by 'actus reus' to establish the criteria for genocide.

The actus reus becomes subject to evaluation at any point during the occurrence of the death and physical or

mental damage and destruction of livelihoods and birth restriction through interferences and compulsory child separation from protected population groups defined by 'Article 2' of the CPPCG. The mens rea can be examined from the words "destroying intentionally the victimized group," which includes "national," "ethnic," "racial," or "religious" groups.⁷ Therefore, the following aspects of the definition itself highlight that mens rea must exist and that the genocidal act must be committed against the victim group whenever it occurs.

Several phases during genocide:

demonstrates another progress in the



“Source: Yale Centre for International and Area Studies.”⁸

People receive classification labels at the first stage by referencing the victimized categories mentioned previously. The main occurrences of genocide take place within societies that display two distinct factions. Social groups use symbols to distinct their identity and classify members within their group. Symbolic recognition from their group makes people mark their bodies while dressing according to their traditions.⁹ This

process. The ongoing murderous process requires dehumanization to activate the combination of classification and symbolization.

Treatments without dignity or fairness towards others are referred to as dehumanization and “Tutsis” were labeled as “cockroaches” during the Rwandan genocide.¹⁰ The media releases dehumanizing propaganda through newspapers together with radio broadcasts. Post-genocide procedures in Rwanda require the establishment of commissions to

investigate all genocidal actions because states and militant organizations typically make plans to carry out such acts. The

target audience during the polarization phase becomes moderates who face retaliation killings. Members need to present their identification cards as part of the identification phase so they get easily identified. During elimination people face severe mistreatment that includes inhumane treatment; “ethnic cleansing” in Bosnia represents an instance of ‘elimination.’¹¹ The phases function as essential components for raising public understanding about genocide prevention.

Establishment and Mandate of ICTR

The fragile peace which was established by the ‘Arusha Accords,’ which were mediated in the hopes of ending the armed conflict between the ‘Rwandan Patriotic Front (RPF)’ and the Rwandan Government, was shattered on the evening of April 6, 1994, when the plane carrying Juvenal Habyarimana, the President of Rwanda, and Cyprien Ntaryamira, the President of Burundi, was shot down over Kigali.¹² In the 100 days that followed, the country was engulfed in unimaginable violence, with war crimes, crimes against humanity, and soldiers, politicians, and ordinary citizens, etc., among those who committed war crimes, mostly against Tutsi civilians and moderate Hutus. ‘Hutu’ extremists murdered between 800,000 and one million men, women, and children, a fourfold increase over the rate of killing during the Nazi Holocaust.¹³

Through its designation of the Rwandan scenario as dangerous to regionwide peace Security Council members established the ICTR. The Security Council used their power from Chapter VII of the United Nations Charter for this action. Through this procedure the Council acquires the power to identify threats toward maintaining peace as well as breaches of peace and aggressive acts while determining suitable actions for

achieving international peace objectives. The ICTR received its founding authority from Article 39 of the United Nations Charter because of which it obtained status as a measure.¹⁴ The Security Council introduced the Tribunal through its Resolution 955 from 8 November 1994.

The principal function specified by the United Nations Security Council for the ICTR involved prosecuting those responsible for Rwandan atrocities. In addition to issuing penalties the Tribunal focused on eliminating a culture of impunity that would support peace establishment and national reconciliation.¹⁵ These international tribunals exist to disseminate a strong message regarding international justice efforts.

Under its strict mandate the ICTR has authority to prosecute specific individuals for committed actions that comply with time and location requirements. Article 1 in the Statute defines what actions the Tribunal possesses jurisdiction to pursue as per its established competency.

Composition and Jurisdiction of ICTR

The International Criminal Tribunal for Rwanda operated through three essential functional bodies according to UN Security Council Resolution 955 (1994). The Chambers organized three Trial Chambers which operated in Arusha Tanzania and a single Appeals Chamber situated in the Hague together with the ICTY. The United Nations General Assembly elected a total of 25 judges for the ICTR with permanent and ad litem positions consisting of 16 and 9 respectively.¹⁶

Through Resolution 1431 (2002) the UN established an expanded pool of ad litem judges numbering 18 to speed up judicial proceedings until Resolution 1512 (2003) increased their active participation to nine.¹⁷ The ICTR adopted a combined international legal framework through its organizational structure which merged independent judicial systems with United Nations management.

The complicated nature of the tribunal sometimes led to performance issues within its administrative systems as well as decreased efficiency in addressing Rwandan community requirements.

Jurisdiction of ICTR

The International Tribunal for Rwanda performs its authority within specified geographical boundaries during a defined time frame and applies its power to pursue specified crimes and particular subjects. Certain jurisdiction types are as follows:

- a. **Temporal jurisdiction:** The ICTR temporal jurisdiction from January 1st 1994 until the last day of December 1994. The Tribunal has authority to investigate and prosecute everyone who carried out offenses between January 1 and December 31 of 1994.¹⁸ One major concern about the temporal scope of the ICTR stemmed from Rwandan government opposition that equally severe crimes existed during previous times connected to the 1994 incidents.¹⁹
- b. **Territorial jurisdiction:** The Tribunal maintains its authority to prosecute cases in all parts of Rwanda beginning from its surface territory up through its air space.²⁰ Through its authority the Tribunal extends across Rwandan territory because it also encompasses violations of humanitarian law made by citizens of neighboring States.
- c. The court system intended to try persons who held leadership positions. All members of humanity submit to the authority of the International Tribunal for Rwanda when examined for legal offenses.²¹ The objective of these proceedings involves trying men and women responsible for the committed offenses. The court systems targeted

leaders among the people for prosecution. (Personal jurisdiction)

- d. **Subject Matter Jurisdiction (Ratione Materiae):** The Tribunal possesses jurisdiction to prosecute people who commit serious violations of international humanitarian law.²² According to Article 1²³ of the Statute the Tribunal specifically targets these categories of criminal offenses: According to the Statute the Tribunal can try cases of genocide against individuals who commit genocide offenses. According to the definition of 'genocide' the courts recognize the destruction of a national, ethnical, racial or religious group as constituting a crime regardless of whether the whole group or only its partial members are targeted. The following punitive conducts are stated as explicit violations within the list.
 - Genocide
 - Conspiracy to commit genocide
 - Generators who make open calls to execute genocide fall within the jurisdiction of the Tribunal
 - Attempt to commit genocide

There exist two specific elements of genocide for prosecution: 'crime of conspiracy to commit genocide' alongside 'direct and public incitement' to Genocide. The Chamber established through indisputable evidence that the defendant criminally instigated the public observers towards genocide.²⁴ The ICTR established in its rulings that the genocide of Tutsi through mass killings constituted an actual genocide while demonstrating Hutu extremists generated the plan and execution of the killing campaign.²⁵ Under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide there are specific guidelines

which define what actions qualify as genocide.

Crimes against Humanity: A Tribunal may exercise jurisdiction over persons who commit defined crimes during systematic attacks against any civilian population based on national or political motivations as well as ethnic and religious elements. Events in Rwanda with its civilian population as target warranted limiting ICTR's jurisdiction to discriminatory crimes against humanity according to the *Kajelijeli judgment*. The sources specify murder, extermination, rape and other inhumane acts as the crimes that belong to this category.²⁶ The *Kajelijeli judgment* handles murder, extermination and rape alongside other inhumane acts as crimes against humanity by analyzing how to demonstrate their existence through establishing an inhumane act-suffering link.

Concurrent jurisdiction and primacy: Both the ICTR and national courts maintain parallel prosecution powers to try individuals causing serious international law violations that took place within the set period in Rwanda along with Rwandan citizen crimes in nearby states. The ICTR possesses authority that exceeds all national courts in every State.²⁷ During any stage of its procedures the Tribunal holds the authority to demand through its Statute as well as rules of procedure and evidence that national courts defer to its jurisdiction.

Ne bis in Idem (Double Jeopardy): According to the Statute it incorporates the legal principle known as *Ne bis in idem* (Double Jeopardy). A person cannot undergo trial in any national judicial system for acts qualifying as serious violations of international humanitarian law under the Statute when such persons previously received trial at the ICTR for exactly these actions. An individual who faces national court prosecution for such acts remains subject to ICTR jurisdiction only when the national court classified the act as mere

criminal conduct or failed to provide impartial justice or served to hide the offender from international criminal prosecution and when the pursuit of the case was sluggish.²⁸ The ICTR needs to include any penalty already given to a person by a national court for identical acts while determining punishments.

ICTR: Landmark Cases

This is not the first International Criminal Tribunal for Rwanda. It is actually practically a division of the 1993-founded International Criminal Tribunal for the Former Yugoslavia. The Chief Prosecutor along with Appeals Chamber are two of the facilities and personnel that the two Tribunals share.²⁹ The Tribunal's essential criminal prosecutions built the foundations of its legal systems which resulted in permanent transformations of global criminal justice operations.

Jurisprudential contribution by ICTR is as follows:

*"Prosecutor v. Jean-Paul Akayesu,"*³⁰ in this case the ICTR convicted 'Jean-Paul Akayesu' for genocide alongside crimes against humanity along with rape as a means of genocide after he served as bourgmestre of Taba commune. Dated September 2nd 1998 judgment established historic legal precedents through its international conviction of genocide along with its official recognition of rape as a tool for genocide. The Tribunal found sexual violence to qualify as an action that destroys groups so it extended traditional genocide definitions through this first-ever judgment. During the

International Court of Justice proceedings on *"Bosnian genocide"*³¹ the court enacted an order against international powers prohibiting further actions that might cause deterioration of the matter or breach human rights because the massacre had caused mass killings and sexual violence. All actions must avoid promoting future acts of genocide by the public.

The 1994, 'genocidal act' often called "*Rwandan genocide*"³² exists between these two ethnic groups Tutsis and Hutus. The genocidal killing caused mass deaths along with large-scale rapes of women thus resulting in ethnic cleansing. The refugees who had fled from Hutus caused a major portion of the refugee problem when they moved to neighboring nations after the RPF gained power. The International Criminal Tribunal for Rwanda (ICTR) gained authorization to handle all genocide cases post-genocide in Rwanda.

Failure of International peacekeeping operations during the genocide:

International peacekeeping operations along with political commitment toward preventive action both failed during the 1994 Rwandan genocide which revealed major deficiencies. Although 'United Nations Assistance Mission for Rwanda (UNAMIR)' Commander Lt. Gen. Roméo Dallaire provided the Security Council with advance warnings about upcoming massacres and weapon stockpiles the Council failed to strengthen the mission by providing extra troops or increasing the mandate.³³ During the peak of the genocide the number of soldiers participating in UNAMIR decreased dramatically from 2,548 troops to only 270 remaining troops. A 1999 investigation discovered multiple problems in the UN's genocide response that resulted from insufficient resources and insufficient political dedication as well as delayed action. An independent report found that the United Nations as a whole exhibited collective malfunction because of its inability to act before or during the killings of 800,000 people. The UN adapted the 'Responsibility to Protect (R2P)' doctrine in 2005 as a result of their previous failure to prevent

mass atrocities.³⁴ The new doctrine prioritized both state and international obligations in stopping murderous atrocities.

Responsibility to protect (R2P) principle:

Each member country of the CPPCG bears responsibility to prevent genocide based on 'Article 1' of the Convention. All countries hold an obligation under the responsibility to protect (R2P) standard to protect their people from genocide and other criminal actions. Reports from Rwanda and Bosnia genocide events led to the increased prominence of Responsibility to Protect (R2P) concept.

A minimum of 134 nations along with six regional organizations have attended interactive UNGA sessions about responsibility to protect since 2009. At the "United Nations World Summit 2005," the majority of nations agreed on the R2P principle, which states that the population will be protected within their own borders by the respective State.³⁵ It also emphasizes the role of the international community in helping the State fulfill its responsibilities and further notes that the international community will use effective measures to protect the population whenever the State lacks the ability to fulfill its obligations.

Any dispute between CPPCG-contracting states that concerns the interpretation process or other matters or articles under Article 3 of CPPCG or R2P can be examined by the International Court of Justice (ICJ).³⁶ Thus, issues pertaining to R2P norm violations in relation to genocide cases are heard by the ICJ. Since it shields nations against mass crimes of any kind and guarantees that international cooperation will preserve world peace, the Responsibility to Protect (R2P) norm has gained more acceptability among governments worldwide. It is observed that many states choose not to approve R2P doctrine since it resembles colonial rule while they reject military intervention which leads to the demise of their soldiers thus demonstrating the limited global endorsement of R2P

Further, following the cases of ICTR,

*Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*³⁷ (also known as “The Media Case”), in this case Media executives received their first genocide conviction through this important ruling on December 3, 2003. During the Rwandan genocide the ‘Radio Télévision Libre des Mille Collines (RTLM)’ broadcasters together with Kangura editors functioned as the orchestrators who prepared public audiences to start the genocide through their speeches aimed at causing hatred. The decision established that expression freedoms do not protect acts that encourage international crimes as it created the basis to prosecute non-state media professionals according to international law

In the case of *Prosecutor v. Théoneste Bagosora*³⁸ (also known as “Military I Case”) Chief executive of the Rwandan Ministry of Defence pursued his position as the main leader behind the genocide. By 2008 the Tribunal decided his guilt for all charges that included genocide and crimes against humanity together with war crimes along with murder and extermination as well as rape. Through the ICTR the doctrine of ‘command responsibility’ gained permanent status because the tribunal established that military officials would be accountable for letting crimes go unpunished or unchecked among their subordinates.

Prosecutor v. Juvénal Kajelijeli,³⁹ the court in the mentioned case convicted Kajelijeli who served as Mukingo commune mayor in 2003 because of his crimes of genocide alongside charges of incitement to genocide and crimes against humanity. Documented evidence proved Kajelijeli personally took part in mass killings while managing checkpoints to target Tutsi civilians and stimulating others to join in the attacks. Local administrative authorities have proven through this case to bear full responsibility in orchestrating mass atrocities.

The judicial decisions made at the ICTR have

shaped international criminal law because they established rape as a genocidal act and prosecuted media professionals along with state officials and commanders in charge. The court cases established essential foundations which the International Criminal Court and other future international tribunals used to interpret essential international criminal offenses.

Failures of the ICTR

A historic development in international justice emerged when the International Criminal Tribunal for Rwanda started operations in 1994 through United Nations Security Council Resolution 955. The Tribunal achieved multiple pivotal developments in international law about genocide and sexual violence although it faced extensive criticism because of operational along with procedural and moral deficiencies. The tribunal suffered various failures which impaired its ability to provide justice while helping Rwanda achieve post-genocide reconciliation.

Geographic as well as linguistic detachment from Rwandan Society: The major flaw of ICTR rests in its physical positioning at Arusha Tanzania where it remained distant from both crime locations and victim communities it had committed to serve. The geographical as well as symbolic separation between the ICTR in Arusha and Rwandan society prevented public attendance at proceedings and blocked Rwandans from effectively participating in justice processes.⁴⁰ The combination of English and French as judicial languages generated added distance from Kinyarwanda-speaking Rwandans who made up the majority of the population.

Bias prosecution: The International Criminal Tribunal for Rwanda devoted its prosecutions exclusively to the crimes done by génocidaires while neglecting the RPF members even though valid claims about RPF’s abuses existed. The selective nature of prosecution led people to believe the Tribunal

showed partiality toward one side which damaged its reputation and undermined its fair process.⁴¹ The failure to prosecute everyone responsible for the conflict breached international criminal law since it discarded its essential impartiality principle.

High costs and institutional inefficiency: Through its twenty-year operation the ICTR used \$1.3 billion USD to conduct trials against sixty-two defendants. Extensive court proceedings spanning multiple years became common at the Tribunal because critics often noted both the ineffective government operations and delayed processes and procedural formalisms. The extended operation

duration and financial expenditure of international criminal tribunals triggered doubts about their monetary and time commitment benefits.

The ICTR has also been criticized for the incredibly high cost of the criminal proceedings. An estimated 2 billion US dollars (1.8 million euros) were spent on the tribunal. The court, which had over 1,200 employees, has previously come under heavy fire for corruption, incompetence, and a lack of professionalism.⁴² ICTR is criticized as tribunal granting “artificial justice”⁴³ and it is believed that the ICTR had not fulfilled its obligation to administer justice. In nearly two decades, less than 70 persons were tried. Rwandan society did not find that adequate.

The ICTR made groundbreaking jurisprudential advances but failed to achieve essential goals during its operations. The tribunal struggled to fulfill its objectives mainly because it failed to achieve meaningful participation from victims, failed to prosecute all perpetrators and operated without sufficient efficiency. The critique reveals essential aspects about future judicial systems and the future permanent International Criminal Court (ICC) which focus on obtaining legitimacy and inclusiveness to deliver justice communities

recognize.

Conclusion

The establishment of the International Criminal Tribunal for Rwanda emerged from the destruction of one of the darkest tragedies of the twentieth century. Such “genocidal crimes” establish permanent national consequences while affecting mental health in the affected nation whenever these events occur. The United Nations also has a responsibility to support worldwide communities in their implementation of peaceful measures through any appropriate action. Understanding why genocide occurs and making sure that it doesn’t happen again requires recognizing the warning signs of genocide, which requires that all countries that have joined the Convention implement the CPPCG effectively. It is observed that despite being criticized by some people for operating far from Rwanda with sluggish proceedings at high costs the ICTR achieved important goals in

international justice. The tribunal became the first UN judicial body to both convict perpetrators for genocide and establish sexual violence as an instrument of genocide thus setting major standards for victim rights. Drawing exclusively on the provided sources, this paper has explored the key aspects of the International Criminal Tribunal for Rwanda. States across the globe should take firm measures to halt genocide activities while promoting peace against their international neighbors. The ICTR created a platform to obtain moral justice along with its established legal rulings. Even with overwhelming cruelty justice proved crucial for the whole world to understand its importance. The tribunal demonstrated how international frameworks struggle to address fundamental issues which occur at the community level. Although it had its flaws the ICTR served its purpose to the world. We remembrance the legacy which demonstrates justice operates

through human processes while both listening and learning and memorializing.

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