

## **International Crimes in Rwanda**

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### **Abstract:**

*“To bring about by peaceful means, and in conformity with the principles of justice and International Law, adjustment or settlement of international disputes or situations, which might lead to a breach of the peace”. This is one of the purposes of United Nations embedded in its statute. Many a time’s peace of the world is hampered by extreme ferocity against humans, wherein ethnic cleansing crusades are operated mercilessly. Targeting people from a particular ethnic sect are motivated by various factors out of which political factors are seen occupying dominant position over the others. This research paper would focus on the infamous Rwandan Genocide of 1994 and its impact on international criminal justice system. The paper has been segmented into various subheads namely introduction: which would lay down cardinal facts regarding Rwandan genocide and how attempts made at tackling the disastrous consequences, Genocide: meaning and events, describing what actually genocide is under “The Convention on Prevention and Punishment of Genocide” and events classified under the term, Historical evidence of ethnic division: discussing how Rwandan culture has vindicated the ethnic detachment of the Hutus and Tutsi (sects involved in the genocide), Establishment of International Criminal Tribunal Rwanda laying down the purpose of such institution and activity of the same till date and finally, the conclusion which discusses related cases of genocide throughout the world and international reaction towards the same.*

### **List of abbreviations:**

ICTR: International Criminal Tribunal for Rwanda

The Convention: The Convention on Prevention and Punishment of Genocide

The Commission: National Human Rights Commission of India

Key Words: *Genocide, Rwanda, International Criminal Tribunal for Rwanda, The Convention on Prevention and Punishment of Genocide, International Criminal Justice System*

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## Introduction:

The Rwandan genocide saw a large scale massacre of particularly one ethnic assemblage namely, Tutsi. Tutsi constituted 14% of the country's population whereas the major population of Rwanda belonged to Hutu sect. In the early 1990s, Hutu extremists within Rwanda's political elite blamed the entire Tutsi minority population for the country's increasing social, economic, and political pressures<sup>2</sup>. They were reminded of earlier times as well when the Tutsi ruled over them, all of these leading to hatred against Tutsi which took the form of Genocide in 1994 killing 800,000 Tutsis across Rwanda. Aim was to sweep off entire Tutsi community from Rwanda and barbarous techniques of large scale slaughter were adopted by Hutu extremists such as killing with machetes and knives without even sparing children, women or the elderly. Tutsi Women were raped and killed because the so called objective of the Hutu extremists was to subject them to misery and suffering. Many Hutus were also made victims to the genocide because of their reluctance to participate in the act of butchering Tutsi population and also because of reasons like their marital association with Tutsis or even their resemblance to Tutsi race. Humanity was placed at the back burner or perhaps the flame had extinguished long ago. The aftermath of the incidents were countered by establishment of International Criminal Tribunal for Rwanda whose purpose was to provide justice to the genocide victims and punish all those active participators of such a heinous crime which was not only a mass murder of Tutsi but of humanitarian principles and ethos. The International Criminal Tribunal for Rwanda was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994 and it also dealt with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighbouring States during the same period<sup>3</sup>. It has been 20 years since the genocide and the ICTR has completed all trial chamber cases with respect to the genocide and all that is left are the cases before the appeal chamber of the Tribunal. The trials saw conviction of public officers since they carried personal criminal liability on them for the commission of genocide, an international citizen and people who indirectly participated in the genocide by inculcating abhorrence among Hutus against Tutsi, thereby provoking them to participate in the cold blooded murders.

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<sup>2</sup><http://www.unitedhumanrights.org> Retrieved on 10/10/2014 at 10:50 A.M.

<sup>3</sup><http://www.unictr.org/> Retrieved on 10/9/2014 at 11:12 A.M.

### **Methodology:**

The research paper is a doctrinal research focusing on the legal propositions, doctrines and international declarations throwing light on the issue of humanitarian law at international level narrowing the concentration on genocide, its aftermath, tools adopted by nations and international agencies to avoid and in cases where it has held to bring justice to the ill bearer of such incident by placing emphasis on the Rwandan Genocide o 1994.

### **Historical evidence of ethnic division:**

The culture of Rwanda has sown in itself stories about Tutsi and Hutu justifying the ethnic division between the two groups. One of the Rwandan myths narrates as how there was a Kigwa who had three sons. He was bestowed with the challenge of deciding a successor from one of his three sons namely: Gatutsi, Gahutu and Gatwa. The Kigwa decided to put all of his three sons to a test which would determine who would be perfect as his heir. He entrusted upon them responsibility of a pot of milk wherein each of them were assigned a pot of milk and were asked to keep an eye on it. Gatutsi rose to the challenge as he was the only one who could successfully protect his pot of milk, Gahutu had fallen asleep and spilled his pot of milk whereas, Gatwa drank the milk. The results made Gatutsi the successor which meant that he would not undertake any menial job and would be the owner of cattle; he was a royal. Gahutu was made a servant of Gatutsi who could acquire cattle only through his acts of serving selflessly to his master. Gatwa was subject to the worse condition where he could not acquire cattle in any situation whatsoever. This story of origin interested the foreign colonizers in Rwanda and discrimination on the basis of appearance commenced. The Tutsi had a somewhat European appearance, they were tall and appealed to the colonizers who entrusted them with leadership responsibilities. Hutu on the other hand were not an evolved race according to them and were subject to the minority rule of Tutsi even though, they were the majority population of the nation. This suppression of Hutu led to tensions between Hutu and Tutsi which aggravated in times to come ultimately leading to the genocide in 1994. However, it cannot be said that only an age old folk tale or situations in colonial times paved its way towards Rwandan genocide of 1994. It was politically motivated and aimed at control of power within a single group. The rein of former President of Rwanda, Juvenal Habyarimana saw exclusion of Tutsi from major national interest decision making process. Death of Habyarimana who was a Hutu on 6<sup>th</sup> April 2014 which sparked off the genocide in Rwanda was caused as a result of the aircraft, in which he was travelling being shot down from above the Kigali airport.

## Genocide: Meaning and events

*Institute of International Law issued a proclamation of rights of man against the State which were more likely to be construed as duties bestowed over the member State namely:*

- *To recognize the right of every individual to life, liberty and property and to accord to all within its territory the full and entire protection of their right without distinction as to nationality, sex, race, language or religion;*
- *To recognize the right of every individual to the free practice, both public and private, of every faith, religion or belief;*
- *To recognize the right of every individual both to free use of the language of his choice and to the teaching of such language;*
- *To recognize that no motive based directly or indirectly on distinction of sex, race, language or religion, empowers State to refuse to any of their nationals, private and public rights;*
- *To recognize that the equality contemplated herein is not to be nominal, but effective;*
- *To recognize that except for motives based upon its general legislation, no State shall have right to withdraw its nationality from those whom for reasons of sex, race, language or religion, it should not deprive of the guarantee contemplated in this proclamation.*

*This proclamation may be considered as the first endeavour towards universalization of human rights.*

The Convention on Prevention and Punishment of Genocide coming in force on January 12, 1951 stated that genocide is an international crime irrespective of whether it is committed in time of war or peace<sup>4</sup>. Article II of the Convention states that "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group". Being explicitly against all humanitarian ethos and principles, it is a crime under International Law. The Convention provides punishment not only for the commission of genocide but also for conspiracy or incitement to commit it, as well as attempt to commit genocide but also for conspiracy or

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<sup>4</sup>Article I, The Convention on Prevention and Punishment of Genocide

incitement to commit it, as well as attempt to commit genocide and complicity in genocide<sup>5</sup>. In *The Prosecutor V Jean Paul Akayesu*<sup>6</sup>, The ICTR held that *acts of rape and sexual violence as other acts of serious bodily and mental harm committed against Tutsi (a particular ethnic group), reflected determination to make Tutsi women suffer and to mutilate them before killing them, the intent being to destroy Tutsi group while inflicting suffering on its members in the process*. These are elements of genocide and people committing such acts against would be tried for genocide. Techniques for provocation to commit acts of genocide are many among which one is hate speech. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination to ostracism, segregation, deportation, violence and in the most extreme cases, to genocide<sup>7</sup>. The crime of genocide has been condemned not only by humanitarians and states but also people of civilized society because of its barbaric approach of not only taking lives of people but shaking their ethnic existence wherein persons are killed physically as well as mentally. Article IV of the Convention provides that punishment for genocide would be carried out against offenders irrespective of the fact whether they are constitutionally responsible rulers, public officers or private individuals. A person committing genocide in capacity of an officer of State shall be liable in his individual capacity and any plea of superior or State sanctioned orders to carry genocide cannot be taken as a defence by such individual. Instances of genocide has been traced back into the ancient period as well, one of the potential genocidal incident being the systematic and state backed termination of Melos by Athens during 416 BC wherein military men of Melos were killed by the latter and their women and children sold as slaves. This act was approved by the popular assembly of Athens and this may have been intended to to uproot and destroy the Melian society and culture<sup>8</sup>. The biggest and one of the most inhuman acts easily paving its way into the category of genocide was the Holocaust in which not only a particular religious group was targeted (Jews) but there was a systematic termination of people of a particular age group and those who were physically or mentally disabled. The incident disregarded any form of humanity and saw gruesome and cold blooded murders of a large number of people. Its repercussions are felt even today and many times sincere efforts are taken to heal deep wounds of such crime though it is extremely grim for fulfilling set targets since monetary compensation of any amount seems bleak in front of the hardships which the victims had to face. The Conference on Jewish Material Claims Against Germany announced last week that it had secured approximately \$250 million from the German government to be paid to Holocaust survivors who were children at the time of the war in the month of September 2014<sup>9</sup>. A recent international scenario is being disputed to be included in the category of genocide, that incident being Syrian Civil War. Peaceful protests in Syria was retaliated by violent actions aiming at suppressing such protests, by the government which saw vehement activities like chemical attack, suicide bombings among others. The crisis in Syria is ongoing and has been declared as by the United Nations as its top priority.

<sup>5</sup> Agarwal H.O., *International Law and Human Rights*, (first published in 1987, Central Law Publications), Pg 733

<sup>6</sup> Case No. ICTR-96-4-T

<sup>7</sup>PravasiBhalaiSangathanVs. Union of India (UOI) and Ors. AIR 2014 SC 1591

<sup>8</sup>Gerard Mulligan, *Genocide in Ancient World* Retrieved from <http://www.ancient.eu/article/485/> on 9/9/2014 at 1:46 P.M.

<sup>9</sup> Maya Shwayder, *JERUSALEM POST CORRESPONDENT*06/09/2014 18:52, Retrieved on 10/9/2014 at 10:05 A.M.

### **Establishment of International Criminal Tribunal for Rwanda:**

The Security Council on November 8,1994 decided to establish an International Tribunal to prosecute persons responsible for genocide and other violations of international humanitarian law committed in Rwanda and Rwandan citizens responsible for genocide in neighbouring states, between January 1<sup>st</sup> 1994 to December 31<sup>st</sup> 1994<sup>10</sup>. Statute of the International Criminal Tribunal for Rwanda was also adopted by the Security Council and duly annexed to the resolution.

The Statute stated that genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, 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 a group;
- (e) Forcibly transferring children of the group to another group<sup>11</sup>.

Para 3 of Article 2 made acts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide, punishable under the statute. The Rwandan Genocide not only saw killing of people belonging to a particular ethnic group but also instances of instigating ghastly violent acts against them publicly. Radio channels for instance encouraged people to be a part of genocide and these messages were disseminated in broad daylight without any fear. The Statute aimed at not only punishing those who had directly taken part in the genocide but also those who through their indirect actions contributed to the genocide and caused widespread destruction. Secondary acts of genocide were not to be spared since they were as pitiless as the act of actually killing someone and caused the same if not dire consequences. The offenders brought onto themselves

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<sup>10</sup>Security Council Resolution 955(1994) dated November 8, 1994

<sup>11</sup>Article 2 Para 2, Statute of the International Criminal Tribunal for Rwanda

personal criminal liability; and the official position of any accused person, whether as Head of State or government or as responsible government official, could not relieve such persons of criminal responsibility nor could mitigate their punishment. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires<sup>12</sup>.

The Tribunal is segregated into the Chamber which constitutes two trial chambers and one appeals chamber, the Prosecutor who would be responsible for carrying out investigation procedure with respect to genocidal incidents in Rwanda and on Rwandan citizens and a Registry which provides administrative assistance to the Tribunal. The Chamber shall be composed of eleven independent judges, no two of whom may be nationals of the same state<sup>13</sup>. The ICTR has completed 75 cases out of which 52 have been convicted, 11 are pending appeal and 12 are acquitted. Since its establishment in Arusha (Headquarters) and Kigali in 1995, the ICTR has secured the arrest of over 70 individuals accused of involvement in the 1994 genocide in Rwanda. Among those arrested were the former Prime Minister and several other members of the interim Government of Rwanda during the genocide as well as senior military leaders and high ranking government officials<sup>14</sup>. The Tribunal (Appeals Chamber) would be conducting two hearings in connection with the 1994 Rwandan Genocide on 29<sup>th</sup> September 2014 namely: The Prosecutor vs. Callixte Nzabonimana<sup>15</sup> and The Prosecutor vs. Ildéphonse Nizeyimana<sup>16</sup>. In both the cases, the trial chamber convicted the alleged offenders for their acts contributing to the Rwandan Genocide. In the first case, the offender, a political figure (Former Minister of Planning and Minister of Youth for Rwanda) had publicly inflamed people to contribute in the infamous genocide, threatened people to abstain from any act of protecting the Tutsi population. Looking into all detailed facts of the case, the Trial Chamber held him to be guilty of participating in the 1994 Rwandan Genocide. In the latter, admissibility of video link evidence has been considered by the Tribunal. *In determining whether video-link testimony is in the interest of justice, the Trial Chamber shall consider the importance of the testimony, the witness's inability or unwillingness to attend, and whether a good reason has been adduced for that inability or unwillingness.* However the onus of proof lies on the party seeking permission for admission of such evidence. Thus, it can be seen that in deciding matters of international criminal concern, the plight of victims is regarded utmost and methods for fuelling up the international criminal proceedings but by keepings pace with justice are extensively adopted in such trials. 10 cases before ICTR have been transferred to national jurisdiction among which one case The Prosecutor v. Laurent Bucyibaruta<sup>17</sup> was transferred to the French authority for the purse of assigning it to appropriate French court. The

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<sup>12</sup> Article 6, Statute of the International Criminal Tribunal for Rwanda

<sup>13</sup> Agarwal H.O., *International Law and Human Rights*, (first published in 1987, Central Law Publications) Pg 735

<sup>14</sup> <http://www.unictt.org> Retrieved on 9/9/2014 at 10:43 A.M.

<sup>15</sup> Case No. ICTR-98-44D-T

<sup>16</sup> CASE NO. ICTR-00-55C-T

<sup>17</sup> Case No. ICTR-2005-85-I

tribunal held that the factors which are to be correctly appreciated before relocating a case before the tribunal to national jurisdiction are:

- Whether the State to which the case is being dispersed has experienced commission of the crime in question or the accused was arrested from a territory of that State or the State having jurisdiction is willingly and adequately prepared to accept such case.
- The Chamber must be contented as to the conduct of a free and fair trial in the court to which the case is being transferred (national jurisdiction).
- The Chamber must be absolutely affirmed that no death penalty would be carried out or imposed with respect to the crime for which the case is being conveyed to court of national jurisdiction.

The Tribunal had also convicted a Belgian journalist for inciting people to commit genocide and sentenced him to 12 years of imprisonment, the case being one of its kinds where a non-Rwandan was convicted in 1994 genocide<sup>18</sup>. He broadcasted messages on the public radio motivating genocidal attacks in the country.

## **Conclusion:**

Related Cases:

- Bosnian Genocide refers to the ethnic cleansing campaign undertaken by the Bosnian Serb forces at Srebrenica and Zepa. As part of that campaign Bosnian Muslims were killed and tortured; several of them were expelled from the country. International Court of Justice in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) passed a unanimous order in 1993 that Yugoslavia (former) should immediately take all measures within its power to prevent commission of the crime of genocide and Yugoslavia and Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide or render it more difficult of solution<sup>19</sup>.
- Selective killings of Kashmiri Pundits (Hindus) in 1971 in Jammu and Kashmir and their expulsion from the Kashmir Valley were not regarded as genocide since they were against the strict interpretation of the term. National Human Rights Commission of India undertook the responsibility of investigating into the events and, prevent and halt any genocidal incidents in the country since India is a party to the Genocide Convention. The reports of the committee concluded that even though India was a party to the

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<sup>18</sup> The Prosecutor v. Georges Ruggiu ICTR-97-32-I

<sup>19</sup> Agarwal H.O., *International Law and Human Rights*, (first published in 1987, Central Law Publications) Pg 735

Genocide Convention, it had not incorporated necessary legislation for enacting provisions of the Constitution of the Convention nor did it lay down effective penalties for offenders of genocide.

Genocide is one of the most degraded crimes shaking the very existence of international humanitarian ideologies and moralities. United Nation's General Assembly's World Summit Outcome 2005 lay down that every state has a responsibility to prevent its population from crimes against humanity like genocide, war crimes among others or their incitement. The international community shall through peaceful and diplomatic approach aim at protecting the world population from genocide, war crimes and ethnic cleansing crimes. The condemnable act of genocide over rides all aspects of international human rights law. The idea that human rights could be protected by International law alongside the aide provided by municipal law has not yet developed completely mainly because sovereignty proved a stumbling block, hassling the sincere efforts made to impose international legal obligations upon States to protect individuals.

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