

# International Criminal Law And Victors Justice: A Case Study of the Tribunal for Rwanda

**Maria**

Student, University of Iring

## **Abstract**

The background of the study focuses on Rwanda in the situation of selective justice by the victors after the civil war between the RPF and the Rwandan government in 1994 and subsequent atrocities the victors committed. The purpose of the study is to critically examine the credibility and the way the ICTR selectively discharged its mandate by only prosecuting the defeated individual perpetrators whilst protecting victors' perpetrators who also committed the same atrocities. The selectivity done by the ICTR was contrary to the Tribunal's competence enshrined in the Statute that the Tribunal shall prosecute individual perpetrators regardless of their affiliations. Ignoring the selective prosecution discharged by the Tribunal would promote the continued violation of International Humanitarian Law and genocide in Rwanda and in other countries worldwide. The methodology applied under this study is based on analytical review of the literature relating to the topic, because it deeply explains the application of the selective prosecution of the perpetrators. The research also analyzed international instruments like ICTR's Statute and Geneva Conventions. The analytical method is also complemented by the methodology of case study of the Tribunal for Rwanda. The data collected was subsequently analyzed qualitatively through narrative data analysis approach showing individual prosecution of perpetrators. The findings of the study show that the ICTR discharged its obligations selectively due to the lack of cooperation from the Rwandan State and support from the United Nations Security Council. Had the RPF led government cooperated with the United Nations Security Council, could lead the ICTR to prosecute both individual perpetrators of armed conflict, end impunity, redress successfully, and contributed to the process of national reconciliation and maintenance of peace. The study recommends to the United Nations Security Council to re- evaluate its mandate and call upon the RPF led government to comply with its obligation.

**Keywords:** Armed conflicts, Genocide, Individual criminal responsibility, International Criminal Tribunal, International Humanitarian Law, Prosecutorial mandate, Selectivity, Serious violations, Tu quoque, Victors' justice.

## **Introduction**

The article analyzes the concept of victors' justice and how it undermines the general objective of international criminal justice principle on prosecuting individual criminal responsible for genocide and other serious violations of International Humanitarian Law (IHL) occurred during the Rwanda armed conflict of 1994.

Victors' justice is the phrase which is applied in a situation whereby the winning side of the war selects the losers of a war for prosecution. The winning side perpetrators of the same atrocities are protected from criminal accountability.<sup>1</sup>

The victor's justice complaints can be categorized into three different categories, namely (i) the legal norms (retrospectively) being applied particularly the crimes of which the Nazis were accused of, (ii) the overall fairness of the proceedings which were not fully respected; and (iii) the selectivity of the tribunal indictment.<sup>2</sup>

For example, the existence of victor's justice could be traced back from the International Military Tribunal (IMT) at Nuremberg that was established on 20 November 1945 by the Allied nations of the Second World War to indict and punish only the Axis States.<sup>3</sup> The triumphant Allied nations were the Great Britain, the United States, France, China and the Soviet Union whilst the Axis States were Germany, Italy and Japan.<sup>4</sup>

Only the vanquished side was prosecuted despite the strong evidence which proved that the same crimes were perpetrated and committed by the triumphant side who established the Tribunal. Under this victor's justice system, the crimes committed by the winners have been overshadowed by the losers.<sup>5</sup>

The conquerors of the armed conflict pretended to use the international system to seek justice for all sides whilst applying it as a means for revenge against the vanquished. The new Rwanda administration as the victor's government requested<sup>6</sup> the United Nations (UN) to establish the international criminal tribunal to prosecute the perpetrators of the Rwandan genocide.

## Background

An armed conflict in Rwanda was initiated from October 1, 1990, and lasted until 1994 between the Rwandan Patriotic Front (RPF) (exiled in the Republic of Uganda who developed the aggressive movement) against the then Government of Rwanda.<sup>7</sup>

On 6 April 1994, the Rwandan Patriotic Front/ Army, which was overwhelmingly Tutsi led by General Paul Kagame, (who is currently the President of Rwanda), organized the shooting down of President Habyarimana's plane at the Kigali airport and killed all on board including President Cyprian Ntaryamira of Burundi.<sup>8</sup>

From this serious attack, the civil war in Rwanda resumed and caused the unspeakable grave human rights violations and atrocities, namely genocide, crimes against humanity and war crimes. With no real figure as to how many people were massacred, the warring situation continued until the RPF seized the Rwandan Government authority in July 1994.

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<sup>1</sup> (William Schabas 2012)

<sup>2</sup> (Victor Peskin, 2005)

<sup>3</sup> (William Schabas, 2010)

<sup>4</sup> (Adam Volle, 2023)

<sup>5</sup> (Adam Volle, 2023)

<sup>6</sup> (UN doc, 1994)

<sup>7</sup> (Karim Shanahan 2012)

<sup>8</sup> (Karim Shanahan 2012)

Therefore, to preempt the study, the genocide and violations of IHL in Rwanda cannot be well understood unless the concept of armed conflict is effectively elucidated as it is the cause for international criminal justice through International Criminal Tribunal for Rwanda to exist.

### **The concept of armed conflict**

This article intends to provide the concept of armed conflict as the unique factor that caused genocide and other serious violations of humanitarian law that led to the establishment of the International Criminal Tribunal for Rwanda as the case study of this article.

There is no treaty definition of an armed conflict within the text of both Geneva Conventions 1949 and Additional Protocols 1977.<sup>9</sup> International case law, state practices and academic scholarship has been important in determining the legal meaning and parameters of this concept as will be elucidated here under.

In the Tadic Interlocutory Appeal Decision, the International Criminal Tribunal for the Former Yugoslavia held that “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.<sup>10</sup>

The ICTR’s decision in the Akayesu’s case<sup>11</sup> also held that “the term armed conflict on itself suggests the existence of hostilities between armed forces organized for greater or lesser extent. This consequently rules out situation of internal disturbances and tension”.

### **Classification of armed conflicts**

International Humanitarian Law categorizes armed conflict into two groups namely: International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC).<sup>12</sup>

### **International Armed Conflict**

Is the type of any declared war or any other armed conflict that may arise between two or more of the High contracting Parties even if the state of war is not recognized by one of them.<sup>13</sup> This is situation that calls for the application of Additional Protocol I<sup>14</sup> which supplements Common Article 2 of Geneva Conventions of 1949 relating to the protection of victims of International Armed Conflicts.

There is a general rule providing that the use of forces between States as refers to Article 2(4) of UN Charter is prohibited. The International Criminal Tribunal for the Former Yugoslavia in the case of Prosecutor v Tadic<sup>15</sup> determined that even minor instances of armed violence, such as an individual border incident or capture of a single prisoner may suffice to cross the threshold for IHL to apply.

Again, the decision determined two factors for IAC to suffice according to Geneva conventions Article 1 (4) and Additional Protocol I; one is the legal status of the belligerent parties to the conflict and two is

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<sup>9</sup> (UNOD, 2018)

<sup>10</sup> (ICTY, 1995)

<sup>11</sup> (ICTR, 2001)

<sup>12</sup> (Geneva Conventions, 1949)

<sup>13</sup> (Geneva Conventions, 1949,2)

<sup>14</sup> (Geneva Convention Additional Protocol 1,1977, 2)

<sup>15</sup> (ICTY, 1995)

the nature of the military confrontation between them like in the case of a declared war or partial or total occupation of the territory of a State.<sup>16</sup>

### **Non-International Armed Conflict**

This is the category of armed hostilities between the governmental armed forces and the nongovernmental armed groups (organized) within a territory of a High contracting Party (State), or between such organized armed forces within a State.<sup>17</sup> This applies when armed conflict not of an international character occurring in the territory of one of the High contracting Parties. Hence Additional Protocol II<sup>18</sup> supplements the common Article 3 of the Geneva Conventions relating to the Protection of Victims of non-international armed conflict.

Moreover, the Non-International Armed Conflict was clarified by the International Criminal Tribunal for the Former Yugoslavia in the case of Prosecutor v Tadic<sup>19</sup> that the NIAC exists when there is a situation of protracted armed violence between governmental authorities and the organized armed groups or between such groups within a State. The case provides evidential factors for determining whether the Armed Conflict threshold test has been crossed in NIAC.

One can now jump to the armed conflict in Rwanda that brought about the idea of establishing an international criminal tribunal.

### **The armed conflict in Rwanda**

There is no way victor's justice could exist and discussed under the ICTR jurisdiction if there was no armed conflict in Rwanda between the Rwandan Armed Forces representing the country's government and the rebel Rwanda Patriotic Front.<sup>20</sup>

Like any other armed conflict, the one in Rwanda in 1994 was also accompanied by grave violations of International Humanitarian Law. For international criminal justice and victor's justice to be examined here there is a necessity to investigate the concept of an armed conflict and the parties that are involved to be able to impute criminal responsibility for the atrocities that have been committed during this period.

The violations that occurred in Rwanda led to the establishment of a Commission of Experts<sup>21</sup> to examine the extent of the violation of IHL committed. The commission concluded that the gross violation of IHL had occurred and proposed for the establishment of the criminal tribunal to prosecute perpetrators from both sides. Again, it is from the established tribunal where victor's justice prevailed and undermined the legitimacy of international criminal justice.

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<sup>16</sup> (Geneva Conventions 1949,2)

<sup>17</sup> (Geneva Conventions 1949,3)

<sup>18</sup> (Geneva Conventions Protocol Additional 11,1977,1)

<sup>19</sup> ICTY ,1995)

<sup>20</sup> Rwandan Conflict: Origin, Development Exit Strategies available at <https://repositories.lib.utexas.edu> <accessed on 18/5/2023> See also <http://casebook.icrc.org> , see also <https://ideas.repec.org> accessed on June 25, 2023

<sup>21</sup> (UNDOC. 1994)

### **The concept of international criminal justice**

Before concentrating on the concept of international criminal justice, it is better to understand the term criminal justice a little bit to make the concept clear.

Criminal justice can be defined as the system through which crimes and criminals are identified, apprehended, judged, and punished. The criminal justice system is comprised of three parts namely legal enforcement, the courts and the corrections which together ensuring that the perpetrators are held accountable for the atrocities they committed while victims get redress.<sup>22</sup>

International criminal justice is a field of international law that calls for the prosecution of the planners and organizers of the gravest war crimes and human rights abuse. It is a party of a growing body of international law that seeks to place the individual at its centre both as perpetrator, to be held accountable, and as victim with a right to redress.<sup>23</sup>

Moreover, international criminal justice refers to the response of the international community and other communities to mass atrocity, the trial of individuals for the commission of the core international crimes like genocide, crimes against humanity, war crimes and aggression.<sup>24</sup>

International criminal justice responds to atrocities through criminal justice system which refers to the system of laws, law enforcement agencies and associated personal that work together to maintain order in the society by identifying criminals who have organized, planned, or committed crimes against state or citizens.<sup>25</sup>

And it is under international criminal justice system which is developed from the Second World War through the established International Military Tribunals at Nuremberg and Tokyo focused only on individual responsibility rather than States responsibility for violation of international humanitarian law.<sup>26</sup> It is from that moment this practice of international criminal justice that international trial courts have been established, including the ad hoc tribunal for Rwanda.

### **The purpose of an international criminal justice system**

The purpose of international criminal justice system is to protect society, punish the offenders and rehabilitate the criminals.<sup>27</sup> It does this by arrest and trial of the offenders for the wrongs they have done and punish them when found to be guilty.

### **2.5 The concept of selectivity in international criminal prosecutions**

The concept of selective prosecution is the application of criminal laws to suspected criminals of one side while shielding the other side from prosecution while they have, allegedly violated the same criminal laws.<sup>28</sup>

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<sup>22</sup> What is criminal justice? in the US available at <https://www.internationalstudent.com> accessed on 13 March 2022

<sup>23</sup> Roadman Kenneth, 2019)

<sup>24</sup>(Boas Gideon, etal.) 2017

<sup>25</sup> (Statute, 1994)

<sup>26</sup> Yao N. Adu 'International Criminal Law and Victor's Justice: The case of Coted'Ivoire' available at <http://asrjetsjournal.org/> > (accessed on 22 May 2023)

<sup>27</sup> 'Purpose of the criminal justice system: examining the purpose and process' northwestcareercollege.edu(accessed on 15/5/2023)

When one (1) invokes selective prosecution, he or she shall prove that “the defendant has been selected for prosecution while others similarly situated who committed the same acts have not been prosecuted; and (2) the discriminatory selection for prosecution was invidious and done in bad faith, resting on impermissible considerations.”<sup>29</sup>

This is so because, ordinarily the prosecution has discretion to select whom to prosecute or not prosecute. It also meant a kind of arguments mechanism whereby the accused parties assert that they should not be held answerable for the violation of law because the judicial system is discriminating them for prosecution.<sup>30</sup>

The U.S. Supreme Court in *Yick Wo v Hopkins*<sup>31</sup> struck down San Francisco ordinance that prohibited the operations of laundries in wooden buildings. The San Francisco authority used the ordinance to prevent the Chinese from operating the business consequently allowed the eighty persons who were not Chinese to operate the same business in wooden buildings. The Court ordered that Yick who had been imprisoned for violating the ordinance, be set free.<sup>32</sup>

Again the U.S. Supreme Court in *United States v Armstrong*,<sup>33</sup> held that selective prosecution exists where the enforcement or prosecution of a criminal law is “directed so exclusively against a particular class of persons [...] with a mind so unequal and oppressive” amounting to denial of equal protection of the law.

The researcher finds that the notion of selectivity in international criminal responsibility prosecution refers to instances whereby the prosecuting authority tends to prosecute some accused persons whilst leaving others apart, who were accused of the same committed atrocities.

Thus considering the limitation of the study, the researcher focuses on the armed conflict that occurred in Rwanda whereby both parties to the conflict who violated the laws of the war, were subjected to be investigated, prosecuted, and punished accordingly. Selective prosecution was strongly applied and operated in the ICTR where the office of the trial prosecutor having prosecutorial mandate indicted only crimes allegedly committed by the defeated side of the armed conflict while leaving the victorious away from prosecution.

That was the violation of the natural law principle that required the like cases ought to be treated alike.<sup>34</sup>

It means that the accused from both parties of the armed conflict were to be treated alike on investigation, prosecution, trial, and punishment. All these treatments were not operated by the International Criminal Tribunal for Rwanda against the triumphant side of the armed conflict. There is also another associated concept of *tu quoque* which is explained hereunder.

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<sup>28</sup> Selective Prosecution : available at <https://www.tutorialspoint.com/selective-prsecution> accessed on 2 August 2023

<sup>29</sup> Selective prosecution”, available at Selective Prosecution [NC PRO (unc.edu), accessed on 14 Sept 2023

<sup>30</sup> Ibid

<sup>31</sup>( US, 1886)

<sup>32</sup> (US, 1886)

<sup>33</sup> (US,1996)

<sup>34</sup> (Thomas Christiano, 2015)

### The concept of *tu quoque* defense

*Tu quoque* is a Latin word which means “you too.” It is the type of defense whereby the accused person instead of denying or defending the allegations against him or her, keeps on saying that “you too did the same”.<sup>35</sup>

This defense is universally rejected by international criminal law. An accused does not acquit from a crime by showing that another person has committed a similar offence either before or after the commission of the crime by the accused.

*Tu quoque* defense does not apply to international humanitarian law. This body of law does not lay down synallagmatic obligation based on reciprocity or bilateral, but obligations *erga omnes* that every accused person must comply with the law regardless of the conduct of the other party or parties.<sup>36</sup>

Again, *tu quoque* does not intend to prove or disprove any of the allegations made in the indictment against the accused, and that the evidence which is adduced to show that one party to the conflict was responsible for starting the conflict is equally irrelevant and hence inadmissible in international crimes proceedings as it was held in the case of Prosecutor v Kupreskic et.al.<sup>37</sup>

The victors who formed the new government in Rwanda vowed and invested its effort to make sure that the established tribunal would prosecute the defeated side only. Knowing that there is no way that the *tu quoque* defense would be applicable under the jurisdiction of the tribunal to which they were subjected to be prosecuted, the victors’ power turned the ICTR to become the victor’s justice tribunal.

### Establishment of the tribunal

In the aftermath of these atrocities and allegedly as a way of restoring international peace and security, the United Nations Security Council through its Resolution 955 of November 8, 1994 established the International Criminal Tribunal for Rwanda (ICTR) after considering the reports made by the Commission of Experts<sup>38</sup> and the request letter from the Rwanda led government requesting an urgent establishment of international tribunal to prosecute perpetrators responsible for genocide and other serious violations of IHL. Article 1 provides that:

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.<sup>39</sup>

That the Tribunal was to prosecute both parties to the armed conflict, simply means that all suspected persons who were believed to have individually<sup>40</sup> committed, aided, abetted, planned, organized, or executed the commission of genocide and other serious widespread and systematic violations of

<sup>35</sup> [www2.palomar.edu](http://www2.palomar.edu), see also [www.dictionary.com](http://www.dictionary.com) (accessed on 12/9/2022)

<sup>36</sup> *ibid*

<sup>37</sup> (ICTY, 2000)

<sup>38</sup> (UNDOC, 1994)

<sup>39</sup> (Statute 1994, 1)

<sup>40</sup> (Statute 1994,6)

International Humanitarian Law in Rwanda and Rwandan nationals who committed or aided the commission of such crimes in neighborhood States was accountable<sup>41</sup>

This article focuses on Rwanda in the context of selective justice by the victors after the civil war. The thrust of the researcher is to show that though the international community through the Security Council resolution 955 of 8 November 1994 resolved to secure peace and security through a criminal justice approach, still there is a clear bias against the victims of selective justice.

The UN Security Council excluded death punishment which was the interest of Rwanda, the Tribunals seat was located at Arusha in the United Republic of Tanzania while Rwanda government wanted to be located in Rwanda but also the Tribunal had limited jurisdiction from January 1, 1994 to December 1994<sup>42</sup> decisions that made Rwanda to vote against the Tribunal establishment and vowed that no single RPF would be prosecuted by the ICTR.<sup>43</sup>

Again the article intends to critically examine the way the ICTR selectively discharged its mandate by only prosecuting the defeated individual perpetrators while shielding the victors who were also committed genocide and serious violations of IHL which is the subject matter of this article.

In examining the mandate of ICTR, the article has developed three questions; namely how the victors' justice prevented the ICTR to prosecute perpetrators of atrocities committed by both parties of armed conflict; does the ICTR managed to ensure equal treatment to all individual perpetrators and prevent impunity; and to what extent do the ICTR applied its prosecutorial mandate on investigate and prosecuting perpetrators who seriously violated IHL and committed genocide in Rwanda.

This article reviews different authors' works in responding those questions as they deeply explain the selectivity prosecution between perpetrators, it also analyzed international instruments materials such as the Statute of the International Criminal Tribunal for Rwanda of 1994, Geneva Conventions of 1949 with their Additional Protocols of 1977, Treaties, and UN Charter of 1945 complementing with ICTR as the case study of an article as primary sources of data to get relevant information. Secondary sources such as books, journals, articles are also applied to cover the article. Narrative approach through qualitative data analysis is applied to make the article perfect. The article relies on primary data sources Moreover, this Article analyzes the jurisdiction vested to International Criminal Tribunal for Rwanda and discusses the way Tribunal failed to execute those mandate as per its Statute.

The ICTR is vested with material jurisdiction<sup>1</sup> where it is competent to investigate and prosecute individual criminal responsible for genocide, crime against humanity, violations of Art.3 Common to the Geneva Conventions<sup>44</sup> and Additional Protocol II and other serious violations of Internal Humanitarian Law in the territory of Rwanda and to Rwanda's neighbouring States.

The Article found that the Tribunal failed to discharge its mandate accordingly by applying selectivity prosecution where by only the defeated side of the perpetrators was prosecuted for genocide, crime against humanity and serious violations of IHL whilst the victors' perpetrators were neither investigated nor indicted regardless they committed the same atrocities based on the Commission of Experts<sup>45</sup> reports provides that genocide and other serious violations of IHL were committed by both parties of

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<sup>41</sup> (Statute 1994,6)

<sup>42</sup> (Statute 1994,7)

<sup>43</sup> (Lars, Waldorf ,1229)

<sup>44</sup> (Statute 1994, Article (2), (3) and (4))

<sup>45</sup> (UNDOC, 1994)



armed conflicts and recommended to the United Nations Security Council to establish the international Tribunal to prosecute both perpetrators regardless of their affiliations.

The Rwanda Tribunal is vested with temporary competence<sup>46</sup> that means it has power to prosecute atrocities committed from January 1 1994 to December 31 1994, the grave violations of IHL and genocide was committed within the time limit enshrined by the Statute, the Rwanda led government after having control of the State, organized and executed genocide and other serious violations of IHL inside Rwanda and to the neighbouring States. Notwithstanding with those evidence, until mid 2008 no single 1994 RPF perpetrators was prosecuted by the Tribunal but the defeated one.<sup>47</sup>

Thus even though the Tribunal was mandated to execute its jurisdiction with in a limited time it executed only for the defeated perpetrators and not to the victors this is contrary to its mandate, thus becoming biased and undermined the legitimacy of international criminal justice system.

It was provided that the Tribunal was mandated to investigate and prosecute individual criminal responsible<sup>48</sup> for genocide and other serious violations of IHL occurred in the territory of Rwanda and to the territory of Rwandan neighbouring States. The RPF like the Rwandan government Army had committed atrocities in Rwanda and in the territory of its neighbouring States like Democratic Republic of Congo.<sup>49</sup>

As per the prosecutorial mandated vested to the Tribunal. The tribunal had to prosecute those committed crimes individually, but in discharging its powers The Tribunal indicted individual criminal responsible for atrocities from the defeated side only and left the victor's individual criminal responsible for atrocities free from indictment.

Again the Tribunal is mandated to personal competence;<sup>50</sup> it has to prosecute natural person and not the state. All crimes committed in Rwanda by the natural persons shall be investigated and prosecuted by the Tribunal as per the report submitted by the Commission of Experts that both parties to armed conflict were committed atrocities.

Therefore each person who committed genocide and other serious violations of international humanitarian law shall be individually accountable. This article found that ICTR was ineffectively discharged its mandate because the RPF perpetrators were there during the whole tenure of its operation and were neither prosecuted nor indicted contrary to provisions of Article 1 of the Statute of 1994 .

A good example is non prosecution of the RPF perpetrators of armed conflict responsible for genocide and other serious violations of IHL while there is vast evidence that the RPF perpetrators committed crimes against the non combatant, victims and civilians including women, children, and elders and handicapped those were not even causing any threat the same to the RPF associates who were protected from prosecutions.

### **How the victors undermined the Tribunal's legitimacy**

Following the Security Council decisions on excluding death penalty to the established Tribunal, Tribunals' location in Tanzania, Limited temporary jurisdiction, the victors government invested a lot of

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<sup>46</sup> (Statute 1994, 7)

<sup>47</sup> (Lars Waldorf, 2011)

<sup>48</sup> (Statute 1994,6)

<sup>49</sup> (Lars Waldorf, 2011)

<sup>50</sup> (Statute, 1994,1,5,7)

effort ensuring that no International Criminal Justice system would hold the RPF perpetrators but the losers, The victor's government became an obstacle for the ICTR to execute its jurisdictions on material, personal, temporary and territorial as strongly opposed any investigation and prosecution of its crimes in Rwanda and Democratic Republic of Congo.<sup>51</sup>

The victors' government suspended its State cooperation and judicial assistance's obligation;<sup>52</sup> refused to cooperate with the Tribunal knowing that such cooperation is crucial for the tribunal to operate. The government also withheld national investigative agency support; it applied its political will to prevent Police force from arresting and investigating the RPF political and military leaders responsible for genocide and serious violations of IHL.<sup>53</sup>

For example The Rwandan led government manipulated the Ibuka (The main genocide survivors organization) to boycott and avoid cooperation with the Tribunal, broke the entrance of the prosecutors staff to investigate crimes in Rwanda, likewise restricted prosecution witnesses travelling passports who were about to testify to the Tribunal.<sup>54</sup>

The researcher found that the victor's government threatened to sue or shut down whoever tried to indict the RPF associates this shows how serious the victors' government was, one prosecutor Louise Arbour quoted "How could we investigate and prosecute the RPF while we [investigators and prosecutors were based in that country] it was never going to happen they would shut us down",<sup>55</sup> another Prosecutor Carla Delponte during the conference requested cooperation from the President of Rwanda led government on her process to indict the RPF perpetrators, a year passed with no cooperation<sup>56</sup> as a result she was terminated from her office.

It is observed that the victor's government applied various techniques ensuring that no way would the Tribunal exercise its authority against the RPF's associates, it blocked the financial networks from USA as the major financial source that supported the Tribunal in order to halt investigation and prosecution.<sup>57</sup>

The Rwanda led government and the United States of America entered into contract on surrender of persons agreeing that Rwanda would not apprehend any USA's suspects to the ICC the same USA would not apprehend any RPF's suspects to the Tribunal.<sup>58</sup>

## Findings

This article found that , the International Criminal Tribunal for Rwanda discharged its obligation selectively due to lack of cooperation from the Rwandan victor's government and support from the United Nations Security Council, where it requested its support to make the Rwanda led government to cooperate and comply with its State obligation, Rwanda government objected to comply with the

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<sup>51</sup> (Lars Waldorf, 2011)

<sup>52</sup> (Statute 1994, 28)

<sup>53</sup> (Lars Waldorf, 1230)

<sup>54</sup> (Lars Waldorf, 1230)

<sup>55</sup> (Lars Waldorf, 1232)

<sup>56</sup> (Lars Waldorf, 1231)

<sup>57</sup> United Nations Office of Legal Affairs "Treaty Series 2947" pp185-189

<sup>58</sup> United Nations Office of Legal Affairs "Treaty Series 2947" pp185-189

Statute, no cooperation was granted to the Tribunal as the literature show that no single RPF was prosecuted by the Tribunal for the whole tenure of its operation.

### Conclusion

The International Criminal Tribunal was established to investigate and prosecute both perpetrators of genocide and other serious violations of IHL regardless of their affiliations whether from the triumphant or defeated side. It was expected to address gross violations of IHL genocide but discharged its mandate selectively despite the consequences of material evidence by Commission of Experts that atrocities were committed by both parties to armed conflict.

The ICTR ineffectively prosecuted part of individual criminal responsibility for genocide and other serious violations of International Humanitarian Law and left other part of individual criminal responsibility apart from criminal justice hand. Promoted impunity; post trauma to victims also failed to restore national reconciliation as it only rendered victors' justice that diminished the legitimacy of the International Criminal Justice system not only in Rwanda but in International community at large.

### Recommendation

This article recommends for the United Nation Security Council to re- evaluate its mandate enshrined under Chapter VII of the United Nations Charter of 1945, and call upon the RPF led government to comply with its cooperation and judicial assistance obligation and ensure that the RPF perpetrators are prosecuted, victims redressed and criminal justice is attained to all.

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