



LIBRARY of PARLIAMENT
BIBLIOTHÈQUE du PARLEMENT

BACKGROUND PAPER



Justice for Genocide? A Retrospective on the Work of the International Criminal Tribunal for Rwanda

Publication No. 2015-135-E
21 January 2016

Erin Shaw
Economics, Resources and International Affairs Division

Maxime Charron-Tousignant
Legal and Social Affairs Division

Parliamentary Information and Research Service

Library of Parliament **Background Papers** provide in-depth studies of policy issues. They feature historical background, current information and references, and many anticipate the emergence of the issues they examine. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

© Library of Parliament, Ottawa, Canada, 2016

Justice for Genocide?

A Retrospective on the Work of the International Criminal Tribunal for Rwanda
(Background Paper)

Publication No. 2015-135-E

Ce document est également publié en français.

CONTENTS

1	INTRODUCTION.....	1
2	THE CREATION OF THE TRIBUNAL	1
3	JURISDICTION	3
3.1	The Crimes.....	3
3.1.1	Genocide	3
3.1.2	Crimes Against Humanity	4
3.1.3	War Crimes.....	5
3.2	Temporal Jurisdiction	6
4	THE JUDGMENTS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: A STATISTICAL OVERVIEW	7
4.1	Trial Chamber Decisions.....	7
4.2	Appeals Chamber Decisions.....	8
5	BEYOND THE NUMBERS: ACQUITTALS AND CONVICTIONS AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA	9
6	THE INFLUENCE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ON CANADIAN JURISPRUDENCE	10
7	CONCLUSION	10

JUSTICE FOR GENOCIDE? A RETROSPECTIVE ON THE WORK OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA*

1 INTRODUCTION

Created in the aftermath of the Rwandan genocide by the United Nations (UN) Security Council in November 1994 and located in Arusha, Tanzania, the International Criminal Tribunal for Rwanda (ICTR) began hearing cases in 1996 and delivered its last appeal judgment in December 2015. More than 20 years after its creation, the ICTR Trial Chamber has rendered 55 first-instance judgments involving 75 individuals.¹ The ICTR Appeals Chamber has, in turn, rendered 47 final judgments in respect of 61 persons.²

While the ICTR was created to prosecute those responsible for genocide, crimes against humanity and other serious violations of international humanitarian law, its influence has transcended the fight against impunity in Rwanda alone. Together with the UN International Criminal Tribunal for the former Yugoslavia (ICTY),³ the ICTR has played an important role in the development of modern international criminal law. The ICTY and the ICTR share the same Appeals Chamber (located in The Hague, Netherlands) and initially shared the same prosecutor. The work of the ICTR has also had an impact on the way national jurisdictions grapple with the prosecution, punishment and deterrence of crimes of concern to humanity as a whole, known as “international crimes.”⁴

Canada and Canadians have played a part in building the ICTR’s international legacy. The Government of Canada contributed to the ICTR financially and through legal and investigative support.⁵ Canadian legal professionals have also been involved in a wide range of the ICTR’s activities as investigators, prosecutors, defence counsel, and legal advisers to the judges, as well as providing witness and victim support.⁶

This background paper will provide an overview of the creation of the ICTR and its jurisdiction to adjudicate cases stemming from the genocide in Rwanda. The paper then offers a statistical overview of the cases decided by the ICTR Trial and Appeals chambers and discusses the impact and influence of the tribunal, including on Canadian jurisprudence, as it concludes its mandate.

2 THE CREATION OF THE TRIBUNAL

Over the course of 100 days between April and July 1994, approximately 800,000 Tutsis and moderate Hutus were killed in a genocide planned and incited by Hutu extremists, including top-level Rwandans inside the government and Hutu militias known as the *Interhamwe*. Although it was aware of the slaughter, the UN Security Council failed to act.⁷ As a result, a contingent of UN peacekeepers already on the ground in Rwanda, led by Canadian Roméo Dallaire,⁸ acting as

Force Commander of the UN Assistance Mission in Rwanda (UNAMIR), was not provided with the mandate or the resources to intervene.⁹

Rwanda's Hutu government was defeated by the Tutsi-dominated Rwandan Patriotic Front (RPF) in mid-July 1994. In response to a request from the new Government of Rwanda, the ICTR was created by the UN Security Council on 8 November 1994, through resolution 955, co-sponsored by Argentina, France, New Zealand, the Russian Federation, Spain, the U.K. and the U.S.¹⁰

The Government of Rwanda provided the following reasons for its request:

First, by asking for the establishment of such a tribunal, the Rwandese Government wanted to involve the international community, which was also harmed by the genocide and by the grave and massive violations of international humanitarian law, and it wanted to enhance the exemplary nature of a justice that would be seen to be completely neutral and fair.

Secondly, the Government appealed for an international presence in order to avoid any suspicion of its wanting to organize speedy, vengeful justice.

Thirdly, the Rwandese Government requested and firmly supports the establishment of an international tribunal to make it easier to get at those criminals who have found refuge in foreign countries.

Fourthly, the genocide committed in Rwanda is a crime against humankind and should be suppressed by the international community as a whole.¹¹

Although the request from the Rwandan government formed the official basis for the Security Council's decision to establish the ICTR, one commentator summed up the situation by remarking that "[t]he major incentive for establishing an ad hoc Tribunal for Rwanda was the disgraceful lack of activity on the part of the international community during the genocide."¹²

In this political context, resolution 955 and the tribunal's Statute, which is annexed to the resolution, were negotiated. Both reflect a political compromise among various states on the Security Council.¹³ As a member of the Security Council when the resolution was passed, the new government of Rwanda played an important role in these negotiations. Nevertheless, Rwanda ultimately voted against resolution 955, citing, among other reasons:

- the inadequate temporal jurisdiction of the tribunal (covering only events within the period 1 January–31 December 1994), which did not permit examination of previous massacres and planning of the genocide;
- the lack of any clear priority in the Statute for the prosecution of charges of genocide, and the likelihood that resources would be diverted to prosecuting the "lesser crimes" of war crimes and crimes against humanity;
- a concern that the tribunal would have inadequate human and financial resources; and
- the refusal of the Security Council to include the death penalty as a possible sentence for convicted persons.¹⁴

3 JURISDICTION

Traditionally, international law has involved regulating relations and settling disputes between sovereign states rather than holding individuals to account. Part of the ICTR's legacy has been to cement the principle that individuals may be held responsible for certain crimes under international law, a concept that was first introduced in the post–World War II Nuremberg and Tokyo tribunals.¹⁵ In its judgment against the major war criminals, the Nuremberg Tribunal emphasized the importance of individual criminal responsibility:

Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.¹⁶

Unlike the Nuremberg and Tokyo tribunals, the ICTR was not given the jurisdiction to prosecute individuals based on their membership in an organization, such as the *Interhamwe*. Nor does its Statute allow individuals to be convicted of a crime based only on their membership in an organization.¹⁷

3.1 THE CRIMES

The ICTR Statute gave the tribunal jurisdiction to try three types of international crimes: genocide, crimes against humanity and war crimes. Over the past 20 years, the legal arguments and the decisions made at the ICTR have had a significant impact on the development and application of these crimes in international law.

3.1.1 GENOCIDE

The ICTR was the first international court to prosecute or render a decision on the crime of genocide.¹⁸ Both the ICTR Statute and the 1948 UN *Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention) define genocide as:

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.¹⁹

Consequently, the ICTR Statute criminalizes:

- (a) Genocide;
- (b) Conspiracy to commit genocide;

- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide; and
- (e) Complicity in genocide.²⁰

One of the ICTR's most significant contributions has been to establish, beyond a reasonable doubt, that genocide did indeed occur in Rwanda. In its first two judgments, in *Prosecutor v. Akayesu* (1998) and *Prosecutor v. Kayishema et al.* (1999), the Trial Chamber reviewed events in Rwanda in 1994 and concluded that they constituted genocide under the definition in the Genocide Convention and the ICTR Statute.²¹ In 2006, the Appeals Chamber stated:

There is no reasonable basis for anyone to dispute that, during 1994, there was a campaign of mass killing intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population That campaign was, to a terrible degree, successful; although exact numbers may never be known, the great majority of Tutsis were murdered, and many others were raped or otherwise harmed. ... The fact of the Rwandan genocide is a part of world history, a fact as certain as any other, a classic instance of a "fact of common knowledge."²²

The ICTR was also the first international court to recognize that rape could constitute an act of genocide and the first to convict members of the media for broadcasts inciting genocide.²³

Genocide has been described as "the crime of crimes."²⁴ In its sentencing judgments, the Trial Chamber has taken the singular nature and extreme gravity of this offence into account.²⁵ What makes the crime of genocide unique – and uniquely serious – is the requirement that the perpetrator specifically intends the destruction, in whole or in part, of a national, ethnic, racial or religious group.

When considering the legacy of the ICTR, it is important to understand that mass killings or other large-scale atrocities do not always fall within the legal definition of genocide. When mass killings or atrocities do not meet the definition of genocide, however, they may qualify as crimes against humanity or war crimes.

3.1.2 CRIMES AGAINST HUMANITY

Crimes against humanity are those committed as part of a widespread or systematic attack against a civilian population; they include acts such as murder, extermination, enslavement, rape, torture and other inhumane acts.²⁶ As the ICTR Trial Chamber explained in *Akayesu*:

The concept of 'widespread' may be defined as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. The concept of 'systematic' may be defined as thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.²⁷

There are two key differences between the crime of genocide and crimes against humanity. The first relates to the intention of the perpetrator. Both types of crime require criminal intent in addition to the underlying offence (murder, rape, torture, etc.). However, a conviction for genocide requires that the specific intention to destroy, in whole or in part, a national, ethnic, racial or religious group be proven. In contrast, for a conviction of crimes against humanity, it only needs to be proven that the accused was aware of the existence of a widespread or systematic practice and knew that his or her crimes were part of it. The second difference relates to the type of victim. Genocide may be committed only against national, ethnic, racial or religious groups, while crimes against humanity may be committed against any group of civilians.

The ICTR was given jurisdiction over a particular set of crimes against humanity, in that article 3 of its Statute provided that these crimes must be committed “as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.” As interpreted by the Appeals Chamber in *Akayesu*, it is not necessary to prove that the accused had a discriminatory intent (except for the crime of persecution), but only that the accused must have known that his or her conduct could further a discriminatory attack against a civilian population.²⁸ The element of a discriminatory motive does not form part of the offence at most of the other tribunals established to address crimes against humanity.²⁹ David Scheffer, a U.S. diplomat who participated in the negotiation of the ICTR Statute, has indicated that discriminatory motives were included as part of the offence because the Rwandan government “wanted to stress the purpose behind the crimes against humanity and align that purpose as closely as possible with genocide.”³⁰

Although the Rwandan genocide occurred in the context of an armed conflict between Hutu-dominated government forces and Tutsi-led rebels (the RPF), the ICTR Statute does not require proof of any connection between the commission of crimes against humanity and the existence of an armed conflict.³¹

3.1.3 WAR CRIMES

War crimes are serious violations of customary or treaty rules protected by international humanitarian law (also known as the law of armed conflict). Those violations must constitute a breach of a rule protecting important values, involve grave consequences for the victim and entail individual criminal responsibility.³² In contrast to genocide and crimes against humanity, war crimes must be committed during, or in connection with, an armed conflict (either international or internal), although it is not necessary to show that the war crime formed part of a larger plan or pattern of behaviour or that the perpetrator intended to destroy a protected group.

War crimes include a broad category of offences that can be classified under different headings, including crimes committed against persons not taking part in armed hostilities (e.g., civilians), or no longer taking part in armed hostilities (e.g., wounded combatants or prisoners of war); crimes against enemy combatants or against civilians, committed by resorting to prohibited methods or means of warfare; crimes against specially protected persons and objects (e.g., medical personnel units or transport); crimes consisting of improperly using protected sign

and emblems (e.g., the Red Cross emblem); and crimes involving conscripting or enlisting children under the age of 15 years or having them participate actively in hostilities.³³

In regard to the ICTR, article 4 of its Statute provides a non-exhaustive list of violations, which includes:

- (a) violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) collective punishments;
- (c) taking of hostages;
- (d) acts of terrorism;
- (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) pillage;
- (g) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples; [and]
- (h) threats to commit any of the foregoing acts.

In order for an accused to be found responsible for a specific violation of article 4, the following elements must be proven:

- the existence of a non-international armed conflict;
- the existence of a link between the alleged violation and the armed conflict; and
- the fact that the victims did not directly take part in the hostilities at the time of the alleged violation.³⁴

3.2 TEMPORAL JURISDICTION

The ICTR Statute allows the tribunal to consider only crimes committed during 1994.³⁵ The Rwandan delegation to the United Nations initially requested that the tribunal be granted jurisdiction over crimes committed between 1 October 1990 and 17 July 1994, which was the day that RPF forces took the town of Gisenyi on the Zaire (now Democratic Republic of Congo) border and the day before the RPF's unilateral declaration of a ceasefire. The longer timeline sought by the Rwandan government would have permitted the tribunal to take into account the "long period of planning during which pilot projects for extermination were successfully tested."³⁶

4 THE JUDGMENTS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: A STATISTICAL OVERVIEW

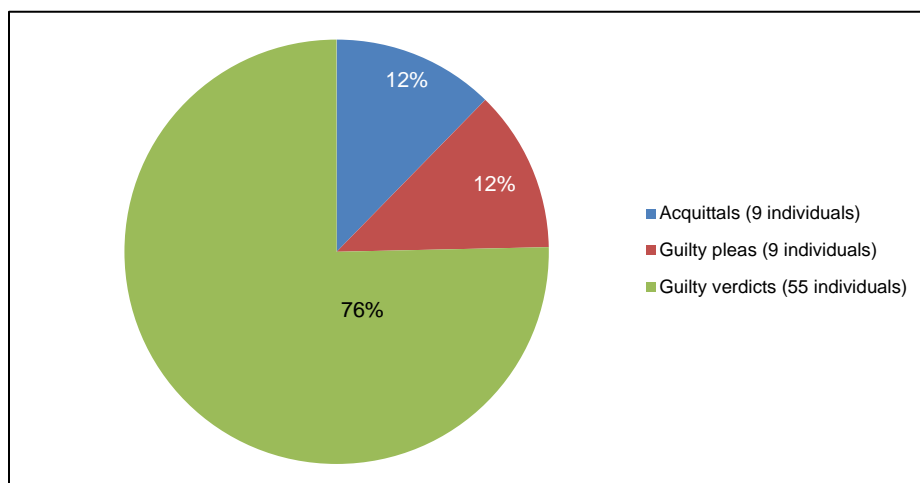
This section concerns the number of ICTR Trial Chamber and Appeals Chamber judgments.

4.1 TRIAL CHAMBER DECISIONS

On 2 September 1998, the Trial Chamber of the ICTR issued its first judgment, in *Prosecutor v. Akayesu*. Fourteen years later, on 12 December 2012, the Trial Chamber delivered its last judgment, in *Prosecutor v. Ngirabatware*. In total, the Trial Chamber has rendered judgments against 73 individuals charged with the crime of genocide, crimes against humanity and war crimes – pursuant to articles 2, 3 and 4, respectively, of the ICTR Statute.³⁷

The Trial Chamber issued a guilty verdict on at least one count of either genocide, crimes against humanity or war crimes for 64 of the 73 accused. Of those 64 individuals, nine entered a guilty plea. As well, the Trial Chamber issued an acquittal on all charges against nine accused. The distribution of decisions is illustrated in Figure 1.

Figure 1 – International Criminal Tribunal for Rwanda Trial Chamber Decisions



Source: Figure prepared by the authors using data obtained from the [International Criminal Tribunal for Rwanda](#).

Of the nine guilty pleas, the first two were entered in late 1998 by Jean Kambanda, the Prime Minister of Rwanda during the genocide, and by Omar Serushago, leader of the *Interhamwe* militia responsible for the killings of Tutsis in Gisenyi prefecture.³⁸ In both cases, the accused pleaded guilty to several counts of the crime of genocide and crimes against humanity. In the seven other instances of guilty pleas, the accused negotiated the withdrawal of multiple charges, including all counts of genocide, in return for a guilty plea on one or two of the counts against them.

Several of the nine acquittals resulted from the failure of the prosecution to prove specific legal elements of the charges against an accused. However, in some situations, the tribunal acquitted individuals of certain charges or reduced their sentences because of violations of the accused's fair trial rights.

4.2 APPEALS CHAMBER DECISIONS

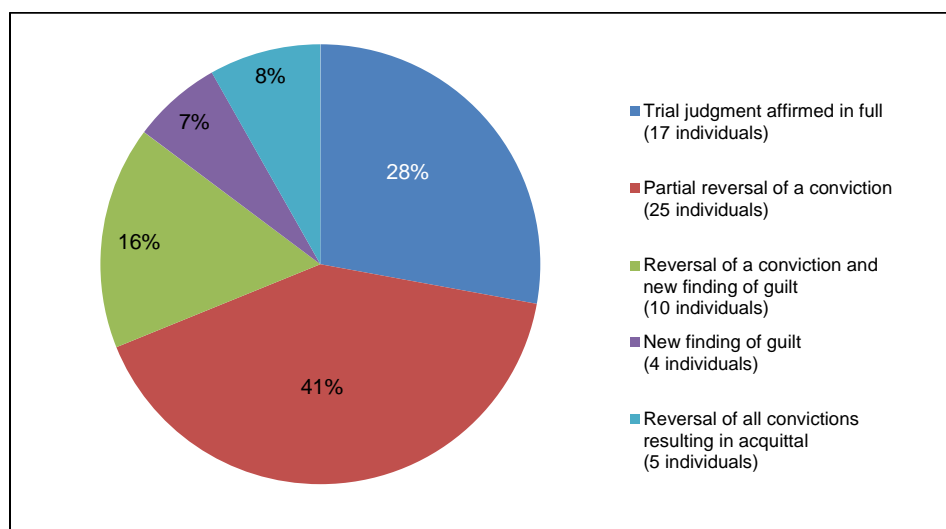
The Appeals Chamber has issued 47 judgments concerning 61 accused persons.

Of the 61 individuals, the Appeals Chamber affirmed the Trial Chamber's judgment for 17 of those involved (including acquittals). Of the remaining 44 individuals, the Appeals Chamber:

- partially reversed the Trial Chamber's judgment for 25 individuals;
- both reversed a conviction and entered a new finding of guilt for 10 individuals;
- made new findings of guilt for four individuals; and
- issued a full acquittal for five individuals who had been convicted at trial.

The distribution of the Appeal Chamber's judgments concerning the 61 individuals is illustrated in Figure 2.

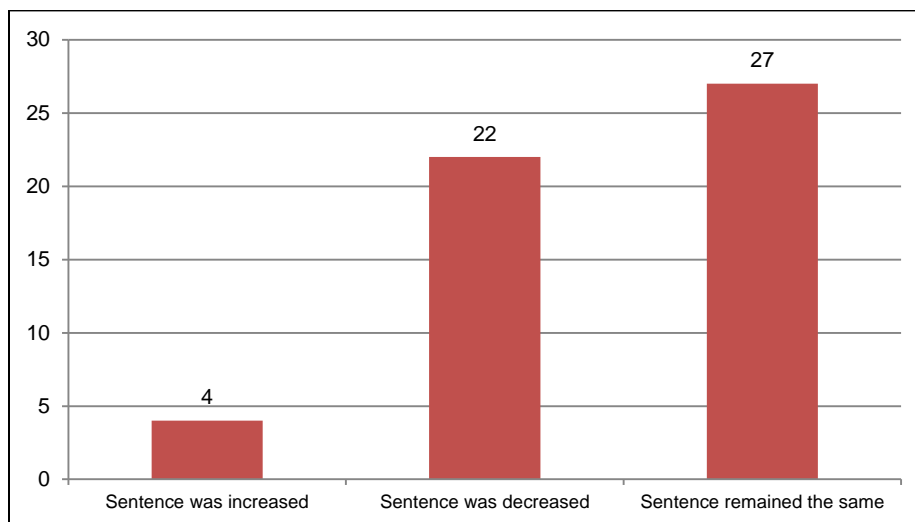
Figure 2 – International Criminal Tribunal for Rwanda Appeals Chamber Decisions



Source: Figure prepared by the authors using data obtained from the [International Criminal Tribunal for Rwanda](#).

In terms of the sentencing decisions, the Appeals Chamber confirmed a conviction on at least one count for 53 accused (excluding acquittals): for 27 accused, their sentence was confirmed; for 22 accused, their sentence was decreased; and for four accused, their sentence was increased. Figure 3 below illustrates these data.

**Figure 3 – International Criminal Tribunal for Rwanda
Appeals Chamber Sentencing Decisions**



Source: Figure prepared by the authors using data obtained from the [International Criminal Tribunal for Rwanda](#).

Some of the decisions rendered by the Appeals Chamber have been controversial, particularly the acquittals and sentence reductions for senior military and political leaders.³⁹

5 BEYOND THE NUMBERS: ACQUITTALS AND CONVICTIONS AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

At an international tribunal, an accused is entitled to the full benefit of fair trial protections. Respecting fair trial rights is particularly important at these tribunals, as their very purpose is to uphold and enforce international human rights standards.⁴⁰ This principle encompasses the following standards: equality of arms,⁴¹ and open and expeditious proceedings. Moreover, respect for fair trial rights underpins the goals of restoring democracy, justice, peace and stability in post-conflict societies. Thus, at the ICTR, the judges require the prosecution to prove the legal elements of every offence beyond a reasonable doubt. A range of procedural protections also aim to ensure that accused persons can defend themselves effectively. An accused will be acquitted if – due to violations of his or her fair trial rights – entering a conviction would result in a miscarriage of justice. Acquitted individuals may also receive compensation in certain cases.⁴² Moreover, trial and appellate judges have handed down reduced sentences in several cases in which a defendant's rights were violated in a less serious fashion during the proceedings.⁴³

As noted above, there has been considerable attention paid to a number of high-profile acquittals by the ICTR Appeals Chamber in recent years. In entering these acquittals, the Appeals Chamber has often faulted ICTR trial judges for improperly drawing inferences based on insufficient evidence. On the other hand, some dissenting appellate judges have criticized the majority for substituting their own

findings of fact and credibility for the findings made by the trial judges who actually heard the witnesses and reviewed the entire body of evidence. Some commentators have suggested that in recent years the Appeals Chamber has interpreted the law in a way that makes it much more difficult to obtain a conviction, especially in cases involving military commanders and other high-level accused.⁴⁴

6 THE INFLUENCE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ON CANADIAN JURISPRUDENCE

The work of the tribunal had a significant impact in the development of international law and the establishment in 2002 of the International Criminal Court (ICC), a court of last resort for the most egregious crimes committed in the international community.⁴⁵ Canada, an early advocate of establishing the court and an active participant in the Rome Conference that led to the creation of the ICC, enacted the *Crimes Against Humanity and War Crimes Act* in 2000 to implement the Rome Statute and thus facilitate the domestic prosecution of genocide, crimes against humanity and war crimes.⁴⁶

The Supreme Court of Canada has cited ICTR and ICTY jurisprudence as “[generating] a unique body of authority which cogently reviews the sources, evolution and application of customary law.”⁴⁷ Customary international law is a binding body of legal rules that come into being because states consider that they are obliged to act in a certain manner and consistently behave in such a manner.⁴⁸ While not binding on Canadian courts, the ICTR’s jurisprudence has nevertheless been used by domestic courts to analyze the meaning of customary international law under the *Crimes Against Humanity and War Crimes Act* and under other statutes and treaties.⁴⁹

7 CONCLUSION

A review of the ICTR’s jurisprudence shows the tension between the need to ensure that those responsible for mass atrocities are convicted of crimes that fully reflect their culpability and the need to ensure fairness in lengthy and complex proceedings. For some, recent high-profile acquittals by the ICTR Appeals Chamber have contributed to the view that international criminal justice places too much emphasis on respecting the accused person’s rights and not enough on respecting the rights of survivors and victims. For others, the tribunal is seen as merely a forum for victors’ justice – a perception based primarily on the failure of the ICTR to try any members of the RPF and on the underlying idea that justice for the victims of the Rwandan genocide is somehow incomplete or not impartial.⁵⁰

An additional perceived failure of the ICTR concerns the relocation of some of the individuals who were acquitted or who purged their sentences. Those acquitted by the ICTR were unable to return to Rwanda for reasons of their own safety, as they were former opponents of the current regime. Of the 14 acquitted, only six have been successfully relocated to a third country, while the others are confined in a safe house located in Arusha, Tanzania.⁵¹

The remaining functions of the ICTR are being carried out by the Mechanism for International Criminal Tribunals (MICT). Established by the UN Security Council, the MICT's role includes securing the arrest, transfer and prosecution of the nine remaining fugitives wanted by the ICTR.⁵²

The ICTR's overall contribution to peace, accountability and reconciliation in Rwanda will likely continue over time, as will debates about the impact of its jurisprudence on the development of international criminal law.

NOTES

- * Miguel Bernal-Castillero and Justin Mohammed, formerly of the Library of Parliament, contributed to this paper.
- 1. United Nations Security Council, [Report on the completion strategy of the International Criminal Tribunal for Rwanda as at 5 May 2015](#), UN Doc. S/2015/340, 15 May 2015, p. 4. Initially, the ICTR indicted 93 individuals, including the 75 who were accused, 10 who were referred to national jurisdiction (including six fugitives), three fugitives whose cases were transferred to the UN Mechanism for International Criminal Tribunals (MICT), two whose indictments were withdrawn and three who died before judgment.
- 2. UN Security Council, [Report on the completion strategy](#), p. 4. After this report, an additional appeal judgment (*Butare*) was delivered in December 2015, which included six accused, for a total of 61 accused. See also United Nations, [Report of the International Criminal Tribunal for Rwanda](#), 31 July 2015, p. 9.
- 3. The ICTY was established by UN Security Council resolution 827 ([UN Doc. S/Res/827, 1993](#)) on 25 May 1993 and has jurisdiction for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.
- 4. For example, in Canada, the [Extradition Act](#), S.C. 1999, c. 18, was adopted in part to facilitate the surrender and extradition of accused individuals to the ICTR.
- 5. See Department of Justice, [International Involvement, 7 January 2015](#). See also Government of Canada, "[Rwanda-Canada Relations](#)," *High Commission of Canada in Kenya*, 12 February 2015, which states that Canada has contributed to the ICTR through general assessments and voluntary contributions.
- 6. Notable examples are Louise Arbour, who served as ICTR Chief Prosecutor from October 1996 to September 1999; James Stewart, who served in a variety of senior positions at the ICTR and the ICTY before taking up his current post as the Deputy Prosecutor of the International Criminal Court (ICC); and Robert Petit, who worked as a Legal Officer in the Office of the Prosecutor under Arbour and eventually became the International Co-Prosecutor for the Extraordinary Chambers in the Courts of Cambodia (the Khmer Rouge Tribunal).

7. According to a UN report, “the overriding failure in the response of the United Nations before and during the genocide in Rwanda can be summarized as a lack of resources and a lack of will to take on the commitment which would have been necessary to prevent or to stop the genocide.” United Nations, [Report of the Independent Inquiry into the Action of the United Nations during the 1994 Genocide in Rwanda](#), UN Doc. S/1999/1257, 15 December 1999, p. 30, [UN Independent Report]. See also The International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, [Rwanda: The Preventable Genocide](#), Organization of the African Union, 2000, [OAU Report]. The conclusions of both the UN Independent Report and the OAU Report have been corroborated by recently declassified cables from the United States, Britain, New Zealand and other members of the United Nations Security Council during the Rwandan genocide and compiled by National Security Archive and the United States Holocaust Memorial Museum, [Rwanda File project](#).
8. See also Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Vintage Canada, Toronto, 2004, describing his experience in Rwanda.
9. UN Independent Report, p. 30.
10. [UN Security Council Resolution 955 \(1994\), Establishing the International Tribunal for Rwanda \(with Annexed Statute\)](#), UN Doc. S/Res/955, 8 November 1994 [ICTR Statute]; [Draft Resolution on Establishing the International Tribunal for Rwanda](#), UN Doc. S/1994/1168, 8 November 1994; and “[Letter Dated 28 September 1994 from the Permanent Representative of Rwanda to the United Nations Addressed to the President of the Security Council](#),” UN Doc. S/1994/1115, 28 September 1994, p. 4.
11. “[Verbatim Record of the 3453rd meeting of the UN Security Council](#),” 8 November 1994, UN Doc. S/PV.3453 [UNSCR 955 PV], p. 14.
12. L. J. van den Herik, *The Contribution of the Rwanda Tribunal to the Development of International Law*, Martinus Nijhoff Publishers, Boston, 2005, pp. 32, 264.
13. David Scheffer, *All the Missing Souls*, Princeton University Press, Princeton, NJ, 2012, pp. 68–86.
14. UNSCR 955 PV, pp. 5, 14–15; and Daphna Shrager and Ralph Zacklin, “[The International Criminal Tribunal for Rwanda](#),” *European Journal of International Law*, Vol. 7, 1996, pp. 504, 511.
15. The International Military Tribunal (Nuremberg Tribunal) was set up by agreement of the Allied forces after World War II to prosecute important political and military leaders of the European Axis countries ([Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal](#), London, 8 August 1945 [London Charter]). The International Military Tribunal for the Far East (the Tokyo Tribunal) was created by a decree of U.S. General Douglas MacArthur for the prosecution of the leaders of the Empire of Japan ([International Military Tribunal for the Far East Charter](#), Tokyo, 19 January 1946 [Tokyo Tribunal Charter]). In both the Nuremberg and Tokyo tribunals, the accused faced charges of crimes against peace, war crimes and crimes against humanity.
16. Nuremberg Tribunal, Trial of the Major War Criminals, “[The Law of the Charter](#),” *Judgment of the International Military Tribunal*, Nuremberg, Germany, 1947.

17. Article 6 of the London Charter and article 5 of the Tokyo Tribunal Charter provided that individuals could be tried as individuals or as members of an organization. At the Nuremberg Tribunal, the following groups were declared criminal under article 9: the SS, the SD, the Gestapo and the Leadership Corps of the Nazi Party. The Nuremberg Tribunal stated that membership alone should not be considered criminal and that the crime “should exclude persons who had no knowledge of the criminal purposes or acts of the organization and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members or the organisation.” See Kevin John Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, Oxford University Press, Oxford, U.K., 2011, pp. 290–294.
18. The International Court of Justice (ICJ) gave an advisory opinion on the Genocide Convention in 1951 in [Reservations to the Convention on Genocide, Advisory Opinion](#), I.C.J. Reports 1951, p. 15. More recently, the ICJ has also adjudicated cases of state responsibility for genocide under the Genocide Convention in [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Yugoslavia\), Preliminary Objections, Judgment](#), I.C.J. Reports 1996, p. 595; [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\), Judgment](#), I.C.J. Reports 2007, p. 43; and [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Croatia v. Serbia\)](#), 3 February 2015 General List No. 118. However, none of these have been criminal cases.
19. ICTR Statute, art. 2(2); and [Convention on the Prevention and Punishment of the Crime of Genocide](#), 9 December 1948, art. II [Genocide Convention]. The Convention was ratified by Canada on 3 September 1952.
20. ICTR Statute, art. 2(3).
21. [Prosecutor v. Akayesu](#), Trial Judgement, 2 September 1998, paras. 112–129; and [Prosecutor v. Kayishema et al.](#), Trial Judgment, 21 May 1999, paras. 289–291. A number of key facts regarding the genocide were admitted by Jean Kambanda in his guilty plea, which are reflected in [Prosecutor v. Kambanda](#), Trial Judgement and Sentence, para. 39. Kambanda later attempted to recant his plea and force the prosecutor to re-try the allegations against him. This attempt was refused by the Appeals Chamber.
22. [Prosecutor v. Karemera et al.](#), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006, para. 35.
23. [Prosecutor v. Akayesu](#), Trial Judgement, 2 September 1998, paras. 731–734; and [Prosecutor v. Nahimana et al. \(Media Case\)](#), Trial Judgement and Sentence, 3 December 2003.
24. [Prosecutor v. Kambanda](#), Trial Judgement and Sentence, 4 September 1998, para. 16.
25. Ibid.
26. ICTR Statute, art. 3. Under this article, when committed as part of a widespread and systematic attack on a civilian population on national, political, ethnic, racial or religious grounds, the following crimes constitute crimes against humanity: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts.
27. [Prosecutor v. Akayesu](#), Trial Judgement, 2 September 1998, para. 580.
28. [Prosecutor v. Akayesu](#), Appeal Judgment, paras. 461–469.

29. Of the other post–World War II international and hybrid national–international tribunals trying crimes against humanity, only the definition of crimes against humanity in the law creating the Extraordinary Chambers in the Courts of Cambodia also contains such a requirement: Cambodia, [Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea \(as amended on 27 October 2004\)](#), NS/RKM/1004/006, art. 5. See [ICTY Statute](#), art. 5; International Criminal Court, [Rome Statute of the International Criminal Court](#), ICC-PIDS-LT-01-002/11_Eng, The Hague, Netherlands, 2011, art. 7; [Statute of the Special Court for Sierra Leone](#), art. 2; and United Nations Transitional Administration in East Timor, [Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences](#), UN Doc. UNTAET/Reg/2000/15, 6 June 2000, s. 5.
30. Scheffer (2012), p. 81.
31. ICTR Statute, art. 3.
32. See [Prosecutor v. Tadic](#), Appeal Decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, para. 94.
33. Antonio Cassese, *International Criminal law*, 2nd ed., Oxford University Press, Oxford, U.K., 2008, pp. 88–92.
34. [Prosecutor v. Ntagerura et al.](#), Trial Judgement, 25 February 2004, para. 766; Karim Khan and Rodney Dixon, *Archbold International Criminal Courts: Practice, Procedure and Evidence*, 4th ed., Sweet and Maxwell, London, 2014, §11-127 [Archbold].
35. ICTR Statute, art. 1.
36. UNSCR 955 PV, pp. 14–15.
37. The Trial Chamber also heard an additional two cases involving persons accused of crimes of contempt of the tribunal: *Prosecutor v. 'GAA'* and *Prosecutor v. Nshogohoza*.
38. ICTR, *Jean Kambanda*, Case ICTR-97-23; ICTR, Omar Serushago, Case ICTR-98-39.
39. High-profile acquittals and sentence reductions at appeal include those of Augustin Ndindiliyimana (former chief of staff of gendarmerie), François-Xavier Nzuwonemeye (former FAR battalion commander), Anatole Nsengiyumva (former lieutenant-colonel in FAR), Theoneste Bagosora (former director of cabinet, Ministry of Defence), Justin Mugenzi (former minister of commerce) and Prosper Mugiraneza (former minister of civil service); “[Rwanda genocide: ICTR overturns ex-ministers’ convictions](#),” *BBC News*, 4 February 2013; and “[Rwanda: 20 Years After Genocide, ICTR Appeals Chamber Accused of Rubbing Salt into the Wounds](#),” *allAfrica.com*, 8 April 2014.
40. Article 19(1) of the ICTR Statute provides that the tribunal “shall ensure that a trial is fair and expeditious.” Article 20(2) provides that “the accused shall be entitled to a fair and public hearing.” The ICTY Appeals Chamber in *Tadic* as stated that “The right to a fair trial is central to the rule of law: it upholds the due process of law.” See [Prosecutor v. Tadic](#), Appeal Judgment, para. 43. Similar dispositions can be found in the [International Covenant on Civil and Political Rights](#), 16 December 1966, art. 14(1) (the right to a fair trial) and art. 9 (the right to freedom from arbitrary detention).
41. Equality of arms is part of the adversarial structure of proceedings, meaning that the prosecution and the defence both have the same rights; i.e., the defendant is entitled to be informed in details of the charges against him or her, the right to appoint defence counsel, the right to call witnesses and cross-examine prosecution’s witnesses, etc. See Cassese (2008), pp. 384–386.

42. The Appeals Chamber founded that there is no right to compensation for an acquittal *per se*, but there is a right in international law for compensation where an individual previously convicted by a final decision is then exonerated by newly discovered facts, as reflected in Article 14(6) of the International Covenant on Civil and Political Rights (*Rwamakuba v. Prosecutor*, Decision on Appeal against Decision on Appropriate Remedy, 13 September 2007, para. 10.) Rwamakuba received compensation of €2,000 for violations of his right to legal assistance for delays before his transfer to the ICTR after he was arrested, which caused delays in holding an initial appearance. For more details, see Archbold, § 18-148 to 18-150.
43. There are several cases in which the ICTR Trial Chamber and Appeals Chamber reduced sentences based on fundamental violations of accused's rights: see *Prosecutor v. Semanza*, Trial Judgment and Sentence, 15 May 2003, para. 580 (the accused received a six-month sentence reduction for a 36-day violation of his right to be promptly informed of the charges); and *Prosecutor v. Nahimana et al.*, Trial Judgment, 3 December 2003, paras. 1106–1107 (the accused received a 35-year sentence instead of a life imprisonment sentence for violations of his rights at the pre-trial stage).
44. See, for example, Marlese Simons, "[Hague Judge Faults Acquittals of Serb and Croat Commanders](#)," *New York Times*, 14 June 2013.
45. For more information on the International Criminal Court and its creation, see Laura Barnett, *The International Criminal Court: History and Role*, Publication no. 2002-11-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 4 November 2008, revised 28 June 2013.
46. *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24.
47. *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, para. 126.
48. For more information on customary international law, see James Crawford, *Brownlie's Principles of Public International Law*, 8th ed., Oxford University Press, Oxford, U.K., 2012, p. 23. For a more detailed discussion, see Tullio Treves, "Customary International Law," in ed. R. Wolfrum, *Max Planck Encyclopedia of Public International Law*, online edition, Oxford University Press, 2006.
49. See, for example, *Munyaneza v. R.*, 2014 QCCA 906 [Que. C.A.]; *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40; *Zazai v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 303; and *Ali v. Canada (Solicitor General)*, 2005 FC 1306.
50. Kingsley Chiedu Moghalu, *Rwanda's Genocide: The Politics of Global Justice*, Palgrave MacMillan, New York, 2005, pp. 197–198; and Human Rights Watch, *Rwanda: Justice After Genocide – 20 Years On*, 28 March 2014.
51. The most striking example is former minister André Ntagerura, who has been confined there since his acquittal in 2004. Despite Security Council resolutions asking member states to assist the ICTR in relocation of those acquitted, there has been little progress. See United Nations, *Report of the International Criminal Tribunal for Rwanda*, 31 July 2015, para. 34.
52. *UN Security Council Resolution 1966 (2010), Establishing the International Residual Mechanism for Criminal Tribunals (with Annexed Statute)*, UN Doc. S/RES/1966, 2010.