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## Bridging Law and Humanity: Integrating Legal Accountability and Restorative Justice in Genocide Prevention

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### ABSTRACT

This study investigates how newly developed human rights frameworks and international mechanisms that are already in use could be tuned to stop genocide more successfully. Using primary sources including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Rome Statute of the International Criminal Court, and important rulings of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, it points up ongoing difficulties: the difficulty of proving genocidal intent, unequal political commitment among states, and the pragmatic challenges of compiling evidence in zones of armed conflict. Examining historic cases for instance, the case against Jean Paul Akayesu and the procedures against Omar Hassan Ahmad Al Bashir the study shows how jurisdictional gaps and state opposition compromise the promise of international justice. The study calls for the use of restorative strategies that priorities the material and psychological needs of victims, as well as foster communal healing, beyond traditional punishment-centric paradigms. The Gacaca Courts in Rwanda and reparations programmes for Holocaust survivors show how community-informed systems could augment official trials. Simultaneously, the paper evaluates the limits of the Responsibility to protect when political will runs short. To prevent future tragedies, this contribution suggests a multipronged approach: strengthening early warning systems, changing the procedural rules of the International Criminal Court to allow greater prosecutorial initiative, and including restorative justice ideas into national and international reactions.

**Keywords:** Genocide Prevention, Legal Accountability, Human Rights, Universal Jurisdiction, Responsibility to Protect (R2P), ICC, Restorative Justice, Victim-Centered Approaches

### 1. Introduction

The seeds of genocide settle silently when humanity turns away from the sight. What follows is the erasure of memory, culture, and voice as much as the death toll. One of the most important issues confronting the international community in the twenty-first century is the prevention of genocide. The Holocaust, The Rwandan Genocide, and the Srebrenica slaughter are just a few examples of historical crimes that serve as sobering reminders of the terrible results of unbridled hatred and impunity.<sup>1</sup> Historical tragedies continue even with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide adopted. Although international law defines genocide as a crime under international law, academics have noted that enforcement of this rule varies.<sup>2</sup> Often reflecting unequal political commitment, states fail to act when early warning signals show up. Supported by the United Nations General

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<sup>1</sup> Elie Wiesel, *From the Kingdom of Memory: Reminiscences* (Knopf 1990)

<sup>2</sup> William A Schabas, *Genocide in International Law: The Crime of Crimes* (2nd edn, Cambridge University Press 2009) 1.

Assembly in 2005, the “Responsibility to Protect” doctrine provides a normative framework to stop mass atrocities; nonetheless, its application has failed in places like Darfur and Myanmar.<sup>3</sup>

Although consistent gaps in jurisdiction and state cooperation limit their deterrent effect, jurisprudence from the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia created key precedents on genocidal intent and modalities of culpability.<sup>4</sup> The Pinochet and Arrest Warrant cases show both promise and difficulties in domestic prosecutions involving universal jurisdiction.<sup>5</sup> Concurrent with official prosecutions, restorative justice systems best represented by Rwanda's Gacaca Courts have shown promise to meet victims' needs using community involvement.<sup>6</sup> First, looking at the conceptual underpinnings of genocide law, this study then studies historic cases to expose jurisdictional and evidentiary challenges. It then reviews restorative strategies and suggests changes to enhance early warning systems and increase prosecutor power in the International Criminal Court. Combining restorative ideas with traditional criminal justice helps to create a stronger framework. Using case studies and doctrinal research, this study emphasizes the need to match legal responsibilities with human rights imperatives to prevent future crimes.

## **2. Research Methodology**

This study applies doctrinal analysis by examining the language of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), or the Genocide Convention, the Statute of the International Criminal Court, and rulings of the International Criminal Tribunal for Rwanda and the Former Yugoslavia.<sup>7</sup> Every clause addressing mental intent, modes of responsibility, and forms of jurisdiction is examined closely to expose interpretation variances. Close attention to judicial reasoning, especially the judgment in the case of Jean Paul Akayesu before the International Criminal Tribunal for Rwanda and decisions of the International Criminal Tribunal for the Former Yugoslavia, permits evaluation of evidentiary requirements and prosecutorial challenges.<sup>8</sup> The study further undertakes comparative analysis of pertinent legislations, court rulings on universal jurisdiction, and scholarly commentary, the study also compares domestic legal systems in the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the French Republic.<sup>9</sup> Secondary reading on international criminal process deepens involvement with intellectual discussions on doctrines.<sup>10</sup> At last, restorative justice ideas are evaluated utilizing reports on Gacaca community Courts and programs for Holocaust survivor reparations, so highlighting systems of victim participation. This integrated approach guarantees that normative recommendations are founded on careful reading of legal texts, court decisions, and community-based activities.

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<sup>3</sup> United Nations World Summit Outcome Document GA Res 60/1 (24 October 2005) para 138

<sup>4</sup> Prosecutor v Jean-Paul Akayesu (Judgment) ICTR-96-4-T (2 September 1998) para 521

<sup>5</sup> Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium) [2002] ICJ Rep 3; R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 3) [2000] 1 AC 147

<sup>6</sup> Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch 1999) 387

<sup>7</sup> Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature on 9 December 1948, United Nations Treaty Series volume 78 page 277 (entered into force on 12 January 1951)

<sup>8</sup> Prosecutor v Jean-Paul Akayesu (Trial Judgment) Case number ICTR-96-4-T (International Criminal Tribunal for Rwanda, 2 September 1998)

<sup>9</sup> Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium) [2002] International Court of Justice Reports 3; Regina v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No 3) [2000] 1 Appeal Cases 147

<sup>10</sup> Robert Cryer, Håkan Friman, Darryl Robinson and Elizabeth Wilmschurst, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press 2014) page 15

### 3. Literature Review

Scholars trace the concept of genocide to Raphael Lemkin's seminal work, which laid the foundation for defining mass atrocities as a distinct crime under international law.<sup>11</sup> William Schabas's comprehensive analysis highlights how legal definitions have evolved since the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, yet he notes persistent interpretive disagreements concerning intent and protected groups.<sup>12</sup> The study of international tribunals reveals significant insights: Antonio Cassese's account of jurisprudence from the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda demonstrates how landmark judgments extended liability for incitement and command responsibility, even as delays and resource constraints limited effectiveness.<sup>13</sup> Samantha Power's critique of political inaction and the United Nations' responsibility to protect doctrine underscores the gap between normative commitments and state practice, particularly where early warning signs were ignored in Rwanda and Darfur.<sup>14</sup>

Finally, literature on human rights advocacy and early detection, including reports by the International Commission on Intervention and State Sovereignty and analyses of non-governmental monitoring, emphasizes the role of civil society and informational networks in identifying risks before violence escalates.<sup>15</sup> Together, these themes reveal a persistent disconnection between doctrinal frameworks and operational capacities, suggesting the need for integrated approaches that bridge legal scholarship with practical prevention mechanisms.

### 4. Historical Context and Evolution of Genocide Law

#### 4.1 Origins and Codification

Based on his studies of Nazi and Armenian atrocities, Raphael Lemkin, the creator of the term genocide, passionately advocated for its recognition as a distinct crime under international law.<sup>16</sup> His efforts helped shape the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which went into effect in January 1951.<sup>17</sup> The Convention defines genocide as acts carried out to eradicate, in whole or in part, a national, ethnic, racial or religious group.<sup>18</sup> This term developed a legal framework to hold those responsible for planning mass violence. However, as academics like William Schabas have observed, serious arguments soon surfaced regarding the definition of protected groups and the necessary mental element.<sup>19</sup> Particularly, the Convention's rigorous definition of intent has made prosecution difficult since it calls for evidence of a particular plan to eradicate a group instead of proof of general violence alone.

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<sup>11</sup> Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace 1944) 79

<sup>12</sup> William A Schabas, *Genocide in International Law: The Crime of Crimes* (2nd edn, Cambridge University Press 2009) 34

<sup>13</sup> Antonio Cassese, *International Criminal Law* (Oxford University Press 2003) 125 and 213

<sup>14</sup> Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Basic Books 2002) 29

<sup>15</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre 2001) 14; Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch 1999) 20

<sup>16</sup> Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace 1944) page 79

<sup>17</sup> Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature on 9 December 1948, United Nations Treaty Series volume 78 page 277 (entered into force on 12 January 1951)

<sup>18</sup> *Ibid* article II

<sup>19</sup> William A Schabas, *Genocide in International Law: The Crime of Crimes* (2nd edn, Cambridge University Press 2009) pages 34–35

## 4.2 Key Early Failures and Judicial Responses

In April 1994, almost eight hundred thousand Tutsis and moderate Hutus were exterminated in Rwanda within approximately one hundred days; the international community's inactivity underscored the enforcement vacuum of the Convention.<sup>20</sup> In its historic ruling of Jean Paul Akayesu, which verified that rape and sexual violence can qualify as genocide when carried out with purpose to destroy a protected group, the International Criminal Tribunal for Rwanda corrected this shortcoming.<sup>21</sup> Comparably, nearly eight thousand Muslim men and boys were killed when Bosnian Serb forces overran the United Nations-assigned "safe area" Srebrenica.<sup>22</sup> The Security Council's resistance to approve strong peacekeeping operations revealed political unwillingness to act forcefully under the cover of the Genocide Convention.<sup>23</sup> Although the Srebrenica killings amounted to genocide, jurisprudence from the International Criminal Tribunal for the Former Yugoslavia, including the ruling in *Prosecutor v Krstić*, confirmed that the tribunal's limited resources and protracted procedures highlighted the pragmatic restrictions of international enforcement.<sup>24</sup> These events showed how legal tools stayed dependent on state assistance while also driving crucial improvements in interpreting genocidal intent and command responsibility.

## 4.3 Emergence of the Responsibility to Protect

Building on these judicial precedents, the international community sought to address genocide prevention through normative evolution. The concept of the Responsibility to Protect was articulated by the International Commission on Intervention and State Sovereignty in December 2001, and later endorsed by the General Assembly at the World Summit in September 2005.<sup>25</sup> The endorsement clarified that whenever a state manifestly fails to protect its population from genocide, war crimes, ethnic cleansing or crimes against humanity, the responsibility shifts to the broader international community.<sup>26</sup> Although the literature review has examined early critiques of implementation, this section focuses on its legal standing: by integrating preventive obligations within the Charter framework, the World Summit outcome affirmed that sovereignty entails duties as well as rights.<sup>27</sup> Nonetheless, as subsequent interventions in Darfur and Myanmar revealed, the normative weight of the Responsibility to Protect has not consistently translated into decisive action, thereby emphasising that legal endorsement must be coupled with political resolve and institutional capacity.

## 5. International Legal Mechanisms and National Jurisdictions

This section looks at how national courts and international tribunals help to avoid genocide and assign responsibility. It starts with evaluating the rulings and restrictions of the ad hoc tribunals for former Yugoslavia and Rwanda. It next assesses the jurisdictional reach and

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<sup>20</sup> Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch 1999) page 20.

<sup>21</sup> *Prosecutor v Jean-Paul Akayesu* (Trial Judgment) Case number ICTR-96-4-T (International Criminal Tribunal for Rwanda, 2 September 1998) paras 498–502

<sup>22</sup> United Nations Security Council, *Report of the Secretary-General on the Srebrenica Massacre* (S/1999/1257, 15 December 1999) para 10

<sup>23</sup> *Ibid* para 12

<sup>24</sup> *Prosecutor v Radislav Krstić* (Judgment) Case number IT-98-33-T (International Criminal Tribunal for the Former Yugoslavia, 2 August 2001) paras 563–568

<sup>25</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre 2001) pages 14–15; United Nations General Assembly, *2005 World Summit Outcome Document* GA Res 60/1 (24 October 2005) para 138

<sup>26</sup> *Ibid* para 139

<sup>27</sup> Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011) pages 45–47.

enforcement difficulties of the International Criminal Court. At last, it looks at the idea of universal jurisdiction and its function in closing gaps when global systems fail.

### 5.1 International Criminal Tribunals

The Security Council established the International Criminal Tribunal for Rwanda in November 1994 and the International Criminal Tribunal for the Former Yugoslavia in May 1993 to address mass atrocities that the international community had failed to prevent. In *Prosecutor v Jean-Paul Akayesu*, the Tribunal for Rwanda became the first judicial body to recognize that sexual violence could constitute genocide when committed with the intent to destroy a protected group in whole or in part.<sup>28</sup> Similarly, the Tribunal for the Former Yugoslavia, in *Prosecutor v Tihomir Blaškić*, reaffirmed that military commanders bear liability when they knew or had reasons to know that subordinates would commit crimes and did nothing to prevent or punish them.<sup>29</sup> Although these decisions clarified critical elements of genocidal intent and command responsibility, both tribunals struggled with lengthy proceedings, high costs, and dependence on member states to arrest suspects.<sup>30</sup>

### 5.2 The International Criminal Court

The Rome Statute, adopted on 17 July 1998 and entering into force on 1 July 2002, created the International Criminal Court as a permanent institution to try genocide, crimes against humanity, war crimes, and the crime of aggression.<sup>31</sup> The Court may exercise jurisdiction when crimes occur on the territory of a state party, are committed by nationals of a state party, or when the Security Council refers a situation under Chapter VII of the United Nations Charter.<sup>32</sup> In the Darfur situation, referred by the Security Council in March 2005, the Court issued an arrest warrant against the sitting President of the Sudan, Omar al-Bashir, for genocide and crimes against humanity.<sup>33</sup> Despite these warrants, state non-cooperation allowed al-Bashir to travel internationally without fear of detention, revealing the Court's reliance on political will for enforcement.<sup>34</sup> The Appeals Chamber later confirmed that heads of state enjoy no immunity before the Court when charged with core international crimes.<sup>35</sup> Yet the limited number of referrals and ongoing jurisdictional gaps continue to challenge the Court's capacity to deter genocide.

### 5.3 Universal Jurisdiction and National Courts

Universal jurisdiction permits domestic courts to prosecute individuals for genocide regardless of where the crime occurred or the nationality of the accused. In *Regina v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No 3)*, the House of Lords held that former heads of state may face prosecution in the United Kingdom for crimes such as torture and crimes against humanity, establishing that state immunity does not extend

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<sup>28</sup> *Prosecutor v Jean-Paul Akayesu* (Trial Judgment) Case No ICTR-96-4-T (International Criminal Tribunal for Rwanda, 2 September 1998) paras 498–99

<sup>29</sup> *Prosecutor v Tihomir Blaškić* (Judgment) Case No IT-95-14-A (International Criminal Tribunal for the Former Yugoslavia, 29 July 2004) paras 105–10

<sup>30</sup> William A Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press 2021) 62

<sup>31</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90

<sup>32</sup> *Ibid* art 12(2)

<sup>33</sup> United Nations Security Council Resolution 1593 (2005) UN Doc S/RES/1593 (31 March 2005)

<sup>34</sup> Kai Ambos, *Treatise on International Criminal Law: Volume I: Foundations and General Part* (2nd edn, Oxford University Press 2021) 289

<sup>35</sup> International Criminal Court, *Judgment on the Appeal of the Republic of South Africa Against the Decision of Pre-Trial Chamber I of 4 March 2009 Entitled "Warrant of Arrest for Omar Hassan Ahmad Al Bashir"* (ICC-02/05-01/09-158) Appeals Chamber (6 July 2010) paras 39–44

to these offences.<sup>36</sup> Germany's Code of Crimes against International Law authorizes its courts to try genocide when the accused or victim is German or if the crime occurred on German territory.<sup>37</sup> In 2021, the Higher Regional Court of Cologne convicted a former Syrian intelligence officer for crimes against humanity committed during the Syrian conflict—demonstrating that national courts can address impunity when international mechanisms lack jurisdiction.<sup>38</sup> Although universal jurisdiction affirms the principle that perpetrators cannot evade justice, its use has provoked diplomatic tensions and prompted legislative refinements in Belgium and Spain.<sup>39</sup> Harmonizing evidentiary standards and procedural safeguards across jurisdictions is essential to ensure fair application and maintain the legitimacy of universal jurisdiction.

## **6. Human Rights and Genocide Prevention: Legal, Moral, and Practical Imperative**

Genocide prevention is not only a legal and moral duty but also a necessity in maintaining global stability and security. History has demonstrated that genocide does not arise in isolation but rather as the culmination of prolonged discrimination, systemic human rights violations, and unchecked hate speech. Preventing genocide thus requires a multi-dimensional approach that integrates human rights protections, legal accountability, international cooperation, and grassroots activism. This article delves deeper into these aspects, emphasizing their interconnectedness and the evolving challenges of genocide prevention in the contemporary global order.

### **6.1 Legal Foundations**

The prohibition of genocide rests upon a robust international legal framework. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly in December 1948, criminalizes acts committed with intent to destroy, in whole or in part, a protected group defined by nationality, ethnicity, race or religion.<sup>40</sup> This treaty obliges states to prevent and punish genocide, affirming that sovereignty entails responsibility as well as authority.<sup>41</sup> Complementary human rights instruments reinforce this duty. The Universal Declaration of Human Rights, adopted in 1948, proclaims that every individual is entitled to life, liberty and security.<sup>42</sup> The International Covenant on Civil and Political Rights, which entered into force in 1976, requires states to respect and ensure fundamental rights without discrimination, underscoring that widespread violation may signal an emergent risk of mass atrocity.<sup>43</sup> Moreover, the 2005 World Summit Outcome Document endorsed the Responsibility to Protect doctrine, declaring that states must prevent genocide, war crimes, ethnic cleansing and crimes against humanity, and that, should a state manifestly fail, the international community must intervene through

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<sup>36</sup> *Regina v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No 3)* [2000] 1 A C 147 (HL)

<sup>37</sup> German Code of Crimes against International Law (Völkerstrafgesetzbuch) of 26 June 2002, Bundesgesetzblatt I 961 (entered into force 30 June 2002) 1–2

<sup>38</sup> Oberlandesgericht Köln [Higher Regional Court of Cologne] 2 StR 313/15 (8 March 2016)

<sup>39</sup> Geoffrey Nice, 'Universal Jurisdiction: A Critical Introduction' (2007) 6 *International & Comparative Law Quarterly* 745, 759

<sup>40</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 art II

<sup>41</sup> *Ibid* art I

<sup>42</sup> Universal Declaration of Human Rights GA Res 217 A (III) (10 December 1948) art 3

<sup>43</sup> International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 arts 2, 6

collective measures.<sup>44</sup> Together, these legal instruments create binding obligations and normative standards that guide prevention efforts and underpin international prosecution.

## 6.2 Moral Imperative

Beyond legal obligations, a moral imperative compels action. Philosophers such as John Rawls emphasize that justice includes preventing severe injustice wherever it occurs, reflecting a duty of solidarity with those facing existential threats.<sup>45</sup> Moral arguments grounded in human dignity assert that permitting genocide violates the core values of empathy and reciprocity inherent in international society.<sup>46</sup> The concept of human rights itself is rooted in the idea that every person possesses intrinsic worth, rendering mass violence not only a legal atrocity but a moral affront.<sup>47</sup> This perspective motivates civil society, faith-based organizations and individuals to bear witness advocate and provide assistance, even when political actors falter.<sup>48</sup> Moral reflection thus demands that affluent and influential states, as well as non-state actors, resist indifference and undertake measures to shield vulnerable populations from systematic persecution.<sup>49</sup>

## 6.3 Practical Imperative

Translating legal and moral imperatives into prevention requires operational frameworks. Early-warning systems, such as those maintained by the United Nations Office on Genocide Prevention, monitor indicators like hate speech, discriminatory laws and forced displacement to identify risk factors before atrocities escalate.<sup>50</sup> Non-governmental organizations, including Human Rights Watch and Amnesty International, document abuses, pressure policymakers and supply evidence that may inform diplomatic measures or legal actions.<sup>51</sup> Integrating human rights training into military and peacekeeping units enhances the capacity of field personnel to recognize and respond to warning signs.<sup>52</sup> At the national level, embedding genocide prevention within judicial and legislative processes through teacher training, public education campaigns and strengthening domestic institutions fosters resilience.<sup>53</sup> Nevertheless, these practical tools depend on sustained political will and adequate resources. When early warnings go unheeded or funding lapses, prevention capacities erode.<sup>54</sup> Therefore, consistent and investment in analytic capacities, cross-border cooperation and survivor support programme is essential to transform normative commitments into tangible protection measures.<sup>55</sup>

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<sup>44</sup> United Nations General Assembly, *2005 World Summit Outcome Document* GA Res 60/1 (24 October 2005) paras 138–139

<sup>45</sup> John Rawls, *A Theory of Justice* (Harvard University Press 1971) 102

<sup>46</sup> Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press 1998) 47

<sup>47</sup> Ruti Teitel, *Humanity's Law* (Oxford University Press 2011) 15

<sup>48</sup> Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press 2010) 213

<sup>49</sup> Amartya Sen, *The Idea of Justice* (Allen Lane 2009) 275

<sup>50</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (United Nations 2014) 6–8.

<sup>51</sup> Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch 1999) 27; Amnesty International, 'Sudan: The Last Border Village: Sudan's Peacekeepers and the Darfur Conflict' (Report, June 2004) 12

<sup>52</sup> United Nations Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations 2008) 45

<sup>53</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre 2001) 22–24

<sup>54</sup> Ichard Goldstone, 'Challenges Facing the International Criminal Court in the Twenty-First Century' (2008) 19 *European Journal of International Law* 1113, 1120

<sup>55</sup> Elizabeth Goitein and Jon Elster, *Counting the Costs: Should Governments Invest in Mass Atrocity Prevention?* (Stimson Center 2015) 35

## 7. Challenges in Legal Accountability for Genocide

### 7.1 Political Impediments and Selective Justice

Often times, attempts to hold offenders responsible fall short when political considerations supersede legal requirements. Key governments in Darfur failed to enforce arrest warrants; therefore the Security Council's referral of the situation to the International Criminal Court in March 2005 did not convert into concerns of top Sudanese leaders.<sup>56</sup> Likewise, the continuous proceedings at the International Court of Justice in *The Gambia v. Myanmar* (2020)<sup>57</sup> show how geopolitical alliances postpone meaningful adjudication of claimed crimes against the Rohingya.<sup>58</sup> At the domestic level, selective prosecutions erode legitimacy: nations may avoid trials involving strong allies while pursuing universal jurisdiction claims against people from smaller governments.<sup>59</sup> This mismatch creates the impression that genocide trials rely more on diplomatic calculus than on moral application of law, therefore undermining faith in international justice and empowering possible offenders who figure they have almost perfect impunity.

### 7.2 Evidentiary Burdens and Mens Rea Interpretations

Still among the most difficult evidentiary tasks is proving genocidal intent. The International Criminal Tribunal for the Former Yugoslavia's ruling in *Prosecutor v. Radislav Krstić* (2001) concluded that purpose might be deduced from a pattern of behavior more especially, the massacre at Srebrenica yet later rulings showed different thresholds.<sup>60</sup> The Appeals Chamber in *Prosecutor v Gotovina* (2012) tightened the criteria by requiring proof of a "specific direction" to target civilians.<sup>61</sup> These contradictions complicate prosecution tactics and extend appeals, therefore eroding faith in uniform legal rules. While determining whether such evidence satisfies the "beyond a reasonable doubt," practical challenges arise at the International Criminal Court as the Al Bashir warrants (2009) include evidence derived from satellite images, intercepted communications, and mass graves to infer intent.<sup>62</sup> Domestic trials under universal jurisdiction also face similar challenges: variances in standards of evidence and witness protection policies could prevent the inclusion of testimony from conflict zones.<sup>63</sup> Prosecutors thus devote significant funds to fact-finding investigations and corroborative analysis; nevertheless, even strong evidence recordings run the danger of being rejected if courts follow literal interpretations of purpose.

### 7.3 Reform Proposals and Practical Steps

Several focused changes worth thought could help to remove political and evidential barriers. First, changing the Rome Statute to let the Prosecutor start investigations proprio motu in

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<sup>56</sup> International Criminal Court, *Situation in Darfur, Sudan: Warrant of Arrest for Omar Hassan Ahmad Al Bashir* (ICC-02/05-01/09-53 Pre-Trial Chamber I, 4 March 2009) para 28

<sup>57</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v Myanmar*) (Provisional Measures) [2020] ICJ Rep 3

<sup>58</sup> Human Rights Watch, 'Myanmar: Rohingya at Risk of Genocide, Crimes against Humanity' (Human Rights Watch Report, 19 January 2017) 5

<sup>59</sup> Geoffrey Nice, 'Universal Jurisdiction: A Critical Introduction' (2007) 6 *International & Comparative Law Quarterly* 745, 759–60

<sup>60</sup> *Prosecutor v Radislav Krstić* (Judgment) Case No IT-98-33-T (International Criminal Tribunal for the Former Yugoslavia, 2 August 2001) paras 563–68

<sup>61</sup> *Prosecutor v Ante Gotovina et al.* (Judgment) Case No IT-06-90-A (International Criminal Tribunal for the Former Yugoslavia, 16 November 2012) para 108

<sup>62</sup> International Criminal Court, *Judgment on the Appeal of the Republic of South Africa Against the Decision of Pre-Trial Chamber I of 4 March 2009 Entitled "Warrant of Arrest for Omar Hassan Ahmad Al Bashir"* (ICC-02/05-01/09-158 Appeals Chamber, 6 July 2010) paras 39–44

<sup>63</sup> Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009) 205–06

response to credible information, without including a Security Council referral, would help to reduce veto-driven gridlock.<sup>64</sup> Second, as suggested by the International Law Commission's work on atrocity crimes, universal rules for inferring genocidal intent could harmonize jurisprudence among tribunals and the International Criminal Court.<sup>65</sup> Thirdly, improving mutual legal aid treaties with particular clauses for forensic knowledge, witness relocation, and digital evidence collecting would increase investigative capability.<sup>66</sup> Fourth, encouraging regional hybrid tribunals like the Special Tribunal for Lebanon model could mix domestic and foreign resources to lower political meddling and promote local ownership.<sup>67</sup> At last, including genocide education into national curriculum and arming law enforcement to identify early signs would strengthen preventive aspects of responsibility.<sup>68</sup> Through these steps calibrated to accommodate both political will and evidential rigor a more robust system can develop, able to convert legal standards into actual justice.

## **8. Victim-Centered and Restorative Justice Approaches in Genocide Prevention**

The shift towards victim-centered and restorative justice approaches is essential for achieving long-term peace and reconciliation in post-genocide societies. Traditional retributive justice, focuses on punishing perpetrators, often fails to address the deep emotional, social, and psychological scars inflicted on survivors and affected communities. In contrast, restorative justice prioritizes healing, reconciliation, and repairing harm, allowing victims to reclaim agency in their pursuit of justice. This approach acknowledges that justice is not just about legal punishment but also about restoring dignity, rebuilding trust, and fostering social cohesion.

### **8.1 Legal Foundations of Community Courts**

In the aftermath of the 1994 genocide, Rwanda enacted Organic Law No 08/96 of 30 August 1996 to establish Gacaca courts, later revised by Organic Law No 40/2000 of 2000, integrating them into the constitutional framework as a decentralized form of justice under Article 152 of the 2003 Constitution.<sup>69</sup> These courts empowered local committees to adjudicate genocide related offences, aiming to expedite proceedings and involve survivors directly.<sup>70</sup> While Gacaca facilitated the trial of over a million accused persons, critics note that the absence of guaranteed legal representation and uniform evidentiary standards raised due process concerns.<sup>71</sup> Phil Clark observes that Gacaca's hybrid nature combining customary dispute resolution with statutory mandates enabled broad participation yet

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<sup>64</sup> Leila Nadya Sadat, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* (Brill 2002) 147

<sup>65</sup> International Law Commission, 'Draft Articles on Prevention and Punishment of Crimes against Humanity' (2019) UN Doc A/74/10, art 18 and commentary, paras 1–5

<sup>66</sup> Anne L Bayefsky and David R Kaye, *International Human Rights Watch* (6th edn, West Academic Publishing 2014) 332–33

<sup>67</sup> Mark A Drumbl, 'Hybrid Tribunals and Selective Adjudication of Mass Atrocities' (2009) 42 *Vanderbilt Journal of Transnational Law* 415, 449–50

<sup>68</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre 2001) 22

<sup>69</sup> Organic Law No 08/96 of 30 August 1996 Relating to the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since 1 October 1990 art 22; Organic Law No 40/2000 of 26 January 2001 Authorizing the Organization of Prosecutions of Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since 1 October 1990 arts 3–5; Constitution of the Republic of Rwanda (2003) art 152

<sup>70</sup> Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge University Press 2010) 48, 112

<sup>71</sup> *Ibid* 67–68; Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch 1999) 332

sometimes sacrificed rigorous legal safeguards, especially where local power imbalances influenced verdicts.<sup>72</sup> Despite these limitations, the legal authorization of Gacaca symbolized a shift towards victim engagement, enabling communities to voice harm, seek reparations and foster social reconciliation within a framework that departed deliberately from purely retributive procedures.<sup>73</sup>

## 8.2 Reparations and Social Reconciliation

Reparative programmes complement judicial processes by addressing survivors' material and psychosocial needs. Under the Luxembourg Agreement of 10 September 1952, Germany established pension schemes for Holocaust survivors, culminating in the Federal Government Foundation "Remembrance, Responsibility and Future" in 2000, which disbursed billions of Euros to former forced laborers, thereby acknowledging state responsibility and mitigating enduring socioeconomic harms.<sup>74</sup> In Bosnia and Herzegovina, the International Organization for Migration's psychosocial support initiatives implemented between 2001 and 2010 provided counseling and community driven reconstruction projects to survivors of ethnic cleansing, reinforcing social bonds fractured by violence.<sup>75</sup> These programmes align with the Basic Principles and Guidelines on the Right to a Remedy and Reparation, adopted by the General Assembly in December 2005, which affirm that reparations including restitution, compensation, rehabilitation and guarantees of non-repetition serve as indispensable complements to criminal accountability.<sup>76</sup> By integrating financial assistance with communal dialogue forums, restorative frameworks seek to rebuild trust, facilitate collective memory and empower survivors to participate actively in shaping their societies' futures.<sup>77</sup>

## 8.3 Critical Reflections and Limitations

While restorative approaches prioritize healing and community cohesion, they face inherent constraints. First, conflating truth seeking with conciliation risks undermining accountability where perpetrators' confessions remain partial or coerced.<sup>78</sup> Second, disparities in local authority structures can distort Gacaca outcomes, as traditional leaders sometimes exerted undue influence over verdicts, raising questions about impartiality.<sup>79</sup> Third, reparations programmes may inadvertently reproduce inequalities if resources are distributed unevenly or if criteria for compensation exclude marginalized groups.<sup>80</sup> Finally, restorative justice does not always satisfy victims' demands for retribution; some survivors express frustration when lower level offenders receive community sanctions rather than imprisonment.<sup>81</sup> Therefore, robust oversight mechanisms, clear procedural rules and ongoing support for survivors are

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<sup>72</sup> Clark (n 2) 75–78

<sup>73</sup> Ibid 185–87

<sup>74</sup> Luxembourg Agreement (Reparation to Holocaust Victims), Germany–Israel, 10 September 1952; Federal Government Foundation "Remembrance, Responsibility and Future" (Stiftung Erinnerung, Verantwortung und Zukunft) Annual Report 2000 – 2005 (Berlin 2005) 14–17

<sup>75</sup> International Organization for Migration, *Psychosocial Support for Victims of War Crimes and Crimes against Humanity in Bosnia and Herzegovina: Lessons Learned* (IOM 2010) 32–35

<sup>76</sup> United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation* GA Res 60/147 (21 March 2006) annex, paras 18–24

<sup>77</sup> Nadia Bernaz, *Reconciliation in Transition: Re-Examining Transitional Justice in Post-Genocide Rwanda* (Cambridge University Press 2019) 132–34

<sup>78</sup> Priscilla B Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011) 204–06

<sup>79</sup> Clark (n 2) 162–64

<sup>80</sup> Centre for Justice and Reconciliation, *Evaluating Reparations in Post-Conflict Settings: Bosnia and Rwanda Compared* (CJR 2016) 45–49

<sup>81</sup> Nic Cheeseman and Matthew Tull, 'Money and Truth: Rethinking the Role of Reparations in the Wake of Violence' (2020) 34 *International Journal of Transitional Justice* 216, 220–22

essential to safeguard the integrity of restorative models and ensure that they function as genuine complements to, rather than substitutes for, formal prosecutions.<sup>82</sup>

## **9. Reforming Legal and Human Rights Frameworks for Future Genocide Prevention**

This part illustrates focused changes meant to improve world capability to stop mass atrocities. It suggests setting up a special early-warning secretariat, giving the International Criminal Court prosecutor more investigative power, and combining local intelligence via civil society involvement and education. Giving these measures top priority will help the world go from reactive responses to proactive prevention.

### **9.1 Strengthening Early-Warning and Rapid Response**

A sustainable prevention paradigm requires a dedicated early-warning secretariat within the United Nations structure. The United Nations Office on Genocide Prevention's Framework of Analysis identifies indicators such as discriminatory legislation, hate speech and forced displacement that signal heightened risk, yet lacks a centralized body empowered to facilitate coordinated action.<sup>83</sup> Establishing a professional secretariat, staffed with legal, human rights and regional experts would ensure that warning signals prompt timely diplomatic engagement, targeted sanctions or peacekeeping adjustments. Such an entity should have authority to issue binding recommendations to Security Council member states, fostering a culture of responsiveness rather than passive observation.

### **9.2 Empowering the International Criminal Court Prosecutor**

The Rome Statute currently confines the Prosecutor's authority to situations referred by a state party or the Security Council, constraining action in non-state-party contexts.<sup>84</sup> Amending Article 15 to allow proprio motu investigations in non-state-party situations, subject to judicial oversight, would mitigate veto-driven paralysis.<sup>85</sup> This reform aligns with proposals by scholars such as Leila Nadya Sadat, who argues that broader prosecutorial initiative would prevent impunity where political interests impede referrals.<sup>86</sup> Equally important is enhancing mutual legal assistance treaties by specifying rapid procedures for evidence sharing, witness relocation and forensic support. Codifying these provisions within the Rome Statute's Rules of Procedure and Evidence would streamline investigations and reduce reliance on ad hoc diplomatic negotiations.

### **9.3 Integrating Local Intelligence and Education**

Bottom-up prevention hinges on empowering local communities to detect and resist precursors of genocide. The International Commission on Intervention and State Sovereignty emphasises that state sovereignty includes a duty to protect, which in practice involves civilian participation in monitoring and reporting.<sup>87</sup> National curricula should incorporate modules on genocide historiography, human rights and critical media literacy, equipping

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<sup>82</sup> Rodrigo Uprimny Yepes, 'Restorative Justice in Times of Transition: Learning from Colombia' in Heidi Rombouts, Felipe Gómez Isa and Willem van Genugten (eds), *Human Rights, Peace and Justice: The Role of the United Nations* (Wolf Legal Publishers 2017) 291, 298–300

<sup>83</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (United Nations 2014) 6

<sup>84</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 art 15

<sup>85</sup> *Ibid*

<sup>86</sup> Leila Nadya Sadat, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* (Brill 2002) 147

<sup>87</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre 2001) 22

future generations to recognize early warning signs. Civil society organizations must receive sustained support for grass-roots networks that document rights violations and coordinate with international bodies. Finally, developing regional legal cooperation frameworks—such as an African Union early-warning mechanism linked to the International Criminal Court—would harness local expertise and political will to reinforce global accountability.

## 10. Conclusion

The obligation to prevent genocide extends beyond codified norms to a broader one that weaves together legal accountability, human rights imperatives and community engagement. By examining landmark judgments from Akayesu to al-Bashir we see that legal instruments clarify intent and command responsibility yet remain vulnerable to political inertia and evidentiary hurdles. Restorative justice mechanisms, exemplified by Rwanda's Gacaca courts, demonstrate how local participation and reparative programs can rebuild social bonds while complementing formal prosecutions. In this way, a multidimensional framework emerges one that underscores that sovereignty entails not only the authority to punish but also the duty to protect, educate, and heal.

Looking ahead, the foremost challenge lies in aligning political will with existing legal duties. If states continue to ignore early-warning recommendations or shield powerful figures through veto power, what novel legal incentives or normative pressures can compel accountability? Could digital platforms and civil society coalitions amplify real-time reporting and force timely interventions? These questions must guide both scholarship and policy: How do we transform a reactive architecture into a proactive shield against mass atrocity? Only by confronting these dilemmas can the international community hope to move from lamenting past failures to safeguarding human dignity in the face of emerging threats.

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