

UNIVERSITY OF ZAMBIA  
DIRECTORATE OF RESEARCH AND GRADUATE STUDIES  
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THE EMERGING SEXUAL VIOLENCE JURISPRUDENCE IN INTERNATIONAL HUMANITARIAN LAW: A  
CASE STUDY OF THE RWANDAN TRIBUNAL

PRINCIPAL SUPERVISOR: JUDGE KABAZO CHANDA (RTD)  
CO- SUPERVISOR: PROFESSOR MUNA NDULO

KAABA O'BRIEN  
STUDENT COMPUTER NO: 528000706

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## **DEDICATION**

To my grandmother, Janet Mabula Hachoose, a true friend in life and in death.

## DECLARATION

I **Kaaba O'Brien** do hereby declare that this thesis entitled **THE EMERGING SEXUAL VIOLENCE JURISPRUDENCE IN INTERNATIONAL HUMANITARIANLAW: A CASE STUDY OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR ANDA** represents my own independent research and that it has not previously been submitted for a degree at this or any other university.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## **CERTIFICATE OF APPROVAL**

This dissertation of Kaaba O'Brien has been approved as fulfilling the requirements for the award of the Degree of Master of Laws by the University of Zambia.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

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## **LIST OF ABBREVIATIONS**

**AIDS:** Acquired Immuno Deficiency Syndrome

**AVEGA:** Association of the Widows of the Genocide of April 1994.

**HIV:** Human Immunodeficiency Virus

**HRFOR:** United Nations Commission for Human Rights Field Operation in Rwanda

**ICC:** International Criminal Court

**ICRC:** International Committee of the Red Cross

**ICTR:** International Criminal Tribunal for Rwanda

**ICTY:** International Criminal Tribunal for the former Yugoslavia

**NAZI:** Nationalsozialismus (National Socialism)

**NGO:** Non -governmental Organisation

**OTP:** Office of the Tribunal Prosecutor

**RPF:** Rwanda Patriotic Front

**UNAMIR:** United Nations Assistance Mission for Rwanda

**UN:** United Nations

**UNDP:** United Nations Development Programme

**UNFPA:** United Nations Population Fund

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- General Winfield Scott's General Order No. 20, 19 February 1847.
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- United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
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## ABSTRACT

This dissertation examines developments and challenges of prosecuting crimes of sexual violence in international tribunals and takes the International Criminal Tribunal for Rwanda as a case study. The dissertation addresses the problem of ending impunity for crimes of sexual violence committed during conflict and war. The research methodology used included sampling, data collection, data analysis and finally writing the report. It is qualitative in nature and not quantitative.

Following the death of the Rwandan president in April 1994 there was occasion mass slaughter of the minority Tutsi that appalled the conscience of the international community. It dawned after the conflict that sexual violence was widespread and systematic and ruthlessly employed to victimise the Tutsi women and girls. In the aftermath of the genocide, recognising that serious violations of humanitarian law were committed in Rwanda, acting under Chapter VII of the United Nations Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by way of Resolution 955 of 8 November 1994. The purpose of this measure was to contribute to the process of national reconciliation in Rwanda and to enhance regional peace and stability. The ICTR has been in operation for more than a decade and has made huge contribution in developing sexual violence jurisprudence including being the first international court to hold that sexual violence could be a constituent element of the crime of genocide.

Despite this achievement and unquestionable contribution of the ICTR to the growth of sexual violence jurisprudence in International Humanitarian Law, the record indicates a less than 30 per cent of convictions for sexual violence in completed cases, a record which reflects squandered opportunities and is at variance with the magnitude of the sexual violence committed during the genocide. The research came to a conclusion that this uninspiring record is due to inept investigation, half-hearted prosecution of sexual violence cases, and insensitivity on the part of some judges. The research also indicates that international instruments that pertain to sexual violence have been superseded by developments in case law and need to be revised so as to suit contemporary challenges.

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