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Original Article

Reconsidering the Definition of Genocide: The Case for Including Political Groups in International Criminal Law

Jovin Ashery Sanga[1*]

[1] Ruaha Catholic University, P. O. Box 774, Iringa, Tanzania.
[*] Author's Email: sangajovintz@gmail.com

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ABSTRACT

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) represents a foundational legal instrument in international criminal law. While it identifies national, ethnic, racial, and religious groups as protected categories, it expressly omits political groups. This exclusion has created a significant gap in the legal construction of the prevention of mass killings. This article argues that the omission of political groups is no longer defensible given the evolving nature of identity-based violence. Drawing on comparative legal analysis, historical precedent, and current international jurisprudence, this article explores the implications of the exclusion and presents a legal rationale for reform. It argues that either political group should be explicitly incorporated into the definition of genocide through formal amendment, or that a more expansive interpretation of group-based targeting should be adopted by international courts. In the interim, enhanced reliance on crimes against humanity under the Rome Statute may provide partial redress. The article concludes with a call for international consensus to close this gap and proposes avenues for legal and policy reform.

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INTRODUCTION

The adoption of the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention) represented a fundamental moment in the evolution of international criminal law. It formalised the global community's commitment to prevent and punish acts aimed at the destruction of specific groups. However, the Convention's limited scope. That is, protecting only national, ethnic, racial, and religious groups has drawn persistent criticism for failing to include political groups. This exclusion has fuelled long-standing debates about the adequacy of the legal definition of genocide in addressing the diverse motives and identities involved in modern mass atrocities.

In the contemporary world, political affiliation often carries the same existential threat as ethnicity or religion. In dictatorial regimes, individuals or communities are frequently targeted based on their political identity, ideology, or opposition to the ruling authorities. This reality contrasts with the narrow list of protected groups under the Genocide Convention. Schabas[1], in his authoritative analysis of genocide law, explains that political groups were deliberately omitted from the final text of the Convention despite their inclusion in earlier drafts. In Chapter 3 of his work, *Genocide in International Law*, he attributes this omission to geopolitical pressures, especially concerns raised by the Soviet Union and others who feared the criminalisation of domestic political oppression.

LeBlanc (1991)[2] similarly notes that the decision to exclude political groups from protection was influenced more by political convenience than legal principle. The result is a legal instrument that fails to account for a significant category of potential victims: those targeted for their political beliefs. While such acts may be prosecuted under the category of crimes against humanity, this classification lacks the specific stigma and gravity attached to genocide.[3] As political identity becomes increasingly central to repression and exclusion globally, in countries such as Chile, Myanmar and Ethiopia, there is growing consensus among scholars and practitioners that the definition of genocide must evolve to include politically motivated mass violence.

METHODOLOGY

This article employed a doctrinal legal methodology, based on the analysis of treaties, international legal instruments, and case law to assess the definition of genocide under international law. It is harmonised by a proportional analysis of domestic legal frameworks, including those of Ethiopia and Rwanda, which recognise political groups in their national laws relating to genocide.

The study also incorporates case-based qualitative research, examining specific instances of political persecution across different regions to assess whether they exhibit elements of genocidal intent. Through this analysis of historical evidence and case documentation, the article constructs a normative case for reforming the Genocide Convention.

HISTORICAL BACKGROUND AND THE DRAFTING OF THE GENOCIDE CONVENTION

The decision to exclude political groups from the Convention was influenced by Cold War-era concerns. The Soviet Union and allied states argued that including such groups would infringe on state sovereignty and criminalise legitimate domestic repression. In his book, particularly in the chapter titled "Protected Groups and Political Groups" (pp. 57–65), LeBlanc discusses how these concerns influenced the exclusion of political groups from the Genocide Convention. He notes that the Soviet Union and its allies

[1] Schabas, W. A. (2009). *Genocide in international law: The crime of crimes* (2nd ed., pp. 117–171). Cambridge University Press

[2] LeBlanc, L. J. (1991). The United States and the Genocide Convention. Duke University Press.

[3] International Criminal Court. (1998). *Rome Statute of the International Criminal Court*. https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf

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argued that including such groups would infringe on state sovereignty and potentially criminalise legitimate domestic repression.[4] As a compromise, the Convention limited its protections to four group types: national, ethnic, racial, and religious, omitting political and social groups.[5]

The exclusion of political groups from the scope of genocide has led to legal inconsistency and gaps in protection. Although the *Rome Statute of the International Criminal Court* defines genocide in nearly identical terms to the 1948 Genocide Convention, it does not expand the list of protected groups.[6] This permanence reflects a conservative legal approach, privileging historical consensus over evolving forms of identity-based violence. As a result, victims targeted for their political affiliation fall outside the legal regime of genocide, even when their persecution imitates genocidal intent and outcomes.

Legal scholars have long argued that this gap reflects a defective distinction between political and ethnic identity. Fein[7] emphasises that the boundary between political and ethnic identity is often porous, especially in cases where political ideology is tied to collective survival or cultural expression. Also, Totten and Parsons[8] illustrate how regimes such as the Khmer Rouge in Cambodia and the Hutu-led government in Rwanda justified mass killings based on both ethnic and political factors, blurring any firm distinction between group types. In such cases, victims were exterminated not only for their ethnic affiliation but for their perceived political stance or association.

Importantly, the intent requirement of genocide "to destroy, in whole or in part, a group" is equally applicable to politically motivated mass killings. As Greenawalt[9] explains, the mental element of genocidal intent does not logically exclude political groups; rather, their omission is an artefact of political compromise. The consequence, however, is a normative hierarchy in which some mass killings are branded as genocide while others are relegated to the broader, less stigmatised category of crimes against humanity. This differentiation impacts not only prosecution but also global recognition, reparations, and memorialisation.

The legal framework's failure to reflect the realities of modern killings undermines both justice and deterrence. In a world where repressive regimes increasingly target political opposition through detention, torture, and mass killing, international law must evolve to meet emerging threats. Including political groups in the definition of genocide would not dilute the Convention's purpose. It would strengthen it by ensuring equal protection for all vulnerable populations, regardless of the specific form of identity that makes them targets.

LEGAL CONSEQUENCES OF THE EXCLUSION OF POLITICAL GROUPS IN THE GENOCIDE DEFINITION

The practical impact of excluding political groups from the definition of genocide is profound. Under Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), genocide is defined as acts committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." Political and social groups were explicitly excluded during the drafting process, largely due to the objections of certain state actors, particularly the Soviet Union, which feared

[4] LeBlanc, Note 2
[5] United Nations. (1948). *Convention on the Prevention and Punishment of the Crime of Genocide*. United Nations Treaty Series, vol. 78, p. 277 (United Nations, 1948, Article II) Retrieved from https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf
[6] International Criminal Court. (1998). *Rome Statute of the International Criminal Court*.
[7] Fein, H. (1993). *Genocide: A Sociological Perspective*. SAGE Publications
[8] Totten, S., & Parsons, W. S. (Eds.). (2012). *Centuries of Genocide: Essays and Eyewitness Accounts* (4th ed.). Routledge
[9] Greenawalt, A. K. (1999). Rethinking genocidal intent: The case for a knowledge-based interpretation. *Columbia Law Review, 99*(8), 2259–2294. https://doi.org/10.2307/1123452

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potential legal exposure for its domestic political purges.[10]

This omission of political groups in the definition has led to a persistent legal gap. Mass killings targeting political groups, regardless of the perpetrators' intent or the scale of the violence, do not fall within the legal framework of genocide. The landmark judgment in *Prosecutor v. Akayesu* (ICTR-96-4) affirmed that the Convention's protections were limited to "stable and permanent" groups, excluding political affiliations. The *Kambanda* case (ICTR-97-23) also reinforced this narrow definitional gap.

Normative and Reparative Impact of the Exclusion

As a result, international prosecutors often charge such crimes under the category of *crimes against humanity*, as defined in Article 7 of the *Rome Statute of the International Criminal Court* (1998). While this category covers acts like extermination and persecution on political grounds, it does not carry the same normative and symbolic weight as genocide. Genocide is widely seen as the "crime of crimes," a unique legal and moral category that invokes universal condemnation and mandates specific obligations for prevention and punishment under international law.[11]

This differentiation creates an inconsistency in international criminal law, particularly in assigning moral blame and facilitating reparative justice. Victims of politically motivated mass violence may be denied the legal recognition and stigma attached to genocide, leading to disparities in reparations, memorialization, and transitional justice processes. As Cassese[12] notes, this divergence undermines the moral foundation of international criminal law by privileging certain victims over others.

Critics such as Benjamin Whitaker, in his 1985 *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide* for the United Nations Sub-Commission on Human Rights, argued that the exclusion of political groups is "morally and legally indefensible" and recommended its reconsideration. Unfortunately, to date, efforts to amend the Genocide Convention to include political groups have failed, despite occasional support from legal scholars and human rights bodies.[13]

Thus, as a result, the exclusion of political groups from the genocide definition not only has consequences, but also symbolic and reparative consequences. It deteriorates deterrence, leaves victims unacknowledged under the required highest standard of international criminal law, and reflects political negotiation rather than rational legal principle.

POLITICAL IDENTITY AS A GENOCIDAL TARGET

Modern political identity can carry the same existential threat as ethnicity or religion. In dictatorial regimes, political affiliation may determine access to resources, mobility, or survival. Legal precision requires a clear distinction between genocide and other international crimes. Under the 1948 Genocide Convention[14], genocide refers specifically to acts intended to destroy national, ethnic, racial, or religious groups, explicitly excluding political groups[15].

Systematic targeting of political groups frequently mirrors the destructive patterns of genocidal

[10] Schabas, W. A. note 1 (pp. 138-139)
[11] Schabas, W. A. (2012). *Unimaginable atrocities: Justice, politics, and rights at the war crimes tribunals*. Oxford University Press; Power, S. (2002). *A problem from hell: America and the age of genocide*. Basic Books.
[12] Cassese, A. (2003). *International criminal law*. Oxford University Press
[13] Lippman, M. (1984). The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty years later. *Temple International & Comparative Law Journal*, 15(1), 1–58; LeBlanc. Note 4
[14] United Nations. (1948). *Convention on the Prevention and Punishment of the Crime of Genocide*. Retrieved from https://www.un.org/en/genocideprevention
[15] United Nations. (1948). *Convention on the Prevention and Punishment of the Crime of Genocide*. Retrieved from https://www.un.org/en/genocideprevention

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violence. The Cambodian killings under the Khmer Rouge, for instance, were largely ideologically motivated and resulted in the deaths of nearly two million people, yet were prosecuted as crimes against humanity due to the legal exclusion of political groups from genocide law.[16] On the contrary, the Rwandan genocide, though primarily framed in ethnic terms, also reflected deep political tensions and affiliations that shaped the violence[17].

While these cases underscore the importance of preserving legal clarity, they also demonstrate how political identity can function as a basis for mass extermination. Recognising this convergence is crucial for advocating future doctrinal reforms and ensuring that international criminal law reflects the full complexity of identity-based persecution.

GLOBAL EXAMPLES OF PERSECUTION OF POLITICAL GROUPS

This section highlights specific examples from Africa and other continents where political groups or followers of political parties have been systematically persecuted, tortured, or subjected to inhumane treatment, suggesting genocidal intent or crimes against humanity. The selection criteria for the case studies is based on global reflection, touching several continents to show that the problem is not just regional, but global, recalling the need to reconsider the inclusion of political groups in the international protection.

In Tanzania, during the one-party rule period under the Tanganyika African National Union (TANU) and later the Chama Cha Mapinduzi (CCM), opposition political expression was severely constrained. While mass killings were not officially documented, political dissidents were frequently detained without trial, especially in the years following the 1964 Zanzibar Revolution. Reports of inhumane treatment in detention, political surveillance, and harassment were common.

In recent elections, too, similar scenarios are seen and reported. Leaders of opposition political parties are being arrested, detained with no or delayed prosecution, and/or being charged with serious offences that they did not commit. Following the 2020 general elections, Tanzanian authorities were reported to have engaged in unlawful killings and torture of opposition members.[18]

The recent political climate in Tanzania illustrates the vulnerability of political groups to state-sponsored persecution. The systematic targeting of opposition parties, particularly CHADEMA members, through arrests, enforced disappearances, and disqualification from elections highlights the pressing need to expand international legal protections to include political affiliations.[19] Such inclusion would acknowledge the multifaceted nature of modern persecutions and strengthen mechanisms to prevent and respond to politically motivated killings and persecutions.[20]

In Zimbabwe, the Gukurahundi massacres (1983–1987) under Robert Mugabe's regime involved mass killings and torture of civilians in Matabeleland, where the population was associated with the Zimbabwe African People's Union (ZAPU), most of whom were primarily from the Ndebele ethnic group. An estimated 20,000 people were killed by the Fifth Brigade, a unit loyal to Mugabe's ZANU-PF. The targeting of civilians based on perceived political allegiance shows clear elements of politically motivated killing crimes.[21]

[16] Schabas W. note 1

[17] Totten, S., & Parsons, W. S. (Eds.). (2012). *Centuries of Genocide: Essays and Eyewitness Accounts* (4th ed.). Routledge

[18] Amnesty International. (2020). Tanzania: Killings, arbitrary detention and torture of opposition members in aftermath of elections.

[19] Agenzia Fides. (2024, December 2). *AFRICA/TANZANIA – Arbitrary arrests and disappearances of opposition figures are worrying*. Retrieved from https://www.fides.org/en/news/75740- AFRICA_TANZANIA_Arbitrary_arrests_and_disappearances_of_opposition_figures_are_worrying

[20] AP News, 2025; Al Jazeera, 2024; Fides, 2024; Financial Times, 2024

[21] Genocide Watch. (n.d.). Genocide Watch Country Report: Zimbabwe (://www.genocidewatch.com/single-post/genocide-watch-country-report-zimbabwe)

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In Chile, under Augusto Pinochet's military dictatorship (1973–1990), thousands of left-wing activists (more than 35,000) primarily aligned with the Socialist Party and Communist Party were tortured, executed, or disappeared for political reasons, during the military rule's repression.[22]

In China, since 1999, members of the banned Falun Gong spiritual group and perceived political dissidents continue to face systemic persecution, arbitrary detention, and reports of organ harvesting, particularly under the guise of "re-education" and national security.[23]

In Myanmar, the military government has violently suppressed political opposition, especially followers of the National League for Democracy (NLD). The February 2021 coup and subsequent crackdowns have led to thousands of deaths, arrests, and acts of torture.[24]

In Iran, the 1988 mass executions of political prisoners, mostly leftist activists and members of the People's Mujahedin of Iran (MEK), resulted in the death of thousands, with many tortured before execution. However, this has been recognised as crime against humanity.[25]

In Russia, political repression has intensified, with opposition leaders like Alexei Navalny facing imprisonment under harsh conditions, and other activists subjected to poisonings, disappearances, and extrajudicial killings, as reports show increasing political persecution and torture against detained opposition members.[26]

In Venezuela, under Nicolás Maduro's regime, members of opposition parties have reported arbitrary arrests, torture, and extrajudicial killings by state security forces, targeting those affiliated with the Democratic Unity Roundtable and other dissenting voices.[27]

The ongoing conflict in the Democratic Republic of Congo (DRC) demonstrates how mass violence can stem from intertwined political and ethnic motivations. Armed groups such as the M23 have been accused of committing killings against civilians in regions considered politically marginalised or hostile to the central government.[28] Although ethnic tensions contribute to the conflict, the root causes include political marginalisation, militarised opposition to state authority, and foreign-backed power struggles, particularly involving Rwanda's alleged support for rebel movements[29].

These cases illustrate the inadequacy of a genocide definition that excludes political groups, as political identity can be a decisive factor in targeting communities for destruction. They underscore that political identity often serves as a key determinant in state-led repression, and in several instances, the scale and intent approach what could be classified as genocide if political groups were legally recognised under the Genocide Convention.

COMPARATIVE JURISPRUDENCE AND EXPANDING LEGAL NORMS

While the international legal definition of genocide remains narrowly constrained under the 1948 Genocide Convention, several domestic legal systems have adopted more expansive interpretations that include political groups. This

22 Ulster University. (2015). *Truth-justice-reparations interaction effects in transitional justice practice: The case of the 'Valech Commission' in Chile*. Retrieved from https://pure.ulster.ac.uk/files/11518683/Valech%20TJ%20rep%20paper%20FINAL%20FINAL%20dec%202015.pdf Ulster University

23 https://en.wikipedia.org/wiki/Persecution_of_Falun_Gong

24 Human Rights Watch. (2024). World Report 2024: Myanmar. Retrieved from https://www.hrw.org/world-report/2024/country-chapters/myanmar

25 Human Rights Watch, 2022, Retrieved from https://www.hrw.org/news/2022/06/08/irans-1988-mass-executions

26 https://www.amnesty.org/en/location/europe-and-central-asia/eastern-europe-and-central-asia/russia/report-russia/

27 https://www.hrw.org/news/2017/11/29/venezuela systematic-abuses-opponents

28 Human Rights Watch, 2023 retrieved from https://www.hrw.org/news/2023/10/25/dr-congo-war-crimes-m23-rebels

29 United Nations Security Council, 2023, retrieved from https://www.hrw.org/news/2023/10/25/dr-congo-war-crimes-m23-rebels

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deviation illustrates an evolving normative trend toward recognising political identity as a potential basis for genocidal targeting, despite its exclusion from international instruments.

For instance, the 2012 proposed draft *Rwandan Penal Code* contained a definition of genocide more broadly than the Genocide Convention, explicitly including political groups among the protected categories. However, such a broad definition was removed at the final publication of the Act and retained the International legal definition.[30] Similarly, Ethiopia's *Criminal Code of the Federal Democratic Republic of Ethiopia (2005)* criminalises acts of genocide against "a nation, nationality, race, ethnic, religious or political group," signalling a domestic commitment to broader protective measures.[31]

RWANDA'S RETRACTION OF POLITICAL GROUP INCLUSION

Expanding the definition could have sparked contentious historical narratives or politicised post-genocide governance. Legally, it avoids conflicts with international treaty obligations, particularly the *Vienna Convention on the Law of Treaties*[32], which bars using domestic law to justify treaty non-compliance. As Schabas[33] explains, while perception-based interpretations may broaden group identity under international law, formal expansion requires broad consensus and must balance clarity with adaptability. However, the initial inclusion of political groups in the definition of genocide in the draft penal code shows recognition of the definitional gap in the Genocide Convention.

The inclusion of political groups in the Ethiopian criminal law makes the definition of genocide and the scope of possible victims wider than the definition of genocide under international law. These statutory innovations reflect both historical trauma and deliberate legal evolution in response to the unique patterns of political violence experienced in those countries.

This comparative approach challenges the fixed boundaries of international law and invites debate over the possibility of dynamic interpretation. The International Criminal Tribunal for Rwanda (ICTR), in *Prosecutor v. Akayesu* (ICTR-96-4), notably recognised that group membership can be based on the *perception of the perpetrator*, rather than on objectively verifiable criteria. This interpretive move allows for the possibility that politically targeted groups, if perceived by perpetrators as cohesive and existentially threatening, could in theory be paralleled to the four protected groups under the Genocide Convention.[34]

Scholars such as William A. Schabas have discussed the normative and legal tensions surrounding this potential expansion. While he acknowledges that perception-based criteria might widen the conceptual boundaries of group identity, he also warns that overexpansion could weaken the moral and legal specificity that gives genocide its distinct standing in international law.[35] Other commentators, such as Stanton,[36] argue that inflexibility in the definition fails to capture evolving patterns of mass violence, particularly in authoritarian and conflict-prone states where political extermination is systematic.

This scholarly and comparative debate raises important questions about legal pluralism, treaty interpretation, and the evolution of customary international law. If a sufficient number of jurisdictions continue to include political groups in domestic genocide legislation, and these statutes are applied in good faith, it could contribute to a shift in customary norms. However, the risk of legal fragmentation and conceptual inflation remains a cautionary note

[30] Republic of Rwanda. (2012). *Organic Law instituting the Penal Code*, Official Gazette No. Special of 14/06/2012, Article 269
[31] Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 (2005).
[32] Vienna Convention on the Law of Treaties, May 23, 1969, United Nations, Treaty Series, vol. 1155, p. 331.
[33] Schabas W.A. Note 1
[34] International Criminal Tribunal for Rwanda. (1998). *Prosecutor v. Akayesu* (Case No. ICTR-96-4).
[35] Schabas, W. A. Note 1 (paras. 512–516)
[36] Stanton, G. H. (2004). The 8 stages of genocide. *Journal of International Affairs*, 2(1), 1–10.

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against speedily redefining genocide without broad international consensus.

CAPITALIZING ON THE CRIMES AGAINST HUMANITY FRAMEWORK

Until the definition of genocide is formally expanded or interpreted to include political groups, international accountability for politically motivated mass violence must be pursued through existing legal frameworks, notably, the crimes against humanity provisions under the Rome Statute of the International Criminal Court (1998). Article 7 of the Statute defines crimes against humanity as acts such as murder, extermination, torture, enforced disappearance, and persecution, committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack. Specifically, Article 7(1)(h) explicitly includes persecution on political grounds, offering a vital prosecutorial avenue for acts excluded from the narrower genocide framework.[37]

This legal category explicitly includes persecution against political groups under Article 7(1)(h), offering a vital mechanism for prosecuting state and non-state actors responsible for political repression and mass violence. Numerous killings historically classified as genocide in public discourse, such as those in Cambodia under the Khmer Rouge, and partially rooted in political targeting, were at least adjudicated under crimes against humanity provisions due to definitional limitations in genocide law. Despite the comparable gravity and structure of such crimes, the absence of the "genocide" label has profound implications, not just legally, but symbolically. Genocide carries an unparalleled normative weight in international law, often referred to as the “crime of crimes,” and this hierarchy influences everything from prosecutorial priorities to the reparative outcomes available to victims.

The disparity between how genocide and crimes against humanity are perceived and prosecuted can lead to unequal access to reparations, recognition, and memorialisation. Victims of political persecution may experience similar levels of suffering and loss, yet receive less international visibility, diplomatic engagement, or transitional justice support due to the absence of the genocide designation. As Cassese[38] and others have noted, this symbolic hierarchy risks undermining the moral coherence of international criminal law by creating a perceived hierarchy of victims.

Legal practitioners, civil society, and scholars should increasingly influence this framework not only to pursue accountability, but also to raise awareness about the moral equivalency between genocide and systematic political killings. The absence of the "genocide" label should not obscure the seriousness of such crimes or minimise their impact on affected populations.

Strategic litigation, public education, and policy advocacy should collectively aim to reduce the symbolic disparity between genocide and other killing-related crimes. While genocide remains the “crime of crimes” in symbolic and legal rhetoric, politically motivated crimes against humanity often involve comparable levels of intent, coordination, and impact. Bridging this perception gap may create greater momentum for eventual doctrinal reform and reinforce the essential elements of prevention and justice. Through strategic litigation, public education, and norm-building efforts, the international community can begin to reduce the symbolic disparity between genocide and comparable forms of mass violence.

Bridging this perception gap is essential not only for justice and victim dignity, but also for building momentum toward long-term doctrinal reform. Process for Reform Efforts to address the exclusion of political groups from the definition of genocide face complex legal and political challenges. Two primary paths exist: formal amendment of the Genocide Convention and judicial interpretation through evolving jurisprudence. While the latter offers flexibility, it

[37] Rome Statute of the International Criminal Court (1998).

[38] Cassese, A. (2008). *International Criminal Law* (2nd ed.). Oxford University Press

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risks being perceived as judicial overreach, particularly when exercised by institutions like the ICC. Such activism may undermine the Court's credibility, provoke state resistance, and weaken cooperation. As Cryer et al.[39] explain, international criminal courts must balance legal development with judicial restraint to preserve legitimacy and effectiveness.

FORMAL AMENDMENT OF THE GENOCIDE CONVENTION

A formal amendment to the Convention on the Prevention and Punishment of the Crime of Genocide (1948) would offer a definitive and uniform solution by explicitly including political groups among the protected categories. Article XIII of the Convention permits amendments, stating that any contracting party may propose an amendment, which must then be adopted by a two-thirds majority of parties and ratified by the same. However, this process is politically hard and historically inert. Since its adoption, no substantive amendments have been made, and past reform proposals, such as those raised by Benjamin Whitaker in his 1985 UN report, have not gained the requisite diplomatic traction.[40] This might be because of the absence of political will from the member states, fearing that they would be victims of the amendment.

Despite these challenges, a formal amendment would promote doctrinal consistency and better reflect the realities of contemporary mass violence, in which political affiliation is often a primary marker of the target population. It would also help align domestic practices, such as those seen in Rwanda and Ethiopia, with international norms. As LeBlanc[41] notes, however, any attempt at amendment must overcome the well-established interests of powerful states that have historically opposed broadening the definition.

JUDICIAL INTERPRETATION (JUDICIAL ACTIVISM)

Absent formal amendment, a more feasible yet controversial approach lies in judicial interpretation. International tribunals, particularly the International Criminal Court (ICC), may gradually interpret the existing treaty framework to accommodate acts committed against political groups, where such identity is linked to ethnicity, nationality, or religion. This approach is a turning point on the conceptual flexibility recognised in *Prosecutor v. Akayesu* (ICTR-96-4), where the ICTR held that group identity could be based on *perception by the perpetrator*, rather than on formal or legal categorisation.[42]

This interpretive opening, while not sufficient to redefine genocide, creates space to recognise the functional equivalence between political and ethnic targeting in specific contexts. For example, the ICC's evolving jurisprudence under Article 21 of the *Rome Statute*, which permits the Court to apply international law and general principles consistent with the Rome Statute, may allow for a dynamic reading of protected groups, especially in mixed-identity contexts where political, ethnic, and religious categories are blurred.[43]

While judicial activism carries the risk of legal uncertainty and charges of overreach, it also allows courts to uphold the principle of 'effectiveness' in treaty interpretation under Article 31 of the *Vienna Convention on the Law of Treaties* (1969). As the nature of mass killings evolves, a context-sensitive interpretation that acknowledges political identity in genocidal acts may enhance both the moral authority and practical relevance of international criminal law.

POLICY RECOMMENDATIONS AND CONCLUSION

The exclusion of political groups from the definition of genocide under international law is a

[39] Cryer, R., Friman, H., Robinson, D., & Wilmshurst, E. (2019). *An introduction to international criminal law and procedure* (4th ed.). Cambridge University Press.
[40] Whitaker, B. (1985). *Revised and updated report on the question of the prevention and punishment of the crime of genocide* (E/CN.4/Sub.2/1985/6). United Nations
[41] Lesblanc, Note 2
[42] ICTR, 1998, paras. 512–516).
[43] Cassese, A. (2003). *International criminal law*. Oxford University Press

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vestige of Cold War-era geopolitical compromises rather than a reflection of principled legal reasoning. As identity-based violence in modern conflicts increasingly targets political affiliation alongside or in place of ethnicity, race, or religion, the international legal framework must evolve to reflect these complex realities. The doctrinal rigidity of the current definition undermines both the universality of human rights protections and the effectiveness of international criminal accountability mechanisms.

To address this normative gap, future reform efforts should pursue both legal innovation and policy-based initiatives that strengthen recognition of and protections for political minorities. These may include:

- **Encouraging proactive engagement by international institutions**: The International Criminal Court (ICC) and other international bodies should be encouraged to issue formal statements of concern or *amicus* interventions when political groups are subject to systematic violence that mirrors the structure and intent of genocidal acts. This form of *soft law* pressure may shape normative expectations and highlight legal ambiguities.
- **Promoting regional human rights instruments and mechanisms:** Regional courts and treaties, such as the African Charter on Human and Peoples' Rights or the Inter-American system, should be leveraged to explicitly recognise politically motivated killings and persecution as violations of fundamental rights. This can create normative precedents and contribute to customary international law development.
- **Supporting scholarly, civil society, and policy dialogue**: Academic and civil society organisations should continue to challenge the doctrinal limitations of the Genocide Convention by reframing discussions around inclusive interpretations of group identity. This discourse can gradually shift policy and judicial attitudes, fostering an environment conducive to interpretive or formal legal reform.

Modern persecutions and killings, such as those in Cambodia, Iraq, and Myanmar, demonstrate that the dividing lines between ethnicity, religion, and political identity are often leaky. When political affiliation becomes a marker of existential threat in the eyes of perpetrators, the moral and material consequences are indistinguishable from acts of genocide as currently defined. However, victims of political persecution are denied the legal recognition and international solidarity associated with genocide prosecutions.

This disconnection reflects a legalistic tightness that contradicts the lived experience of targeted political groups, especially in regimes where dissent is treated as treason and opposition is criminalised. Strengthening global protection mechanisms will require a legal re-examination of the definition of genocide, one that integrates the right to political participation, freedom of association, and protection against politically motivated torture, disappearances, and killings.

Thus, to conclude, genocide law must reclaim its moral universality by acknowledging the full range of identity-based violence in modern political life. Recognising and protecting political groups is not only a matter of doctrinal integrity, it is a requirement for justice, human dignity, and the credibility of international criminal law.

REFERENCES

Agenzia Fides. (2024, December 2). *AFRICA/TANZANIA – Arbitrary arrests and disappearances of opposition figures are worrying*. Retrieved from https://www.fides.org/en/news/75740- AFRICA_TANZANIA_Arbitrary_arrests_and_disappearances_of_opposition_figures_are_worrying

Al Jazeera. (2024, August 12). *Tanzania clamps down on opposition rally, arrests leaders*. Retrieved from https://www.aljazeera.com/news/2024/8/12/tanzania-clamps-down-on-opposition-rally-arrests-leaders

Article DOI: https://doi.org/10.37284/eajle.8.1.3369

Amnesty International. (2020). *Tanzania: Killings, arbitrary detention and torture of opposition members in aftermath of elections*. Retrieved from https://www.amnesty.org/en/latest/press-release/2020/11/tanzania-killings-arbitrary-detention-and-torture-of-opposition-members-in-aftermath-of-elections/

AP News. (2025, April 25). *Tanzania arrests 2 senior opposition officials ahead of their party leader's treason trial*. Retrieved from https://apnews.com/article/cb80a2d36eb278907df4a99e56d2fe55

Cassese, A. (2003). *International criminal law*. Oxford University Press.

Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 (2005).

Cryer, R., Friman, H., Robinson, D., & Wilmshurst, E. (2019). *An introduction to international criminal law and procedure* (4th ed.). Cambridge University Press.

Fein, H. (1993). *Genocide: A sociological perspective*. SAGE Publications.

Financial Times. (2024, September 30). *Killing of opposition politician in Tanzania casts shadow over upcoming elections*. Retrieved from https://www.ft.com/content/ab6e17dc-2384-4f23-99ff-79d4f7cbc87a

Genocide Watch. (n.d.). *Genocide Watch Country Report: Zimbabwe*. Retrieved from https://www.genocidewatch.com/single-post/genocide-watch-country-report-zimbabwe

Greenawalt, A. K. (1999). Rethinking genocidal intent: The case for a knowledge-based interpretation. *Columbia Law Review, 99*(8), 2259–2294. https://doi.org/10.2307/1123452

Human Rights Watch. (2017). *Venezuela: Systematic abuses of opponents*. Retrieved from https://www.hrw.org/news/2017/11/29/venezuela-systematic-abuses-opponents

Human Rights Watch. (2022). *Iran's 1988 mass executions*. Retrieved from https://www.hrw.org/news/2022/06/08/irans-1988-mass-executions

Human Rights Watch. (2023). *DR Congo: War crimes by M23 rebels*. Retrieved from https://www.hrw.org/news/2023/10/25/dr-congo-war-crimes-m23-rebels

Human Rights Watch. (2024). *World Report 2024: Myanmar*. Retrieved from https://www.hrw.org/world-report/2024/country-chapters/myanmar

International Criminal Court. (1998). *Rome Statute of the International Criminal Court*. Retrieved from https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf

International Criminal Tribunal for Rwanda. (1998). *Prosecutor v. Akayesu* (Case No. ICTR-96-4). Judgment.

International Criminal Tribunal for Rwanda. (1998). *Prosecutor v. Kambanda* (Case No. ICTR-97-23). Judgment.

LeBlanc, L. J. (1991). *The United Nations Genocide Convention: A commentary*. Transnational Publishers.

Lippman, M. (1984). The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty years later. *Temple International & Comparative Law Journal, 15*(1), 1–58.

Power, S. (2002). *A problem from hell: America and the age of genocide*. Basic Books.

Republic of Rwanda. (2012). *Organic Law instituting the Penal Code*, Official Gazette No. Special of 14/06/2012, Article 269.

Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3. Retrieved from https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf

Schabas, W. A. (2000). *Genocide in international law: The crime of crimes*. Cambridge University Press.

Article DOI: https://doi.org/10.37284/eajle.8.1.3369

Schabas, W. A. (2009). *Genocide in international law: The crimes of crimes* (2nd ed.). Cambridge University Press.

Schabas, W. A. (2012). *Unimaginable atrocities: Justice, politics, and rights at the war crimes tribunals*. Oxford University Press.

Stanton, G. H. (2004). The 8 stages of genocide. *Journal of International Affairs, 2*(1), 1–10.

Totten, S., & Parsons, W. S. (Eds.). (2012). *Centuries of genocide: Essays and eyewitness accounts* (4th ed.). Routledge.

Ulster University. (2015). *Truth-justice-reparations interaction effects in transitional justice practice: The case of the 'Valech Commission' in Chile*. Retrieved from https://pure.ulster.ac.uk/files/11518683/Valech%20TJ%20rep%20paper%20FINAL%20FINAL%20dec%202015.pdf

United Nations. (1948). *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277. Retrieved from https://www.un.org/en/genocideprevention

United Nations. (1969). *Vienna Convention on the Law of Treaties*, 1155 U.N.T.S. 331.

United Nations Security Council. (2023). *Final report of the Group of Experts on the Democratic Republic of the Congo (S/2023/754)*. Retrieved from https://www.undocs.org/Home/Mobile?FinalSymbol=S%2F2023%2F754

Whitaker, B. (1985). *Revised and updated report on the question of the prevention and punishment of the crime of genocide* (E/CN.4/Sub.2/1985/6). United Nations.

Wikipedia. (n.d.). *Human rights abuses in Chile under Augusto Pinochet*. Retrieved from https://en.wikipedia.org/wiki/Human_rights_abuses_in_Chile_under_Augusto_Pinochet

