National Prosecution of International Crimes: Legislation and Cases

France, Universal Jurisdiction and Rwandan génocidaires

The Simbikangwa Trial

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Abstract

In 2014, 20 years after the Rwandan genocide, the first trial took place in France of a Rwandan génocidaire, Pascal Simbikangwa, despite the presence on French territory of a number of genocide suspects for many years, various extradition requests by Rwanda — declined by France — and numerous arrests and investigations. This article looks at questions surrounding jurisdiction in the Simbikangwa case and the reasons why the French courts heard this case. The article examines some issues that may hold significance in the future for the choice of arena in bringing to justice those suspects of the Rwandan genocide living in France.

1. Introduction

On 14 March 2014, Pascal Simbikangwa was found guilty by the Cour d’assises in Paris for the part he played in the Rwandan genocide nearly 20 years earlier, when approximately 800,000 Rwandan citizens, mostly Tutsis or moderate Hutus, were massacred by the Hutu majority during a ruthless demonstration of ethnic cleansing. On trial for complicity in genocide as well as in crimes against humanity, Simbikangwa, former head of the Rwandan Service central de renseignement, the Central Intelligence Services in Rwanda, and captain of the presidential guard, was convicted and sentenced to 25 years in prison. His was no ‘ordinary’ crime, but the lengthy delay in bringing Simbikangwa to justice was not due to lack of evidence or inability to track him down.

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1 Simbikangwa was initially charged with complicity to commit genocide and complicity to commit crimes against humanity, but during the course of the trial, the avocat général (assistant public prosecutor) requested that charges should be upgraded to include genocide and not only complicity. See ‘Premier procès lié au génocide rwandais: perpétuité requise contre l’accusé’, Le Monde, 12 March 2014.
Simbikangwa had been arrested in October 2008 on the French island of Mayotte,2 and remanded in custody on Réunion Island in April 2009, and transferred to Fresnes prison in the south of Paris, in mainland France some months later.3 He remained at Fresnes until his trial in 2014. His trial was also no ‘ordinary’ trial, marking the first complete trial of a suspect in the Rwandan genocide by a French court. This is despite the presence of a number of suspected génocidaires currently living in France and a number of similar trials of génocidaires in other countries, in Europe and beyond.4 This article examines how Simbikangwa came before the French courts and the significance of the Simbikangwa trial in France in bringing to justice those Rwandans living in France, who are suspected of committing the ‘crime of crimes’, a term commonly used to describe genocide since the Nuremberg trials.

2. Arrest and Investigation

The journey which was to bring Simbikangwa before the French courts began when he fled Rwanda in July 1995, after the genocide. Simbikangwa was a paraplegic, confined to a wheelchair, following a car accident in which he was involved as a young man in 1986.5 His first destination was Goma in the Democratic Republic of the Congo (formerly Zaire), and thereafter he travelled to east Africa in October 1996, then to the Comoros Islands in 1998, where various catholic missions assisted him. Finally, in 2005, he obtained passage on a boat, alongside other illegal immigrants, to Mayotte, where he claimed asylum under the name of Safari Senyamuhara. Simbikangwa lived with an assumed name and false identity until his involvement in the production of false identity documents brought him to the attention of the local police in Mayotte in 2008.6 At that point, his real identity was revealed and it was discovered that he was wanted for offences related to genocide by the Rwandan authorities and was the subject of an Interpol red notice ‘to seek the location and arrest of a person wanted by a judicial jurisdiction or an international tribunal with a view to his/her extradition’.7 The Rwandan authorities in Kigali had classified Simbikangwa as a category one génocidaires, the category reserved for alleged

4 Germany, the Netherlands, Belgium, Norway, Sweden, Switzerland and Canada have all tried Rwandan genocide suspects.
5 Paris Cour d’assises, Judgment No. 13/0033, Pascal Senyamuhara Safari (alias Pascal Simbikangwa), 14 March 2014 (hereinafter ‘Cour d’assises, Judgment No. 13/0033’).
orchestrators and organizers of the genocide and crimes against humanity,\(^8\) as opposed to those with a more minor involvement, who occupied categories two to four. Category two offenders, for example, include perpetrators, conspirators or accomplices of homicide and assault causing death, where category three includes those responsible for serious assaults against the person, and category four, persons who committed offences against property. At the time these categories were established by Rwandan Organic Law No. 08/96, dated 30 August 1996, defendants under category one — and this category only — were liable for the death penalty if found guilty.\(^9\)

Once aware of his arrest, the Rwanda government requested Simbikangwa’s extradition from France to face justice in Rwanda. The French authorities refused the request in order to try him in Paris with respect to his false documents. Simbikangwa was sentenced to two years in Fresnes prison in 2012 for that crime.\(^10\) Thereafter, France sought to pursue the genocide charges domestically.

However, amongst all the signatories of the European Convention on Human Rights (ECHR), France has one of the worst reputations for violations of Article 5(3),\(^11\) which concerns unreasonable delays in bringing cases to court, and it has taken a considerable number of years to bring Simbikangwa to trial for the offences related to genocide. The Tomasi case is regularly used to demonstrate the delays in French justice. Corsican Félix Tomasi was arrested in Bastia in March 1983 on suspicion of involvement in an attack by an independence group in Corsica. He was released immediately after his trial in October 1988, five and a half years after his arrest, when he was found not guilty.\(^12\) Although Simbikangwa’s trial for falsifying identity documents was slightly less drawn out than the Tomasi trial, with three years of pre-trial detention, it

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8 Art. 2 Organic Law No. 08/96, 30 August 1996, on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990 states: ‘Persons accused of offences set out in Article 1 of this organic law and committed during the period between 1 October 1990 and 1994 shall, on the basis of their acts of participation, be classified into one of the following categories: Category 1: a) person whose criminal acts or whose acts of criminal participation place them among the planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a crime against humanity; b) persons who acted in positions of authority at the national, prefectural, communal, sector or cell level, or in a political party, or fostered such crimes; c) notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed; d) persons who committed acts of sexual torture’ (hereinafter ‘Organic Law’). See also V. Thalmann, ‘Rwandan Genocide Cases’, in A. Cassese et al. (eds), *Oxford Companion to International Criminal Justice* (Oxford University Press, 2009) 498.


11 Art. 5(3) ECHR reads: ‘Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.’

has taken French courts a similar length of time to bring Simbikangwa to trial for the counts related to genocide. Simbikangwa was arrested and detained on 28 October 2008 in Mayotte for the falsification of identity documents, officially remanded in custody for the genocide offences on 16 April 2009, and sentenced to 25 years in prison on 14 March 2014.13 following a trial which began on 4 February 2014.14 France had already received a warning about unreasonable delays in dealing with Rwandan cases in June 2004, when the European Court of Human Rights had unanimously decided that the French courts had violated the rights of Yvonne Mutimura, a victim, to be heard promptly. It had taken nine years to investigate the role in the genocide of Rwandan priest, Wenceslas Munyeshyaka, who was arrested in France in 1995 following a complaint by genocide survivors that he was complicit in torture and inhuman or degrading treatment during the genocide.15 Indeed, although he was officially charged with genocide offences and referred by the International Criminal Tribunal for Rwanda (ICTR) to France for prosecution in 2007,16 the investigation into Munyeshyaka was only completed in April 2015. Furthermore, a recent decision of the juge d'instruction (examining magistrate) investigating Munyeshyaka has ruled that there is no case to answer against him for the offences related to genocide. It remains to be seen whether this decision to not prosecute Munyeshyaka for the offences of genocide, rape as a crime against humanity, extermination as a crime against humanity and murder as a crime against humanity, as outlined on the ICTR indictment, which was drafted before the referral to France was agreed,17 will be appealed by the Fédération internationale des droits de l'homme (FIDH) and the Ligue des droits de l'homme (LDH).18

The investigation by the French authorities into Simbikangwa’s involvement in the genocide was finally completed in February 2013, and passed to the prosecutor’s department, in order for the charges to be finalized. April 2013 would mark the end of Simbikangwa’s fourth year in detention in France, and the maximum duration which the law allows detention of a suspect pre-trial

17 Indictment, Munyeshyaka (ICTR-05-87), 20 July 2005.
for a crime punishable by a custodial sentence exceeding 20 years and committed outside of France. Although these limits can be extended by up to eight months in exceptional circumstances — where the examining magistrate requires more time to complete the investigation and releasing the suspect could put property or members of the public at risk — it was becoming urgent to deal with Simbikangwa’s case.

Following the investigation of four years, which included four expeditions to Rwanda by the examining magistrates, Simbikangwa was formally indicted for complicity in genocide and complicity in crimes against humanity on 29 March 2013. This indictment covered the role he played in distributing weapons to the guards stationed at the roadblocks in Kigali and for giving them instructions and encouragement which led to the massacre of the Tutsis. Initially, he had been investigated in connection with, and indicted for, a number of other crimes as well — genocide through wilful attacks and attempts on life, crimes against humanity through wilful attacks and attempts on life, torture and barbarity — but, after having interviewed over 100 witnesses, the examining magistrates decided that they were unable to proceed with certain charges initially envisaged, notably relating to the massacre at Kesho Hill. The accounts of the witnesses were too ‘fragile’ to enable the examining magistrates to pursue Simbikangwa for the charges of genocide through wilful attacks and attempts on life and crimes against humanity through wilful attacks and attempts on life. The extent of Simbikangwa’s involvement in the massacre on Kesho Hill was at issue, where between 1400 and 1600 Tutsis were killed, having gathered there to seek refuge from their Hutu aggressors in the aftermath of the assassination of President Juvenal Habyarimana — the incident that set the genocide in motion. Witnesses denounced Simbikangwa as having been not only present on 8 April 1994,

20 Ibid.
21 FIDH and LDH, The Pascal Simbikangwa Case, supra note 13 at 6.
22 Cour d’assises, Judgment No. 13/0033.
23 See Paris Cour d’appel, Ordonnance de Requalification, de non-lieu partiel et de mise en accusation devant la Cour d’assises, Pascal Senyamuhara Safari (alias Pascal Simbikangwa) 29 March 2013. Simbikangwa was initially charged with ‘crimes de génocide (par des atteintes volontaires à la vie et tentatives, et des atteintes graves à l’intégrité physique ou psychique) et complicité de génocide (par des atteintes volontaires à la vie et tentatives, et des atteintes graves à l’intégrité physique ou psychique); crimes contre l’humanité (par des atteintes volontaires à la vie — meurtres/assassinats — et tentatives et autres actes inhumains); participation à un groupement formé ou à une entente établie en vue de la préparation caractérisée par un ou plusieurs faits matériels, de l’un des crimes définis par les articles 211-1, 212-1 et 212-2 du code pénal, actes de tortures et de barbarie’. Most of the provisions cited relate to definitions of genocide and crimes against humanity. The reclassification order is summarized in English in FIDH and LDH, The Pascal Simbikangwa Case, supra note 13 at 7, as follows: ‘for genocide through wilful attacks and attempts on life and wilful and grievous attacks on the physical integrity of persons and for complicity in genocide, for crimes against humanity through wilful attacks and attempts on life and other inhumane acts, for complicity in crimes against humanity, for participation in a group... or in an established agreement created to carry out genocide or crimes against humanity, and for acts of torture and barbarity’.
but also instrumental in the massacre that occurred on that day.\textsuperscript{24} Even prior to the genocide, Simbikangwa, who owned a property at Kesho, was feared as merciless and above the law by the Tutsi workforce he employed to look after his farm. The FIDH had already expressed serious concerns as to Simbikangwa’s violations of human rights and his reputation as a torturer.\textsuperscript{25} However, the Paris Cour d’appel found that there was insufficient evidence to try Simbikangwa for the events at Kesho Hill, so charges relating to the Kesho Hill massacre were removed from the indictment. Simbikangwa faced additional charges of torture under the 1984 Convention against Torture,\textsuperscript{26} and Articles 222-1 to 222-6 of the Code pénal,\textsuperscript{27} were also dropped, failing to satisfy the domestic statute of limitations, which prevents the prosecution of most crimes — the most serious offences including offences of torture — more than ten years after they have been committed.\textsuperscript{28} Thus, only charges for complicity in genocide and complicity in crimes against humanity remained on the indictment when Simbikangwa went to trial in 2014.

3. The Genocide Case and Issues of Jurisdiction

The offences had not been committed on French soil, were not against French nationals and the accused was not a French national — which does not satisfy the normal criteria where issues of jurisdiction are concerned, namely, territoriality or nationality. The Simbikangwa case is a classic illustration of the tensions at play when deciding jurisdiction, balancing claims of international tribunals, territorial states where the offences were committed and third party states, which commonly have a more tenuous connection with the

\textsuperscript{24} ‘On se souvient de Simbikangwa, premier Rwandais jugé en France pour génocide’, \textit{Jeune Afrique}, 31 January 2014.


\textsuperscript{26} Art. 2(1) Convention against Torture holds: ‘Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.’ This Convention was incorporated into French domestic law through Art. 689-2 Code de procédure pénale.

\textsuperscript{27} Art. 222-1 Code pénal holds that: ‘Le fait de soumettre une personne à des tortures ou à des actes de barbarie est puni de quinze ans de réclusion criminelle.’ This provision specifies: the fact of subjecting a person to torture or acts of barbarity carries a penalty of imprisonment for a term of 15 years (author’s own translation).

\textsuperscript{28} Art. 7 Code de procédure pénale states: ‘En matière de crime et sous réserve des dispositions de l’article 213-5 du code pénal, faction publique se prescrit par dix années révolues à compter du jour où le crime a été commis si, dans cet intervalle, il n’a été fait aucun acte d’instruction ou de poursuite.’ This provision specifies that in the case of serious crimes and subject to the provisions of article 213-5 of the Criminal Code, no action or proceedings shall be taken by the state more than ten years after the date on which the crime was committed if, during this time, no investigation or legal proceedings have been commenced.
accused and the offences. At first sight, a number of alternative routes would have been open to bring Simbikangwa to justice and various jurisdictions could have asserted their jurisdictional rights to try Simbikangwa.

A. Trial before the ICTR

It may have been the most logical solution for this case to be heard before the ICTR, established by the Security Council in Arusha, Tanzania, in 1995, to ‘prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighbouring States, between 1 January 1994 and 31 December 1994’. The ICTR had jurisdiction to deal with the Simbikangwa case. The issues of territoriality, that is, violations committed on the territory of Rwanda and neighbouring states, and temporality, namely, between 1 January 1994 and 31 December 1994, were satisfied, and the charges related to crimes of genocide and crimes against humanity, which could be dealt with under Articles 2 and 3 of the ICTR Statute. The ICTR also had primacy over states to deal with the genocide suspects. However, at the time of Simbikangwa’s arrest in Mayotte in 2008, the ICTR had already commenced its completion strategy, the Security Council, in August 2003: ‘Urging the ICTR to formalize a detailed strategy... to transfer cases involving intermediate- and lower-rank accused to competent national jurisdictions, as appropriate, including Rwanda, in order to allow the ICTR to achieve its objective of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (ICTR Completion Strategy)’. This was not going to prove the moment for the ICTR to open a new investigation. There had already been referrals of two cases to French jurisdiction, Wenceslas Munyeshyaka and Laurent Bucyibaruta, in 2007, even if their trials have yet to take place. The ICTR has also successfully transferred cases to the Rwandan courts: Jean Bosco Uwinkindi’s case was finally transferred to Rwanda in April 2012 and Bernard Munyagishali’s in July 2013. Despite the intention to conclude its work in 2010, five years on, in 2015, the ICTR has only just met its target of completing all its cases, concluding the hearing of the Butare appeal on 14

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30 Art. 1 ICTRSt.
31 Art. 8(2) ICTRSt states: ‘The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.’
December 2015, involving amongst others Pauline Nyiramasuhuko, who was the Minister for Family Welfare and the Advancement of Women at the time of the genocide. Nyiramasuhuko, who was appealing her sentence of imprisonment for life handed down in June 2011, is the first woman to be convicted of genocide by the ICTR as part of the Butare Group and is also the first woman to be convicted of genocidal rape, having been accused of inciting troops and militia to carry out rape during the genocide.34 Trying Simbikangwa before the ICTR or, rather, the United Nations Mechanism for International Criminal Tribunals (UNMICT), the temporary body established in 2010 to complete outstanding work on any trial or appeal proceedings of the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY), which were pending, could have been theoretically possible. The UNMICT was still operational in 2014. Indeed, in view of subsequent serious rifts and tensions between Rwanda and France, the UNMICT would certainly have provided a forum to bring Simbikangwa to justice with a little more serenity, on a neutral stage, than other options. However, this would have added to the difficulties the ICTR was already experiencing in completing its work and meeting the ever-receding deadlines by which to close its doors.

A further consideration is that the ICTR was only ever intended to try those with a leading role in the genocide, and certainly, before his trial in France commenced, the ICTR as well as the French authorities did not perceive Simbikangwa as one of the ‘big fish’ of the genocide, even if the Rwandan authorities had not held the same opinion. Simbikangwa was not on the list of fugitives to be tried by the ICTR. The UNMICT Statute gives the Mechanism the power to prosecute the accused indicted by the ICTR who are among the most senior leaders suspected of being most responsible for the crimes committed under Article 1(2), and to prosecute those who are not the most senior, such as Simbikangwa, but only after it has exhausted all reasonable efforts to refer the case to a state in whose territory the crime was committed, or in which the accused was arrested, or having jurisdiction and being willing and adequately prepared to accept such a case’, under Articles 1(3) and 6.35

B. The International Criminal Court

If the ICTR would not hear the Simbikangwa case, neither would the International Criminal Court (ICC). When Simbikangwa was arrested in 2008, the ICC was already in operation in The Hague. Its remit is to ‘exercise its jurisdiction over persons for the most serious crimes of international concern’.36 Article 5 of the ICC Statute specifies that: ‘The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) genocide,

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34 Judgment, Nyiramasuhuko et al. (ICTR-98-42-T), Trial Chamber, 24 June 2011, §§ 6186, 6200, 6271. See also Judgment, Nyiramasuhuko et al. (ICTR-98-42-A), Appeals Chamber, 14 December 2015.
35 Arts 1(2), 1(3), 6 UNMICT St.
36 Art. 1 ICCSt.
(b) crimes against humanity, (c) war crimes and (d) the crime of aggression. In terms of *ratione materiae*, the ICC had jurisdiction over the crimes that Simbikangwa was initially alleged to have committed in Rwanda: genocide through wilful attacks and attempts on life and crimes against humanity through wilful attacks and attempts on life. In addition, the ICC is empowered to initiate an investigation or prosecution into individuals, rather than states, in certain specific sets of circumstances: firstly, if situations are referred to the ICC by state parties, secondly, if the Security Council puts forward a request for investigation or prosecution; or thirdly, on the Court's own initiative, additional requirements being that, in the first and third situations cited, the reprehensible conduct must be committed on the territory of a state party or the accused must be a national of a state party. However, the jurisdiction of the ICC is founded on the principle of complementarity. This means that state parties have primary jurisdiction and the primary obligation to investigate, punish and prevent genocide, crimes against humanity, war crimes and the crime of aggression. The ICC will consider a case inadmissible if it has been, or is being, investigated or prosecuted by a state with jurisdiction. The ICC will only intervene if national courts are either unwilling or unable to bring perpetrators to justice, for example, in the event that national justice systems do not carry out proceedings or claim they to do so, but are not genuinely conducting proceedings. Rwanda is not a state party to the ICC Statute, but Article 12 allows for states not a party to accept the jurisdiction of the ICC. This possibility is not inconceivable as Rwanda had already requested the assistance of the United Nations in bringing the genocide suspects to justice, in 1994, at a time when, following the devastation of the genocide, the country lacked the infrastructure and manpower to do this itself. However, the ICC would not provide the arena for Simbikangwa's trial, as, although the ICC was established for precisely this kind of situation, on condition that Simbikangwa's actions had passed the gravity threshold outlined in Article 17, the ICC Statute states clearly that its jurisdiction is limited temporally: 'The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute', the entry into force being 1 July 2002, and thus, falling six years after the end of the genocide.

C. Extradition to Face Justice in Rwandan Courts

The third option would have been to extradite Simbikangwa to Rwanda, as requested by the Rwandan authorities in 2008. The French authorities flatly refused this request. Relationships between Rwanda and France had been strained. France had been accused by Rwandan President, Paul Kagame, of

37 Art. 5(1) ICCSt.
38 Art. 13 ICCSt.
39 Art. 12 ICCSt.
40 Art. 17 ICCSt.
41 Art. 11 ICCSt.
having played an active role in supporting the former Hutu government, even
training some of the forces which went on to commit the genocide,\(^\text{42}\) and
France had denied and refused to apologize for any wrongdoing.\(^\text{43}\) Tensions
had mounted to extreme limits by 2008, when Simbikangwa was arrested. In
1997, the daughter of the French co-pilot of President Habyarimana’s aero-
plane, Jean-Pierre Minaberry, one of three French crew members who perished
on board the aeroplane, filed a criminal complaint and sued for damages for
the acts of terrorism and complicity in acts of terrorism which had led to the
loss of her father, as is authorized by the Code de procédure pénale.\(^\text{44}\) As a
direct consequence, Jean-Louis Bruguière, France’s leading anti-terrorist
expert for more than 20 years, examining magistrate and vice-president of
the anti-terrorist unit at the Tribunal de grand instance in Paris, opened an in-
vestigation into President Kagame and nine of his officials, for deliberately
assassinating President Habyarimana in order to provoke the genocide against
his own ethnic group, with a view to taking power thereafter. Bruguière subse-
quently recommended the trial of Kagame by the ICTR for complicity in the
attack. On the basis of presidential immunity, Kagame could not be tried by
French courts, and in 2006, Bruguière requested the issuing of international
arrest warrants for the nine other officials, with the intention of trying them
in the French courts.\(^\text{45}\) The response from Kagame was to sever diplomatic rela-
tions with France, to prepare his counter-attack by initiating proceedings
before the International Court of Justice.\(^\text{46}\) Kagame went further and, in 2008,
released a report compiled by a commission of the Rwandan Justice Ministry,
which had been charged with gathering evidence into France’s implication in
the genocide, and which accused 13 French politicians, including former
President, François Mitterrand, of having prior knowledge of the genocide,
planning it and directly participating in it.\(^\text{47}\) Relations between France and
Rwanda were resumed late in 2009, but by this time, Rwanda had moved sev-
eral symbolic steps away from its francophone heritage, joining the
Commonwealth in November 2009 and turning towards the teaching of
English as a first foreign language in its schools rather than French. Promises
to drop Bruguière’s investigation and prosecute the genocide suspects in

\(^{42}\) Human Rights Watch, Rwanda, at 9.
\(^{43}\) O. Marsaud, ‘Le juge Bruguière démenti par l’un de ses témoins-clés’, RFI, 4 December 2006.
\(^{44}\) Art. 85 Code de procédure pénale reads: ‘Toute personne qui se prétend lésée par un crime ou
un délit peut en portant plainte se constituer partie civile devant le juge d’instruction
compétent.’ This provision holds that anyone who claims to have been the victim of a criminal
offence may, when filing a criminal complaint, bring a civil action before the appropriate exam-
ining magistrate.
\(^{45}\) Tribunal de grande instance de Paris, Cabinet de Jean-Louis Bruguière, Délivrance de mandats
d’arrestats internationaux, Ordonnance de soit-communiqué, 17 November 2006. See also V.
Thalmann, ‘French Justice’s Endeavours to Substitute for the ICTR’, 6 Journal of International
\(^{46}\) International Court of Justice Press Release, ‘The Republic of Rwanda applies to the
\(^{47}\) Ibid., at 2.
France were demanded of former President, Nicolas Sarkozy, but progress was slow.

Diplomatic issues aside, France, like other states, would have had immense difficulties extraditing Simbikangwa or other Rwandan genocide suspects to Rwanda for trial for fear of infringing their human rights. The death penalty had been in place in Rwanda until July 2007, and was in use until 1998, and was only abolished following a vote in the Rwandan parliament in June 2007, in which 96% of members of parliament voted in favour of abolition. It was hoped that this move would pave the way for states to extradite suspects back to Rwanda for trial, but states remained reticent to comply with Rwandan extradition requests. For instance, although the request for asylum from President Habyarimana’s widow, Agathe Habyarimana, was refused in 2009, on grounds of her potential involvement in the genocide, and she was arrested and questioned immediately following an official visit by Sarkozy to Rwanda in March 2009, France was unwilling to extradite her to Rwanda, preferring to pursue its own inquiries in France. The Paris Cour d’appel eventually formally refused Rwanda’s request for her extradition in 2011, concluding, in the words of Agathe Habyarimana’s lawyer maître Philippe Meilhac, that ‘les juges ont marqué le coup de façon cinglante vis-à-vis des demandes rwandaises, en soulignant que les faits reprochés sont décrits sans aucune précision et ne sont détaillés par aucun élément à charge et à décharge.’ The Court followed previous rulings by the Cour de cassation, which held that the Rwandan courts did not meet international standards and could not guarantee a fair trial, nor access to an independent judiciary.

The first countries to agree to requests to extradite genocide suspects to Rwanda — Norway and Sweden — did not do so until the example was set by the ICTR. In June 2011, the ICTR referred the Uwinkindi case from its jurisdiction to Rwanda for trial, acting under the terms of Rule 11bis of the Rules of

49 Rwanda last implemented the death penalty in 1998 when 22 accused, who had been found guilty of genocide related crimes, were put before a firing squad. J. Standley, ‘From butchery to executions in Rwanda’, BBC News, 27 April 1998.
50 ‘Rwanda scraps the death penalty’, BBC News, 8 June 2007.
53 ‘the judges made their point with a resounding response to the Rwandan request, emphasizing that the facts held against her were described with imprecision and accompanied by no supporting details either for the prosecution or the defence’ (author’s own translation). Maître Philippe Meilhac, quoted in Ibukabose, ‘Madame Agathe Habyarimana ne sera pas extradée au Rwanda’, Tribune Franco-Rwandaise, 30 September 2011.
54 Cour de cassation, Chambre criminelle, Audience publique, M. Claver X., 9 July 2008.
56 Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, Uwinkindi (ICTR-2001-75-r11bis) Referral Chamber, 28 June 2011.
Procedure and Evidence, which requires that the trial chamber must be satisfied that the accused will be assured of a fair trial in the state of transfer and not be subjected to the death penalty.\footnote{Rule 11bis Rules of Procedure and Evidence reads: ‘(A) If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State: (i) in whose territory the crime was committed; or (ii) in which the accused was arrested; or (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State. (C) In determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned and that the death penalty will not be imposed or carried out.’} Although Uwinkindi’s appeal against extradition was not heard until December 2011, when it was dismissed, confirmation that European states would not be violating genocide suspects’ human rights if they extradited them to Rwanda came in the form of a ruling by the European Court of Human Rights in October 2011, which upheld the 2009 decision of the Swedish courts to extradite Sylvère Ahorugeze and which the Rwandan had appealed.\footnote{Human Rights Watch, Rwanda, at 10. See Ahorugeze v. Sweden, No. 37075, 09 (2011) (hereinafter ‘Ahorugeze v. Sweden’).} This particular case demonstrates the difficulty of bringing genocide suspects to trial. Ahorugeze fled to Denmark in the immediate aftermath of the genocide. The subject of an Interpol red notice, he was arrested in 2006, formally charged with killing 25 Tutsis in a suburb of Kigali during the first day of the genocide and detained in custody. Denmark has no extradition agreement with Rwanda and could have heard Ahorugeze’s case itself as Danish law allows for trials of Rwandan genocide suspects who are resident in Denmark, but released him without trial in 2007 due to lack of evidence.\footnote{According to Section 3 Danish Extradition Act, a request for extradition may be denied if the evidence in support of the request is deemed insufficient. See Ahorugeze v. Sweden, supra note 58.} One year later, Ahorugeze was arrested again, this time in Sweden, after a visit to the Rwandan embassy in Stockholm in 2008. The Swedish government agreed to extradite him to Rwanda, but following his appeal of this decision to the European Court of Human Rights, Ahorugeze was released from custody whilst the Court considered his case, and he took advantage of the opportunity to return to Denmark, where he currently lives with his family. Any discussions regarding his extradition must now be made between Denmark and Rwanda. In the meantime, Ahorugeze remains at liberty.\footnote{TRIAL, Sylvère Ahorugeze, available online at http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/476/action/show/controller/Profile/tab/legal-procedure.html (visited 21 May 2015).}

In Simbikangwa’s case, considerations of human rights had been at the forefront. In November 2008, the Chambre d'instruction of the Tribunal supérieur d'appel in Mayotte had refused Rwanda’s request to extradite Simbikangwa for genocide (complicité et complot/complicity in genocide and conspiracy), crimes against humanity (assassination et extermination) and ‘ordinary crimes’ (association de malfaiteurs/criminal association) on grounds that the sentence he
would be likely to receive, although not the death sentence as it had been by that time been abolished, would be a life sentence with 20 years in solitary confinement, which was unacceptable for international, and French, norms. Furthermore, the Court accepted there were serious concerns whether Simbikangwa would receive a fair trial. Human Rights Watch had published a report in July 2008 questioning the impartiality of the Rwandan courts, highlighting the fact that ‘Judges remain subject...to pressure from members of the executive branch and other powerful persons. Basic fair trial rights are not fully assured, including the presumption of innocence, the right of equal access to justice, the right to present witnesses in one’s own defense, the right to humane conditions of detention, the right to freedom from torture, and the right to protection from double jeopardy.’

It was feared that the defence would have difficulty in bringing witnesses to court safely to testify in a country where, in the words of the Presiding Judge Jean-Claude Sarthou, ‘Certains prisonniers ont tendance à se retrouver avec une balle dans le dos s’ils tentent de s’enfuir.’ Simbikangwa’s lawyer, maître Sylvie Prat, also drew the Court’s attention to the appalling conditions of detention in Rwandan prisons, where over 100,000 suspects were detained awaiting trial, emphasizing that her client was a paraplegic who required special care for his medical conditions and was at risk of dying before reaching trial before a Rwandan court. In 2008, no Rwandan genocide suspects had been extradited from France to Rwanda. The sole occasion that a court had agreed to an extradition request, namely, the Cour d’appel in Chambéry, in the trial of Claver Kamana, the Cour de cassation had quashed the decision and subsequently referred the matter to the Cour d’appel in Lyon, which rejected the extradition request, reversing the initial ruling of the Chambéry Cour d’appel on grounds that the conviction of Kamana in absentia by the Rwandan courts amounted to inhuman and degrading treatment.

Over the course of the years, the Cour de cassation has reinforced this situation, also refusing to extradite genocide suspects to Rwanda for prosecution on the ground that genocide and crimes against humanity had not been treated inhumanely.

criminalized in Rwanda at the time of the events of 1994. For example, in the Muhayimana case, the extradition of the accused to Rwanda was approved by the Cour d'appel in Rouen in March 2012. The Court considered:

\[\text{que les conditions légales de l'extradition sont remplies, que les faits reprochés n'ont aucun caractère politique et sont de nature criminelle, que la prescription ne saurait être acquise et que les juridictions rwandaises sont en mesure d'assurer les garanties fondamentales de procédure et de protection des droits de la défense en conformité avec la conception française de l'ordre public international.}\]

This decision was quashed by the Cour de cassation in July 2012,\(^6\) which held that the Rouen court had not assured itself that Muhayimana's rights would be respected and sent the case to be heard before the Cour d'appel in Paris. This Court reached the same decision in November 2013 as the Rouen Cour d'appel had in March 2012. In other words, that the defendant would receive a fair trial in Rwanda. This decision was finally overturned once more by the Cour de cassation on 26 February 2014,\(^6\) on the grounds that Rwanda's request for extradition was based on laws which had not been in place at the time of the facts. Muhayimana could not be extradited for genocide charges, since genocide was not legally defined in the Rwandan Criminal Code at the time the offences were allegedly committed. Paul Bradfield, a member of the Defence team of Ildephonse Nizeyimana at the ICTR, finds the Cour de cassation ruling 'deeply perplexing, as it goes against established norms of international law, and the fact that many other jurisdictions have held the complete opposite — that Rwanda does have the legal competency to try crimes of genocide'.\(^7\)

Bradfield remarks that this may appear to be a 'classic case of nullum crimen sine lege... [which] holds that a criminal conviction can only be based upon a law which existed at the time the acts or omission with which the accused is charged were committed', but that, in fact, as Rwanda had, in 1975, adopted both the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the ICTR and numerous national jurisdictions considered that Rwanda had the requisite jurisdiction and legal competency to try crimes of genocide.

However, this is the path chosen by France with respect to Rwandan genocide suspects residing on its territory. Precisely at the time the Cour de cassation reached its decision in the Muhayimana case, the trial of Simbikangwa was underway in France, and Muhayimana was arrested in Rouen in April 2014.

\(^6\) ‘The legal conditions of extradition have been fulfilled, the facts of which he stands accused are not political in character but criminal, there is no issue of the limitation period expiring and the Rwandan courts are in a position to provide the essential guarantees concerning procedure and protection of the rights of the defence, in a manner which conforms to the French conception of public international law’ (author’s own translation). This quotation is cited in TRIAL, Claude Muhayimana, supra note 66.

\(^7\) Cour de cassation, Chambre criminelle, audience publique, M. Claude X, 11 July 2012.

\(^6\) Cour de cassation, Chambre criminelle, Judgment No. 810, M. X, 26 February 2014.

\(^7\) P. Bradfield, ‘France vs the rest of the world — who is right?’ Beyond the Hague, 3 March 2014.
to face genocide charges in France, shortly after the conclusion of Simbikangwa’s trial. Muhayimana was released a year later, in April 2015, but is currently awaiting trial at a future date.

To this date, an increasing number of national courts as well as the ICTR itself have approved the extradition of genocide suspects to Rwanda for trial, but as yet France has not done so. The signs indicate that there is little intention to change this situation in the immediate future.

D. Trial before the French Courts

Having refused to extradite Simbikangwa to Rwanda for trial, France then tried him in its national courts under the doctrine of universal jurisdiction, which allows states to claim criminal jurisdiction over an accused regardless of where the alleged offence was committed, or of the nationality or country of residence of the accused. As mentioned above, for the French courts to have jurisdiction, the offences concerned should normally have been committed on French soil, by a French citizen or against a French citizen. However, for the most serious violations of international law, generally considered as war crimes, crimes against humanity, genocide and torture, a state may exercise universal jurisdiction over crimes that are neither committed against it nor committed by, or against, its own nationals. In short, these crimes can be tried regardless of whether there is a connection between the offence and the territory of the prosecuting state or its citizens. It is the nature of the offences that creates universal disapproval. The philosophy behind universal jurisdiction holds that certain offences affect the international legal order as a whole, that serious violations of international law affect all states and peoples and that not all states address violations effectively. Consequently, international law endows all states with the right to prosecute international crimes.

Universal jurisdiction in France is defined in Articles 689 and 689-1 of the Code de procédure pénale. Article 689, created by Law No. 75-624 of 11 July 1975, and amended most recently by Law No. 2009-1503 of 8 December 2009, extended French jurisdiction to prosecute perpetrators or their accomplices of crimes committed outside French territory either when French law is applicable, under the provisions of first book of the Code pénal, any other domestic legislation, or when an international convention or decree in application of the treaty establishing the European Communities, provides jurisdiction to French courts. Legislation passed in France in 1996, Law No. 96-432 of 22

71 See TRIAL, Claude Muhayimana.
72 For example, the United States, Canada, Sweden, Norway, Denmark and the Netherlands. See M. Bolhuis, L. Middelkoop and J. van Wijk, ‘Refugee Exclusion and Extradition in the Netherlands’, 12 JICJ (2014) 1115, at 1117.
74 Art. 689 Code de procédure pénale, as amended, reads: ‘Les auteurs ou complices d’infractions commises hors du territoire de la République peuvent être poursuivis et jugés par les
May 1996, effectively transposed Security Council Resolution 955 into French law. This resolution created the ICTR and its Statute. Article 1 of Law No. 96-432 states that France will cooperate with the ICTR and participate in the repression of acts of genocide or other crimes against humanity committed in Rwanda or neighbouring states between 1 January 1994 and 31 December 1994. In addition, it makes specific reference to the prosecution of those crimes outlined in Articles 2–4 of the ICTR Statute, namely, genocide, crimes against humanity and violations of Common Article 3 of the Geneva Conventions and Additional Protocol II. Article 689 of the Code de procédure pénale and Law No. 96-432 enabled French courts, using the principle of universal jurisdiction, to try Simbikangwa for genocide and crimes against humanity under the ICTR Statute, on condition that he found himself on French territory. This outcome was envisaged by the ICTR Statute. Article 8 states that national courts as well as the ICTR shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda, and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994. Thus, French courts were able to apply the provisions of the ICTR Statute governing the crimes of genocide and crimes against humanity committed in Rwanda or by Rwandan citizens in neighbouring countries between 1 January 1994 and 31 December 1994 directly to a criminal trial held in France. This was assisted further by legislation enacted in 1964 that specified that crimes against humanity and genocide were not subject to any statute of limitations.77
Simbikangwa was indicted for complicity in genocide, under Article 2, and complicity in crimes against humanity, under Article 3, the allegations of torture being covered by the definition of crimes against humanity in Article 3(f) of the ICTR Statute.

Having invoked this legislation to try Simbikangwa, the courts then turned to Article 211-1 of the *Code pénal* for the definition of genocide as found in national law, the investigating judges arguing that, as sentencing was to be carried out under French law, it had to be linked to a crime covered by national law. This was a view not universally shared, and the FIDH has voiced the opinion that, if the crimes are charged under the ICTR Statute, then the broader definition of genocide in the ICTR Statute should apply. Article 211-1 came into effect in March 1994, with the provisions of the revised *Code pénal* and was drafted following a series of trials of high profile Nazi war criminals. Klaus Barbie, the butcher of Lyon, in 1987, Paul Touvier, head of the Lyon Milice and the first Frenchman to be convicted of crimes against humanity in 1994, and Maurice Papon, senior police official in Bordeaux, responsible for sending many Jews to their deaths in concentration camps, tried in 1998, but charged in 1992. The definition of genocide in Article 211-1 of the amended *Code pénal* came too late to be used to incriminate these criminals, who were charged with crimes against humanity instead, but was in force and could be used to prosecute Simbikangwa.

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78 Since the introduction of Law No. 92-683, which came into effect on 1 March 1994, as amended by Law No. 2004-800, 6 August 2004. Art. 211-1 *Code pénal* reads: ‘Constitue un génocide le fait, en exécution d’un plan concerté tendant à la destruction totale ou partielle d’un groupe national, ethnique, racial ou religieux, ou d’un groupe déterminé à partir de tout autre critère arbitraire, de commettre ou de faire commettre, à l’encontre de membres de ce groupe, l’un des actes suivants: atteinte volontaire à la vie; atteinte grave à l’intégrité physique ou psychique; soumission à des conditions d’existence de nature à entraîner la destruction totale ou partielle du groupe; mesures visant à entraver les naissances; transfert forcé d’enfants. Le génocide est puni de la réclusion criminelle à perpétuité.’ Genocide occurs where, in the enforcement of a concerted plan aimed at the partial or total destruction of a national, ethnic, racial or religious group, or of a group determined by any other arbitrary criterion, one of the following actions are committed or caused to be committed against members of that group: wilful attack on life; serious attack on psychological or physical integrity; subjection to living conditions likely to entail the partial or total destruction of that group; measures aimed at preventing births; and enforced child transfers. Genocide is punished by criminal imprisonment for life. (official translation) *Legifrance*, available online at http://www.legifrance.gouv.fr/Traductions/en-English/ Legifrance-translations (visited 22 October 2015).

79 FIDH and LDH, *The Pascal Simbikangwa Case*, supra note 13, at 8.

80 Ibid., at 9.

Under Article 689-1 of the *Code de procédure pénale*, any individual having committed, outside French territory, the crimes listed in paragraphs 2–13 of Article 689 may be tried in French courts, where this is provided for by specific international treaties, which are listed in the Code, on condition that the accused is present in France. The presence of the suspect within national territory when proceedings are initiated is a requirement and proceedings cannot be initiated in the absence of the suspect.\(^{82}\) The crimes listed include, amongst others, torture as defined by Article 1 of the Convention against Torture, as specified in Article 689-2,\(^{83}\) and crimes which fall under the jurisdiction of the ICC, as laid down by Article 689-11,\(^{84}\) effectively extending jurisdiction to cover genocide, war crimes and crimes against humanity as stipulated by the ICC Statute. The list is expanded regularly, with enforced disappearances being added by a new law passed in 2013.\(^{85}\) However, neither Article 689-2, nor Article 689-11, were used to prosecute Simbikangwa. As mentioned above, torture, as well as most other crimes, is subject to a ten-year statute of limitations in French law,\(^{86}\) and this time period had long since passed when Simbikangwa was arrested. With regard to crimes falling under the jurisdiction of the ICC, these could only be prosecuted if committed after the date Article 689-11 entered into force, namely, on 11 August 2010.

In order to ensure the effective prosecution of these and future crimes, a special *pôle génocide et crimes contre l’humanité* was created in 2012 at the *Tribunal de grande instance* in Paris to deal with crimes against humanity and war crimes in general.\(^{87}\) There are now three examining magistrates working full-time, two prosecutors and four specialized legal assistants in post, but their case load is not limited to Rwandan genocide suspects, also stretching to accusations of torture in Chad, chemical attacks in Baghdad and the victims who went missing from a Brazzaville beach in May 1999.\(^{88}\)

\(^{82}\) Art. 689-1 Code de procédure pénale reads: *En application des conventions internationales visées aux articles suivants, peut être poursuivie et jugée par les juridictions françaises, si elle se trouve en France, toute personne qui s’est rendue coupable hors du territoire de la République de l’une des infractions énumérées par ces articles. Les dispositions du présent article sont applicables à la tentative de ces infractions, chaque fois que celle-ci est punissable.* In application of the international conventions which are the subject of the following articles, any person guilty of having committed, outside of French territory, any of the offences listed in these articles may be prosecuted and tried by the French courts, if he or she is found to be in France. The provisions of this article are applicable to attempt to commit the offence whenever this is subject to punishment (author’s own translation).

\(^{83}\) Art. 689-2 Code de procédure pénale. This provision was created by Art. 30 Law No. 99-515, 23 June 1999.

\(^{84}\) Art. 689-11 Code de procédure pénale, created by Art. 8 Law No. 2010-930, 9 August 2010.

\(^{85}\) Art. 689-13, Code de procédure pénale, created by Art. 16 Law No. 2013-711, 5 August 2013.

\(^{86}\) Art. 7, Code de procédure pénale.


82 Art. 689-1 Code de procédure pénale reads: ‘En application des conventions internationales visées aux articles suivants, peut être poursuivie et jugée par les juridictions françaises, si elle se trouve en France, toute personne qui s’est rendue coupable hors du territoire de la République de l’une des infractions énumérées par ces articles. Les dispositions du présent article sont applicables à la tentative de ces infractions, chaque fois que celle-ci est punissable.’ In application of the international conventions which are the subject of the following articles, any person guilty of having committed, outside of French territory, any of the offences listed in these articles may be prosecuted and tried by the French courts, if he or she is found to be in France. The provisions of this article are applicable to attempt to commit the offence whenever this is subject to punishment (author’s own translation).

83 Art. 689-2 Code de procédure pénale. This provision was created by Art. 30 Law No. 99-515, 23 June 1999.

84 Art. 689-11 Code de procédure pénale, created by Art. 8 Law No. 2010-930, 9 August 2010.


86 Art. 7, Code de procédure pénale.


On 14 March 2014, after a trial in Paris lasting six weeks, Simbikangwa was found guilty of genocide, as opposed to complicity in genocide, the offence with which he was originally charged, and complicity in crimes against humanity for crimes committed in Kigali, notably for having supplied arms to the Interahamwe manning the barriers in Kigali and having encouraged them to kill the Tutsis — but he was acquitted of participation in crimes at the barriers in Gisenyi on grounds of inadequate evidence. Simbikangwa was sentenced to 25 years in prison. Simbikangwa has appealed the verdict and his appeal is due to be heard before the French courts in 2016.

4. French Courts: The Best Forum for génocidaires?

Are we witnessing the commencement of large-scale prosecutions of genocide suspects currently residing in France? At first sight, this could appear to be the case. At present, there are 27 Rwandan genocide suspects under investigation by the pôle génocide et crimes contre l’humanité, and certainly, there has been a flurry of activity since the Simbikangwa verdict in order to progress these cases. In addition, non-governmental organizations, including FIDH and the Collectif des parties civiles pour le Rwanda, play a strong role in bringing civil actions in France. This applies to not only the energy and determination such organizations have devoted to demanding that perpetrators are prosecuted, but also research they have conducted and shared with the pôle. While some suspects are still the subject of extradition spats between Rwanda and France, some appear to have inched closer to trial in France.

Claude Muhayimana, driver for a guesthouse, accused of having conveyed soldiers to execute Tutsis in Rwanda, was arrested in April 2014, indicted for genocide and is awaiting trial in France. Charles Twagira, a doctor based in a Rouen hospital and formerly regional health director in Kibuye, was placed under investigation by the French authorities for genocide and crimes against humanity immediately after the conclusion of Simbikangwa’s trial. Octavien Ngenzi, mayor of the Kabarondo district in the east of the country, and local leader of the former political party, the Mouvement républicain national pour la démocratie et le développement (MRND) and Tito Barahira, chairman of MRND were indicted in France, on 30 May 2014, for genocide and crimes against humanity in Rwanda, the indictment confirmed on appeal on 28 January 2015. Innocent Musabyimana has not yet been indicted, but the prosecution strongly advocated his extradition to Rwanda before the Cour de cassation denied their request, so it is likely that the French authorities will investigate his case.

89 Cour d’assises, Judgment No. 13/0033.
Father Wenceslas Munyeshyaka, former head of the Sainte-Famille parish in Kigali, and parish priest in France since 2001, was expected to be the subject of the next French trial, and fittingly so, as he was the first genocide suspect against whom charges were brought in France, as early as 1995. Before the examining magistrate investigating Munyeshyaka declared that there was no case to answer,\(^{92}\) the trial had been expected to commence in 2015 or 2016.\(^{93}\) It remains to be seen what will result from this decision.

Although this may appear to represent considerable progress in the fight against impunity and ensuring that the numerous genocide suspects who fled to France do not continue to reside there alongside their Tutsi victims who have also claimed refuge in France, nonetheless, issues that have been raised remain regarding the application of universal jurisdiction in this type of case, which cause considerable unease in some quarters. Simbikangwa was tried before the Cour d’assises in Paris, the verdict reached by a jury of six ‘ordinary’ citizens, selected at random from the electoral roll. The first two weeks of the trial were spent setting the context for the three judges and the jurors of a genocide that occurred 20 years previously, 7,000 kilometres away, in a country in which, in all probability, none of them had ever set foot. Aside from the vast differences of everyday life in an east African country, where appreciations of time and distance and relationships do not correspond to European norms, judges and jurors had to grapple with the historical and political events preceding the genocide, which are immensely complex, and the role played by France, which still remains somewhat ambiguous and partisan. It could be argued that the challenge faced by jurors to understand the events and the role played by the accused cannot be surmounted — and is too traumatic to be reasonably imposed on the average person — and this could jeopardize the provision of a fair trial. This could be offset by an advantage, in theory at least, of a greater likelihood of finding neutral, unbiased jurors in France than in Rwanda, where each citizen must be drawn in one direction or the other, due to the nature of the crimes committed. It is also to be noted that, had Simbikangwa appeared before an international court, there would have been no jury, as judges reach decisions at these forums. Presiding Judge, Olivier Leurent, considers that trials, such as the Simbikangwa case, should be heard by judges without a jury, as is already the case for terrorism offences in France, with the cour d’assises spécialement composées. Judge Leurent justifies his views not only by the complexity of these cases, and by suggesting that hearing such cases systematically before judges specially trained to deal with these type of matters would bring about real savings of time and money, but also by recalling that the justification of the popular jury is to associate the people in the judging of crimes committed in their neighbourhood. This


argument can hardly be advanced to support the hearing of trials of Rwandan genocide suspects before a people’s jury in France.\textsuperscript{94}

In addition to this knowledge gap, arguably costly to fill in terms of court time, but also, as Xavier Philippe maintains, in terms of guaranteeing a fair determination of guilt,\textsuperscript{95} other costs are necessary to ensure a fair trial: transporting witnesses from Rwanda to testify; extracting convicted Rwandan criminals from prison to attend court in France; providing appropriate interpretation between French and Kinyarwanda;\textsuperscript{96} exploratory visits by the Judges to Rwanda; establishing the \textit{pôle} in Paris. These suggest that the appropriate forum for the trial of a Rwandan genocide suspect is by Rwandan court, or at least one with in-depth local knowledge and not a French court.

Leila Sadat further emphasizes the delicate situation of France exercising jurisdiction over genocide suspects, when it itself potentially has ‘unclean hands’,\textsuperscript{97} and suggests that trying Simbikangwa before a neutral international court in preference to a national one could have helped diffuse the antagonism between France and Rwanda arising from the extradition request. Although it may be argued that the need to bring Simbikangwa — and others — to justice obliged the French courts to find a way to achieve this, in theory opening the gates to future trials, this was not without major problems, which could potentially have led to creating insurmountable diplomatic incidents, which would have been better avoided.

Sadat also highlights the Princeton Principles, devised by a working group of jurists and academics to study the challenges raised by universal jurisdiction and to produce principles to help clarify the concept of universal jurisdiction. The Principles promote greater justice for victims of serious crimes under international law, close the gaps that have often led to impunity for the most serious of crimes and to ascertain the best forum for the trial.\textsuperscript{98} Sadat refers specifically to the eighth principle, which suggests various factors to be considered when ascertaining the appropriateness of a particular forum where universal jurisdiction is an issue. These factors include: first, the place of commission of the crime; second, the nationality of the perpetrator; third, the nationality of the victim; fourth, any other connection between the requesting state and the alleged perpetrator; the crime or the victim; fifth, the likelihood,


\textsuperscript{97} Sadat, \textit{supra} note 29, at 545.

good faith and effectiveness of a prosecution in the requesting state; sixth, the fairness and impartiality of the proceedings in the requesting state; seventh, convenience to the parties and witnesses, as well as the availability of evidence in the requesting state; and finally, the interests of justice. Whereas none of these elements are absolute requirements and do not fall in any particular order, a quick glance through the list indicates that a third party state will not normally be anticipated as the forum of choice for crimes of this nature, the sticking point being the interpretation of ‘the interests of justice’ in any given case. Many factors tend towards the position that cases should be tried where the crimes occurred. Certainly, the policy of the ICC — enshrined in its Statute — is essentially to step in if domestic courts do not do so. The vast costs of investigating and holding international trials have limited the number of cases which the ICC has been able to hear, and it is usually financially preferable, if at all possible, to send suspects to be dealt with by the domestic courts where the conflict took place.99

Indeed, since the transfer of Uwinkindi to Rwanda by the ICTR in 2011, many states are handing genocide suspects back to Rwandan courts.100 There is no doubt that the choice of forum will rarely be straightforward and will likely involve much legal argument — in the United Kingdom, for example, the decision of the Supreme Court is pending regarding the extradition of Vincent Bajinya (also known as Vincent Brown), Celestin Ugirashebuja, Charles Munyaneza, Emmanuel Nteziryayo and Celestin Mutabaruka, arrested in 2013 on charges of murder and genocide after living in Britain for more than a decade. The High Court refused their extradition to Rwanda in 2009 because of the risk they would face a ‘flagrant denial of justice’ in Rwanda, but this has been reopened following the introduction of measures in Rwanda that may counter the High Court’s objections.101 If their challenge is successful, the five accused will be granted permission to remain and stand trial in the United Kingdom. If they are unsuccessful, they may raise the argument, once again, that extradition to Rwanda constitutes a denial of the right to a fair trial, using the 1998 Human Rights Act.102

5. Conclusion

Any discussion of jurisdiction where multiple fora are possible will unveil numerous complex issues which cannot be resolved quickly and easily, but such discussions are crucial to enable us to find an appropriate forum to

102 R. Pells, ‘Supreme Court to rule on Rwandan Genocide Extradition this Week’, *The Independent*, 2 November 2014.
prosecute the perpetrators of crimes, such as genocide. It is critical that criminals do not remain unpunished because existing mechanisms to prosecute them are reaching the end of their life cycle, are not trusted to provide a fair trial or are incapable of investigating and prosecuting within a reasonable delay. As states continue to seek the best way to deal with the genocide suspects living in impunity on their territory, it may be appropriate for the international community to reflect upon William Schabas’ suggestion that the ‘multitude of tribunals’ which bring ‘varying perspectives and, occasionally, different results’ may actually strengthen international law, rather than fragmenting it.\textsuperscript{103}