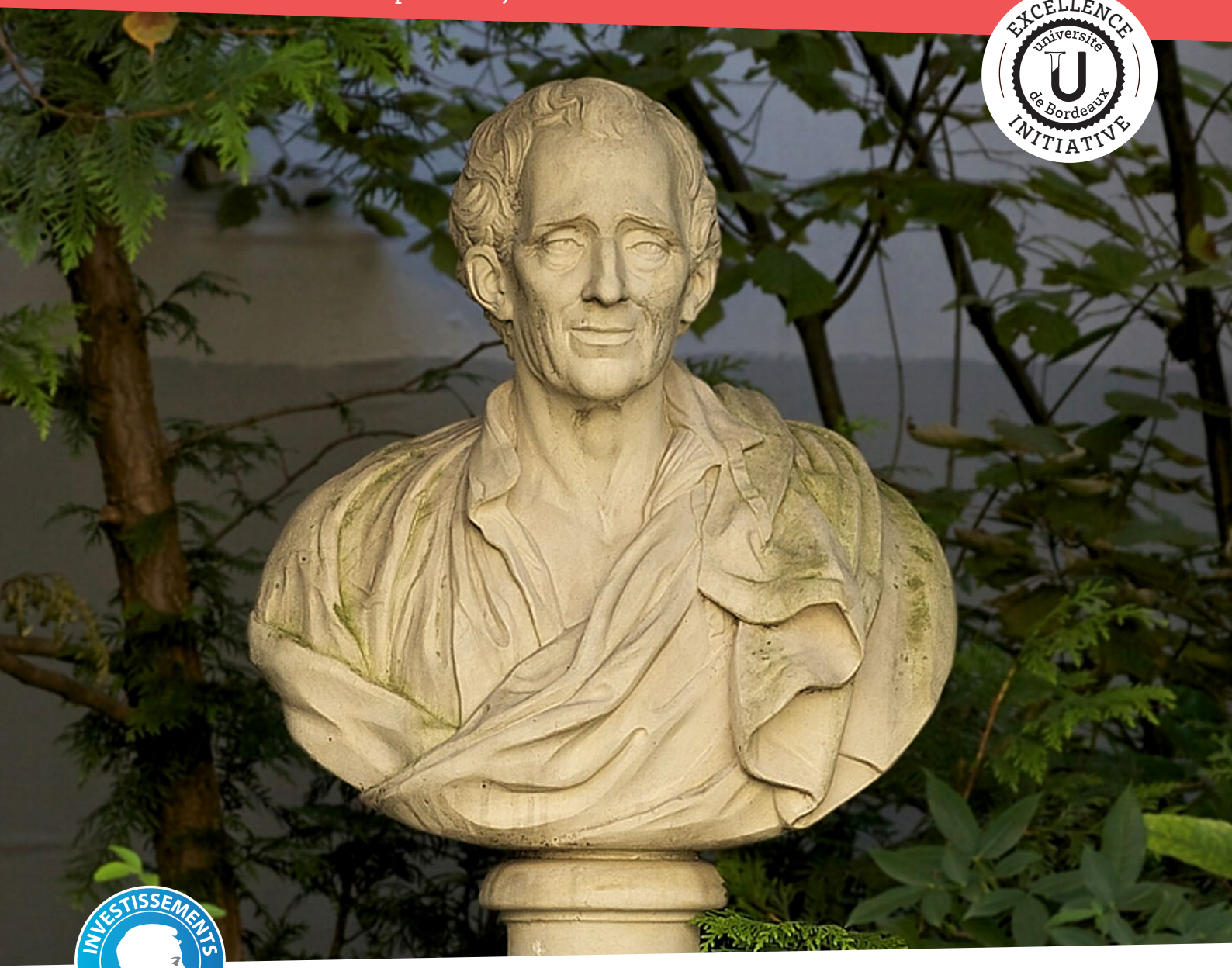
Issue No.1 | January 2015

Montesquieu Law Review

The trial of Pascal Simbikangwa, or how the application of the principle of universal jurisdiction has led to the very first conviction of a Rwandan genocide fugitive in France

Professor Anne-Marie Tournepiche and Justine Castillo



Program supported by the ANR n°ANR-10-IDEX-03-02

Public international law:

The Trial of Pascal Simbikangwa, or how the application of the principle of universal jurisdiction led to the very first conviction of a Rwandan genocide fugitive in France

Anne-Marie Tournepiche *Professor of Public Law, Doctoral student*
Justine Castillo *Doctoral Student, University of Bordeaux*

Paris Assize Court, 2nd Section ruling in first instance, criminal judgment of 14 March 2014, n° 13/0033, in the matter of Pascal SIMBIKANGWA

The decision handed down by the Paris Assize Court on 14 March 2014 is of particular interest on a number of counts.

On the one hand, it constitutes one of the few instances in which the principle of universal jurisdiction has been applied in France, whereby a French criminal court can judge the acts committed outside French territory by foreign nationals. On the other hand, it is the first time that a French court has been called upon to give a ruling on acts committed during the genocide in Rwanda. Furthermore, this case is also the first instance of a French court using the concept of the crime of genocide since this was included in the French *Code penal* (Penal Code) in 1994, as well as being the first time that the concept of crimes against humanity has been employed since the Papon trial in 1997 (1). Finally, from a symbolic point of view, it should be noted that this decision, which clearly demonstrates France's willingness to fight against impunity, was handed down on the eve of the commemorations marking the twentieth anniversary of the genocide in Rwanda.

The trial of Pascal Simbikangwa, accused of complicity in genocide and crimes against humanity, opened before the Paris Assize Court on 4 February 2014. In order to understand how the court came to have jurisdiction to hear the case, we must first recall a number of factual and procedural aspects. Simbikangwa held the rank of captain in Rwanda's regular army; he was also close to the President of Rwanda, Juvénal Habyarimana. On his arrival in Mayotte (an overseas French territory in the Comoros Islands) in February 2005, he applied to the *Office français de protection des réfugiés et des apatrides* (OFPRA – French Office for the Protection of Refugees and Stateless Persons) for asylum. He was arrested after presenting false identity papers and faced an extradition request made by the Rwandan authorities on grounds of genocide and complicity in crimes against humanity for acts committed in Rwanda in 1994. The Investigatory Chamber at Mamoudzou (the capital of Mayotte) refused this request. Further to a complaint lodged by the collective of civil parties for Rwanda, the Chief Prosecutor in Mayotte opened a judicial investigation of Simbikangwa. The *Cour de cassation* then decided to group together all the cases against persons suspected of involvement in the Rwandan genocide under the auspices of the *Tribunal de grande instance* (TGI – regional court) at Paris, thus taking the matter out of the hands of the examining magistrate at Mamoudzou. The examining magistrate at the Paris TGI then ordered Simbikangwa's indictment before the Paris Assize Court.

A verdict was reached following a six-week hearing. The members of the court (nine judges and six jurors), following their conscience and their innermost conviction (2), found the accused guilty of genocide and complicity in crimes against humanity, and sentenced him, by an absolute majority, to 25 years in prison.

The trial was made possible by the application of the concept of universal jurisdiction (see part I below), which allowed the French justice system to recognise the guilt of the accused and his involvement in the genocide in Rwanda, and thereby reach a verdict that clearly contributes to the fight against the impunity of those perpetrators of international crimes who seek refuge overseas (see part II below).

I: The unprecedented acknowledgement of the principle of universal jurisdiction in France for international crimes committed in Rwanda

In theory, national courts do not have jurisdiction to try a foreign national for a crime committed overseas, as in the case in point, unless they apply the principle of universal jurisdiction.

The classic conditions for the jurisdiction of French courts

According to the principle of territorial jurisdiction, French criminal courts have jurisdiction to judge those persons who have committed a crime on national territory. Alongside this territorial jurisdiction, the French courts may also exercise jurisdiction where the perpetrator (*compétence personnelle active* – active personality principle) or the victim (*compétence personnelle passive* – passive personality principle) of a given crime is a French national. Finally, it must be mentioned that there exists the *compétence réelle* (protective principle) for those crimes that "adversely affect the fundamental interests of the Nation".

In the present case, on the one hand, genocide had been committed on Rwandan territory and, on the other hand, both Simbikangwa and the victims of the genocide were Rwandan nationals. Thus, the jurisdiction of the Paris Assize Court could be founded neither on the territory criterion nor on the personality principle, but rather on a specific criterion: universal jurisdiction (3). This acknowledges the jurisdiction exercised by national criminal courts in the location where the alleged offender is, wherever the offence has been committed and whatever the nationality of the perpetrator or the victim of the offence. (4)

The conditions for implementing universal jurisdiction

French law upholds a specific conception of universal jurisdiction. Indeed, under Article 689-1 of the *Code de procédure pénale* (Criminal Procedure Code) introduced by statute on 16 December 1992, *"[i]n accordance with the international Conventions quoted in the following articles, a person guilty of committing any of the offences listed by these provisions outside the territory of the Republic and who happens to be in France may be prosecuted and tried by French courts. The provisions of the present article apply to attempts to commit these offences, in every case where attempt is punishable"*.

The conditions for exercising universal jurisdiction are restricted twofold: on the one hand, the accused must be on French territory at the time when the prosecution is undertaken. On the other hand, the exercise of universal jurisdiction is restricted by the need to incorporate into French law those international agreements that grant jurisdiction to national courts. Thus Articles 689-2 to 689-10 of the Criminal Procedure Code list the international agreements that may give rise to

prosecution before the French courts. To these agreements may be added the two resolutions passed by the UN Security Council, establishing the *ad hoc* International Criminal Tribunals for the former Yugoslavia and for Rwanda. French law has thus recognised the *ad hoc* universal jurisdiction of French courts to try those crimes specific to the Criminal Tribunal for Rwanda, pursuant to Law n° 96-432 of 22 May 1996 (5), which adapts French legislation to the provisions of Resolution 955 of the UN Security Council establishing the Criminal Tribunal for Rwanda.

Thus, in this case, the two conditions for the implementation of universal jurisdiction had been met: Simbikangwa was on French territory (at Mayotte) and accused of crimes falling under the jurisdiction of the Criminal Tribunal for Rwanda. The jurisdiction of the Paris Assize Court was therefore based on a jurisdiction that may be qualified as "quasi-universal" as enshrined in French law. These fairly restrictive conditions explain why so few people have been convicted in France on the basis of this jurisdiction.

II: The encouraging consequences of the recognition of universal jurisdiction in France for international crimes committed in Rwanda

In ruling that *"(…) the above facts deemed established by this Court and jury constitute the crimes listed and punishable by (…) Articles 2 and 3 of the Statute of the International Criminal Tribunal for Rwanda (…)"*, the Paris Assize Court considered that the facts that unfolded in Rwanda between April and July 1994 constituted genocide and a crime against humanity (6). Simbikangwa was thus convicted (by a majority of nine votes to six) of genocide and complicity in crimes against humanity. Pursuant to Law n°2011-939 of 10 August 2011, the court issued a *feuille de motivation* – a document containing the grounds for the court's decision – along with its verdict.

Regarding the crime of genocide

Generally, the Paris Assize Court ruled that the crime of genocide, as defined under Article 211-1 of the French Penal Code (7), had indeed been committed in Rwanda between April and July 1994. Thus, the fact *"of enabling persons to commit acts, at Kigali (in Rwanda), between April and July 1994, in the execution of a concerted plan intended to destroy, in whole or in part, the Tutsi ethnic group: - killing members of said community, - causing serious bodily or mental harm to the members of said community"* constitute genocide as *"(…) the facts (…) constitute the crimes misted and punishable under Article 211-1 (…) of the Penal Code (…)."*.

It must be remembered that, under Article 211-1 of the Penal Code, genocide is defined both as committing and enabling another person to commit an act constituting genocide. The definition thus encompassed the fact of having supplied arms to persons responsible for checking the identity of individuals belonging to the Tutsi community and having given the order to execute them. Simbikangwa was consequently convicted of genocide, not complicity in genocide.

Regarding crimes against humanity

In the same vein, the Assize Court ruled that the events that unfolded in Rwanda between April and July 1994 '*characterize crimes against humanity, listed and punishable under Article 212-1 of the Penal Code* (8)'(9) More specifically, the court asserted that the facts *'of making oneself complicit, at Kigali (in Rwanda) between April and July 1994, in a massive, systematic practice of summary executions and inhuman acts, based on political, philosophical, racial or religious grounds, in the execution of a concerted plan directed at a section of a civil population by*

knowingly aiding and abetting the perpetrators of said acts in order to facilitate the preparation or commission thereof, and by giving orders to commit said acts;" constitute complicity in crimes against humanity, as the court ruled that " *(...) the facts (...) constitute the crimes listed and punishable under (...)* Article*s 212-1 (...) of the Penal Code as was in force on 1 March 1994 (...).".*

In addition to Article 212-1 of the Penal Code defining crimes against humanity, reference was also made to the definition of complicity given under Article 121-7 of the Penal Code, which is the fact of facilitating "*the preparation or commission"* of the main offence (10). Thus, as much for supplying arms to those persons on the road-blocks (complicity by aiding and abetting) as for issuing orders to execute Tutsis (complicity by instigation), Simbikangwa was found guilty of complicity in crimes against humanity, not crimes against humanity.

Through his counsel, Patrice Simbikangwa appealed against the verdict (main appeal), as did the prosecution (cross-appeal), on 18 March (11). Consequently, the Assize Court of Appeal will re-examine the case in fact and in law (12) and may sentence Simbikangwa to a longer term of imprisonment insofar as the latter is not alone in bringing an appeal (13).

It would therefore appear that the exercise of universal jurisdiction can contribute effectively to the fight against impunity, by depriving suspects of *"any sanctuary"* (14). France has given a clear signal, not only to other states, but also to persons who have committed international crimes and are tempted to seek refuge on French territory. Beyond that, the verdict demonstrates just how much of a determining role national courts have to play, alongside international courts, in the administration of international justice.

A full translation of the Court's grounds for its verdict follows the notes.

Notes:

(1) Translator's note: Following a lengthy investigation, Maurice Papon was tried in 1997 on charges of crimes against humanity for his involvement in the deportation of 1,690 French Jews between 1942 and 1944 during the German Occupation. He was found guilty of complicity in crimes against humanity in 1998.

(2) As per Article 304 of the *Code de procédure pénale* (French criminal procedure code).

(3) Universal jurisdiction is also presented as the "*system of the universal right to punish*", cf. DESPORTES (Frédéric) et LE GUNEHEC (Francis), *Droit pénal general* (General Criminal Law), Paris, Economica, 2009, 16ème édition, 1248 p., p. 368.

(4) See the resolution passed by the Institute of International Law, *Universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes*, 17th commission, Krakow Session 2005, in which universal jurisdiction is *"the competence of a State to prosecute alleged offenders and to punish them if convicted, irrespective of the place of commission of the crime and regardless of any link of active or passive nationality, or other grounds of jurisdiction recognized by international law"*.

(5) It may also be mentioned that the Law of 9 August 2010 added a new Article 689-11 to the *Code de procédure pénale*, under the terms of which "*(a)ny person who is habitually resident on the territory of the French Republic and who has been found guilty of a crime falling within the jurisdiction of the International Criminal Court, in application of the Statute of the International Criminal Court signed at Rome on 18 July 1998, may be prosecuted and convicted by the French courts, where the facts in question are punishable under the laws of the State where said facts unfolded or where said State or the*

State of which such an individual is a national is a party to the abovementioned Statute. The prosecution of such crimes may only be brought at the request of the Public Prosecutor's Office where no national or international court has requested the surrender or extradition of said person. To this end, the Public Prosecutor's Office shall ensure with the International Criminal Court that it expressly waives jurisdiction and that no other international court with jurisdiction to try said person has requested the surrender of said person and that no other State has requested the extradition of said person."

(6) Indeed, under the Statute of the International Criminal Tribunal for Rwanda, Article 2 defines genocide while Article 3 defines crimes against humanity.

(7) Article 211-1 of the Penal Code: "*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; - enforced child transfers.. (...)*"

(8) Article 212-1 of the Penal Code: "*Any one of the following acts, committed in the execution of a concerted plan targeting a section of the civil population within the scope of a generalised or systematic attack, shall also constitute crimes against humanity and be punishable by life imprisonment : 1. murder; 2. extermination ; 3. enslavement ; 4. deportation or forcible transfer of population; 5. imprisonment or any other form of serious deprivation of freedom, in violation of the fundamental provisions of international law; 6. torture; 7. rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; 8. persecution against any group or population identifiable on political, racial; national, ethnic, cultural, religious or sexist grounds or based on any other criteria universally recognised as inadmissible under international law; 9. enforced disappearance of persons; 10. acts of segregation committed within the scope of an institutionalised regime of systematic oppression and domination by one racial group against any or all other racial groups and with the intention of maintaining such a regime; 11. other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury. (...)*"

(9) *Feuille de motivation* (grounds for verdict), point 1.

(10) Complicity is effectively an *"ancillary form for imputing a crime to an individual"* cf. DESPORTES (Frédéric) et LE GUNEHEC (Francis), *Droit pénal général*, Paris, Economica, 2009, 16ème édition, 1248 p., p. 515.

(11) Since Law n° 2000-516 of 15 June 2000 and pursuant to Article 380-2 of the Criminal Procedure Code, both the accused and the prosecutor may appeal against conviction and sentence.

(12) cf. Article 380-1, Criminal Procedure Code

(13) cf. Article 380-3, Criminal Procedure Code

(14) DESPORTES (Frédéric) et LE GUNEHEC (Francis), *Droit pénal général, Paris*, Economica, 2009, 16ème édition, 1248 p., p. 346

Paris Assize Court ruling at first instance:

Feuille de motivation (Grounds for the verdict)

In the case of Pascal Senyamuhara SAFARI alias Pascal SIMBIKANGWA

In application of Article 365-1 of the *Code de procedure pénale* (criminal procedure code)

1: On the existence of crimes against humanity in Rwanda between April and July 1994

The Paris Assize Court considers that the tragic events that unfolded in Rwanda between April and July 1994 characterize crimes against humanity, as provided and punishable under Article 212-1 of the Penal Code in force at the time of the offence, being in the present case the massive and systematic practice of summary executions or inhuman acts, inspired by political or racial motives and organised in execution of a concerted plan directed against a section of the civil population.

Indeed, it is clearly apparent from historical examinations of that period, (developed in particular by Alison Desforges, André Guichaoua, Jean-Pierre Chrétien, Jacques Semelin or Stéphane Andouin-Rouzeau) and fully confirmed by journalists on the ground at the time of the offences (such as Colette Braeckman, Renaud Girard or Jean-Philippe Ceppi), that massive and systematic executions or inhuman acts, inspired by political or racial motives were committed within the scope of a concerted plan directed at a section of the civil population.

This finding was further shared as early as 28 June 1994 by the United Nations Human Rights Commission's Special Rapporteur on Rwanda, René Degni-Segui.

Equally, since the *Karemera* decision of 16 June 2006, the Appeals Chamber of the International Criminal Tribunal for Rwanda has considered that there remains no reasonable doubt as to the existence of the crime of genocide and crimes against humanity committed in Rwanda between April and July 1994 against the Tutsi community and the political opponents of the Juvénal Habyarimana regime.

The speed of execution and the simultaneity of the massacres; their spread throughout the country; the mobilisation of the State's civil and military capabilities; the development of propaganda in the media advocating inter-ethnic hatred and the murder of political opponents; the distribution of weapons and the military training provided to the *Interahamwe*; the systematic identity checks conducted on civilians at roadblocks and the immediate execution of those suspected of being Tutsi or enemy accomplices; and finally, the sheer number of victims, estimated to be in the hundreds of thousands over the course of three months; all reveal the efficiency of a collective organisation necessarily based on a concerted plan.

The Court consequently considers that the case argued by the accused as to a chaotic, spontaneous, uncontrollable popular movement that was neither concerted nor organised does not tally in any way with the findings of historians or eyewitnesses – journalists, survivors and diplomats, all of whom have on the contrary testified to the particularly effective preparation and organisation of the massacres perpetrated on political or racial grounds.

This argument as to widespread chaos is also incompatible with the scale of the murders committed and their spread throughout the country.

2: On the existence of the crime of genocide in Rwanda between April and July 1994:

Likewise, the Paris Assize Court is convinced that the crime of genocide as defined under Article 211-1 of the Penal Code, namely the existence of killings or acts causing serious physical or mental harm, in the execution of a concerted plan intended to destroy, in whole or in part, the Tutsi ethnic group, was indeed committed in Rwanda between April and July 1994.

Indeed, it is clearly apparent from the relevant debates and eyewitness testimony that the definition of "enemy of the state" gradually evolved, starting as a restrictive conception of "RPF accomplice" and then encompassing the entire Tutsi community; the latter eventually became synonymous with the notion of *inyenzi*, meaning cockroaches.

In this respect, the accounts regarding the operation of roadblocks speak volumes as the murderous selection process was based exclusively on the ethnic origin stated on identity cards, whatever the age, gender, identity or political involvement of the person who had been stopped. Resorting to physical or morphological characteristics to determine membership of the Tutsi ethnic group, in the absence of an identity card or in case of the suspected forgery of the latter, also illustrates an attempt at ethnic cleansing and the extermination of the entire group.

In the same way, the messages broadcast by RTLM calling for Tutsis to be hunted down on the basis of lists of names demonstrate the assimilation of the "Tutsi" into the definition of the enemy and prove the desire to eradicate that ethnicity, which allegedly made up the entire membership of the RPF.

The International Criminal Tribunal for Rwanda (ICTR) took judicial notice of the existence of the Tutsi genocide and, before that Tribunal, the Commission of Experts appointed by the Secretary General of the United Nations at the end of 1994 reached the same conclusion as René Degni-Segui.

The existence of a concerted plan in the race to exterminate the Tutsi community emerges from the same elements as those applicable to crimes against humanity: the speed of the elimination operations and their propagation throughout the country; the use of all echelons in the administrative and military chain; the formation of armed militias; the distribution of weapons to the *Interahamwe* and civilians; the preparation of lists of Tutsis to be killed; the searches conducted in houses occupied by Tutsis; the collection of corpses using lorries belonging to the administration; burial of the dead in unmarked mass graves; the sheer number of victims in the space of only three months.

Finally, the Court notes that, after making particularly ambiguous statements as to the realities of the Tutsi genocide over the course of the judicial investigation, Pascal Simbikangwa ultimately did not contest the existence of the genocide during the trial, even if he did evoke the reality of the massacre of Hutus, even a Hutu genocide (for which the RPF was allegedly responsible) where the events of April-July 1994 were concerned.

3: On the jurisdiction of the Paris Assize Court:

The Court considers, moreover, that the charges brought against Senyamuhara Safari alias Pascal Simbikangwa do indeed fall within the scope of the definition of genocide and crimes against humanity as provided under Articles 2 and 3 of the Statute of the ICTR, which did not wish to assume jurisdiction for this case.

Consequently, Senyamuhara Safari alias Pascal Simbikangwa, having been arrested at Mayotte where he had settled, the Paris Assize Court has jurisdiction on the basis of universal jurisdiction to examine the charges brought against the accused, in application of Law n°96-432 of 22 May

1996 bringing French legislation in line with Resolution 955 of the United Nations Security Council establishing the International Criminal Tribunal for Rwanda.

4: The involvement of Senyamuhara Safari alias Pascal Simbikangwa in crimes against humanity and genocide, committed in Kigali, Rwanda, between April and July 1994:

4.1: The person of Senyamuhara Safari alias Pascal Simbikangwa, his ties with President Juvénal Habyarimana and his support for the anti-Tutsi discourse:

The Court considers that there evidently existed an especially strong intellectual and emotional bond between Pascal Senyamuhara Safari alias Pascal Simbikangwa and President Juvénal Habyarimana.

Aside from their family connections, their shared place of birth and the fact that the accused had served in the Presidential Guard before joining the Rwanda's intelligence service (SCR – *Service Central de Renseignement*), which was answerable directly to the President, the views expressed by Pascal Simbikangwa in his book, "*L'homme et sa croix*" ("The man and his cross"), about President Habyarimana reveal the fascination that the Rwandan head of state exerted on the accused.

The psychology experts who have examined him confirm that President Habiyarimana represented an idealised father-figure for Pascal Simbikangwa.

Further, his social position fully illustrates his membership of a circle of dignitaries who were especially close to the government of the day prior to 1994.

Thus, his year-long hospitalisation in Belgium from 1986 to 1987 following a traffic accident proves that he was not a mere captain in the Rwandan Army, but rather a figure requiring particular care, whatever the cost.

Despite owning two houses, he was provided with government accommodation in the presidential quarter in Kigali reserved for the regime's dignitaries, with a vehicle and chauffeur, when he argued at trial that he had only been a subaltern within the intelligence service.

Nevertheless, during his arrest, he himself claimed to be third in command of the service, with the title of "director".

Augustin Iyamuremye, his immediate superior from April 1992 onwards, branded him a fanatical supporter of President Habyarimana; according to Iyamuremye, Simbikangwa was involved in parallel intelligence networks on behalf of the presidency once the SCR came under the authority of the Prime Minister.

Augustin Iyamuremye confirmed that Pascal Simbikangwa went directly to printing works to perform the task of censoring opposition newspapers.
Finally, he stated that the circumstances of Simbikangwa's administrative transfer from the Army to the SCR following the latter's car accident, had struck him as obscure and suggestive of an intervention of a political nature.

Venance Munyakazi, a printworks technician, described the close ties between Hassan Ngeze, a notoriously anti-Tutsi journalist at Kangura, and Pascal Simbikangwa. He recounted the violent methods employed by the accused with the opposition press, and explained that *Umurava*, the newspaper edited by Pascal Simbikangwa, held an anti-Tutsi editorial line which was close to that of Kangura; this analysis is confirmed in a book written by Jean-Pierre Chrétien, *Les medias du genocide* ("The Genocide Media").

Innocent Bigega, a former member of the SCR, stated that Pascal Simbikangwa – who insisted on being called by his rank of "Captain", thus deliberately maintaining the ambiguity as to his exact status – could become verbally aggressive if President Habyarimana was criticised, and that he regularly made anti-Tutsi statements.

Even his disabled friend, Joseph Bazira Sibo, confirmed that Pascal Simbikangwa did not tolerate anyone calling President Habyarimana into question and that he also attempted to recruit members for the President's party, the MRND (*Mouvement républicain national pour la démocratie et le développement*).

The sworn statements given in 1992 by Sam Gody Nshimiyimana, a journalist who was arrested and tortured at the SCR for having criticised the regime, confirmed that Pascal Simbikangwa did not tolerate any challenge to the President.

The Court also notes that Sam Gody Nshimiyimana did not hesitate in denouncing the FPR's acts of violence, thus demonstrating complete freedom of speech and an unquestionable independence of mind.

The Court considers that these witness statements as to Pascal Simbikangwa's character and his involvement in politics are all the more credible in that they are corroborative and do not incriminate the accused directly in the genocide.

Moreover, Pascal Simbikangwa's membership of the anti-Tutsi school of thought (which developed in Rwanda from 1990 onwards) runs through his book, *La guerre d'octobre* ("The October War"), but also in his one-twenty-fifth stake in RTLM, the principal shareholders of which were President Habiyarimana himself, his family and pro-Hutu hardliners.

Pascal Simbikangwa never distanced himself subsequently from that radio station, which, from the autumn of 1993, extensively broadcast views calling for inter-ethnic hatred by gradually placing all Tutsis in the same category as enemies of Rwanda.

Simbikangwa's statements claiming that he did not listen to that radio station are devoid of any credibility, not only given the sums that he had invested therein, but also in light of his passion for politics and the media.

Speaking in Belgium in June 2012 following his release, Georges Riggiu, a journalist with RTLM, confirmed Pascal Simbikangwa's extremist views and his closeness to the MRND, whose flags he had in his home, as well as his links with the *Interahamwe*.

The fact that Riggiu was not considered a credible witness in 2003 by the ICTR, in the context of

another trial when he was still under arrest in Arusha and evidently under pressure from his co-detainees following his decision to plead guilty, is not binding upon the Paris Assize Court; indeed, for its part, the Court notes that at no time did Georges Riggiu implicate Pascal Simbikangwa in the genocide, but simply shared details of the accused's political involvement and his support for radical pro-Hutu views.

The suspicions shared as early as 1992 by many international human rights groups, whose independence and neutrality in the conflict have been acknowledged, that Pascal Simbikangwa played an active part in this anti-Tutsi school of thought, cannot be the result of manipulation on the part of the RPF, contrary to the argument put forward by the accused.

Indeed, on the one hand the investigation teams set up by these groups were made up of members offering every guarantee of impartiality, as was recalled during the trial by the Belgian barrister, Eric Gillet; and, on the other hand, these same groups also denounced the RPF's acts of violence.

Furthermore, had he indeed been the junior officer that he claimed to be at the time, it is difficult to comprehend how he could be been a media target for the RPF and, therefore, the victim of a plot to poison him.

The Belgian ambassador, Mr. Swinnen, also explained the circumstances under which he alerted the appropriate minister as to the existence of a parallel secret military staff in which, according to his information, Pascal Simbikangwa was involved. He described personally meeting and talking to the journalist Boniface Ntawuyrushintege, who appeared to be credible when he told the ambassador of the torture inflicted by Pascal Simbikangwa for having published an article opposed to President Habyarimana.

Professor Filip Reyntjens described having personally alerted President Habyarimana as to the existence of an extremist network in which Pascal Simbikangwa was involved.

Isaïe Harindintware, as well as Albert and Pascal Gahamanyi, confirmed having seen a MRND flag at Pascal Simbikangwa's home when they went there to watch television.

Béatrice Nyirasafari, who fled to Pascal Simbikangwa's home during the genocide, explained that he regularly expressed anti-Tutsi views.

Now, the lives of all of these witnesses were saved thanks to Pascal Simbikangwa, which makes their statements particularly reliable.

As early as 1992, he was identified by the RDM as a recruiting agent for the *Interahamwe*, his name appearing in this capacity in the archives of the opposition party; this was subsequently confirmed by Grégoire Nyrimanzi.

The death threats made by Pascal Simbikangwa on 19 March 1994 to the presiding judge of Rwanda's *Cour de Cassation* (Court of Cassation), and denounced by the latter to the President of the Republic in a letter of 23 March 1994, were confirmed by his wife.

The letter was, moreover, subsequently published in a Rwandan newspaper before the genocide began, thus confirming the reality of the same.

These threats clearly reveal the impunity of those close to President Habyarimana at that time.

The availability of two soldiers to guarantee his protection from the beginning of April 1994, when Simbikangwa was no longer at the Ministry of Defence, demonstrates the close ties that he had maintained with the Army.

The maintenance of this close protection throughout the genocide, even when the country was at war against the RPF, proves Simbikangwa's ongoing influence within the Rwandan state apparatus, in complete contradiction of the subordinate role that he claims to have had.

Finally, the press release published by the White House in Washington on 22 April 1994, exhorting the highest political and military authorities in Rwanda, including Pascal Simbikangwa, to stop the massacre, clearly shows that he was considered a dignitary of the regime, having a certain amount of control over the course of events.

His explanation, claiming that his name had been mentioned in the press release owing to his alleged intervention in allowing two MINUAR buses through the roadblocks, is not substantiated.

4.2: The role of Pascal Senyamuahara Safari alias Pascal Simbikangwa in genocide and crimes against humanity between April and July 1994 at Kigali:

The Court notes that, contrary to what Pascal Simbikangwa argued throughout the trial, aside from Martin Higiro and his family who were brought to him by his brother, those Tutsis who took refuge in Simbikangwa's home were all born to mixed couples, i.e. belonging, as he did, to both Hutu and Tutsi ethnicities.

Mrs Sironi-Guilbaud, the psychologist, explained how this mixed ethnic origin was in no way incompatible on a psychological level with participation in genocide where such miscegenation may not have been integrated harmoniously in the construction of a person's personality – which was, in her view, the case with Pascal Simbikangwa.

The Court considers that it is at the very least surprising that the other Tutsis, estimated at several dozen persons by the accused, have not come forward since the genocide to thank or support him.

The Court further considers that the reasons for which Pascal Simbikangwa protected a number of Tutsis during the genocide remain particularly obscure in light of his personality and his political involvement at the time.

In this respect, the testimony of Béatrice Nyirasafari, Michel Gahamanyi and, to an even greater extent, Pascal Gahamanyi are especially evocative.

Indeed, while all may claim that Pascal Simbikangwa saved their lives, which none of them failed to do during the trial, not one of them was able to give the deeper reasons for his behaviour, each having a particularly ambivalent and unsettling recollection of their protector's behaviour.

Pascal Gahamanyi and Béatrice Nyirasafari even feared on several occasions that their saviour could, at any time, become a potential killer.

The Court further considers that the saving of several Tutsis – who, incidentally, were for the most part the progeny of mixed marriages – did not incur any risks for Simbikangwa in reality, taking into account the authority that he held at the time of the genocide.

Finally, none of the survivors testified as to an emotional relationship which may have explained his behaviour; indeed, the lack of emotion on the part of Pascal Simbikangwa (with whom they barely managed to talk) marked them, on the contrary, to such an extent as to cause them distress.

Furthermore, in light of Pascal Simbikangwa's political convictions and his admiration for President Habyarimana, who represented the ideal father-figure for him, the Court considers it improbable that he took no action in relation to those who allegedly carried out the assassination, between April and July 1994.

This purported inaction is indeed in complete contradiction with the personality of the accused, who presented himself at trial as a leader of men who essentially enjoys giving orders, which is the reason for his embarking on a military career. Additionally, while Pascal Simbikangwa had wanted to take cover as events unfolded – which would have seemed perfectly understandable given his disability – he would naturally have sought refuge at his family property at Rambura, a much less dangerous region than the city of Kigali.

Now, the Court notes in this respect that Pascal Simbikangwa, no doubt aware of the incongruity of his presence in the Rwandan capital at the time of the genocide when he could easily have fled to Rambura, began by lying about his movements, not only during his arrest but also at his initial interviews with the examining magistrate in the presence of his legal counsel, claiming to have spent almost the entirety of the genocide at the prefecture in Gisenyi and not in Kigali.

His confusing explanations to justify such lies do little to disguise his intention to hide the true nature of his activities in Kivoyu during that period. He only went back on his false account of his movements when he learned of a number of witness statements placing him in Kigali during the genocide.

Equally, Pascal Simbikangwa clearly changed tack in his statements concerning his day-to-day activities between April and July 1994.

After claiming in vain that he had barely set foot outside his house, he finally admitted having left his home on a number of occasions when faced with the statements of those persons whom he sheltered, stating that they saw him leave every day with his bodyguard, as though he were going to work.

Again, the Court considers that this intention to mislead the Court as to his real activities during the genocide is a concrete manifestation of his involvement in the charges against him.

The long-maintained ambiguity as to his actual status, to such an extent that some of his neighbours believed that he was still a captain in the Rwandan Army; the use, belatedly acknowledged at trial, of a military-style jacket added to the presence of his bodyguards and his reputation as a former member of the presidential guard; all evidently gave him unquestionable authority in the neighbourhood and when crossing roadblocks in Kigali.

This authority – which the accused himself ultimately did not dispute, invoking his former status as an officer to justify it – was noticed by all who travelled with him during the genocide when crossing roadblocks, and particularly by the Gahamanyi brothers and Béatrice Nyirasafari.

Equally, Isaïe Harindintwari, the Tutsi security guard at the house opposite Pascal Simbikangwa's home and whose life was saved by the latter when he was taken, in his own words, to the slaughterhouse – which, incidentally, demonstrates the authority that Pascal Simbikangwa had over the *Interahamwe* – explained in particularly significant terms that he had the power of life or death over any person in the neighbourhood. This expression was repeated in the same terms by another security guard, Joël Gasarasi.

The Court notes in this respect that Simbikangwa never exercised that authority for the survival or protection of those Tutsis who were killed at the roadblocks in Kivoyu, and yet these were less than one hundred metres away from his residence.

The fact that Pascal Simbikangwa claims not to have seen any corpses whatsoever over the course of the events described, in spite of his many journeys and in spite of the testimony of almost all the survivors of the tragedy in Rwanda, is clearly a part of his intention to minimize his role and disguise the full knowledge that he had at the time of the genocide, events which were unfolding close to his house and before his very eyes.

His initial statements made before the examining magistrate, which consisted in arguing that there had been no roadblocks within the city of Kigali, are clearly part of the same strategy.

His application for political asylum, submitted to the OFPRA on his arrival at Mayotte in February 2005 under the name of Senyamuhara Safari, which identity he had not used in thirty years, again illustrates his intention to evade justice and hide his true involvement in the Tutsi genocide and crimes against humanity committed in Rwanda in 1994.

The Court considers that his arguments claiming that the witnesses calling him personally into question were subject to pressure brought by the Rwandan authorities or by IBUKA, a lobby group, are devoid of any factual basis given that many of those witnesses – particularly the Gahamanyi brothers, Isaïe Harindintwari and Béatrice Nyirasafari, all of whom continue to reside in Rwanda (with the exception of Pascal Gahamanyi) – freely stated during the trial that Pascal Simbikangwa was among those who contributed to their survival.

The Court consequently considers that their testimony cannot be motivated by a desire to harm the accused or result from outside pressure.

The Court also considers that any contradictions as may be between some of these accounts on such and such a factual aspect may easily be explained by the amount of time that has elapsed

since the events in question took place, difficulties in translation or the fact that the witnesses did not necessarily see exactly the same events. Too close a similarity would, on the contrary, indicate potential fraudulent concertation between the witnesses.

In this regard, it must be admitted that while there are indeed differences in the statements given by Isaïe Harindintwari, Michel Gahamanyi and Pascal Gahamanyi on the transportation and stockpiling of weapons of war in Pascal Simbikangwa's home during the genocide, all maintained at trial that they had seen those weapons in the accused's residence.

These accounts are supported by the statements of Thadée Nzbonimana, Venance Munyakasi and Jean-Marie Vianney Niyrigira, all of whom had also seen soldiers or *Interahamwe* procuring weapons at the home of Pascal Simbikangwa or directly from him at the beginning of the genocide.

Adbelrahmane Sadama, Isaïe Harindintwari, Jonathan Rekeraho, Diogène Nyirishema and Joël Gasarasi all confirmed that Pascal Simbikangwa distributed weapons in the neighbourhood, including the "Chinese" roadblock which was one of the most murderous in Kivoyu, located some hundred metres or so from Simbikangwa's home.

Again, while their statements differ on the circumstances surrounding the distribution of those weapons – which is unsurprising given the passage of time and the stress that the witnesses were under at the time of the events – all maintain that, on the orders issued by Pascal Simbikangwa, the weapons were intended to kill *inyenzi*, i.e. Tutsis.

On this point, Venance Munyakazi and Isaïe Harindintwari both stated that people were indeed killed with the weapons distributed by the accused. Jonathan Rekeraho had also confirmed this during the judicial investigation.

Faced with multiple and repeated allegations, Pascal Simbikangwa began by lying to the examining magistrate, disputing the handing over of a rifle to Jonathan Rekeraho only to admit subsequently, in light of the accumulation of statements made against him, that the weapon had been intended to be used solely in protecting the home of Abdelrahmane Sadala; this is devoid of any credibility, the rifle having been personally handed over to Jonathan Rekeraho, who was guarding a roadblock intended to filter out Tutsis and was in no way the employee of Mr Sadala.

The particularly detailed and reliable testimony given by Jean-Marie Vianney Nyirigira, essentially confirmed by Jean-Népomuscène Nsengumuremyi, also proves that Pascal Simbikangwa gave orders at roadblocks to ensure that guards and *Interahamwe* immediately exterminated any Tutsis likely to present themselves there, especially by meticulously examining all identity cards.

Indeed, Jean-Marie Vianney Nyirigira, a Tutsi guard who survived the genocide, has given the same account in the same terms since 2000, i.e. long before the location and arrest of Pascal Simbikangwa: that the latter passed through the "Chinese" roadblock on numerous occasions, calling on the guards there to be vigilant and ordering Nyirigira's execution after casting doubt on the authenticity of his identity card, which was indeed a forgery.

While, in the context of the appeal brought by Protais Zigiranyirazo, the ICTR found that the statement made by Jean-Marie Vianney Nyirigira did not establish beyond all reasonable doubt that Protais Zigiranyirazo was in Kigali in April 1994, this is only due to the uncertainty that remained as to his exact location in light of statements made by the defence witnesses brought before the Chamber of First Instance by Zigiranyirazo and in the absence of any verification as to the journey times between Kigali and the province where he allegedly was. The ICTR's proper legal analysis therefore related to facts that are in no way connected to the present case.

Albert, Michel and Pascal Gahamanyi all described having heard Pascal Simbikangwa's bodyguards boasting about having murdering Tutsis in the neighbourhood, and Michel even noticed on one occasion that there was blood on the weapon belonging to one of the bodyguards on their return – a fact of which Pascal Simbikangwa must have been aware, bearing in mind the authority that he had over the two soldiers attached permanently to his service and, indeed, his person.

Consequently, the bodyguards' participation in the killings in the neighbourhood can only be explained by their knowing that their superior officer, to whom they were supposed to provide close protection 24 hours a day, supported such acts of violence and that they consequently ran no risk of being reprimanded or sanctioned by him for leaving the house.

In conclusion, it is clearly apparent from oral argument at trial that Pascal Simbikangwa actively supported the operation of the Kigali roadblocks and the killings there, supplying weapons and directly issuing orders that Tutsis be systematically executed on the spot, with a view to completely destroying the ethnic group presumed to be responsible for the death of President Habyarimana and, to his mind, consequently to be viewed as the enemy to be exterminated by its very nature, within the scope of a concerted plan, particularly through the meticulous organisation of roadblocks controlling the city and the systematic search of houses that may have been sheltering Tutsis.

Pascal Simbikangwa did indeed enable others to kill and commit acts causing serious physical or mental harm, in the execution of a concerted plan leading to the total destruction of the Tutsi ethnic group. This, in light of the offences under Article 211-1 of the Penal Code, constitutes genocide, not complicity in genocide.

Furthermore, Simbikangwa knew perfectly well that, at that time, opposition Hutus were put in the same category as enemies of the state and that they were suffering the same fate as the Tutsis thanks to the weapons that he had supplied and his orders to eliminate all *inyenzi*.

The examination of his character and professional career proves that he fully supported those summary executions and inhuman acts, performed systematically and on a massive scale; this characterizes his involvement on grounds of complicity in crimes against humanity committed against a section of the civil population, in the execution of the same concerted plan as that for the crime of genocide committed against the Tutsi community, but also directed against opposition Hutus.

4.3: On the involvement of Senyamuhara Safari alias Pascal Simbikangwa in crimes against humanity and genocide committed at the prefecture of Gisenyi in Rwanda between April and July 1994:

On the other hand, the Court considers that the charges brought against Pascal Simbikangwa regarding his alleged involvement in the roadblocks set up in the prefecture of Giyensi between April and July 1994 are too weak to secure a conviction.

Indeed, his presence at the meeting in Kibihekane on 7 April 1994, between 3:00 pm and 5:00 pm, during which orders were allegedly given to the *Interahamwe* to raise roadblocks and hunt down Tutsis, does not tally with the fact that he was seen in Kigali that day, bearing in mind the journey time between the capital and the prefecture in the north-west of the country, which was estimated to be three to four hours at normal times.

Furthermore, his presence on the morning of 8 April 1994 in the prefecture of Gisenyi does not tally with the testimony given by the Gahamanyi family, stating that he was at his home in Kivoyu that morning.

Equally, his involvement in the training provided to the *Interahamwe* in Kibihekane during the genocide does not tally with his state of health.

Finally, the statements taken from Théoneste Habarugira, Théoneste Marijoje and Jean de Dieu Bihintare, present striking similarities, particularly concerning Pascal Simbikangwa's car registration plate, which had never been at issue prior to the trial; this suggests a degree of concertation between them which does not tally with the truth.

Consequently, Pascal Simbikangwa will be acquitted of the charges of genocide and crimes against humanity, as both accomplice and perpetrator, relating to the prefecture of Gisenyi.

Made at the Paris Law Court, 14 March 2014
The foreman of the jury
The Presiding Judge of the Paris Assize Court