

THE RWANDAN GENOCIDE: A TWENTY YEAR FIGHT FOR JUSTICE 1994 - 2014

PRESS KIT

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



Twenty years on from the Rwandan genocide, the fight against impunity for its alleged perpetrators remains more than ever on the agenda. The latest genocide trial took place before a French Criminal Court in Paris, where Pascal Simbikangwa was sentenced to 25 years in prison. FIDH took part in these proceedings. Since 1993, when FIDH had warned that preparation for genocide was taking place in Rwanda, our organisation has been particularly committed in the fight for the prosecution of its perpetrators throughout the world. The 20 year anniversary of the genocide presents an opportunity to look back at the efforts undertaken internationally, both before the International Criminal Tribunal for Rwanda and foreign national jurisdictions, to bring justice to the genocide victims.

Proceedings at the International Criminal Tribunal for Rwanda

Created by Resolution 955, adopted by the UN Security Council on 8 November 1994, the International Criminal Tribunal for Rwanda (ICTR) is an ad hoc court whose mandate is to judge those responsible for the crime of genocide, crimes against humanity and war crimes committed on Rwanda soil, or by Rwandans in neighbouring countries, between 1 January and 31 December 1994.

To date, *the ICTR has ruled on 65 cases. Of these, 57 individuals have been found guilty and 8 acquitted.* All cases in the Trial Chambers have been completed and it remains only for the Tribunal to decide on appeals in 10 ongoing cases. The Tribunal's objective is to judge those who bear the greatest responsibility and encourage national courts to prosecute those responsible for the aforementioned crimes who are present on their territory. The ICTR has transferred two cases to French courts and two cases to Rwandan national courts.

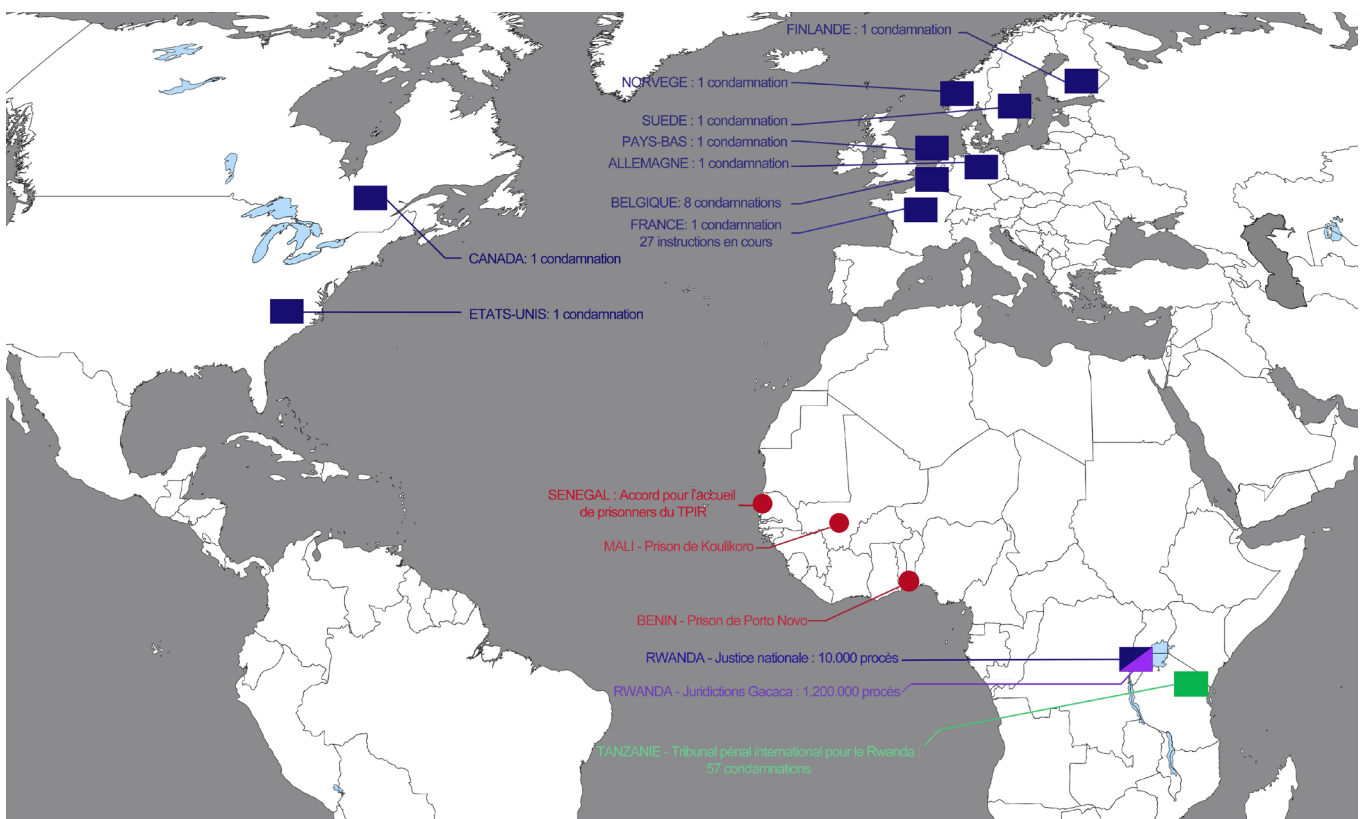
The ICTR was created with a limited life span, which has been extended several times. The ICTR Completion Strategy specifies that appeal proceedings and the Tribunal's activities should end by 2014, except for the *Butare* case, which should end in 2015.

However, the ICTR will not cease all activity. It is particularly specified that the Office of the Prosecutor shall assist states in apprehending suspects and bringing them to justice in their own countries. In 2010, an international mechanism (« the Mechanism »), composed of two divisions, was created by the UN Security Council to exercise the residual functions of the International Criminal Tribunals. Out of the 9 persons still sought by the ICTR but who remain at large, the Mechanism is empowered to prosecute three, with the remaining six to be transferred to the Rwandan justice system.

For FIDH, the challenges faced in achieving these aims entail: ensuring that the last remaining fugitives do not escape justice, ensuring the security of witnesses, as well as access to and protection of archives, security of proceedings and securing the role of victims in this completion strategy.

In 2004, FIDH published a report on the role and status of victims before the ICTR, entitled *Victims in the Balance*. In 2009 FIDH published another report on the stakes involved in the closure of the International Criminal Tribunals for the former Yugoslavia and Rwanda.

The ICTR has sometimes been criticised, especially at the beginning of its term, because of the complexity of its procedures, the manipulation of some witnesses by the parties, and especially for not having tried crimes committed by the Rwandan Patriotic Front (RPF). However, the ICTR constitutes an important justice effort undertaken by an international community that had failed to mobilise to prevent genocide. Perpetrators of the genocide convicted by the ICTR serve their prison sentences in different countries that have agreed to receive them.



Status of the judicial proceedings after the Rwanda genocide - April 2014

Extraterritorial jurisdiction, A bulwark against impunity: Proceedings against Rwandan suspects before foreign national courts

Complementing the work of the ICTR and the Rwanda “gacaca” courts (people’s courts), extraterritorial jurisdiction is a mechanism used to fight impunity of the perpetrators of international crimes committed in Rwanda who have sought refuge from justice abroad. Pursuant to the Security Council resolution creating the ICTR, UN member states have been provided with special jurisdiction allowing them to prosecute the perpetrators of these crimes in their own courts. In this context, if a State is refusing to extradite, its tribunals must prosecute and judge any individual present on its territory and suspected of genocide, crimes against humanity or war crimes committed in Rwanda.

The legitimacy of such jurisdiction is not only based on the nature of the crimes in question, but this mechanism is especially necessary as many suspects of the Rwanda genocide have long taken refuge in foreign countries.

Several states have already used this mechanism to investigate and prosecute those accused of genocide who are on their soil, e.g. in Europe, (Germany, Belgium, Denmark, Finland, France, Norway, the Netherlands, the United Kingdom, Sweden, Switzerland), Canada and the USA. These states have already started proceedings based on extraterritorial jurisdiction against individuals accused of international crimes committed in Rwanda in 1994, that have resulted in 16 convictions.¹

1. Onesphore Rwabukombe (Germany), Vincent Ntezimana, Alphonse Higaniro, Consolata Mukangango, Julienne Mukabutera, Etienne Nzabonimana, Samuel Ndashyikirwa, Bernard Ntuyahaga, Ephraim Nkezabera (Belgium), Désiré Munyaneza (Canada), Beatrice Munyenyezi (United States), François Bazaramba (Finland), Pascal Simbikangwa (France), Sadi Buringo (Norway), Yvonne Basebya (The Netherlands), Stanislas Mbanenande (Sweden).

In Belgium, four trials took place in 2001, 2005, 2007 and 2009, leading to *the sentencing of 8 persons for war crimes and crimes against humanity*. Seven other persons should be sent to trial before Belgian courts very soon. More recently, in France, on 14 March 2014, the Paris Criminal Court sentenced Pascal Simbikangwa to 25 years in prison for genocide and complicity in crimes against humanity. In Germany, on 18 February 2014 a Frankfurt court sentenced Onesphore Rwabukombe to 14 years in prison for complicity in genocide.

In cases prosecuted abroad, the question of extradition plays a central role. Some countries, such as Denmark, Norway and Sweden, have decided to respond to Rwanda's extradition requests and extradite Rwandan nationals to their homeland so that they can be prosecuted before the national courts. France has always refused to extradite Rwandans to Kigali because Rwanda did not offer any guarantees of a fair trial and because the crime of genocide did not exist under Rwanda law at the time it occurred in the country. The Cassation Court reaffirmed this position on 26 February 2014, refusing to extradite three Rwandan nationals accused of genocide and crimes against humanity. Since 2011, the European Court of Human Rights in Strasbourg decided in favour of the extradition of Rwandan suspects to Rwanda, indicating thus that the Rwandan courts are now able to render justice and ensure a fair trial.

Proceedings initiated in France : a first conviction after 20 years

In France, after six weeks of trial proceedings, Pascal Simbikangwa was sentenced to 25 years in prison for genocide and complicity in crimes against humanity, marking the first verdict in a Rwandan genocide case before a French court. This conviction is under appeal.

Since 1995, after the filing by survivors, victims' families and NGOs of complaints against Rwandan alleged perpetrators found to be living in France, ***27 cases against suspects of international crimes committed in Rwanda are now under investigation in France***. All these proceedings were initiated after NGOs and/or Rwandan victims had filed complaints. The Public Prosecutor's office has never opened a judicial inquiry on its own initiative. On 9 August 2010, a legislation was adopted implementing the Statute of the International Criminal Court

into French law. This gave the Public Prosecutor's office sole jurisdiction over crimes defined by the Rome Statute (crimes against humanity, genocide and war crimes). This provision has been heavily criticised by organizations involved in the fight against impunity for these crimes.

In January 2012, a specialised unit, with jurisdiction over crimes of genocide, crimes against humanity, war crimes and torture, was set up within the Court of First Instance in Paris. Created for the efficient handling of these crimes entailing great factual and legal complexity, this unit now centralises all proceedings against Rwandan suspects, and other proceedings for international crimes committed in countries such as Syria, the Republic of Congo, Algeria and even Libya.

FIDH Litigation Action Group, LDH and Rwandan cases

FIDH Litigation Action Group (LAG) is a network of lawyers, magistrates, jurists, and law professors, who together with the International Justice Desk at the FIDH International Secretariat, strives to provide redress to victims of international crimes, and to ensure that their rights are respected and that they obtain reparation.

In this context, FIDH has been providing legal and judicial assistance to victims engaged in judicial proceedings at the national level, as well as at the Extraordinary Chambers in the Courts of Cambodia and to Congolese victims before the International Criminal Court.

In 1995, a criminal investigation was opened in France against Wenceslas Munyeshaka, accused of genocide. Through its LAG, FIDH and its French member organisation the *Ligue des droits de l'Homme* (LDH), joined the proceedings as civil parties in May 2004. This case remains under investigation to this day.

In January 2000, FIDH and LDH were informed of the presence on French territory of Laurent Bucyibaruta and Laurent Serubuga, two Rwandan genocide suspects. FIDH and LDH subsequently filed complaints against both suspects. An investigation is still ongoing.

To date, FIDH is a civil party in more than twenty legal proceedings targeting alleged perpetrators of genocide.

FIDH also takes part in two other proceedings linked to the Rwanda genocide: one questions the implication of the French military in *Opération Turquoise* and the other targets the individual criminal responsibility for genocide of Paul Barril, who is suspected of having concluded an agreement with the Rwandan interim government, on 28 May 1994, for the supply of arms and ammunition and the training and mentoring Rwandan soldiers. These two cases are being investigated by the specialised unit in the Paris Court.

Back to the Rwandan genocide

Between 7 April and the month of July 1994, some 500,000 to one million Rwandan men, women and children were killed during the genocide.

Tutsi and Hutu were originally different social groups who together formed a single people. German, and then Belgian colonial powers established two distinct ethnic groups for administrative reasons, favouring the Tutsi group, whom they used as colonial administrators until the Hutu nationalist rebellion in 1959. In 1961, independence and the establishment of the first Republic saw Hutu parties take dominance.

From 1959 to 1973, there were regular violent outbreaks as the largely Tutsi opposition fought for power, which laid almost exclusively with Hutu. This led to the massacre of several thousands of Tutsi, in particular in 1959, December 1963 and in 1973. Juvénal Habyarimana, a Hutu, took advantage of the situation and seized power in July 1973. He set up the MRND (*Mouvement Révolutionnaire National pour le Développement* – National Revolutionary Movement for Development) as the country's only party. Meanwhile, exiled Tutsi organised themselves in Uganda and created the Rwandan Patriotic Front (RPF) in 1987.

On 1 October 1990, the RPF left its Ugandan base to launch its first attack on Rwandan territory, an act that increased the radicalism of MRND leaders. This was the beginning of a spiral into genocide. In 1991, Akazu ("little house" in Kinyarwanda), a group composed of civilian and military leaders in the inner circle of President Habyarimana, conceptualised and organised the subordination of State structures to the "Hutu Power" doctrine, cultivating the mechanisms of genocide. At that point, a population census was conducted to identify ethnic Tutsi and Hutu, and an identity card issued specifying each individual's ethnic group.

By the end of 1992, the growing influence of the RPF led to greater tension, which was met by President Juvénal Habyarimana by widening the gap between the two groups through malicious propaganda and the creation of hate media, like *Radio-télévision des Mille Collines* and its equivalent in the written press, *Kangura*. However, between June 1992 and August 1993 President Habyarimana and the RPF signed the Arusha Agreements.

During this same period of time, Habyarimana's supporters used a militia group called *Interahamwe* ("they who fight together" in Kinyarwanda) and state forces to organise the logistics required for attacking and exterminating the minority group. The RPF, hearing of this plan, recruited more partisans and fighters.

On 6 April 1994, President Juvénal Habyarimana's plane was shot down on his way home from a peace conference in Tanzania. The government accused the RPF of carrying out the attack. This was then used as a pretext for exterminating the Tutsi population in the country. Within the next few hours, Hutu soldiers and militia troops began systematically killing Tutsi.

The interim government installed immediately after the assassination of Habyarimana was led by the former Prime Minister; Jean Kambanda, though according to the prosecutor of the ICTR and many observers, the country was actually run by the "brains" behind the genocide itself, Colonel Théoneste Bagosora (condemned to life imprisonment by the ICTR in 2008). After securing the support of the majority of army commanders, the recruitment and massacre campaign grew more vicious.

The international community's lack of response and the impotence of UNAMIR (Assistance Mission for Rwanda) troops stationed in the country, mean that the massacres took place without any real opposition. In the first days after Habyarimana's plane was shot down, Tutsi were systematically tracked down and killed in their homes. Those Tutsi seeking to flee were systematically executed at ID checkpoints.

By June the interim government had been weakened by victorious RPF troops and the campaign against the Tutsi grew weaker as the leaders of the genocide fled, particularly to France.

On 4 July 1994, the RPF took Rwanda's capital, Kigali, chasing out perpetrators of genocide, who were followed by ethnic Hutu populations in their escape to eastern Zaïre (now the DRC). In doing so however, the RPF perpetrated grave human rights violations and international crimes leaving a trail of thousands of victims in their wake. The genocide ended when the RPF obtained total control over the country during the summer of 1994.



Rwandan - 2005 - © Pierre-Yves Ginet / Women in Resistance

FIDH and the genocide in Rwanda

Starting in 1993, FIDH used the media and international organisations to alert the international community of the events taking place in Rwanda. A fact-finding mission report denounced the “*massive, systematic*” human rights violations being committed “*with the deliberate intention to attack a specific ethnic group*” – acts that marked only the beginning of a genocidal logic.

Killings and declarations by Rwandan human rights defenders were reported daily during the genocide.

As of 1995, FIDH and Human Rights Watch (HRW) frequently investigated the situation in the field and recorded testimonies to elucidate the international crimes committed in the provinces and to analyse political, military and civilian responsibility.

In 1997, FIDH and HRW published a fact-finding report on sexual violence committed during the genocide.

In 1999, FIDH and HRW published a joint report called *Leave None to Tell the Story*. It became a major legal reference for the ICTR and for the national courts that hear cases on genocide. Alison des Forges, who wrote this report, has frequently been called upon to give expert testimony before the courts.

In 1999, an FIDH fact-finding report denounced the grave human rights violations committed by the Rwandan army against the Hutu populations who took refuge in Zaïre.

In 2004, FIDH published a report on the role and position of victims before the ICTR, entitled *Victims in the Balance*, followed by another publication in 2009 on the issues at stake in the closure of the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

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FIDH represents 178 human rights organisations on 5 continents



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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