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The Prosecution and Conviction of Those Who Are Responsible for “Atrocity Crimes” in Canada and the Advancement of International Justice

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Abstract

Canada played a pivotal role in the establishment of the International Criminal Court (ICC) and it was the first country in the world to incorporate the Rome Statute in its domestic law when it passed the *Crimes Against Humanity and War Crimes Act (CAHWCA)* on 24 June 2000. The CAHWCA allows the application of universal jurisdiction for the prosecution of those persons responsible for “atrocity crimes” who are present in Canada. Yet, Canada’s record for the prosecution and conviction of those who are responsible for “atrocity crimes” under CAHWCA is far from enviable. Rather than taking a leadership role in the prosecution of those responsible for “atrocity crimes,” Canada has avoided doing so. Thus far, Canada has prosecuted only two atrocity crimes cases under universal jurisdiction: *R. v. Munyaneza* 2009 QCCS 2201 [2009] QJ No 4913 conviction and the denial of its appeal in *R. v. Munyaneza* 2201. (Quebec Court of Appeal, 7 May 2014); and an acquittal in the *R. v. Mungwarere* (Superior Court of Ontario, 5 July 2013) case. This article will analyze the *ratio decidendi* in these two precedent-setting cases that rest on the credibility and trustworthiness of the testimonial evidence presented. It also considers other factors that militate against the criminal investigation and prosecution of those who are allegedly responsible for atrocity crimes. This raises the fundamental question of whether it will be possible to “end impunity for international crimes” and advance international justice when States, such as Canada, are failing to prosecute and convict those who are responsible for atrocity crimes through universal jurisdiction. It calls on States to allocate adequate funding for criminal investigations and prosecutions under universal jurisdiction and to develop more rigorous, detailed, and refined methods for gathering and adducing credible and trustworthy testimonial evidence for the prosecution of cases involving these serious international crimes.

Keywords: universal jurisdiction; atrocity crimes; international justice; prosecuting serious international crimes; international and domestic criminal law



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1. Introduction

Canada’s contribution to the advancement of international justice is perhaps second to none ([Oosterveld 2018](#)). Canada played a pivotal role in the establishment of the International Criminal Court (ICC) and it was the first country in the world to incorporate the Rome Statute in its national law when it passed the “Crimes Against Humanity and War Crimes Act (CAHWCA) on 24 June 2000. Canada was then able to ratify the Rome Statute on 9 July 2000.” ([Government of Canada n.d.a](#);

CBC News 2008; Crimes Against Humanity and War Crimes Act (S.C. 2000, c. 24) 2000).¹ Canada has adopted and applies universal jurisdiction to the prosecution of those responsible for “atrocities crimes” and beyond.²

Yet, Canada’s record for the prosecution and conviction of those who are responsible for “atrocities crimes” is far from envious (The Canadian Press 2011). Rather than taking a leadership role in the prosecution of those responsible for “atrocities crimes,” Canada has studiously avoided, so it appears, in doing so. This article will review Canada’s record in applying universal jurisdiction for the prosecution of atrocities crimes. It will analyze the *ratio decidendi* for the judgments rendered on the two universal jurisdiction cases to date. And it will consider the possible rationales for why Canada has chosen not to prosecute persons for war crimes, crimes against humanity, and genocide, but, rather, has chosen to apply immigration measures against individuals who are responsible for such serious international crimes from entering or remaining in Canada.

While it is noteworthy that recently Ahmed Eldidi and his son, Mostafa Eldidi, were charged with terrorism and, subsequently, Ahmed Eldidi was also charged with war crimes (Daigle 2024, 2025; Kersten 2024). Their cases will not go to trial until September 2026 (Daigle 2025). This article will focus on two cases to consider legal reasoning, specifically, the *ratio decidendi*, that led to a conviction in *R v Munyaneza* 2009 QCCS 2201 [2009] QJ No 4913 and the denial of its appeal in *R v Munyaneza* 2201. (Quebec Court of Appeal, 7 May 2014), and an acquittal in the *R v. Mungwarere* (Superior Court of Ontario, 5 July 2013) case (Available online: <https://www.canlii.org/en/qc/qccs/doc/2009/2009qccs2201/2009qccs2201.html>; <https://canlii.ca/t/g2rzz> and <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/235798/index.do> (accessed 9 May 2024)). It will seek to discern the legal and other rationales for Canada’s reluctance to pursue those who are responsible for “atrocities crimes” through universal jurisdiction. This raises the overriding question of whether and how it will be possible to “end impunity for international crimes” and achieve international justice when States, such as Canada, are failing to prosecute and convict those who are responsible for atrocities crimes. The inevitable conclusion is that there must be a reconsideration of the application of universal jurisdiction at the State level, through more rigorous and systematic methods for gathering reliable and trustworthy testimonial evidence for trial, if we ever hope to end impunity for the perpetration of atrocities crimes (Matthews 2018; Kersten 2025b; Teich and Reisdorf 2021).

2. The Application of “Universal Jurisdiction” in Canada

As noted above, Canada was the first country in the world to incorporate the obligations of the Rome Statute of the International Criminal Court into its national legislation with the passage of the CAHWCA, and it did so before it ratified the Rome Statute (Government of Canada n.d.a.). The CAHWCA also amended the *Canadian Criminal Code*, the *Extradition Act*, and the *Mutual Legal Assistance in Criminal Matters Act* to ensure that Canada cooperated fully with the International Criminal Court (Government of Canada n.d.a.). The CAHWCA criminalizes, in domestic legislation, war crimes, crimes against humanity, and genocide. The CAHWCA incorporates several grounds of jurisdiction:

¹ It is noteworthy that the *Crimes Against Humanity and War Crimes Act* was passed before Canada ratified the Rome Statute of the International Criminal Court.

² For a detailed explanation of the legislative provisions regulating universal jurisdiction in Canada, see Rikhs (2025, pp. 137–38). Wherein it is noted that, “universal jurisdiction, can be used for a number of transnational crimes as well as the international crimes of genocide, crimes against humanity, and war crimes.” (p. 138). The key provision being the person who is alleged to have committed the international crime must be in Canada. Footnote 11, at page 138, also provides a list of the transnational crimes that are included within universal jurisdiction.

Active nationality and territorial jurisdiction, which ensure that Canada has jurisdiction over crimes committed on Canadian territory and by Canadian citizens or residents anywhere in the world.

Passive nationality jurisdiction, which gives Canada jurisdiction over crimes committed against Canadian nationals.

Universal jurisdiction, which allows Canada to prosecute any individual present in Canada for crimes listed in the CAHWCA regardless of the individual's nationality or where the crimes were committed ([Government of Canada n.d.a.](#); [Crimes Against Humanity and War Crimes Act \(S.C. 2000, c. 24\) 2000](#)).³

In conjunction with the CAHWCA, there is a Crimes Against Humanity and War Crimes Program to deny safe haven for those persons who are believed to have committed or who have been complicit in war crimes, crimes against humanity, or genocide ([Government of Canada n.d.a.](#)). The four program partners for the CAHWCA are: the Canada Border Services Agency; Immigration, Refugees and Citizenship Canada; the Department of Justice; and the Royal Canadian Mounted Police ([Government of Canada n.d.a.](#)).

It has been noted that the CAHWCA extends criminal liability consistent with the Rome Statute of the ICC and at times goes beyond it, including war crimes arising out of customary international law and international criminal law ([The Scope and Application of Universal Jurisdiction in Canada n.d.](#)). The “CAHWCA is structured to accommodate new developments in international criminal law, whether originating from the International Criminal Court or other international law sources.” ([The Scope and Application of Universal Jurisdiction in Canada n.d.](#)). The Canadian Criminal Code also extends universal jurisdiction to certain offenses to persons who are in Canada ([The Scope and Application of Universal Jurisdiction in Canada n.d.](#)). The position of Canada is that it accepts that the primary responsibility for investigating and prosecuting serious international crimes rests with the State in which the criminal conduct occurred and the State of nationality of the perpetrators ([The Scope and Application of Universal Jurisdiction in Canada n.d.](#)).

It is worth noting that the Government of Canada considers the ICC and the CAHWCA as a “significant step forward for international justice” ([Government of Canada n.d.b.](#)). Nevertheless, Amnesty International, in its 2020 report, *Canada, End Impunity with Universal Jurisdiction*, notes that,

Therefore, Canada can be a safe haven from prosecution in its courts for foreigners who are responsible for the crimes of aggression, enforced disappearance, apartheid, extrajudicial execution, or forcible transfer of populations, committed abroad, and where the obstacles to prosecution are noted at present ([Amnesty International 2020a](#)).

Despite the Government of Canada having a Crimes Against Humanity and War Crimes Program that is dedicated to ensuring that people who have committed or are complicit in war crimes, crimes against humanity, or genocide do not enter Canada, and if they do enter Canada, then to remove their immigration status, and remove them from Canada, or to prosecute them ([Government of Canada 2021](#)). Nonetheless, it has been noted by a number of academic analysts and human rights organizations that Canada does not prosecute people who have been accused of war crimes, crimes against humanity, and genocide.

³ See also [Crimes Against Humanity and War Crimes Act \(S.C. 2000, c. 24\) \(2000\)](#), Offences Within Canada, Offences Outside Canada, and Jurisdiction, Section 8.

One of the chief critics in this regard has been Amnesty International ([Amnesty International 2020b](#)). Amnesty International has noted critically that Canada “over the last decades since [CAHWCA was passed], only two individuals have been prosecuted under CAHWCA, both linked to the genocide in Rwanda in 1994.” ([Amnesty International 2020b](#); [Dickson 2020](#)).

This has also been a topic of some debate in Canada’s Parliament, where the opposition political parties have taken the Canadian Government of the day to task for not prosecuting more suspects who have allegedly committed “atrocities crimes.” ([Thompson 2013](#)).

Clearly, universal jurisdiction is available for the prosecution of those who have committed or are complicit in serious international crimes, yet the Canadian Government has not rigorously applied universal jurisdiction as a method of advancing international justice in the world.

It is not reasonable to accept that persons who have committed or who have been complicit in serious international crimes are not entering Canada. The Canadian Government states, “There are no accurate figures representing the number or composition of undocumented immigrants residing in Canada. Estimates suggest that the population could be as high as 500,000 persons.” ([Government of Canada 2024b](#); [Duncombe 2025](#)). When this is combined with the number of persons who enter Canada legally either as permanent residents, whether as economic migrants, immediate family members, refugees, or protected persons, or arrive as temporary residents, the total number of those entering Canada each year increases dramatically to over a million people ([Government of Canada 2025](#)). According to the Canada Border Services Agency, “Over 30 million foreign nationals enter Canada each year and 0.02% are subject to detention.” ([Government of Canada 2025](#)). It would be unreasonable to expect that none of these people would be responsible for serious international crimes. ([Government of Canada 2024a](#))

3. Achieving International Justice Through Domestic Prosecutions of Serious International Crimes

It is important to emphasize that the International Criminal Court operates on the complementarity principle. The complementarity principle is premised on the understanding that national courts must, first and foremost, deal with serious violations of international criminal law. ([Seils 2016](#)) In fact, the complementary principle is enunciated in the very first article of the Rome Statute of the International Criminal Court. Article 1, The Court, states:

An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, **and shall be complementary to national criminal jurisdictions**. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute ([United Nations General Assembly 2002](#), emphasis added).

Four justifications have been provided for the ICC’s complementary system, which include the following:

1. It protects the accused if they have been prosecuted in national courts.
2. It respects national sovereignty in the exercise of criminal jurisdiction.
3. It might promote greater efficiency because the ICC cannot deal with all cases of serious crime.
4. It puts the onus on states to do their duty under international and national law to investigate and prosecute alleged serious crimes (that is, it is not just a matter of efficiency but a matter of law, policy, and morality) ([Justice Truth Dignity n.d.](#)).

The ICC was established by States to end impunity for some of the worst serious international crimes, and this was seen as a threat to peace and democracy (Justice Truth Dignity n.d.). Consequently, it was agreed that the ICC would not accept any immunities or amnesties, especially for those at the very top of the governmental and State hierarchies (Justice Truth Dignity n.d.). In short, the ICC would be a “court of last resort” and only deal with cases under limited circumstances (Justice Truth Dignity n.d.).

What is essential in the ICC complementarity system is the issue of admissibility and whether a case is admissible before the ICC. In this regard, Article 17, Issues of admissibility, of the *Rome Statute* is critical. While Article 17 outlines a two-step process in determining the question of admissibility, it is essential to take note of the first step involved:

Article 17.1

- (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- (b) The case has been investigated by a State which has jurisdiction over it, and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
- (d) The case is not of sufficient gravity to justify further action by the Court (United Nations General Assembly 2002).

What is evident in Article 17.1 is that States have jurisdiction to prosecute serious international crimes unless they are “unwilling or unable genuinely to carry out investigations or prosecutions” or States have conducted investigations and decided not to prosecute, “unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.” In Article 17.1(c), the reference to Article 20, paragraph three, is the prohibition of the double jeopardy principle in criminal law. It is patently clear that the onus is on the States to prosecute serious international crimes and, if they are either unwilling or incapable of doing so for any reason, then it devolves to the ICC to do so.

The argument presented here is that Canada is failing to meet its obligation in this regard. But sadly, Canada is not alone in failing to prosecute those alleged to have committed serious international crimes. It is important to keep in mind that very few countries in the world are exercising universal jurisdiction to prosecute those who are alleged to have committed serious international crimes.

Trial International’s *Universal Jurisdiction Annual Review 2025* only lists 16 countries that have undertaken prosecutions for serious international crimes—genocide, crimes against humanity, war crimes, torture and enforced disappearances in 2024 (Trial International 2025). The sixteen States listed include: Argentina, Australia, Austria, Belgium, Canada, Finland, France, Germany, Lithuania, Netherlands, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the United States (Trial International 2025). It is worth noting that they are all high-income/Global North countries. Among this report’s key findings are the following Table 1:

Only 8.2 percent of the world’s States, which are members of the United Nations, are exercising universal jurisdiction in the prosecution of those suspected of serious international crimes. There are 125 States Parties to the Rome Statute out of 195 sovereign States in the world today (International Criminal Court n.d.b.). This leaves some 70 States that are not Parties to the Rome Statute, including the United States, Russia, China, India and Israel. Only the United States among these non-State Parties to the Rome Statute is prosecuting those responsible for serious international crimes through universal jurisdiction.

Table 1. Key findings on the exercise of universal jurisdiction in 2024 (Trial International 2025).

Countries of the commission	32
Countries of prosecution	16
New cases	36
Suspects	297 (20 women)
Charges	83 war crimes; 107 crimes against humanity; 25 genocides; 32 economic actor suspects (business people or companies); 14 sexual violence charges; 27 convictions (first instance or appeal) (Trial International 2025)

The ICC is frequently criticized for prosecuting so few individuals for the alleged commission of serious international crimes when there are so very few States in the world that are doing so under universal jurisdiction (Wong 2019; Schaefer 2025; Sterio 2020). The ICC has convicted 13 people in total, and it has acquitted four people. There have been 34 cases, and 22 people have been detained at the ICC detention center. The ICC has issued 61 arrest warrants, but many suspects are still at large.⁴ It is also relevant to keep in mind that the ICC was formally established on 1 July 2002, when the Rome Statute came into force, about a quarter century ago (International Criminal Court n.d.a.). The first 18 judges of the ICC were sworn in on 11 March 2003 (United Nations 2003), and the first arrest by the ICC took place on 17 March 2006 (International Criminal Court 2006). The ICC issued its first verdict on 14 March 2012, a mere fourteen years ago (International Criminal Court 2012). As a court of last resort, the ICC can hardly be expected to be doing more, based on the complementarity principle and system, when State Parties to the Rome Statute are doing so few prosecutions under universal jurisdiction. The question that arises is, why are there so few countries in the world that are exercising universal jurisdiction to prosecute those who are alleged to have committed serious international crimes?

4. Canada’s Record on the Prosecution of Serious International Crimes

If Canada’s record on the prosecution of serious international crimes is far from stellar, then what can be reasonably expected from any other country in the world? And, if State Parties to the Rome Statute are not doing their share to end impunity for the commission of the most serious international crimes, then how reasonable is it to criticize the ICC for not prosecuting and convicting more perpetrators of serious international crimes? (Do Better Team 2023; Sayyed 2026).

Professor Fannie Lafontaine, Canada Research Chair on International Criminal Justice and Human Rights, at Laval University, Quebec, is quoted as stating that, “Canada has failed to adequately take up cases of universal jurisdiction.” (Amnesty International 2020b). Professor Lafontaine has also pointed out “that generally [the War Crimes Program] has opted to screen individuals and deny them entry into Canada rather than seek prosecution.” (Amnesty International 2020b). She goes on to argue that those who survive and/or have suffered from serious international crimes are left without adequate justice (Amnesty International 2020b).

Further, Amnesty International has noted:

From 1997 to 2007, over 17,000 cases of suspected war criminals were reviewed in the offices of the Canada Border Services Agency and Citizenship and Im-

⁴ These statistics are sourced from the ICC website. See International Criminal Court, About the Court, Facts and Figures, <https://www.icc-cpi.int/about/the-court> (accessed on 28 May 2026).

migration Canada. More than 3700 people were barred entry to Canada as a result. Between 2009 and 2015, 138 individuals were removed from Canada as there were reasonable grounds to believe they were involved in crimes against humanity, war crimes, or genocide, 285 people were denied refugee protection, 47 claimants were found inadmissible, and one person's citizenship was revoked ([Amnesty International 2020b](#)).

The most recent program evaluation available of the War Crimes Program or the CAHWC Program was in August 2016 ([Evaluation Division 2016](#)). The basis of the program evaluation was to assess the remedies that are available to respond to persons who are believed to have committed or been complicit in crimes against humanity, war crimes, or genocide. The available remedies include: "denial of visa/entry into Canada; exclusion from the refugee determination process; an admissibility hearing and, if inadmissible, removal from Canada; revocation of citizenship proceedings; extradition to an international criminal tribunal; and criminal investigations and prosecutions." ([Evaluation Division 2016](#)). While overall the program evaluation was positive, it did acknowledge some challenges including that the "level of resources has restricted the number of criminal investigations and prosecutions that can be undertaken." ([Evaluation Division 2016](#)). It further acknowledged the performance of the program in terms of the removal of persons believed to have committed serious international crimes from entering Canada.

Performance data demonstrates that the Program employed all the available remedies during the evaluation period. In this period, 285 individuals have been denied refugee protection, 47 claimants have been found inadmissible, and 138 individuals have been removed from Canada based on reasonable grounds to believe they were involved or complicit in crimes against humanity, war crimes, or genocide. In addition, one individual's citizenship has been revoked by the Governor in Council (GIC), and another has been imprisoned for life for involvement in crimes against humanity, war crimes, or genocide⁵ ([Evaluation Division 2016](#)).

Moreover, the program evaluation also noted that,

Furthermore, Canada's leadership in conducting prosecutions is questioned when compared to other established programs (Belgium) and even relatively new programs (Sweden), which have conducted more prosecutions than Canada in a shorter time period ([Evaluation Division 2016](#)).

The program evaluation also emphasized that it has been operating with the same budget since the inception of the CAHWC Program and that the "strain of conducting its work within the available resources is showing." ([Evaluation Division 2016](#)). And most importantly, that, "The Program's resource constraints have affected its ability to pursue criminal investigations and prosecutions." ([Evaluation Division 2016](#)).

In essence, the program evaluation on the CAHWC Program mirrors the criticisms of the program by the NGO, academic, and media communities. Consequently, this lends further support to the argument that Canada is not meeting its international obligations with respect to prosecuting those responsible for serious international crimes through the rigorous and effective exercise of universal jurisdiction.

⁵ Please note that the evaluation period was fiscal years 2009–2010 to 2014–2015.

5. Munyaneza and Mungwarera, Legal Rationale, Conviction and Acquittal

Thus far, only two cases of serious international crimes have been tried under universal jurisdiction in Canada: Desire Munyaneza (*R. c. Munyaneza*, 2009) and Jacques Mungwarere (*Mungwarere v. Canada (Public Safety and Emergency Preparedness)* 2017 FC 708, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/235798/index.do> (accessed 9 May 2024)). Munyaneza was the first person to be charged under the CAHWCA, and he was found guilty and sentenced to a 25-year sentence with no chance of parole. Mungwarere was the second person to be charged under the CAHWCA, and he was acquitted. The judge in the case ruled that the prosecution did not meet the standard of proof of guilt beyond a reasonable doubt. Both were refugee claimants. Munyaneza's refugee claim was rejected, and Mungwarere's refugee claim was accepted (Banerjee 2014; Rwandan Man Guilty of War Crimes During Genocide 2009; Aubrey 2013). Munyaneza was found guilty on the basis of the credibility of the Crown Prosecutor's witness testimony, while the opposite was the case in the Mungwarere case. The point was made in the media that the *Munyaneza* case cost over \$1.6 million, one of the most expensive ever held in Canada, and took two years to conclude (Banerjee 2014; Rwandan Man Guilty of War Crimes During Genocide 2009; Aubrey 2013).

Both cases set precedents in their own right, given that they were the first applications of universal jurisdiction through the CAHWCA.

5.1. The Munyaneza Trial and Appeal Judgements

The *Munyaneza* judgment stands out and is exceptional for a number of reasons. The judgment is 224 pages long and includes four appendices. It was the very first case to be prosecuted under the CAHWCA.⁶ Before the trial began, the trial judge presided over a rogatory commission in Kigali, Rwanda, during which the first 14 prosecution witnesses were heard (*R. c. Munyaneza*, 2009). Sixteen additional prosecution witnesses were heard in the courthouse in Montreal, Quebec, for a total of 30 witnesses for the prosecution (*R. c. Munyaneza*, 2009). In addition, three rogatory commissions were held to hear the defendants' witnesses: three defense witnesses in Paris, France; seven defense witnesses in Kigali, Rwanda; and 14 defense witnesses in Dar es Salaam, Tanzania (*R. c. Munyaneza*, 2009). In addition, 12 defense witnesses were heard in Canada for a total of 36 defense witnesses (*R. c. Munyaneza*, 2009). In total, there were 66 witnesses with some 16,000 pages of testimony and close to 200 exhibits for the criminal trial (*R. c. Munyaneza*, 2009). The judgment includes a number of expert witnesses, including the testimony of former General Romeo Dallaire, of the Canadian Army, who in 1994 was the military officer in charge of the United Nations Assistance for Rwanda (UNAMIR) (*R. c. Munyaneza*, 2009) (See Dallaire (2003); Raymont (2004); Whitten (2006); Clark (n.d.)). Much of the judgment includes a detailed summary of many of the witnesses' testimonies. In the end, the judgment turned on the credibility of witness testimony, and the trial judge concluded that the prosecution's witness testimony was trustworthy and credible, and the defense's was not. This led the trial judge to conclude that, "The accused's criminal intent was demonstrated beyond a reasonable doubt, as was his culpable violence." (*R. c. Munyaneza*, 2009). Accordingly, the defendant was found guilty of all seven counts of the indictment and that he committed genocide, crimes against humanity, and war crimes, in the prefecture of Butare, Rwanda, from 1 April to 31 July 1994 (*R. c. Munyaneza*, 2009).⁷

⁶ For a detailed historical review of this first case tried under the CAHWCA and its broader comparative implications, see Currie and Stancu (2010).

⁷ See IX—Conclusions, para 1. For a detailed legal analysis of this judgement see Lafontaine (2010).

The appeal on the *Munyaneza* judgment was rendered on 7 May 2014, and the trial judge was upheld on all counts ([International Committee of the Red Cross 2014](#)). The grounds of the appeal regarding the seven charges were as follows:

[14] The appellant raises several grounds, which can be grouped into five categories, which the Court will address in the following order:

- The acts alleged in counts 5, 6, and 7 do not constitute war crimes according to international law in force in 1994 or, in the alternative, according to Canadian law in 1994;
- The invalidity of the seven counts on grounds of vagueness;
- The commission of irregularities by the judge, rendering the trial unfair;
- The judge's misinterpretation of the constituent elements of the alleged offenses;
- The clear lack of credibility of the Crown's witnesses invalidates the verdict ([International Committee of the Red Cross 2014](#)).

The Quebec Court of Appeal carefully considered and analyzed all these grounds for appeal and dismissed them. It is noteworthy that the Quebec Court of Appeal drew heavily from international instruments and various international tribunals' jurisprudence in rendering its decision on each of these various grounds of appeal. What is also particularly noteworthy is the careful assessment of the trial judge's findings with respect to the credibility of the many witnesses, for and against the appellant, in their judgment. For example, in the trial judge's conclusions with respect to the appellant's sexual assaults, the Quebec Court of Appeal ruled the following:

[303] In short, while some of the elements of the testimony, considered separately, may appear questionable or create a vague sense of unease, it is important to consider all of the evidence as a whole when determining whether the verdict is unreasonable. Unless all of the witnesses' testimony of the witnesses from the prefecture can be rejected as a whole, it must be found that the judge had sufficient evidence to conclude beyond any reasonable doubt that the appellant went to the prefecture on several occasions and took part in the rapes of many of the women who had taken refuge there ([International Committee of the Red Cross 2014](#)).

With respect to the pillage of houses and businesses belonging to Tutsis, the Quebec Court of Appeal ruled the following:

[361] In short, despite a certain amount of confusion about dates and some differences in the details, it was open to the judge to accept the testimony of RCW-5 and RCW-6 in support of his conclusion that the appellant participated in the attacks on RCW-5's business, its pillage, and in the theft of the property in it ([International Committee of the Red Cross 2014](#)).

And, with respect to the justification of the verdicts of the trial judge, the Quebec Court of Appeal noted the following:

[370] Almost all of the Crown witnesses, who for the most part were in no way connected with each other, stated that the appellant acted as a leader during the events that took place in the Butare prefecture between April and July of 1994. That is why the judge found that he was [TRANSLATION] "at the forefront of the genocidal movement", instead of refraining and refusing to take part in the genocide, he chose to participate actively as *Interahamwe* leader and as a member of the local elite ([International Committee of the Red Cross 2014](#)).

In the end, it was, undoubtedly, the witness testimony that was determinative of the case and the trial judge's very thorough, careful, and detailed assessment of the evidence presented by all 66 witnesses and the confirmation of this by the Quebec Court of Appeal in their examination and assessment of the trial judge's judgment. In view of the International Committee of the Red Cross, the Quebec Court of Appeal judgment in *Munyaneza* ruled the following:

The Court confirmed Canadian courts' jurisdiction over acts which constituted crimes under international law at the time and in the place of their commission (paragraphs 20–55). It considered that the Act [CAHWCA], at most, retrospective in effect but not retroactive (International Committee of the Red Cross 2014).

5.2. The Mungwarere Trial Judgment

The central issue in the Jacques Mungwarere case was as follows:

[5] The central issue in this case is whether the prosecution has proven beyond a reasonable doubt that the accused committed the intentional killing of Tutsis during the above-mentioned events, and that he possessed at the time of committing the killing the additional mental intent required to elevate the killing to the crime of genocide and/or a crime against humanity contrary to paragraphs 6(1)(a) and 6(1)(b) of the *Crimes Against Humanity and War Crimes Act* (the "CCWCA"), SC 2000, c. 24 (*R. v. Jacques Mungwarere* 2013, ONCS 4594 (CanLII), <<https://canlii.ca/t/g2rzz>>, (accessed 16 July 2025)).

Like the *Munyaneza* trial, the *Mungwarere* trial was decided by a judge and not a jury (*R. v. Jacques Mungwarere* 2013; *Canadian Jury Dismissed in Mungwarere Genocide Case* 2012). At the trial, the prosecution called 13 witnesses, the defense called 31 witnesses, including the accused, and 125 exhibits were filed for the trial (*R. v. Jacques Mungwarere*, 2013). Many of the witnesses testified anonymously for both the defense and the prosecution (*R. v. Jacques Mungwarere*, 2013).⁸ This was also a multilingual court trial with many of the witnesses testifying *via* video link from Kigali, Rwanda, in Kinyarwanda translated into French by two interpreters in Ottawa (Nigam 2012). While the trial was conducted mainly in French, English was also used occasionally (Nigam 2012). What is underscored here, then, is as follows:

The importance of precise translation in the trial of someone accused of what is often referred to as the "crime of crimes" cannot be overstated. One aspect of the defense strategy was to challenge the witnesses' credibility by suggesting inconsistencies between past statements and testimony in court. Defense efforts were complicated by the fact past translations of these statements were not always accurate (Nigam 2012).

The bulk of the *Mungwarere* judgment, that is, well over 200 pages in length, consists of a detailed presentation of the witnesses' testimony. After reviewing and assessing all the witnesses' testimonies carefully, the judge in the *Mungwarere* case concluded that the accused was not a credible witness and that he rejected the bulk of his testimony (*R. v. Jacques Mungwarere* 2013). In reaching his not guilty verdict, the judge stated the following:

[1260] Even if I ignore the concerns I raised regarding the testimony of Asinathe Nyiragwiza and Maria Myiramaboyi, the evidence as a whole, which appears credible to me, would not allow me to conclude beyond a reasonable doubt that, after leaving for the attacks with the group of attackers, the accused committed

⁸ The trial judge noted that witnesses' motions to testify anonymously were routine in trials alleging genocide or crimes against humanity.

acts that largely facilitated the perpetration of murders of Tutsis or committed acts that significantly contributed to the death of Tutsis. I am of the opinion that in both cases, the evidence must identify the specific acts on which the prosecution relies. Here, what the accused did after leaving the small center is pure speculation. At most, this evidence establishes a probability of guilt (*R. v. Jacques Mungwarere* 2013).

The witness testimony, in its totality, was so tainted that the prosecution could not make out their case that the accused was guilty beyond a reasonable doubt (Marin 2014; CBC News 2013; Musoni 2013).⁹ What the *Mungwarere* case illustrates are the inherent difficulties in acquiring credible and trustworthy witness evidence necessary to convict a person for the serious international crimes of genocide and crimes against humanity.

Professor Lafontaine has given a positive assessment of both of these judgements and has noted that, “Canada has a strong piece of legislation that fulfils the primary objective of its adoption, that is to retain and to enhance Canada’s capacity to prosecute and punish persons accused of the ‘core’ international crimes.” (Lafontaine 2014). However, Professor Lafontaine makes the point that with an over-reliance on immigration measures for not allowing Canada to become a safe haven for war criminals, this does little for ensuring accountability for the commission of serious international crimes (Lafontaine 2014). Universal jurisdiction cases have not been prosecuted in Canada under CAHWCA since these two cases. Although, as noted at the outset, there is one other war crimes case that has been initiated recently with Ahmed Eldidi, who is facing charges of murder, mutilation, torture, and outrages on the personal dignity against a protected person in a non-international armed conflict contrary to Section 6(1)(c) of the CAHWCA (Royal Canadian Mounted Police 2024).¹⁰

Others have not been so sanguine about the manner in which these two trials were conducted. For instance, Marc Nerenberg and Philippe Larochelle, two of Jacques Mungwarere’s defense counsels, argued that the indictments in both trials were insufficient and did not allow the accused to know precisely what he was charged with, and, therefore, it negatively affected his trial defense preparations. In addition, one of the unresolved issues in these trials was whether unanimity was required in the conviction of an accused in a CAHWCA trial if they chose to be tried before a jury instead of simply a judge (Nerenberg and Larochelle 2014). Nerenberg and Larochelle conclude as follows:

The way in which the *Act* was applied in both *Munyaneza* and *Mungwarere* regarding their indictments was, in the opinion of the authors, both incoherent and incorrect in law. Furthermore, it is submitted that if such applications are allowed to stand, they will have made the *Act* into a completely unworkable statute—one whose application would be so replete with uncertainty that justice could not be assured. With no possibility of justice, Canada will be returned to the days of relying solely on deportation rather than criminal trials to deal with the possibility of war criminals seeking safe haven in this country. Canada will have abdicated its responsibilities under the *Rome Statute of the International Criminal Court* (of which, this country was a principle (sic) moving force) to try such criminals in our country. This was clearly not the intention of either the *Rome Statute* or the *Act* (Nerenberg and Larochelle 2014).

⁹ It is important to note that the accused was charged with genocide and/or crimes against humanity and not war crimes.

¹⁰ Wherein it states, “This is the first National Security investigation where War Crimes charges have been laid in Canada.”

Mungwarere's testimony in his CAHWCA trial led the Canadian Border Services Agency (CBSA) to initiate proceedings to vacate his refugee protection status because he had obtained his refugee protection status through misrepresentation and withholding material facts (Larochelle and Chartrand 2015). The CBSA also argued that Mungwarere should have been excluded from refugee protection under Article 1F of the Refugee Convention, based on the evidence of the criminal investigation and his trial. The Immigration and Refugee Board of Canada vacated his refugee status on 18 September 2014 (Government of Canada 2016). This reveals, according to Philippe Larochelle and Sébastien Chartrand, "the flaws in the coordination of immigration and criminal laws concerning the application of international criminal law are exploited by the different Canadian agencies involved in furtherance of their common purpose." (Larochelle and Chartrand 2015). This leads them to the argument that the applicable law be harmonized and interpreted in a compatible fashion; that is, "immigration law can and must be interpreted so as to avoid the *Mungwarere* conundrum, especially in light of the principle in *Ezokola*. . . regardless of the difference in the applicable burden of proof." (Larochelle and Chartrand 2015). However, is it, in fact, appropriate to harmonize and interpret criminal law and refugee law in compatible ways when the former is retributive and punitive while the latter is protective and surrogate? Exclusion from refugee protection under Article 1F cannot be equated with a determination of guilt or innocence. As the Supreme Court of Canada ruled in *Ezokola*, exclusion determinations are not determinations of guilt and are not based on the standard of proof of beyond a reasonable doubt or even the civil standard of a balance of probabilities (*Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 S.C.R. 678; Immigration and Refugee Board of Canada 2020).

What the *Munyaneza* and *Mungwarere* cases demonstrate is that prosecuting persons for atrocity crimes is difficult, complicated, time-consuming, resource-intensive, and highly expensive. They typically involve the necessity of translation, and in these two cases, in more than two languages, with the inherent problems of interpretation, particularly with legal and technical terminology. But, at its very core, the significance of credible and trustworthy testimonial evidence is essential for the conviction of a person charged with serious international crimes. Such international criminal cases are extremely demanding for all who are involved, given the traumatic and horrifying evidence involved for the witnesses, most often the direct victims of these crimes, but also all the others involved in the trial (Smith 2023; United Nations n.d.; McIntosh 2021). Accordingly, these complicating factors, inherent in the prosecution of atrocity crimes under universal jurisdiction, should never be underestimated.

6. Reasons for the Use of Immigration Measures over Criminal Prosecutions Under Universal Jurisdiction

The reasons why Canadian Governments prefer immigration measures over criminal prosecutions under universal jurisdiction seem to be obvious. Firstly, prosecutions under universal jurisdiction are very expensive and time-consuming, and highly demanding, difficult, and draining for all involved. The exercise of universal jurisdiction is resource-intensive and involves the coordinated participation of several government departments and agencies. Valerie Oosterveld has noted the following:

The same review [2016 Department of Justice, *Crimes Against Humanity and War Crimes Program Evaluation*] also noted that the program's relatively low budget of CDN\$15.6 million—which is the same budget amount since the program's inception in 1998, and, therefore, a shrinking budget, due to inflation—has restricted the program's ability to undertake prosecutions, which are far more expensive (at \$6 million) than the remedies of denial of visas (\$6280), refugee exclusion

(\$55,162), challenging admissibility and removal under the Immigration and Refugee Protection Act (\$122,908) and revocation of citizenship (\$1.58 million) (Oosterveld 2018).

Indeed, Oosterveld goes on to make the following point:

Given the budget limitations, the War Crimes Program emphasizes immigration remedies as “effective and cost-efficient.” In this respect, the program has had a number of successes. For example, after 17 years of legal challenges, Canada successfully deported Leon Mugasera, due to his role in encouraging the Rwandan genocide, and, in 2011, the Federal Court found that Branko Rogan had been untruthful in his 1994 application to come to Canada with respect to his work as a reserve police officer and guard at detention facilities in Bosnia-Herzegovina and that he had participated in the abuse of Muslim prisoners in detention facilities in Bileca. Continuing that success, from 2009 to 2015, the program was involved in cases in which 140 individuals were denied refugee protection, 47 claimants were found inadmissible and 138 individuals were removed from Canada, based on reasonable grounds to believe that they had been involved or were complicit in genocide, crimes against humanity or war crimes (Oosterveld 2018).

Nevertheless, the fact that the Canadian Government’s CAHWC Program has had the same budget since its inception implies that it is clearly facing challenges in trying to fulfill its program functions, given the annual decline in real dollar terms due to inflation of its program budget over time. This indicates that the prosecution of those who have committed serious international crimes through universal jurisdiction has not been a priority for Canadian Governments.

Secondly, there is no guarantee that the prosecution of a suspect of an alleged atrocity crime(s) will result in a conviction. This is most evident in the *Mungwarere* case, where the Crown Prosecutor’s witness testimony was found to be unreliable and even fabricated (*Mungwarere v. Canada (Public Safety and Emergency Preparedness)* 2017). The point was made by the judge in this case that the defendant’s own testimony was not credible but the Crown Prosecutor’s witness testimony was not credible either, which led, subsequently, to his acquittal.

This demonstrates one of the difficulties in investigating and marshaling evidence against a suspect of atrocity crimes, especially if they have taken place many years ago. Even though law enforcement spent many years investigating Mungwarere as a suspect in atrocity crimes and compiling a case against him, in the end, the evidence proved problematic, unreliable and not credible.

It is worth noting that international and hybrid courts rely on witness testimony for prosecuting their crimes against humanity, genocide, and war crimes cases, and these take time and considerable resources to secure (Devaney 2018; United Nations n.d.; United Nations 2015). While witness testimony is obviously essential for securing a conviction in crimes against humanity, genocide, and war crimes trials, it entails its own set of risks, especially for vulnerable witnesses (United Nations n.d.; Press Release 2026). What has been developed over time is a set of protocols, special procedures, and jurisprudence dealing with witness testimony (Adamska-Gallant 2024). Nonetheless, there is no guarantee that the viva voce evidence adduced will be deemed credible and trustworthy. Many international trials have gone down when witnesses either withdrew from the hearing or changed their testimony (Adamska-Gallant 2024). This is too often ignored or discounted by the critics of international and hybrid courts or, for that matter, domestic courts (International Criminal Court n.d.c.; Hurley 2013; US Department of Justice n.d.). Joseph Rikhof, among others, has made the point that,

There is no doubt that there are serious obstacles to conducting a war crimes investigation or prosecution. Apart from legal constraints and the complexity of international crimes, an investigation and prosecution based on universal jurisdiction also faces practical difficulties. The main difficulty is the cost of investigating and mounting a prosecution based on evidence, which for the most part must be collected outside the country (Rikhof 2025).

The third factor that should be considered is the political cost of undertaking a universal jurisdiction prosecution for the government of the day, especially if they are unable to obtain a conviction. The political costs involved might be quite high, not only in terms of the appearance of a lack of competence, but also among those members of the community who are persuaded that the accused is guilty and should be convicted for the commission of their crimes, and do not understand the high criminal standard necessary to obtain a conviction. All these factors work against the Canadian Government and other governments, for that matter, from pursuing, so it seems, prosecutions under universal jurisdiction for those who have allegedly committed atrocity crimes. It appears more cost-effective, efficient and less politically hazardous for governments to pursue immigration measures with these suspects than to pursue them through judicial proceedings utilizing universal jurisdiction.

7. Conclusions

7.1. Legal and Practical Limitations in the Application of Universal Jurisdiction

It is worth pointing out that despite Canada having the legal tools necessary for pursuing prosecutions with the 2000 CAHWCA, and the optimism following the successful prosecution of Munyaneza, this success led some to note the following

That said, we think it is now clear that the Canadian legislative and prosecutorial model has a great deal to offer other states. The *Munyaneza* judgment strengthens the effectiveness of Canada's approach, and the overall good work it will do as a partner in the worldwide battle against impunity (Currie and Stancu 2010).

No other prosecutions under CAHWCA have taken place since the *Mungwarere* case in 2013, although, as noted, there is at least one pending. Despite Canada's commitment not to be a safe haven for those who have perpetrated the most serious international crimes, like the vast bulk of countries in the world, it has not fully utilized universal jurisdiction prosecutions to do so. Rather, it has relied primarily on immigration measures. While this might prevent the perpetrators of serious international crimes from entering and remaining in Canada, it does not bring justice to their victims of serious international crimes.

7.2. Can Impunity for Serious International Crimes Ever Be Eliminated?

This raises the broader and more pertinent question of whether it will ever be possible to end impunity for the commission of serious international crimes, given the current complementarity principle and system with the ICC. If State Parties to the Rome Statute are relying on immigration measures to prevent becoming a safe haven for those who have committed atrocity crimes, then how will impunity end for the commission of atrocity crimes, and how will international justice ever be advanced? Fannie Lafontaine has pointed out the following:

Criminalization of the core international crimes in domestic criminal legal systems is essential for the success of the ICC, which is founded on the principle of complementarity, and, more broadly, of the enterprise of international criminal justice. The broad exercise of jurisdiction over these crimes, including on the principle of universality, will be indispensable for the system to function effectively (Lafontaine 2010).

Given that States must prosecute “atrocity crimes” under universal jurisdiction to advance international justice in meeting the goal of ending impunity for all those who are responsible for the commission of such heinous crimes, what more ought to be done to further this meritorious objective?

From this examination of both the *Munyaneza* and *Mungwarere* trials and judgements, it is evident that the quality of the witnesses’ testimony is key to whether anyone indicted of an “atrocity crime” will ever be convicted. This makes it incumbent on the criminal investigators and the prosecution to obtain only the best, credible, trustworthy, and reliable witnesses who are willing to testify in these trials. One should not underestimate the real and significant challenges and difficulties in obtaining these types of witnesses, given the stakes that are involved (Manco and Paulet 2019; de Brouwer 2015; Amoury Combs 2017; Wald 2002; Human Rights Watch 2014; Altaani et al. 2024). Perhaps, in the end, what will be absolutely vital will be the political commitment necessary from States to be willing to provide the staff and financial resources required to ensure that this work gets done and that it is sustained over time to fulfill their essential role in ensuring the work for international justice is completed and impunity for the “atrocity crimes” is eradicated eventually. In this regard, there is a leadership role for high-income states, like Canada, to step up to make such a vital international and global commitment (Kersten 2025a).

The simplest and quickest way to do so is to increase the budget of the Crimes Against Humanity and War Crimes Program so that it can play a more vigorous role in fulfilling its mandate. In addition, Canada should provide more financial support to the ICC so that it too can pursue its mandate for ending impunity for the commission of serious international crimes. What is undeniable is that Canada must continue to play a leadership role in the advancement of international justice in the world today, considering the ever-escalating challenges of protracted armed conflict, terrorism, non-compliance with international law, and the undermining of the rule of law. But, clearly, the more difficult and challenging undertaking here is for governments to rethink their approach to pursuing criminal investigations and prosecutions under universal jurisdiction (Rikhof 2025). Irrespective of the difficulties and challenges involved, governments must devise more rigorous and systematic methods of obtaining reliable and trustworthy witness testimony when collecting evidence during their criminal investigations and when adducing witness testimony during atrocity crimes trials (Consider, for instance, Dostal (n.d.)).

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