



## The Prosecutor of the Tribunal v. Jean-Paul Akayesu

The Prosecutor v. Jean-Paul Akayesu, [1998] ICTR 2, ICTR-96-4-T

**Country:** Rwanda

**Region:** Africa

**Year:** 1998

**Court:** International Criminal Tribunal for Rwanda

### Facts

Between 1 January 1994 and 31 December 1994, at least 2000 Tutsis were killed in Taba, Gitarama, Rwanda, while Jean-Paul Akayesu was still in power as a burgomaster. While seeking refuge at the bureau communal, female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten on or near the bureau communal premises. Many women were forced to suffer multiple acts of sexual violence which were at times committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm.

Akayesu was indicted and tried before the International Criminal Tribunal for Rwanda for genocide, crimes against humanity, and violations of Article 3 Common to the Geneva Conventions.

### Decision and Reasoning

The Chamber found that there was sufficient credible evidence to establish beyond a reasonable doubt that during the events of 1994, Tutsi girls and women were subjected to sexual violence, beaten and killed on or near the bureau communal premises, as well as elsewhere in the commune of Taba. The Tribunal considered the criminal responsibility of Akayesu on crimes against humanity (rape), and crimes against humanity (other inhumane acts).

In considering the extent to which acts of sexual violence constitute crimes against humanity the Tribunal defined rape. The Tribunal noted that while rape has been historically defined in national jurisdictions as non-consensual sexual intercourse, variations on the form of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual. The Tribunal considered that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.

The Tribunal also noted the cultural sensitivities involved in public discussion of intimate matters and recalled the painful reluctance and inability of witnesses to disclose graphic anatomical details of sexual violence they endured. Like torture, affirmed the Tribunal, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Tribunal defined rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. It considered sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact. The Tribunal noted in this context that coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal.

### Decision Excerpts

"Now with regard to aggravating factors, the Chamber notes that on the one hand following a meeting held at Gitarama on 18th April 1994, with senior government officials including the then Prime Minister, Mr. Jean Kabanda, Akayesu consciously chose to participate in the systematic killings that followed in Taba. The Chamber also notes on the other hand that without being a senior government official, his status as

burgomaster made of Akayesu the most senior government personality in Taba and in this capacity he was responsible for protection of the population and he failed in this mission. He publicly incited people to kill in Taba. He also ordered the killing of a number of persons some of whom were killed in his presence and he participated in the killings. He also cautioned and supported through his presence and acts, the rape of many women at the bureau communal.

The Chamber having weighed the circumstances, the aggravating circumstances against the mitigating circumstances, is of the opinion that the aggravating circumstances outweigh the mitigating circumstances especially as Jean Paul Akayesu chose to participate in the genocide. The Chamber is of the opinion that since - - that mitigating circumstances applied to the sentence, not to the gravity of the crimes. In this connection, the Chamber shares the or follows the reasoning in the - - Jean Kabanda's case and also made reference to the Erdemovic case wherein the judgement was rendered by the ICTY Trial Chamber I, I quote; it must be observed however that mitigation of punishment does not in any sense of the word reduce the degree of the crime, it is more a matter of grace than of defence. In other words, the punishment assessed is not a proper criterion to be considered in evaluating the findings of the court with reference to the degree of magnitude of the crime. Unquote.

The degree of magnitude of the crimes is still an essential criterion, is still an essential criterion for evaluation of sentence. A sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender. Just sentences contribute to respect for the law and the maintenance of a just, peaceful and safe society." Page 8-9 (Sentence).