



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

*CASE NO: ICTR - 96 - 4 - T*

**THE PROSECUTOR OF THE TRIBUNAL  
AGAINST  
Jean-Paul AKAYESU**

02 OCTOBER, 98

**Before:**

Mr. Justice Laity Kama, President  
Mr. Justice Lennart Aspegren  
Madame Justice Navanethem Pillay

**Registry:**

Dr. Mindua  
Ms. Prisca Nyambe.

**Courtroom Assistant:**

Mr. Tobias Ruge

**For the Prosecution:**

Mr. Pierre Jean Prosper

**For the Defendant Akayesu:**

In person

**Court Reporter:**

Ms. Judith Kapatamoyo  
Ms. Gifty Hardings

MR. PRESIDENT:

The session is called to order. I am requesting the registrar to tell us what is on the cause list for the Tribunal this morning.

MS. NYAMBE:

Thank you, Mr. President. Trial Chamber of the International Criminal Tribunal for Rwanda composed of Judge Laity Kama presiding, Judge Lennart Aspegren and Judge Navanethem Pillay is in session today, Friday 2 October, 1998 to pronounce the sentence

in the matter of the Prosecutor versus Jean-Paul Akayesu. Case No. ICTR - 96 - 4 - T. I am obliged.

MR. PRESIDENT:

Thank you, madame. Can the Prosecutor introduce themselves.

MR. PROSPER:

Goodmorning Your Honours. Pierre Prosper on behalf of the office of the Prosecutor. Thank you.

MR. PRESIDENT:

I now want to request the accused to come before the court and introduce himself. Can he please come before the court. You may be seated. Since you do not have counsel, please tell us who you are.

THE ACCUSED:

Thank you, Mr. President. My name is Jean-Paul Akayesu. Thank you.

MR. PRESIDENT:

As indicated by the registry, this morning the Tribunal is meeting to render sentence in the matter of the Prosecutor for the International Criminal Tribunal for Rwanda against Jean-Paul Akayesu. Sitting as Trial Chamber 1, composed of Judge Laity Kama, Presiding, Judge Lennart Aspegren and Judge Navanethem Pillay, considering that on 2 September 1998 a judgement was rendered by this Chamber in the matter of the Prosecutor versus Jean-Paul Akayesu. Considering that Jean-Paul Akayesu was convicted of genocide, crime against humanity, direct and public incitement to commit genocide. Crime against humanity, torture, crime against humanity, rape crime against humanity, other inhumane acts and on three counts of crimes against humanity, murder. Considering the written brief dated 21 September, 1998 filed by the Prosecutor on the sentence and the points that she raised in support of the said brief. At the pre-sentencing hearing on the 28 September 1998. Considering also the oral submissions made by Jean-Paul Akayesu at the said hearing of 28 September 1998, after having expressly given up his rights to be represented by counsel. Considering Articles 22 and 27 of the Statute of the Tribunal hereinafter, the Tribunal; that the Statute and Rules 100 to 104 of the Rules of Procedure and Evidence. The Trial will now look at the applicable law and principles. Here we shall look at the applicable text; namely Article 22 concerning sentencing. 101 of the Rules concerning pre-sentencing procedure, Article 23 and Rule 101 of the Rules concerning penalties. Article 26 enforcement of sentences. Rule 102 of the Rules, status of the convicted person. Rule 103, placement of the imprisonment. Article 27 of the Statute, pardon or commutation of sentences. And finally Rule 104 of the Rules, supervision of imprisonment. Then the Tribunal went into the consideration of the scale of sentences

applicable to the accused found guilty of one of the crimes listed in article 2, 3, or 4 of the Statute. Basically the submissions have been based on the decision of this Trial Chamber in the matter of Jean Kambanda and we can summarise the following:

Following the above - - as noted from a reading of the above provisions on penalties, the only penalties that the Tribunal can impose on an accused who pleads guilty or is convicted as such, are prison terms up to and including life imprisonment pursuant in particular to Rule 101(a) of the Rules, whose provisions apply to all crimes which fall within the jurisdiction of the Tribunal, namely genocide. Article 2 of the Statute crimes against humanity. Article three and violations of Article 3 common to the Geneva conventions and the Addition Protocol, Article 4. The Statute of the Tribunal excludes the forms of punishments such as death sentence penalty servitude or a fine. Neither Article 23 or the Statute - - of the Statute nor Rule 101 of the Rules determine any specific penalty for each of the crimes falling under the jurisdiction of the Tribunal. The determination of sentences is left to the discretion of the Chamber which should take into account apart from general practice regarding prison sentences in the court of Rwanda a number of other factors in particular the gravity of the crime. The personal circumstances of the convicted person. The existence of any aggravating or mitigating circumstances including the substantial co - operation by the convicted person before or after conviction.

As the Chamber stated concerning the sentencing in the matter of the Prosecutor against Jean Kambanda, it seems more difficult for the Chamber to rank the various crimes following - - falling under the jurisdiction of the Tribunal and thereby the sentence to be handed down. It seems more difficult for the Chamber to rank genocide and crimes against humanity in terms of their respective gravity. The Chamber held that crimes against humanity already punished by the Nuremberg and Tokyo Tribunals and genocide a concept defined later, are crimes which particularly shock the collective conscious.

Regarding the crime of genocide in particular, a preamble of the genocide convention recognises that at all periods of history, genocide has inflicted great losses on humanity and reiterates the need for International cooperation to liberate humanity from this scourge. The crime of genocide is unique because it is of its element of *dolus specialis* (special intent) which requires that the crime of - - - the crime be committed with the intent to destroy in whole or in part a national ethnic racial or religious group as such, as stipulated in Article 2 of the Statute. Hence the Chamber is of the opinion that genocide constitutes the crime of crimes and is therefore crucial in determination of a sentence.

Concerning the crimes against humanity as has been done in other jurisdiction, the Chamber holds that such crimes are particularly shocking to the human conscious because they typify inhumane acts committed against civilians on a discriminatory basis. There is no argument that precisely on account of their extreme gravity, crimes against humanity and genocide must be punished appropriately. Article 27 of the Charter of the Nuremberg Tribunal empowered that Tribunal pursuant to Article 6(c) of the said Charter to sentence any accused found guilty of crimes against humanity to death or such other punishment as was deemed by it to be just. Rwanda like all States which have

incorporated crimes against humanity or genocide in their domestic legislation has envisaged the most severe penalties in its criminal legislation for these crimes. The Tribunal then went into the general principles regarding the determination of sentences.

As indicated supra in determining the sentence, the Chamber must among other things, have recourse to the general practice regarding prison sentences in courts in Rwanda. Article 23 of Statute and Rule 101 of the Rules. The Chamber notes that it is logical that in the determination of sentence it has recourse only to prison sentences applicable in Rwanda to the exclusion of other sentences applicable in that country including the death sentences, since the Statute and the Rules provide that the Tribunal cannot impose this - - cannot impose this one type of sentence. Thus said the Chamber raises the question as to whether the scale of sentences applicable in Rwanda as mandatory or whether it is to be used only as a reference.

The Chamber is of the opinion that such reference is but one of the factors that it has to take into account in determining sentences. Consequently, it holds that with regard to penalties applicable in Rwanda, the Chamber notes that since the trials related to the events in 1994 began in that country, the death penalty and prison terms of up to life imprisonment have been passed on several occasions. However, the Chamber has not been able to have information on contents of these decisions particularly their underlying reasons. There is a foot note therefore to that decision which was rendered. In - - as has been said a previous sentencing the - - when the crimes with which Akayesu is charged, committed - - were committed and the perpetrators of such crimes could indeed be charged before the appropriate Rwandan courts.

Concerning sentences, the Chamber must also bear in mind that the Tribunal was established by the Security Council pursuant to Chapter 7 of the Charter of the United Nations within the context of the measures of the council, was empowered to take under Article 39 of the said Charter to ensure that violations of International humanitarian law in Rwanda in 1994 were halted and effectively redressed. As required by the Charter, in such cases, the council noted that the situation in Rwanda constituted a threat to International peace and security. In resolution 955 of 8 November, 1994 which was passed by the Council in this connection clearly indicates that the aim of the establishment of the Tribunal was to prosecute and punish the perpetrators of the atrocities in Rwanda in such a way as to put an end to impunity and thereby to promote national reconciliation and the restoration of peace. It is therefore clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed on the one hand attri - - attribution (sic) of said accused who must see their crime punished and on the other hand as deterrence, namely dissuading for good those who will be tempted in future to perpetrate such atrocities by showing them that the International community was no longer ready to tolerate serious violations of International humanitarian law and human rights. The Chamber recalls however that in the determination of sentences it is required by Article 23 and Rule 101 of the Rules to also take into account a number of factors including the gravity of the offence, the individual circumstances of the accused, the existence of any aggravating or mitigating circumstances including the substantial cooperation by the accused with the Prosecutor before or guilt plea. It is a matter as it

were of individualising the penalty. Clearly to the Chamber however, as far as the individualisation of penalties is concerned, the Judges cannot limit themselves to the factors mentioned in the statutes and the Rules. Here again their unfettered discretion to evaluate the facts and attendance circumstances should enable them to take into account any other factor that they deem pertinent. Similarly the factors at issue in the Statute and in the Rules can not interpreted as having to be mandatorily cumulative in the determination of the sentence. Recalling these factors the Chamber would like to emphasise three of them in particular.

These are the aggravating circumstances, individual circumstances of the accused and the mitigating circumstances.

Then the Chamber went on to consider issues of merit. Thus, having reviewed the principles set out above the Trial Chamber proceeds to consider all relevant information submitted by both parties in order to determine an appropriate sentence in accordance with Rule 100 of the Rules. In this connection, the Chamber first of dealt with the facts of the case. In rendering judgement on 2 September 1998 in the of Akayesu, Trial Chamber 1 found that it was established beyond reasonable doubt that;

- 1 . Akayesu is individually, criminally responsible for the killing of and causing serious bodily or mental harm to members of the Tutsi group.
2. Akayesu aided and abetted acts of sexual violence by allowing them to take place on or near the premises of the bureau communal while he was present on the premises and by facilitating the commission of these acts through his words of encouragement. In other acts of sexual violence which buy virtue of his authority sent a clear signal of official tolerance for sexual violence without which these acts of sexual violence would not have taken place.
3. On 19 April 1994, Akayesu addressed a meeting at Gisheshe and called on the population fight against accomplices of the Inkotanye knowing that his utterances would be understood by the people present to mean, kill the Tutsi, and as a result thereof widespread killing of Tutsi had commenced in Taba;
4. At this meeting in Gisheshe, Akayesu mentioned the name of Euphraim Karangwa. Later on, that same day, groups of people acting on the orders of Akayesu and in his presence, destroyed Karangwa's house and Karangwa's mother's house and killed Karangwa's three brothers.
5. Akayesu is individually, criminally responsible for the death of the eight refugees from Ruanda who were killed in his presence by the Interahamwe acting on his orders.
6. Akayesu is individually, criminally responsible for the killing of the five teachers who were killed by the Interahamwe and local population acting on his orders.

Lastly, point, 7 Akayesu is individually, criminally responsible for the torture of Victims, U,V,W,X,Y, and Z.

Now the Chamber would now come on the pre-sentencing hearing, the pre-sentence hearing that was held. During that hearing in her brief, the prosecutor in the main argued that the crimes committed by Akayesu are of extreme gravity and that they deserve to be punished appropriately. The Prosecutor was of the opinion that the Chamber should access person role of Akayesu in the crimes as well as the attendance circumstances of those crimes. She recalled that Akayesu performed executive duties in Taba commune, that he was responsible for the enforcement of laws and regulations as well as for the administration of justice and that he also had absolute authority over the communal police. The Prosecutor stated that in his opinion, the following aggravating circumstances may justify the heavy sentence that the Chamber should inflict on Akayesu:

1. Akayesu was in a position of authority and had the duty to protect the population and ensure its security
2. He betrayed the confidence that the population placed in him and used his power as Bourgemaster to commit the crimes. He also used the municipal police under his responsibility, in the commission of the crimes. He thus abused his powers.
3. He was motivated by the intent to commit genocide and planned his acts up consequently and thus acted with premeditation.
4. His criminal conduct was sustained and systematic and lasted for almost three months becoming ever more intensive.

Furthermore, the prosecutor submits that in his opinion on the basis of the information available, there are no mitigating circumstances for Akayesu's conviction. With regard to the issue of multiple sentences which could be imposed on Akayesu as envisaged by Rule 101 (c) of the Rules, the Prosecutor sought or seeks separate sentences for each of the counts on which Akayesu was found guilty but specify that the Chamber could impose concurrent sentences for offences arising from the same acts. In the opinion of the prosecutor the Chamber should impose a sentence for each of the offences committed in order to reflect the gravity of each and every one of them and to properly assess the guilt of the accused.

Finally, the Prosecutor requests that for - - request the following penalties for the crimes for which Akayesu was convicted;

Count 1. Genocide, he proposes life imprisonment.

For Count 3. He proposes life imprisonment, that is for the crimes against humanity extermination.

For Count 4. The prosecutor proposes life imprisonment for direct and public incitement to commit genocide.

For Count 5. He proposes life imprisonment or a minimum term of 30 years for crimes against humanity, that is murder.

For Count 7. He proposes life imprisonment or a minimum term of 30 years imprisonment, for crimes against humanity, murder.

For Count 9. He proposes life imprisonment or a minimum term of 30 years for crimes against humanity. Once

again murder.

For Count 11. He proposes a minimum term of 25 years of imprisonment for crimes against humanity, torture.

For Count 13. He proposes life imprisonment, for crimes against humanity, rape.

For Count 14. He proposes ten years imprisonment, for crimes against humanity other inhumane acts.

During the same hearing, that is the pre-sentencing hearing, Akayesu, first of all told the Chamber that although he was innocent of the crimes of which he was convicted, he nevertheless intended to submit to the Chamber that convicted him in the following mitigating circumstances which according to him argue in his favour.

1. Substantial evidence before the Chamber during the trial show that he was opposed to the killings and violence. Akayesu argued that he even risked his own life in order to protect the population. He was pursued and one of the policemen responsible for his protection was killed and another wounded.

2. As a self - styled small burgomaster, he had only eight communal policemen at his disposal. Akayesu compared his very limited powers and resources with those of Major General Dallaire, Commander of the United Nations Assistance Mission for Rwanda, UNAMIR, who during his appearance before the chamber explained that even the international community itself was powerless in the face of the Rwandan tragedy. Akayesu submitted that he cooperated with the prosecutor and the Tribunal in that he was available and disciplined and never obstructed the judicial process or attempted to evade it.

Finally, Akayesu insisted on publicly expressing sympathy for all the victims of the tragic events which took place in Rwanda, be they Tutsi, Hutu, or Twa. He asked for the forgiveness of the people of Rwanda in general and specifically of the people of the Taba commune not because he felt he was guilty of the crimes with which he was charged, but

because he regrets that he was not able to live up to his duty of protecting the population of Taba.

Now with regard to the personal situation of Jean Paul Akayesu, the Chamber notes that Jean Paul Akayesu was born in 1953 in Murehe sector, Taba commune, in Rwanda. He is married and a father of five children. He was a teacher and later on promoted to primary school inspector in Taba commune. In 1993, he was elected burgomaster of Taba.

Trial Chamber I, scrupulously examined all the factual evidence submitted by the two parties with regard to the determination of the penalty and it, it gathers from there above that with regard to mitigating factors, the Chamber notes that Akayesu was not a very high official in the governmental hierarchy in Rwanda and recognises that his influence and power overcame or was not commensurate with the events of the time. Akayesu expressed sympathy for the many victims of the genocide and identified himself with the survivors of the events of 1994.

3. Up to 18 April 1994, Akayesu, and this has been established, Akayesu made efforts to prevent massacres in Taba.

Several prosecution witnesses including Euphrain Karangwa, who was then an IPJ, Inspecteur de Police Judiciel, testified that the killings in Taba would have started much earlier had it not been for Akayesu's efforts in preventing such killings.

Lastly, the prosecutor has not proved that Akayesu had been previously convicted for - - of any criminal charges.

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.

Before delivering the verdict, the Chamber wishes to serve notice on the prosecutor that under the provisions of Rule 101 C of the Rules, the Tribunal may, depending on the case that is where there are several counts on which he's guilty, impose either a single sentence or multiple sentences with the understanding that in the latter case, the Chamber shall decide whether such sentences should be served consecutively or concurrently.

Here now we'll read the verdict and we'll ask the accused to stand up before the court.

Trial Chamber I, for the foregoing reasons, delivering its decision in public inter partes and in the first instance, pursuant to Articles 23, 26 and 27 of the Statute and Rules 100, 101, 102, 103, and 104 of the Rules of Procedure and Evidence, noting the general practice of sentencing by the courts of Rwanda, noting that Akayesu was convicted on Counts 1, 3, 4, 5, 7, 9, 11, 13 and 14 of the indictment in the judgement delivered by this Chamber on 2nd September 1998, noting the brief submitted by the prosecutor, having heard the prosecutor and Akayesu in punishment of the above mentioned crimes, sentences Jean Paul Akayesu, born in 1953 in Moreshe (phonetic) sector, Taba commune, Gitarama prefecture, Rwanda;

For Count 1, life imprisonment for the crime of genocide.

Count 3 of the indictment, life in imprisonment for the crime - - for crimes against humanity, extermination.

Count 4, life imprisonment for direct and public incitement to commit genocide.

Count 5, 15 years of imprisonment for crimes against humanity, murder.

For Count 7, 15 years of imprisonment for the crime - - for crimes against humanity, murder.

For Count 9, 15 years of imprisonment for crimes against humanity, murder.

For Count 11, 10 years of imprisonment for crimes against humanity, torture.

Count 13, 15 years imprisonment for crimes against humanity, rape.

Count 14, 10 years of imprisonment for crimes against humanity, other inhumane acts.

The Chamber decides that the above sentences shall be served concurrently and therefore sentences Akayesu to a single sentence of life imprisonment.

Rules that, rules that imprisonment shall be served in a state designated by the President of the Tribunal in consultation with the Trial Chamber, that the said designation shall be conveyed to the government of Rwanda at a later stage by the Registrar. Rules that this judgement shall be enforced immediately and that however, until his transfer to the said place of imprisonment, Akayesu shall be kept in detention at the Detention facility of the Tribunal in Arusha.

Upon notice of appeal if any, the enforcement of the sentence shall be stayed until a decision has been rendered on the appeal with the convicted person remaining nevertheless in detention.

Done in Arusha Second October, nineteen hundred and ninety-eight.

The following have signed;

Laity Kama, Presiding Judge, Laity Kama from Senegal,

Lennert Aspegren from Sweden, Judge, and

Mrs. Navanethem Pillay from South Africa, Judge.

It is so decided.

I will ask the accused now to withdraw.

The proceedings are adjourned.