

**PROSECUTOR v. JEAN-PAUL AKAYESU**

Case No. ICTR-96-04-T

International Criminal Tribunal for Rwanda

Trial Chamber Judgment

September 2, 1998

**Judges:**

Judge Laïty Kama, Presiding

Judge Lennart Aspegren

Judge Navanethem Pillay

**Prosecution:**

Mr. Pierre-Richard Prosper

**Defense:**

Mr. Nicolas Tiangaye

Mr. Patrice Monthé

**Gender Keyword(s):** Act of a Sexual Nature; Coercion; Consent; Corroboration; Credibility or Character of the Victim; Forced Nudity; Gang Rape; Genocidal Rape; Imposing measures intended to prevent births; Penis; Rape; Rape, Physical and Mental Harm; Rape, Public; Sexual Mutilation; Sexual Violence; Sexual Violence, Other Inhumane Acts; Vagina

**Procedural History:** On October 10, 1995, the Zambian authorities arrested Jean-Paul Akayesu (¶ 9). On February 13, 1996, the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) submitted an indictment against Akayesu (¶ 10), charging him with individual criminal responsibility for 12 counts, including for the crimes of genocide, complicity in genocide, and direct and public incitement to commit genocide; murder and cruel treatment as war crimes; and extermination, murder, and torture as crimes against humanity (¶ 6). On February 16, 1996, Judge William H. Sekule confirmed the indictment against Akayesu (¶ 11). On May 26, 1996, Akayesu was transferred to the ICTR detention facilities in Arusha, Tanzania (*id.*). On May 30, 1996, Akayesu made his initial appearance before the Trial Chamber and pleaded not guilty to all the counts against him. (¶ 12). On January 9, 1997, the Chamber commenced the trial against Akayesu (¶ 17). On June 17, 1997, with the permission of the Trial Chamber, the Prosecutor amended the indictment to include three additional charges, adding rape and inhumane acts as crimes against humanity and “outrages upon personal dignity, notably rape, degrading and humiliating treatment and indecent assault” as a war crime (¶ 23). On October 23, 1997, the second phase of the trial began; Akayesu made his initial appearance in light of the new charges and pleaded not guilty to each of the three new additional charges (¶ 24). On March 26, 1998, the

Chamber adjourned for deliberation (¶ 28). On September 2, 1998, the Trial Chamber pronounced its judgment on the case, which is digested here with a focus on the charges of sexual and gender-based violence.

**Disposition:** The Trial Chamber finds Akayesu individually criminally responsible for the crimes against humanity of rape and other inhumane acts based on evidence of rapes and other forms of sexual violence (¶¶ 685-695). The Chamber finds Akayesu individually criminally responsible for genocide, based in part on evidence of rape causing serious bodily and mental harm to Tutsi women (¶¶ 731, 734). The Trial Chamber also finds Akayesu guilty of direct and public incitement to commit genocide and the crimes against humanity of extermination, murder and torture (¶¶ 645-671, 672-75, 676-684, 699 -734, 735-44). The Chamber finds Akayesu not guilty for the crime of complicity in genocide, having determined that Akayesu was guilty of genocide rather than complicity (¶ 734). The Chamber finds Akayesu not guilty of all war crimes charges—murder and cruel treatment and outrages upon personal dignity, in particular rape—finding that he was not a member of the military and his actions were not committed in conjunction with the armed conflict (¶¶ 638-44). The Trial Chamber sentences Akayesu to life imprisonment.<sup>1</sup>

### **Key Gender-Based Holdings:**

#### **ACT OF A SEXUAL NATURE:**

- The Trial Chamber “defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers 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” (¶ 688). These definitions are discussed further under “Coercion,” “Rape” and “Sexual Violence” below.

#### **COERCION:**

- The Trial Chamber addresses the concept of coercion in its definition of rape, providing that rape is “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive” (¶ 688). The Chamber finds further that it “considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive” (*id.*). The Trial Chamber finds that “coercive circumstances need not be evidenced by a show of physical force;” rather, “threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain

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<sup>1</sup> *Prosecutor v. Jean-Paul Akayesu*, Trial Chamber Sentencing, October 2, 1998.

circumstances such as armed conflict or the military presence of the *Interahamwe*<sup>2</sup> among the refugee Tutsi women at the bureau communal” (*id.*).

#### CONSENT:

- The Trial Chamber did not use the term “consent” in its definition of rape, but acknowledges that rape has been historically defined in national jurisdictions as “non-consensual sexual intercourse” (¶ 686).

#### CORROBORATION:

- The Trial Chamber states that Rule 96(i) of the ICTR’s Rules of Procedure and Evidence provides that in cases involving testimony of victims of sexual assault, no corroboration shall be required (¶ 134). The Trial Chamber recalls that the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Trial Chamber Judgment in *Prosecutor v. Tadić* held that this “Sub-rule accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something which had long been denied to victims of sexual assault in common law [which] certainly does not [...] justify any inference that in cases of crimes other than sexual assault, corroboration is required. The proper inference is, in fact, directly to the contrary” (*id.*). The Chamber notes that it can therefore rule based on a single testimony provided such testimony is, in its opinion, relevant and credible (¶ 135).

#### CREDIBILITY OR CHARACTER OF THE VICTIM:

- The Defense alleged in its closing argument that some, if not all, of the Prosecution witnesses who testified did so either “because they were colluding in a ‘syndicate of informers’ which would denounce a particular individual for political reasons” or to take over Akayesu’s property; the Defense therefore called on the Trial Chamber to give no credence to these testimonies (¶¶ 44- 45). The Trial Chamber notes this is a very serious allegation, accusing witnesses of false testimonies or perjury, which is a criminal offense (¶ 45). The Chamber finds it cannot give any weight to a blanket allegation seeking to undermine the credibility of all Prosecution witnesses because it is based on one unsubstantiated suspicion and generalized rather than particularized with regard to individual witnesses and because the Defense, if it wished to challenge a witness’s credibility, was required to “lay the foundations for that challenge and put the challenge to the witness in question during cross-examination” (¶ 46). The Trial Chamber

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<sup>2</sup> The Interahamwe were militia members of the youth movement of the MRND (Mouvement Révolutionnaire National pour le Développement) accused of directly committing many of the crimes underlying allegations of genocide (see e.g., ¶¶ 92, 99, 105, 128, 151). The Trial Chamber notes that “The term Interahamwe derives from two words put together to make a noun, intera and hamwe. Intera comes from the verb gutera, which can mean both to attack and to work. It was documented that in 1994, besides meaning to work or to attack, the word gutera could also mean to kill. Hamwe means together. Therefore Interahamwe could mean to attack or to work together, and, depending on the context, to kill together.” (¶ 151)

dismisses the Defense's argument, noting that "during the trial the Defence did not put, nor even suggest, to a single prosecution witness that he or she was lying" (¶ 47).

- The Chamber notes that the Defense did not question the testimony of Witness J or Witness H "on rape at all" but that the Chamber itself tested their testimony (¶ 453). The Chamber notes that the Defense did question witnesses JJ, OO, KK, NN and PP regarding certain inconsistencies between their testimonies about sexual violence and prior statements they had made, and questioned certain aspects about their testimonies, including "where the rapes took place, how many rapists there were, how old they were, whether the Accused participated in the rapes, who was raped and which rapists used condoms," but the Chamber notes that the Defense never suggested that the rapes had not taken place (*id.*). The Trial Chamber dismisses Defense claims regarding discrepancies between the pre-trial written statements and the testimony of witnesses who testified about sexual violence, finding these arguments "to be unfounded or immaterial" (¶ 454). The Trial Chamber finds "[s]electively quoting from the pre-trial statements, the Defence often suggested inconsistencies which, upon examination or with further explanation, were found not to be inconsistencies" (*id.*). In those instances in which the Defense did identify actual inconsistencies between pre-trial statements and the testimony of sexual violence victims, the Trial Chamber finds them to be "of no material consequence and that they are not substantial enough to impeach the credibility of the witnesses" (¶ 455). The Trial Chamber finds that "the inconsistencies between pre-trial statements and witness testimony can be explained by the difficulties of recollecting precise details several years after the occurrence of the events, the trauma experienced by the witnesses to these events, the difficulties of translation, and the fact that several witnesses were illiterate and stated that they had not read their written statements" (¶ 455).

#### FORCED NUDITY/PUBLIC NUDITY:

- As explained in the "Rape" section below, most witnesses who testified about experiencing sexual violence described how they and other Tutsi women victims were either asked to undress or forcibly undressed or "stripped" by the Interahamwe, prior to being publicly raped or sexually assaulted or being forced to march or do gymnastics naked in front of a crowd (¶¶ 421, 427, 429, 433-37). The Chamber recounts Witness JJ's testimony about "the humiliation she felt as a mother, by the public nudity and being raped in the presence of children" (¶ 423). The Chamber recounts Witness KK's testimony regarding an incident in which Akayesu told the Interahamwe to undress a young girl named Chantal, whom he knew to be a gymnast, so that she could do gymnastics naked (¶¶ 429, 452). Witness KK recounted how Chantal was forced to march naked in front of a crowd while Akayesu laughed (*id.*). The Chamber finds that this instance of forcing the girl to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, constitutes sexual violence, determining that

“[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact” (¶ 688). The Chamber finds that this evidence supports Akayesu’s conviction for rape and other inhumane acts as crimes against humanity (¶¶ 688-95).

#### GANG RAPE:

- As discussed in the “Rape” section below, several witnesses made reference in their testimonies to having been raped by more than one person (¶¶ 425, 432, 436, 437). The Trial Chamber uses the actual term “gang rape” only once in its judgment, in its conclusion that these and other acts of sexual violence helped evidence the intent to destroy the Tutsi people and to thus establish that these acts amounted to genocide (¶ 733).

#### GENOCIDAL RAPE:

- The Prosecutor refers to allegations of rape in the amended indictment to support the charges for genocide and complicity in genocide (¶ 6, indictment ¶¶ 12A-12B). At trial, the Prosecutor presented evidence from witness testimonies detailed below under the “Rape” section (¶¶ 418-38).
- The Chamber recalls that the crime of genocide “does not imply the actual extermination of group in its entirety,” but can be committed if any of the acts enumerated in Article 2 of the ICTR Statute are committed with the “specific intent to destroy in whole or in part a national, ethnical, racial or religious group” (¶ 497). Thus, the Chamber finds that rape and sexual violence “constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such” (¶ 731).
- The Chamber finds that “rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict [sic] harm on the victim as he or she suffers both bodily and mental harm” (¶¶ 731-34).
- The Chamber also finds that the acts of rape and sexual violence were committed by Akayesu “with the specific intent to destroy the Tutsi group, as such.” (¶ 734). The Chamber notes these acts were committed exclusively against Tutsi women, “many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant” and that these acts resulted in “the physical and psychological destruction of Tutsi women, their families, and their communities” (¶ 731). The Trial Chamber concludes that “[s]exual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole” (*id.*).

- In support of the conclusion that the acts of rape and sexual violence were committed with the intent to destroy, the Trial Chamber also points to evidence showing that the rape of Tutsi women was systematic and perpetrated against Tutsi women because of their ethnicity (¶ 732). In particular, the Chamber notes: 1) testimony of a witness who testified that the Interahamwe did not rape her because they did not know her ethnic background; 2) testimony that the Interahamwe forced Alexia, a Tutsi woman, and her two nieces to undress, run and do exercises “in order to display the thighs of Tutsi women” and that the Interahamwe who raped Alexia said, “let us now see what the vagina of a Tutsi woman tastes like;” and 3) and evidence that Akayesu himself once said to the Interahamwe who were committing the rapes “don’t ever ask again what a Tutsi woman tastes like” (*id.*). The Trial Chamber finds that this “sexualized representation of ethnic identity” clearly shows that the Tutsi women were subjected to sexual violence because they were Tutsi (*id.*). This finding supports the Chamber’s conclusion that “sexual violence was a step in the process of destruction of the [T]utsi group - destruction of the spirit, of the will to live, and of life itself” (*id.*).
- Finally, the Trial Chamber stresses that the intent to destroy was also evidenced by the fact that “in most cases, the rapes of Tutsi women in Taba, were accompanied with the intent to kill those women” (¶ 733). Many rapes “were perpetrated near mass graves where the Tutsi women were taken to be killed” (*id.*). One witness testified that after an act of gang rape, she heard Akayesu saying “tomorrow they will be killed” and they were actually killed (*id.*).
- The Trial Chamber concludes that these acts of rape and sexual violence constitute the infliction of serious bodily and mental harm and that they were committed with the intent to destroy the Tutsi group, finding they “constitute the crime of genocide” and that Akayesu is individually criminally responsible for genocide (¶ 734).

#### IMPOSING MEASURES INTENDED TO PREVENT BIRTHS:

- The Chamber analyzes Article 2(2)(d) of the ICTR Statute, which includes as an enumerated act of genocide “imposing measures to prevent birth.” The Chamber finds that “measures intended to prevent births within the group” should be “construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages” (¶ 507). The Chamber notes further that “in patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group” (*id.*). The Chamber notes further that “measures intended to prevent births within the group may be physical, but can also be mental” finding that “rape can be a measure intended to prevent births when the person raped refuses subsequently to

procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate” (¶ 508).

- In the present case, Akayesu was not specifically charged with “imposing measures intended to prevent births” as an act of genocide. However, the Chamber relies on evidence of acts that could amount to such measures to find that genocide was in fact committed against the Tutsi population in Rwanda (¶ 122, 124-26). For instance, the Chamber cites testimony by Major-General Dallaire, among others, showing that pregnant women were killed, including Hutu women, based on the fact that the fetuses they were carrying were fathered by Tutsi men and were therefore perceived as belonging to the father’s ethnic group (¶ 121). Additionally, the Chamber cites the testimony of Witness PP, who testified that Akayesu publicly stated that a Hutu woman impregnated by a Tutsi man had to be found in order ““for the pregnancy to be aborted”” (*id.*). According to Witnesses KK, PP and OO, Akayesu expressed this opinion on other occasions in the form of a Rwandese proverb that implied if a Hutu woman married to a Tutsi man was impregnated by him, the fetus had to be destroyed to prevent the woman from birthing a Tutsi child (*id.*).

#### PENIS:

- Witnesses used the term “penis” in their testimony when characterizing acts of rape committed against them and other Tutsi women by the *Interahamwe* and other men, stating that the perpetrators penetrated the women’s vaginas with their penises (¶¶ 421, 424, 430). However, the Chamber defines rape more broadly than vaginal penetration by the perpetrator’s penis, finding that “any physical invasion of a sexual nature, committed on a person under circumstances which are coercive” constitutes rape (¶ 688). The Chamber finds 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” (¶ 687).

#### RAPE:

- In the amended indictment, the Prosecutor charged Akayesu for rape and other inhumane acts as crimes against humanity and “outrages upon personal dignity, notably rape, degrading and humiliating treatment and indecent assault” as a war crime (¶¶ 6, 23).
- The Chamber notes that there is no commonly accepted definition of rape under international law (¶ 686). The Chamber considers 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” (¶ 687). The Chamber notes further “the cultural sensitivities involved in public discussion of intimate matters and recalls the painful reluctance and inability of witnesses to disclose graphic anatomical details of sexual violence they endured” (*id.*). The Chamber recalls that “the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual

framework of state-sanctioned violence” and finds this approach is “more useful in the context of international law” (*id.*). The Chamber compares rape to torture, noting that rape, too, is committed for purposes such as “intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person” and that, like torture, “rape is a violation of personal dignity” (*id.*). Based on this analysis, the Chamber defines rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive” (¶ 688). The Chamber further finds 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” (*id.*).

- The Trial Chamber heard testimony from several witnesses about the rape allegations in the commune of Taba on April 7 and at the end of June 1994, including:
  - Witness J, a Tutsi woman, testified that three Interahamwe raped her 6 year old daughter when they came to kill her father (¶ 416). This testimony brought the incidence of sexual violence to the attention of the Chamber, which led to the amendment of the indictment to add charges related to rape and other forms of sexual violence (¶¶ 416-17). Witness J also testified that she had heard that young girls were raped at the bureau communal (*id.*).
  - Witness H, a Tutsi woman, testified that she herself was raped in a sorghum field and that Interahamwe raped other Tutsi women at the Bureau Communal (¶ 416). Witness H testified that Akayesu was present during at least one of the rapes at the Bureau Communal but that she did not know if Akayesu was aware of it (*id.*). She testified that the Interahamwe were not given any orders to rape but that the rapes could have been prevented by the commune police and Akayesu (*id.*).
  - Witness JJ testified that the Interahamwe took women and young girls from the refuge area near the bureau communal to rape them in the forest (¶ 421). Witness JJ testified that an Interahamwe, armed with weapons, took her from the area near the bureau communal, stripped off her clothing in front of others, penetrated her vagina with his penis and raped her twice (*id.*). She also testified that the Interahamwe forcibly took her and fifteen other girls to the cultural center and raped them there (*id.*). In her testimony, Witness JJ described how one Interahamwe raped her twice, after which two others also raped her, “at which point she described herself as feeling near dead” (*id.*). Witness JJ testified that the Interahamwe later dragged her and ten other girls back to the cultural center and raped her twice (*id.*). Witness JJ testified that she could not count the total number of times she was raped, as the attackers raped her anytime she encountered them (*id.*). Witness JJ recalled an instance when an Interahamwe raped her repeatedly and as she was lying in the cultural center, she heard the cries of girls as young as 12 or 13 years old (¶ 422).

Witness JJ also testified that the first time the Interahamwe took her and others to the cultural center to rape them, Akayesu just looked at them, but that the second time she heard Akayesu say to the Interahamwe “‘Never ask me again what a Tutsi woman tastes like’” and “‘Tomorrow they will be killed’” (*id.*). She also testified to the shame she experienced after the young men publicly exposed her nudity and raped her in the presence of children (§ 423). In her testimony, Witness JJ testified that although she did not witness Akayesu rape anyone, she believed he had the means to prevent the acts of rape and “‘suggested that he was the one ‘supervising’ the acts of rape’” (§ 422).

- Witness OO, a young Tutsi woman, testified that on or around April 1994 when the Interahamwe started killing people at the bureau communal, she and two girls tried fleeing but the Interahamwe stopped them and informed Akayesu that they were taking the girls away to “‘sleep with’ them” and that Akayesu replied, “‘take them’” (§ 424). Witness OO testified that an Interahamwe called Antoine took her to a field, pushed her to the ground and put his “sex” into hers, which she explained to mean that he penetrated her vagina with his penis (*id.*). According to Witness OO, the Interahamwe later took her to the house of a certain woman where she spent three nights, and subsequently took her to the house of another Interahamwe (§ 425). Witness OO testified that Antoine “‘did the same thing he had done before to her’” and the other Interahamwe did the same (*id.*). Witness OO testified that the two Interahamwe sexually violated her during the three days she stayed there (*id.*). Witness OO testified that she was fifteen years old at the time of these events (§ 426).
- Witness KK, a Hutu woman who was married to a Tutsi man, testified to the events she witnessed when she sought refuge at the bureau communal after her home was destroyed (§ 427). Witness KK testified that upon Akayesu’s request, the police brought a teacher named Tharcisse and his wife to the bureau communal (*id.*). Witness KK testified that with Akayesu standing nearby, the Interahamwes killed Tharcisse, undressed his wife, and asked her to go and die somewhere else (*id.*). Witness KK testified that she was pregnant at the time and in an attempt to keep her children alive she asked Akayesu for an attestation but his response was that he was not the one who made them be born Tutsi, adding that “‘when rats are killed you don’t spare rats that are still in the form of fetus’” (§ 428). She eventually miscarried after the police and Interahamwe beat her (*id.*). She also testified that she saw the Interahamwe selecting women and girls and taking them to the cultural center saying that they were going to “‘sleep with’” them (§ 429). Witness KK testified that Akayesu asked the Interahamwe to undress a young girl named Chantal who he knew to be a gymnast so that she could do gymnastics naked (*id.*). The young girl told Akayesu she was Hutu but he insisted that she must be Tutsi because her father was Tutsi (*id.*). The young girl was forced to march around naked in front of many

people during which time Akayesu was laughing (¶ 429). Witness KK testified that Akayesu later told the Interahamwe to take the young girl away and told them that, ““you should first of all make sure you sleep with this girl”” (*id.*). Witness KK also testified to the rape of Tutsi women married to Hutu men (*id.*). Witness KK testified that on leaving the bureau communal, she came across a man and woman who had been killed but explained that the woman who was a Tutsi married to a Hutu was ““not exactly dead”” but still in agony (*id.*). Witness KK testified that the Interahamwe were ““forcing a piece of wood into the woman’s sexual organs... before she died”” (*id.*). Witness KK testified, however, that she never saw Akayesu rape a woman (*id.*).

- Witness NN, the younger sister of JJ, testified to “being raped along with another sister by two men in the courtyard of their home, just after it was destroyed by their Hutu neighbors and her brother and father had been killed” (¶ 430). She testified that her mother begged the armed men “to kill her daughters rather than rape them in front of her” and that the men replied that the ““principle was to make them suffer”” (*id.*). Witness NN testified that “the man who raped her penetrated her vagina with his penis, [adding that] he did it in an ‘atrocious’ manner, whilst mocking and taunting them” (*id.*). Witness NN testified that the men raped both she and her sister at the same time, close to each other so that they each could see what was happening to the other person (*id.*). Witness NN testified that after this incident of rape, she “begged for death” (*id.*). Witness NN testified that two other male neighbors came and raped her and her sister after the first incident of rape (¶ 431). Witness NN also testified that two other men, around the age of 15 or 16, raped her and her sister as well (*id.*), and that after these incidents, their mother asked them to leave “rather than continue to be tortured in front of her,” and they went into hiding (*id.*). She testified that after she had been in hiding for a week and a half, she heard that Akayesu had stopped the killings and she and her sister decided to go to the bureau communal, each taking a different route (¶ 432). Witness NN testified that on the way she met two men who claimed to have been given orders by Akayesu to accompany her to the bureau communal (*id.*). After a short distance, these men raped her and left her naked (*id.*). Four cattle herders came across her naked and two of them raped her (*id.*). Afterward, she was unable to get up; her sister assisted her and the two proceeded to the bureau communal (*id.*). Witness NN testified that on or about the beginning of May, whilst at the bureau communal, she saw Akayesu with a towel around his neck, moving to the place where two Interahamwe were driving a pregnant woman between the bureau communal and the cultural center (¶ 433). She testified that Akayesu stood and watched the men drag the woman and later entered the office (*id.*). Witness NN testified that she saw the Interahamwe “circle this woman and saw them on top of her but did not see them penetrate her” (*id.*). She also said during this incident there were two commune policemen in front of the

office of the bourgmestre but they did nothing to prevent the rape from happening (*id.*). She said that after the rape she saw that the naked woman was hungry and cold, and pregnant (*id.*). She said an Interahamwe told her that the woman died at the bureau communal (*id.*). She testified that she did not see anyone raped inside the cultural center, but that she did see the Interahamwe “come at night and take some girls away” (§ 433). Witness NN also testified that shortly after arriving at the bureau communal, she met an Interahamwe called Rafiki who had “previously told her he wanted to live with her” but when he saw her at the bureau communal, he “told her he was going to rape her and not marry her” (§ 434). He took her to his home near the bureau communal where he locked her up for two days, “during which time he raped her repeatedly day and night, a total of approximately six times” (*id.*). Witness NN testified that when she returned to the bureau communal, she found out that her sister had been raped again and her sister eventually died (*id.*). She testified that on two occasions, she and several hundred people, mostly children and women, were taken “to a hole near the bureau communal where the Interahamwe were intending to kill them with a grenade” (§ 435). She was rescued by Rafiki, the Interahamwe, who told the others that she was his wife (*id.*). Rafiki’s younger brother took her back to his home where she was locked up for a week (§ 436). Rafiki gave the key to other young men who came and “‘slept with’ her which she explained meant that they took ‘their sex’ and put it into hers” (*id.*). Although Witness NN does not recall how many times it happened, she testified that they came everyday but at times they did not rape her (*id.*). She testified that she eventually ran away and hid in the bush after a week (*id.*). In her testimony, Witness NN opined that “the Accused had the power to oppose the killings and rapes and that by not giving refuge to anybody at the bureau communal, he authorized the rapes which took place” (*id.*).

- Witness PP, a Tutsi woman, married to a Hutu man, testified that she saw the Interahamwe rape and kill a woman and her two nieces at Kinihira, a basin near the bureau communal (§ 437). According to Witness PP, the Interahamwe forced the women to undress and to walk, run and perform exercises “so that they could display the thighs of Tutsi women” in front of about two hundred people (*id.*). Witness PP testified that the Interahamwe then threw a woman who was pregnant at that time on the ground and climbed on top of her saying “‘Now, let's see what the vagina of a Tutsi woman feels like,’” whilst another held her neck and the other Interahamwe held her shoulders and her thighs apart as numerous Interahamwe raped her, which led to the pregnant woman going into premature delivery during the rapes (*id.*). Witness PP testified that several Interahamwe went on to rape the two nieces which left the younger one with “lots of blood coming from her private parts” (*id.*). After the rapes, the Interahamwe placed all three women on their stomachs, hit them with sticks, and killed them (*id.*). Witness PP testified that said she was not

raped because no one knew her ethnic group (¶ 438). Witness PP also testified that some women and children were able to escape from the bureau communal after they had to “sacrifice themselves,” which she explained meant they had submitted to rape (*id.*). Witness PP testified that she rescued a woman called Vestine from the pit at Kinihira after the woman gave birth and took the woman to the house of a man named Emmanuel but she was later told that an Interahamwe called Habarurena had come for Vestine and taken her to a sorghum field in a place known as Kanyinya where he kept her for a week and raped her repeatedly (*id.*). Witness PP testified that “[w]hen she next saw Vestine there was a liquid flowing from her private parts and Vestine told her, ‘I think it would be better to go Kinihira to be killed’” (*id.*). Witness PP testified that she saw the Interahamwe rape Vestine together with other women and that on the following day she saw an Interahamwe kill Vestine and throw her in a pit (*id.*).

- The Trial Chamber finds this evidence credible and sufficient to establish beyond a reasonable doubt that during this period, Tutsi girls and women were subjected to sexual violence, beaten and killed on or near the bureau communal and in other parts of the commune of Taba, and that many of the acts of sexual violence took place in front of many people and all were directed against Tutsi women (¶ 449). The Trial Chamber finds that hundreds of Tutsis, mostly women and children, sought refuge at the bureau communal during these events and many acts of rapes took place on or near the premises of the bureau communal (*id.*). The Trial Chamber finds that the Interahamwe were the perpetrators of the acts of rape and sexual violence which took place on or near the premises of the bureau communal (¶ 450). The Trial Chamber finds beyond a reasonable doubt that Akayesu had reason to know and in fact knew that sexual violence was taking place on or near the premises of the bureau communal and that women were being taken away from the bureau communal and sexually violated (¶¶ 451-52). The Trial Chamber finds that Akayesu did not take any measures to prevent acts of sexual violence or to punish the perpetrators of sexual violence (¶ 452), and that he ordered, instigated and otherwise aided and abetted sexual violence (*id.*). The Trial Chamber finds that Akayesu watched two Interahamwes drag a woman to be raped between the bureau communal and the cultural center and two commune policemen in front of his office witnessed the rape but did nothing to prevent it (*id.*).
- Based on the findings above, the Trial Chamber finds Akayesu individually criminally responsible for rape and other inhumane acts as crimes against humanity and as acts of genocide (¶¶ 696-97, 734).

#### RAPE, PUBLIC:

- The Chamber cites the fact that “[n]umerous Tutsi women were forced to endure acts of sexual violence, mutilations and rape, often repeatedly, often publicly and often by more than one assailant” in its finding that Akayesu “by his presence, his attitude and

his utterances” encouraged such acts, including by telling the Interahamwe committing the acts “‘never ask me again what a Tutsi woman tastes like’ (¶¶ 706-07).

#### RAPE, PHYSICAL AND MENTAL HARM:

- The Trial Chamber considers that the acts of sexual violence as described above in the “Rape” section constitute acts of genocide as they were committed to cause serious bodily or mental harm with the specific intent to destroy, in whole or in part, a particular group (¶ 731). The Trial Chamber finds that committing acts rape and sexual violence are “one of the worst ways of inflic[ting] harm on the victim as he or she suffers both bodily and mental harm” (¶ 731). As noted above under “Genocidal Rape,” the Chamber finds that acts of rape and sexual violence were committed exclusively against the Tutsi women, resulting in physical and psychological destruction of Tutsi women, their families, and their communities and that these acts were committed with the intent to destroy the group, thus constituting genocide (¶¶ 731-733).

#### SEXUAL MUTILATION:

- The Chamber considers evidence of sexual mutilation in support of the charge of genocide. The Chamber notes that the genocidal act of imposing measures intended to prevent births within the group should be construed as including sexual mutilation (¶ 507). Akayesu was not specifically charged with preventing births within the group as an act of genocide, but was charged with causing serious physical and mental harm as an act of genocide (¶ 6). In considering the evidence to support that charge, the Chamber notes several times that Tutsi women were forced to endure sexual mutilation and this evidence supported Akayesu’s conviction for genocide (¶¶ 706, 731, 733).

#### SEXUAL VIOLENCE:

- The Chamber defines “sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive,” noting that “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” (¶ 688). The Chamber finds that an incident described by Witness KK in which Akayesu ordered the Interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, constitutes sexual violence (*id.*).

#### SEXUAL VIOLENCE, OTHER INHUMANE ACTS:

- The Prosecution added charges in the amended indictment against Akayesu for other inhumane acts as a crime against humanity based on acts of sexual violence (¶ 6, indictment ¶¶ 12A-12B). In support of this charge, the prosecution presented evidence to the chamber in the form of witness testimonies which is discussed in detail in the “Rape” section above. Considering the testimonies of the witnesses, the Trial Chamber finds Akayesu criminally responsible for the inhumane acts of the forced undressing of Tharcisse’s wife, the forced undressing and naked public marching of a young girl named Chantal, as well as the forced undressing of a woman and her two nieces and the forcing of these women to perform exercises naked in public, all events that occurred in and around the bureau communal (¶ 697).

#### VAGINA:

- The Prosecution uses the term “vagina” in its allegations to define acts of “sexual violence.” As discussed above in the “Rape” section, the witnesses also used the term “vagina” in their testimonies to describe acts of rape (¶¶ 421, 430). The Chamber also notes statements made by perpetrators of rapes sexualizing the ethnicity of the Tutsi women in the context of the rapes committed against them, such as ““Now, let’s see what the vagina of a Tutsi woman feels like”” (¶ 437). The Chamber relies upon this evidence in finding Akayesu guilty of rape and other inhumane acts as crimes against humanity and rape as an act of genocide (¶¶ 685-95, 731, 734).