

**PROSECUTOR V. JEAN-PAUL AKAYESU**

Case No ICTR-96-4-A

Appeals Chamber of the International Criminal Tribunal for Rwanda

June 1, 2001

**Judges:** Claude Jorda, presiding  
Lal Chand Vohrah  
Mohamed Shahabuddeen  
Rafael Nieto-Navia  
Fausto Pocar

**Prosecutor:** Carla Del Ponte  
Solomon Loh  
Wen-qu Zhu  
Sonja Boelaert-Suominen  
Morris Anyah

**Defense:** John Philpot  
André Tremblay

**Gender Keywords:** Rape

**Procedural history:**

On October 10, 1995, the Zambian authorities arrested Jean-Paul Akayesu.<sup>1</sup> On February 13, 1996, the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) submitted an indictment against Akayesu,<sup>2</sup> 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 (¶ 3).<sup>3</sup> On May 30, 1996, Akayesu made his initial appearance before the Trial Chamber and pleaded not guilty to all the counts against him (¶ 5). On January 9, 1997, the Chamber commenced the trial against Akayesu (¶ 5). 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 (¶ 4). Akayesu was charged both as an individual and as a superior for these crimes (¶ 4).

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<sup>1</sup> *Prosecutor v. Jean-Paul Akayesu*, ICTR Trial Chamber Judgment, September 2, 1998, ¶ 9.

<sup>2</sup> *Id.*, ¶ 10.

<sup>3</sup> *Id.*, ¶ 6.

On September 2, 1998, the Trial Chamber found Akayesu guilty for genocide, based in part on evidence of rape causing serious bodily and mental harm to Tutsi women.<sup>4</sup> The Trial Chamber also found Akayesu guilty of direct and public incitement to commit genocide and the crimes against humanity of extermination, murder and torture.<sup>5</sup> The Chamber found Akayesu not guilty for the crimes of complicity in genocide, having determined that Akayesu was guilty of genocide rather than complicity.<sup>6</sup> The Chamber found Akayesu not guilty of all war crimes charges—namely, murder, 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.<sup>7</sup>

On October 2, 1998, Akayesu was sentenced to life imprisonment (¶ 8). Both Akayesu and the Prosecutor appealed from the Judgement (¶ 9). In addition, Akayesu lodged an appeal against the Sentencing Judgement (*id.*).

Among the issues raised by Akayesu on appeal were that: 1) he was denied the right to be defended by counsel of his own choice; 2) he was denied the right to competent counsel; 3) the tribunal was biased and lacked independence; 4) and errors invalidated the finding of guilt, including unlawful amendment of the original indictment, improper treatment of prior statements, failure to apply the beyond a reasonable doubt standard of proof, substantive errors of fact and use of out-of-court evidence. (¶ 10). The Prosecution also appealed on several issues, including that the Tribunal erred in requiring discriminatory intent for certain crimes against humanity, including murder and rape (¶ 11).

The Appeals Chamber focuses on the grounds of appeal “in which Akayesu submitted that the alleged error had a bearing on the verdict of the Trial Chamber,” which include:

- (1) Improper amendment of the initial indictment;
- (2) Improper treatment of prior statements;
- (3) Non-application of the reasonable doubt standard and resulting material errors of fact; and
- (4) Out-of-court evidence (¶ 36).

This digest focuses on the Appeals Chamber’s consideration of the grounds of appeal above that deal with issues related to sexual and gender-based.

### **Disposition:**

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<sup>4</sup> Id., ¶¶ 731, 734.

<sup>5</sup> Id., ¶¶ 645-671, 672-75, 676-684, 699 -734, 735-44.

<sup>6</sup> Id., ¶ 734.

<sup>7</sup> Id., ¶¶ 638-44.

The Appeals Chamber unanimously dismisses each of the grounds of appeal raised by Akayesu and affirms the verdict of guilt entered against him on all the counts on which he was convicted and the sentence of life imprisonment (p. 143). The Appeals Chamber also agrees with the Prosecution's argument that the Trial Chamber erred in requiring discriminatory intent for the crimes against humanity of murder and rape; except for persecution, the Prosecution need not prove the enumerated acts were committed with discriminatory intent (¶¶ 467-68).

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

#### **RAPE**

- The Prosecution appealed on the ground that the Trial Chamber erred in holding that a victim of the crimes against humanity of murder or rape must have been murdered or raped with a discriminatory purpose, based on the victim's national, political, ethnic, racial, or religious group (¶ 447). The Prosecution argued that the discriminatory purpose requirement should apply to the broader attack on the civilian population of which the act of the accused is a part, not to the specific acts of the accused (¶¶ 447-48). The Appeals Chamber finds that there is a *prima facie* contradiction between the way the Trial Chamber applied this requirement to murder and rape and how it applied this requirement to other crimes against humanity (¶ 458). For extermination and torture as crimes against humanity, the Trial Chamber required the broader attack to encompass a discriminatory intent, not the individual acts of the accused, while for rape and murder, the Trial Chamber required the acts themselves to be committed with discriminatory intent (¶ 456-58). The Appeals Chamber reviews jurisprudence from the ICTY and other sources of customary international law as well as the context in which the UN Security Council promulgated the ICTR statute and determines that, except for persecution, crimes against humanity do not include a burden on the Prosecution to prove the individual accused committed the enumerated act with discriminatory intent (¶¶ 461-68). Rather, it is the broader attack (to which the enumerated act must be connected) that must be committed with discriminatory intent based on national, political, ethnic, racial, or religious reasons (¶¶ 468-69).

### **Other Issues:**

#### **AMENDMENT OF INDICTMENT**

- As noted above, the Prosecution amended the indictment after trial had started in the case, adding charges of sexual and gender-based violence after hearing evidence provided by witness testimony (¶¶ 4, 108). Akayesu appealed, arguing that the Trial Chamber erred in law by allowing the Prosecution to add three charges related to sexual violence, causing substantial prejudice to the defense due to the timing of the amendment and the

fact that the new charges alleged events outside of the timeframe of the original indictment (¶¶ 103-05). Akayesu requested that, as a result, the convictions for sexual violence be set aside as a remedy (¶ 106).

- The Prosecution responded that while it had had some evidence of sexual violence prior to amending the indictment, this evidence was insufficient to bring charges until Witness J and Witness H described during the trial acts of rape and other forms of sexual violence that occurred in Taba for which Akayesu was allegedly responsible (¶ 108).
- The Appeals Chamber finds that the scope of the amended indictment did not make it a “new” indictment as alleged by the Defense because the location and timeframe were the same as the allegations in the original indictment (¶ 119). The Appeals Chamber also finds with regard to the timing of the amendment that a Prosecutor can amend an indictment during trial with the permission of the Trial Chamber and that in this case, the Trial Chamber was justified in granting the Prosecutor leave to amend (¶ 120). The Appeals Chamber notes that the security situation in Rwanda interfered with a timely and thorough investigation of the new charges prior to the amendment, and that the Prosecutor’s motion to amend the indictment included sufficient support for these new charges (*id.*).
- With regard to Akayesu’s argument that Defense Counsel was unable to cross-examine Witness J and Witness H about the allegations of sexual violence because the witnesses testified prior to the addition of sexual violence charges, the Appeals Chamber finds that the Defense could have asked the Court to recall these witnesses for cross-examination on these charges after the indictment was amended but chose not to, concluding there is no error (¶ 121).
- Finally, the Appeals Chamber finds that the Trial Chamber was reasonable in granting the Defense a four-month extension to prepare Akayesu’s defense after the addition of the new charges (¶ 122). Thus, the Appeals Chamber rejects all of Akayesu’s grounds of appeal related to the amendment of the indictment (¶ 123).