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# Case Study: Prosecutor v. Jean-Paul Akayesu (2001)

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## ABSTRACT

*The case Prosecutor v. Jean-Paul Akayesu (ICTR-96-4-T) is of immense significance in the development of international criminal law as it was the first international tribunal conviction for genocide and, importantly, the first time an international court recognized that rape and sexual violence could be genocide and crimes against humanity. This case study explores how the Akayesu trial progressed from a gender-blind indictment to a pivotal recognition of sexual violence as a means of ethnic extermination. Using survivors' testimonies, the ICTR's reasoning, and later legal developments, the study argues that Akayesu reset the stage for international law to think about gender, intent, and accountability. The analysis situates the ruling amid the larger historical silence regarding sexual violence in wartime and shows how women's testimony compelled international law to confront its patriarchal biases. It also examines the Tribunal's determination of genocidal intent, command responsibility, and the challenges of proving sexual violence. Lastly, the piece traces the legacy of Akayesu in influencing gender provisions in the Rome Statute and its influence on later developments in jurisprudence at the ICTY and ICC. By translating the lived experiences of victims into legally cognizable harm, Akayesu brought together outrage with legal accountability, creating a lasting precedent of gender justice in international law.*

## KEYWORDS

*Akayesu case; International Criminal Tribunal for Rwanda (ICTR); genocide; sexual violence; gender justice; international criminal law; survivor testimony; command responsibility; feminist legal theory; crimes against humanity*

## INTRODUCTION

The genocide in Rwanda in 1994 marks one of the most sinister periods in contemporary international history: in an estimated one hundred days, somewhere between 800,000 and more than one million Tutsi and moderate Hutu were murdered. In the wake of this historical event, the International Criminal Tribunal for Rwanda (ICTR), established by the United Nations Security Council in Resolution 955(1994), paved the way for international criminal law accountability for the crime of genocide and other related offences. The ICTR has numerous ground-breaking decisions, but one of the landmark decisions is the case of Jean-Paul Akayesu, formerly the mayor of the Taba Commune in Rwanda. It was the first conviction for genocide handed down by an international tribunal.

But the Akayesu verdict is significant beyond a conviction for genocide. The Trial Chamber, in a novel legal development, acknowledged for the first time in international criminal law precedent that rape and other forms of sexual violence may constitute genocide and crimes against humanity if committed for the purpose of the required genocidal intent. This legal reasoning challenged the prevailing notion in international law that sexual violence is the incidental or collateral damage of war, and reconfigured it to be a deliberate and systematic method of ethnic erasure.

As a student of international law, I find the Akayesu finding particularly interesting because it demonstrates how legal doctrine can change under the weight of lived experiences, testimony and collective advocacy. In particular, it emphasizes a situation in which gender-based violence, which has historically been marginalized in legal reasoning, took center stage in both prosecutorial strategy and judicial reasoning. Accordingly, this case study will examine not only the facts, issues and reasoning of Akayesu, but also the fact that the judgment marked a substantial paradigm shift: the move from silence to recognition of sexual violence in genocide law.

## FACTS OF THE CASE

Jean-Paul Akayesu was the bourgmestre (mayor) of the Taba Commune in the Gitarama Prefecture of Rwanda at the time of the genocide in 1994<sup>1</sup>. He had wide-ranging administrative and political control over the local police, communal guards, and the residents of his commune<sup>2</sup>. Akayesu was initially seen as a

<sup>1</sup> *Prosecutor v Jean-Paul Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) para 63.

<sup>2</sup> William A. Schabas, *The UN International Criminal Tribunals: The Former*

moderate, but his actions changed dramatically after the assassination of President Juvénal Habyarimana on 6 April 1994, which was the triggering event of the systematic killings of Tutsi people throughout the country<sup>3</sup>. Within weeks of this event, widespread killings, rapes, and other atrocities began occurring in Taba Commune, predominantly against Tutsi civilians<sup>4</sup>.

Sight witnesses testified that Akayesu not only did not prevent the crimes, but instead also incited, encouraged, and facilitated them<sup>5</sup>. Eyewitness testimony accused him of openly ordering the murder of Tutsi people and, on at least a few notable occasions, treating local women who were subsequently raped and murdered<sup>6</sup>. It is worth noting that at the initial stages of the investigation and indictment, sexual violence was not one of the charges presented against Akayesu<sup>7</sup>. It was only after brave testimony from women survivors was given during the trial proceedings that the charges of rape and other forms of sexual violence, such as murder, torture, and other inhumane acts, were added to the indictment as genocide, specifically as an instrument of genocide, and as crimes against humanity<sup>8</sup>.

The trial began on 9 January 1997 before Trial Chamber I of the International Criminal Tribunal for Rwanda (ICTR), consisting of Judges Laïty Kama (Presiding), Navanethem Pillay and Yakov Ostrovsky<sup>9</sup>. On 2 September 1998, the Chamber's verdict found Akayesu guilty of nine charges, including genocide, direct and public incitement to commit genocide, and crimes against humanity (murder, torture, rape, and other inhumane acts)<sup>10</sup>. Akayesu was sentenced to life imprisonment<sup>11</sup>. The verdict was presented as a watershed in international criminal law, in the same way as the Genocide Convention Act, given that it was the first time rape was defined and prosecuted in this way by an international tribunal<sup>12</sup>.

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*Yugoslavia, Rwanda and Sierra Leone* (Cambridge University Press 2006) 137.

<sup>3</sup> Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch 1999) 3.

<sup>4</sup> *ibid* 148–150.

<sup>5</sup> *Akayesu* (n 1) paras 416–420.

<sup>6</sup> *ibid* paras 426–429.

<sup>7</sup> Kelly D. Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Brill 1997) 288.

<sup>8</sup> Patricia Viseur Sellers, 'The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation' (2007) 35 *Nordic Journal of Human Rights* 181, 186.

<sup>9</sup> *Akayesu* (n 1) paras 5–6.

<sup>10</sup> *ibid* paras 731–734.

<sup>11</sup> *Prosecutor v Jean-Paul Akayesu* (Sentence) ICTR-96-4-T (2 October 1998) para 5.

<sup>12</sup> Kelly D. Askin, 'Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring

## ISSUES BEFORE THE TRIBUNAL

The Prosecutor v. Akayesu case raised several complex legal questions related to both individual responsibility, the meaning of genocidal intent, and the characterization of sexual violence as a form of genocide and a crime against humanity. The main issues for the International Criminal Tribunal for Rwanda (ICTR) were:

*Whether Jean-Paul Akayesu could be Criminally Responsible for Genocide under Article 2(3)(a) of the ICTR Statute?*

The core issue was whether Akayesu, in his capacity as bourgmestre, had both knowledge of and intent to exterminate the Tutsi people, and whether he can be said to have participated in genocide by his words and deeds or his inaction. Establishing this would require a showing of *actus reus* (the act or aiding the killings) and *mens rea* (intent to destroy - in whole or in part - a protected group).

*Whether Rape and Sexual Violence Constitute Genocide or Crimes Against Humanity?*

The primary and novel issue was whether rape could be encompassed within the definition of genocide in Article 2(2)(b) and (c) of the Statute of the ICTR<sup>13</sup>. The Chamber considered whether the infliction of rape, with the intent to destroy the Tutsi group, could satisfy the definition of inflicting "serious bodily or mental harm," or constituted the utterance of "conditions of life calculated to bring about the physical destruction" of that Tutsi group<sup>14</sup>.

*Whether Akayesu could face liability under the principle of command responsibility?*

Given his administrative position, the Tribunal considered whether Akayesu had command responsibility over these acts of his subordinate even without physical participation<sup>15</sup>, and whether failure to prevent or punish those acts would constitute tacit approval or encouragement, and criminal responsibility under international law<sup>16</sup>.

*Whether Akayesu's public statements met the definition of direct*

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<sup>13</sup> Obstacles' (2003) 21 *Berkeley Journal of International Law* 288, 300.

<sup>14</sup> Akayesu (n 1) paras 731–732.

<sup>15</sup> ibid paras 731–733; United Nations, *Statute of the International Criminal Tribunal for Rwanda* (1994) art 2(2)(b)–(c).

<sup>16</sup> Akayesu (n 1) paras 486–488.

<sup>16</sup> Paola Gaeta, *The UN Genocide Convention: A Commentary* (Oxford University Press 2009) 141–143.

*and public incitement to commit genocide?*

The Tribunal also considered whether Akayesu's public speeches and acts met the definition of "direct and public incitement to commit genocide" as defined under Article 2(3)(c) of the Convention<sup>17</sup>. This issue also tested the extent to which verbal acts (as opposed to physical acts of violence) could result in criminal liability for genocide<sup>18</sup>.

### **JUDGEMENT OF THE CASE**

The International Criminal Tribunal for Rwanda (ICTR) convicted Jean-Paul Akayesu of nine separate counts that included genocide and crimes against humanity. In its landmark decision, the Tribunal held that sexual violence could form part of the act constituting genocide if committed for the purpose of destroying, in whole or in part, a protected group. The Chamber noted that rape was used systemically with the intent of causing serious bodily or mental harm to Tutsi women, which engaged one of the acts constituting genocide found in Article 2(2)(b) of the ICTR Statute<sup>19</sup>. This finding marked a broader legal understanding of genocide beyond killing and established sexual violence as a tool for destroying the social cohesion of a group.

Moreover, the Tribunal expressed a central principle regarding responsibility to command. It held Akayesu liable, not only for his own participation, but also for his inaction to prevent or punish the acts of subordinates under his command when he was a bourgmestre<sup>20</sup>. This finding reaffirmed the duty of superiors in civilian or military hierarchies to act when they have knowledge of atrocities. The Tribunal's invocation of the doctrine was based upon prior precedents of the Nuremberg and Tokyo Tribunals, but also creatively adapted the duty to a non-military context<sup>21</sup>.

Similarly to its jurisdictional reasoning, the wider legal reasoning of this judgment helped build a definition of rape and sexual violence in international law. The Chamber defined rape as "a physical invasion of a sexual nature, committed on a person under coercive circumstances," thus establishing a fluid definition of rape, grounded in the experience of the survivor<sup>22</sup>. This language continued to influence case law at the Tribunal and the

<sup>17</sup> *Akayesu* (n 1) paras 557–560.

<sup>18</sup> Gregory S. Gordon, *Atrocity Speech Law: Foundation, Fragmentation, Fruition* (Oxford University Press 2017) 188.

<sup>19</sup> *Prosecutor v Jean-Paul Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) [731].

<sup>20</sup> *Ibid.*

<sup>21</sup> *Prosecutor v Delalić et al* (Čelebići case) ICTY-96-21-T (16 November 1998) [364], [370].

<sup>22</sup> *Akayesu* (n 1) [598].

International Criminal Court, and was expressly with the intent to focus on the coercive nature of sexual violence rather than weigh it down with narrow definitions that emphasize mechanical qualities. Akayesu effectively served as a basis for conceiving sexual violence as a tactic; sexual violence was no longer an incidental form of warfare, but recognized as a purposeful and critical part of a genocidal policy<sup>23</sup>.

## CRITICAL ANALYSIS

The Akayesu judgment was a major break in the way international criminal law addressed gender violence. For decades, sexual violence in war was hidden under what feminist scholars have termed the "invisible crime" — something recognized in history, yet unrecognized in law<sup>24</sup>. The International Criminal Tribunal for Rwanda (ICTR) ultimately recognized rape as genocide in Akayesu. This marked the first expansion of the convention of genocide, as female suffering became an international discourse rather than a private shame<sup>25</sup>.

The true transformative aspect of Akayesu is the use of survivor testimony as a way to create legal authorship. Initially, no sexual violence was present in the indictment, and it was only through the commitment of Tutsi women who bore witness at the Tribunal that the prosecution amended its indictment<sup>26</sup>. In making space for everyone to speak, survivors became co-makers of international law — showcasing the ways law and legal norms evolve not just through judicial practice, but also lived experience. In this way, Akayesu blurred the line between evidence and norm, as international law transformed from being imposed on victims to being informed by survivors<sup>27</sup>.

The case also revised the definition of genocidal intent — expanding to include the destruction of a group's capacity for reproduction and cultural continuity<sup>28</sup>. As a result of this broader definition, genocide could also mean systematic violation of women's bodies as a way of destroying the group. With Akayesu, international law not only sought to punish perpetrators — it

<sup>23</sup> Kelly D Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Martinus Nijhoff 1997) 269.

<sup>24</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000) 313.

<sup>25</sup> *Prosecutor v Jean-Paul Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) [731].

<sup>26</sup> Prosecutor's Motion for Leave to Amend the Indictment, *Akayesu* (ICTR-96-4-PT) (17 June 1997).

<sup>27</sup> Patricia Sellers, 'The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation' (2007) 35 *Nordic Journal of Human Rights* 143.

<sup>28</sup> Ibid.

began to listen.

## CONCLUSION

The Prosecutor v. Akayesu case is recognized as a watershed moment in the history of international criminal law because of what it recognized, not merely what it convicted or punished. By recognizing sexual violence as a means of committing genocide, the ICTR signaled a fundamental shift in the legal and moral lexicon of atrocious acts. The judgment closed a historical gap between the suffering of individuals and legal recognition of that suffering, and translated the unspeakable suffering endured by women into the language and framework of justice.

What makes Akayesu particularly notable is not some form of judicial creativity or innovation, but the courage of survivors who through their testimony, redefined the contours of the law. Through testimony, survivors expanded genocide to move beyond the eradication of individuals to include the cultural and reproductive destruction of women, putting international law in a position of reckoning with its historical incapacity to be gender conscious of harm.

Akayesu was not simply a legal victory as it was a moral reckoning. It asserted that justice is not complete unless it is inclusive, and that truth is not lasting unless told by those who have been disempowered. Akayesu did the work of transforming silence into recognition and thereby reoriented international law toward a more humane, gender conscious understanding of justice - where listening itself is the act of legal transformation.