



International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda

Jean-Paul Akayesu, summary of the Judgement

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1. Trial Chamber 1 is sitting on this day, 2 September 1998, to deliver its judgment in the case " The Prosecutor versus Jean-Paul Akayesu", case no. ICTR-96-4-T.

2. The Judgment, which is already available in French and English, the two official languages of the Tribunal, is a voluminous document of almost three hundred pages. The Chamber therefore considers that it would be appropriate to limit its delivery to a summary of the content of its Judgment and its Verdict as regards the guilt of Jean-Paul Akayesu on each count with which he is charged.

3. In its Judgment, the Chamber first presents a brief profile of the International Criminal Tribunal for Rwanda, which was established by the United Nations Security Council for the purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January and 31 December 1994. The proceedings before the Tribunal are governed by its Statute annexed to Resolution 955 of the Security Council and its Rules of Procedure and Evidence .The *ratione materiae* jurisdiction of the Tribunal is to prosecute persons charged with genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of Victims in Times of War and of Additional Protocol II thereto of 8 June 1977.

4. The Chamber then summarizes the proceedings of the case. It is shown that Jean-Paul Akayesu was arrested in Zambia on 10 October 1995. On 16 February 1996, Judge William Sekule confirmed the Indictment submitted by the Prosecutor against Jean-Paul Akayesu. In all, the said Indictment covers 13 counts relating to genocide, crimes against humanity and violations of Article 3 common to the Geneva Conventions of 1949 and of Additional Protocol II of 1977.

5. At the time he confirmed the Indictment, Judge William Sekule also issued a warrant of arrest, accompanied by an order for the continued detention of the Accused. Pursuant to this order, Akayesu was transferred from Zambia to Arusha on 26 May 1996, to be detained at the Detention Facility of the Tribunal.

6. Jean-Paul Akayesu made his initial appearance before this Chamber on 30 May 1996. At that time, he pleaded not guilty to each of the counts charged. The trial on the merits opened on 9 January 1997. During the trial, the Chamber heard forty-two witnesses called by the parties. The proceedings generated more than 4000 pages of transcripts and 125 documents entered in evidence.

7. In the course of the trial on 17 June 1997, the Chamber granted the Prosecutor leave to amend the Indictment in order to add three new counts relating to allegations of rape and sexual violence, to which several witnesses had testified earlier during their appearance before the Chamber. Jean-Paul Akayesu also pleaded not guilty to the counts of rape and other inhumane acts constituting crimes against humanity and other outrages upon personal dignity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

8. In its Judgment, the Chamber then gives a profile of the Accused, the responsibilities he had in Taba and the line of defence that he adopted during his trial.

9. Jean-Paul Akayesu, a Rwandan national, was born in 1953. He is married, with five children. Prior to becoming bourgmestre of Taba commune, in the prefecture of Gitarama, in Rwanda, he was a teacher, then an inspector of schools. Akayesu entered politics in 1991, during the establishment of the Mouvement Démocratique Républicain (MDR), of which he is one of the founding members. He was Chairman of the local wing of the MDR in Taba commune, which a vast majority of the population joined. In April 1993, Akayesu, whose candidacy was supported by several key figures and influential groups in the commune, was elected bourgmestre of Taba. He held that position until June 1994, when he fled Rwanda.

10. Based on the evidence submitted to it, the Chamber notes that, in Rwanda, the bourgmestre was traditionally treated with a lot of deference by the people and that he had extensive powers. Akayesu appears to have discharged his various responsibilities relatively well until the period of the events described in the Indictment and to have been a respected bourgmestre.

11. In the opinion of the Chamber, the Defence case, in essence, is that he did not commit, order to be committed or in any way aid and facilitate the acts with which he is charged in the Indictment. Akayesu concedes, nonetheless, that massacres aimed mainly at the Tutsi took place in Taba commune in 1994. The Defence argues that Jean-Paul Akayesu was helpless to prevent the commission of such acts, because the balance of force in the commune was in favour of the Interahamwe, who were under the strict authority of one Silas Kubwimana. The Defence argues further that the Accused was allegedly so harassed by the Interahamwe that he himself had to flee Taba temporarily. It submits that as soon as the massacres became widespread, the Accused was stripped of all authority and lacked the means to stop the killings. The Defence stated further that Jean-Paul Akayesu could not be required to be a hero, to lay down his life in futile attempt to prevent the massacres. As concerns acts of sexual violence and rape which were allegedly committed in Taba, Jean-Paul Akayesu maintains that he never heard of them and considers that they never even took place.

12. Before rendering its findings on the acts with which Akayesu is charged and the applicable law, the Chamber is of the opinion that it would be appropriate, for a better understanding of the events alleged in the Indictment, to briefly summarise the history of Rwanda. To this end, it recalled the most important events in the country's history, from the pre-colonial period up to 1994, reviewing the colonial period and the "Revolution" of 1959 by Grégoire Kayibanda. The Chamber most particularly highlighted the military and political conflict between the Rwandan Armed Forces (RAF) and the Rwandan Patriotic Front (RPF) and its armed wing, from 1990. This conflict led to the signing of the Arusha Peace Accords and the deployment of a United Nations peacekeeping force, UNAMIR.

13. The Chamber then considered whether the events that took place in Rwanda in 1994 occurred solely within the context of the conflict between the RAF and the RPF, as some maintain, or whether the massacres that occurred between April and July 1994 constituted genocide. To that end, and even if the Chamber later goes back on its definition of genocide, it should be noted that genocide means, as defined in the Convention for the Prevention and Punishment of the Crime of Genocide, as the act of committing certain crimes, including the killing of members of the group or causing serious physical or mental harm to members of the group with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

14. Even though the number of victims is yet to be known with accuracy, no one can reasonably refute the fact that widespread killings took place during this period throughout the country. Dr. Zachariah, who appeared as an expert witness before this Tribunal, described the piles of bodies he saw everywhere, on the roads, on the footpaths and in rivers and, particularly, the manner in which all these people had been killed. He saw many wounded people who, according to him, were mostly Tutsi and who, apparently, had sustained wounds inflicted with machetes to the face, the neck, the ankle and also to the Achilles' tendon to prevent them from fleeing. Similarly, the testimony of Major-General Dallaire, former Commander of UNAMIR, before the Chamber indicated that, from 6 April 1994, the date of the crash that claimed the life of President Habyarimana, members of FAR and the Presidential Guard were going into houses in Kigali that had been previously identified in order to kill. Another witness, the British cameraman, Simon Cox, took photographs of bodies in various localities in Rwanda, and mentioned identity cards strewn on the ground, all of which were marked "Tutsi".

15. Consequently, in view of these widespread killings the victims of which were mainly Tutsi, the Trial Chamber is of the opinion that the first requirement for there to be genocide has been met, to wit, killing and causing serious bodily harm to members of a group. The second requirement is that these killings and serious bodily harm be committed with the intent to destroy, in whole or in part, a particular group targeted as such.

16. In the opinion of the Chamber, many facts show that the intention of the perpetrators of these killings was to cause the complete disappearance of the Tutsi people. In this connection, Alison DesForges, a specialist historian on Rwanda, who appeared as an expert witness, stated as follows: " on the basis of the statements made by certain political leaders, on the basis of songs and slogans popular among the interahamwe, I believe that these people had the intention of completely wiping out the Tutsi from Rwanda so that- as they said on certain occasions- their children , later on , should not know what a Tutsi looked like , unless they referred to history books". This testimony given by Dr. DesForges was confirmed by two prosecution witnesses, who testified separately before the Tribunal that one Silas Kubwimana said during a public meeting chaired by the Accused himself that all the Tutsi had to be killed so that someday Hutu children would not know what a Tutsi looked like. Dr. Zachariah also testified that the Achilles' tendons of many wounded persons were cut to prevent them from fleeing. In the opinion of the Chamber, this demonstrates the resolve of the perpetrators of these massacres not to spare any Tutsi. Their plan called for doing whatever was possible to prevent any Tutsi from escaping and, thus, to destroy the whole group. Dr. Alison DesForges stated that numerous Tutsi corpses were systematically thrown into the River Nyabarongo, a tributary of the Nile, as seen, incidentally, in several photographs shown in court throughout the trial. She explained that the intent in that gesture was "to send the Tutsi back to their origin", to make them "return to Abyssinia", in accordance with the notion that the Tutsi are a "foreign" group in Rwanda, believed to have come from the Nilotic regions.

17. Other testimonies heard, especially that of Major-General Dallaire, also show that there was an intention to wipe out the Tutsi group in its entirety, since even newborn babies were not spared. Many testimonies given before the Chamber concur on the fact that it was the Tutsi as members of an ethnic group who were targeted in the massacres. General Dallaire, Doctor Zachariah and, particularly, the Accused himself, unanimously stated so before the Chamber.

18. Numerous witnesses testified before the Chamber that the systematic checking of identity cards, on which the ethnic group was mentioned, made it possible to separate the Hutu from the Tutsi, with the latter being immediately arrested and often killed, sometimes on the spot, at the roadblocks which were erected in Kigali soon after the crash of the plane of President Habyarimana, and thereafter everywhere in the country.

19. Based on the evidence submitted to the Chamber, it is clear that the massacres which occurred in Rwanda in 1994 had a specific objective, namely the extermination of the Tutsi, who were targeted especially because of their Tutsi origin and not because they were RPF fighters. In any case, the Tutsi children and pregnant women would, naturally, not have been among the fighters. The Chamber concludes that, alongside the conflict between the RAF and the RPF, genocide was committed in Rwanda in 1994 against the Tutsi as a group. The execution of this genocide was probably facilitated by the conflict, in the sense that the conflict with the RPF forces served as a pretext for the propaganda inciting genocide against the Tutsi, by branding RPF fighters and Tutsi civilians together through the notion widely disseminated, particularly by Radio Television Libre des Mille Collines (RTL), to the effect that every Tutsi was allegedly an accomplice of the RPF soldiers or "Inkotanyi". However, the fact that the genocide occurred while the RAF were in conflict with the RPF, obviously, cannot serve as a mitigating circumstance for the genocide.

20. Consequently, the Chamber concludes from all the foregoing that it was, indeed, genocide that was committed in Rwanda in 1994, against the Tutsi as a group. The Chamber is of the opinion that the genocide appears to have been meticulously organized. In fact, Dr. Alison DesForges testifying before the Chamber on 24 May 1997, talked of "centrally organized and supervised massacres". Some evidence supports this view that the genocide had been planned. First, the existence of lists of Tutsi to be eliminated is corroborated by many testimonies. In this respect, Dr. Zachariah mentioned the case of patients and nurses killed in a hospital because a soldier had a list including their names.

21. The Chamber holds that the genocide was organized and planned not only by members of the RAF, but

also by the political forces who were behind the "Hutu-power", that it was executed essentially by civilians including the armed militia and even ordinary citizens, and above all, that the majority of the Tutsi victims were non-combatants, including thousands of women and children.

22. Having said that, the Chamber then recalled that the fact that genocide was, indeed, committed in Rwanda in 1994, and more particularly in Taba, cannot influence it in its findings in the present matter. It is the Chamber's responsibility alone to assess the individual criminal responsibility of the Accused, Jean-Paul Akayesu, for the crimes alleged against him, including genocide, for which the Prosecution has to show proof. Despite the indisputable atrociousness of the crimes and the emotions evoked in the international community, the judges have examined the facts adduced in a most dispassionate manner, bearing in mind that the accused is presumed innocent.

23. The Chamber then turned to the question of assessment of evidence. The evidence produced by the parties to the case was mainly testimonial. Yet, human testimony often has the shortcoming of being eminently fragile and fallible. The Chamber considered the credibility of the testimonies, all the more so as three problems were posed: firstly, the fact that most of the witnesses directly experienced the terrible events they were narrating, and that such trauma could have an impact on their testimonies; secondly, the impact of cultural and social factors on communication with the witnesses; and thirdly, the difficulties in interpreting the statements made by the witnesses, most of whom spoke in Kinyarwanda. Despite the difficulties experienced, the Chamber wishes, in this regard, to thank each witness, once again, for his/her deposition at the hearing and commends the strength and courage of survivors, who have narrated the extremely traumatic experiences they had, sometimes rekindling extremely painful emotions. Their testimonies were invaluable to the Tribunal in its search for the truth on the events that happened in Taba commune in 1994.

24. The Chamber then ruled on the admissibility of some evidence. It concluded, in essence, in accordance with the Statute and Rules of Procedure and Evidence, that the Chamber applies the rules which in its view best favour a fair determination of the matter before it and are consonant with the spirit and general principles of law. It noted, in particular that when only one testimony is presented on a fact, it is not bound to apply the adage *Unus Testis, Nullus Testis*) whereby corroboration of evidence is required if it is to be admitted. The Chamber determined to freely assess the probative value of all relevant evidence. The Chamber had thus determined that in accordance with Rule 89, any relevant evidence having probative value may be admitted into evidence, subject to it being in accordance with the requisites of a fair trial. The Chamber also found that hearsay evidence is not inadmissible per se, but that such evidence should be considered with caution.

25. Having made all these preliminary remarks, the Chamber dealt with the specific facts of the case. It rendered its detailed factual conclusions, by scrupulously analyzing, for each fact, all the related prosecution and defence testimonies, including that of the accused himself. It emerges that for each of the events described in paragraphs 12 to 23 of the Indictment, the Chamber is convinced beyond a reasonable doubt of the following:

26. The Chamber finds that, as pertains to the acts alleged in paragraph 12, it has been established that, throughout the period covered in the Indictment, Akayesu, in his capacity as bourgmestre, was responsible for maintaining law and public order in the commune of Taba and that he had effective authority over the communal police. Moreover, as "leader" of Taba commune, of which he was one of the most prominent figures, the inhabitants respected him and followed his orders. Akayesu himself admitted before the Chamber that he had the power to assemble the population and that they obeyed his instructions. It has also been proven that a very large number of Tutsi were killed in Taba between 7 April and the end of June 1994, while Akayesu was bourgmestre of the Commune. Knowing of such killings, he opposed them and attempted to prevent them only until 18 April 1994, date after which he not only stopped trying to maintain law and order in his commune, but was also present during the acts of violence and killings, and sometimes even gave orders himself for bodily or mental harm to be caused to certain Tutsi, and endorsed and even ordered the killing of several Tutsi.

27. With regard to the acts alleged in paragraphs 12 (A) and 12 (B) of the Indictment, the Prosecutor has shown beyond a reasonable doubt that between 7 April and the end of June 1994, numerous Tutsi who sought refuge at the Taba Bureau communal were frequently beaten by members of the Interahamwe on or near the premises of the Bureau communal. Some of them were killed. Numerous Tutsi women were forced

to endure acts of sexual violence, mutilations and rape, often repeatedly, often publicly and often by more than one assailant. Tutsi women were systematically raped, as one female victim testified to by saying that "each time that you met assailants, they raped you". Numerous incidents of such rape and sexual violence against Tutsi women occurred inside or near the Bureau communal. It has been proven that some communal policemen armed with guns and the accused himself were present while some of these rapes and sexual violence were being committed. Furthermore, it is proven that on several occasions, by his presence, his attitude and his utterances, Akayesu encouraged such acts, one particular witness testifying that Akayesu, addressed the Interahamwe who were committing the rapes and said that "never ask me again what a Tutsi woman tastes like" "Ntihazagire umbaza uko umututsikazi yari ameze, ngo kandi mumenye ko ejo ngo nibabica nta kintu muzambaza.". In the opinion of the Chamber, this constitutes tacit encouragement to the rapes that were being committed.

28. Regarding the facts alleged in paragraph 13 of the Indictment, the Prosecutor failed to demonstrate that they are established.

29. As regards the facts alleged in paragraphs 14 and 15 of the Indictment, it is established that in the early hours of 19 April 1994, Akayesu joined a gathering in Gishyeshye and took this opportunity to address the public; he led the meeting and conducted the proceedings. He then called on the population to unite in order to eliminate what he referred to as the sole enemy: the accomplices of the Inkotanyi; and the population understood that he was thus urging them to kill the Tutsi. Indeed, Akayesu himself knew of the impact of his statements on the crowd and of the fact that his call to fight against the accomplices of the Inkotanyi would be understood as exhortations to kill the Tutsi in general. Akayesu who had received from the Interahamwe documents containing lists of names did, in the course of the said gathering, summarize the contents of the same to the crowd by pointing out in particular that the names were those of RPF accomplices. He specifically indicated to the participants that Ephrem Karangwa's name was on one of the lists. Akayesu admitted before the Chamber that during the period in question, that to publicly label someone as an accomplice of the RPF would put such a person in danger. The statements thus made by Akayesu at that gathering immediately led to widespread killings of Tutsi in Taba.

30. With respect to the allegations in paragraph 16 of the Indictment, it is also established that on 19 April 1994, Akayesu on two occasions threatened to kill victim U, a Tutsi woman, while she was being interrogated. He detained her for several hours at the Bureau communal, before allowing her to leave. In the evening of 20 April 1994, during a search conducted in the home of victim V, a Hutu man, Akayesu directly threatened to kill the latter. Victim V was thereafter beaten with a stick and the butt of a rifle by a communal policeman called Mugenzi and one Francois, a member of the Interahamwe militia, in the presence of the accused. One of victim V's ribs was broken as a result of the beating.

31. Regarding the acts alleged in paragraph 17, proof has not been provided by the Prosecutor to establish them.

32. As for the allegations made in paragraph 18 of the Indictment, it is established that on or about 19 April 1994, Akayesu and a group of men under his control were looking for Ephrem Karangwa and destroyed his house and that of his mother. They then went to search the house of Ephrem Karangwa's brother-in-law, in Musambira commune and found his three brothers there. When the three brothers, namely Simon Mutijima, Thaddee Uwanyiligira and Jean-Chrysostome Gakuba, tried to escape, Akayesu ordered that they be captured, and ordered that they be killed, and participated in their killing.

33. Regarding the allegations in paragraph 19, the Chamber is satisfied that it has been established that on or about 19 April 1994, Akayesu took from Taba communal prison eight refugees from Runda commune, handed them over to Interahamwe militiamen and ordered that they be killed. They were killed by the Interahamwe using various traditional weapons, including machetes and small axes, in front of the Bureau communal and in the presence of Akayesu who told the killers "do it quickly". The refugees were killed because they were Tutsi.

34. The Prosecutor has proved that, as alleged in paragraph 20 of the Indictment, on that same day, Akayesu ordered the local people to kill intellectuals and to look for one Samuel, a professor who was then brought to the Bureau communal and killed with a machete blow to the neck. Teachers in Taba commune were killed later, on Akayesu's instructions. The victims included the following: Tharcisse Twizyumuremye, Theogene, Phoebe Uwizeze and her fiancé whose name is unknown. They were killed on the road in front of the Bureau communal by the local people and the Interahamwe with machetes and agricultural tools. Akayesu personally witnessed the killing of Tharcisse.

35. The Chamber finds that the acts alleged in paragraph 21 have been proven. It has been established that on the evening of 20 April 1994, Akayesu, and two Interahamwe militiamen and a communal policeman, one Mugenzi, who was armed at the time of the events in question, went to the house of Victim Y, a 69 year old Hutu woman, to interrogate her on the whereabouts of Alexia, the wife of Ntereye, the teacher. During the questioning which took place in the presence of Akayesu, the victim was hit and beaten several times. In particular, she was hit with the barrel of a rifle on the head by the communal policeman. She was forcibly taken away and ordered by Akayesu to lie on the ground. Akayesu himself beat her on her back with a stick. Later on, he had her lie down in front of a vehicle and threatened to drive over her if she failed to give the information he sought.

36. Furthermore, as regards the allegations in paragraphs 22 and 23 of the Indictment, it has been established that on the evening of 20 April 1994, in the course of an interrogation, Akayesu forced victim W to lay down in front of a vehicle and threatened to drive over her. That same evening, Akayesu, accompanied by Mugenzi, a communal policeman, and one Francois, an Interahamwe militiaman, interrogated victims Z and Y. The Accused put his foot on the face of victim Z, causing the said victim to bleed, while the police officer and the militiaman beat the victim with the butt of their rifles. The militiaman forced victim Z to beat victim Y with a stick. The two victims were tied together. Victim Z was also beaten on the back with the blade of a machete.

37. Having made its factual findings, the Chamber analysed the legal definitions proposed by the Prosecutor for each of the facts. It thus considered the applicable law for each of the three crimes under its jurisdiction, which is all the more important since this is the very first Judgement on the legal definitions of genocide on the one hand, and of serious violations of Additional Protocol II of the Geneva Conventions, on the other. Moreover, the Chamber also had to define certain crimes which constitute offences under its jurisdiction, in particular, rape, because to date, there is no commonly accepted definition of this term in international law.

38. In the opinion of the Chamber, rape is a form of aggression the central elements of which cannot be captured in a mechanical description of objects and body parts. The Chamber also notes 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 the sexual violence they endured. The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, including rape, is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact. The Chamber notes 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.

39. The Chamber reviewed Article 6 (1) of its Statute, on the individual criminal responsibility of the accused for the three crimes constituting *ratione materiae* of the Chamber. Article 6(1) enunciates the basic principles of individual criminal liability which are probably common to most national criminal jurisdictions. Article 6(3), by contrast, constitutes something of an exception to the principles articulated in Article 6(1), an exception which derives from military law, particularly the principle of the liability of a commander for the acts of his subordinates or "command responsibility". Article 6(3) does not necessarily require the superior to have had knowledge of such to render him criminally liable. The only requirement is that he had reason to know that his subordinates were about to commit or had committed and failed to take the necessary or reasonable measures to prevent such acts or punish the perpetrators thereof.

40. The Chamber then expressed its opinion that with respect to the crimes under its jurisdiction, it should adhere to the concept of notional plurality of offences (cumulative charges) which would render multiple convictions permissible for the same act. As a result, a particular act may constitute both genocide and a crime against humanity.

41. On the crime of genocide, the Chamber recalls that the definition given by Article 2 of the Statute is echoed exactly by the Convention for the Prevention and Repression of the Crime of Genocide. The Chamber notes that Rwanda acceded, by legislative decree, to the Convention on Genocide on 12 February 1975. Thus, punishment of the crime of genocide did exist in Rwanda in 1994, at the time of the acts alleged in the Indictment, and the perpetrator was liable to be brought before the competent courts of Rwanda to answer for this crime.

42. Contrary to popular belief, the crime of genocide does not imply the actual extermination of a group in its entirety, but is understood as such once any one of the acts mentioned in Article 2 of the Statute is committed with the specific intent to destroy "in whole or in part" a national, ethnical, racial or religious group. Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which requires that the perpetrator clearly seek to produce the act charged. The special intent in the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

43. Specifically, for any of the acts charged under Article 2(2) of the Statute to be a constitutive element of genocide, the act must have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, targeted as such; hence, the victim of the crime of genocide is the group itself and not the individual alone.

44. On the issue of determining the offender's specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the Accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.

45. Apart from the crime of genocide, Jean-Paul Akayesu is charged with complicity in genocide and direct and public incitement to commit genocide.

46. In the opinion of the Chamber, an Accused is an accomplice in genocide if he knowingly aided and abetted or provoked a person or persons to commit genocide, knowing that this person or persons were committing genocide, even if the Accused himself lacked the specific intent of destroying in whole or in part, the national, ethnical, racial or religious group, as such.

47. Regarding the crime of direct and public incitement to commit genocide, the Chamber defines it mainly on the basis of Article 91 of the Rwandan Penal Code, as directly provoking another to commit genocide, either through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public

gatherings or through the public display of placards or posters, or by any other means of audiovisual communication. The moral element of this crime lies in the intent to directly encourage or provoke another to commit genocide. It presupposes the desire of the guilty to create, by his actions, within the person or persons whom he is addressing, the state of mind which is appropriate to the commission of a crime. In other words, the person who is inciting to commit genocide must have the specific intent of genocide: that of destroying in whole or in part, a national, ethnical, racial or religious group, as such. The Chamber believes that incitement is a formal offence, for which the mere method used is culpable. In other words, the offence is considered to have been completed once the incitement has taken place and that it is direct and public, whether or not it was successful.

48. The second crime which comes within the jurisdiction of the Tribunal and of which Jean-Paul Akayesu is charged is that of crimes against humanity. On the law applicable to this crime, the Chamber reviewed the case law on this crime, from the judgements rendered by the Nuremberg and Tokyo Tribunals to more recent cases, including the Touvier and Papon cases in France notably, and the Eichmann trial in Israel. It indicated the circumstances under which the charge of crimes against humanity would be leveled, as provided for by Article 3 of the Statute, under which the act must be committed as part of a widespread or systematic attack directed against a civilian population on discriminatory grounds.

49. The third crime on which the Chamber rendered its conclusions is that for which it has competence pursuant to article 4 of the Statute, which provides that the Tribunal is empowered to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the protection of War Victims, and of the Additional Protocol II thereto of June 8 1977. The said Article 3 common to the Geneva Conventions extends a minimum threshold of humanitarian protection as well to all persons affected by a non-international conflict, a protection which was further developed and enhanced in the 1977 Additional Protocol II. The Chamber decided to analyse separately, the respective conditions of applicability of Article 3 Common to the Geneva Conventions and the Additional Protocol II thereto. It then analysed the conflict which took place in Rwanda in 1994 in the light of those conditions and concluded that each of the two legal instruments was applicable in this case. Furthermore, the Chamber is of the opinion that all the norms set forth under article 4 of its Statute constitute a part of customary International Law. It finally recalled that the violation of the norms defined in article 4 of the Statute, may, in principle, commit criminal responsibility of civilians and that, the Accused belongs to the category of individuals who could be held responsible for serious infringement of international humanitarian law, particularly for serious violations of article 3 common to the Geneva Conventions and the Additional Protocol II thereto.

50. On the basis of the factual findings just shown, the Chamber delivered the following legal findings.

51. With regard to count one on genocide, the Chamber having regard, particularly, to the acts described in paragraphs 12(A) and 12(B) of the Indictment, that is, rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they 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. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims. See above, the findings of the Trial Chamber on the Chapter relating to the law applicable to the crime of genocide, in particular, the definition of the constituent elements of genocide. and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely 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. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual 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.

52. The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them. A Tutsi woman, married to a Hutu, testified before the Chamber that she was not raped because her ethnic background was unknown. As part of the propaganda campaign geared to mobilizing the Hutu against the Tutsi, the Tutsi women were presented as sexual objects. Indeed, the Chamber was told, for an example, that before being raped and killed, Alexia, who was the wife of the Professor, Ntereye, and her two nieces, were forced by the Interahamwe to undress and ordered to run and do exercises "in order to display the thighs of Tutsi women". The Interahamwe who raped Alexia said, as he threw her on the ground and got on top of her, "let us now see what the vagina of a Tutsi woman tastes like". As stated above, Akayesu himself, speaking to the Interahamwe who were committing the rapes, said to them: "don't ever ask again what a Tutsi woman tastes like".

53. On the basis of the substantial testimonies brought before it, the Chamber finds that in most cases, the rapes of Tutsi women in Taba, were accompanied with the intent to kill those women. Many rapes were perpetrated near mass graves where the women were taken to be killed. A victim testified that Tutsi women caught could be taken away by peasants and men with the promise that they would be collected later to be executed. Following an act of gang rape, a witness heard Akayesu say "tomorrow they will be killed" and they were actually killed. In this respect, it appears clearly to the Chamber that the acts of rape and sexual violence, as other acts of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process.

54. The Chamber has already established that genocide was committed against the Tutsi group in Rwanda in 1994, throughout the period covering the events alleged in the Indictment² See above, the findings of the Trial Chamber on the occurrence of genocide against the Tutsi group in Rwanda in 1994.. Owing to the very high number of atrocities committed against the Tutsi, their widespread nature not only in the commune of Taba, but also throughout Rwanda, and to the fact that the victims were systematically and deliberately selected because they belonged to the Tutsi group, with persons belonging to other groups being excluded, the Chamber is also able to infer, beyond reasonable doubt, the genocidal intent of the accused in the commission of the above-mentioned crimes; to the extent that the actions and words of Akayesu during the period of the facts alleged in the Indictment, the Chamber is convinced beyond reasonable doubt, on the basis of evidence adduced before it during the hearing, that he repeatedly made statements more or less explicitly calling for the commission of genocide. Yet, according to the Chamber, he who incites another to commit genocide must have the specific intent to commit genocide: that of destroying in whole or in part, a national, ethnical, racial, or religious group, as such.

55. In conclusion, regarding Count One on genocide, the Chamber is satisfied beyond reasonable doubt that these various acts were committed by Akayesu with the specific intent to destroy the Tutsi group, as such. Consequently, the Chamber is of the opinion that the acts alleged in paragraphs 12, 12A, 12B, 16, 18, 19, 20, 22 and 23 of the Indictment, constitute the crimes of killing members of the Tutsi group and causing serious bodily and mental harm to members of the Tutsi group. Furthermore, the Chamber is satisfied beyond reasonable doubt that in committing the various acts alleged, Akayesu had the specific intent of destroying the Tutsi group as such.

56. Regarding Count Two, on the crime of complicity in genocide, the Chamber indicated supra that, in its opinion, the crime of genocide and that of complicity in genocide were two distinct crimes, and that the same person could certainly not be both the principal perpetrator of, and accomplice to, the same offence. Given that genocide and complicity in genocide are mutually exclusive by definition, the accused cannot obviously be found guilty of both these crimes for the same act. However, since the Prosecutor has charged the accused with both genocide and complicity in genocide for each of the alleged acts, the Chamber deems it necessary, in the instant case, to rule on Counts 1 and 2 simultaneously, so as to determine, as far as each proven fact is concerned, whether it constituted genocide or complicity in genocide.

57. Count 3 of the Indictment on crimes against humanity, extermination, the Chamber concludes that the murder of the eight refugees described in paragraph 19 of the Indictment as well as the killing of Simon Mutijima, Thaddée Uwanyiligira and Jean Chrysostome Gakuba, Samuel, Tharcisse, Théogène, Phoebe Uwineze and her fiancé, facts described in paragraph 20 of the Indictment, constitute, beyond reasonable doubt, a crime of extermination, perpetrated during a widespread and systematic attack against a civilian population on ethnic grounds and, as such, constitutes a crime against humanity for which Akayesu is individually criminally responsible.

58. Regarding Count Four, on the basis of the facts described in paragraphs 14 and 15 of the Indictment and which it believes are well founded, the Chamber is satisfied beyond reasonable doubt that by the speeches made in public, Akayesu had the intent to directly create a particular state of mind in his audience necessary to lead to the destruction of the Tutsi group as such. Accordingly, the Chamber finds that the said acts constitute the crime of direct and public incitement to commit genocide. In addition, the Chamber finds that the direct and public incitement to commit genocide engaged in by Akayesu, was indeed successful and did lead to the destruction of a great number of Tutsi in the commune of Taba.

59. On Count five of the Indictment, the Accused is charged of crimes against humanity (murder) for the acts alleged in paragraphs 15 and 18 of the Indictment. The Chamber finds beyond a reasonable doubt that the killing of Simon Mutijima, Thaddée Uwanyiligira and Jean Chrysostome, was committed as part of a widespread and systematic attack against a civilian population of Rwanda on ethnic grounds, and therefore, a crime against humanity. Akayesu thereby incurs individual criminal responsibility for having ordered and participated in the commission of this crime.

60. On Count seven of the Indictment, crimes against humanity (murder) for the acts alleged in paragraph 19 of the Indictment, the Chamber finds beyond reasonable doubt that the killing of the eight refugees constitutes murder committed as part of a widespread or systematic attack on civilian population on ethnic grounds and as such constitutes a crime against humanity. Accordingly, the Chamber concludes that the Accused, having ordered the said killings, has incurred individual criminal responsibility as charged in Count Seven of the Indictment.

61. On Count Nine of the Indictment the Accused is charged with a crime against humanity (murder), pursuant to Article 3(a) of the Statute for the acts alleged in paragraph 20 of the Indictment. The Chamber finds beyond a reasonable doubt that the killing of the five individuals does indeed constitute murder as part of a widespread or systematic attack against a civilian population of Rwanda on ethnic grounds and as such constitutes a crime against humanity. Accordingly Akayesu has incurred individual criminal responsibility for having ordered, aided and abetted the planning and execution of the crime.

62. Under Count 11, Akayesu is charged with crimes against humanity (torture), acts alleged in paragraphs 16, 17, 21, 22 and 23 of the indictment. Based on the above factual findings, the Chamber is satisfied beyond reasonable doubt that the acts described in those paragraphs constitute torture. Having being committed as part of a wide spread and systematic attack against a civilian population on ethnic grounds, they constitute crimes against humanity and render Akayesu criminally liable for having ordered, aided and abetted in their commission.

63. With regard to Counts 13 and 14, relating to the acts described in paragraphs 12A and 12B of the indictment and which it considers proven, the Chamber is also satisfied beyond a reasonable doubt that they constitute acts of rape and other inhumane acts, committed as part of a widespread and systematic attack against a civilian population on ethnic grounds and therefore constitute a crime against humanity. Consequently, the Chamber finds the Accused individually criminally liable for the said acts described in counts 13 and 14 and for having through his presence tacitly abetted their commission.

64. With respect to Counts 6, 8, 10, 12 and 15, Akayesu is charged with violations of Common Article 3 of the Geneva Conventions of 1949 in counts 6, 8, 10 and 12, and with violations of Common Article 3 of the

Geneva Conventions and of Additional Protocol II thereto of 1977 under count 15. The Chamber finds that it has been established beyond reasonable doubt that there was an armed conflict not of an international character between the Government of Rwanda and the RPF at the time of the facts alleged in the Indictment, and that the said conflict was well within the provisions of Common Article 3 and of the Additional Protocol II. The Chamber however finds that the Prosecution has failed to show beyond reasonable doubt that Akayesu was a member of the armed forces and that he was duly mandated and expected, in his capacity as a public official or agent or person otherwise vested with public authority or a de facto representative of the Government, to support and carry out the war effort.

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments, THE CHAMBER unanimously finds as follows:

Count 1: Guilty of Genocide

Count 2: Not guilty of Complicity in Genocide

Count 3: Guilty of Crime against Humanity (Extermination)

Count 4: Guilty of Direct and Public Incitement to Commit Genocide

Count 5: Guilty of Crime against Humanity (Murder)

Count 6: Not guilty of Violation of Article 3 common to the Geneva Conventions (Murder)

Count 7: Guilty of Crime against Humanity (Murder)

Count 8: Not guilty of Violation of Article 3 common to the Geneva Conventions (Murder)

Count 9: Guilty of Crime against Humanity (Murder)

Count 10: Not guilty of Violation of Article 3 common to the Geneva Conventions (Murder)

Count 11: Guilty of Crime against Humanity (Torture)

Count 12: Not guilty of Violation of Article 3 common to the Geneva Conventions (Cruel Treatment)

Count 13: Guilty of Crime against Humanity (Rape)

Count 14: Guilty of Crime against Humanity (Other Inhumane Acts)

Count 15: Not guilty of Violation of Article 3 common to the Geneva Conventions and of Article 4(2)(e) of Additional Protocol II (Outrage upon personal dignity, in particular Rape, Degrading and Humiliating Treatment and Indecent Assault)

Done in English and French,
Signed in Arusha, 2 September 1998,
Laiity Kama Lennart Aspegren Navanethem Pillay

Presiding Judge
(Seal of the Tribunal)