

EXCERPTS FROM AKAYESU ON SEXUAL VIOLENCE



“Sexual violence was a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live, and of life itself.”

I. THE LAW

Definition of Rape

596. Considering the extent to which rape constitute crimes against humanity, pursuant to Article 3(g) of the Statute, the Chamber must define rape, as there is no commonly accepted definition of this term in international law. While rape has been defined in certain national jurisdictions as non-consensual intercourse, variations on the act of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual.

597. 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. The 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 frame work of state sanctioned violence. This approach is more useful in international law. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

598. The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.

Rape As Genocide

731. With 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. 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.

II. FACTUAL FINDINGS ON SEXUAL VIOLENCE

5.5 Sexual Violence (Paragraphs 12A & 12B of the Indictment)

Charges Set Forth in the Indictment

12A. Between April 7 and the end of June, 1994, hundreds of civilians (hereinafter "displaced civilians") sought refuge at the bureau communal. The majority of these displaced civilians were Tutsi. While seeking refuge at the bureau communal, female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or

beaten on or near the bureau communal premises. Displaced civilians were also murdered frequently on or near the bureau communal premises. Many women were forced to endure multiple acts of sexual violence which were at times committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The female displaced civilians lived in constant fear and their physical and psychological health deteriorated as a result of the sexual violence and beatings and killings. 12B. Jean Paul Akayesu knew that the acts of sexual violence, beatings and murders were being committed and was at times present during their commission. Jean Paul Akayesu facilitated the commission of the sexual violence, beatings and murders by allowing the sexual violence and beatings and murders to occur on or near the bureau communal premises. By virtue of his presence during the commission of the sexual violence, beatings and murders and by failing to prevent the sexual violence, beatings and murders, Jean Paul Akayesu encouraged these activities.

Events Alleged

416. Allegations of sexual violence first came to the attention of the Chamber through the testimony of Witness J, a Tutsi woman, who stated that her six year-old daughter had been raped by three Interahamwe when they came to kill her father. On examination by the Chamber, Witness J also testified that she had heard that young girls were raped at the bureau communal. Subsequently, Witness H, a Tutsi woman, testified that she herself was raped in a sorghum field and that, just outside the compound of the bureau communal, she personally saw other Tutsi women being raped and knew of at least three such cases of rape by Interahamwe. Witness H testified initially that the Accused, as well as commune police officers, were present while this was happening and did nothing to prevent the rapes. However, on examination by the Chamber as to whether Akayesu was aware that the rapes were going on, she responded that she didn't know, but that it happened at the bureau communal and he knew that the women were there. Witness H stated that some of the rapes occurred in the bush area nearby but that some of them occurred "on site". On examination by the Chamber, she said that the Accused was present during one of the rapes, but she could not confirm that he saw what was happening. While Witness H expressed the view that the Interahamwe acted with impunity and should have been prevented by the commune police and the Accused from committing abuses, she testified that no orders were given to the Interahamwe to rape. She also testified that she herself was beaten but not raped at the bureau communal.

417. On 17 June 1997, the Indictment was amended to include allegations of sexual violence and additional charges against the Accused under Article 3(g), Article 3(i) and Article 4(2)(e) of the ICTR Statute. In introducing this amendment, the Prosecution stated that the testimony of Witness H motivated them to renew their investigation of sexual violence in connection with events which took place in Taba at the bureau communal. The Prosecution stated that evidence previously available was not sufficient to link the Accused to acts of sexual violence and acknowledged that factors to explain this lack of evidence might include the shame that accompanies acts of sexual violence as well as insensitivity in the investigation of sexual violence. The Chamber notes that the Defence in its closing statement questioned whether the Indictment was amended in response to public pressure concerning the prosecution of sexual violence. The Chamber understands that the amendment of the Indictment resulted from the

spontaneous testimony of sexual violence by Witness J and Witness H during the course of this trial and the subsequent investigation of the Prosecution, rather than from public pressure. Nevertheless, the Chamber takes note of the interest shown in this issue by non-governmental organizations, which it considers as indicative of public concern over the historical exclusion of rape and other forms of sexual violence from the investigation and prosecution of war crimes. The investigation and presentation of evidence relating to sexual violence is in the interest of justice.

418. Following the amendment of the Indictment, Witness JJ, a Tutsi woman, testified about the events which took place in Taba after the plane crash. She said that she was driven away from her home, which was destroyed by her Hutu neighbours who attacked her and her family after a man came to the hill near where she lived and said that the bourgmestre had sent him so that no Tutsi would remain on the hill that night. Witness JJ saw her Tutsi neighbours killed and she fled, seeking refuge in a nearby forest with her baby on her back and her younger sister, who had been wounded in the attack by a blow with an axe and two machete cuts. As she was being chased everywhere she went, Witness JJ said she went to the bureau communal. There she found more than sixty refugees down the road and on the field nearby. She testified that most of the refugees were women and children.

419. Witness JJ testified that the refugees at the bureau communal had been beaten by the Interahamwe and were lying on the ground when she arrived. Witness JJ encountered four Interahamwe outside the bureau communal, armed with knives, clubs, small axes and small hoes. That afternoon, she said, approximately forty more Interahamwe came and beat the refugees, including Witness JJ. At this time she said she saw the Accused, standing in the courtyard of the communal office, with two communal police officers who were armed with guns, one of whom was called Mushumba. Witness JJ said she was beaten on the head, the ribs and the right leg, which left her disabled. That evening, she said, the Accused came with a policeman to look for refugees and ordered the Interahamwe to beat them up, calling them "wicked, wicked people" and saying they "no longer had a right to shelter." The refugees were then beaten and chased away. Witness JJ said she was beaten by the policeman Mushumna, who hit her with the butt of his gun just behind her ear.

420. Witness JJ testified that she spent the night in the rain in a field. The next day she said she returned to the bureau communal and went to the Accused, in a group of ten people representing the refugees, who asked that they be killed as the others had been because they were so tired of it all. She said the Accused told them that there were no more bullets and that he had gone to look for more in Gitarama but they had not yet been made available. He asked his police officers to chase them away and said that even if there were bullets they would not waste them on the refugees. As the refugees saw that death would be waiting for them anywhere else, Witness JJ testified they stayed at the bureau communal.

421. Witness JJ testified that often the Interahamwe came to beat the refugees during the day, and that the policemen came to beat them at night. She also testified that the Interahamwe took young girls and women from their site of refuge near the bureau communal into a forest in the area and raped them. Witness JJ testified that this happened to her - that she was stripped of her clothing and raped in front of other people. At the request of the Prosecutor and with great

embarrassment, she explicitly specified that the rapist, a young man armed with an axe and a long knife, penetrated her vagina with his penis. She stated that on this occasion she was raped twice. Subsequently, she told the Chamber, on a day when it was raining, she was taken by force from near the bureau communal into the cultural center within the compound of the bureau communal, in a group of approximately fifteen girls and women. In the cultural center, according to Witness JJ, they were raped. She was raped twice by one man. Then another man came to where she was lying and he also raped her. A third man then raped her, she said, at which point she described herself as feeling near dead. Witness JJ testified that she was at a later time dragged back to the cultural center in a group of approximately ten girls and women and they were raped. She was raped again, two times. Witness JJ testified that she could not count the total number of times she was raped. She said, "each time you encountered attackers they would rape you," - in the forest, in the sorghum fields. Witness JJ related to the Chamber the experience of finding her sister before she died, having been raped and cut with a machete.

422. Witness JJ testified that when they arrived at the bureau communal the women were hoping the authorities would defend them but she was surprised to the contrary. In her testimony she recalled lying in the cultural center, having been raped repeatedly by Interahamwe, and hearing the cries of young girls around her, girls as young as twelve or thirteen years old. On the way to the cultural center the first time she was raped there, Witness JJ said that she and the others were taken past the Accused and that he was looking at them. The second time she was taken to the cultural center to be raped, Witness JJ recalled seeing the Accused standing at the entrance of the cultural center and hearing him say loudly to the Interahamwe, "Never ask me again what a Tutsi woman tastes like," and "Tomorrow they will be killed" (Ntihazagire umbaza uko umututsikazi yari ameze, ngo kandi mumenye ko ejo ngo nibabica nta kintu muzambaza. Ngo ejo bazabica). According to Witness JJ, most of the girls and women were subsequently killed, either brought to the river and killed there, after having returned to their houses, or killed at the bureau communal. Witness JJ testified that she never saw the Accused rape anyone, but she, like Witness H, believed that he had the means to prevent the rapes from taking place and never even tried to do so. In describing the Accused and the statement he made regarding the taste of Tutsi women, she said he was "talking as if someone were encouraging a player" (Yavugaga nk'ubwiriza umukinnyi) and suggested that he was the one "supervising" the acts of rape. Witness JJ said she did not witness any killings at the bureau communal, although she saw dead bodies there.

423. When Witness JJ fled from the bureau communal, she left her one year-old child with a Hutu man and woman, who said they had milk for the child and subsequently killed him. Witness JJ spoke of the heavy sorrow the war had caused her. She testified to the humiliation she felt as a mother, by the public nudity and being raped in the presence of children by young men. She said that just thinking about it made the war come alive inside of her. Witness JJ told the Chamber that she had remarried but that her life had never been the same because of the beatings and rapes she suffered. She said the pain in her ribs prevents her from farming because she can no longer use a hoe, and she used to live on the food that she could grow.

424. Witness OO, a young Tutsi woman, testified that she and her family sought refuge at the bureau communal in April 1994 and encountered many other Tutsi refugees there, on the road outside the compound. While she was there, she said, some Interahamwe arrived and started

killing people with machetes. She and two other girls tried to flee but were stopped by the Interahamwe who went back and told the Accused that they were taking the girls away to "sleep with" them. Witness OO told the Chamber that standing five meters away from the Accused, she heard him say in reply, "take them". She said she was then separated from the other girls and taken to a field by one Interahamwe called Antoine. When she refused to sit down, he pushed her to the ground and put his "sex" into hers, clarifying on examination that he penetrated her vagina with his penis. When she started to cry, she said he warned her that if she cried or shouted, others might come and kill her.

425. According to Witness OO, Antoine left her in the field and returned that night to take her to the house of a woman called Zimba, where she spent three nights. On the fourth night, she said Antoine returned and took her to another Interahamwe called Emanuel. She said that Antoine did the same thing he had done before to her, and that Emanuel followed him in turn. Witness OO told the Chamber she spent three days and nights at the house of Emanuel where every day she was sexually violated by both Antoine and Emanuel. Afterwards, she said she was chased away by them.

426. Witness OO returned to the bureau communal when she heard that an order had been given to stop the killing of women and children, but after hearing the Accused, Kubwimana and Ruvugama all call for the killing of Tutsi, she left and went back into hiding. Subsequently, she and her seven year-old sister were apprehended by Interahamwe and taken to a roadblock. Her sister and two other people were imprisoned overnight and killed in the morning. At the time of these events, Witness OO was fifteen years old. When asked how it was that the Accused had the authority to protect her from rape, Witness OO replied that if he had told the Interahamwe not to take her from the bureau communal, they would have listened to him because he was the bourgmestre. Witness OO was unable to identify the Accused in the courtroom. She told the Chamber that someone had pointed him out to her at the bureau communal as the bourgmestre but that she had not looked at him closely and that it had been a long time ago.

427. Witness KK, a Hutu woman married to a Tutsi man, also sought refuge at the bureau communal in Taba after her home was destroyed. She testified that the Tutsi refugees there were beaten often by the police and the Accused, whom she described as "supervising." She recalled the Accused publicly name a teacher called Tharcisse as an accomplice and send the police to find him. They brought Tharcisse and his wife and made them sit in the mud. With the Accused standing nearby they then killed Tharcisse. They took off his wife's clothing and told her to go and die somewhere else. Witness KK testified that on the same day, on the orders of the Accused, the Interahamwe brought teachers from Remera, who were also forced to sit in the mud. She said they started by clubbing a young teacher who had been brought with his fiancée, and that during this time the Accused was walking around and supervising the police, who were beating refugees. The teachers were critically wounded with small hoes and taken in a wheelbarrow to a mass grave, many still breathing, left to die a slow death.

428. Witness KK testified that her husband was beaten at the bureau communal and injured on the head. After escaping, he was captured by Interahamwe, and Witness KK received a message from him requesting to speak to her before he died. She found him behind the bureau communal with Interahamwes armed with clubs and spears, who then took him away between the two

buildings of the bureau communal. She learned later that he was killed. Witness KK later went to the Accused and asked him for an attestation to help her keep her children alive. She said he replied that it was not he who had made them be born Tutsi and that "when rats are killed you don't spare rats that are still in the form of fetus." Witness KK testified that she had been pregnant and miscarried after being beaten by police and Interahamwe. Of her nine children, only two survived the events of this period.

429. Witness KK also recalled seeing women and girls selected and taken away to the cultural center at the bureau communal by Interahamwes who said they were going to "sleep with" these women and girls. Witness KK testified regarding an incident in which the Accused told the Interahamwe to undress a young girl named Chantal, whom he knew to be a gymnast, so that she could do gymnastics naked. The Accused told Chantal, who said she was Hutu, that she must be a Tutsi because he knew her father to be a Tutsi. As Chantal was forced to march around naked in front of many people, Witness KK testified that the Accused was laughing and happy with this. Afterwards, she said he told the Interahamwes to take her away and said "you should first of all make sure that you sleep with this girl." (Ngo kandi nababwiye ko muzajya mubanza mukirwanaho mukarongora abo bakobwa.) Witness KK also testified regarding the rape of Tutsi women married to Hutu men. She described, after leaving the bureau communal, encountering on the road a man and woman who had been killed. She said the woman, whom she knew to be a Tutsi married to a Hutu, was "not exactly dead" and still in agony. She described the Interahamwes forcing a piece of wood into the woman's sexual organs while she was still breathing, before she died. In most cases, Witness KK said that Tutsi women married to Hutu men "were left alone because it was said that these women deliver Hutu children." She said that there were Hutu men who married Tutsi women to save them, but that these women were sought, taken away forcibly and killed. She said that she never saw the Accused rape a woman.

430. Witness NN, a Tutsi woman and the younger sister of JJ, described being raped along with another sister by two men in the courtyard of their home, just after it was destroyed by their Hutu neighbours and her brother and father had been killed. Witness NN said one of the men told her that the girls had been spared so that they could be raped. She said her mother begged the men, who were armed with bludgeons and machetes, to kill her daughters rather than rape them in front of her, and the man replied that the "principle was to make them suffer" and the girls were then raped. Witness NN confirmed on examination that the man who raped her penetrated her vagina with his penis, saying he did it in an "atrocious" manner, mocking and taunting them. She said her sister was raped by the other man at the same time, near her, so that they could each see what was happening to the other. Afterwards, she said she begged for death.

431. According to the testimony of Witness NN, after these men left, two other men who were neighbours came and one of them raped her, while the other took her sister a little further away and raped her sister. She recalled that the neighbour said that marriage had been refused to them, but now they were going to sleep with the girls without penalty (peine). She said the men left afterwards, warning the girls that they would kill them if they did not stay where they were. That evening, she said two other younger men, around the age of 15 or 16, came and asked them to "teach them because they didn't know how it was done". After these two men raped the girls, Witness NN said their mother asked her daughters to leave rather than continue to be tortured in front of her. The girls left and went into hiding with a relative.

432. After hiding for a week and one half, Witness NN said she heard that Akayesu had stopped the killings, and she went with her sister towards the bureau communal. On the way, having taken a different route from her sister, Witness NN said she met two men who said they would accompany her to the bureau communal and that they had been given orders by the bourgmestre. She said the two men then took her a short distance away and raped her, each of them in turn, leaving her there afterwards lying naked. Subsequently, she said four men herding cattle came upon her, and two of them raped her. These incidents took place in the countryside, not very far from the bureau communal, according to Witness NN. After the rapes, Witness NN said she could not move - she was unable to get up and unable to dress herself. She said her sister found her and brought her some ghee to put in her lower parts to relieve the muscles. When she was able to get up, Witness NN said she continued on her way to the bureau communal with her sister.

433. Witness NN estimated that she arrived at the bureau communal some time in the beginning of May, and she said she found about three hundred refugees there, mostly women and children. The morning after she arrived, she said she saw the Accused with a towel around his neck, moving to the place where two Interahamwes were driving a woman to rape her, between the bureau communal and the cultural center. She said she saw the Accused standing watching the men drag the woman and later on he entered the office. She said she saw the Interahamwe circle this woman and saw them on top of her but did not see them penetrate her. She also said there were many refugees watching while this was happening. During the rape, she said there were two commune policemen who were in front of the office of the bourgmestre, one called Mushumba and one called Nsengiyumva who was in plain clothes. She said they did nothing to prevent the rape from happening and that the Accused did nothing as well - only watched and entered his office. She said after the rape she saw that the naked woman was hungry and cold, and the woman was pregnant. She said she was told by an Interahamwe that the woman died at the bureau communal. Witness NN said she did not see anyone raped inside the cultural center but that the Interahamwe did come at night and take some girls away.

434. Two days after arriving at the bureau communal, Witness NN recounted seeing an Interahamwe called Rafiki, whom she had known previously and who had previously told her that he wanted to live with her. When he saw her at the bureau communal, she said he told her that he was going to rape her and not marry her. She said Rafiki took her to his home not far from the bureau communal and locked her up there for two days, during which time he raped her repeatedly day and night, a total of approximately six times. She said often when he came to rape her, he had been smoking herbs or drinking alcohol. When she returned to the bureau communal, Witness NN said she found her sister, who told her that she also had been raped again, at the bureau communal. Witness NN testified that her sister was hungry and cold, and could not move. Her sister died and when they went to bury her, they found her body had been eaten by dogs.

435. Witness NN said she saw the Accused often at the bureau communal and that she heard him tell police to remove the refugees, citing one occasion where a policeman named Mushuba beat and chased them away after receiving such an order from the Accused. She also recalled seeing the Accused when Ntereye was taken from the prison and killed. She did not witness this killing but heard a gunshot and later saw the corpse of Nteyere, his head crushed as if by a hammer. Subsequently, Witness NN said on two consecutive days she was taken with a group of several

hundred people, mostly women and children, to a hole near the bureau communal where the Interahamwe were intending to kill them with a grenade. The first day they were apparently unable to find a grenade. On the second day, they were beaten and brought back to the hole. At that time Witness NN said Rafiki, the Interahamwe who had locked her in his house, took her out of the group and said that she was his wife. According to her testimony, the Interahamwe then started stabbing the group of people, beating them with machetes and throwing them into the hole while she was standing by. Witness NN said she closed her eyes but could hear people crying and shouting. She estimated that the killing of the group took twenty minutes, and recalled feeling as if she were dead, apart from the fact that she was still breathing.

436. Witness NN said she was then taken by the younger brother of Rafiki back to his home where she stayed for one week. While she was there, she said she was locked up by Rafiki, who 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. She did not recall how many times this happened, stating that they came every day but that sometimes they did not rape her. After a week, Witness NN told the Chamber that she ran away and hid in the bush. Witness NN expressed the opinion in her testimony 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. She testified that as a result of the rapes she has had recurring vaginal discharge and pain which require treatment in hospital.

437. Witness PP, a Tutsi woman married to a Hutu man, lived very near the bureau communal. Witness PP testified that she saw three women - Alexia, the wife of Ntereye, and her two nieces Nishimwe and Louise - raped and killed at Kinihira, a basin near the bureau communal. Witness PP said that the women were brought by the Interahamwe, at the direction of the Accused, in a vehicle of the bureau communal driven by Mutabaruka, the driver of the commune of Taba. She said she first saw the women in the vehicle at the bureau communal, where she heard the Accused say to the Interahamwe, "Take them to Kinihira. Don't you know where killings take place, where the others have been killed?" According to Witness PP, who then went to Kinihira herself, the three women were forced by the Interahamwe to undress and told to walk, run and perform exercises "so that they could display the thighs of Tutsi women." All this took place, she said, in front of approximately two hundred people. After this, she said the women were raped. She described in particular detail the rape of Alexia by Interahamwe who threw her to the ground and climbed on top of her saying "Now, let's see what the vagina of a Tutsi woman feels like." According to Witness PP, Alexia gave the Interahamwe named Pierre her Bible before he raped her and told him, "Take this Bible because it's our memory, because you do not know what you're doing." Then one person held her neck, others took her by the shoulders and others held her thighs apart as numerous Interahamwe continued to rape her - Bongo after Pierre, and Habarurena after Bongo. According to the testimony, Alexia was pregnant. When she became weak she was turned over and lying on her stomach, she went into premature delivery during the rapes. Witness PP testified that the Interahamwe then went on to rape Nishimwe, a young girl, and recalled lots of blood coming from her private parts after several men raped her. Louise was then raped by several Interahamwe while others held her down, and after the rapes, according to the testimony, all three women were placed on their stomachs and hit with sticks and killed.

438. Witness PP said that no one tried to rape her because they did not know which ethnic group she belonged to. She also said she was protected from rape by an Interahamwe named Bongo because she had given him a sandwich and tea, and he told the other Interahamwe not to harm her. Witness PP testified that some women and children were able to escape from the bureau communal in April 1994 but that they had to "sacrifice themselves" in order to survive. By sacrifice she said she meant that they submitted to rape and she said that she helped to care for one of these women who subsequently came to her house for a week. On cross-examination, Witness PP described her encounter with a woman called Vestine, whom she had rescued from the pit at Kinihira where people were being thrown and where Vestine had just given birth. Witness PP said she brought Vestine to stay in the house of Emmanuel, a man she knew, and when she went back two days later, he told her that Vestine had been taken by an Interahamwe called Habarurena to a sorghum field in a place known as Kanyinya. According to Witness PP, Habarurena kept Vestine in the sorghum field for a week and raped her repeatedly. When 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." The next day Witness PP said she saw Vestine being raped, together with other women, and there was nothing she could do. On the following day, from the church where she went to pray, Witness PP said she saw Vestine being killed with a machete, by an Interahamwe called Bongo, and thrown into the pit, having been brought back there by the Interahamwe Habarurena.

439. Defence Witness DBB, a former student of the Accused currently in detention in Rwanda, testified that he went to the bureau communal on the 17 April 1994. Thereafter he went into hiding during the massacres and did not go to the bureau communal at all. Witness DBB testified that he never heard of or saw violence perpetrated against women during the events which took place in 1994, and that no women in his sector were raped. Subsequently he did say that he heard people saying that women were being raped in the commune of Taba, outside of his sector, but he said he did not witness this. Witness DBB said he did not hear the name of the Accused mentioned in connection with sexual violence and that it was being attributed to the people who were participating in the massacres and looting. Witness DBB expressed the view that these incidents were being done out of sight of the Accused. On cross-examination he said he did not know anything about the Accused allowing women to be taken away and raped at the bureau communal.

440. Defence Witness DCC, the driver of Taba commune, testified that he never heard about violence perpetrated against women in Taba commune, that the Accused perpetrated violence against women in the commune or that the Accused gave orders for women to be raped. He said that during the period he was at the bureau communal, in April and throughout May, there were refugees there and he was there every day. He said nothing happened to the women refugees, and that he did not witness any of them being beaten or taken away to be raped. He said he did not know Alexia, Ntereye's wife, and denied going to look for her, finding her, and driving her in the communal vehicle to the bureau communal and then to Kinihira. He said the bureau communal vehicle had broken down before the massacres started

441. Defence Witness DZZ, a former Taba communal policeman currently in detention in Rwanda, testified that he went to the bureau communal every day and that incidents of sexual violence did not take place there. Witness DZZ also testified that he saw no crimes of any type

being committed at the bureau communal. Witness DZZ was quite insistent that he heard of no cases of rape in the entire commune of Taba during this period. Defence Witness DCX in a similar statement said that when he was in Taba he heard no mention of sexual violence. He stated categorically that there was no rape. Defence Witness DAX when asked whether he had heard that the Interahamwe had committed crimes of sexual violence against women stated that nobody talked about such things where he was. He said he could not affirm that elsewhere maybe such things were heard or took place.

442. Defence Witness Matata, called as an expert witness, noted only one case he had heard of in Taba, an attempted rape of two girls aged fourteen and fifteen. He expressed his opinion that the bourgmestre would not have been aware of this case as it was in a region, Buguri sector, which the bourgmestre had never gone to. Witness Matata noted that there is a cultural factor which prevented people from talking about rape, but also suggested that the phenomenon of rape was introduced afterwards for purposes of blackmail. He said he had come across incidents of rape in other parts of the country but suggested that cases of rape were not frequent and not related to an ethnic group. Witness Matata expressed the opinion that rapists were more interested in satisfying their physical needs, that there were spontaneous acts of desire even in the context of killing. He noted that Tutsi women, in general, are quite beautiful and that raping them is not necessarily intended to destroy an ethnic group, but rather to have a beautiful woman.

443. Defence Witness DIX testified that her father lent his vehicle to the Accused and helped him ensure security in the commune during this period. Witness DIX testified that she was at home in Taba and heard all the news but that she did not hear anything about rape or sexual violence during the killings which took place. However, she said that she received all her information from her parents and neighbours and did not once go to the bureau communal after the killings started. She said that she herself saw the Accused just one time, in April. According to her testimony, she did not speak to him at that time, and has never spoken to him at any other time. Nevertheless, Witness DIX expressed the opinion that the Accused had committed no crime, and she was surprised that he was in prison. Defence Witness DJX, a minor and the brother of Witness DIX, also testified that he did not hear anything about rape and he did not see any cases of rape. The Chamber notes that the written statements of these two witnesses, prepared and submitted by the Defence, are identical. Witness DJX was twelve years old at the time of the events, and like Witness DIX, he testified that he did not go to the bureau communal during this period. He said he saw the Accused two times.

444. Witness DFX testified that she was never a witness to acts of rape or sexual violence in Taba and that she never even heard anyone talk about them. The Chamber notes that this witness, who is a protected witness, has a close personal relationship to the Defendant. She testified, on examination by the Chamber, that the Accused did not tell her what was happening at the bureau communal, that she did not ask him, and that her source of information was from other people. On cross-examination by the Prosecution, she testified that she herself never went to the bureau communal during this period for security reasons. On examination by the Chamber, the Witness acknowledged that in her written statement submitted by the Defence she had mentioned reports that the Interahamwe were abducting beautiful Tutsi girls and taking them home as mistresses. She conceded that such conduct could be considered sexual violence as it was not consensual.

445. Defence Witness DEEX, a Tutsi woman, testified that before killing women the Interahamwes raped them. Asked whether the Accused encouraged or authorized them in this sexual violence, she said she did not know. On cross-examination, she said that she did not personally witness sexual violence, although she heard that the girls at the house of the family where she had taken refuge were raped by the Interahamwe. Witness DEEX testified that she was given a laissez-passer by the Accused, which helped her to move around safely.

446. The Accused himself testified that he was completely surprised by the allegations of rape in Taba during the events which took place. He asserted that anyone saying that even a single woman was raped at the bureau communal was lying. While he acknowledged that some witnesses had testified that they were raped at the bureau communal, he swore, in the name of God, that the charge was made up. He said he never saw, and never heard from his policemen, that any woman was raped at the bureau communal. He said that he heard about rape accusations over Radio Rwanda and that women's associations had organized demonstrations and a march from Kigali to Taba. He suggested that perhaps this was intended to make the Chamber understand that in Taba women were raped at the bureau communal, but he insisted that women were never raped within the premises of the bureau communal or on land belonging to the bureau communal or the commune.

447. In his testimony, the Accused recalled the allegation that he had forced a young girl, Chantal, to march naked. He said he did not know her and that it never took place. He said he would not do something like that. He referred to the account of a woman raped with a wooden stick as "savagery", questioning how a woman could witness such a thing, and he referred to the statement he had been accused of making at the entrance to the cultural center as "too much". He also testified that the cultural center building is such that it would be difficult to see what was going on inside from the door and that it would be difficult for a woman lying down inside to know who is at the door. The Accused testified that there were women taking refuge all over and outside the bureau communal and that there were women in the cultural center. He denied that the Interahamwe brought women to the cultural center. He said that some of the women who took refuge at the bureau communal were killed and others escaped.

448. On examination by the Chamber, the Accused stated that he did hear about rapes in Kigali but only after he was out of the country. When asked by the Chamber for a reaction to the testimony of sexual violence, the Accused noted that rape was not mentioned in the pre-trial statements of Witness J and Witness H, although Witness H said on examination by the Chamber that she had mentioned her rape to investigators. The Accused suggested that his Indictment was amended because of pressure from the women's movement and women in Rwanda, whom he described as "worked up to agree that they have been raped." On examination by the Chamber, the Accused acknowledged that it was possible that rape might have taken place in the commune of Taba, but he insisted that no rape took place at the bureau communal. He said he first learned of the rape allegations in Taba at the Chamber and maintained that the charges were an "invented accusation.

Factual Findings

449. Having carefully reviewed the testimony of the Prosecution witnesses regarding sexual violence, the Chamber finds that there is sufficient credible evidence to establish beyond a reasonable doubt that during the events of 1994, Tutsi girls and women were subjected to sexual violence, beaten and killed on or near the bureau communal premises, as well as elsewhere in the commune of Taba. Witness H, Witness JJ, Witness OO, and Witness NN all testified that they themselves were raped, and all, with the exception of Witness OO, testified that they witnessed other girls and women being raped. Witness J, Witness KK and Witness PP also testified that they witnessed other girls and women being raped in the commune of Taba. Hundreds of Tutsi, mostly women and children, sought refuge at the bureau communal during this period and many rapes took place on or near the premises of the bureau communal - Witness JJ was taken by Interahamwe from the refuge site near the bureau communal to a nearby forest area and raped there. She testified that this happened often to other young girls and women at the refuge site. Witness JJ was also raped repeatedly on two separate occasions in the cultural center on the premises of the bureau communal, once in a group of fifteen girls and women and once in a group of ten girls and women. Witness KK saw women and girls being selected and taken by the Interahamwe to the cultural center to be raped. Witness H saw women being raped outside the compound of the bureau communal, and Witness NN saw two Interahamwes take a woman and rape her between the bureau communal and the cultural center. Witness OO was taken from the bureau communal and raped in a nearby field. Witness PP saw three women being raped at Kinihira, the killing site near the bureau communal, and Witness NN found her younger sister, dying, after she had been raped at the bureau communal. Many other instances of rape in Taba outside the bureau communal - in fields, on the road, and in or just outside houses - were described by Witness J, Witness H, Witness OO, Witness KK, Witness NN and Witness PP. Witness KK and Witness PP also described other acts of sexual violence which took place on or near the premises of the bureau communal - the forced undressing and public humiliation of girls and women. The Chamber notes that much of the sexual violence took place in front of large numbers of people, and that all of it was directed against Tutsi women.

450. With a few exceptions, most of the rapes and all of the other acts of sexual violence described by the Prosecution witnesses were committed by Interahamwe. It has not been established that the perpetrator of the rape of Witness H in a sorghum field and six of the men who raped Witness NN were Interahamwe. In the case of Witness NN, two of her rapists were neighbours, two were teenage boys and two were herdsmen, and there is no evidence that any of these people were Interahamwe. Nevertheless, with regard to all evidence of rape and sexual violence which took place on or near the premises of the bureau communal, the perpetrators were all identified as Interahamwe. Interahamwe are also identified as the perpetrators of many rapes which took place outside the bureau communal, including the rapes of Witness H, Witness OO, Witness NN, Witness J's daughter, a woman near death seen by Witness KK and a woman called Vestine, seen by Witness PP. There is no suggestion in any of the evidence that the Accused or any communal policemen perpetrated rape, and both Witness JJ and Witness KK affirmed that they never saw the Accused rape anyone.

451. In considering the role of the Accused in the sexual violence which took place and the extent of his direct knowledge of incidents of sexual violence, the Chamber has taken into account only evidence which is direct and unequivocal. Witness H testified that the Accused was present during the rape of Tutsi women outside the compound of the bureau communal, but as

she could not confirm that he was aware that the rapes were taking place, the Chamber discounts this testimony in its assessment of the evidence. Witness PP recalled the Accused directing the Interahamwe to take Alexia and her two nieces to Kinihira, saying "Don't you know where killings take place, where the others have been killed?" The three women were raped before they were killed, but the statement of the Accused does not refer to sexual violence and there is no evidence that the Accused was present at Kinihira. For this reason, the Chamber also discounts this testimony in its assessment of the evidence.

452. On the basis of the evidence set forth herein, the Chamber finds beyond a reasonable doubt that the Accused 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. There is no evidence that the Accused took any measures to prevent acts of sexual violence or to punish the perpetrators of sexual violence. In fact there is evidence that the Accused ordered, instigated and otherwise aided and abetted sexual violence. The Accused watched two Interahamwe drag a woman to be raped between the bureau communal and the cultural center. The two commune policemen in front of his office witnessed the rape but did nothing to prevent it. On the two occasions Witness JJ was brought to the cultural center of the bureau communal to be raped, she and the group of girls and women with her were taken past the Accused, on the way. On the first occasion he was looking at them, and on the second occasion he was standing at the entrance to the cultural center. On this second occasion, he said, "Never ask me again what a Tutsi woman tastes like." Witness JJ described the Accused in making these statements as "talking as if someone were encouraging a player." More generally she stated that the Accused was the one "supervising" the acts of rape. When Witness OO and two other girls were apprehended by Interahamwe in flight from the bureau communal, the Interahamwe went to the Accused and told him that they were taking the girls away to sleep with them. The Accused said "take them." The Accused told the Interahamwe to undress Chantal and march her around. He was laughing and happy to be watching and afterwards told the Interahamwe to take her away and said "you should first of all make sure that you sleep with this girl." The Chamber considers this statement as evidence that the Accused ordered and instigated sexual violence, although insufficient evidence was presented to establish beyond a reasonable doubt that Chantal was in fact raped.

453. In making its factual findings, the Chamber has carefully considered the cross-examination by the Defence of Prosecution witnesses and the evidence presented by the Defence. With regard to cross-examination, the Chamber notes that the Defence did not question the testimony of Witness J or Witness H on rape at all, although the Chamber itself questioned both witnesses on this testimony. Witness JJ, OO, KK, NN and PP were questioned by the Defence with regard to their testimony of sexual violence, but the testimony itself was never challenged. Details such as 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 were all elicited by the Defence, but at no point did the Defence suggest to the witnesses that the rapes had not taken place. The main line of questioning by the Defence with regard to the rapes and other sexual violence, other than to confirm the details of the testimony, related to whether the Accused had the authority to stop them. In cross-examination of the evidence presented by the Prosecution, specific incidents of sexual violence were never challenged by the Defence.

454. The Defence has raised discrepancies between the pre-trial written statements made by witnesses to the Office of the Prosecutor and their testimony before this Chamber, to challenge the credibility of these witnesses. The Chamber has considered the discrepancies which have been alleged with regard to the witnesses who testified on sexual violence and finds them to be unfounded or immaterial. For example, the Defence challenged Witness PP, quoting from her pre-trial statement that she stayed home during the genocide and recalling her testimony that she went out often as a contradiction. The Chamber pointed out to the Defence that elsewhere in her pre-trial statement, Witness PP had also said "I went out of my house often." The Chamber established that during this period, Witness PP stayed, generally speaking, in the Taba commune, but that she went out of her house often. Selectively quoting from the pre-trial statements, the Defence often suggested inconsistencies which, upon examination or with further explanation, were found not to be inconsistencies.

455. With regard to the inconsistencies which were established by the Defence, the Chamber finds them to be immaterial. For example, Witness OO said in her pre-trial statement that she went to the bureau communal four days after the plane crash which killed President Habyarimana. In her testimony, she said she went to the bureau communal one week after the plane crash. Witness PP said in her pre-trial statement that when she rescued Vestine, Vestine was thereafter taken from her by Habarurena. In her testimony, Witness PP said she left Vestine at the house of Emmanuel, from which Vestine was taken by Habarurena. Whether Tutsi women were stripped on the way to or at Kinihira is the core of another discrepancy between the pre-trial statement and testimony of Witness PP. The Chamber considers that these inconsistencies are not of material consequence and that they are not substantial enough to impeach the credibility of the witnesses. The Chamber is of the view 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.

456. The Defence in its closing argument used the example of Witness J to demonstrate the dishonesty of Prosecution witnesses. He recalled that Witness J testified that she was six months pregnant, and that when her brother was killed she climbed up a tree and stayed there for an entire week in her condition, without any food. In fact, the Defence is misrepresenting Witness J's testimony. She did not say that she stayed in a tree for a whole week without food. Witness J testified that when she got hungry she came down and went to a neighbour's house for food and that subsequently her neighbour brought food to her and then she would spend the night in the tree. Under cross-examination, Witness J testified that she came down from the tree every night. What the Defence characterized as the "fantasy" of this witness, which may be "of interest to psychologists and not justice", the witness characterized as desperation, answering his challenge with the suggestion, "If somebody was chasing you, you would be able to climb a tree."

457. Of the twelve witnesses presented by the Defence, other than the Accused only two - DZZ and DCC - testified that they went regularly to the bureau communal after the killings began in Taba. These two witnesses contradicted each other on what they saw and heard. Witness DZZ, a former communal policeman currently in detention in Rwanda, testified that he heard of no cases of rape in the entire commune during this period. He testified that he was at the bureau

communal every day and that no sexual violence took place there. He also testified that no crimes of any sort took place at the bureau communal - a categorical statement which, in the light of all the other witnesses who have testified that killings took place at the bureau communal, is highly implausible. The Accused himself testified that killings took place at the bureau communal. Witness DCC, who is currently in detention in Rwanda, also testified that killings took place at the bureau communal. Witness DCC was the driver of the commune during this time, and he testified that he never heard that violence was perpetrated against women in Taba. He denied bringing Alexia, the wife of Ntereye, in the communal vehicle to the bureau communal and then to Kinihira, and he testified that this vehicle had broken down before the massacres started. Yet Defence Witness DAX testified that the communal vehicle was in use between April and June. Witness PP also testified that she saw the driver in this vehicle within this time frame. For these reasons the Chamber does not accept the testimony of Witness DZZ and DCC with regard to sexual violence.

458. Most of the Defence witnesses did not go to the bureau communal during the period from 7 April 1994 to the end of June 1994. Witness DCX, who testified that he did not hear any mention of sexual violence, only went to the bureau communal two times during this period, for personal reasons, and passed by the bureau several times. Witness DEEX, a Tutsi woman, who testified that she went once to the bureau communal, did hear that women were being raped by the Interahamwe before they were killed. The other Defence witnesses who testified that they had not heard any mention of sexual violence stated that they did not go to the bureau communal at any time after the killings started. Witness DBB, Witness DAX, Witness DAAX, Witness DIX, Witness DJX, Witness DFX and Witness Matata never went to the bureau communal during this period. Witness DAAX and Witness Matata, who was called as an expert, were not in the commune of Taba during this period, and Witness DBB was in hiding after 17 April 1994. The Chamber considers that these witnesses were not in a position to know what occurred at the bureau communal. By their own accounts none of them, with the exception of Witness DAAX, had any conversation with the Accused regarding what was happening there. Witness DAAX, a prefect, testified that he lost contact with the Accused after 18 April 1994, before the killings began. The testimony of these witnesses therefore does not discredit the evidence presented by the Prosecution witnesses.

459. With regard to the testimony of the Accused, the Chamber finds very little concrete evidence or argument on sexual violence other than his bare denial that it occurred. The only specific incident referred to by the Accused on direct examination was the forced undressing and parading of Chantal, which he denied. On examination by the Chamber, the Accused subsequently referred to other incidents and a statement he was said to have made outside the cultural center, suggesting that it would be difficult for a person standing at the entrance to see what was happening inside, and that it would be difficult for a person inside lying down to see who was at the entrance. The Accused did not assert that this was impossible, and these comments were made in an offhand manner rather than as a serious defence. The Accused simply stated that there was very little to say about the allegations of sexual violence, that unlike the killings this was impossible and not even for discussion.

460. Faced with first-hand personal accounts from women who experienced and witnessed sexual violence in Taba and at the bureau communal, and who swore under oath that the

Accused was present and saw what was happening, the Chamber does not accept the statement made by the Accused. The Accused insists that the charges are fabricated, but the Defence has offered the Chamber no evidence to support this assertion. There is overwhelming evidence to the contrary, and the Chamber does not accept the testimony of the Accused. The findings of the Chamber are based on the evidence which has been presented in this trial. As the Accused flatly denies the occurrence of sexual violence at the bureau communal, he does not allow for the possibility that the sexual violence may have occurred but that he was unaware of it.

III. LEGAL FINDINGS

7.7. Count 13 (rape) and Count 14 (other inhumane acts) - Crimes against Humanity

685. In the light of its factual findings with regard to the allegations of sexual violence set forth in paragraphs 12A and 12B of the Indictment, the Tribunal considers the criminal responsibility of the Accused on Count 13, crimes against humanity (rape), punishable by Article 3(g) of the Statute of the Tribunal and Count 14, crimes against humanity (other inhumane acts), punishable by Article 3(i) of the Statute.

686. In considering the extent to which acts of sexual violence constitute crimes against humanity under Article 3(g) of its Statute, the Tribunal must define rape, as there is no commonly accepted definition of the term in international law. The Tribunal notes that many of the witnesses have used the term "rape" in their testimony. At times, the Prosecution and the Defence have also tried to elicit an explicit description of what happened in physical terms, to document what the witnesses mean by the term "rape". The Tribunal notes that while rape has been historically defined in national jurisdictions as non-consensual sexual intercourse, variations on the form of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual. An act such as that described by Witness KK in her testimony - the Interahamwes thrusting a piece of wood into the sexual organs of a woman as she lay dying - constitutes rape in the Tribunal's view.

687. The Tribunal 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. The Tribunal 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 sexual violence they endured. 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. The Tribunal finds this approach more useful in the context of international law. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

688. The Tribunal 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. The incident described by Witness KK in which the Accused 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. The Tribunal 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, 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. Sexual violence falls within the scope of "other inhumane acts", set forth Article 3(i) of the Tribunal's Statute, "outrages upon personal dignity," set forth in Article 4(e) of the Statute, and "serious bodily or mental harm," set forth in Article 2(2)(b) of the Statute.

689. The Tribunal notes that as set forth by the Prosecution, Counts 13-15 are drawn on the basis of acts as described in paragraphs 12(A) and 12(B) of the Indictment. The allegations in these paragraphs of the Indictment are limited to events which took place "on or near the bureau communal premises." Many of the beatings, rapes and murders established by the evidence presented took place away from the bureau communal premises, and therefore the Tribunal does not make any legal findings with respect to these incidents pursuant to Counts 13, 14 and 15.

690. The Tribunal also notes that on the basis of acts described in paragraphs 12(A) and 12(B), the Accused is charged only pursuant to Article 3(g) (rape) and 3(i) (other inhumane acts) of its Statute, but not Article 3(a)(murder) or Article 3(f)(torture). Similarly, on the basis of acts described in paragraphs 12(A) and 12(B), the Accused is charged only pursuant to Article 4(e)(outrages upon personal dignity) of its Statute, and not Article 4(a)(violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment). As these paragraphs are not referenced elsewhere in the Indictment in connection with these other relevant Articles of the Statute of the Tribunal, the Tribunal concludes that the Accused has not been charged with the beatings and killings which have been established as Crimes Against Humanity or Violations of Article 3 Common to the Geneva Conventions. The Tribunal notes, however, that paragraphs 12(A) and 12(B) are referenced in Counts 1-3, Genocide and it considers the beatings and killings, as well as sexual violence, in connection with those counts.

691. The Tribunal has found that the Accused had reason to know and in fact knew that acts of sexual violence were occurring on or near the premises of the bureau communal and that he took no measures to prevent these acts or punish the perpetrators of them. The Tribunal notes that it is only in consideration of Counts 13, 14 and 15 that the Accused is charged with individual criminal responsibility under Section 6(3) of its Statute. As set forth in the Indictment, under Article 6(3) "an individual is criminally responsible as a superior for the acts of a subordinate if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof." Although the evidence supports a finding that a superior/subordinate relationship existed between the Accused and the Interahamwe who were at the bureau communal, the Tribunal notes that there is no allegation in the Indictment that the Interahamwe, who are referred to as "armed local militia," were subordinates of the Accused.

This relationship is a fundamental element of the criminal offence set forth in Article 6(3). The amendment of the Indictment with additional charges pursuant to Article 6(3) could arguably be interpreted as implying an allegation of the command responsibility required by Article 6(3). In fairness to the Accused, the Tribunal will not make this inference. Therefore, the Tribunal finds that it cannot consider the criminal responsibility of the Accused under Article 6(3).

692. The Tribunal finds, under Article 6(1) of its Statute, that the Accused, by his own words, specifically ordered, instigated, aided and abetted the following acts of sexual violence:

- (i) the multiple acts of rape of ten girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
- (ii) the rape of Witness OO by an Interahamwe named Antoine in a field near the bureau communal;
- (iii) the forced undressing and public marching of Chantal naked at the bureau communal.

693. The Tribunal finds, under Article 6(1) of its Statute, that the Accused aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal, while he was present on the premises in respect of (i) and in his presence in respect of (ii) and (iii), and by facilitating the commission of these acts through his words of encouragement in other acts of sexual violence, which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place:

- (i) the multiple acts of rape of fifteen girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
- (ii) the rape of a woman by Interahamwe in between two buildings of the bureau communal, witnessed by Witness NN;
- (iii) the forced undressing of the wife of Tharcisse after making her sit in the mud outside the bureau communal, as witnessed by Witness KK;

694. The Tribunal finds, under Article 6(1) of its Statute, that the Accused, having had reason to know that sexual violence was occurring, aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal and by facilitating the commission of such sexual violence through his words of encouragement in other acts of sexual violence which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place:

- (i) the rape of Witness JJ by an Interahamwe who took her from outside the bureau communal and raped her in a nearby forest;
- (ii) the rape of the younger sister of Witness NN by an Interahamwe at the bureau communal;
- (iii) the multiple rapes of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe by Interahamwe near the bureau communal;
- (iv) the forced undressing of Alexia, wife of Ntereye, and her two nieces Louise

and Nishimwe, and the forcing of the women to perform exercises naked in public near the bureau communal.

695. The Tribunal has established that a widespread and systematic attack against the civilian ethnic population of Tutsis took place in Taba, and more generally in Rwanda, between April 7 and the end of June, 1994. The Tribunal finds that the rape and other inhumane acts which took place on or near the bureau communal premises of Taba were committed as part of this attack.

COUNT 13

696. The Accused is judged criminally responsible under Article 3(g) of the Statute for the following incidents of rape:

- (i) the rape of Witness JJ by an Interahamwe who took her from outside the bureau communal and raped her in a nearby forest;
- (ii) the multiple acts of rape of fifteen girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
- (iii) the multiple acts of rape of ten girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
- (iv) the rape of Witness OO by an Interahamwe named Antoine in a field near the bureau communal;
- (v) the rape of a woman by Interahamwe in between two buildings of the bureau communal, witnessed by Witness NN;
- (vi) the rape of the younger sister of Witness NN by an Interahamwe at the bureau communal;
- (vii) the multiple rapes of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe by Interahamwe near the bureau communal.

COUNT 14

697. The Accused is judged criminally responsible under Article 3(i) of the Statute for the following other inhumane acts:

- (i) the forced undressing of the wife of Tharcisse outside the bureau communal, after making her sit in the mud, as witnessed by Witness KK;
- (ii) the forced undressing and public marching of Chantal naked at the bureau communal;
- (iii) the forced undressing of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe, and the forcing of the women to perform exercises naked in public near the bureau communal.

7.8. Count 1 - Genocide, Count 2 - Complicity in Genocide

705. In the opinion of the Chamber, the said acts indeed incur the individual criminal responsibility of Akayesu for having ordered, committed, or otherwise aided and abetted in the

preparation or execution of the killing of and causing serious bodily or mental harm to members of the Tutsi group. Indeed, the Chamber holds that the fact that Akayesu, as a local authority, failed to oppose such killings and serious bodily or mental harm constituted a form of tacit encouragement, which was compounded by being present to such criminal acts.

706. 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" In the opinion of the Chamber, this constitutes tacit encouragement to the rapes that were being committed.

707. In the opinion of the Chamber, the above-mentioned acts with which Akayesu is charged indeed render him individually criminally responsible for having abetted in the preparation or execution of the killings of members of the Tutsi group and the infliction of serious bodily and mental harm on members of said group.

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731. With 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 and are even, according to the Chamber, one of the worst ways of inflict 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.

732. 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". This sexualized representation of ethnic identity graphically illustrates that tutsi women were subjected to sexual violence because they were Tutsi. Sexual violence was a step in the process of destruction of the tutsi group - destruction of the spirit, of the will to live, and of life itself.

733. 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.

IV. EVIDENTIARY MATTERS – NOTES ON LANGUAGE

152. The terms gusambanya, kurungora, kuryamana and gufata ku ngufu were used interchangeably by witnesses and translated by the interpreters as "rape". The Chamber has consulted its official trial interpreters to gain a precise understanding of these words and how they have been interpreted. The word gusambanya means "to bring (a person) to commit adultery or fornication". The word kurungora means "to have sexual intercourse with a woman". This term is used regardless of whether the woman is married or not, and regardless of whether she gives consent or not. The word kuryamana means "to share a bed" or "to have sexual intercourse", depending on the context. It seems similar to the colloquial usage in English and in French of the term "to sleep with". The term gufata ku ngufu means "to take (anything) by force" and also "to rape".

153. The context in which these terms are used is critical to an understanding of their meaning and their translation. The dictionary entry for kurungora [68](#), the most generic term for sexual intercourse, includes as an example of usage of this word, the sentence "Mukantwali yahuye n'abasore batatu baramwambura baramurongora," for which the dictionary translation into French is "Mukantwali a recontré trois jeunes gens qui l'ont dévalisée et violée" (in English "Mukantwali met three young men who robbed her of her belongings and raped her.")

154. The Chamber notes that the accused objected on one occasion to the translation of the words stated by Witness JJ ("Batangira kujya babafata ku ngufu babakoresha ibyo bashaka") as

"They began to rape them." It was clarified that the witness said "they had their way with them." The Chamber notes that in this instance the term used, babafata ku ngufu, is the term which of the four terms identified in the paragraph above is the term most closely connected to the concept of force. Having reviewed in detail with the official trial interpreters the references to "rape" in the transcript, the Chamber is satisfied that the Kinyarwanda expressions have been accurately translated.